Passage of the

Children and Young People (Scotland) Bill 2013

SPPB 199
Passage of the
Children and Young People (Scotland) Bill 2013
SP Bill 27 (Session 4), subsequently 2014 asp 8

SPPB 199

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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and "As Passed");
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
Introduction, followed by publication of the Bill and its accompanying documents;

Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;

Stage 2: the Bill returns to a committee for detailed consideration of amendments;

Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The Education and Culture Committee was the lead committee at Stage 1. Relevant extracts from the Official Report and minutes and all written submissions received (all originally published separately from the Stage 1 Report on the Parliament’s website) are included in this volume, after the Stage 1 Report.

The Local Government and Regeneration Committee also reported on the Bill at Stage 1, as did the Delegated Powers and Law Reform Committee and the Finance Committee. Again, any additional material relating to each Committee’s consideration of the Bill is included after the relevant committee report.

The Education and Culture Committee took evidence on the issue of school closures between Stages 1 and 2. Relevant Official Report and minute extracts, along with written submissions received, are included at the appropriate point. No formal report was issued by the Committee in relation to this evidence.
Various additional pieces of relevant correspondence are also included throughout.

The Finance Committee took evidence on the Supplementary Financial Memorandum on the morning of the day on which Stage 3 took place. Later correspondence relating to this evidence session, along with extracts from the Official Report and minutes of a further evidence session which took place before the Committee on 4 June 2014 are included for completeness, despite the Bill having been passed by the Parliament on 19 February 2014.
Children and Young People (Scotland) Bill
[AS INTRODUCED]

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An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children’s hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

PART 1

RIGHTS OF CHILDREN

1 Duties of Scottish Ministers in relation to the rights of children

10 (1) The Scottish Ministers must—

(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and

(b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

15 (2) The Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.

10 (3) As soon as practicable after the end of each 3 year period, the Scottish Ministers must lay before the Scottish Parliament a report of—

(a) what steps they have taken in that period to secure better or further effect in Scotland of the UNCRC requirements, and

(b) what they have done in pursuance of subsection (2).

20 (4) In subsection (3), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.
(5) As soon as practicable after a report has been laid before the Scottish Parliament under subsection (3), the Scottish Ministers must publish it (in such manner as they consider appropriate).

2 Duties of public authorities in relation to the UNCRC

(1) As soon as practicable after the end of each 3 year period, an authority to which this section applies must publish (in such manner as the authority considers appropriate) a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements.

(2) In subsection (1), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

(3) Two or more authorities to which this section applies may satisfy subsection (1) by publishing a report prepared by them jointly.

3 Authorities to which section 2 applies

(1) The authorities to which section 2 applies are the persons listed, or persons within a description listed, in schedule 1.

(2) The Scottish Ministers may by order modify schedule 1 by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) modifying an entry listed in it.

(3) An order under subsection (2)(a) may—

(a) add a person only if the person falls within subsection (4),

(b) add a description of persons only if each of the persons within the description falls within subsection (4).

(4) A person falls within this subsection if the person—

(a) is part of the Scottish Administration,

(b) is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or

(c) is a publicly owned company.

(5) In subsection (4)(c), “publicly owned company” means a company that is wholly owned by—

(a) the Scottish Ministers, or

(b) a person listed, or a person within a description listed, in schedule 1.

(6) For the purpose of subsection (5), a company is wholly owned—

(a) by the Scottish Ministers if it has no members other than—

(i) the Scottish Ministers or other companies that are wholly owned by them,
(ii) persons acting on behalf of the Scottish Ministers or of such other companies,

(b) by a person listed, or a person within a description listed, in schedule 1 if it has no members other than—

(i) the person or other companies that are wholly owned by the person, or

(ii) persons acting on behalf of the person or of such other companies.

(7) In this section, “company” includes any body corporate.

4 Interpretation of Part 1

(1) In this Part—

“the rights of children” includes the rights and obligations set out in—

(a) the UNCRC,

(b) the first optional protocol to the UNCRC, and

(c) the second optional protocol to the UNCRC,

“the UNCRC” means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989,

“the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

“the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,

“the UNCRC requirements” means the rights and obligations set out in—

(a) Part 1 of the UNCRC,

(b) Articles 1 to 6(1), 6(3) and 7 of the first optional protocol, and

(c) Articles 1 to 10 of the second optional protocol.

(2) A reference in subsection (1) to a UNCRC document is to be read as a reference to that document subject to—

(a) any amendments in force in relation to the United Kingdom at the time, and

(b) any reservations, objections or interpretative declarations by the United Kingdom in force at the time.

(3) In subsection (2), “UNCRC document”—

(a) means the UNCRC or any optional protocol to the UNCRC, and

(b) includes provision of a UNCRC document.

(4) Where subsection (5) applies, the Scottish Ministers may by order modify subsection (1) as they consider appropriate to take account of—

(a) an optional protocol to the UNCRC, or

(b) an amendment of a document referred to in subsection (1) at the time.

(5) This subsection applies where the protocol or amendment is one which—
(a) the United Kingdom has ratified, or
(b) the United Kingdom has signed with a view to ratification.

(6) No modification may be made by an order under subsection (4) so as to come into force before the protocol or amendment is in force in relation to the United Kingdom.

**PART 2**

**COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND**

**5 Investigations by the Commissioner**

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 7—

(a) for subsections (1) and (2), substitute—

“(1) The Commissioner may carry out an investigation into—

(a) whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (such an investigation being called a “general investigation”),

(b) whether, by what means and to what extent a service provider had regard to the rights, interests and views of a child or young person in making a decision or taking an action that affected that child or young person (such an investigation being called an “individual investigation”).

(2) The Commissioner may carry out a general investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to—

(a) children and young people generally, or

(b) particular groups of children and young people.

(2A) The Commissioner may carry out an investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.”;

(b) in subsection (3), omit paragraph (b),

(c) after that subsection, add—

“(4) Subsection (5) applies in relation to a matter about which the Commissioner may carry out an individual investigation.

(5) Where the Commissioner considers that the matter may be capable of being resolved without an investigation, the Commissioner may with a view to securing that outcome take such steps as the Commissioner considers appropriate.”.

(3) In section 8—

(a) in subsection (1), for paragraph (b) substitute—
“(b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.”,

(b) in subsection (2), for “An” substitute “A general”,

(c) after that subsection, add—

“(3) An individual investigation is to be conducted in private.”.

(4) In section 11—

(a) in subsection (1), for “lay before the Parliament” substitute “prepare”,

(b) in subsection (3), for “laid before the Parliament” substitute “finalised”,

(c) after that subsection, add—

“(4) The Commissioner must lay before the Parliament the report of a general investigation.

(5) The Commissioner may lay before the Parliament the report of an individual investigation.”.

6 Requirement to respond to Commissioner’s recommendations

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 11—

(a) after subsection (2), insert—

“(2A) In relation to any such recommendation, the report may include a requirement to respond.

(2B) A requirement to respond is a requirement that the service provider provides, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out—

(a) what the service provider has done or proposes to do in response to the recommendation; or

(b) if the service provider does not intend to do anything in response to the recommendation, the reasons for that.”,

(b) after subsection (5) (as inserted by section 5 of this Act), add—

“(6) Where a report of an investigation includes a requirement to respond, the Commissioner must give a copy of the report to the service provider.”.

(3) After section 14, insert—

“14AA Publication of responses to recommendations of investigations

(1) The Commissioner must publish any statement provided in response to a requirement to respond to a recommendation arising out of a general investigation.

(2) Subsection (1) does not apply if, or to the extent that, the Commissioner considers publication to be inappropriate.
(3) The Commissioner may publish any statement provided in response to a requirement to respond to a recommendation arising out of an individual investigation.

(4) The Commissioner must ensure that, so far as reasonable and practicable having regard to the subject matter, the version of the statement which is published under subsection (1) or (3) does not name or identify any child or young person, or group of children or young people, referred to in it.

(5) The Commissioner may, in such manner as the Commissioner considers appropriate, publicise a failure to comply with a requirement to respond."

PART 3

CHILDREN’S SERVICES PLANNING

7 Introductory

(1) For the purposes of this Part—

“children’s service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which is provided wholly or mainly to, or for the benefit of—

(a) children generally, or
(b) children with needs of a particular type (such as looked after children or children with a disability or a need for additional support in learning),

“other service provider” means—

(a) the chief constable of the Police Service of Scotland,
(b) the Scottish Fire and Rescue Service,
(c) the Principal Reporter,
(d) the National Convener of Children’s Hearings Scotland,
(e) the Scottish Court Service,
(f) the Scottish Ministers,

“related service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which though not a children’s service is capable of having a significant effect on the wellbeing of children,

“relevant health board” means a health board whose area comprises some or all of the area of the local authority.

(2) The persons referred to in the definitions of “children’s service” and “related service” in subsection (1) are—

(a) the local authority,
(b) any relevant health board,
(c) any other service provider.

(3) The Scottish Ministers may by order specify—

(a) services which are to be considered to be included within or excluded from the definition of “children’s service” or “related service” in subsection (1),
(b) matters in relation to services falling within either of those definitions which are
to be considered to be included within or excluded from those services.

(4) Before making such an order, the Scottish Ministers must consult—
   (a) each health board,
   (b) each local authority, and
   (c) where the service concerned is provided by one of the other service providers, that
       person.

(5) The Scottish Ministers may by order modify the definition of “other service provider” in
subsection (1) by—
   (a) adding a person or a description of persons,
   (b) removing an entry listed in it, or
   (c) varying an entry listed in it.

(6) A function conferred by this Part on a local authority and each relevant health board is
to be exercised by those persons jointly.

8 Requirement to prepare children’s services plan

(1) A local authority and each relevant health board must in respect of each 3 year period
prepare a children’s services plan for the area of the local authority.

(2) In subsection (1)—
   “3 year period” means—
   (a) the period of 3 years beginning with such date after the coming into force
       of this section as the Scottish Ministers specify by order, and
   (b) each subsequent period of 3 years,
   “children’s services plan” means a document setting out their plans for the
provision over that period of all—
   (a) children’s services, and
   (b) related services.

9 Aims of children’s services plan

(1) A children’s services plan is to be prepared with a view to securing the achievement of
the aims in subsection (2).

(2) Those aims are—
   (a) that children’s services in the area concerned are provided in the way which—
       (i) best safeguards, supports and promotes the wellbeing of children in the
           area concerned,
       (ii) is most integrated from the point of view of recipients, and
       (iii) constitutes the most efficient use of available resources,
(b) that related services in the area concerned are provided in the way which, so far as consistent with the objects and proper delivery of the service concerned, safeguards, supports and promotes the wellbeing of children in the area concerned.

10 Children’s services plan: process

(1) In preparing a children’s services plan a local authority and each relevant health board must—

(a) give each of the other service providers an effective opportunity (consistent with the extent to which the services they provide are to be the subject of the children’s services plan) to participate in or contribute to the preparation of the plan, and

(b) consult—

(i) such organisations as appear to fall within subsection (2),

(ii) such social landlords as appear to provide housing in the area of the local authority, and

(iii) such other persons as the Scottish Ministers may by direction specify.

(2) The organisations falling within this subsection are organisations (whether or not formally constituted) which—

(a) represent the interests of persons who use or are likely to use any children’s service or related service in the area of the local authority, or

(b) provide a service in the area which, if it were provided by the local authority, any relevant health board or any of the other service providers, would be a children’s service or a related service.

(3) In subsection (1)(b)(ii), “social landlords” has the meaning given by section 165 of the Housing (Scotland) Act 2010.

(4) A direction under subsection (1)(b)(iii) may—

(a) specify different persons for different local authority areas,

(b) be revised or revoked.

(5) Each of other service providers is to participate in or contribute to the preparation of the children’s services plan in accordance with the opportunity given to them under subsection (1)(a).

(6) The persons to be consulted under subsection (1)(b) are to meet any reasonable request which the local authority and each relevant health board make of them—

(a) to participate in the preparation of the children’s services plan for the area,

(b) to contribute to the preparation of that plan.

(7) As soon as reasonably practicable after a children’s services plan has been prepared, the local authority and each relevant health board must submit it to each of the other service providers for agreement.

(8) As soon as reasonably practicable after each of the other service providers has agreed a children’s services plan, the local authority and each relevant health board must—

(a) submit it to the Scottish Ministers, and

(b) publish it (in such manner as the persons who prepared it consider appropriate).
11  Children’s services plan: review
   (1) A local authority and each relevant health board—
       (a) must keep the children’s services plan for the area of the local authority under
           review, and
       (b) may in consequence prepare a revised children’s services plan.
   (2) The following provisions apply to a revised children’s services plan as they apply to a
       children’s services plan—
           section 9,
           section 10, and
           subsection (1) of this section.

12  Implementation of children’s services plan
   (1) Subsection (2) applies where a children’s services plan is published under section 10(8).
   (2) The local authority, each relevant health board and each of the other service providers
       must, so far as reasonably practicable, provide children’s services and related services in
       the area of the local authority in accordance with the plan.
   (3) Subsection (2) does not apply to the extent that the person providing the service
       considers that to comply with it would adversely affect the wellbeing of a child.

13  Reporting on children’s services plan
   (1) As soon as practicable after the end of each 1 year period, a local authority and each
       relevant health board must publish (in such manner as they consider appropriate) a
       report on the extent to which—
           (a) children’s services and related services have in that period been provided in the
               area of the local authority in accordance with the children’s services plan, and
           (b) that provision has achieved—
               (i) the aims listed in section 9(2),
               (ii) such outcomes in relation to the wellbeing of children in the area as the
                    Scottish Ministers may by order prescribe.
   (2) In subsection (1), “1 year period” means—
       (a) the period of 1 year beginning with the date specified under section 8(1), and
       (b) each subsequent period of 1 year.

14  Assistance in relation to children’s services planning
   (1) A person mentioned in subsection (2) must comply with any reasonable request made of
       them to provide a local authority and each relevant health board with information,
       advice or assistance for the purposes of exercising their functions under this Part.
   (2) Those persons are—
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(a) any of the other service providers (but only in so far as the information, advice or assistance relates to a children’s service or a related service which it is a function of the other service provider to provide),

(b) any of the persons mentioned in section 10(1)(b).

Subsection (1) does not apply where the person considers that the provision of the information, advice or assistance concerned would—

(a) be incompatible with any duty of the person, or

(b) unduly prejudice the exercise of any function of the person.

15 Guidance in relation to children’s services planning

(1) The persons mentioned in subsection (2) must have regard to any guidance issued by the Scottish Ministers about the exercise of the functions conferred on them by this Part (other than the function of complying with section 12).

(2) Those persons are—

(a) a local authority and each relevant health board,

(b) each of the other service providers.

(3) Guidance may be issued generally or for particular purposes.

(4) Different guidance may be issued for different local government areas or otherwise for different purposes.

(5) Before issuing or revising guidance, the Scottish Ministers must consult the persons to whom it relates.

16 Directions in relation to children’s services planning

(1) The persons mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of the functions conferred by this Part (other than the function of complying with section 12).

(2) Those persons are—

(a) a local authority and each relevant health board,

(b) each of the other service providers.

(3) Directions may be issued generally or for particular purposes.

(4) Different directions may be issued to different persons or otherwise for different purposes.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to which it relates.

17 Children’s services planning: default powers of Scottish Ministers

(1) This section applies where the Scottish Ministers consider that a local authority and each relevant health board—

(a) are not exercising a function conferred on them by this Part, or

(b) are in exercising such a function not complying with section 15(1).

(2) The Scottish Ministers may direct that the function—
(a) is to be exercised in particular way, or
(b) is to be exercised instead by such of the persons mentioned in subsection (3) as
the Scottish Ministers consider appropriate.

(3) Those persons are—
(a) one of or some of the persons whose function it is,
(b) other local authorities or health boards.

(4) A direction under subsection (2)(b) may include such provision as the Scottish Ministers
consider appropriate as to the making by a person who is not to be exercising the
function of payment to a person who is to exercise the function by virtue of the
direction.

(5) Before issuing, revising or revoking a direction under subsection (2) the Scottish
Ministers must consult—
(a) the local authority and relevant health boards whose failure is to be, or is, the
subject of the direction, and
(b) such other persons as they consider appropriate.

(6) Where the Scottish Ministers consider that a direction under subsection (2) has been or
would be insufficient to achieve effective exercise of the function concerned they may
by order constitute a joint board of the local authority and each relevant health board to
exercise the function.

(7) A order under subsection (6) may include provision as to—
(a) the constitution and proceedings of the joint board,
(b) the membership of the joint board,
(c) the transfer to the joint board of any property, rights or liabilities of the local
authority or any of the relevant health boards,
(d) the transfer to the joint board of any staff of the local authority or any of the
relevant health boards,
(e) the supply of services or facilities by the local authority or any of the relevant
health boards to the joint board,
(f) direction by the Scottish Ministers of the exercise by the joint board of any of its
functions, or
(g) such other matters relating to the operation of the joint board as the Scottish
Ministers consider appropriate.

(8) A joint board constituted under subsection (6) is to be a body corporate.

(9) Before making an order under subsection (6) the Scottish Ministers must consult—
(a) the local authority and relevant health boards to whom it relates, and
(b) such other persons as they consider appropriate.

18 Interpretation of Part 3
In this Part—
“children’s services plan” has the meaning given by section 8(2),
“service” means any service or support—
(a) which must be provided by the person concerned, or
(b) which the person concerned has power to provide.

**PART 4**

**PROVISION OF NAMED PERSONS**

19 **Named person service**

(1) In this Part, “named person service” means the service of making available, in relation to a child or young person, an identified individual who is to exercise the functions in subsection (5).

(2) An individual may be identified for the purpose of a named person service only if the individual falls within subsection (3).

(3) An individual falls within this subsection if—

(a) the individual—

(i) is an employee of the service provider, or

(ii) is, or is an employee of, a person who exercises any function on behalf of the service provider, and

(b) the individual meets such requirements as to training, qualifications, experience or position as may be specified by the Scottish Ministers by order.

(4) An individual does not fall within subsection (3) if the individual is a parent of the child or young person.

(5) The functions referred to in subsection (1) are—

(a) doing such of the following where the named person considers it to be appropriate in order to promote, support or safeguard the wellbeing of the child or young person—

(i) advising, informing or supporting the child or young person, or a parent of the child or young person,

(ii) helping the child or young person, or a parent of the child or young person, to access a service or support, or

(iii) discussing, or raising, a matter about the child or young person with a service provider or relevant authority, and

(b) such other functions as are specified by this Act or any other enactment as being functions of a named person in relation to a child or young person.

(6) The named person functions are exercised on behalf of the service provider concerned.

(7) Responsibility for the exercise of the named person functions lies with the service provider rather than the named person.

20 **Named person service in relation to pre-school child**

(1) A health board is to make arrangements for the provision of a named person service in relation to each pre-school child residing in its area.

(2) A “pre-school child” is a child who—
(a) has not commenced attendance at a primary school, and
(b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child’s commencement at primary school being delayed.

(3) For the purposes of this section—
(a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,
(b) references to attendance at a primary school do not include attendance at a nursery class in such a school,
(c) references to the relevant local authority are to the local authority for the area in which the child concerned resides.

21 Named person service in relation to children not falling within section 20

(1) A local authority is to make arrangements for the provision of a named person service in relation to each child residing in its area, other than—
(a) a pre-school child, or
(b) a child falling within subsection (2) or (3).

(2) A child falls within this subsection if the child is—
(a) a pupil at a public school which is managed by a different local authority,
(b) a pupil at—
(i) a grant-aided school, or
(ii) an independent school, or
(c) kept in secure accommodation.

(3) A child falls within this subsection if the child is a member of any of the regular forces.

(4) During any period when a child falls within subsection (2)(a), the local authority which manages the school concerned is to make arrangements for the provision of a named person service in relation to the child.

(5) During any period when a child falls within subsection (2)(b) or (c), the directing authority of the establishment concerned is to make arrangements for the provision of a named person service in relation to the child.

22 Continuation of named person service in relation to certain young people

(1) A person mentioned in subsection (5) is to make arrangements for the provision of a named person service in relation to each young person.

(2) A “young person” is a person who falls within subsection (3) or (4).

(3) A person falls within this subsection if the person—
(a) attained the age of 18 years while a pupil at a school, and
(b) has since attaining that age, remained a pupil at that or another school.

(4) A person falls within this subsection if the person—
(a) attained the age of 18 years while kept in secure accommodation, and
(b) has since attaining that age remained kept in secure accommodation.

(5) The person referred to in subsection (1) is—
(a) where the young person is a pupil at a school managed by a local authority, that authority,
(b) in any other case, the directing authority of the establishment concerned.

23 Communication in relation to movement of children and young people

(1) This section applies where a person ceases to be the service provider in relation to a child or young person.

(2) The person (“the outgoing service provider”) must as soon as is reasonably practicable—
(a) inform any other person which has become or which it considers may be the service provider in relation to the child or young person (“the incoming service provider”) that the outgoing service provider has ceased to be the service provider in relation to the child or young person, and
(b) provide the incoming service provider with—
(i) the name and address of the child or young person and each parent of the child or young person (so far as the outgoing service provider has that information), and
(ii) all information which the outgoing service provider holds which falls within subsection (3).

(3) Information falls within this subsection if the outgoing service provider considers that—
(a) it might be relevant to—
(i) the exercise by the incoming service provider of any functions of a service provider under this Part, or
(ii) the future exercise of the named person functions in relation to the child or young person,
(b) it ought to be provided for that purpose, and
(c) its provision would not prejudice the conduct of a criminal investigation or the prosecution of any offence.

24 Duty to communicate information about role of named persons

(1) Each service provider must publish (in such manner as it considers appropriate) information about—
(a) the named person service in its area or establishment,
(b) how the named person functions are, generally, exercised in its area or establishment,
(c) the arrangements, generally, for contacting named persons in its area or establishment,
(d) how the service provider generally exercises its functions under this Part, and
(e) such other matters relating to this Part as it considers appropriate.
(2) The service provider in relation to a child or young person must provide the child or young person and the parents of the child or young person with information about the arrangements for contacting the named person for the child or young person—

(a) as soon as reasonably practicable after it becomes the service provider in relation to the child or young person, and

(b) as soon as reasonably practicable after there is any change in those arrangements.

25 **Duty to help named person**

(1) Subsection (2) applies where it appears to the service provider in relation to a child or young person that another service provider or a relevant authority could, by doing a certain thing, help in the exercise of any of the named person functions for a child or young person.

(2) The other service provider or relevant authority must comply with any request for such help which is made of it, unless subsection (3) applies.

(3) This subsection applies where the other service provider or relevant authority considers that the provision of the help would—

(a) be incompatible with any duty of the other service provider or relevant authority, or

(b) unduly prejudice the exercise of any function of the other service provider or relevant authority.

26 **Information sharing**

(1) A service provider or relevant authority must provide to the service provider in relation to a child or young person any information which the person holds which falls within subsection (2).

(2) Information falls within this subsection if the information holder considers that—

(a) it might be relevant to the exercise of the named person functions in relation to the child or young person,

(b) it ought to be provided for that purpose, and

(c) its provision to the service provider in relation to the child or young person would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

(3) The service provider in relation to a child or young person must provide to a service provider or relevant authority any information which the person holds which falls within subsection (4).

(4) Information falls within this subsection if the information holder considers that—

(a) it might be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person,

(b) it ought to be provided for that purpose, and

(c) its provision to the service provider or relevant authority would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
(5) The service provider in relation to a child or young person may provide to a service provider or relevant authority any information which the person holds which falls within subsection (6).

(6) Information falls within this subsection if the information holder considers that its provision to the service provider or relevant authority is necessary or expedient for the purposes of the exercise of any of the named person functions.

(7) References in this section to a service provider or a relevant authority include any person exercising a function on behalf of a service provider or relevant authority.

27 Disclosure of information

(1) The provision of information under this Part is not to be taken to breach any prohibition or restriction on the disclosure of information.

(2) Subsection (3) applies—
   (a) where by virtue of subsection (1), a person provides information in breach of a duty of confidentiality, and
   (b) in providing the information, the person informs the recipient of the breach of duty.

(3) The recipient is not to provide the information to any other person, unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

28 Guidance in relation to named person service

(1) Service providers must have regard to any guidance issued by the Scottish Ministers about exercising functions under this Part.

(2) Guidance may be issued generally or for particular purposes.

(3) Different guidance may be issued—
   (a) to different service providers,
   (b) to different types of service provider, or
   (c) otherwise for different purposes.

(4) Before issuing or revising guidance, the Scottish Ministers must consult any person to whom it will relate.

29 Directions in relation to named person service

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part.

(2) Those persons are—
   (a) a local authority,
   (b) a health board,
   (c) a directing authority.

(3) Directions may be issued generally or for particular purposes.
(4) Different directions may be issued to different persons or otherwise for different purposes.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to which it relates.

30 Interpretation of Part 4

(1) In this Part—

“directing authority” means—

(a) when used generally—

(i) the managers of each grant-aided school,

(ii) the proprietor of each independent school, and

(iii) the local authority or other person who manages each residential establishment which comprises secure accommodation,

(b) when used in relation to a particular establishment—

(i) in relation to a grant-aided school, the managers of the school,

(ii) in relation to an independent school, the proprietor of the school,

(iii) in relation to secure accommodation, the local authority or other person who manages the residential establishment,

“named person” means the identified individual made available in pursuance of a named person service,

“named person functions” means the functions to be exercised by way of the named person service,

“parent” has the same meaning as in the 1980 Act,

“pre-school child” has the meaning given by section 20(2),

“regular forces” has the meaning given by section 374 of the Armed Forces Act 2006,

“relevant authority” means a person listed, or within a description listed, in schedule 2,

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

“service provider” means—

(a) when used generally—

(i) each health board,

(ii) each local authority, and

(iii) each directing authority,

(b) when used in relation to a child or young person, the health board, local authority or directing authority which has the function of providing a named person service in relation to the child or young person.
“young person” has the meaning given by section 22(2).

(2) The Scottish Ministers may by order modify schedule 2 by—
   (a) adding a person or description of persons,
   (b) removing an entry listed in it, or
   (c) varying an entry listed in it.

**Part 5**

**Child’s plan**

**Child’s plan: requirement**

(1) For the purposes of this Part, a child requires a child’s plan if the responsible authority in relation to a child considers that—
   (a) the child has a wellbeing need, and
   (b) subsection (3) applies in relation to that need.

(2) A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter.

(3) This subsection applies in relation to a wellbeing need if—
   (a) the need is not capable of being met, or met fully, by the taking of action other than a targeted intervention in relation to the child, and
   (b) the need, or the remainder of the need, is capable of being met, or met to some extent, by a targeted intervention in relation to the child.

(4) A “targeted intervention” is the provision of a service by a relevant authority which is directed at meeting the needs of children whose needs are not capable of being met, or met fully, by the services which are provided generally to children by the authority.

(5) In deciding whether a child requires a child’s plan, the responsible authority is so far as reasonably practicable to ascertain and have regard to the views of—
   (a) the child, and
   (b) the child’s parents.

(6) In having regard to the views of the child, the responsible authority is to take account of the child’s age and maturity.

(7) Subsection (1) does not apply in relation to—
   (a) a child who already has a child’s plan,
   (b) a child who is a member of any of the regular forces.

(8) In subsection (7)(b), “regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

**Content of a child’s plan**

(1) A child’s plan is to contain a statement of—
   (a) the child’s wellbeing need,
   (b) the targeted intervention which requires to be provided in relation to the child,
Part 5—Child’s plan

(c) the relevant authority which is to provide the targeted intervention,
(d) the manner in which the targeted intervention is to be provided, and
(e) the outcome in relation to the child’s wellbeing need which the targeted intervention is intended to achieve.

(2) The Scottish Ministers may by order make provision as to—
(a) other information which is, or is not, to be contained in child’s plans,
(b) the form of a child’s plans.

Preparation of a child’s plan

(1) This section applies where a child requires a child’s plan.

(2) Subject to subsection (3), the responsible authority is to prepare such a plan as soon as is reasonably practicable.

(3) Where the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare a child’s plan, the relevant authority is to prepare the plan as soon as is reasonably practicable.

(4) A child’s plan may contain a targeted intervention to be provided by a relevant authority other than the authority preparing the plan only where the authority providing the service agrees.

(5) A relevant authority which declines to give its agreement as mentioned in subsection (3) or (4) must provide a statement of its reasons.

(6) In preparing a child’s plan, an authority is so far as reasonably practicable to ascertain and have regard to the views of—
(a) the child, and
(b) the child’s parents.

(7) In having regard to the views of the child, the authority preparing the child’s plan is to take account of the child’s age and maturity.

(8) The Scottish Ministers may by order make further provision as to the preparation of child’s plans.

Responsible authority: general

(1) For the purposes of this Part, the responsible authority in relation to a child is—
(a) where the child is a pre-school child, the health board for the area in which the child resides,
(b) where the child is not a pre-school child, the local authority for the area in which a child resides.

(2) Subsection (1) is subject to section 35.

(3) A “pre-school child” is a child who—
(a) has not commenced attendance at a primary school, and
(b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child’s commencement at primary school being delayed.
(4) For the purposes of this section—

(a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,

(b) the references to attendance at a primary school do not include attendance at a nursery class in such a school, and

(c) the references to the relevant local authority are to the local authority for the area in which the child concerned resides.

35 Responsible authority: special cases

(1) Where in pursuance of a decision of a local authority or health board a pre-school child resides in the area of a health board which is different to that in which the child would otherwise reside, the health board for the area in which the child would otherwise reside is the responsible authority in relation to the child.

(2) Where the child is a pupil at a public school which is managed by a local authority other than the one for the area in which the child resides, that other authority is the responsible authority in relation to the child.

(3) Where the child is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the child.

(4) Subsection (3) does not apply where the child is such a pupil by virtue of a placement by the local authority for the area in which the child resides.

(5) The Scottish Ministers may by order modify this section so as to make further or different provision as to circumstances in which section 34(1) does not apply in relation to a child.

36 Delivery of a child’s plan

(1) A relevant authority which is to provide a targeted intervention under a child’s plan is so far as reasonably practicable to provide it in accordance with the plan.

(2) Subsection (1) does not apply to the extent that the authority considers that to comply with it would adversely affect the wellbeing of the child.

37 Child’s plan: management

(1) The managing authority of a child’s plan is to keep under review whether—

(a) the wellbeing need of the child stated in the plan is still accurate,

(b) the targeted intervention, or the manner of its provision, is still appropriate,

(c) the outcome of the plan has been achieved, and

(d) the management of the plan should transfer to another relevant authority.

(2) In reviewing a child’s plan, the managing authority—

(a) is to consult—

(i) each other relevant authority which is providing a targeted intervention contained in the plan, and

(ii) where it is neither the managing authority nor consulted under subparagraph (i), the responsible authority in relation to the child, and
(b) is so far as reasonably practicable to ascertain and have regard to the views of—

(i) the child, and

(ii) the child’s parents.

(3) In having regard to the views of the child, the managing authority is to take account of the child’s age and maturity.

(4) The managing authority of a child’s plan may in consequence of the review—

(a) amend the plan so as to revise—

(i) the wellbeing need of the child,

(ii) the targeted intervention,

(iii) the manner in which the targeted intervention requires to be provided, or

(iv) the outcome which the plan is intended to achieve,

(b) transfer the management of the plan to another relevant authority, or

(c) end the plan.

(5) The Scottish Ministers may by order make provision about the management of child’s plans, including provision about—

(a) when and how a child’s plan is to be reviewed in accordance with subsection (1),

(b) who is to be the managing authority of a child’s plan,

(c) when and to whom management of a child’s plan is to or may transfer under subsection (4)(b),

(d) when and how a new targeted intervention may be included in a child’s plan,

(e) the keeping, disclosure and destruction of child’s plans.

(6) Subject to provision made under subsection (5)(b), the managing authority of a child’s plan is—

(a) the relevant authority which prepared it, or

(b) where management of the child’s plan has been transferred under subsection (4)(b), the relevant authority to which the management of the child’s plan was so transferred (or where there has been more than one such transfer, last so transferred).

38 Assistance in relation to child’s plan

(1) A relevant authority must comply with any reasonable request made of it to provide a person exercising functions under this Part with information, advice or assistance for that purpose.

(2) Subsection (1) does not apply where the authority considers that provision of the information, advice or assistance concerned would—

(a) be incompatible with any duty of the authority, or

(b) unduly prejudice the exercise of any function of the authority.

(3) The provision of information in pursuance of subsection (1) is not to be taken to breach any prohibition or restriction on the disclosure of information.

(4) Subsection (5) applies—
(a) where, by virtue of subsection (3), a person provides information in breach of a duty of confidentiality, and

(b) in providing the information, the person informs the recipient of the breach of duty.

5 (5) The recipient is not to provide the information to any other person unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

39 Guidance on child’s plans

(1) A person exercising a function under this Part (other than the function of complying with section 36) must have regard to any guidance issued by the Scottish Ministers about that matter.

(2) Guidance may be issued generally or for particular purposes.

(3) Different guidance may be issued—

(a) to different persons,

(b) to different types of person, or

(c) otherwise for different purposes.

(4) Before issuing or revising guidance, the Scottish Ministers must consult any person to whom it will relate.

40 Directions in relation to child’s plans

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 36).

(2) Those persons are—

(a) a local authority,

(b) a health board,

(c) a directing authority.

(3) Directions may be issued generally or for particular purposes.

(4) Different directions may be issued to different persons or otherwise for different purposes.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to which it relates.

41 Interpretation of Part 5

In this Part—

“directing authority” means—

(a) when used generally—

(i) the managers of each grant-aided school,

(ii) the proprietor of each independent school,
Part 6

Early learning and childcare

In this Part, “early learning and childcare” means a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.

Duty to secure provision of early learning and childcare

(1) An education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare is made available for each eligible pre-school child belonging to its area.

(2) An “eligible pre-school child” is a child who—

(a) is under school age,

(b) has not commenced attendance at a primary school (other than at a nursery class in such a school), and

(c) either—

(i) falls within subsection (3), or

(ii) is within such age range, or is of such other description, as the Scottish Ministers may by order specify.

(3) A child falls within this subsection if the child is aged 2 or over and is or has been at any time since the child’s second birthday—

(a) looked after by the authority concerned or by any other local authority, or

(b) the subject of a kinship care order.
(4) An order made under subsection (2)(c)(ii) may provide that a child is to be an eligible pre-school child only if the education authority concerned is satisfied as to any matter relating to the child which is specified in the order.

(5) In subsection (3)(b), “kinship care order” has the meaning given by section 65(1).

44 Mandatory amount of early learning and childcare

(1) The “mandatory amount”, for the purposes of section 43(1), means—

(a) 600 hours in each year for which a child is an eligible pre-school child, and

(b) a pro rata amount for each part of a year for which a child is an eligible pre-school child.

(2) The Scottish Ministers may by order modify subsection (1) so as to vary the amount of early learning and childcare which is to be made available in pursuance of section 43(1).

(3) Such an order may, without prejudice to section 77(1)(a), make different provision in relation to different types of eligible pre-school children.

45 Looked after 2 year olds: alternative arrangements to meet wellbeing needs

(1) Subsection (2) applies where—

(a) an authority’s duty under section 43(1) applies in relation to a child only by virtue of the child falling within section 43(3)(a),

(b) the authority, after assessing the child’s needs, considers that making alternative arrangements in relation to the child’s education and care would better safeguard or promote the child’s wellbeing.

(2) Where this subsection applies, the authority—

(a) need not comply with its duty under section 43(1) in relation to the child, but

(b) must make such alternative arrangements in relation to the child’s education and care as it considers appropriate for the purposes of safeguarding or promoting the child’s wellbeing.

(3) Subsection (2) does not apply in relation to a child who is not being looked after by the authority if a parent of the child objects to the authority making alternative arrangements.

(4) The authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) (and must do so on becoming aware of any significant change in the child’s circumstances) and may, following such a review, alter those arrangements.

(5) The authority must seek to ensure that a record of—

(a) the outcome of any assessment of a child’s needs that it undertakes in pursuance of subsection (1)(b), and

(b) any alternative arrangements that it makes in relation to the child’s education and care in pursuance of subsection (2)(b),

is included in any child’s plan which is prepared for the child under Part 5.
Duty to consult and plan on delivery of early learning and childcare

(1) An education authority must, at least once every 2 years—

(a) consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available in pursuance of this Part, and

(b) after having had regard to views expressed, prepare and publish a plan for how it intends to make early learning and childcare available in pursuance of this Part.

(2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

Method of delivery of early learning and childcare

(1) An education authority must ensure that it makes early learning and childcare available in pursuance of this Part by way of sessions—

(a) which are provided during at least 38 weeks of every calendar year, and

(b) which are each of more than 2.5 hours but less than 8 hours in duration.

(2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the method of delivering early learning and childcare which it describes.

Flexibility in way in which early learning and childcare is made available

In exercising functions under sections 46 and 47, an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available in pursuance of this Part is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service.

Interpretation of Part

In this Part—

“early learning and childcare” has the meaning given by section 42,

“eligible pre-school child” has the meaning given by section 43(2),

“parent” has the same meaning as in the 1980 Act.

PART 7

CORPORATE PARENTING

Corporate parents

(1) The persons listed, or within a description listed, in schedule 3 are “corporate parents” for the purposes of this Part (subject to subsection (3)).

(2) The Scottish Ministers may by order modify schedule 3 by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) varying an entry listed in it.
(3) The Scottish Ministers are not corporate parents for the purposes of sections 55 to 58.

(4) In this Part, “corporate parenting responsibilities” means the duties conferred on corporate parents by section 52.

51 Application of Part: children and young people

This Part applies to—

(a) every child who is looked after by a local authority, and

(b) every young person who—

(i) is under the age of 26, and

(ii) was (at the time when the person ceased to be of school age or at any subsequent time) but is no longer looked after by a local authority.

52 Corporate parenting responsibilities

It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions—

(a) to be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom this Part applies,

(b) to assess the needs of those children and young people for services and support it provides,

(c) to promote the interests of those children and young people,

(d) to seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing,

(e) to take such action as it considers appropriate to help those children and young people—

(i) to access opportunities it provides in pursuance of paragraph (d), and

(ii) to make use of services, and access support, which it provides, and

(f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

53 Planning by corporate parents

(1) A corporate parent must—

(a) prepare a plan for how it proposes to exercise its corporate parenting responsibilities, and

(b) keep its plan under review.

(2) Before preparing or revising a plan, a corporate parent must consult such other corporate parents, and such other persons, as it considers appropriate.

(3) A corporate parent must publish its plan, and any revised plan, in such manner as it considers appropriate (and, in particular, plans may be published together with, or as part of, any other plan or document).
Collaborative working among corporate parents

(1) Corporate parents must, in so far as reasonably practicable, collaborate with each other when exercising their corporate parenting responsibilities or any other functions under this Part where they consider that doing so would safeguard or promote the wellbeing of children or young people to whom this Part applies.

(2) Such collaboration may include—
   (a) sharing information,
   (b) providing advice or assistance,
   (c) co-ordinating activities (and seeking to prevent unnecessary duplication),
   (d) sharing responsibility for action,
   (e) funding activities jointly,
   (f) exercising functions under this Part jointly (for example, by publishing a joint plan or joint report).

Reports by corporate parents

(1) A corporate parent must report on how it has exercised—
   (a) its corporate parenting responsibilities,
   (b) its planning and collaborating functions in pursuance of sections 53 and 54, and
   (c) its other functions under this Part.

(2) Reports may, in particular, include information about—
   (a) standards of performance,
   (b) the outcomes achieved in pursuance of this Part.

(3) Reports are to be published in such manner as the corporate parent considers appropriate (and, in particular, reports may be published together with, or as part of, any other report or document).

Duty to provide information to Scottish Ministers

(1) A corporate parent must provide the Scottish Ministers with such information as they may reasonably require about how it is—
   (a) exercising its corporate parenting responsibilities,
   (b) planning, collaborating or reporting in pursuance of sections 53, 54 or 55, or
   (c) otherwise exercising functions under this Part.

(2) Information which is required may, in particular, include information about—
   (a) standards of performance,
   (b) the outcomes achieved in pursuance of this Part.

Guidance on corporate parenting

(1) A corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers.
(2) Guidance may, in particular, include advice or information about—
   (a) how corporate parents should—
      (i) exercise their corporate parenting responsibilities,
      (ii) promote awareness of their corporate parenting responsibilities,
      (iii) plan, collaborate or report in pursuance of sections 53, 54 or 55, or
      (iv) otherwise exercise functions under this Part,
   (b) outcomes which corporate parents should seek to achieve in exercising functions under this Part.

(3) Guidance may be issued generally or for particular purposes.

(4) Different guidance may be issued for different corporate parents or otherwise for different purposes.

(5) Before issuing or revising guidance, the Scottish Ministers must consult—
   (a) any corporate parent to which they relate, and
   (b) such other persons as they consider appropriate.

58 **Directions to corporate parents**

(1) A corporate parent must comply with any direction issued by the Scottish Ministers about—
   (a) its corporate parenting responsibilities,
   (b) its planning, collaborating or reporting functions under sections 53, 54 or 55, or
   (c) its other functions under this Part.

(2) Directions may be issued generally or for particular purposes.

(3) Different directions may be issued to different corporate parents or otherwise for different purposes.

(4) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
   (a) any corporate parent to which it relates, and
   (b) such other persons as they consider appropriate.

59 **Reports by Scottish Ministers**

(1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.

(2) In subsection (1), “3 year period” means—
   (a) the period of 3 years beginning with the day on which this section comes into force, and
   (b) each subsequent period of 3 years.
PART 8
AFTERCARE

60 Provision of aftercare to young people

(1) The 1995 Act is amended as follows.

(2) In section 29—
   (a) in subsection (2)—
      (i) for “twenty-one” substitute “twenty-six”,
      (ii) the words from third “and” to the end of the subsection are repealed,
   (b) in subsection (3), for “or (2) above” substitute “above or (5A) or (5B) below”,
   (c) after subsection (5) insert—
      “(5A) After carrying out an assessment under subsection (5) above in pursuance of an
      application made by a person under subsection (2) above, the local authority—
      (a) must, if satisfied that the person has any eligible needs which cannot be
      met other than by taking action under this subsection, provide the person
      with such advice, guidance and assistance as it considers necessary for
      the purposes of meeting those needs, and
      (b) may otherwise provide such advice, guidance and assistance as it
      considers appropriate having regard to the person’s welfare,
      (5B) A local authority may (but is not required to) continue to provide advice,
      guidance and assistance to a person in pursuance of subsection (5A) after the
      person reaches the age of twenty-six.”,
   (d) in subsection (6), for “(5)” substitute “(5B)”,
   (e) after subsection (7) insert—
      “(8) For the purposes of subsection (5A)(a) above, a person has “eligible needs” if
      the person needs care, attention or support of such type as the Scottish
      Ministers may by order specify.
      (9) An order made under subsection (8) is subject to the affirmative procedure.”.

(3) In section 30—
   (a) in subsection (2)(a), for “twenty-one” substitute “twenty-six”,
   (b) omit subsections (3) and (4).

PART 9
COUNSELLING SERVICES

61 Provision of counselling services to parents and others

(1) A local authority must make arrangements to secure that counselling services of such
    description as the Scottish Ministers may by order specify are made available for
    persons residing in its area who fall within subsection (2).

(2) A person falls within this subsection if the person is—
    (a) a parent of an eligible child,
(b) an individual with parental rights or parental responsibilities in relation to an eligible child.

(3) For the purposes of subsection (2), an “eligible child” is a child who is of such description as the Scottish Ministers may by order specify.

(4) An order under subsection (3)—

(a) may include provision which describes a child by reference to a matter about which the local authority must be satisfied in relation to the child,

(b) may, without prejudice to section 77(1)(a), make different provision in relation to—

(i) different descriptions of counselling services specified under subsection (1), or

(ii) each of the paragraphs of subsection (2).

(5) The reference in subsection (2)(b) to an individual with parental rights or parental responsibilities includes an individual with any of those rights or as the case may be responsibilities.

62 Counselling services: further provision

(1) The Scottish Ministers may by order make provision about—

(a) when or how counselling services specified in an order under section 61(1) are to be provided,

(b) when or how a local authority is to consider whether a child is an eligible child for the purpose of section 61(2),

(c) when or how a local authority is to review whether a child continues to be an eligible child for the purpose of section 61(2),

(d) such other matters about the provision of counselling services specified in an order under section 61(1) as the Scottish Ministers consider appropriate.

(2) An order under subsection (1)(d) may include provision about—

(a) circumstances in which counselling services specified in an order under section 61(1) may be provided subject to conditions (including conditions as to payment), and

(b) consequences of such conditions not being met.

63 Interpretation of Part 9

The following expressions have the same meaning in this Part as they have in Part 1 of the 1995 Act—

parent

parental responsibilities

parental rights.
PART 10
SUPPORT FOR KINSHIP CARE

64 Assistance in relation to kinship care orders

(1) A local authority must make arrangements to secure that kinship care assistance is made available for a person residing in its area who falls within subsection (3).

(2) “Kinship care assistance” is assistance of such description as the Scottish Ministers may by order specify.

(3) A person falls within this subsection if the person is—

(a) a person who is applying for, or considering applying for, a kinship care order in relation to an eligible child,

(b) an eligible child who is the subject of a kinship care order,

(c) a person in whose favour a kinship care order in relation to an eligible child subsists,

(d) a child who has attained the age of 16 years, where—

(i) immediately before doing so, the child fell within paragraph (b), and

(ii) the child is an eligible child.

(4) For the purposes of subsection (3), an “eligible child” is a child who is of such description as the Scottish Ministers may by order specify.

(5) An order under subsection (4)—

(a) may include provision which describes a child by reference to a matter about which the local authority must be satisfied in relation to the child,

(b) may, without prejudice to section 77(1)(a), make different provision in relation to—

(i) different descriptions of assistance specified under subsection (1), or

(ii) different paragraphs of subsection (3).

65 Orders which are kinship care orders

(1) In section 64, “kinship care order” means—

(a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child, or

(b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person.

(2) For the purposes of subsection (1), a “qualifying person” is a person who, at the time the order is made—

(a) is related to the child,

(b) is a friend or acquaintance of a person related to the child, or

(c) has such other relationship to, or connection with, the child as the Scottish Ministers may by order specify.

(3) But a parent or guardian of a child is not a “qualifying person” for the purposes of subsection (1).
(4) The references in subsection (2) to a person who is related to a child include a person who is—
   (a) married to a person who is related to the child,
   (b) related to the child by the half blood.

66 Kinship care assistance: further provision

(1) The assistance which may be specified as kinship care assistance includes—
   (a) the provision of counselling, advice or information about any matter,
   (b) the provision of financial support (or support in kind) of any description,
   (c) the provision of any service provided by a local authority on a subsidised basis.

(2) An order under section 64(1) may specify assistance by reference to assistance which a person was entitled to from, or being provided with by, a local authority immediately before becoming entitled to assistance under that section.

(3) The Scottish Ministers may by order make provision about—
   (a) when or how kinship care assistance is to be provided,
   (b) when or how a local authority is to consider whether a child is an eligible child for the purpose of section 64(3),
   (c) when or how a local authority is to review whether a child continues to be an eligible child for the purpose of section 64(3),
   (d) such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.

(4) An order under subsection (3)(d) may include provision about—
   (a) circumstances in which a local authority may provide kinship care assistance subject to conditions (including conditions as to payment for the assistance or the repayment of financial support), and
   (b) consequences of such conditions not being met (including the recovery of any financial support provided).

67 Interpretation of Part 10

In this Part, “kinship care assistance” has the meaning given by section 64(2).

PART 11

ADOPTION REGISTER

68 Scotland’s Adoption Register

After section 13 of the Adoption and Children (Scotland) Act 2007, insert—

“CHAPTER 1A

SCOTLAND’S ADOPTION REGISTER

13A Scotland’s Adoption Register
Part 11—Adoption register

(1) The Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register (referred to in this Chapter as “the Register”).

(2) The Scottish Ministers may by regulations—

(a) prescribe information which is, or types of information which are, to be included in the Register, which may include information relating to—

(i) children who adoption agencies consider ought to be placed for adoption,

(ii) persons considered by adoption agencies as suitable to have a child placed with them for adoption,

(iii) matters relating to such children or persons which arise after information about them is included in the Register,

(iv) children outwith Scotland who may be suitable for adoption,

(v) prospective adopters outwith Scotland,

(b) provide for how information is to be retained in the Register,

(c) make such further provision in relation to the Register as they consider appropriate.

(3) The Register is not to be open to public inspection or search.

(4) Information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

13B Registration organisation

(1) Arrangements made by the Scottish Ministers under section 13A(1) may in particular—

(a) authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation),

(b) provide for payments to be made to an organisation so authorised.

(2) An organisation authorised in pursuance of subsection (1) (a “registration organisation”) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

13C Supply of information for the Register

(1) An adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about—

(a) children who it considers ought to be placed for adoption or persons who were included in the Register as such children,

(b) persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons.

(2) But an adoption agency is not to disclose—

(a) any information about a child of the type referred to in subsection (1)(a), without the consent of—
(i) the child’s parent or any person who has parental responsibilities or parental rights in relation to the child, and

(ii) such other person as may be prescribed in regulations made under section 13A(2),

(b) any information about a person (other than a child) of the type referred to in subsection (1)(a), without the consent of that person, or

(c) any information about a person of the type referred to in subsection (1)(b), without the consent of that person.

(3) Regulations made under section 13A(2) may—

(a) provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers,

(b) provide for how and by when information is to be provided in pursuance of subsection (1),

(c) prescribe a fee which is to be paid by an adoption agency when providing that information,

(d) prescribe the form in which consent is to be given for the purposes of subsection (2).

13D Disclosure of information

(1) It is an offence to disclose any information derived from the Register other than in accordance with regulations made under section 13A(2) in pursuance of this section.

(2) Regulations made under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register—

(a) to an adoption agency for the purposes of helping it—

(i) to find persons with whom it would be appropriate to place a child for whom the agency is acting, or

(ii) to find a child who is appropriate for adoption by persons for whom the agency is acting,

(b) to any person (whether or not established or operating in Scotland) specified in the regulations—

(i) for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter,

(ii) for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption,

(iii) for the purpose of enabling or assisting that person to perform any functions which relate to adoption,

(iv) for use for statistical or research purposes, or

(v) for any other purpose relating to adoption.
(3) Regulations made under section 13A(2) may—
   (a) set out terms and conditions on which information may be disclosed in
       pursuance of this section,
   (b) specify steps to be taken by an adoption agency in respect of information
       received in pursuance of subsection (2),
   (c) authorise an adoption agency to disclose information derived from the
       Register for purposes relating to adoption,
   (d) prescribe a fee which is to be paid to the Scottish Ministers or a
       registration organisation in respect of a disclosure of information made
       in pursuance of subsection (2) or (4) or paragraph (c) of this subsection.

(4) Subsection (1) does not apply to a disclosure of information by or with the
     authority of the Scottish Ministers.

(5) A person who is guilty of an offence under subsection (1) is liable on summary
     conviction to imprisonment for a term not exceeding 3 months, or a fine not
     exceeding level 5 on the standard scale, or both.

13E Use of an organisation as agency for payments

(1) The Scottish Ministers may by regulations authorise a registration organisation
     or any other person to act as agent for the payment or receipt of sums payable
     by adoption agencies to other adoption agencies and may require adoption
     agencies to pay or receive such sums through the organisation.

(2) A registration organisation or other person authorised under subsection (1) is to
     perform the functions exercisable by virtue of that subsection in accordance
     with any directions (general or specific) given by the Scottish Ministers.

13F Supplementary

Nothing authorised or required to be done by virtue of this Chapter constitutes
an offence under section 72(2) or 75(1).”.

PART 12
OTHER REFORMS

Children’s hearings

69 Area support teams: establishment

(1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In schedule 1—
   (a) in paragraph 12—
      (i) in sub-paragraph (1), omit “and maintain”,
      (ii) for sub-paragraph (3), substitute—
         “(3) The National Convener—
            (a) must keep the designation of areas under sub-paragraph (1) under
                review, and
(b) may at any time revoke a designation or make a new one.

(3A) In exercising the powers to make and revoke designations, the National Convener must ensure that at all times each local authority area falls within an area designated under sub-paragraph (1).

(3B) Revocation of a designation under sub-paragraph (1) has the effect of dissolving the area support team established in consequence of the designation.

(3C) Before deciding to make or revoke a designation under sub-paragraph (1), the National Convener must consult each affected local authority.

(3D) In sub-paragraph (3C), “affected local authority” means—

(a) in the case of making a designation, each local authority whose area falls within the area proposed to be designated,

(b) in the case of revoking a designation, each constituent authority for the area support team established in consequence of the designation.

(3E) On making or revoking a designation under sub-paragraph (1), the National Convener must notify each local authority which was consulted under sub-paragraph (3C) in relation to the decision to make or revoke the designation.”,

(b) in paragraph 13—

(i) in sub-paragraph (1), the words “the National Convener establishes an area support team under paragraph 12(1)” become sub-sub-paragraph (a),

(ii) after that sub-sub-paragraph insert “; and

(b) the area of the area support team consists of or includes a new area.”,

(iii) in sub-paragraph (4)(a), for “area of the area support team” substitute “new area concerned”;

(iv) in sub-paragraph (7), after the definition of “Children’s Panel Advisory Committee” insert—

“‘new area’ means an area which has never previously been the area (or part of the area) of an area support team.”.

(3) An area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

70 Area support teams: administrative support by local authorities

(1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In schedule 1, in paragraph 14, after sub-paragraph (8) insert—

“(9) A constituent authority must provide an area support team with such administrative support as the National Convener considers appropriate.

(10) In sub-paragraph (9), “administrative support” means staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.”.
Detention of children in secure accommodation

71 Appeal against detention of child in secure accommodation

After section 44 of the Criminal Procedure (Scotland) Act 1995 insert—

“44A Appeal against detention in secure accommodation

(1) A child, or a relevant person in relation to the child, may appeal to the sheriff against a decision by a local authority to detain the child in secure accommodation in pursuance of an order made under section 44 of this Act.

(2) The sheriff may determine an appeal by—

(a) confirming the decision to detain the child in secure accommodation; or

(b) quashing that decision and directing the local authority to move the child to be detained in residential accommodation which is not secure accommodation.

(3) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).

(4) Regulations under subsection (3) may in particular—

(a) specify the period within which an appeal may be made;

(b) make provision about the hearing of evidence during an appeal;

(c) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

(5) Regulations under subsection (3) are subject to the affirmative procedure.

(6) In this section—

“relevant person”, in relation to a child, means—

(a) any person who has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) respectively of the Children (Scotland) Act 1995) in relation to the child; and

(b) where the child is subject to a compulsory supervision order which does not have effect by virtue of section 44(4) of this Act, any person who is deemed to be a relevant person in relation to the child by virtue of section 81(3), 160(4)(b) or 164(6) of the Children’s Hearings (Scotland) Act 2011; and

“secure accommodation” has the same meaning as in section 44 of this Act.”.

Schools consultation

72 Closure proposals: call-in by the Scottish Ministers

(1) In section 15 of the Schools (Consultation) (Scotland) Act 2010, in each of subsections (3), (4) and (6) for “6” substitute “8”.

(2) The amendments made by subsection (1) have effect only where the decision of the education authority to implement the closure proposal (as referred to in section 15(1) of the Schools (Consultation) (Scotland) Act 2010) is made on or after the day on which that subsection comes into force.
Wellbeing under 1995 Act

73 Consideration of wellbeing in exercising certain functions

After section 23 of the 1995 Act, insert—

“23A Sections 17 and 22: consideration of wellbeing
(1) This section applies where a local authority is exercising a function under or by virtue of section 17 or 22 of this Act.
(2) The local authority must have regard to the general principle that functions should be exercised in relation to children in a way which is designed to safeguard, support and promote their wellbeing.
(3) For the purpose of subsection (2) above, the local authority is to assess the wellbeing of a child by reference to the extent to which the matters listed in section 74(2) of the 2013 Act are or, as the case may be, would be satisfied in relation to the child.
(4) In assessing the wellbeing of a child as mentioned in subsection (3) above, a local authority is to have regard to the guidance issued under section 74(3) of the 2013 Act.
(5) In this section, “the 2013 Act” means the Children and Young People (Scotland) Act 2013.”.

Part 13
General

74 Assessment of wellbeing

(1) This section applies where under this Act a person requires to assess whether the wellbeing of a child or young person is being or would be—
(a) promoted,
(b) safeguarded,
(c) supported,
(d) affected, or
(e) subject to an effect.
(2) The person is to assess the wellbeing of the child or young person by reference to the extent to which the child or young person is or, as the case may be, would be—
Safe,
Healthy,
Achieving,
Nurtured,
Active,
Respected,
Responsible, and
Included.
(3) The Scottish Ministers must issue guidance on how the matters listed in subsection (2) are to be used to assess the wellbeing of a child or young person.

(4) Before issuing or revising such guidance, the Scottish Ministers must consult—
   (a) each local authority,
   (b) each health board, and
   (c) such other persons as they consider appropriate.

(5) In measuring the wellbeing of a child or young person as mentioned in subsection (2), a person is to have regard to the guidance issued under subsection (3).

(6) The Scottish Ministers may by order modify the list in subsection (2).

(7) Before making an order under subsection (6), the Scottish Ministers must consult—
   (a) each local authority,
   (b) each health board, and
   (c) such other persons as they consider appropriate.

Interpretation

(1) In this Act—
   “the 1980 Act” means the Education (Scotland) Act 1980,
   “the 1995 Act” means the Children (Scotland) Act 1995,
   “child” means a person who has not attained the age of 18 years,
   “health board” means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.

(2) References in this Act to a child being “looked after” are to be construed in accordance with section 17(6) of the 1995 Act.

(3) The following expressions have the same meaning in this Act as they have in the 1980 Act—
   education authority
   grant-aided school
   independent school
   managers
   nursery class
   primary school
   proprietor
   public school
   pupil
   school age.
Modification of enactments

Schedule 4 (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

Subordinate legislation

(1) Any power of the Scottish Ministers to make an order under this Act includes power to make—
   (a) different provision for different purposes,
   (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

(2) An order made under any of the following sections is subject to the affirmative procedure—
   section 3(2)
   section 7(5)
   section 17(6)
   section 30(2)
   section 35(5)
   section 44(2)
   section 47(2)
   section 50(2)
   section 74(6).

(3) An order made under section 78 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to the affirmative procedure.

(4) All other orders made under this Act are subject to the negative procedure.

(5) This section does not apply to an order made under section 79(2).

Ancillary provision

The Scottish Ministers may by order make—
   (a) such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act, and
   (b) such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

Commencement

(1) This Part (apart from sections 74, 75 and 76) comes into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
(3) An order under this section may include transitional, transitory or saving provision.

80 **Short title**

The short title of this Act is the Children and Young People (Scotland) Act 2013.
### SCHEDULE 1
*(introduced by section 3)*

**AUTHORITIES TO WHICH SECTION 2 APPLIES**

<table>
<thead>
<tr>
<th>No.</th>
<th>Authority</th>
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<tbody>
<tr>
<td>1</td>
<td>A local authority</td>
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<tr>
<td>2</td>
<td>Children’s Hearings Scotland</td>
</tr>
<tr>
<td>3</td>
<td>The Scottish Children’s Reporter Administration</td>
</tr>
<tr>
<td>4</td>
<td>A health board</td>
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<tr>
<td>5</td>
<td>A board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978</td>
</tr>
<tr>
<td>6</td>
<td>Healthcare Improvement Scotland</td>
</tr>
<tr>
<td>7</td>
<td>The Scottish Qualifications Authority</td>
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<tr>
<td>8</td>
<td>Skills Development Scotland Co. Ltd (registered number SC 202659)</td>
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<tr>
<td>9</td>
<td>Social Care and Social Work Improvement Scotland</td>
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<tr>
<td>10</td>
<td>The Scottish Social Services Council</td>
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<td>11</td>
<td>The Scottish Sports Council</td>
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<td>12</td>
<td>The chief constable of the Police Service of Scotland</td>
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<td>13</td>
<td>The Scottish Police Authority</td>
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<td>14</td>
<td>The Scottish Fire and Rescue Service</td>
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<td>15</td>
<td>The Scottish Legal Aid Board</td>
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<td>16</td>
<td>The Mental Welfare Commission for Scotland</td>
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<td>17</td>
<td>The Scottish Housing Regulator</td>
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<td>18</td>
<td>Bòrd na Gàidhlig</td>
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<td>19</td>
<td>Creative Scotland</td>
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### SCHEDULE 2
*(introduced by section 30)*

**RELEVANT AUTHORITIES**

<table>
<thead>
<tr>
<th>No.</th>
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<tbody>
<tr>
<td>1</td>
<td>The Scottish Ministers</td>
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<tr>
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<td>NHS 24</td>
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<td>3</td>
<td>NHS National Services Scotland</td>
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<td>4</td>
<td>Scottish Ambulance Service Board</td>
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<tr>
<td>5</td>
<td>State Hospitals Board for Scotland</td>
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<tr>
<td>6</td>
<td>Skills Development Scotland Co. Ltd (registered number SC 202659)</td>
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</table>
10 The Scottish Police Authority
11 The Scottish Fire and Rescue Service
12 The Scottish Court Service
13 The Commissioner for Children and Young People in Scotland
14 The Mental Health Tribunal for Scotland
15 The Mental Welfare Commission for Scotland
16 A body which is a “post-16 education body” or a “regional strategic body” for the purposes of the Further and Higher Education (Scotland) Act 2005

SCHEDULE 3
(introduced by section 50)

CORPORATE PARENTS

1 The Scottish Ministers
2 A local authority
3 The National Convener of Children’s Hearings Scotland
4 Children’s Hearings Scotland
5 The Principal Reporter
6 The Scottish Children’s Reporter Administration
7 A health board
8 A board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978
9 Healthcare Improvement Scotland
10 The Scottish Qualifications Authority
11 Skills Development Scotland Co. Ltd (registered number SC 202659)
12 Social Care and Social Work Improvement Scotland
13 The Scottish Social Services Council
14 The Scottish Sports Council
15 The chief constable of the Police Service of Scotland
16 The Scottish Police Authority
17 The Scottish Fire and Rescue Service
18 The Scottish Court Service
19 The Scottish Legal Aid Board
20 The Commissioner for Children and Young People in Scotland
21 The Mental Welfare Commission for Scotland
22 The Scottish Housing Regulator
23 Bòrd na Gàidhlig
Children and Young People (Scotland) Bill

Schedule 4—Modification of enactments

Creative Scotland
The Scottish Further and Higher Education Funding Council
A body which is a “post-16 education body” or a “regional strategic body” for the purposes of the Further and Higher Education (Scotland) Act 2005

SCHEDULE 4
(introduced by section 76)

MODIFICATION OF ENACTMENTS

Social Work (Scotland) Act 1968

In section 5 of the Social Work (Scotland) Act 1968—

(a) in subsection (1)—
(i) for “1995 and” substitute “1995,”,
(ii) after “2013 (asp 1)” insert “Part 6 (in so far as it applies to looked after children) and Parts 9 and 10 of the Children and Young People (Scotland) Act 2013 (asp 00),”,

(b) in subsection (1B), after paragraph (r) insert—
“(s) Part 6 (in so far as it applies to looked after children) of the Children and Young People (Scotland) Act 2013 (asp 00),”,

(c) after subsection (1B) insert—
“(1C) In subsections (1) and (1B) of this section, the references to looked after children are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.”.

Education (Scotland) Act 1980

(1) The 1980 Act is amended as follows.

(2) In section 1—

(a) in subsection (1A), for the words from first “as” to “order” substitute “to the extent required by section 43(1) of the Children and Young People (Scotland) Act 2013”,

(b) omit subsections (1B) and (4A),

(c) in subsection (5)(a), for sub-paragraph (i) substitute—
“(i) early learning and childcare;”.

(3) In section 135—

(a) after the definition of “dental treatment” insert—
“early learning and childcare” has same meaning as in Part 6 of the Children and Young People (Scotland) Act 2013;”,

(b) for the definitions of “nursery school” and “nursery class” substitute—
“nursery schools” and “nursery classes” are schools and classes which provide early learning and childcare;”. 
Children (Scotland) Act 1995

3 (1) The 1995 Act is amended as follows.

(2) Section 19 is repealed.

(3) In section 20, for subsection (2) substitute—

“(2) In subsection (1) above, “relevant services” means services provided by a local authority under or by virtue of—

(a) this Part of this Act;
(b) the Children’s Hearings (Scotland) Act 2011; or
(c) any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (s) of the Social Work (Scotland) Act 1968.”.

(4) In section 44—

(a) for subsection (1) substitute—

“(1) No person shall publish any matter in respect of proceedings before a sheriff on an application under section 76(1) of this Act which is intended to, or is likely to, identify—

(a) any child concerned in the proceedings; or
(b) any address or school as being that of any such child.”,

(b) in subsection (5)—

(i) omit paragraphs (b) and (c),
(ii) in the full-out, omit “, the Court or the Secretary of State as the case may be”.

Criminal Procedure (Scotland) Act 1995

4 In section 57A(16) of the Criminal Procedure (Scotland) Act 1995, in the definition of “relevant services” for “19(2)” substitute “20(2)”. 

Standards in Scotland’s Schools Act 2000

5 In section 34 of the Standards in Scotland’s Schools Act 2000—

(a) in paragraph (a), after “Act” insert “and Part 6 of the Children and Young People (Scotland) Act 2013”,

(b) in paragraph (b), for “that Act” substitute “those Acts”.

Regulation of Care (Scotland) Act 2001

6 In section 73(2)(a) of the Regulation of Care (Scotland) Act 2001—

(a) after first “provided” insert “under subsection (1) or (5A)(a) of that section”,

(b) for “the subsection in question” substitute “subsection (5A)(b) or (5B) of that section”.

Children and Young People (Scotland) Bill
Schedule 4—Modification of enactments
Mental Health (Care and Treatment) (Scotland) Act 2003

7 In section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003, in the definition of “relevant services” for “19(2)” substitute “20(2)”).

Education (Additional Support for Learning) (Scotland) Act 2004

5 8 (1) The Education (Additional Support for Learning) (Scotland) Act 2004 is amended as follows.

(2) In section 1(3)—
(a) in paragraph (a), for “a prescribed” substitute “an eligible”,
(b) in paragraph (b), for “a prescribed” substitute “an eligible”.

10 (3) In section 5(3)(a), in paragraph (a), for “a prescribed” substitute “an eligible”.

(4) In section 29(1)—
(a) after the definition of “co-ordinated support plan” insert—

“eligible pre-school child” has the same meaning as in Part 6 of the Children and Young People (Scotland) Act 2013,”,

(b) omit the definition of “prescribed pre-school child”.

Adoption and Children (Scotland) Act 2007

9 (1) The Adoption and Children (Scotland) Act 2007 is amended as follows.

(2) Section 4 is repealed.

(3) In section 6(1), omit “or 4”.

20 (4) The title of section 6 becomes “Assistance in carrying out functions under section 1”.

(5) In section 117(5)(a), after sub-paragraph (i) insert—

“(ia) section 13A(2),
(ib) section 13E(1),”.

(6) In section 119(1), in paragraph (b) of the definition of “adoption agency”, after “sections” insert “13A, 13D, 13E,.”.

Children’s Hearings (Scotland) Act 2011

10 In schedule 6 to the Children’s Hearings (Scotland) Act 2011, in the entry for the 1995 Act—

(a) at the end of the reference to sections 39 to 74 insert “, except section 44”,

(b) in the reference to section 105, omit “44,”.
Children and Young People (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children’s hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

Introduced by: Alex Neil
Supported by: Aileen Campbell
On: 17 April 2013
Bill type: Government Bill
CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Children and Young People (Scotland) Bill introduced in the Scottish Parliament on 17 April 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 27–PM.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Scottish Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Summary and background

4. The Bill makes provision in relation to aspects of children’s services reform to:

- Reflect in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services by placing duties on the Scottish Ministers and the wider public sector, and strengthening the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people;

- Improve the way services work to support children, young people and families by: ensuring there is a single planning approach for children who need additional support from services; creating a single point of contact around every child or young person; ensuring coordinated planning and delivery of services with a focus on outcomes, and providing a holistic and shared understanding of a child’s or young person’s wellbeing;

- Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds, and 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order;

- Ensure better permanence planning for looked after children by: extending corporate parenting across the public sector; extending support to young people leaving care for longer (up to and including the age of 25); supporting families and the parenting role of kinship carers through new legal entitlements; and putting Scotland’s National Adoption Register on a statutory footing; and

- Strengthen existing legislation that affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical changes in the areas of children’s hearings support arrangements and school closures.
COMMENTARY ON SECTIONS

Part 1 – Children’s Rights

Section 1 – Duty on Scottish Ministers in relation to the rights of children

5. Section 1 places duties on the Scottish Ministers in relation to the rights of children as set out in the UNCRC and its First and Second Optional Protocols.

6. Subsection (1)(a) places a duty on the Scottish Ministers to keep under consideration whether there are any steps which they could take to give better or further effect to the UNCRC requirements. In effect, this means a requirement on the Scottish Ministers to keep under review their approach to implementation of the UNCRC in the exercise of their functions. Subsection (1)(b) requires the Scottish Ministers to take steps which they believe to be appropriate in consequence of that consideration.

7. Subsection (2) places a duty on the Scottish Ministers to promote public awareness and understanding of the rights of children. The term “rights of children” has a different definition to the term “UNCRC requirements” for these purposes. An interpretation of both terms is included at section 4. This provision has the effect of incorporating Article 42 of the UNCRC into Scots law, introducing a new domestic requirement on the Scottish Ministers to raise awareness and understanding of the UNCRC amongst children, and those individuals working with children and members of the public. This could involve, for example, targeted work within schools, the development of information materials, the preparation of guidance for professionals and the provision of support to other organisations who have a role in promoting children’s rights in Scotland.

8. Subsection (3) requires the Scottish Ministers to lay a report before the Scottish Parliament every 3 years detailing the steps they have taken in that 3 year period to give better or further effect to the UNCRC requirements and to promote public awareness and understanding of the rights of children.

9. Subsection (4) defines what is meant by “3 year period”. This is the period of 3 years beginning with the day the section comes into force and each period of 3 years thereafter.

10. Subsection (5) requires the Scottish Ministers to publish the report they have laid before the Scottish Parliament as soon as practicable.

Section 2 – Duties of public authorities in relation to the UNCRC

11. Subsection (1) requires each identified public authority, as listed, or with a description listed, in schedule 1, to publish (in a way each authority thinks is appropriate) a report every 3 years setting out the steps it has taken in that 3 year period to give better or further effect within its areas of responsibility to the UNCRC requirements. The public authority may choose to satisfy the duty, through, for example, annual reports. The public authority can also satisfy the duty through development of a standalone report, should it choose.
12. Subsection (3) makes clear that two or more of the public authorities to whom the duty applies may satisfy the duty through preparation and publication of a joint report.

Part 2 – Commissioner for Children and Young People In Scotland

Section 5 – Investigations by the Commissioner

13. Section 7 of the Commissioner for Children and Young People (Scotland) Act 2003 (the 2003 Act) provides for the Commissioner to undertake an investigation into whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people. Any such investigation must focus on a matter of particular significance to children and young people generally or to particular groups of children and young people, but not to individual children.

14. Subsections (1) and (2) amend sections 7(1) and 7(2) of the 2003 Act in order to allow for the Commissioner to undertake two distinct types of investigation: a “general investigation” which is consistent with the Commissioner’s original investigatory power under section 7 of the 2003 Act; and an “individual investigation” focusing on the extent to which a service provider has had regard to the rights, views and interests of an individual child or young person. The term “service provider” is defined in the 2003 Act and means any person or organisation providing a service to children and young people. This includes the private, public and voluntary sector. Thus any individual who, or organisation or company which, provides services to children or young people can be investigated by the Commissioner. For example, organisations which give advice, provide guidance or provide goods could be investigated. The service in question does not need to be provided exclusively to children or young people. Parents carrying out their parental responsibilities are not service providers. However, the local authorities to whom parental responsibilities have been transferred are treated as service providers.

15. Section 7(2) of the 2003 Act as amended provides that the Commissioner can only carry out a general investigation if the evidence and information collected demonstrates that there is an issue that is significant for children and young people generally or specific groups of children and young people.

16. New section 7(2A) of the 2003 Act makes clear that the Commissioner may only undertake either a general or individual investigation if they are satisfied that it would not duplicate the work that is the function of another person. There are a number of bodies already tasked with considering complaints and responding to concerns raised by members of the public in Scotland including the Scottish Public Services Ombudsman, Social Care and Social Work Improvement Scotland (the Care Inspectorate) and the Equality and Human Rights Commission. Each has a particular function and where it is recognised that a complaint falls within the remit of one of these bodies or any other complaint handling body, the Commissioner should not pursue the matter.

17. Subsection (2)(b) removes section 7(3)(b) of the 2003 Act. This is the provision that currently prevents the Commissioner from undertaking investigations in relation to individual children.
18. Subsection 2(c) amends section 7 of the 2003 Act to provide for the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.

19. Subsection (3)(a) replaces section 8(1)(b) of the 2003 Act, removing the requirement for the Commissioner to publish notice of any investigation and terms of reference. Instead, it simply requires the Commissioner to give notice of an investigation to those individuals who are likely to be affected by it. The change reflects the fact that it will not always be appropriate for details of a planned investigation to be made widely available, particularly where the investigation focuses on sensitive matters relating to an individual child. Subsections (3)(b) and (c) provide for individual investigations to be held in private whilst the presumption is that general investigations will be held in public unless the Commissioner is satisfied that there are grounds for taking evidence in private, as is currently provided for under section 8(2) of the 2003 Act.

20. Subsection (4)(a) amends section 11(1) of the 2003 Act, removing the need for all investigation reports to be laid before the Scottish Parliament. Instead, section 11(1) will require that the Commissioner prepares a report in relation to each investigation. In order to finalise the report, the Commissioner will share its content for consideration and comment with all those persons named within the report or identifiable from it. Should the report be amended as a consequence of this process, a revised version will be made available to all of the above persons.

21. Subsection (4)(c) adds new subsections to section 11 that require the Commissioner to lay before the Scottish Parliament any finalised report relating to a general investigation. The Commissioner will have the power, but not an obligation, to lay before the Scottish Parliament a report relating to an individual investigation.

**Section 6 – Requirement to respond to Commissioner’s recommendations**

22. Subsection (2) amends section 11 of the 2003 Act, providing the Commissioner with a power to require a response from a service provider to any recommendations made as part of a report linked to either a general investigation or an individual investigation and to identify a time by which that response must be received. Where a report includes a requirement to respond, a copy of the report must also be shared with the service provider on whom the requirement is made.

23. Subsection (3) sets out the arrangements for publishing a service provider’s response to any recommendations made by the Commissioner. It requires the Commissioner to publish any response made by a service provider in respect of recommendations following a general investigation unless the Commissioner considers publication to be inappropriate. The Commissioner may publish a response to recommendations following an individual investigation. Any published material should not, so far as reasonable and practicable, name or identify any child/children referred to in it.

24. Where a service provider fails to respond to a requirement, the Commissioner may take steps to publicise this failure.
Part 3 – Children’s Services Planning

Section 7 – Introductory

25. Subsections (1) and (2) are interpretation subsections for this Part.

26. Subsections (3) and (4) provide that the Scottish Ministers may, by order, specify the services which are to be included within or excluded from the definition of children’s services or related services for the purposes of this Part. They may also specify matters in relation to those services. Before making such an order the Scottish Ministers must consult with each relevant health board, local authority and where the service is provided by another service provider, that person.

27. Subsection (5) provides that the Scottish Ministers may, by order, modify the definition of “other service provider” in subsection (1) by adding a person, removing an entry or varying an entry.

28. This Part confers certain functions on “a local authority and each relevant health board”. Subsection (6) provides that those are joint functions (i.e. functions that are to be exercised by those persons together).

Section 8 – Requirement to prepare children’s services plan

29. Subsection (1) provides that each local authority and relevant health board must jointly prepare a children’s services plan for the area of the local authority, in respect of each 3 year period.

30. Subsection (2) defines “3 year period” as that beginning with such date after the coming into force of this section as the Scottish Ministers specify, by order, and each subsequent period of 3 years. It defines “children’s services plan” as a document setting out the plans of each local authority and relevant health board for the provision of children’s services and related services over that 3 year period.

Section 9 – Aims of children’s services plan

31. Subsections (1) and (2) provide that a children’s services plan should be prepared with a view to achieving the aims of providing children’s services in the area in a way which: best safeguards, supports or promotes the wellbeing of children; is most integrated from the point of view of the recipients; and constitutes the most efficient use of available resources. Most integrated would be where service providers co-operate with each other to ensure that service provision is planned and delivered in a way which best meets the needs of children and families. Also, related services in the area are to be provided in the way which safeguards, supports or promotes the wellbeing of children, so far as this is consistent with the objects and proper delivery of the service concerned.
Section 10 – Children’s services plan: process

32. Subsection (1) provides that in preparing a children’s services plan, the local authority and relevant health board must give the other service providers an effective opportunity to participate in or contribute to the preparation of the plan. The local authority and relevant health board must also consult with organisations falling within subsection (2) (which represent the interests of persons who use or are likely to use any children’s service or related service in the area; or provide a service in the area which, if it were provided by the local authority or health board, would be a children’s service or related service), such social landlords as appear to provide housing in the area of the local authority and other such persons as the Scottish Ministers may, by direction, specify. “Social landlords” has the meaning given by section 165 of the Housing (Scotland) Act 2010.

33. Subsection (4) provides that a direction under subsection (1)(b)(iii) may specify different persons for different local authority areas and be revised or revoked.

34. Subsections (5) and (6) require the other service providers to participate in, or contribute to, the preparation of the children’s services plan, and the bodies to be consulted within subsection (1)(b) are to meet any reasonable request of the local authority or health board in participating in, or contributing to, the preparation of the children’s services plan. Subsection (7) provides that, as soon as reasonably practicable, after the plan has been prepared, the persons who prepared it must submit it to the other service providers for agreement.

35. Subsection (8) provides that, as soon as is reasonably practicable, after a children’s services plan has been agreed, the persons who prepared it must submit it to the Scottish Ministers and publish it in a manner they consider appropriate, which could entail publication online or as a hard copy report.

Section 11 – Children’s services plan: review

36. Subsection (1) provides that local authorities and relevant health boards in an area must jointly keep the children’s services plan under review and as a consequence of that review may prepare a revised plan.

37. Subsection (2) means that where a revised plan has been prepared, the local authority and each relevant health board must keep it under review and may in consequence prepare a revised plan.

Section 12 – Implementation of children’s services plan

38. This section provides that the local authority, relevant health board, and each of the other service providers in an area must, so far as reasonably practicable, provide services in accordance with the children’s services plan for that area. This does not apply whereto the extent the person providing the service considers that doing so would adversely affect the wellbeing of a child.
Section 13 – Reporting on children’s services plan

39. Subsection (1) provides that as soon as is practicable at the end of each year, the local authority and relevant health board must publish, in a way they consider appropriate, a joint report on how the provision of children’s services and related services in that area during that period have been provided in accordance with the children’s services plan and the extent to which the aims, specified in section 9(2) have been achieved, and such outcomes in relation to the wellbeing of the children in the area as the Scottish Ministers may, by order, prescribe.

40. Subsection (2) defines “1 year period” as the period of a year beginning on the date on which the children’s services plan for the area has begun, in accordance with section 8(1), and each period of a year thereafter.

Section 14 – Assistance in relation to children’s services planning

41. Subsections (1) and (2) provide that any of the other service providers and persons mentioned in section 10(1)(b) must comply with any reasonable request made of them to provide the local authority or relevant health board with information, advice or assistance, for the purposes of carrying out their functions under this Part.

42. Subsection (3) states that subsection (1) does not apply where the person considers the provision of information, advice or assistance would be incompatible with any duties of that person or unduly prejudices the carrying out of any functions of the person.

Section 15 – Guidance in relation to children’s services planning

43. Subsections (1) to (4) state that local authorities and relevant health boards, and the other service providers, in each area must have regard to any guidance issued by the Scottish Ministers about how to carry out their planning, reviewing and reporting functions, and this guidance may be issued either generally or for specific purposes and for different local government areas.

44. Subsection (5) states that before guidance is issued or revised, the Scottish Ministers have to consult with the persons to whom the guidance relates.

Section 16 – Directions in relation to children’s services planning

45. Subsections (1) and (2) provide that local authorities, relevant health boards and the other service providers must comply with any direction issued by the Scottish Ministers about the carrying out of the functions conferred by this Part (other than that of implementation).

46. Subsections (3), (4) and (5) provide that directions may be issued generally or for particular purposes, and different directions may be issued to different persons or otherwise for different purposes. Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to whom it relates.
Section 17 – Children’s services plan: default powers of Scottish Ministers

47. Subsection (1) states that this section applies where the Scottish Ministers consider that local authorities and relevant health boards are either not carrying out one of their joint functions under this Part (other than that of implementation) or in carrying out such a function are not complying with guidance issued under section 15(1).

48. The Scottish Ministers may issue directions stating that the function is to be carried out in a particular way or that the function is to be carried out instead by such of the persons mentioned in subsection (3) as the Scottish Ministers consider appropriate.

49. Subsection (3) explains that persons referred to in the previous subsection are one or some of the persons whose function it is and other local authorities or health boards.

50. Subsection (4) states that a direction under subsection (2)(b) may include such provision as the Scottish Ministers consider appropriate as to the making by a local authority or relevant health board in an area, which is not to be carrying out the function, of payment to a person who is to carry out the function by virtue of the direction.

51. Subsection (5) states that before issuing, revising or revoking a direction under subsection (2) the Scottish Ministers must consult with the local authority or relevant health boards whose failure is to be, or is, the subject of the direction, and such other persons as they consider appropriate.

52. Subsection (6) provides that where the Scottish Ministers consider that a direction under subsection (2) has been or would be insufficient to achieve effective exercise of the function concerned they may, by order, constitute a joint board of the principal service providers in a local government area concerned to carry out the function.

53. Subsection (7) provides that subsection (6) may include provisions as to: the constitution and proceedings of the joint board; the membership of the joint board; the transfer to the joint board of any property, rights or liabilities of any of the services providers in the local government area; the transfer to the joint board of any staff of any of the service providers in the local government area; the supply of services or facilities by any of the service providers in the local government area to the joint board; direction by the Scottish Ministers of the carrying out by the joint board of any of its functions; and such other matters relating to its operation as the Scottish Ministers consider appropriate.

54. Subsection (8) provides that the joint board is to be a body corporate.

55. Subsection (9) provides that before making an order under subsection (6) the Scottish Ministers must consult the local authority and health board to whom it relates and such other persons as they consider appropriate.
Section 18 – Interpretation of Part 3

56. This is an interpretation section for this Part.

Part 4 – Provision of Named Persons

Section 19 – Named person service

57. Subsections (1) and (5) define “named person service” as meaning the service of making available an individual from within named person service providers who carry out the functions in order to promote, support or safeguard the wellbeing of the child or young person. They will do this through a number of activities, including: advising, informing or supporting the child or young person or their parent; helping them to access a service or support; or discussing or raising a matter about that child or young person with a service provider or relevant authority.

58. Subsections (2) and (3) provide that individuals can only be identified for the named person service if they are an employee of the service provider, or are either a person, or employee of a person, who carries out functions on behalf of the service provider. Individuals must also satisfy such requirements as to qualifications, training and experience as the Scottish Ministers may specify by order.

59. Subsection (4) provides that the named person function cannot be carried out by a parent of the child or young person.

60. Subsections (6) and (7) state that the named person functions are carried out on behalf of the service provider and the responsibility for carrying out the named person function lies with the service provider and not with the individual named person.

Section 20 – Named person service in relation to pre-school child

61. Subsections (1) and (2) provide that it is the duty of the health board to make arrangements to provide a named person for each pre-school child in its area and defines “pre-school child” as a child who has not started primary school either because they are not old enough or the education authority has allowed the child to delay starting at primary school.

62. Subsection (3) explains that for the purposes of this section, school age should be taken to be that determined by the relevant education authority by reference to the school commencement dates fixed by it. Attendance at primary school does not include attendance at a nursery class based in a school, and relevant education authority means that of the area where the child lives.

Section 21 – Named person service in relation to children not falling within section 20

63. Subsections (1), (2) and (3) state that an education authority must make arrangements to provide a named person service for each child living in its area unless: they are a pre-school child (as defined in section 20); they attend a school managed by a different local authority or attend a grant-aided school or independent school; or are kept in secure accommodation. The duty to provide a named person does not apply to a child if they are a member of any of the regular forces.
64. Subsection (4) provides that, during any period when a child is a pupil at a public school managed by a different authority from the one in which the child resides, then that local authority must make arrangements to provide the named person service for that child. Subsection (5) provides that at any time when the child attends a grant-aided school, independent school or is kept in secure accommodation, that establishment must provide the named person service for the child.

**Section 22 – Continuation of named person service in relation to certain young people**

65. This section provides that, where a young person attends a public school, the education authority must provide the named person service to that young person, and in any other case the directing authority of the establishment, as defined in section 30(1), concerned must provide the named person service. “Young person” is defined as anyone who has reached the age of 18 but still attends school or is kept in secure accommodation.

**Section 23 – Communication in relation to movement of children and young people**

66. This section provides that where a service provider no longer provides services to a child, that service provider must provide the new service provider, or the person it considers will be the new service provider, with information it holds that might be relevant in the exercise of any functions of the service provider under this Part, or the future exercise of the named person functions in relation to the child or young person, if it ought to be provided for that purpose and unless this information prejudices the conduct of a criminal investigation or the prosecution of an offence.

**Section 24 – Duty to communicate information about role of named persons**

67. Subsection (1) provides that each health board, education authority or directing authority must publish, in such a manner as it considers appropriate, information about: the named person service; the functions of the named person service; how the service exercises its functions; how to contact named persons in its area or establishment; how the body exercises its functions under this Part; and any other matters it feels appropriate.

68. Subsection (2) states that service providers must provide the child or young person for whom they are providing the named person, and their parents, with details of how to contact named persons in their area as soon as is reasonably practicable after they become the service provider for the child, and as soon as is reasonably practicable after there is any change in those arrangements.

**Section 25 – Duty to help named person**

69. This section provides that where it appears to a service provider that another relevant authority could, by doing something, help in the exercise of any of its functions as provider of a named person, the other relevant authority must comply with a request for help. This could entail the relevant authority providing assessments or analysis, chronologies of significant events or any other information which would assist the named person in assessing the overall needs of the child and determining how they can be met. This duty to comply with a request applies unless
the request is incompatible with any of its own duties or unduly prejudices the exercise of any of its functions. Schedule 2 contains a list of relevant authorities.

Section 26 – Information sharing

70. Subsections (1) and (2) provide that a service provider or relevant authority (as listed in schedule 2) must provide to the service provider in relation to a child or young person information which it holds if it considers that: it might be relevant to the exercise of the named person functions; it ought to be provided for that purpose; and its provision would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

71. Subsections (3) and (4) provide that a service provider in relation to a child or young person must provide, to a service provider or relevant authority, any information which it holds that might be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person. This applies where the service provider in relation to the child or young person considers that the information ought to be provided for that purpose and where its provision would not prejudice the conduct of any criminal investigation.

72. Subsections (5) and (6) provide that the service provider or relevant authority may provide to a service provider or relevant authority any information it holds which is necessary or expedient to help the service provider or relevant authority carry out its named person role.

73. Subsection (7) provides that references in this section to a service provider or relevant authority include any person carrying out a function on behalf of a service provider or relevant authority.

Section 27 – Disclosure of information

74. Subsection (1) gives a legal protection for those who provide information under Part 4 of the Act. However, a person providing information and relying on this protection will have to consider other potentially relevant rules of law because of the provisions of subsections (2) and (3).

75. Subsections (2) and (3) provide that the person who receives information (the recipient), if it was provided to the person in breach of a duty of confidentiality in accordance with subsection (1), is not then to provide that information to anyone else (a third party), if the person who provides them with the information informs the recipient of the breach of duty unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 4) or any rule of law.

Section 28 – Guidance in relation to named person service

76. Subsections (1), (2) and (3) provide that health boards, education authorities and directing authorities must have regard to any guidance issued by the Scottish Ministers about exercising functions under this Part. That guidance may be issued generally or for particular purposes and may be issued for different service providers, or otherwise, for different purposes.
77. Subsection (4) provides that before issuing or revising guidance, the Scottish Ministers must consult with any person to whom it will relate.

Section 29 – Directions in relation to named person service

78. This section provides that local authorities, health boards and directing authorities must comply with any direction issued by the Scottish Ministers about carrying out the functions conferred by this Part. These directions may be issued generally or for particular purposes, and different directions may be issued to different persons for different purposes. Before issuing, revising or revoking a direction, the Scottish Ministers must consult the persons to whom it relates.

Section 30 – Interpretation of Part 4

79. Subsection (1) explains the definition of phrases used in this Part. Subsection (2) confers upon the Scottish Ministers a power to modify schedule 2 which contains a list of relevant authorities.

Part 5 – Child’s Plan

Section 31 – Child’s plan: requirement

80. Subsections (1) to (4) provide that for this Part a child requires a child’s plan where the responsible authority considers that the child has a wellbeing need and that need is not capable of being met, or fully met, by taking action other than targeted intervention, and the need is capable of being met, at least to some extent, by that targeted intervention. A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter. “Targeted intervention” means the provision of a service, by a health board or local authority or a grant aided or independent school, which aims to meet the needs of children whose needs cannot be met, or fully met, by the services which are generally provided to all children by that body.

81. Subsections (5) and (6) provide that in deciding whether a child requires a child’s plan, the responsible authority is, so far as reasonably practicable, to have regard to the views of the child (taking account of the child’s age and maturity) and their parent.

82. Subsections (7) and (8) provide that if a child already has a plan, or if the child is a member of any of the regular forces, then subsection (1) does not apply. Where a child already has a plan, section 37 would apply. “Regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

Section 32 – Content of a child’s plan

83. Subsection (1) provides that a child’s plan must include a statement of: the child’s wellbeing need; the targeted intervention which requires to be provided in relation to the child to address the wellbeing need; the relevant authority which is to provide the targeted intervention; how the intervention is to be provided; and the outcome which the intervention is intended to achieve.
84. Subsection (2) provides that the Scottish Ministers may, by order, make provision as to any other information which is, or is not, to be contained in the child’s plan and the form of the plan.

Section 33 – Preparation of a child’s plan

85. Subsections (1), (2) and (3) state that where a child requires a child’s plan, the responsible authority should prepare the plan unless the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare the plan. The plan should always be prepared as soon as is reasonably practicable.

86. Subsections (4) and (5) provide that where a relevant authority declines to give its agreement to prepare a plan or provide a targeted intervention, the relevant authority must provide a statement of its reasons for declining.

87. Subsections (6) and (7) provide that in preparing a child’s plan, an authority is so far as reasonably practicable to ascertain and have regard to the views of the child (taking account of the child’s age and maturity) and the child’s parents.

88. The Scottish Ministers may, by order, make further provision as to the preparation of child’s plans (subsection (8)).

Section 34 – Responsible authority: general

89. Subsection (1)(a) provides that for the purposes of this Part the responsible authority for a pre-school child is the health board for the area where the child lives. Subsection (1)(b) provides that the responsible authority for a child who is not a pre-school child is the local authority for the area where the child lives. Subsection (2) provides that subsection (1) is subject to special cases outlined in section 35. Special cases are those not covered in section 34.

90. Subsection (3) defines “pre-school child” as a child who has not started primary school and, if the child is of school age, has not started school because the education authority has consented to this being delayed.

91. Subsection (4) provides that for the purposes of this section, the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant education authority; the references to attendance at primary school do not include attendance at nursery classes based in a primary school; and the references to relevant education authority are to the education authority for the area where the child resides.

Section 35 – Responsible authority: special cases

92. Section 35 makes provision about who the responsible authority is in relation to special cases, which are cases where section 34 does not apply. Subsection (1) provides that where a pre-school child resides in the area of a health board, by virtue of a placement by another health board or local authority, the health board for the area in which the child resides immediately before that placement is the responsible authority in relation to the child. “Pre-school child” has the meaning given by section 34(3).
93. Subsection (2) provides that where the child is at a public school managed by a local authority other than the one for the area in which the child lives, that other authority is the responsible authority in relation to the child.

94. Subsection (3) provides that where the child is a pupil at a grant-aided or independent school, the directing authority of that school is the responsible authority in relation to that child.

95. Subsection (4) provides that subsection (3) does not apply where the child is such a pupil by virtue of placement by the local authority for the area in which the child permanently resides and the local authority is responsible for the provision of services.

96. Subsection (5) provides that the Scottish Ministers may, by order (subject to affirmative procedure), modify this section so as to make further or different provision as to the circumstances in which section 34(1) does not apply in relation to the child.

Section 36 – Delivery of a child’s plan

97. Subsection (1) provides that a person who is to provide a targeted intervention in terms of a child’s plan is to provide it, so far as reasonably practicable, in accordance with the plan. This does not apply where the responsible authority considers that to do so would adversely affect the wellbeing of the child (subsection (2)).

Section 37 – Child’s plan: management

98. Subsection (1) provides that the managing authority of a child’s plan must keep under review: whether the wellbeing need of the child stated in the plan is still accurate; whether the targeted intervention or manner of its provision is still appropriate; whether the outcome of the plan has been achieved; and whether the management of the plan should transfer to another authority. In reviewing a child’s plan, subsections (2) and (3) state that the managing authority is to consult each relevant authority which is providing a targeted intervention contained in the plan and the responsible authority (where that authority is neither the managing authority nor providing a targeted intervention) and must ascertain and have regard to the views of the child (taking account of the child’s age and maturity) and parent so far as is reasonably practicable.

99. In consequence of this review, the managing authority may, under subsection (4)(a) amend the plan so as to revise the wellbeing need of the child, the targeted intervention, or manner of the provision of the targeted intervention which requires to be provided, or the outcome which the plan is intended to achieve. The managing authority may also transfer the management of the plan to a relevant authority or end the plan (subsections (4)(b) and (c)).

100. Subsection (5) provides that the Scottish Ministers may make, by order, provision about: the management of the child’s plan, including when and how a child’s plan is to be reviewed in accordance with subsection (1); who is to be the managing authority of the plan; when and to whom the management of the plan is to or may be transferred under subsection (4)(b); when and how a new targeted intervention may be included in a child’s plan; and the keeping, disclosure and destruction of child’s plans.
101. Subsection (6) provides that the managing authority of a child’s plan is the authority which prepared it, or where the management of the plan has been transferred, the person to whom it was transferred. This is subject to any different provision made under subsection (5)(b).

Section 38 – Assistance in relation to child’s plan

102. Subsection (1) provides that a relevant authority must comply with any reasonable request made of it to provide a person exercising a function under this Part with information, advice and assistance.

103. Subsection (2) provides that subsection (1) does not apply where the authority considers that the provision of such information, advice or assistance would be incompatible with any of the duties of the authority, or unduly prejudices the exercise of any of the authority’s functions.

104. Subsection (3) provides that in providing information in pursuance of subsection (1) a person is not to be taken to be in breach of any prohibition or restriction on the disclosure of information.

105. Subsections (4) and (5) provide that a recipient of confidential information is not to provide the information to any other person unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law. This applies where, by virtue of subsection (3), a person provides information in breach of a duty of confidentiality and in providing the information, the person informs the recipient of the breach of duty.

Section 39 – Guidance on child’s plans

106. Subsection (1) provides that a person exercising a function under this Part (other than the function of complying with section 36) must have regard to any guidance issued by the Scottish Ministers about that matter.

107. Subsections (2) to (4) state that guidance may be issued generally or for specific purposes, different guidance may be issued to different persons or types of person, or otherwise for different purposes, and that before issuing any such guidance, the Scottish Ministers must consult with any person to whom it will relate.

Section 40 – Directions in relation to child’s plans

108. Subsections (1) and (2) provide that a local authority, health board or directing authority must comply with any direction issued by the Scottish Ministers about the carrying out of the functions conferred by this Part. Directions may be issued generally or for particular purposes, different directions may be issued to different persons or otherwise for different purposes and before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to whom it relates.
Section 41 – Interpretation of Part 5

109. This is an interpretation section for this Part. It defines “directing authority”. When used generally, this means the managers of each grant-aided school and the proprietor of each independent school. When used in relation to a grant-aided school, it means the managers of the school, and in relation to an independent school, it means the proprietor of the school.

Part 6 – Early Learning and Childcare

Section 42 – Early learning and childcare

110. Section 1(1) of the Education (Scotland) Act 1980 (the 1980 Act) imposes a duty on every education authority to secure that there is adequate and efficient provision of school education made for their area. Section 42 defines “early learning and childcare” as a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, with regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting. The phrase “of a kind which is suitable in the ordinary case for children who are under school age” is consistent with its use in the Education (Scotland) Act 1980. Guidance issued by the Scottish Ministers under section 34 of the Standards in Scotland’s Schools Act 2000 (the 2000 Act) (which is amended by paragraph 5 of schedule 4) will be used to provide more detail as to what those types of interactions and experiences will encapsulate.

Section 43 – Duty to secure provision of early learning and childcare

111. Subsection (1) provides that an education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare (as defined in section 42) is made available for each eligible pre-school child belonging to its area. Section 23(3) of the 1980 Act provides that a pupil receiving school education is deemed to belong to the area where the pupil’s parent is ordinarily residing. This is subject to any regulations made by the Scottish Ministers.

112. Subsection (2) defines “eligible pre-school child”. It means a child who is under school age, has not started primary school and either falls within subsection (3) or is within such age range, or is of such other description, as the Scottish Ministers may by order specify.

113. Subsection (3) provides that a child is also an eligible pre-school child if the child is aged 2 or over, and is, or has been at any time since their 2nd birthday, looked after by a local authority (“looked after” is defined in section 75(2)) or the subject of a kinship care order. Kinship care order is defined in subsection (5) as having the meaning given by section 65(1).

114. Section 75(3) provides that “school age” has the same meaning as it has in the 1980 Act. Section 31 of the 1980 Act defines a person as being of “school age” if they have attained the age of 5 but not 16 years. Section 31 is however qualified by section 32(3) of the 1980 Act which provides that a child who does not attain the age of 5 on a school commencement date (defined in section 32(1)) shall for the purposes of section 31 be deemed not to have attained that age until the school commencement date following his/her 5th birthday.
115. An order under section 43(2)(c)(ii) is subject to negative resolution procedure. It is anticipated that any order made under that enabling power will include provision akin to that made in the Provision of School Education for Children under School Age (Prescribed Children)(Scotland) Order 2002 (SSI 2002/90) made under section (1A) of the 1980 Act (which order making power is to be removed from the 1980 Act by paragraph 2(2)(a) and (b) of schedule 4), so for example to set out that eligibility for early learning and childcare starts from the first term following the child’s 3rd birthday. Subsection (4) provides that an order under section 43(2)(c)(ii) may sub-delegate the function of determining the eligibility criteria to an education authority, so for example the order might provide that a child is an eligible pre-school child only if the education authority is satisfied as to any matter relating to the child which is specified in the order.

Section 44 – Mandatory amount of early learning and childcare

116. Subsection (1) defines the mandatory amount of early learning and childcare for the purposes of section 43(1) as 600 hours in each year for which a child is an eligible pre-school child and a **pro rata** amount for each part of a year for which a child is so eligible.

117. Subsection (2) provides that the Scottish Ministers may, by order, modify the mandatory amount of early learning and childcare in subsection (1) for eligible pre-school children so as to vary the amount of early learning and childcare which is to be made available. Under subsection (3) the order is capable of making different provision for different types of eligible pre-school children (for example different amounts for children of different ages). Such an order is subject to affirmative procedure by virtue of section 77(2).

Section 45 – Looked after 2 year olds: alternative arrangements to meet wellbeing needs

118. Section 45 enables an authority to make alternative provision of education and care in order to meet the wellbeing needs of children. Subsection (1) provides that where an authority’s duty under section 43(1) applies in relation to a child only by virtue of the child falling within section 43(3)(a)(that is any 2 year old who is, or has been at any time since turning 2, looked after until he or she becomes eligible under section 43(2)), and the authority, after assessing the child’s needs considers that making alternative arrangements in relation to the child’s education and care would better safeguard or promote the child’s wellbeing, then subsection (2) applies.

119. Subsection (2) provides that in relation to these children the authority need not comply with its duty under section 43(1) in relation to the child but must make alternative arrangements in relation to the child’s education and care as it considers appropriate for the purposes of safeguarding or promoting the child’s wellbeing. The power for the authority to make alternative arrangements by virtue of 45(1) and (2) continues to apply notwithstanding that the 2 year old child ceases to be looked after so as to ensure continuity in the education and care of the child. However, under subsection (3), alternative arrangements cannot continue to be made if a parent of the child objects to those alternative arrangements being made.

120. Subsection (4) provides that the authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) and must do so on becoming aware of any significant change in the child’s circumstances. It may, following such a review, alter those arrangements.
121. Subsection (5) provides that the authority must seek to ensure that a record of the outcome of any assessment of a child’s needs that it undertakes in pursuance of subsection (1)(b) and any alternative arrangements that it makes in relation to the child’s education and care in pursuance of subsection (2)(b) is included in any child’s plan which is prepared under Part 5.

Section 46 – Duty to consult and plan on delivery of early learning and childcare

122. Subsection (1)(a) provides that an education authority must consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available. Subsection (1)(b) provides that the education authority must have regard to the views expressed in that consultation and having done so prepare and publish a plan for how it intends to make early learning and childcare available. Such consultation must be carried out every 2 years although subsection (2) enables the Scottish Ministers to vary the regularity of that consultation by order subject to negative resolution procedure. Guidance issued by the Scottish Ministers under section 34 of the 2000 Act (as amended by paragraph 5 of schedule 4) will be used to set out more detail about how it is expected the consultation will be carried out and in relation to the preparation of the requisite plans for how early learning and childcare will be delivered.

Section 47 – Method of delivery of early learning and childcare

123. Subsection (1) provides that an education authority must ensure that it makes early learning and childcare available by way of sessions which are provided during at least 38 weeks of every calendar year, and which are at least 2.5 hours but no more than 8 hours in duration. This is the minimum framework for delivering early learning and childcare.

124. Subsection (2) provides that the Scottish Ministers may by order modify subsection (1) so as to vary the minimum framework for delivering early learning and childcare. Such an order is subject to affirmative procedure by virtue of section 77(2).

Section 48 – Flexibility in way in which early learning and childcare is made available

125. This section provides that in exercising functions under section 46 (duty to consult and plan on delivery of early learning and childcare) and section 47 (method of delivery of early learning and childcare), an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available is flexible enough to allow parents an appropriate degree of choice when deciding how to access the services.

Section 49 – Interpretation of Part 6

126. This section is an interpretation section for this Part which explains that the expression “early learning and childcare” has the meaning given by section 42, “eligible pre-school child” has the meaning given by section 43(2) and “parent” has the meaning given by the 1980 Act. Other interpretation provisions relevant to this Part are contained in section 75.
Part 7 – Corporate Parenting

Section 50 – Corporate parents

127. This Part of the Bill gives effect to a concept of “corporate parenting”. This concept involves placing new duties on certain public bodies to act in particular ways in support of certain children and young people. The public bodies are called “corporate parents” and the duties are “corporate parenting responsibilities”.

128. Subsection (1) of this section provides that those people listed, or included with a description which is listed, in schedule 3 are “corporate parents”. Although the Scottish Ministers are listed, there is an exception for them in relation to certain of the duties (see subsection (3)). This is because of their special position in relation to some of the duties.

129. Subsection (2) provides that the Scottish Ministers can, by order, modify schedule 3 by adding a person or description of persons, removing an entry or changing an entry. Such an order is subject to affirmative procedure by virtue of section 77(2) (subordinate legislation).

130. Subsection (4) defines “corporate parenting responsibilities” as the duties conferred on corporate parents by section 52.

Section 51 – Application of Part: children and young people

131. The children in relation to whom corporate parenting responsibilities apply are set out in this section. They are children who are looked after by a local authority in accordance with section 17(6) of the 1995 Act and young people who are under 26 and were, at the time when they ceased to be of school age or at any subsequent time, but are no longer, looked after by a local authority.

Section 52 – Corporate parenting responsibilities

132. As noted above, this section sets out the corporate parenting responsibilities. It provides that it is the duty of every corporate parent (where consistent with their other functions): to be alert to matters which could adversely affect the wellbeing of children and young people to whom this Part applies; to assess the needs of those children and young people for support and services it provides; to promote the interests of those children and young people; to seek to provide those children and young people with opportunities to participate in activities designed to advance their wellbeing; to take such action as it considers appropriate to help those children and young people to access those opportunities and to make use of services, and access the support, which it provides; and to take any other action it considers appropriate to improve the way in which it carries out its functions in relation to those children and young people.

Section 53 – Planning by corporate parents

133. Subsection (1) provides that corporate parents must prepare a plan for how they propose exercising their corporate parenting responsibilities and must keep this plan under review.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

134. Subsection (2) provides that before preparing or revising this plan, corporate parents must consult with other corporate parents and persons as they consider appropriate.

135. Subsection (3) provides that corporate parents must publish their plan, or revised plan, in such manner as they consider appropriate (and, in particular, that plans may be published together with, or as a part of, any other plan or document).

Section 54 – Collaborative working among corporate parents

136. Subsection (1) provides that corporate parents must collaborate with each other, in so far as is reasonably practicable, when undertaking their corporate parenting responsibilities or any other functions under this Part, where they consider that doing so would safeguard or promote the wellbeing of children or young people which this Part applies to.

137. Subsection (2) gives examples of what that collaboration may include, namely sharing information, providing advice or assistance, co-ordinating activities, sharing responsibility for action, funding activities jointly and exercising these functions jointly (for example, by publishing a joint plan or joint report).

Section 55 – Reports by corporate parents

138. Subsection (1) provides that a corporate parent must report on how it has exercised its corporate parenting responsibilities, planning and collaborating functions in pursuance of sections 53 and 54, and its other functions under this Part.

139. Subsection (2) states that these reports may, in particular, include information about standards of performance, and the outcomes achieved in pursuance of this Part.

140. Subsection (3) provides that reports are to be published in such manner as the corporate parent considers appropriate (and, in particular, that reports may be published together with, or as part of, any other report or document).

Section 56 – Duty to provide information to Scottish Ministers

141. Subsection (1) states that a corporate parent must provide the Scottish Ministers with such information they require about how it is: exercising its corporate parenting responsibilities; planning, collaborating or reporting in pursuance of sections 53, 54 or 55; or otherwise exercising functions under this Part.

142. Subsection (2) states that information which is required may include information about standards of performance, and the outcomes achieved in pursuance of this Part.

Section 57 – Guidance on corporate parenting

143. Subsection (1) provides that a corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers.
144. Subsection (2) states that guidance may include advice or information about how corporate parents should: exercise their corporate parenting responsibilities; promote awareness of their corporate parenting responsibilities; plan, collaborate or report in pursuance of sections 53, 54 and 55; and otherwise exercise their functions under this Part. Guidance may also include information about the outcomes which corporate parents should seek to achieve in exercising their functions.

145. Subsections (3), (4) and (5) state that guidance may be issued generally or for specific purposes and that different guidance may be issued for different corporate parents or for different purposes. Before issuing guidance the Scottish Ministers must consult with the corporate parents to which guidance relates and anyone else they consider appropriate.

Section 58 – Directions to corporate parents

146. Subsection (1) provides that corporate parents have to comply with any direction issued by the Scottish Ministers about their corporate parenting responsibilities, their planning or collaborating or reporting functions in pursuance of sections 53, 54 and 55 or their functions under this Part. Section 53 requires a corporate parent to prepare and review a plan for how it proposes to exercise its corporate parenting responsibilities. Section 54 requires corporate parents to work collaboratively when exercising their corporate parent responsibilities or other functions under this Part. Section 55 requires a corporate parent to report on how it has exercised its corporate parenting responsibilities, collaborating functions and its other functions under this Part.

147. Subsections (2) and (3) state that directions may be issued generally or for specific purposes and that directions may be issued to different corporate parents or otherwise for different purposes.

148. Subsection (4) provides that before issuing, revising, or revoking directions, Scottish Ministers must consult with any corporate parent to which the directions relate and such other persons as they consider appropriate.

Section 59 – Reports by Scottish Ministers

149. Subsection (1) provides that the Scottish Ministers must, as soon as practicable, after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.

150. Subsection (2) states that “3 year period” means the period of 3 years beginning with the day on which this section comes into force, and each subsequent 3 years.

Part 8 – Aftercare

Section 60 – Provision of aftercare to young people

151. Section 29 of the 1995 Act places certain duties on, and gives certain powers to, local authorities in relation to the provision of aftercare to young people that they at one stage looked after. Section 30 of the 1995 Act gives local authorities the power to provide financial assistance
to a similar category of young people for the purpose of meeting expenses connected with their education and training.

152. This section amends sections 29(2) and 30(2) of the 1995 Act to extend the age up to which formerly looked after young persons may access aftercare assistance under these provisions from 21 to 26 (subsections (2)(a)(i) and (3)(a)).

153. Subsection (2)(c) inserts new subsections (5A) and (5B) into section 29. New subsection (5A) provides that, after carrying out an assessment under section 29(5) in pursuance of an application made by a person under section 29(2), the local authority must, if satisfied that the person has eligible needs and that these cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs. The local authority may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare. New subsection (5B) provides that a local authority can continue to provide advice, guidance and assistance after a person reaches the age of 26, but they are not required to do so.

154. Subsection (2)(e) inserts new subsections (8) and (9) into section 29 to provide that the Scottish Ministers may, by order, specify types of care, attention and support that constitute “eligible needs” for the purposes of new subsection (5A)(a).

Part 9 – Counselling Services

Section 61 – Provision of counselling services to parents and others

155. Subsection (1), (2) and (5) provide that a local authority must make arrangements to secure that counselling services as described by the Scottish Ministers, by order, are made available for those persons living in its area that are parents of eligible children or individuals with parental rights or responsibilities in relation to an eligible child. This includes an individual with any of those rights or, as the case may be, responsibilities.

156. Subsections (3) and (4) explain that an “eligible child” is a child who is of such descriptions as the Scottish Ministers may, by order, specify. Such an order may include provision which describes a child by reference to a matter about which the local authority must be satisfied in relation to the child and may, without prejudice to section 77(1)(a), make different provision in relation to different descriptions of counselling services specified under subsection (1) and in relation to different paragraphs of subsection (2).

Section 62 – Counselling services: further provision

157. Subsection (1) provides that the Scottish Ministers may make, by order, provision about: when or how counselling services specified in an order under section 61(1) are to be provided; when or how a local authority is to consider whether a child is eligible for the purpose of section 61(2); when or how a local authority is to review whether a child continues to be an eligible child; and such other matters about the provision of counselling services specified in an order under section 61(1) as the Scottish Ministers consider appropriate.
158. Subsection (2) provides that an order under subsection (1)(d) may include provision about circumstances in which counselling services specified in an order under section 61(1) may be provided subject to conditions (including conditions as to payment), and consequences of such conditions not being met.

Section 63 – Interpretation of Part 9

159. This is an interpretation section for this Part and explains that the terms parent, parental responsibilities and parental rights have the same meaning as they do in Part 1 of the 1995 Act.

Part 10 – Support for Kinship Care

Section 64 – Assistance in relation to kinship care orders

160. Subsection (1), (2) and (3) provide that local authorities must make arrangements to ensure that kinship care assistance, of such description as specified by the Scottish Ministers by order, is made available to those persons living in its area who are: a person applying for, or considering applying for, a kinship care order in relation to an eligible child; an eligible child who is subject of a kinship care order; a person in whose favour a kinship care order in relation to an eligible child subsists; and a child who is 16 years old where, immediately before the child reached 16 years old, the child fell within sub-paragraph (b) (i.e. was an eligible child who is subject to a kinship care order) and the child is an eligible child.

161. Subsection (4) provides that “eligible child” means a child that has been described by the Scottish Ministers by order. Subsection (5) provides that such an order may include provision which describes the child by reference to a matter about which the local authority must be satisfied in relation to that child, and may, without prejudice to section 77(1)(a) make different provision in relation to different descriptions of assistance specified under subsection (1) and different paragraphs of subsection (3).

Section 65 – Orders which are kinship care orders

162. Subsection (1) explains that for the purposes of this section a “kinship care order” is an order under section 11(1) of the 1995 Act which gives a qualifying person the right to have the child living with that person or to otherwise regulate the child’s residence; or a residence order which has the effect of the child living with or predominately living with a qualifying person. Subsection (2) provides that a “qualifying person” means a person related to a child, or a friend or acquaintance of someone related to a child or who has another relationship or connection with a child, as specified, by order, by the Scottish Ministers. An acquaintance is someone who is known slightly to the relative, where the relationship does not necessarily have the same depth or intimacy as a friendship, for example a neighbour. Subsection (3) provides that a “qualifying person” is not a parent or guardian for the purposes of subsection (1). In subsection (2) where it refers to a person who is related to a child subsection (4) provides that this includes someone married to a person who is related to the child or related to the child by half blood.
Section 66 – Kinship care assistance: further provision

163. Subsection (1) provides that the kinship care assistance which the Scottish Ministers may specify in an order under section 64(1) includes: counselling, advice or information about any matter; financial support (or support in kind) of any description; and any service provided by a local authority on a subsidised basis.

164. Subsection (2) provides that the assistance specified by such an order may include assistance which a person was entitled to from, or being provided with by, a local authority, immediately prior to a person becoming entitled to assistance under section 64(1).

165. Subsection (3) provides that the Scottish Ministers may, by order, make provision about: when or how assistance is to provided; when or how a local authority is to consider whether a child is eligible for the purpose of section 64(3); when or how a local authority is to review whether a child continues to be an eligible child for the purpose of section 64(2); when or how a local authority is to review whether a child continues to be an eligible child for the purpose of section 64(3) and such other matters about the provision of kinship care assistance specified in an order under section 64(1) as the Scottish Ministers consider appropriate.

166. Subsection (4) provides that an order under subsection (3)(d) may include provision about circumstances in which a local authority may provide kinship care assistance specified in an order under section 64(2) subject to conditions (including conditions as to payment for the assistance or the repayment of financial support) and consequences of such conditions not being met (including the recovery of any financial support provided).

Section 67 – Interpretation of Part 10

167. This is an interpretation section for this Part.

Part 11 – Adoption Register

Section 68 – Scotland’s Adoption Register

168. This section amends the Adoption and Children (Scotland) Act 2007 by inserting sections 13A to 13F after section 13 of that Act.

Section 13A – Scotland’s Adoption Register

169. Subsection (1) provides that the Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register (“the Register”).

170. Subsection (2) provides that the Scottish Ministers may, by regulations, prescribe information which is or types of information which are, to be included in the Register. This may include information relating to: children who adoption agencies consider should be placed for adoption; persons considered by adoption agencies as suitable to have a child placed with them for adoption; matters relating to such children or persons which arise after information about them is included in the Register; or prospective adopters outwith Scotland. It provides that the
Scottish Ministers may, by regulations, provide for how information is to be retained in the Register and make such further provision in relation to the Register as they consider appropriate.

171. Subsection (3) provides that the Register is not to be open to public inspection or search. The information on the Register cannot be accessed or searched by anyone other than the Scottish Ministers, or the Registration organisation on behalf of the Scottish Ministers.

172. Subsection (4) provides that information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

Section 13B – Registration organisation

173. Subsection (1) provides that arrangements made by the Scottish Ministers under the previous section may, in particular, authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation), and provide for payments to be made to an organisation so authorised.

174. Subsection (2) provides that an organisation authorised in pursuance of subsection (1) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

Section 13C – Supply of information for the Register

175. Subsection (1) provides that an adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about children who it considers ought to be placed for adoption or persons who were included in the Register as such children; and persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons. Subsection (2) provides that an adoption agency is not to: disclose any information about a child of the type referred to in subsection (1)(a) (children suitable for adoption or persons who were included in the Register as such persons), without the consent of the child’s parent or any person who has parental responsibilities or parental rights in relation to the child, and any other person specified in regulations made under section 13A(2); any information about a person (other than a child) of the type referred to in subsection (1)(a), without the consent of that person (in other words a child that is now an adult); and any information about a person of the type referred to in subsection (1)(b) (persons suitable to have a child placed with them for adoption or persons who were included in the Register as such persons), without the consent of that person.

176. Subsection (3) provides that regulations made under section 13A(2) may: provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers; provide for how and by when that information is to be provided; prescribe a fee which is to be paid by an adoption agency when providing that information; and prescribe the form in which consent is to be given for the purposes of subsection (2).

Section 13D – Disclosure of information

177. Subsection (1) provides that it is an offence to disclose any information derived from the Register other than in accordance with the regulations under section 13A(2). Subsection (2)(a)
provides that the regulations under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register to an adoption agency for the purposes of helping it to find someone with whom it would be appropriate to place a child for whom the agency is acting, or to find a child who is appropriate for adoption by someone for whom the agency is acting. Subsection (2)(b) provides that the Scottish Ministers or registration organisation may also disclose this information: to any person (whether or not established or operating in Scotland) specified in the regulations, for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter; for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption; for the purpose of enabling or assisting that person to perform any functions which relate to adoption; for use for statistical or research purposes; and for any other purpose relating to adoption.

178. Subsection (3) provides that regulations made under section 13A(2) may set out terms and conditions on which information may be disclosed in pursuance of this section; specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2); authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption; and prescribe a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of subsections (2), (4) or paragraph (c) of this subsection.

179. Subsection (4) provides that subsection (1) (the offence provision) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.

180. Subsection (5) provides that a person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

Section 13E – Use of an organisation as agency for payments

181. Subsection (1) provides that Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

182. Subsection (2) provides that a registration organisation or other person authorised under subsection (1) is to perform the functions exercisable under section 13E(1) in accordance with any directions given by the Scottish Ministers.

Section 13F - Supplementary

183. Section 13F provides that nothing authorised or required to be done by virtue of Chapter 1A constitutes an offence under section 72(2) or 75(1) of the Adoption and Children (Scotland) Act 2007. Section 72(2) of this Act provides it is an offence to make, agree to make, receive or attempt to obtain certain payments in relation the adoption of a child. Section 75(1) of the 2007 Act provides that it is an offence to make arrangements for or to place a child for adoption (this does not apply to adoption agencies).
Part 12 – Other Reforms

Children’s hearings

Section 69 – Area support teams: establishment

184. Section 69 amends paragraphs 12 and 13 of schedule 1 of the Children’s Hearings (Scotland) Act 2011 (the 2011 Act). Schedule 1 of the 2011 Act makes further provision about the National Convener of Children’s Hearings Scotland (CHS) and about CHS itself – such as provision relating to appointment and functions, etc. Paragraph 12 of the schedule provides for the establishment and membership of area support teams (ASTs) which are to carry out for their areas, the selection of children’s hearing members and paragraph 13 applies when the National Convener first establishes an AST under paragraph 12 and is a transitional provision dealing with the transfer of members from a Children’s Panel Advisory Committee to an AST. Paragraph 14 makes provision for the functions of ASTs.

185. Section 69(2)(a) provides that the National Convener must keep the designation of areas under paragraph 12(1) under review and that the National Convener may revoke or make a new designation at any time. The National Convener will be required to ensure, when revoking or making new designations, that each local authority will fall within a designated area under paragraph 12(1). Where a designation is revoked, this will have the effect of dissolving the area support team that was established as a consequence of the designation. New paragraph 12(3C) requires the National Convener to consult with the affected local authority before revoking or making a designation. This means that the National Convener must ensure that when exercising the power to make and revoke designations of ASTs, there will always be an AST in relation to each local authority area and therefore that there will not be a time when a local authority no longer has an AST as a result of a revocation.

186. New paragraph 12(3D) provides that in sub-paragraph 3C “affected local authority” means, in the case of making a designation, the local authority whose area falls with the area proposed to be designated and, in the case of a revocation of a designation, each constituent local authority for the area support team established as a consequence of the designation.

187. On making or revoking a designation under paragraph 12(1) and 12(3B), the National Convener must notify each affected constituent local authority.

188. Section 69(2)(b) amends paragraph 13 of schedule 1 to the 2011 Act so that paragraph 13 applies where the National Convener establishes an area support team under paragraph 12(1) and where the area of the area support team consists of or includes a new area. Paragraph 13(2) requires the National Convener to notify each relevant Children’s Panel Advisory Committee member of the National Convener’s intention to transfer the member to the area support team.

189. Paragraph 13(b)(iv) amends paragraph 13(7) to provide that “new area” means an area which has never previously been the area (or part of the area) of an area support team.

190. Section 69(3) provides that an area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.
Section 70 – Area support teams: administrative support by local authorities

191. This section amends paragraph 14 of schedule 1 to the 2011 Act to provide that each constituent local authority (of an area support team, as established by the National Convener in terms of schedule 1, paragraph 12 of the 2011 Act) must provide an area support team with such administrative support as the National Convener considers appropriate. “Administrative support” is defined as staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.

Detention of children in secure accommodation

Section 71 – Appeal against detention of child in secure accommodation

192. This section amends the Criminal Procedure (Scotland) Act 1995 (the CPSA) to insert a new provision, section 44A, which provides that a child or relevant person in relation to the child may appeal to the sheriff against a local authority decision to detain the child in secure accommodation following an order having been made to detain the child in residential accommodation under section 44 of the CPSA. New section 44A(2) provides that the sheriff may either confirm the decision to detain the child in secure accommodation or quash the decision and direct the local authority to move the child to residential accommodation which is not secure accommodation instead.

193. New section 44A(3) allows the Scottish Ministers by regulations to make further provisions about appeals. These regulations, which are subject to affirmative procedure, may specify the period within which appeals should be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

194. “Relevant person” in relation to a child is defined as any person who has parental responsibilities or parental rights (within the meaning of sections 1(3) and 2(4) of the 1995 Act in relation to the child); and, where the child is subject to a compulsory supervision order even if that order does not have any effect as a result of section 44(4) of the 1995 Act, any person who is deemed to be a relevant person in relation to the child by virtue of sections 81(3), 160(4)(b) or 164(6) of the 2011 Act.

195. This is to replicate the appeal rights under the 2011 Act. Section 151 of that Act sets out the ways in which secure accommodation authorisations are implemented where a children’s hearing makes a relevant order or warrant (including a compulsory supervision order) in relation to a child and section 162 of that Act provides for an appeal to the sheriff against a decision to implement a secure accommodation authorisation, including by one or more relevant persons in relation to a child. Section 81(4) of the 2011 Act provides that where the children’s hearing deems the individual to be a relevant person, they are to be treated as relevant persons for the purposes of Part 15 (which includes the appeal to the sheriff against secure accommodation authorisation implementation decisions) and section 81(3) provides that the children’s hearing must deem the individual to be a relevant person if it considers that the individual has or has recently had a significant involvement in the upbringing of the child.

196. Secure accommodation in this section has the meaning assigned to it in Part II of the 1995 Act.
Schools consultation

Section 72 – Closure proposals: call-in by the Scottish Ministers

197. Subsection (1) amends section 15 of the Schools (Consultation) (Scotland) Act 2010 to provide for an extension to the period during which the Scottish Ministers may issue a call-in notice to an education authority in relation to a decision taken by that education authority to implement a closure proposal, that is a proposal to permanently discontinue a school or discontinue all nursery classes in a school or a stage of education in a school. This period is extended from 6 weeks to 8 weeks.

198. Subsection (2) provides that this extension will apply to all school closure proposals in respect of which a decision to implement has been taken by an education authority from the date that subsection (1) is commenced.

Wellbeing

Section 73 – Consideration of wellbeing in exercising certain functions

199. This section inserts text after section 23 of the 1995 Act to create a new section 23A.

200. Subsection (1) of the new section 23A applies where a local authority is exercising a function under or by virtue of section 17 or 22 of the 1995 Act.

201. Subsection (2) provides that the local authority must have regard to the general principle that its functions in relation to children should be exercised in a way which is designed to promote, safeguard and support their wellbeing.

202. Subsection (3) provides that for the purposes of the previous subsection the local authority is to assess the wellbeing of a child by referring to the extent to which the wellbeing indicators in section 74(2) are or would be satisfied in relation to the child.

203. Subsection (4) provides that a local authority is to have regard to the guidance issued under section 74(3) of the Children and Young People (Scotland) Act 2013 when assessing the wellbeing of the child.

204. Subsection (5) defines “the 2013 Act” as the Children and Young People (Scotland) Act 2013.

Part 13 - General

Section 74 – Assessment of wellbeing

205. Subsection (1) applies where a person is to assess whether the wellbeing of a child or young person is being, or would be, promoted, safeguarded, supported, or adversely affected.

206. Subsection (2) provides that the person should assess the wellbeing of the child or young person by reference to the extent to which the child or young person would be safe, healthy, achieving, nurtured, active, respected, responsible and included.
207. Subsection (3) provides that the Scottish Ministers must issue guidance on how the wellbeing indicators listed in subsection (2) are to be used to assess the wellbeing of a child or young person.

208. Subsections (4) and (5) provide that the Scottish Ministers must consult with local authorities, health boards and any other persons they think appropriate before a person issues or revises guidance and that, in measuring the wellbeing of a child or young person, they must have regard to the guidance issued in subsection (3).

209. Subsections (6) and (7) provide that Scottish Ministers can, by order, modify the list of wellbeing indicators in subsection (2) and before making an order must consult with each local authority, health board and any other people they think are appropriate.

Section 76 – Modification of enactments

210. This section introduces schedule 4 which contains minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act.

Section 77 – Subordinate legislation

211. Subsection (1) provides that any power of the Scottish Ministers to make an order or regulations includes powers to make different provision for different purposes and such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

212. Subsection (2) states that an order made under the following sections is subject to the affirmative procedure – sections 3(2), 8(3), 17(6), 30(2), 35(5), 44(2), 47(2), 50(2), 74(6).

213. Subsection (3) provides that an order made under section 78 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to affirmative procedure.

214. Subsection (4) provides that other orders made under this Act, and any regulations made under this Act, are subject to negative procedure.

215. Subsection (5) provides that this section does not apply to an order made under section 79(2).

Section 78 – Ancillary Provision

216. This section allows the Scottish Ministers, by order, to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act. Such an order may also make such transitional, transitory or savings provision as the Scottish Ministers consider appropriate for the purposes of, or in connection with, the coming into force of any provision.
Section 79 – Commencement

217. This section provides for this Part (except for sections 74, 75 and 76) to come into force on the day after Royal Assent and for the other provisions of the Act to be commenced by order made by the Scottish Ministers. Such an order may include transitional, transitory or savings provision.

Section 80 – Short Title

218. This section states the short title of the Act as being the Children and Young People (Scotland) Act 2013.

Schedule 1 – Authorities to which section 2 applies

219. Schedule 1 lists the authorities to which the duty in section 2 of the Act (duties of public authorities in relation to the UNCRC) applies. Schedule 1 is introduced by section 3. The persons included in this schedule are those persons who it is considered are likely to, in the course of its function, engage directly with children and young people, and as such should be taking steps to secure better or further effect, within the area of its responsibility, the UNCRC requirements.

Schedule 2 – Relevant authorities

220. Schedule 2 lists relevant authorities for the purposes of Part 4 (named persons) of the Act and is introduced by section 30. The persons included in this schedule are those persons who it is considered are likely to, in the course of their function, engage directly with children, families and adults.

Schedule 3 – Corporate parents

221. Schedule 3 lists the persons who are “corporate parents” for the purposes of Part 7 (corporate parenting) of the Act and is introduced by section 50. The persons included in this schedule are those bodies which it is considered are likely to, in the course of exercising their functions, engage directly with looked after children.

Schedule 4 – Modification of enactments

222. Schedule 4 makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act. Schedule 4 is introduced by section 76.

223. Paragraph 1 amends the Social Work (Scotland) Act 1968 (the 1968 Act). Section 5(1) of the 1968 Act provides that local authorities shall perform their functions under certain enactments under the general guidance of the Scottish Ministers. Further, section 5(1A) enables the Scottish Ministers to issue directions to local authorities (either individually or collectively) as to the manner in which they are to exercise their functions under the enactments mentioned in subsection (1B); and a local authority is required to comply with any direction made.
224. Paragraph 1(2)(a)(i) and (ii) of schedule 4 amend section 5 of the 1968 Act so as to bring the early learning and childcare provisions and the kinship care order and counselling services provisions within the ambit of section 5(1) of the 1968 Act; the effect will be that local authorities must perform their functions in relation to early learning and child care in so far as they apply to children falling within section 43(3)(a) of the Act (that is looked after 2 year olds), and in relation to the provision of support to kinship carers and the provision of counselling services to those eligible to receive it under the general guidance of the Scottish Ministers. Paragraph 1(2)(b) amends section 5(1B) of the 1968 Act so as to include the provisions on early learning and childcare in so far as they relate to looked after 2 year olds within subsection (1B) of the 1968 Act; the effect being that the Scottish Ministers will be able to issue directions to local authorities as to the manner in which they exercise their functions in relation to early learning and childcare for looked after 2 year olds. Paragraph 1(2)(c) inserts a definition of looked after children into section 5 of the 1968 Act.

225. Paragraph 2 amends the Education (Scotland) Act 1980 (the 1980 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Paragraph 2(2)(a) amends section 1(1A) of the 1980 Act so as to provide that the duty to provide adequate and effective provision of school education conferred on education authorities under section 1(1) of the 1980 Act, in relation to children who are under school age, is to be exercisable only to the extent required by section 43(1). Under the current law, the duty to provide adequate and effective school education in relation to children who are under school age is exercisable only in respect of children described in an order made under subsection (1A) of section 1 of the 1980 Act.

226. Paragraph 2(2)(b) removes subsections (1B) and (4A) from section 1 of the 1980 Act; those provisions set out that an order made under subsection (1A) could set out the amount of school education which children described in the order are to be provided with (subsection (1B)) and that such an order was subject to negative procedure (subsection (4A)).

227. Section 1(5)(a)(i) of the 1980 Act defines school education in relation to pupils who are under school age. Paragraph 2(2)(c) of schedule 4 replaces that definition with the concept of early learning and childcare which has the meaning given in Part 6 of the Act (see the definition of "early learning and childcare" inserted into section 135 of the 1980 Act by paragraph 2(3)(a) of schedule 4).

228. Paragraph 2(3) amends section 135 of the 1980 Act which is an interpretation section. Paragraph 2(3)(a) inserts a definition of "early learning and childcare" which has the same meaning as in Part 6. Paragraph 2(3)(b) substitutes the definitions of "nursery school" and "nursery classes" and replaces the current definition (which gives them the same meaning in section 1(5)(a)(i) of the 1980 Act) with a definition which states that they are schools and classes which provide early learning and childcare.

229. Paragraph 3 amends the Children (Scotland) Act 1995 (the 1995 Act). Paragraph 3(2) repeals section 19 (local authority plans for services for children) of the 1995 Act in consequence of the provisions in Part 3 of the Bill relating to Children’s Services Planning. Paragraph 3(3) amends section 20 (publication of information about services for children) of the 1995 Act to substitute a new subsection (2) which defines “relevant services” for the purposes of that section which means services provided by a local authority under or by virtue of Part II of the 1995 Act,
the Children’s Hearings (Scotland) Act 2011 or any of the enactments mentioned in section 5(1B)(a) to (o) of the 1968 Act. A further connected amendment is made in paragraphs 4 and 7 of schedule 4 and is explained below.

230. Paragraph 3(4) amends section 44 of the 1995 Act to prevent a person publishing information which would identify a child, the child’s address or school only in respect of proceedings before a sheriff on an application for an exclusion order under section 76(1) of the 1995 Act. This is connected to the amendment made in paragraph 10 of schedule 4 which is explained below.

231. Paragraph 4 amends the Criminal Procedure (Scotland) Act 1995 so as to make a change to the definition of “relevant services” consequential on the repeal of section 19 of the Children (Scotland) Act 1995 by paragraph 3(2) of schedule 4 explained above.

232. Paragraph 5 amends the Standards in Scotland’s Schools Act 2000 (the 2000 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Section 34 of the 2000 Act contains a power for the Scottish Ministers to issue guidance to education authorities as respects the discharge of their functions under the 1980 Act and education authorities must in discharging those functions have regard to such guidance. Paragraph 4(a) and (b) of schedule 4 amend section 34 to enable guidance to be issued by the Scottish Ministers to local authorities about their functions in relation to the provision of early learning and childcare under Part 6 of the Act.

233. Paragraph 6 amends section 73(2)(a) of the Regulation of Care (Scotland) Act 2001 in consequence of the provision made at 60 of the Act relating to the provision of aftercare to young people. Section 73(2) is a power for the Scottish Ministers to make regulations to specify the manner in which assistance may be provided under subsections (1) and (2) of section 29 of the Children (Scotland) Act 1995. Section 73(2)(a) is amended so that this power may be exercised in relation to assistance provided under new subsections (5A) and (5B) which are inserted by section 60 of the Act.

234. Paragraph 7 amends the Mental Health (Care and Treatment) (Scotland) Act 2003 so as to make a change to the definition of “relevant services” consequential on the repeal of section 19 of the Children (Scotland) Act 1995 by paragraph 3(2) of schedule 4 explained above.

235. Paragraph 8 amends the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Paragraph 6(2), (3) and (4)(a) amends sections 1(3), 5(3)(a) and 29(1) of the 2004 Act respectively so as to replace the concept of "prescribed pre-school child" (as under current law such children are prescribed by an order under section 1(1A) and (1C) of the 1980 Act) with the concept of "eligible pre-school child" as defined in section 43(2) of the Act. Paragraph 8(4)(b) of schedule 4 removes the definition of "prescribed pre-school child" in consequence of the other amendments made by paragraph 8. It should be noted that an “eligible pre-school child” for the purposes of the early learning and childcare provisions in Part 6 of the Act will fall squarely within the definition of “pre-school child” in the 2000 Act and other enactments which refer to that concept.
236. Paragraph 9 amends the Adoption and Children (Scotland) Act 2007 to provide that any orders or regulations made under section 13A(2) or 13E(1) respectively, are not to be made unless a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament (affirmative procedure instruments).

237. Paragraph 10 amends schedule 6 (Repeals) of the Children’s Hearings (Scotland) Act 2011 (the 2011 Act) to omit the repeal of section 44 of the Children (Scotland) Act 1995 (prohibition of publication of proceedings at children’s hearings) from the list of repealed provisions in that Act. Section 44, whilst broadly replaced by provision made at section 182 of the 2011 Act, requires to be retained in relation to proceedings for exclusion orders under section 76(1) of the 1995 Act. Paragraph 3(4) of schedule 4 makes amendments to section 44 of the 1995 Act to limit its effect in this regard.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Children and Young People (Scotland) Bill (“the Bill”) introduced in the Scottish Parliament on 17 April 2013. It has been prepared by the Scottish Government to satisfy rule 9.3.2 of the Scottish Parliament’s Standing Orders. It does not form part of the Bill and it has not been endorsed by the Scottish Parliament.

OVERVIEW

2. The Memorandum summarises the cost implications of the Bill. The Bill’s intentions are to address the challenges faced by children and young people who experience poor outcomes throughout their lives by introducing various policies. The following table provides an overview of the provisions, cross referencing them with the Bill sections, and detailing where they can be found in the Financial Memorandum and the expected commencement date.

Table 1: Index of Provisions

<table>
<thead>
<tr>
<th>Provision</th>
<th>Bill Section Number</th>
<th>Financial Memorandum Paragraph Number</th>
<th>Expected Year of Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights of Children and Young People</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Placing a duty on the Scottish Ministers to keep under consideration and</td>
<td>1</td>
<td>14 – 21</td>
<td>2015</td>
</tr>
<tr>
<td>take steps to further the rights of children and young people, to</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>promote and raise awareness and understanding of the United Nations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convention on the Rights of the Child (UNCRC) and to prepare periodic</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>reports describing this activity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Placing a duty on the wider public sector (as listed in schedule 1) to</td>
<td>2 - 4</td>
<td>22 – 26</td>
<td>2015</td>
</tr>
<tr>
<td>report on what they are doing to take forward realisation of the rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>set out in the UNCRC</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>The Commissioner for Children and Young People in Scotland</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Extending the powers of the Commissioner for Children and Young People in</td>
<td>5 - 6</td>
<td>27 – 34</td>
<td>2016</td>
</tr>
<tr>
<td>Scotland, so that the office will be able to undertake investigations</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>in relation to individual children and young people</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planning and Delivery of Services</td>
<td>7 - 18</td>
<td>35 – 39</td>
<td>2015</td>
</tr>
<tr>
<td>Placing duties on local authorities to report</td>
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</table>
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

<table>
<thead>
<tr>
<th>Provision</th>
<th>Bill Section Number</th>
<th>Financial Memorandum Paragraph Number</th>
<th>Expected Year of Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>on how they are improving outcomes for children and young people</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Getting It Right for Every Child (GIRFEC)</strong>&lt;sup&gt;1&lt;/sup&gt;</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Ensuring that all children and young people from birth to 18 years old have access to a Named Person by putting duties on local authorities, health boards and other organisations</td>
<td>19 - 30</td>
<td>40 – 65</td>
<td>2016</td>
</tr>
<tr>
<td>Putting in place a single planning process to support those children who require it</td>
<td>31 – 41</td>
<td>40 – 65</td>
<td>2016</td>
</tr>
<tr>
<td><strong>Early Learning and Childcare</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Improving the availability of high quality, flexible, integrated early learning and childcare by increasing the funded annual provision from 475 hours pre-school education for 3 and 4 year olds to a minimum annual provision of 600 hours early learning and childcare for: 3 and 4 year olds; and any 2 year old who is, or has been at any time since turning 2, looked after or subject to a kinship care order</td>
<td>42 – 49</td>
<td>66 – 84</td>
<td>2014</td>
</tr>
<tr>
<td><strong>Getting It Right for Looked After Children</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Providing for a clear definition of corporate parenting, and defining the bodies to which it will apply</td>
<td>50 – 59</td>
<td>86 – 90</td>
<td>2015</td>
</tr>
<tr>
<td>Placing a duty on local authorities to assess a care leaver’s request for assistance up to and including the age of 25</td>
<td>60</td>
<td>91 – 105</td>
<td>2015</td>
</tr>
<tr>
<td>Providing families with children in distress access to appropriate intensive family therapy</td>
<td>61 – 63</td>
<td>106 – 152</td>
<td>2015</td>
</tr>
<tr>
<td>Providing for additional support to be given to kinship carers in relation to their parenting role, through the kinship care order</td>
<td>64 – 67</td>
<td>106 – 152</td>
<td>2015</td>
</tr>
<tr>
<td>Putting Scotland’s Adoption Register on a statutory footing</td>
<td>68</td>
<td>153 – 157</td>
<td>2014</td>
</tr>
<tr>
<td><strong>Other Proposals</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children’s Hearings: requiring local authorities to assist the National Convener,</td>
<td>69 - 70</td>
<td>158 – 161</td>
<td>2014</td>
</tr>
</tbody>
</table>

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These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

<table>
<thead>
<tr>
<th>Provision</th>
<th>Bill Section Number</th>
<th>Financial Memorandum Paragraph Number</th>
<th>Expected Year of Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>which in practical terms will be delivered through their contributions to Additional Support Teams’ support to the children’s panel, and, relieving the National Convenor of the obligation to obtain the consent of each constituent authority before establishing (or re-establishing) Area Support Teams (AST’s)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Secure Accommodation: providing a right of appeal to the sheriff against a decision by the chief social work officer of a local authority to place a child in secure accommodation following an order under section 44 of the Criminal Procedure (Scotland) Act 1995 to detain a child in residential accommodation</td>
<td>71</td>
<td>162 – 164</td>
<td>2014</td>
</tr>
<tr>
<td>Amendment to the Schools (Consultation) (Scotland) Act 2010, extending the period of time Scottish Ministers have to consider representations and seek information in considering whether to issue a call in notice as respects a closure proposal</td>
<td>72</td>
<td>165 – 167</td>
<td>2014</td>
</tr>
<tr>
<td>Increasing the time available for the Scottish Ministers to issue a call in notice from when a school closure proposal is made from six to eight weeks</td>
<td>72</td>
<td>165 – 167</td>
<td>2014</td>
</tr>
<tr>
<td>Placing a definition of wellbeing in legislation</td>
<td>74</td>
<td>168</td>
<td>2015</td>
</tr>
<tr>
<td>Reversing the unintended repeal of section 44 of the Children (Scotland) Act 1995, by schedule 6 of the Children’s Hearings (Scotland) Act 2011</td>
<td>76</td>
<td>169 - 170</td>
<td>2014</td>
</tr>
</tbody>
</table>

Methodology

3. The analysis and estimates contained in this Memorandum draw on a variety of sources including:

- Consultation responses to the Bill proposals\(^2\) and the draft Business Regulatory Impact Assessment (BRIA)\(^3\); and

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Discussions with partners and stakeholders for whom there may be financial implications, or who may be affected as a result of the Bill including: the Convention of Scottish Local Authorities (COSLA); individual local authorities; Community Planning Partnerships (CPPs); health boards; special health boards; the Association of Directors of Education (ADES); the Association of Directors of Social Work (ADSW); Scotland’s Commissioner for Children and Young People; partner providers of early learning and childcare; independent schools; and the third sector.

4. It is noted at several points in the document that there have been methodological challenges in estimating the costs of some provisions, particularly with respect to the duties relating to the Named Person, the Child's Plan, throughcare and aftercare, kinship carers and counselling services. These challenges in large part relate to estimating how the preventative approach set out here will result in future avoided costs, which in several cases, depends on forward projections of current costs in the absence of the provisions. The approach taken has been to estimate median costs, and assumes that there will be margins of uncertainty around some of the costs cited. However, where the assumptions used in the methodology result in significant margins, the margins have been set out in the calculations (specifically, with regards to the duties relating to kinship carers and counselling services).

5. This document should be read in conjunction with the Policy Memorandum, which sets out more fully the reasoning behind the Bill, and the BRIA, which sets out any possible implications on private organisations.

Timescales

6. If the Bill is passed then it is expected that the following commencement dates will apply:

2014:
- Duties relating to early learning and childcare;
- Placing Scotland’s National Adoption Register on a statutory footing;
- Amendment to the Schools (Consultation) (Scotland) Act 2010; and
- Provisions relating to the Children’s Hearings system.

2015:
- Duties on the Scottish Ministers relating to the UNCRC;
- Duty on public bodies to report on the steps that they have taken to further children’s rights;
- Duties to provide additional support to kinship carers through the kinship care order;
- Provisions relating to providing families with children access to appropriate intensive family therapy;
- Duties relating to throughcare and aftercare; and
- Duties relating to corporate parenting.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

2016:
- Duties relating to GIRFEC; and
- Extending the power of Scotland’s Commissioner for Children and Young People.

Summary of Estimated Financial Costs

Table 2: Summary of Costs (£):

<table>
<thead>
<tr>
<th></th>
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<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
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<td>32,500</td>
<td>0</td>
<td>0</td>
<td>32,500</td>
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<tr>
<td>Local Authority</td>
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<td>107,765,588</td>
<td>121,862,826</td>
<td>89,929,616</td>
<td>97,973,022</td>
<td>97,973,022</td>
</tr>
<tr>
<td>NHS</td>
<td>300,000</td>
<td>1,088,949</td>
<td>16,315,681</td>
<td>13,056,680</td>
<td>11,414,442</td>
<td>10,803,505</td>
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<tr>
<td>Other Organisations</td>
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<td>202,280</td>
<td>746,597</td>
<td>162,109</td>
<td>236,349</td>
<td>162,109</td>
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<tr>
<td>Total</td>
<td>79,107,982</td>
<td>109,089,317</td>
<td>138,925,104</td>
<td>103,148,405</td>
<td>109,656,313</td>
<td>108,938,636</td>
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Table 3: Costs on the Scottish Administration (£)

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<tbody>
<tr>
<td>Children’s Rights</td>
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<td>32,500</td>
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<td>GIRFEC</td>
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<tr>
<td>Early Learning/ Childcare</td>
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<tr>
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Table 4: Costs on local authorities (£)

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<td>GIRFEC</td>
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<tr>
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<td>85,895,976</td>
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<tr>
<td>Total</td>
<td>78,782,982</td>
<td>107,765,588</td>
<td>121,862,826</td>
<td>89,929,616</td>
<td>97,973,022</td>
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</table>
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Table 5: Costs on the NHS (£)

<table>
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<tbody>
<tr>
<td>Children’s Rights</td>
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<tr>
<td>GIRFEC</td>
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<tr>
<td>Early Learning/Childcare</td>
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<td>16,315,681</td>
<td>13,056,680</td>
<td>11,414,442</td>
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Table 6: Costs on other bodies, individuals and businesses (£)

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<td>Total</td>
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<td>199,230</td>
<td>746,597</td>
<td>162,109</td>
<td>236,349</td>
<td>162,109</td>
</tr>
</tbody>
</table>

Why a Preventative Approach?

7. The Children and Young People (Scotland) Bill is founded on the key principles of early intervention and prevention, an approach to which the Scottish Government is committed, that is designed to deliver better outcomes for the people of Scotland, more efficient use of public services and sustainable economic growth. Evidence shows that effective early intervention and prevention can help break recurring cycles of poor social outcomes, and prevent extensive and expensive responses from public services at a later stage.

8. Several longitudinal studies provide evidence that returns from early investment in children during the pre-birth period and up to the age of 8 are high, but reduce the later the investment is initiated.\(^4\) This is not to suggest that later interventions are ineffective, only that intervening

\(^4\) Heckman, J., The Case for Investing in Disadvantaged Young Children (2009)
earlier is usually better. For example, there is clear evidence concerning the benefits of securing early and permanent placement of children who are unable to live with their birth parents.\(^5\)

9. In the longer term, failure to effectively intervene to address the complex needs of an individual in early childhood can result in a nine fold increase in direct public costs, when compared with an individual who accesses only universal services. A package of effective early years interventions designed to reduce the frequency and type of service demanded by those individuals experiencing severe problems through their lives could have a significant impact on the outcomes for those individuals, and result in a reduction in the level of cost to the public sector. For example, a 10% reduction in the total cost to the public sector supporting an individual with severe problems could result in a potential avoided cost of approximately £94,000 per individual over time.\(^6\)

10. There is evidence that children and young people with complex needs and multiple contacts with public services often receive several interventions that are uncoordinated and may not meet their individual needs in a personalised and targeted way.\(^7\) Not only does such uncoordinated intervention drain scarce public resources but it also detracts from the effectiveness of interventions overall.\(^8\) By creating services that offer a more proportionate response to issues that affect children, children would receive better tailored interventions resulting in better outcomes, while avoiding duplication. This in turn would lead to efficiency savings in both time and resource.

11. Changes introduced in the Bill are part of an overall package of targeted interventions to achieve the impact described above. It is not always possible to estimate the contribution of individual measures to this wider impact. Where possible, the avoided costs resulting from specific measures have been estimated in the sections below.

**RIGHTS OF CHILDREN AND YOUNG PEOPLE**

12. The following estimates were arrived at following consultation with a number of stakeholders and interested parties including: Scotland’s Commissioner for Children and Young People; the Scottish Parliament Corporate Body; the Scottish Public Services Ombudsman; and the Children’s Commissioner for Wales.

13. The costs for these provisions primarily relate to:

- Development and delivery of policy initiatives by the Scottish Ministers to further, and raise awareness and understanding of the UNCRC;
- Preparation and publication of periodic ministerial reports focussing on UNCRC implementation;

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• Preparation and publication of periodic reports by other relevant public bodies focusing on UNCRC implementation; and

• Operational costs for the office of the Commissioner for Children and Young People in Scotland.

Section 1 – Duty on the Scottish Ministers to keep under consideration and take appropriate steps to further the UNCRC; to promote and raise awareness and understanding of the UNCRC and to report on implementation of the UNCRC.

14. The Bill will place a new duty on the Scottish Ministers to keep under consideration their approach to UNCRC implementation and to take steps which they consider to be appropriate in order to further the rights set out in the UNCRC; to promote public awareness and understanding of the UNCRC and to publish reports every 3 years which outline the steps that they have taken to further children’s and young people’s rights under the UNCRC.

Costs on the Scottish Administration

15. Implementation of the UNCRC is an international obligation which must be satisfied by the Scottish Ministers. Because Ministers currently satisfy this obligation, the ‘duty to take appropriate steps’ would not result in substantial additional costs. The Scottish Government already takes forward a wide range of activity to implement the UNCRC and we expect that similar actions will need to be taken forward in future in order to ensure that Ministers continue to satisfy both their international obligations and the new duties being proposed through the Bill. There is no evidence to suggest a need for increased spend beyond what is currently being committed in order to implement the UNCRC. Instead, as the focus of our activity changes, we will change the way that resources are targeted.

16. The key costs are linked to other provisions described below as well as guidance. The Scottish Government intends to develop guidance to support Ministers in the continued implementation of the UNCRC as well as the proposed duty to ‘keep under consideration and take appropriate steps’. The guidance will not require entirely new processes to be established within Government. One off costs associated with developing and disseminating the guidance are expected to be approximately £25,000. This estimate is based on experience of developing previous guidance linked to public sector equality duties. Costs primarily reflect the allocation of staff resource required to develop the guidance.

17. The Bill provides for individuals to test how the Scottish Ministers have implemented the UNCRC through the domestic courts in a way not currently possible. However, given the significant progress that has already been made around implementation, we anticipate challenges of this nature being rare. Accordingly, we would expect any costs associated with judicial action to be marginal, for which there is a contingency. The Scottish Legal Aid Board spent £6,500 in 2011-12 on average on a judicial review.

18. In relation to the new duty on Ministers to promote awareness and understanding, it is estimated that this will not carry any additional costs. This is because Article 42 of the UNCRC already requires Ministers to make the principles and provisions of the UNCRC widely known to both adults and children.
19. In relation to the duty to produce reports: the Scottish Ministers are already committed to the development and implementation of periodic action plans focusing on the Scottish Government’s approach to implementation of the UNCRC. In addition, in 2012 the Scottish Ministers committed themselves to the future development of interim reports which detail progress made since the publication of the last action plan. The new duty will ensure this commitment is fulfilled moving forward.

20. Based on the preparation of a report similar in size and scope to the UNCRC progress report published by the Scottish Ministers in May 2012, and the consultation activity undertaken with children and young people for the Bill, it is expected that the following costs might reasonably be incurred every 3 years when developing a report to satisfy this duty:

- Staffing costs of approximately £8,000;
- Engagement with children and young people at a cost of approximately £20,000; and
- Publication costs of approximately £4,500.

This amounts to an approximate cost of £32,500 every 3 years

Costs on local authorities, other bodies, individuals and businesses.

21. The duty will apply solely to the Scottish Government, therefore, there will be no cost to others.

Section 2 – Duty on public bodies to report on steps taken to further the UNCRC

22. A duty will be placed on public bodies (as listed in schedule 1) to report every 3 years on the steps that they have taken to further children and young people’s rights.

Costs on the Scottish Administration

23. As this is a duty on the wider public sector, there will be no cost to the Scottish Administration. Guidance will be prepared to support bodies in satisfying the duty. However, marginal financial resources will be required to take that work forward.

Costs on local authorities, other bodies, individuals and businesses.

24. It is not expected that the public bodies upon whom the duty will be placed will need to establish structures similar to those proposed in respect of the Ministerial reporting duty. Costs are, therefore, not expected to be as high. Those public bodies on which this duty falls should be able to utilise their current reporting process in order to satisfy this duty (such as Children’s Services Integrated Plans and annual reports), and a level of flexibility in the reporting process will be encouraged. This should minimise costs as it is expected that organisations will routinely allocate resources to support those reporting processes.

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9 Scottish Government, Do the Right Thing (2012)
25. Furthermore, where a public body has a narrow remit, this may limit the extent to which they will report on UNCRC implementation. The less significant the impact of their work on UNCRC implementation, the less onerous and less costly the reporting process will be.

26. Given the level of flexibility to be encouraged, any additional costs likely to fall on public bodies as a consequence of the Bill will be marginal.

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

Sections 5 - 6 – Extension of the power of the Commissioner for Children and Young People in Scotland

27. The Bill seeks to extend the powers currently available to the Commissioner for Children and Young People in Scotland under the Commissioner for Children and Young People (Scotland) Act 2003. That legislation provides for the Commissioner to undertake investigations focussing on the extent to which service providers have had regard to the rights, views and interests of groups of children and young people, or children and young people in general. This Bill seeks to extend this power in order that the Commissioner may undertake similar investigations in relation to individual children.

28. In reaching a conclusion on the financial implications for these proposals, the Scottish Government has consulted with organisations including: the Commissioner for Children and Young People in Scotland; the Children’s Commissioner for Wales; the Scottish Public Services Ombudsman; and the Scottish Parliament Corporate Body.

Costs on the Scottish Administration

29. As the Commissioner for Children and Young People in Scotland is a Parliamentary appointment, all costs associated with the proposed extension of powers will fall to the Scottish Parliament Corporate Body, and there will be no cost to the Scottish Administration.

Costs on the Children’s Commissioner

30. Whilst the Commissioner may require a service provider to participate in an investigation, the anticipated low volume of any such investigations suggests that costs will be marginal. To date, the Commissioner has not undertaken any investigation in line with his current powers under section 7 of the Commissioner for Children and Young People (Scotland) Act 2003; therefore, the following figures should be considered speculative.

31. Under the extended powers, it is expected that the Commissioner will undertake between 1 and 4 investigations per year. This estimate has been reached following discussion with other key complaints handling bodies in Scotland, including: the Scottish Public Services Ombudsman; the Care Inspectorate; and the Equalities and Human Rights Commission. Those discussions have indicated the existence of robust processes for handling complaints in a wide range of circumstances. That being said, all of the bodies agreed that there may be limited instances where an investigation by the Commissioner would be beneficial in order to address concerns on the part of an individual child or young person, particularly from a rights perspective. The estimate is also reflective of the fact that both the Children’s Commissioner for
Wales and the Northern Ireland Commissioner for Children and Young People have undertaken very few investigations of this nature, having had similar powers extended to them previously.

32. Following discussions with Scottish Parliamentary officials with responsibility for office holder services, we have concluded that the Commissioner will require:

- 3 additional full time equivalent (FTE) members of staff as a consequence of the changes proposed, including: a Head of Casework and Legal; an Investigator; and a Casework Support Officer;
- One-off costs associated with the appointment of additional staff (e.g. advertisement);
- Training costs and travel expenses;
- Accommodation costs, calculated on a pro-rata basis from the Commissioner’s existing accommodation costs; and
- Provision of expert advice to support delivery of investigations.

33. There are no IT costs associated with the extension of powers. The Commissioner currently deals with between 350 and 425 enquiries per year. The number of enquiries may increase as a consequence of the extension of the Commissioner’s powers, but the majority of those enquiries should be dealt with in line with current practice and existing IT systems. Only very few enquiries will lead to an individual investigation. Accordingly, we do not believe that a dedicated additional IT solution will be necessary in order to effectively manage those cases.

**Costs on local authorities, other bodies, individuals and businesses.**

34. There will be no costs on other bodies, individuals or businesses.

Table 7: Summary of costs for Commissioner for Children and Young People in Scotland (£)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Training/travel</td>
<td>4,500</td>
<td>7,000</td>
<td>7,000</td>
<td>7,000</td>
<td>7,000</td>
</tr>
<tr>
<td>Accommodation</td>
<td>16,500</td>
<td>33,000</td>
<td>33,000</td>
<td>33,000</td>
<td>33,000</td>
</tr>
<tr>
<td>Expert advice</td>
<td>0</td>
<td>9,000</td>
<td>9,000</td>
<td>9,000</td>
<td>9,000</td>
</tr>
<tr>
<td>Total</td>
<td>83,190</td>
<td>162,109</td>
<td>162,109</td>
<td>162,109</td>
<td>162,109</td>
</tr>
</tbody>
</table>

* The costs for 2015-16 have the following additional assumptions: start-up costs (which have been included under staff costs as they largely relate to recruitment); a half year of staff, travel and accommodation costs; and no expert advice required as the duty will not have commenced.

**PLANNING AND DELIVERY OF SERVICES**

**Sections 7 – 18 – Duties on planning and delivering services and reporting on wellbeing indicators**

35. There will be a duty on local authorities and health boards to cooperate with other public bodies to jointly plan and deliver services for children and young people, with a focus on wellbeing, and to report on outcomes and wellbeing indicators.
Costs on the Scottish Administration

36. As this will be a duty for the wider public sector, there will be no additional cost to the Scottish Administration.

Costs on local authorities, other bodies, individuals and businesses.

37. Local authorities already have a statutory obligation to produce integrated children’s services plans. It is expected that health boards and other public sector partners will work through the existing structures that they have with the local authorities to deliver this duty. It is understood that organisations routinely allocate resources to support existing processes, therefore, there will be no additional cost.

38. Those public bodies on which the duty to report falls should be able to utilise current reporting processes in order to satisfy this duty (such as Single Outcome Agreement Annual Reports), and a level of flexibility in the reporting process will be encouraged. This should minimise costs as it is expected organisations routinely allocate resources to support existing reporting processes.

39. Given the level of flexibility to be encouraged, any additional costs likely to fall on public bodies as a consequence of the Bill will be marginal.

GETTING IT RIGHT FOR EVERY CHILD (GIRFEC)

40. The Scottish Government and COSLA are committed to the GIRFEC approach and for several years have been promoting the development and subsequent implementation of GIRFEC by CPPs across Scotland. By March 2013, the Scottish Government will have spent £7,878,919 since 2008 working with GIRFEC Pathfinders and Learning Partners to develop GIRFEC (including the development of the concept of the Child’s Plan and Named Person).

41. Different parts of Scotland are at different stages in fully embedding the GIRFEC approach, and unfortunately none have established a cost analysis or benefit realisation model which could inform this Memorandum. It is difficult to create a definitive costing for implementation of the duties set out in the Bill and a margin of error is anticipated. The Scottish Government has consulted widely with numerous stakeholders, including: the GIRFEC Pathfinder in Highland and Learning Partners; COSLA; health boards; ADES; and ADSW. The following costs have been calculated to reflect the financial implications of GIRFEC implementation from a base rate of zero (i.e. where no GIRFEC implementation has been undertaken).

42. GIRFEC costs primarily relate to:
   - Replacement of staff training on the Named Person and Child’s Plan duties;
   - Additional time from staff required to fulfil the duties of the Named Person and the Child’s Plan; and
   - Additional administrative support required.
Sections 19 – 41 – Duties relating to the Named Person and Child’s Plan

43. These sections place a duty on a set of public bodies set out in the Bill to provide a Named Person for every child in Scotland from birth until they leave school, and provide a Child’s Plan where appropriate.

Costs on the Scottish Administration

44. There will be no additional cost to the Scottish Administration as the duties are being placed on local authorities, health boards and other organisations.

Costs on local authorities

45. Local authorities will be responsible for the duties associated for the Named Person and Child’s Plan for those children and young people from the age of 5 until they leave school who are educated within state schools or who are school leavers. Each local authority is at a different stage of implementation, so the cost to each will be dependent on what stage they are at. The following costs have been determined at a national level.

Training

46. For staff delivering the Named Person role, for those who will have significant contact with the Named Person or will be primarily involved with the Child’s Plan, it is expected that there will be a requirement for initial training on a multi-agency basis for 2 days. The expectation is that training will be delivered in house by the public body with materials already developed by the Scottish Government (in collaboration with stakeholders). Therefore, it is assumed that there would not be a cost associated with developing and delivering the training. These assumptions have been confirmed in discussion with a sample of stakeholders.

47. There will, however, be a cost associated with replacing staff for training days, where that is necessary, and this will vary depending on the level of teacher involved. The following table sets out the estimate. It does not separate out the estimates for primary, secondary and special schools. The backfill assumptions are based on: the level of likely teaching commitment for different staff (0% for head teachers, 10% for depute heads and 30% for principal teachers); and an estimated £31.56 per hour for 7 hours of training per day. These assumptions have been derived from discussion with a sample of stakeholders.

<table>
<thead>
<tr>
<th>Number to be backfilled</th>
<th>Cost of 2 days training (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head Teacher</td>
<td>0</td>
</tr>
<tr>
<td>Deputy Head Teacher</td>
<td>247</td>
</tr>
<tr>
<td>Principal</td>
<td>654</td>
</tr>
<tr>
<td>Total for 2 days training</td>
<td></td>
</tr>
</tbody>
</table>

48. It is expected that training will not be a ‘one-off’ event but going forward this training will then form part of standard Continued Professional Development, and be absorbed as part of the
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

on-going training requirements on these organisations. Discussions with stakeholders suggest that it has been mainstreamed already in many parts of educational training.

49. Training and preparation costs may require some activity ahead of commencement, depending on the planning in each area, but for the purposes of these calculations, it is assumed that the cost is applied in 2015-2016.

50. Comprehensive national guidance is to be produced ahead of commencement. While local guidance may be developed, the national guidance should mitigate any costs. This work is already underway and costed as part of current activity.

Staff costs

51. In addition to the costs of preparing for the duties, there will be costs in carrying out these duties as part of a system change. These principally relate to directly carrying out the Named Person role (and the duties relating to the Child’s Plan) and the administrative support required. There may be a need for additional management or non-class contact time to deliver the Named Person role, and this could take the form of additional teaching hours. The table below is based on the following assumptions, derived from discussion with a sample of stakeholders.

- It is not assumed that the Named Person role would lead to additional costs with respect to all children and young people in local authority education, but only those who require additional planning from local authority services.
- This latter group is estimated to equate to 10% of the children and young people school population. This reflects the experience of those areas where the Named Person role has already been operated.
- No distinction has been made between different ages in this assumption: while there will be differences in demand across the age ranges, no evidence was forthcoming to suggest that there is a consistent concentration of activity at particular ages. As education staff are already currently planning for those children who need additional support, the additional costs are associated with the transition period when the Named Person will require more time to become familiar with and use the new system of planning.
- It is assumed that the additional help required across the system for this cohort would amount to an average of approximately 3.5 hours in the first year of implementation. Again, this reflects the experience of existing GIRFEC operation.
- We have taken the salary of a grade 6 teacher as the basis for estimating salary costs.
Table 9: Estimated cost of additional teacher hours for local authorities

<table>
<thead>
<tr>
<th>Population of children 5-18 in local authority schools (GROS, 2011)</th>
<th>Children requiring extra help (%)</th>
<th>Additional hours estimated for each requiring additional help in the first year</th>
<th>Total additional hours for children requiring extra help in the first year</th>
<th>Total additional cost in teacher staffing time in the first year (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>707,468</td>
<td>10</td>
<td>3.5</td>
<td>247,613</td>
<td>7,814,691</td>
</tr>
</tbody>
</table>

52. It is not anticipated that these will be recurring costs once the system change has bedded in after 1 year. The experience of GIRFEC in those areas most advanced in its implementation suggests that the system change accommodates the additional hours with efficiency savings in the services required to support children and young people with additional needs. In particular, the early intervention approach of the Named Person would result in reductions in the time spent by educational staff in addressing the needs of children and young people in crisis circumstances, such as child protection case conferences or children’s panel appearances.

53. Evidence on the benefits of GIRFEC highlights these efficiency savings and improved outcomes through closer cross partnership working and information sharing. In the Highland Pathfinder evaluation, the authors cite improved outcomes for the majority of children (two thirds of around 100 sampled) all of whom had complex needs. In addition, the following tangible benefits were realised:

- Fewer meetings and reports for all agencies, 75% time saving for meetings and administration was reduced to 10% of activity;
- Social worker caseloads reduced by 50% and inappropriate referrals to social work services reduced, freeing up time to focus on more serious concerns and circumstances involving vulnerable children;
- Unnecessary referrals to the Children’s Reporter reduced by 70%, leaving reporters and children’s panels increasingly free to focus on more serious cases at an earlier stage in the child’s or young person’s life; and
- A reduction of around 50% in the number of children regarded as at risk of significant harm and, therefore, on the Child Protection Register, attributed to the appropriate targeting of resources, early intervention and a more coordinated approach by all services and agencies under GIRFEC.

54. There is also evidence reported from other parts of Scotland of the benefits of adopting elements of GIRFEC practice. In Fife, there have been: significant reductions in referrals to the Children’s Reporter; a 30% reduction in out of authority placements; reduction in the average waiting time for referral to acute paediatric clinics for children with Autistic Spectrum Disorders from 3 years to 24 weeks; 54% diversion of children between 16 and 17 being reported to the Procurator Fiscal to alternative interventions; and a 50% drop in school exclusions. Similar gains were reported by Falkirk Council.

102 Scottish Government, Changing Professional Practice and Culture to Get it Right for Every Child (2010)
Administrative Costs

55. As well as direct staff costs, additional administrative support needs to be estimated as well. This arises from the handling of any additional information sharing between the Named Person and other practitioners, in line with the Bill provisions, as well as administration relating to the Child’s Plan. It recognises that there would be different administrative needs between different types of schools, particularly the heavier needs of secondary schools.

Table 10: Estimated cost of administrative support for local authorities

<table>
<thead>
<tr>
<th>Number of schools</th>
<th>Admin support (hours per week)</th>
<th>Working weeks</th>
<th>Total hours</th>
<th>Total cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary schools</td>
<td>376</td>
<td>4</td>
<td>52</td>
<td>78,208</td>
</tr>
<tr>
<td>Primary schools</td>
<td>2,153</td>
<td>1</td>
<td>39</td>
<td>83,967</td>
</tr>
<tr>
<td>Special schools</td>
<td>193</td>
<td>2</td>
<td>39</td>
<td>15,054</td>
</tr>
<tr>
<td>Total cost</td>
<td></td>
<td></td>
<td></td>
<td>1,949,519</td>
</tr>
</tbody>
</table>

56. For the same reasons set out for teacher costs above, it is assumed that this would be a one-off transitional cost of 1 year.

Costs on the NHS

57. As with the costs of the Named Person and the Child’s Plan for local authorities for children and young people aged between 5 and 18, similar costs will be incurred by health boards for children aged between 0 and 5.

58. There are 2 components to training costs: development of training materials; and training to prepare for the new duties. As with local authorities, it is assumed that training itself will be one-off and subsumed within existing training programmes after the first year of implementation.

- The development of training modules to fit within existing training has been identified along with the backfill costs (estimates have been based on discussion with senior NHS managers at a 60% staff replacement rate across all midwives/health visitors/public health nurses). The estimated salary of midwives/health visitors/public health nurses staff costs with on costs is £37,125 per annum (leaving an effective hourly rate of £19.04). This would apply to training across 2 days, resulting in a total one-off cost of £1,088,949 in 2015-16.

- As adequate training materials do not currently exist, training modules based on guidance will also need to be developed. Based on previous estimates from NHS Education for Scotland, this will be approximately £300,000. For the purposes of calculation, it is assumed that this cost will be incurred in 2014-15.

59. The functions of a Named Person will require some additional activity for midwives, health visitors and public health nurses. These will involve the holistic assessment based on information received and observed, any preparation towards the creation of a Child’s Plan where needed, and management of the plan through on-going involvement with the child and family as required.
60. In calculating the financial impact of the Bill provisions, account has been taken of the current activity by midwives, health visitors and public health nurses. Where new or additional work is required, assumptions have been made based on discussions with senior health staff. Advice has varied, reflecting the current different stages of implementation of the GIRFEC approach across Scotland, so national averages have been estimated.

- For 80% of all children between 0 and 5, it is assumed that there will be marginal concerns requiring additional activity over and above routine engagement. Average activity has been estimated:
  - For midwives the need for some additional activity around pre-birth assessment is recognised at 2 hours per child per year. This pre-birth assessment will help prepare for the relevant staff to take up the Named Person (and Child’s Plan) duties after birth;
  - For health visitors and public health nurses additional activity will amount to 1 hour per child in the age bands 0-1, 1 and 2; and
  - For those children aged 3-5 the additional work is considered minimal, reflecting current levels of activity.

- For the remaining 20% of all children for whom there will be emerging or significant concerns, there will be additional work to assess whether a Child’s Plan is required. This will include liaison between the midwife and the health visitor/public health nurse at transition and an hour each per midwife and health visitor/public health nurse has been assumed on average.

- For children with particularly complex needs, the additional role of the Named Person described in the Bill will be limited. These children are estimated to account for 2% of this wider group with emerging or significant concerns. These children will already be receiving significant support and it is not anticipated that there will be any additional requirements arising from the Named Person role.

- However, for the remaining 18% of this group of children with emerging or significant concerns, health visitors/public health nurses are likely to experience additional work. This has been estimated as an average of 10 hours per health visitor/public health nurse per child in the first year of implementation. As the new approach beds in, with a number of children being siblings and from families already known to health visitors, the additional hours are expected to reduce, reflecting the impact of preventative intervention and the efficiencies arising from less time spent in addressing children in crisis circumstances (e.g. child protection case conferences and children’s panels). The assumptions of hours per child per age group are set out below, as well as the current population estimates for the different age bands (used to calculate estimated costs for each year of implementation).

| Table 11: Estimated additional midwife, health visitor and public health nurse hours for children with emerging or significant concerns at different ages |
|------------------|-----|-----|-----|-----|-----|-----|
|                  | 0-1 | 1   | 2   | 3   | 4   | Total |
| 2016-17          | 10  | 10  | 10  | 10  | 10  | 50    |
| 2017-18          | 10  | 8   | 6   | 6   | 4   | 34    |
| 2018-19          | 8   | 6   | 4   | 4   | 4   | 26    |
| 2019-20          | 8   | 5   | 4   | 3   | 3   | 23    |
Table 12: Population of children for different age bands (GROS, 2011*)

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Estimated children with emerging/ significant concerns***</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-birth**</td>
<td>59,176</td>
<td>11,835</td>
</tr>
<tr>
<td>0-1</td>
<td>59,176</td>
<td>10,652</td>
</tr>
<tr>
<td>1</td>
<td>59,826</td>
<td>10,769</td>
</tr>
<tr>
<td>2</td>
<td>60,308</td>
<td>10,855</td>
</tr>
<tr>
<td>3</td>
<td>60,276</td>
<td>10,850</td>
</tr>
<tr>
<td>4</td>
<td>58,155</td>
<td>10,468</td>
</tr>
</tbody>
</table>

* The 2011 numbers have been assumed to have remained the same for 2014-15 to enable modelling.
** This number has been assumed to be the same as the 0-1 age band.
*** This has been calculated on the basis of 20% of the age cohort, adjusted for the 2% with particularly complex needs already receiving support.

61. From these estimated hours and size of cohort population, estimates of additional costs for midwife, health visitor and public health nurse activity can be calculated using the same salary assumption as above (i.e. an effective hourly rate of £19.04). These estimated costs, along with the other costs, are set out in the table below.

Table 13: Summary of GIRFEC costs to the NHS (£)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Training development</td>
<td>300,000</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Training backfill</td>
<td>0</td>
<td>1,088,949</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Midwives: activity for ‘80%’</td>
<td>0</td>
<td>0</td>
<td>1,802,738</td>
<td>1,802,738</td>
<td>1,802,738</td>
<td>1,802,738</td>
</tr>
<tr>
<td>Midwives: activity for ‘20%’*</td>
<td>0</td>
<td>0</td>
<td>1,126,711</td>
<td>1,126,711</td>
<td>1,126,711</td>
<td>1,126,711</td>
</tr>
<tr>
<td>Midwife/HV/PHN transition</td>
<td>0</td>
<td>0</td>
<td>450,684</td>
<td>450,684</td>
<td>450,684</td>
<td>450,684</td>
</tr>
<tr>
<td>HVs/PHNs: activity for ‘80%’*</td>
<td>0</td>
<td>0</td>
<td>2,731,250</td>
<td>2,731,250</td>
<td>2,731,250</td>
<td>2,731,250</td>
</tr>
<tr>
<td>HVs/PHNs: activity for ’20%’*</td>
<td>0</td>
<td>0</td>
<td>10,204,298</td>
<td>6,945,297</td>
<td>5,303,059</td>
<td>4,692,122</td>
</tr>
<tr>
<td>Total</td>
<td>300,000</td>
<td>1,088,949</td>
<td>16,315,681</td>
<td>13,056,680</td>
<td>11,414,442</td>
<td>10,803,505</td>
</tr>
</tbody>
</table>

* This has been calculated on the basis of approximately 20% of babies born (20% of 60,000 which is 12,000) with four hours of midwife time at £24 an hour with on costs. This is needed to provide assessment and care planning pre-birth.
**This has been calculated on the basis of 20% of the different age cohorts, adjusted for the 2% with particularly complex needs already receiving support.

Costs on other bodies, individuals and businesses

62. For those children and young people in independent or grant maintained schools between the ages of 5 and 18, the Named Person and Child’s Plan duties fall on the relevant organisation. The approach to calculating the costs follows the same approach as for local authorities. For staff delivering the Named Person role or who have significant contact with the Named Person, and
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will need to have knowledge of a Child’s Plan, there will be initial training required for 2 days. Training is currently provided by the Scottish Council of Independent Schools, at a cost of £95 per person, per day, and is, therefore, estimated to be £41,800 for Head Teachers and Depute Head Teachers.

63. As per the costings for local authority schools, there may be additional management time or non-class contact time required to deliver the Named Person role. Based on the same methodology that was used for local authority schools, this is estimated to cost £400,568.

Table 14: Estimated cost of additional teacher hours for private organisations

<table>
<thead>
<tr>
<th>Population of children 5-18 in independent schools</th>
<th>Children estimated to require extra help (%)</th>
<th>Additional hours estimated for each requiring additional help (per year)</th>
<th>Total additional hours for children estimated to require extra help (per year)</th>
<th>Total additional cost in teacher staffing time (per year) (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31,100</td>
<td>10</td>
<td>3.5</td>
<td>10,885</td>
<td>400,568</td>
</tr>
</tbody>
</table>

64. As per local authority education it is estimated that there may be additional administrative support required to address the handling of additional information sharing between the Named Person and other practitioners, in line with Bill provisions.

Table 15: Estimated cost of administrative support for private organisations

<table>
<thead>
<tr>
<th>Number of schools</th>
<th>Admin support (hours per week)</th>
<th>Working weeks</th>
<th>Total hours</th>
<th>Total cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>110</td>
<td>4</td>
<td>38</td>
<td>16,720</td>
<td>183,920</td>
</tr>
</tbody>
</table>

65. With respect to children and young people in secure accommodation, staff acting as Named Persons will continue to support children’s wellbeing and we expect that new requirements including the use of the Child’s Plan can be absorbed within existing training and staff development.

Early Learning and Childcare

66. Section 43 of the Bill establishes a duty on local authorities to secure a minimum of 600 hours flexible early learning and childcare for 3 and 4 year olds, and any 2 year old who is, or has been at any time since turning 2, looked after or subject to a kinship care order. Local authorities will also be obliged to provide flexible patterns of early learning and childcare within a minimum framework to meet local need, as identified through consultation. This will include:

- The needs of parents and children identified through consultation with local populations of parents every 2 years; and
- Responses to those consultations through published plans or local strategies to re-configure services over time to meet those needs within a minimum framework of no less than 2.5 hours/day, no more than 8 hours/day; and over no less than 38 weeks a year which are not confined to term times.
67. The main costs of these Bill provisions are the additional hours and additional flexibility or options of hours for those eligible children, in particular:

- Staff costs;
- Operational costs;
- Support costs; and
- Capital costs associated with adapting and expanding accommodation to meet requirements for longer sessions of early learning and childcare for eligible children.

Costs on the Scottish Administration

68. The duty to secure the additional hours will be on the local authority so there will be no cost to the Scottish Government.

Costs on local authorities

69. The cost to local authorities has been estimated on the basis of existing costs for the delivery of pre-school education or early learning and childcare and estimated costs of delivering new models. The current default model of provision of 475 hours per annum is 2.5 hours per day, 5 days per week, for 38 weeks per year. Local Government Financial Return Data (LFR) indicates that local authorities spent approximately £318,300,000 on pre-school education in 2010-11. This total includes employee costs, operating costs and support service costs. Local authorities also spent a further £527,000,000 on Special Education; with an estimated £17,000,000 of this directed to pre-school special education (based on an estimated 3.3% of children based in special schools as pre-school children).

Table 16: Summary of cost components for 2010 - 2011

<table>
<thead>
<tr>
<th>Cost components (2010-11)</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-school</td>
<td></td>
</tr>
<tr>
<td>Employee costs</td>
<td>222,563,000</td>
</tr>
<tr>
<td>Operating costs</td>
<td>85,166,000</td>
</tr>
<tr>
<td>Transfer payments</td>
<td>4,074,000</td>
</tr>
<tr>
<td>Revenue contributions to capital</td>
<td>254,000</td>
</tr>
<tr>
<td>Support Service costs</td>
<td>8,082,608</td>
</tr>
<tr>
<td>Total pre-school</td>
<td>318,345,000</td>
</tr>
<tr>
<td>Total Special education (3.3%)</td>
<td>17,392,254</td>
</tr>
<tr>
<td>Total costs</td>
<td>335,737,254</td>
</tr>
</tbody>
</table>
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

70. The estimated costs are as follows:

<table>
<thead>
<tr>
<th>Table 17: Summary of additional costs of early learning and childcare (£)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff costs</td>
</tr>
<tr>
<td>Variable</td>
</tr>
<tr>
<td>Marginal</td>
</tr>
<tr>
<td>Operational</td>
</tr>
<tr>
<td>Support costs***</td>
</tr>
<tr>
<td>Additional</td>
</tr>
<tr>
<td>Partner</td>
</tr>
<tr>
<td>Revenue****</td>
</tr>
<tr>
<td>Total costs</td>
</tr>
</tbody>
</table>

* Costs are estimated in 2011-12 prices.
** Marginal operational costs are adjusted to 50%, reflecting the share of operational costs that need to rise to accommodate the additional hours.
*** Marginal support costs are adjusted to 30%, reflecting the share of support costs that need to rise to accommodate the additional hours.
**** Revenue costs in the first year assume an implementation date of August 2014 (hence, a 75% figure has been applied to the total revenue cost for 2014-15).

71. Estimated costs have been based on:
   - an increase of 125 hours for 3 and 4 year olds;
   - a range of exemplar models of delivery;
   - an additional new entitlement of 600 hours for looked after 2 year olds and 2 year olds under a kinship care order.

72. It is not sufficient to cost the additional hours alone. Costs will vary according to how many hours per day children are in early learning and childcare. Staff ratios increase when children are in early learning and childcare for more than 4 hours (from 1:10 – 1:8) and, where children are aged 2 (a ratio of 1:5). There are other implications in terms of cover over meal times. Costs will also vary where local authorities are required to secure a range of patterns of hours in order to increase flexibility. Therefore, the estimated costs also reflect those factors.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

73. The increasing flexibility will require a re-configuration of services in response to locally identified need and this will be achieved incrementally. Therefore the final estimated costs are incremental. Local authorities will have full flexibility to develop and re-configure services and provision to meet local need and circumstances, and it is expected that there will be a range of approaches to developing options over the first few years. This will be reflected in incrementally increasing revenue costs, front loaded in the first 3 years with capital to adapt or expand accommodation in response to local consultations. On-going consultation with parents, coupled with increasing revenue and capital support upfront will, therefore, ensure increasing flexibility of provision and the establishment of a range of choices and patterns for parents, and consistency for children.

74. The main additional costs arising from those provisions will be staff costs. Recruitment for additional staff and extensions or renegotiations of current staff contracts will also be required. Local authorities currently have high levels of access to a teacher in pre-school (96% of children) and local authorities often provide peripatetic teams of teachers to work with partner providers. The recent report by Education Scotland, *Making the difference*,\(^{11}\) found that the BA Childhood Practice Award is beginning to show a positive impact on children’s learning in the early years; and, that the best experiences for children are found where there is a range of staff with complementary skills and relevant higher qualifications. It is, therefore, envisaged that a continued mix of early years staff and skills will be paramount to ensure quality of expanded provision.

75. Working with COSLA and individual local authorities, the additional staff costs associated with a range of patterns of delivery have been estimated. The derivation of the revenue and capital costs for the early learning and childcare costs outlined below demonstrates that the incremental increase in flexibility is more complex to estimate than just additional hours. The other complex factor has been that models of flexibility used have been indicative examples developed by local authorities in advance of consultation with local populations. We have sought to mitigate this uncertainty by working closely with COSLA and others on their models and estimates of anticipated costs and, by building in an incremental approach which allows re-configuration of services in response to consultation which is planned and manageable.

76. Different models of provision will incur different costs. For the purposes of this estimate, a mixture of different flexible options set out in the consultation document\(^{12}\) and modelled by local authorities have been used as the final range of options for 2018-19 onwards. These models are only examples and, therefore, costs are indicative. The final models developed by local authorities will vary according to locally identified need and cannot be anticipated in advance of consultation. However, 5 models ranging from 2.5 hours a day extending over non-term time to 8 hours a day for 2 days a week over term time were analysed for staff implications and costs.

77. Indicative additional staff costs for those 5 models ranged from £44 million to £65 million, with an estimated increase to £75 million where there was a combination of models. The models of additional costs for local authorities were also reflective of their own different starting positions.

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\(^{11}\) Education Scotland, *Making the difference: The impact of staff qualifications on children’s learning in early years*, November 2012

These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

78. These figures form the derivation of estimated staff costs, adjusted incrementally as services adapt and mix to reflect identified need.

79. As indicated, the main additional costs will be associated with staff. Additional operational and support costs have been added to those staff costs, based on variable marginal costs derived from the most recent local government financial return data.\(^\text{13}\) Not all costs will increase equally; marginal operational and support costs have been accordingly adjusted to 50% and 30% respectively.

80. Costs assume a continued commencement date of first term after the third birthday for 3 year olds. Additional costs have also been estimated for looked after 2 year olds and those 2 year olds who are, or who have been at any time since turning 2, looked after or subject to a kinship care order. Provision for 2 year olds will be different, and there is flexibility to provide more individualised approaches for looked after 2 year olds in a range of settings, and with parents or carers where appropriate. Cost estimates also allow for continued provision for looked after 2 year olds and those 2 year olds who, are or who have been, at any time since turning 2, subject to a kinship care order, until they are eligible for universal provision at the first term after the third birthday, even if their looked after or kinship care status changes, in order to ensure consistency and minimise transitions for the most vulnerable 2 year olds.

81. Early learning and childcare will continue to include those children with additional support needs, and this has been factored into the estimated revenue costs. They have been calculated on a pro-rata basis from the existing additional support for learning needs published expenditure.\(^\text{14}\) Special education apportionment is estimated at 3.3% of the special school population and 3.3% of the special education budget. 90% of this is estimated as a variable cost.

82. Broadly, local authorities secure around 40% of provision through independent, private and third sector partners; it is anticipated that local authorities will continue to use those sectors to provide capacity and flexibility. The National Day Nursery Association and some partner providers have raised the issue of unsustainable funding levels for the majority of partner provider placements, especially if the patterns of placements change to full or half days. The Scottish Government issued an annual advisory floor letter to local authorities to set an advisory minimum payment level for a pre-school education. This was in place until 2007 when this stopped under the terms of Concordat and block funding, whereby it was agreed this advice was no longer appropriate. The last letter issued in 2007 advised a payment of £1,550 per annum per child. There has been no consistent increase across local authorities since then. Estimating hourly costs in line with inflation increases costs from what would have been £3.73 per hour to £4.09 an hour. The revenue estimate takes into consideration inflationary linked payments for partner providers as a partner uprating.

83. Capital costs will be required to adapt existing provision for additional hours and associated accommodation needs. Capital costs are estimated on the basis that local authorities will have variable needs ranging from adaptation of existing accommodation to additional provision, such as additional integrated space with current schools or local authority estate resources, or small stand-alone units. This will also depend upon the current pre-school estate in each local authority.

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\(^{14}\) *Ibid.*
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

area, the use of partner providers, the response of local authorities to consultation and their reconfiguration strategies. Capital estimates are based on Scottish Futures Trust metrics for primary schools. This is an allowance of 7.5 square metres per child at a cost of £2,350 per square metre. Costs could be: around £700,000 for an integrated unit for 40 morning and 40 afternoon children; around £1,500,000 for a stand-alone unit for 80 children; or less for smaller alterations and adaptations. In the absence of inclusion of the pre-school estate in the annual national School Estate Core Facts Survey on the size, condition, suitability and capacity of all primary, secondary and special schools, refurbishment and/or rebuilding information, and knowledge of the views of local parents, this estimate is necessarily limited. Nevertheless, it has been tested with a number of local authorities.

Costs on other bodies, individuals and businesses
84. There are no further costs anticipated for others.

GETTING IT RIGHT FOR LOOKED AFTER CHILDREN
85. The costs of these Bill provisions relate to 4 sets of provisions affecting looked after children:

- Putting Scotland’s Adoption Register on a statutory footing;
- Providing for a clear definition of corporate parenting, and defining the bodies to which it will apply;
- Placing a duty on local authorities to assess a care leaver’s request for assistance up to and including the age of 25;
- Providing families in distress where a child is at risk of being looked after access to appropriate intensive family therapy; and
- Providing for additional support to be given to kinship carers in relation to their parenting role, through the kinship care order.

Section 50 – Extending the range and number of corporate parents
86. The Bill sets out a number of public bodies which will be considered ‘corporate parents.’

Costs on the Scottish Administration
87. As this duty will fall on the wider public sector, there will be no cost to the Scottish Administration. However, the Scottish Government may continue to provide corporate parenting training. In May 2010, the Scottish Government commissioned Who Cares? Scotland to develop and run a national corporate parenting training programme, aimed at local authority elected members and health board members. The funding was £300,000 over 3 years, and came to an end in March 2013. The overall aim of the programme was to improve awareness of corporate parenting responsibilities and duties for new and existing corporate parents, and to highlight the challenges faced by looked after children and young people. The programme has recently been evaluated. A second phase, which would extend the reach of the programme to a broader range of corporate parents, is under negotiation. The cost would likely be similar to Phase 1.
Costs on local authorities, other bodies, individuals and businesses.

88. A duty will be placed on a number of public bodies listed as corporate parents in the Bill to develop, consult on and publish a corporate parenting plan, which they will need to review from time to time. It has been assumed that every 3 years they will publish reports on how they have exercised their responsibilities, in such a manner as they consider appropriate. There may be a marginal cost associated with this duty which would fall on the corporate parents.

89. Corporate parents are encouraged to collaborate in publishing joint plans or reports, which would allow them to share costs. They are also encouraged to utilise any current reporting or planning processes to satisfy this duty. This should minimise costs as organisations will already likely have allocated resources to support these reporting processes. In addition, where a public body named as a corporate parent has a limited role in that regard, then the extent to which it is necessary to plan and report may also be limited.

90. Therefore, any additional costs likely to fall on public bodies as a consequence of the Bill would be expected to be limited to £820-2,700 per corporate parent, depending on the size of their role and influence, in relation to developing, consulting on and publishing a plan. This estimate covers web publishing costs of a short consultation document and a plan, plus staff time to analyse responses. In relation to publishing reports, the estimate is £350-770. The estimates reflect current experience in applying corporate parenting duties. Given the number of expected corporate parents, the total cost is estimated at £74,240 once every 3 years.

Section 60 – Extending throughcare and aftercare support

91. The Bill provides for care leavers to ask their local authority to be assessed as to whether they need financial support and assistance up to and including the age of 25 and for the local authority to provide support and assistance where a care leaver's needs are considered to be eligible, when the care leaver is unable to get that support from elsewhere.

Costs on the Scottish Administration

92. The duty will be placed on local authorities to provide the support and assistance, and, therefore, there will be no cost to the Scottish Government.

Costs on local authorities

93. The cost of the provision will fall on local authorities, principally through an estimated increase in the number of care leavers who will receive support. To calculate this increase, it is first necessary to establish a baseline for the expected number of care leavers who would receive support in the absence of the provision. In arriving at an estimate of cost we have consulted with a number of local authorities and COSLA.  

94. The “Children Looked After Statistics” set out the number of care leavers eligible for aftercare support by age. As at 31 July 2011, there were 3,662 care leavers aged 15 to 21 (up to but not including their 22nd birthday) who were eligible for aftercare support. Over the last 3

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15 These include: East Dunbartonshire; Falkirk; Inverclyde; North Lanarkshire; Perth and Kinross; South Lanarkshire; and West Dunbartonshire.
years the number of young people leaving care has been fairly stable. Consequently, in modelling future numbers of care leavers (at commencement of this Bill provision in 2015), we use current numbers of care leavers by age as a proxy.

95. There are two groups of care leavers who will be eligible for support under the provisions. In extending the duty on local authorities to offer support and assistance to young people up to and including 25 year olds, new care leavers will be eligible to request support, including those aged between 21 and 25 who were not eligible previously but who will qualify with the age extension. In addition, there will be a number of former care leavers who will re-qualify, including those aged 19-21 who had applied previously but for whom the application for support was turned down.

96. Most local authorities neither collect nor retain data on: how long these care leavers have been out of care at the time they were granted support and assistance; who applied for support from a local authority, but were denied it; and the duration of aftercare support. For these reasons it is difficult to model fully how many young people might come forward for support. In the following modelling, costing assumptions have been made to create a realistic estimate.

97. To estimate the cost of this provision, two elements need to be determined. First, the additional number who are likely to receive support and the duration of support; and second, the average cost of support per care leaver.

98. Under current provisions, in 2011, there were 975 care leavers between the ages of 19 and 21 receiving aftercare.\(^{16}\) It is assumed that all of these care leavers will come forward to have their needs assessed under the new proposal. As the proposals will extend throughcare and aftercare support to 25 year olds, it is estimated that a further 2,500 young people aged 21-25 inclusive may also come forward to have their needs assessed. This estimate assumes that around 500 in each of the 5 age cohorts 21-25 are eligible in each 12-month period, reflecting the approximate number of 20 year olds (492) qualifying in 2011. It is, therefore, estimated that a total of around 3,725 young persons aged 19-25 in 2015 may come forward to have their needs assessed under the new duty.

99. Several other factors need to be taken into consideration to estimate the cost impact.

- First, the number of young people who come forward for support should decline with the age of the care leaver, and reflect the natural process whereby young adults gain their own support and independence as they get older. This tapering effect is reflected in the table below and the initial numbers for 2015-16 are drawn from current 2011 figures for eligible care leavers at that age.

- Second, it is not expected that all care leavers will take up the support. The uptake will more than likely happen in the early stages after they leave care. For that reason, and to annualise costs, it has been considered that support would be provided over a 3 year period. The table sets out the flow of eligible care leavers for a 5 year period.

- Lastly, the proportion of successful applicants under the provision is likely to change. It is estimated that in 2011, local authorities granted support and assistance

to 56% of care leavers aged 19–21. However, under the new provision, it is estimated that the provision of support will extend to 65%. For example, in the table below, when applying this to the number of young people estimated to be eligible to apply in 2015-16 (3,225), the total would be 2,096 young people.

**Table 18: Total numbers eligible for support for throughcare and aftercare at different ages**

<table>
<thead>
<tr>
<th>Year</th>
<th>19</th>
<th>20</th>
<th>21</th>
<th>22</th>
<th>23</th>
<th>24</th>
<th>25</th>
<th>Total eligible</th>
<th>Total likely to be successful for support (65%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>727</td>
<td>492</td>
<td>506</td>
<td>450</td>
<td>400</td>
<td>350</td>
<td>300</td>
<td>3,225</td>
<td>2,096</td>
</tr>
<tr>
<td>2016-17</td>
<td>700</td>
<td>600</td>
<td>500</td>
<td>450</td>
<td>400</td>
<td>350</td>
<td>300</td>
<td>3,300</td>
<td>2,145</td>
</tr>
<tr>
<td>2017-18</td>
<td>700</td>
<td>600</td>
<td>500</td>
<td>450</td>
<td>400</td>
<td>350</td>
<td>300</td>
<td>3,300</td>
<td>2,145</td>
</tr>
<tr>
<td>2018-19</td>
<td>700</td>
<td>600</td>
<td>500</td>
<td>150</td>
<td>150</td>
<td>100</td>
<td>50</td>
<td>2,250</td>
<td>1,463</td>
</tr>
<tr>
<td>2019-20</td>
<td>700</td>
<td>600</td>
<td>500</td>
<td>150</td>
<td>150</td>
<td>100</td>
<td>50</td>
<td>2,250</td>
<td>1,463</td>
</tr>
</tbody>
</table>

100. The second element that needs to be determined is the average cost of support per care leaver. Different parts of Scotland offer different throughcare and aftercare services and the average cost per young person across local authorities reflects this variation. It is difficult to identify total expenditure on throughcare and aftercare as it has been difficult to obtain data from local authorities. We have drawn on information received from a number of local authorities in Scotland detailing their aftercare services. The average costs of these services over a 12 month period have been used to arrive at an estimated range of total additional expenditure for the proposal as set out in the table below. The duty will apply only to eligible needs that cannot be met from elsewhere. Eligible needs will be defined in an order to be made by Scottish Ministers but it is anticipated that they will be those needs that are essential to daily living. The table below reflects this.
Table 19: Cost components of aftercare services to age group 19-25

<table>
<thead>
<tr>
<th>Resource required</th>
<th>Possible cost per care leaver</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furnishing of new tenancy (one-off)</td>
<td>Items such as white goods, furniture, basic kitchen equipment £2,000 (one-off)</td>
</tr>
<tr>
<td>Travel – could include travel costs to places of employment, training or education</td>
<td>Potentially bus passes, train tickets or taxi fares in crisis or emergency Average cost of £400 per year</td>
</tr>
<tr>
<td>Emergency payments</td>
<td>Could include emergency utility cards, food and groceries, children’s equipment, replacement or repair of white goods etc. Up to £200 per year</td>
</tr>
<tr>
<td>Payments to other agencies and/or supports</td>
<td>Input from a third sector organisation who may offer specific or intensive support to implement part of the Pathways Plan (e.g. support with parenting skills or housekeeping). Other support may require payment (i.e. support groups, clubs and activities). Up to £1,500</td>
</tr>
</tbody>
</table>

101. For the purposes of calculating the average cost per care leaver, it is useful to separate out continuing annual costs and one-off costs. Overall, annual support costs have been estimated at an average annual cost of £3,142 per young person, consisting of an average of £2,100 in support costs (based on the costs identified in the table above) and estimated application/process costs at £1,042 (based on average caseloads and average worker salaries).

102. Aftercare support is currently provided to 975 young people aged 19-21, and if there were no change in legislation, then it is likely that this will continue with a similar number. If it is assumed that under the new provisions, 2,096 young people will be likely to receive aftercare support in 2015-16 (for example), then that means there would be an additional cost for 1,121 young people. The table below sets out how this would result in a set of annual net additional costs.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Table 20: Additional annual support* cost of throughcare and aftercare

<table>
<thead>
<tr>
<th></th>
<th>Estimated total which will be successful for recurring support</th>
<th>Total cost per year (at £3,142) (£)</th>
<th>Estimated number of care leavers already receiving support</th>
<th>Cost of current support per year (at £3,142) (£)</th>
<th>Net additional cost per year (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>2,096</td>
<td>6,585,632</td>
<td>975</td>
<td>3,063,450</td>
<td>3,522,182</td>
</tr>
<tr>
<td>2016-17</td>
<td>2,145</td>
<td>6,739,590</td>
<td>975</td>
<td>3,063,450</td>
<td>3,676,140</td>
</tr>
<tr>
<td>2017-18</td>
<td>2,145</td>
<td>6,739,590</td>
<td>975</td>
<td>3,063,450</td>
<td>3,676,140</td>
</tr>
<tr>
<td>2018-19</td>
<td>1,463</td>
<td>4,596,746</td>
<td>975</td>
<td>3,063,450</td>
<td>1,533,296</td>
</tr>
<tr>
<td>2019-20</td>
<td>1,463</td>
<td>4,596,746</td>
<td>975</td>
<td>3,063,450</td>
<td>1,533,296</td>
</tr>
</tbody>
</table>

* This does not include the one-off furnishing grant of £2,000, which is discussed below.

103. In addition, there may be a one-off cost of £2,000 for furnishing. Of the 2,096 young people who will be successful in receiving general financial support, it is estimated that approximately 25% will also be successfully assessed for support with this one-off furnishing cost of £2,000. This estimate is much lower than the support costs, as there will often be occasions where the young person will have already been in receipt of this furnishing cost, when they first move into new accommodation at 18. As this is a one-off cost, it has been annualised over the average term that young people are expected to be in receipt of aftercare (3 years, as stated above) for the purposes of presenting annual total costs. The table below sets out the costs per year that would result.

Table 21: Additional one-off support cost of throughcare and aftercare

<table>
<thead>
<tr>
<th></th>
<th>Estimated total which will be successful for recurring support</th>
<th>Number eligible for one-off support</th>
<th>Total cost (based on £2,000 furnishing cost) (£)</th>
<th>Total cost annualised over 3 years (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>2,096</td>
<td>524</td>
<td>1,048,000</td>
<td>349,333</td>
</tr>
<tr>
<td>2016-17</td>
<td>2,145</td>
<td>536</td>
<td>1,072,500</td>
<td>357,500</td>
</tr>
<tr>
<td>2017-18</td>
<td>2,145</td>
<td>536</td>
<td>1,072,500</td>
<td>357,500</td>
</tr>
<tr>
<td>2018-19</td>
<td>1,463</td>
<td>366</td>
<td>731,250</td>
<td>243,750</td>
</tr>
<tr>
<td>2019-20</td>
<td>1,463</td>
<td>366</td>
<td>731,250</td>
<td>243,750</td>
</tr>
</tbody>
</table>
104. Finally, the table below sets out the additional total cost each year based on the annual and one-off costs set out above.

Table 22: Additional total cost of throughcare and aftercare

<table>
<thead>
<tr>
<th>Year</th>
<th>Net additional annual costs (£)</th>
<th>Total one-off costs (£)</th>
<th>Total combined costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>3,522,182</td>
<td>349,333</td>
<td>3,871,515</td>
</tr>
<tr>
<td>2016-17</td>
<td>3,676,140</td>
<td>357,500</td>
<td>4,033,640</td>
</tr>
<tr>
<td>2017-18</td>
<td>3,676,140</td>
<td>357,500</td>
<td>4,033,640</td>
</tr>
<tr>
<td>2018-19</td>
<td>1,533,296</td>
<td>243,750</td>
<td>1,777,046</td>
</tr>
<tr>
<td>2019-20</td>
<td>1,533,296</td>
<td>243,750</td>
<td>1,777,046</td>
</tr>
</tbody>
</table>

Costs on other bodies, individuals and businesses.

105. It is estimated that there will be no additional cost to other bodies, individuals and businesses.

Sections 61 – 67 – Duties relating to kinship care and family therapy

106. The duty is placed on local authorities to provide, where appropriate, enhanced support to kinship carers who apply for, consider applying for, have obtained or are subject to a section 11(1) of the Children (Scotland) Act 1995. These section 11 orders will be re-designated a kinship care order. By placing a duty on local authorities, the Bill ensures that those who apply for, consider applying for, have obtained or are subject to a kinship care order will be entitled to assistance if the relevant eligibility test is met. This will also apply to eligible children who have reached the age of 16, but who were subject to a kinship care order immediately prior to turning this age. The type of assistance will be prescribed by the Scottish Ministers in secondary legislation.

107. There are 2 categories of kinship care that will be affected by this measure, formal and informal kinship arrangements.

108. Formal kinship care is where a child is placed under section 25, 70, 57 or 17(6) of the Children Scotland Act 1995 with a kinship carer. This arrangement is defined in the Looked After Children (Scotland) Regulations 2009 and a duty is placed on local authorities to ensure their procedures explicitly address the needs of kinship care and they have appropriate processes in place.

109. Informal kinship care is where a family with limited or no social work intervention has made arrangements with the birth family to look after a child, and where the child is not looked after. In these circumstances kinship carers do not have specific entitlement to additional support from local authorities, although some local authorities may provide support under section 22 of the Children (Scotland) Act 1995. Some informal kinship carers may have obtained a section 11 order under the Children (Scotland) Act 1995 which provides some or all parental responsibilities and rights for the child, which may include a residence order stating where the child should reside. Such an order does not, however, confer any specific duties on local authorities to provide additional support.
Costs on the Scottish Government

110. The duty will be placed on local authorities and, therefore, there will be no cost to the Scottish Government.

Costs on local authorities

111. The costs associated with the provisions relate to: additional eligibility to local authority support to kinship carers; a set of financial entitlements and other supports (to be detailed in regulations); and transitional costs for implementing the changes.

112. There will be avoided future costs associated with this measure. Estimating these costs is critical to the operation of these provisions. It is anticipated that these new measures will attract kinship carers from both formal and informal arrangements. The mechanism by which the order achieves this is by providing an enhanced permanence option for families where it is appropriate for a kinship carer to become the primary carer, with parental responsibilities and rights or in a supportive role to the birth parents. The costs will reflect the migration from both types of arrangement to the new kinship care order.

Support available in relation to the kinship care order

113. The table below sets out the proposed support available to kinship carers and families which will be set out in Regulations.

Table 23: Support available in relation to the kinship care order

<table>
<thead>
<tr>
<th>1. Support to kinship carers who hold a kinship care order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information, advice and counselling support</td>
</tr>
<tr>
<td>Transitional support (where a child is formally looked after immediately prior to the order)</td>
</tr>
<tr>
<td>Essential start up grant of £500</td>
</tr>
<tr>
<td>Assistance with essential transport to comply with section 11 contact order</td>
</tr>
<tr>
<td>(Up to) 600+ hours early learning and childcare for a 2 year old</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2. Support to kinship carers applying for a kinship care order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information, advice and counselling support</td>
</tr>
<tr>
<td>Assistance with kinship care order petition</td>
</tr>
</tbody>
</table>

114. The first category of support is for those who are granted an order. Regulations will specify a general qualifying test which is linked to the current or projected risk that a child may need to become formally looked after. This test would only apply once and periodic reviews by the local authority would determine whether on-going support was needed. Various support options would be available.

- The right to transitional support attempts to address the concern of kinship carers who can provide long term care for a child currently looked after, that they will be unable to access support if a child leaves formal care onto a kinship care order.
- The right to an essential start up grant meets a general but important need whereby carers can find themselves facing a cliff-edge of additional costs (e.g. for bedding,
clothes and household items). With a high proportion of kinship carers on low incomes, these costs can be prohibitive. The proposal is for a grant of £500 per child (based on discussion with a selection of local authorities).

- The right to assistance with essential transport costs is linked to supporting the carer with essential transport costs to comply with the terms of a section 11 contact order (e.g. where the child in kinship care meets the birth parent once a week and must be accompanied by the kinship carer). Given the older age profile of many kinship carers, many would be eligible for free bus travel locally. While most would not need this support, when it applies it can be reasonably costly. The assumption is £500 to £1,800 in a given year which translates to approximately £10 to £35 a week.

- The Bill will extend early learning and childcare entitlement to looked after 2 year olds. These costs are identified in the section on early learning and childcare. This will be available without the eligibility test.

115. The second category of support applies to kinship carers before an application is made to the court. Assistance is likely to be determined by eligibility criteria linked to the circumstances of the child and/or carer. The support provided could be by way of advice, information, practical assistance and financial contributions. This could be direct or in kind.

**Costs on support relating to the kinship care order**

116. The Bill measures are not designed to replace formal kinship care entirely. They will, however, offer formal and informal kinship carers an alternative means of securing care arrangements, without recourse to formal care, which is not always desirable to kinship carers or necessary for the long-term care of a child.

117. The costs associated with the support provided in relation to a section 11 order awarded to an eligible kinship carer (hence forth a kinship care order) can be broken down into different categories; the cost of formal carers obtaining a kinship care order, the cost of informal carers obtaining a kinship care order; the transitional costs for local authorities; and the avoided costs of formal care.

118. These sets of costs will be worked through individually.

**Costs of formal kinship carers applying for the kinship care order**

119. It is expected that a proportion of formal carers will apply for a kinship care order. We have estimated this based on the numbers of those already applying for section 11 orders and assumptions tested with some local authorities. The upper and lower bands are shown in the table below and assume a modest increase on existing applications for section 11 orders (currently accounting for 4% of formal carers).
Table 24: Projected numbers of formal carers who will apply for the kinship care order

<table>
<thead>
<tr>
<th></th>
<th>Estimated number of children in formal kinship care</th>
<th>Applications that relate to children formally cared for: lower estimate</th>
<th>% equivalent</th>
<th>Applications that relate to children formally cared for: upper equivalent</th>
<th>% equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>5,039</td>
<td>124</td>
<td>2</td>
<td>195</td>
<td>4</td>
</tr>
<tr>
<td>2016-17</td>
<td>5,367</td>
<td>226</td>
<td>4</td>
<td>352</td>
<td>7</td>
</tr>
<tr>
<td>2017-18</td>
<td>5,715</td>
<td>368</td>
<td>6</td>
<td>637</td>
<td>11</td>
</tr>
<tr>
<td>2018-19</td>
<td>6,087</td>
<td>386</td>
<td>6</td>
<td>672</td>
<td>11</td>
</tr>
<tr>
<td>2019-20</td>
<td>6,483</td>
<td>404</td>
<td>6</td>
<td>709</td>
<td>11</td>
</tr>
</tbody>
</table>

120. For formal carers, table 25 lists the support that is likely to be applicable, estimates the proportion who are likely to be eligible applicants and sets out the upper estimates of the costs of each form of support.

Table 25: Cost of support provided to formal carers receiving kinship care orders

<table>
<thead>
<tr>
<th></th>
<th>Proportion eligible (%)</th>
<th>Upper unit cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start-up grant</td>
<td>50</td>
<td>500</td>
</tr>
<tr>
<td>Petition support</td>
<td>66</td>
<td>1,500</td>
</tr>
<tr>
<td>Information etc *</td>
<td>100</td>
<td>180</td>
</tr>
<tr>
<td>Transitional support *</td>
<td>75</td>
<td>4,500</td>
</tr>
<tr>
<td>Transport *</td>
<td>10</td>
<td>1,550</td>
</tr>
</tbody>
</table>

*Recurring costs

121. In terms of assumptions, the following have been applied:

- The £500 start-up grant will likely be time limited to around 12 months from the date the kinship arrangement began. Around 50% of applicants for the kinship care order would be eligible.
- Information support is based on 2-14 hours of time spent with a client by a suitable officer, at an hourly rate of around £25 including on costs.
- Transport costs are likely to be high but only apply to a minority of cases. It is assumed that 1 in 10 or 10% of applicants are likely to need this support.
- It is assumed all 2 year olds (approximately 5% of all children) subject to a kinship care order will be eligible for early learning and childcare (this was modelled earlier in the Memorandum).
- Following discussions with Scottish Legal Aid Board, we believe local authorities will need to meet costs associated with petitions in around two thirds of cases. This could take the form of advice or information or financial support – our upper estimate is a typical cost for legal aid associated with a section 11 residence order.
- Transitional support would be provided for a period of 3 years: hence, costs are modelled in terms of one off costs (counted once) and recurring costs (counted 3 times for each case, and as marked in the table 25 above).
Transition costs

122. Table 25 also models eligibility for the right to transitional support, which will only apply to kinship carers of children who are formally looked after at the time the order is granted. The actual support provided will be linked to the needs of the child and as such will involve an assessment. Support will only be provided if it is not automatically provided elsewhere through universal services in Scotland or across the UK (including through the UK benefits system).

123. As transitional support is expected to be provided on top of entitlements provided by universal services it is assumed that some kinship carers will be notionally eligible but will not in fact need additional support from the local authority. For some, on-going support may mean continuing weekly allowances for a period of up to 3 years or other, non-monetary support such as counselling or respite. The order does not convey additional rights to allowances. However, for practical purposes and based on scenarios discussed with local authorities, the cost here is modelled on providing a ‘top up’ allowance of £70 a week for 3 years in addition to around £900 for other general support costs.

Costs of informal kinship carers applying for the kinship care order

124. The model also needs to estimate the number of informal carers who will apply for the kinship care order and meet the ‘at risk’ test. It is estimated that between 220 and 530 informal carers will make applications each year. These lower and upper projections are based around the numbers of relevant section 11 orders currently petitioned for each year and assumptions relating to the number of kinship care applications likely to be made (based on discussion with a selection of local authorities). As a result, the kinship care order would lead to a small increase in the number of informal kinship carers applying for section 11 orders.

125. The scale of informal kinship care is difficult to gauge because of lack of data, but can be assessed using the most recent evidence collected and trend assumptions. There is anecdotal evidence that a growing proportion of kinship care is now formally recognised, and currently stands at approximately 20%. As there were 3,917 in formal kinship care in 2011, this suggests that approximately 15,668 children in Scotland may have been in informal kinship care arrangements and eligible for the new kinship care order. For simplicity it is assumed that this number would be similar in 2015. We have estimated that, the number of informal kinship carers applying for the kinship care order would account for approximately 1.5-3.5% of the estimated number of informal kinship care arrangements each year.

126. For informal carers, table 26 lists the support that is likely to be applicable and estimates the proportion of carers who are eligible applicants.

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17 SPICE briefing, ‘Spotlight on Kinship Care’ (25 January 2012)
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Table 26: Cost of support provided to informal carers receiving kinship care orders

<table>
<thead>
<tr>
<th></th>
<th>Proportion eligible (%)</th>
<th>Upper unit cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting capacity assessment</td>
<td>100</td>
<td>1,500</td>
</tr>
<tr>
<td>Start-up grant</td>
<td>50</td>
<td>500</td>
</tr>
<tr>
<td>Petition support</td>
<td>66</td>
<td>1,500</td>
</tr>
<tr>
<td>Information etc *</td>
<td>100</td>
<td>180</td>
</tr>
<tr>
<td>Transport *</td>
<td>10</td>
<td>1,550</td>
</tr>
</tbody>
</table>

*Recurring costs

127. Assumptions are broadly similar to those relating to support for formal kinship carers. There are no transitional costs, as noted above, but in all cases of informal carers, a parenting capacity assessment would be needed to determine (i) whether the family meets the ‘at risk’ test and (ii) the type of support needed.

Combined cost impact from informal and formal arrangements

128. Part of the purpose of the order and the accompanying measures is to reduce unchecked growth in formal kinship care, which has increased by 87% over the 4 years since 2007. The population of looked after children in formal kinship care arrangements as at July 2011 stood at 3,917 children and young people aged 0-21 years. In the absence of any policy change, this is likely to continue on an upward trend. Assuming a continuing rate of annual expansion of 6.5%, by 2019-20, approximately 6,483 children would be in formal kinship care arrangements in Scotland.

129. At an average annual cost of £5,331 per child (based on kinship allowances, at an average of £102.52 per week), the cost of this obligation would exceed £35 million per annum. This does not take account of additional financial contributions, one-off support, respite, support groups and other support provided locally. On the basis of an average social worker’s time with a typical salary and a caseload of around 12, the total cost in 2019-20 would amount to nearly £58 million.

130. As a result of the additional support provided to kinship carers obtaining a section 11 order we expect numbers of such orders to rise beyond the current estimated levels (approximately 200 a year). The lower and upper estimates on the number of applications, set out in table 24, as well as assumptions on application success rates (as derived from discussion with selected local authorities) have been used to estimate the numbers in the table below. Because the kinship care order acts to prevent a child becoming looked after unnecessarily, this would give rise to future avoided costs compared with the expenditure local authorities would need to make otherwise. Table 27 demonstrates how the projected numbers in formal kinship care would be affected by the lower and upper assumptions of take up of the order.

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Table 27: Projected number in formal kinship care

<table>
<thead>
<tr>
<th></th>
<th>Projected number in formal kinship care in absence of kinship care order and counselling services</th>
<th>Number of children each year who avoid becoming looked after: lower estimate</th>
<th>Projected number in formal kinship care with lower estimate of kinship care order</th>
<th>Number of children each year who avoid becoming looked after: upper estimate</th>
<th>Projected number in formal kinship care with upper estimate of kinship care order</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>5,039</td>
<td>319</td>
<td>4,720</td>
<td>1,045</td>
<td>3,994</td>
</tr>
<tr>
<td>2016-17</td>
<td>5,369</td>
<td>551</td>
<td>4,818</td>
<td>1,515</td>
<td>3,854</td>
</tr>
<tr>
<td>2017-18</td>
<td>5,715</td>
<td>851</td>
<td>4,864</td>
<td>2,115</td>
<td>3,600</td>
</tr>
<tr>
<td>2018-19</td>
<td>6,087</td>
<td>869</td>
<td>5,218</td>
<td>2,150</td>
<td>3,937</td>
</tr>
<tr>
<td>2019-20</td>
<td>6,483</td>
<td>887</td>
<td>5,596</td>
<td>2,187</td>
<td>4,296</td>
</tr>
</tbody>
</table>

131. On the basis of the lower and upper estimates of numbers in formal kinship care and the costs set out above, table 28 shows the avoided future costs that would arise from the order. The model suggests that avoided future costs arise from the first year of implementation and increase for the first few years before stabilising. This applies whether the lower or upper estimates are used for the numbers of children diverted from formal kinship care.

132. The model bases avoided future costs on the numbers in formal kinship care in a given year – the true picture of formal kinship care involves a significant number of children coming into and leaving formal supervision arrangements each year and across different types of care placement, including foster care, residential care and looked after at home with birth parents. This ‘churn’ is very difficult to model, so we have assumed conservatively that the avoided costs associated with diverting an individual child from care only last for a single year, rather than several years or indeed, permanently.
Table 28: Projected avoided costs arising from diverting children from formal kinship care

<table>
<thead>
<tr>
<th></th>
<th>Projected number in formal kinship care in absence of kinship care order and counselling services</th>
<th>Projected cost in absence of kinship care order (£)*</th>
<th>Projected number in formal kinship care with lower estimate of kinship care order</th>
<th>Projected cost with lower estimate (£)*</th>
<th>Projected number in formal kinship care with upper estimate of kinship care order</th>
<th>Projected cost with upper estimate (£)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>5,039</td>
<td>45,340,922</td>
<td>4,667</td>
<td>41,993,666</td>
<td>3,364</td>
<td>30,269,272</td>
</tr>
<tr>
<td>2016-17</td>
<td>5,369</td>
<td>48,310,262</td>
<td>4,713</td>
<td>42,407,574</td>
<td>3,224</td>
<td>29,009,552</td>
</tr>
<tr>
<td>2017-18</td>
<td>5,715</td>
<td>51,423,570</td>
<td>4,601</td>
<td>41,399,798</td>
<td>2,655</td>
<td>23,889,690</td>
</tr>
<tr>
<td>2018-19</td>
<td>6,087</td>
<td>54,770,826</td>
<td>4,955</td>
<td>44,585,090</td>
<td>2,992</td>
<td>26,922,016</td>
</tr>
<tr>
<td>2019-20</td>
<td>6,483</td>
<td>58,334,034</td>
<td>5,333</td>
<td>47,986,334</td>
<td>3,351</td>
<td>30,152,298</td>
</tr>
<tr>
<td></td>
<td><strong>Avoided future costs: lower estimate (£)</strong></td>
<td></td>
<td></td>
<td><strong>Avoided future costs: upper estimate (£)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2015-16</td>
<td>3,347,256</td>
<td></td>
<td></td>
<td>15,071,650</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016-17</td>
<td>5,902,688</td>
<td></td>
<td></td>
<td>19,300,710</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2017-18</td>
<td>10,023,772</td>
<td></td>
<td></td>
<td>27,533,880</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2018-19</td>
<td>9,185,736</td>
<td></td>
<td></td>
<td>27,848,810</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2019-20</td>
<td>10,347,700</td>
<td></td>
<td></td>
<td>28,181,736</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* This is based on an average annual cost of £5,331 per child (based on kinship allowances, at an average of £102.52 per week); and social worker costs per child of £3,667 (as tested with a number of local authorities).

** This is the difference between the projected costs of formal kinship care without and with a kinship care order in each year.

Sections 61 – 67 – Duties relating to provision of counselling services

133. A duty is placed on local authorities to assess children who are at risk of coming into care for access to counselling services such as family mediation or family group conferencing support.

134. This measure offers intensive family therapy at an early enough point in the breakdown of a family to stabilise the care environment and offset or reduce the risk of a child eventually becoming looked after. Therapy of this type may include family mediation or family group conferencing/decision making. This support would also apply to those with a relevant order. By restricting availability to those who meet the ‘at risk’ test the local authority retains professional ownership over the determination of whether the support is needed and how it is delivered.

135. Family therapy can result in a number of positive outcomes, one of which could be realising that a kinship carer may have a role in helping care for a child longer term. This may in turn lead to an application for a relevant order. Alternatively, the therapy may be sufficient in itself to arrest any further breakdown in the care environment.
Costs on the Scottish Government

136. The duties will be placed on local authorities and, therefore, there will be no cost to the Scottish Government.

Costs on local authorities

137. The costs associated with the provisions relate to the provision of information, parenting capacity assessment, and the provision of counselling services for families approaching crisis circumstances to avert children and young people being taken into care.

138. Modelling the eligible population for support to families with a child at risk of becoming looked after is particularly problematic and can be achieved in a number of ways. For practical purposes, the estimate below of the number of families likely to be eligible to access family mediation or family group conferencing is a proportion of the overall ‘children in need’ population. This group will be defined through Regulations as those families whose circumstances give rise to a substantial risk that a child will become looked after within a period of time, in the absence of additional support. It will be important to avoid this becoming overly focused on immediate risk (which is the current focus of statutory duties).

139. For practical purposes, there will be a further condition of eligibility that the right to family mediation (or the duty on the local authority to provide it) would not be triggered unless that particular form of support would benefit the family circumstances or reduce the risk of the child coming into care.

140. Table 29 provides lower and upper estimates of the numbers of eligible children based on the proportion who are referred to the Children’s Reporter on welfare grounds. The range below is necessarily broad. At the lower end, we would expect local authorities to be incurring expenditure no greater than they might otherwise through existing discretionary activity. At the upper end, we might expect a pronounced change in the volume of families who assert their right to assistance.

Table 29: Number of families applying for the support with a child at risk of becoming looked after

<table>
<thead>
<tr>
<th>Years</th>
<th>Numbers of children at risk of becoming looked after*</th>
<th>Lower estimate</th>
<th>% equivalent</th>
<th>Upper estimate</th>
<th>% equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>21,000</td>
<td>105</td>
<td>0.5</td>
<td>1,050</td>
<td>5.0</td>
</tr>
<tr>
<td>2016-17</td>
<td>21,000</td>
<td>210</td>
<td>1.0</td>
<td>1,050</td>
<td>5.0</td>
</tr>
<tr>
<td>2017-18</td>
<td>21,000</td>
<td>525</td>
<td>2.5</td>
<td>1,575</td>
<td>7.5</td>
</tr>
<tr>
<td>2018-19</td>
<td>21,000</td>
<td>525</td>
<td>2.5</td>
<td>1,575</td>
<td>7.5</td>
</tr>
<tr>
<td>2019-20</td>
<td>21,000</td>
<td>525</td>
<td>2.5</td>
<td>1,575</td>
<td>7.5</td>
</tr>
</tbody>
</table>

*Based on the approximate number of children referred to the Children’s Reporter on welfare grounds, 2011

141. The unit cost of parenting capacity assessment, providing information and intensive family therapy is drawn from examples provided by third sector organisations. For intensive
family therapy the average is made up of a lower unit cost of £750 and an upper cost of £2,500. In modelling the costs of this support, it is assumed that the support is provided once.

**Table 30: Costs associated with provision of support**

<table>
<thead>
<tr>
<th>Type of support</th>
<th>Proportion eligible (%)</th>
<th>Average unit cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting capacity assessment</td>
<td>100</td>
<td>1,500</td>
</tr>
<tr>
<td>Info</td>
<td>100</td>
<td>103</td>
</tr>
<tr>
<td>Intensive family therapy</td>
<td>80</td>
<td>1,625</td>
</tr>
</tbody>
</table>

142. Research, project evaluations and in house evidence from local authorities generally support the effectiveness of models like family group conferencing (FGC) when applied appropriately and at a suitable point. When the explicit goal of FGC is to prevent a child becoming looked after, success has been reported as high at 87%. Because the therapy offered will be broader than just FGC, a lower overall success figure of 50-60% is assumed. Moreover, it is assumed that for every successful mediation in this scenario, a single child avoids care.

**Table 31: Projected avoided costs arising from diverting children from formal kinship care**

<table>
<thead>
<tr>
<th>Year</th>
<th>Projected numbers avoiding formal kinship care: lower</th>
<th>Projected avoided cost: lower (£)</th>
<th>Projected numbers avoiding formal kinship care: higher</th>
<th>Projected avoided cost: higher (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>53</td>
<td>476,894</td>
<td>630</td>
<td>5,668,740</td>
</tr>
<tr>
<td>2016-17</td>
<td>105</td>
<td>944,790</td>
<td>630</td>
<td>5,668,740</td>
</tr>
<tr>
<td>2017-18</td>
<td>263</td>
<td>2,366,474</td>
<td>945</td>
<td>8,503,110</td>
</tr>
<tr>
<td>2018-19</td>
<td>263</td>
<td>2,366,474</td>
<td>945</td>
<td>8,503,110</td>
</tr>
<tr>
<td>2019-20</td>
<td>263</td>
<td>2,366,474</td>
<td>945</td>
<td>8,503,110</td>
</tr>
</tbody>
</table>

*This is based on an average annual cost of £5,331 per child (based on kinship allowances, at an average of £102.52 per week); and social worker costs per child of £3,667 (as tested with a number of local authorities).

**Overall impact of duties relating to kinship care and the provision of counselling services**

143. The costs to local authorities of each of these measures have been outlined separately above.

144. Taken together, the measures relating to kinship care and the provision of counselling services are intended to be a positive incentive for kinship carers and their families to assert themselves in the solutions they face which, if left unchecked, could lead to a child becoming looked after.

145. Table 32 brings together the gross costs of support and the projected avoided costs arising from the kinship care order and the provision of counselling services in combination. The costs
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

have been derived from the estimated support costs, the eligible proportions of lower and upper numbers and the estimates of formal and informal carers successfully applying. The table suggests that there are net avoided future costs from the first year of implementation of the provisions and each year thereafter. The basis of this model is around preventing a child unnecessarily becoming formally looked after and the estimates used have been conservative. In addition, only direct costs have been taken into account: but there are likely to be avoided costs to the children’s hearings system and the Scottish Children’s Reporter Administration as well.

Table 32: Total costs of the kinship care provisions

<table>
<thead>
<tr>
<th>Type of support</th>
<th>Lower estimate costs (£)</th>
<th>Upper estimate costs (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support to informal kinship carers</td>
<td>436,650</td>
<td>676,500</td>
</tr>
<tr>
<td>Support to formal kinship carers</td>
<td>613,800</td>
<td>965,250</td>
</tr>
<tr>
<td>Support to families with ‘at risk’ child</td>
<td>386,400</td>
<td>3,864,000</td>
</tr>
<tr>
<td>Total gross cost**</td>
<td>1,436,850</td>
<td>5,505,750</td>
</tr>
<tr>
<td>Total avoided cost***</td>
<td>2,870,362</td>
<td>9,402,910</td>
</tr>
<tr>
<td><strong>Total net cost</strong>**</td>
<td>(1,433,512)*</td>
<td>(3,897,160)</td>
</tr>
<tr>
<td>2016-17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support to informal kinship carers</td>
<td>724,070</td>
<td>1,712,675</td>
</tr>
<tr>
<td>Support to formal kinship carers</td>
<td>1,578,740</td>
<td>2,465,850</td>
</tr>
<tr>
<td>Support to families with ‘at risk’ child</td>
<td>394,800</td>
<td>3,864,000</td>
</tr>
<tr>
<td>Total gross cost</td>
<td>2,697,610</td>
<td>8,042,525</td>
</tr>
<tr>
<td>Total avoided cost</td>
<td>4,957,898</td>
<td>13,631,970</td>
</tr>
<tr>
<td><strong>Total net cost</strong></td>
<td>(2,260,288)</td>
<td>(5,589,445)</td>
</tr>
<tr>
<td>2017-18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support to informal kinship carers</td>
<td>797,770</td>
<td>1,891,230</td>
</tr>
<tr>
<td>Support to formal kinship carers</td>
<td>3,120,100</td>
<td>5,182,520</td>
</tr>
<tr>
<td>Support to families with ‘at risk’ child</td>
<td>1,932,000</td>
<td>5,796,000</td>
</tr>
<tr>
<td>Total gross cost</td>
<td>5,849,870</td>
<td>12,869,750</td>
</tr>
<tr>
<td>Total avoided cost</td>
<td>7,657,298</td>
<td>19,030,770</td>
</tr>
<tr>
<td><strong>Total net cost</strong></td>
<td>(1,807,428)</td>
<td>(6,161,020)</td>
</tr>
<tr>
<td>2018-19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support to informal kinship carers</td>
<td>823,900</td>
<td>1,996,085</td>
</tr>
<tr>
<td>Support to formal kinship carers</td>
<td>4,114,440</td>
<td>6,995,590</td>
</tr>
<tr>
<td>Support to families with ‘at risk’ child</td>
<td>1,932,000</td>
<td>5,796,000</td>
</tr>
<tr>
<td>Total gross cost</td>
<td>6,870,340</td>
<td>14,787,675</td>
</tr>
<tr>
<td>Total avoided cost</td>
<td>7,819,262</td>
<td>19,345,700</td>
</tr>
<tr>
<td><strong>Total net cost</strong></td>
<td>(948,922)</td>
<td>(4,558,025)</td>
</tr>
<tr>
<td>2019-20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support to informal kinship carers</td>
<td>823,900</td>
<td>1,996,085</td>
</tr>
<tr>
<td>Support to formal kinship carers</td>
<td>4,797,140</td>
<td>8,365,940</td>
</tr>
<tr>
<td>Support to families with ‘at risk’ child</td>
<td>1,932,000</td>
<td>5,796,000</td>
</tr>
<tr>
<td>Total gross cost</td>
<td>7,553,040</td>
<td>16,158,025</td>
</tr>
<tr>
<td>Total avoided cost</td>
<td>7,981,226</td>
<td>19,678,626</td>
</tr>
<tr>
<td><strong>Total net cost</strong></td>
<td>(428,186)</td>
<td>(3,520,601)</td>
</tr>
</tbody>
</table>

* Bracketed numbers indicate there are net avoided costs.
** ‘Total gross cost’ is the sum of the different support costs.
*** ‘Total avoided cost’ for the lower and upper estimates have been derived from table 27 and 30
**** ‘Total net cost’ is the difference between ‘total gross cost’ and ‘total avoided cost’.
146. Consequently, for the purposes of calculating the full costs of the provisions to local authorities, we have assumed a zero direct cost arising from the support associated with the Bill. However, in recognition of the one off transition costs associated with the Bill, as outlined above, we have attributed a cost of £2.6 million in 2015-16.

**Transitional costs on local authorities**

147. There will be necessary transition costs associated with this measure for which no direct savings are attributable. These represent real up-front costs to local authorities. Assumptions are drawn from previous programmes and it is assumed that these will be a one-off set of costs in the first year of implementation.

148. Key measures include the following.

- In order to facilitate the work arising from the kinship care order, it is assumed 10 staff from each local authority on average will need to spend 2 days in further training.

- Each local authority will need to generate new information in respect of the policy both electronically and in paper form, so it is assumed that around £10,000 per authority will be required.

- Around £15,000 would be needed to promote the policy locally, based on the time needed by staff to visit kinship groups, meet with key stakeholders and service providers (such as family mediation services) and commission advertising.

- This model assumes a very significant usage of parenting capacity assessment to provide initial assistance but also to trigger further support. However, to facilitate properly an earlier intervention approach that is attractive to families and kinship carers and does not stigmatise, local authorities will likely need to develop or commission an alternative type of assessment which provides early parenting support and encouragement. Costing this is difficult but for modelling purposes it is assumed councils will need around £30,000 each to commission and test a new model.

- In addition, as part of wider joint work between the Scottish Government and local authorities, funding will be required to undertake population level surveys in each area to help analyse the medium term demand on social services. This work supports a wider programme to introduce strategic commissioning into each local authority and will help authorities map service provision on kinship (and other care placements) effectively over time.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Table 33: Transition costs

| Training for practitioners (2 days, 10 staff per local authority) | Cost (£) |
| Awareness raising locally (£15,000 per local authority, on average) | 480,000 |
| Information: local website, training and kinship carer materials | 320,000 |
| Developmental and testing of early intervention, therapeutic alternative to parenting capacity assessment | 775,000 |
| Population research costs: survey of school children and families | 960,000 |
| Total cost | 2,600,000 |

Costs on local authorities, other bodies, individuals and businesses

149. For simplicity we have identified costs to others across the two measures in combination.

150. For the purposes of modelling the impact on Scottish Legal Aid Board (SLAB), it is assumed that only one third of those who apply for the kinship care order would find sufficient support elsewhere through their own means or through legal aid. Table 34 sets out the net impact on SLAB in terms of cases linked to these measures.

Table 34: Impact on Scottish Legal Aid

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications to SLAB: lower estimate</th>
<th>SLAB cost: lower estimate (£)</th>
<th>Applicati ons to SLAB: upper estimate</th>
<th>SLAB cost: upper estimate (£)</th>
<th>Average gross costs (£)</th>
<th>Average costs avoided (£)</th>
<th>Average net costs* (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-16</td>
<td>66</td>
<td>22,670</td>
<td>215</td>
<td>73,848</td>
<td>48,259</td>
<td>108,632</td>
<td>(60,373)</td>
</tr>
<tr>
<td>2016-17</td>
<td>246</td>
<td>84,496</td>
<td>685</td>
<td>235,283</td>
<td>159,889</td>
<td>192,205</td>
<td>(32,315)</td>
</tr>
<tr>
<td>2017-18</td>
<td>388</td>
<td>133,270</td>
<td>970</td>
<td>333,174</td>
<td>233,222</td>
<td>296,992</td>
<td>(63,770)</td>
</tr>
<tr>
<td>2018-19</td>
<td>406</td>
<td>139,452</td>
<td>1,005</td>
<td>345,196</td>
<td>242,324</td>
<td>303,395</td>
<td>(61,071)</td>
</tr>
<tr>
<td>2019-20</td>
<td>424</td>
<td>145,635</td>
<td>1,042</td>
<td>357,905</td>
<td>251,770</td>
<td>310,043</td>
<td>(58,273)</td>
</tr>
</tbody>
</table>

* Bracketed numbers indicate there are net avoided costs.

151. The calculation assumes that the underlying number of residence orders petitioned for each year are already supported by legal aid – approximately 200 per year. As the policy revolves around support provided by local authorities it is assumed they will support around two thirds of applicants in the first instance and SLAB will generally need to support mainly birth parents who contest such orders (assumed to be one third of all orders) and a small number of kinship carers (assumed to be 5% of those not supported by local authorities). A relatively low level of contested applications is assumed owing to the existence of intensive family therapy in this modelling which would act to reduce conflict between parties. Based on discussions between SLAB and the British Association of Adoption and Fostering it is assumed that two thirds of applicants in both groups would be eligible for legal aid. The unit cost used is £1,475 which is the median cost of legal aid for a residence order provided by SLAB.

152. We have calculated that for each kinship care order granted and each successful intensive family therapy, 1 child avoids the care system. For modelling the impact on SLAB, this means
costs avoided in respect of children’s hearings and legal actions associated with permanence. Unit costs provided by SLAB have been used and volumes drawn from Children Looked After Statistics and SLAB data. The net effect is a small annual avoided cost to SLAB of around £50-60,000 a year.

Section 68 – Putting Scotland’s Adoption Register on a statutory footing

153. There will be a requirement for local authorities and registered adoption services to provide specified information to the Register so that there is a list of prospective adopters and children in respect of which no match has been made.

154. Two thirds of local authorities and 3 registered adoption services are already using the Register.

Costs on the Scottish Administration

155. The Government has committed to an additional 2 years funding for 2013-15 of £90,000, to provide for the remaining local authorities to register.

156. There will be no additional costs to the Scottish Administration, as a specific budget has already been committed to.

Costs on local authorities, other bodies, individuals and businesses.

157. The provisions allow for Scottish Ministers to charge fees for transactions that occur in relation to the Adoption Register. The intention at present is that these charges are not applied, and for that reason there will be no additional cost to local authorities, other bodies, individuals and businesses.

OTHER PROPOSALS

Sections 69 - 70 – National Convener and Children’s Hearings

158. The Bill will require local authorities to assist the National Convener, which in practical terms will be delivered through their contributions to AST’s which will provide support to the children’s panel. It will also relieve the National Convener of the obligation to obtain the consent of each constituent authority before establishing or re-establishing area support teams to support the national children’s panel. Instead, the National Convener’s duty in this respect will be limited to a requirement to consult with each constituent local authority before requiring the merger or reconstitution of existing AST’s in 2014 or beyond.

159. The provisions in the Children’s Hearings (Scotland) Act 2011 are not considered sufficient to require all local authorities to deliver on assisting the National Convener, although many local authorities do provide this assistance as part of their AST agreement.
These documents relate to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Costs on the Scottish Administration
160. The proposed provisions puts the arrangements that are already in place on a statutory footing and introduces nothing new, so no additional costs are anticipated.

Costs on local authorities, other bodies, individuals and businesses.
161. This provision will not result in any additional costs on other organisations.

Section 71 – Secure accommodation
162. The proposal establishes a right of appeal to the sheriff against the decision by a chief social work officer of a local authority to place a child in secure accommodation following an order under section 44 of the Criminal Procedure (Scotland) Act 1995 to detain a child in residential accommodation.

Costs on the Scottish Administration
163. The provisions will not result in any additional costs to the Scottish Administration.

Costs on local authorities, other bodies, individuals and businesses.
164. This provision will not result in any additional costs on other organisations.

Section 72 – Amendment to the Schools (Consultation) (Scotland) Act 2010
165. The Bill amends the Schools (Consultation) (Scotland) Act 2010 by making minor changes to the procedure relating to call in by the Scottish Ministers of school closure proposals.

Costs on the Scottish Administration
166. The changes make a slight increase to the time available for Ministers to consider representations in relation to a closure proposal – from 6 to 8 weeks. A small extension to this period would reduce the likelihood of unnecessary call ins by allowing better consideration of representations received in the first 3 weeks of this period. These changes should have no financial impact.

Costs on local authorities, other bodies, individuals and businesses.
167. This provision will not result in any additional costs on other organisations.

Section 73 – Defining ‘wellbeing’ around the SHANNARI structure

Costs on the Scottish Administration, local authorities, other bodies, individuals and businesses.
168. There will be no cost in implementing this provision, as it is creating a definition in legislation.
Section 76 – Modification of Enactments – Reversing the Repeal of Section 44 of the Children (Scotland) Act 1995

169. Schedule 6 of the Childrens Hearings (Scotland) Act 2011 repealed section 44 of the Children (Scotland) Act 1995 in its entirety, and this provision reverses this unintended repeal.

Costs on the Scottish Administration, local authorities, other bodies, individuals and businesses.

170. There are no costs associated with this provision.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 17 April 2013, the Cabinet Secretary for Health and Wellbeing (Alex Neil MSP) made the following statement:

“In my view, the provisions of the Children and Young People (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 17 April 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Children and Young People (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
INTRODUCTION

1. This document relates to the Children and Young People (Scotland) Bill introduced in the Scottish Parliament on 17 April 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 27–EN.

POLICY OBJECTIVES OF THE BILL

2. It is the aspiration of the Scottish Government for Scotland to be the best place to grow up in. The objective of the Children and Young People (Scotland) Bill is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.

3. Specifically, the Bill aims to:
   - Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland’s Commissioner for Children and Young People;
   - Improve the way services support children and families by promoting cooperation between services, with the child at the centre;
   - Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare;
   - Ensure better permanence planning for looked after children by improving support for kinship carers, families and care leavers, extending corporate parenting across the public sector, and putting Scotland’s National Adoption Register on a statutory footing; and
   - Strengthen existing legislation that affects children and young people by making procedural and technical changes in the areas of children’s hearings support arrangements, secure accommodation placements, and school closures.
BACKGROUND

4. Scotland is in a defining period, facing unique challenges and opportunities. Our children and young people face new and significant demands both individually and collectively. In the face of such challenges, it is the job of public services to: support children and parents; strengthen resilience; provide opportunities; and encourage and enable children and young people to participate fully, whatever their background and from wherever they come. We should not be content just to address problems or maintain the status quo. Improvement must be at the core of what the Scottish Government and wider public services do. This is not just an issue of prioritising resources, important as that is. It is also about shifting the culture in how children and young people are helped to achieve their potential and how public services and communities can best work to support families.

5. The Scottish Government fully recognises this responsibility, both morally and practically, for it is through the engagement and participation of its children and young people in society that Scotland will flourish and succeed. Inevitably the constraints of the constitution are limiting, preventing the use of powerful tools such as the tax and benefits system. Nevertheless, the Scottish Government must do all it can with the powers available to improve the lives of Scotland’s children and young people.

6. On 11 May 2012, the First Minister announced the Scottish Government’s intention to introduce a Children and Young People (Scotland) Bill to the Parliament in 2013. The Bill sets out fundamental reforms to children’s services in line with the report of the Christie Commission, which highlighted the importance of early years, prevention and personalised service delivery with a clear focus on the achievement of outcomes.1

7. The Scottish Government response to the Christie Commission report explains that its public service reform programme for improving service outcomes for the people of Scotland is based on four pillars:

- A decisive shift towards prevention;
- Greater integration of public services at a local level, driven by better partnership, collaboration and effective local delivery;
- A sharp focus on improving performance, through greater transparency and innovation; and
- Use of digital technology.

8. These pillars are the basis for the Scottish Government’s agenda to achieve its stated ambitions for Scotland’s children and young people. That agenda includes:

- Re-focusing the delivery and coordination of services to children and young people around their needs and wellbeing, so that care is person-centred, with the child at the centre of service design, planning and delivery;
- A stronger emphasis on supporting children and improving their wellbeing;

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1 Scottish Government, Commission On The Future Delivery of Public Services (2011)
• A fundamental shift in philosophy and approach from intervening only once a crisis has happened, to prevention and early intervention where appropriate;

• Providing the right support to parents to enable them to effectively fulfil what is the most challenging role in society and involving them in decisions that affect them and their families;

• Recognising the rights of the child as being of paramount importance to achieving the vision of improving life chances for all children and young people; and

• Empowering practitioners to take decisions and act to improve outcomes.

9. Much progress has been and continues to be made through these and other activities. There is, of course, more to do. Scotland’s children and young people continue to face a myriad of challenges:

• There were 2,706 children on the Child Protection Register in Scotland as of July 2011. Scotland has a lower proportion of children on the Child Protection Register than other parts of the UK, but the share of the wider children’s population on the Register has not changed greatly over the past decade;

• In Scotland, in 2011, over 16,000 children were looked after. Although recent years have seen a sustained fall in new referrals into care and an increase in young people leaving care, Scotland has a higher proportion of looked after children than other parts of the UK – and the proportion of “formal” kinship carers continues to grow sharply;

• Children and young people who need to come into care are more likely to have poorer outcomes than their peers. Health and educational attainment outcomes for most looked after children are significantly worse than for other children and young people;

• On current estimates, between 10,000 and 20,000 children live with at least one parent who is using drugs, and between 36,000 and 51,000 children are living with parents (or guardians) whose alcohol use is potentially problematic;

• Three-quarters of families experiencing high adversity have low parenting skills; and

• While child poverty has fallen markedly over the past decade, 170,000 children and young people in Scotland still live below the poverty threshold (17% of all children and young people). Children and young people who grow up in poor households are

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3 Ibid
6 Scottish Government, Final Business and Regulatory Impact Assessment for Minimum Price Per Unit Of Alcohol As Contained In Alcohol (Minimum Pricing) (Scotland) Bill (2012)
more likely to have low self-esteem, play truant, leave home earlier, leave school earlier and with fewer qualifications, and be economically inactive as adults.\textsuperscript{9}

10. Of course, children’s and young people’s future lives are not just shaped by their backgrounds. Nevertheless, the potential impact that a care environment marred by neglect, substance misuse, domestic abuse and poverty can have on a child’s development is clear. The scale of these challenges, and the economic and social costs to society, are daunting. They require a focus on early intervention, on tackling these problems at the earliest opportunity, particularly in the first years of a child’s life, and where possible, preventing these problems before they arise.

ALTERNATIVE APPROACHES AND THE ROLE OF LEGISLATION

11. The Scottish Government is pursuing a range of policy initiatives and alternative approaches as part of its agenda to improve the lives of children and young people, including:

- The Early Years Collaborative, a multi-agency, local, quality improvement programme delivered at a national scale, and a Practice Development Team have been launched to take forward the vision and priorities of the Early Years Task Force;
- A decisive shift to preventative spending has been made through the creation of an Early Years Change Fund of over £270 million;
- Separate to the legislative provisions, £4.5 million has been invested for 3 years from April 2012 to provide early learning and childcare opportunities for looked after 2 year olds;
- £4.5 million has been contributed to establish the Big Lottery £6 million Communities and Families Fund, aimed at supporting community-based solutions to family support and early learning and childcare;
- A new Third Sector Early Intervention Fund from financial year 2013-14 has been established;
- £18 million is being provided to create high quality, co-ordinated and accessible family support;
- The Family Nurse Partnership, an early intervention programme for first time teenage mothers aimed at improving pregnancy outcomes, child health and development, and parents’ economic self-sufficiency, is currently being delivered in six health board areas, with a further area due to begin delivery over the course of 2013;
- The Maternity Services Framework,\textsuperscript{10} Maternal and Infant Nutrition Framework\textsuperscript{11} and Health for All Children Guidance for Scotland\textsuperscript{12} are supporting the delivery of efficient, effective and person-centred health services for pregnant women, babies, children and young people;

\textsuperscript{9} Ermisch, J., Francesconi, M. and Pevalin, D., The Outcomes for Children of Poverty (2001)
\textsuperscript{12} Scottish Government, Health for All Children: Guidance on Implementation in Scotland (2011)
• A National Parenting Strategy was published in October 2012, setting out a cohesive and compelling narrative around the value and importance of parenting, and including over 80 commitments to support Scotland’s parents; 13
• As set out in the “Do the Right Thing” report, a range of measures have been taken forward to ensure that children’s rights continue to be at the forefront of policy and service delivery in Scotland; 14
• The ambitious Curriculum for Excellence programme is on track and is now a reality in Scotland’s early learning and childcare establishments, schools and colleges; 15
• The creation of the Centre for Excellence for Looked After Children in Scotland (CELCIS) has been funded, the remit of which includes the comprehensive redesign of care, focusing on shortening every child’s care journey;
• A Corporate Parenting National Training Programme has been launched to make key decision makers in local authorities and health boards more aware of their role as corporate parents;
• The Looked After Children Strategic Implementation Group (LACSIG) has been set up to identify key “sticking points” in the looked after child’s journey; and
• The first National Advice and Support Service for all kinship carers has been established.

12. While there is no one policy or initiative that can bring about the kind of change required, there is a fundamental role for legislation: to accelerate the progress that has already been made and to ensure a consistent structure within which services operate; to bring about a step-change in the way that all services support children and young people; and to inspire renewed debate and ambition for what Scotland’s children and young people can expect.

The Role of the Children and Young People (Scotland) Bill

13. The Children and Young People (Scotland) Bill (“the Bill”) will:
• Reflect in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services by placing duties on the Scottish Ministers and the wider public sector, and strengthening the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people;
• Improve the way services work to support children, young people and families by: ensuring there is a single planning approach for children who need additional support from services; creating a single point of contact around every child or young person; ensuring coordinated planning and delivery of services with a focus on outcomes, and providing a holistic and shared understanding of a child’s or young person’s wellbeing;

14 Scottish Government, Do the Right Thing (2012)
15 http://www.scotland.gov.uk/Topics/Education/Schools/curriculum/ACE [link is no longer active]
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- Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds, and 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order;
- Ensure better permanence planning for looked after children by: extending corporate parenting across the public sector; extending support to young people leaving care for longer (up to and including the age of 25); supporting families and the parenting role of kinship carers through new legal entitlements; and putting Scotland’s National Adoption Register on a statutory footing; and
- Strengthen existing legislation that affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical changes in the areas of children’s hearings support arrangements and school closures.

14. The Bill is, therefore, fully complementary to other Scottish Government policy and legislation aimed at improving the outcomes for Scotland’s population. In particular, the Bill shares with the proposed Bill on the integration of health and social care the underpinning principles of person-centred care and the coordination of services around the needs of individuals. These principles are apparent in the content of both Bills.

Benefits of the Children and Young People (Scotland) Bill

15. The scientific evidence is clear that the foundations for a successful society can be built in early childhood.\textsuperscript{16} The brains of children develop at an astonishing rate before birth and in the first few months of life. If their experiences are supportive and consistent in response to the child’s expressed needs, the child learns that the world is a safe, nurturing place with opportunities to learn and grow. If, on the other hand, the child experiences inconsistency of response to its signals for attention, the brain develops in a different way that sacrifices growth in centres associated with learning, memory and judgement in favour of those involved in the responses to threat.

16. Children who experience poor, unstable care environments often face greater challenges in later life as a result. As the Chief Medical Officer for Scotland stated in his 2006 Annual Report:

“Insecurely attached infants are at greater risk of problems in emotional development, and children with very poor attachment experiences are at greatest risk of failure to thrive in early years and behaviour problems, lowered self-esteem and schooling difficulties in childhood and adolescence.”\textsuperscript{17}


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17. Adverse events in childhood have also been associated with higher risks of alcohol and drug misuse and teenage pregnancy among children and young people in later life.\(^{18}\)

18. In the United States, one 2007 study has estimated the annual costs of child abuse and neglect – both in terms of direct costs in supporting victims and the longer term economic costs – at $103.8 billion (approximately £66.2 billion).\(^{19}\)

19. Poor parenting and other forms of adversity in early life lead to poor outcomes. There is a wealth of evidence emerging – through the Effective Provision of Pre-school Education programme, Triple P (Positive Parenting Programme), Incredible Years, and Family Nurse Partnership – that demonstrates the effectiveness of interventions supporting children in the earliest years.

20. Intervening early not only improves outcomes for individuals, their families and communities, but can save the costs of expensive interventions in health, social care, justice and welfare over several decades. The Scottish Government examined the costs of failing to make the right interventions in the early years of a child’s life in a 2010 study, “The Financial Impact of Early Years Interventions in Scotland”.\(^{20}\) The report highlighted the significant costs of failing to act to prevent problems emerging and worsening for children at developmental risk.

21. Thus, preventative action is vital to achieve improved social outcomes for children and young people, and will also result in considerable financial savings in the medium to long term. Evidence shows that early intervention and prevention can help break recurring cycles of poor social outcomes, and can prevent extensive and expensive responses from public services at a later stage.

22. The Bill is founded upon this preventative approach. By increasing the provision of high quality early learning and childcare, ensuring more effective delivery of services to support children, young people and their families, placing children’s rights at the centre of those services and their design, improving family support at an earlier stage and enhancing permanence planning for looked after children, the Bill seeks to address the damaging problems that may affect the wellbeing and outcomes of Scotland’s children and young people.

23. The potential benefits of the provisions of the Bill are further detailed in the “Policy Objectives: Specific Provisions” section of this document.

CONSULTATION

24. On 4 July 2012, the Scottish Government published a consultation document which invited views on key areas of proposed reform. A formal, 12 week public consultation was undertaken from 4 July to 25 September 2012, and 300 responses were received from a wide range of stakeholders.

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\(^{19}\) Wang, C.T. and Holton, J., “Total estimated cost of child abuse and neglect in the United States”, *Prevent Child Abuse America* (September 2007)

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range of stakeholders from public, private and third sector organisations, and individuals. Non-confidential consultation responses were published on 30 October on the Scottish Government website.\textsuperscript{21} The Scottish Government commissioned the independent consultancy organisation The Research Shop to undertake a formal analysis of consultation responses, and this was published on 4 December 2012.\textsuperscript{22}

25. In parallel with the consultation exercise, the Scottish Government also conducted a large-scale series of national engagement events to discuss the proposal for reform with a wide range of stakeholders. These events were held in Dundee, Edinburgh, Glasgow and Inverness over the summer of 2012, and were attended by over 800 people from the third, public and private sectors. The majority of these individuals identified as being from either a social work (23\%), voluntary (21\%) or education (16\%) background. A series of questions on the Children and Young People (Scotland) Bill were posed to all attendees, and their views were captured quantitatively through electronic voting and qualitatively through extensive table discussions.

26. In addition to the national engagement events, further engagement meetings were held during Bill development involving over 150 stakeholder groups/organisations from the third, public and private sectors.

27. It was essential that the views of children and young people were represented in the consultation process, and to that end, engagement activity was commissioned with children and young people from across Scotland. Several nurseries were commissioned to conduct informal engagement around the Bill to ensure that 3 and 4 year olds were able to participate in the process. For school-age children, the Children’s Parliament was commissioned to engage on the Bill through two-day workshops at six primary schools throughout Scotland, and over 100 children were involved in these activities.

28. Young Scot and the Scottish Youth Parliament were commissioned to engage with young people aged 12 to 26. These two organisations jointly undertook a mass engagement exercise over the summer of 2012, which consisted of:

- An online and offline survey seeking the young people’s quantitative opinions on proposals in the consultation document; and
- Seven dialogue groups involving young people with diverse backgrounds and experiences, facilitated to gauge views in a qualitative manner through in-depth discussion of the Bill proposals.

Over 1,400 young people responded to the survey, and over 50 young people participated in the dialogue groups.

29. Materials and engagement tools designed by the Children’s Parliament and Young Scot/Scottish Youth Parliament were made available to others wishing to carry out engagement with children and young people. Largely through the use of these materials, around 900 children and young people were involved in engagement activities facilitated by other organisations. In

\textsuperscript{21} Scottish Government, Non-Confidential Responses to Children and Young People Bill (2012) http://www.scotland.gov.uk/Publications/2012/10/5874/downloads
\textsuperscript{22} Scottish Government, Analysis of Responses to the Children and Young People Bill Consultation (2012)
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Total, over 2,400 children and young people from the ages of 3 to 26 and from a diverse range of backgrounds were involved in the consultation process.

30. Useful information about parents’ views on services and childcare was gleaned from the significant engagement activity undertaken with parents during the development of the Scottish Government’s National Parenting Strategy. In addition, the Scottish Government worked with ParentLine Scotland to seek parents’ views on Bill proposals specifically.

**Outcome of Consultation and Engagement**

31. The analysis of consultation responses indicated that stakeholders were broadly supportive of the Bill proposals:

- 70% of those who provided a view considered that the proposals would improve transparency and scrutiny of the steps being taken by the Scottish Ministers and relevant public bodies to ensure the progressive realisation of children’s rights;
- 84% of those who commented supported the proposed definition of the wellbeing of a child or young person;
- 80% of those who provided a view supported the proposal to place a duty on public bodies to work together to jointly design, plan and deliver policies and services focused on improving children’s wellbeing, and 70% agreed that reporting arrangements should be put in place which make a direct link for the public between local services and outcomes for children and young people;
- 72% of respondents who provided a view supported the Named Person role;
- 76% of those who commented agreed that a single planning approach would help improve outcomes for children;
- 76% of those who addressed the topic agreed that the Scottish Government should increase the number of hours of funded early learning and childcare, and 83% agreed that flexibility of provision should be increased; and
- 88% of those who provided a view agreed that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now) and 88% agreed that it would be helpful to define corporate parenting and to clarify the public bodies to which this definition applies.

32. Feedback from all the extensive engagement undertaken alongside the consultation was similarly supportive and broadly positive about the Scottish Government’s aspirations and the intentions behind the Bills proposals. Attention was focused largely on how the proposals would work in practice rather than on matters of principle.

33. The main issues emerging from the consultation and engagement activity in this regard were:

- Concern from some stakeholders about the effectiveness of the kinship care order as originally proposed to bring benefit to kinship carers and the children in their care and thus achieve the policy intention;
A strong feeling that providing care leavers a right to request assistance from local authorities would not necessarily mean that support would actually be provided, and that a duty on local authorities to provide support may be more effective;

Concern from key stakeholders about the proposed prescriptive approach of requiring local authorities to consult on and offer the same minimum set of options to achieve consistent flexibility of early learning and childcare provision; and

Concern that the existing legal framework for information sharing with regard to the Named Person is insufficient to enable the role to function as envisaged and would not provide professionals with confidence when making decisions as to when information should be shared.

34. These concerns were addressed in the Scottish Government’s response to the findings of the consultation, which was published on 22 March 2013. This details the intention to proceed largely as originally proposed, but also sets out the way a small number of proposals have been adapted to:

- Build on existing legislation to deliver the benefits of the kinship care order more effectively;
- Introduce a duty on local authorities to assess whether a care leaver up to and including the age of 25 who has requested assistance has eligible needs, and, if they do, to provide that assistance if it cannot be met from elsewhere;
- Provide local authorities more flexibility to determine choices and options for patterns of delivery of a minimum of 600 hours early learning and childcare as part of local strategies developed in response to local consultation with parents; and
- Provide more clarity on how the role of Named Person will operate with regard to information sharing, by placing duties on the public bodies working with children and on Named Persons.

35. Further information on these alternative approaches can be found in the “Policy Objectives: Specific Provisions” section.

Consultation on Additional Provisions

36. A small number of policy issues emerged subsequent to the launch of the consultation. These require additional provisions in the Bill that were not part of the formal consultation. However, views have been sought on these additional provisions, as set out below.

Children’s hearings

37. Officials have held informal discussions with the main national volunteers’ representative groups, with the Convention of Scottish Local Authorities (COSLA) and with Children’s Hearings Scotland (CHS) since mid-2012, in order to monitor the issues affecting implementation of the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”). In December 2012, the Scottish Government circulated a policy paper to key hearings system partners—
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children’s panel chairs, Children’s Panel Advisory Committees (CPACs), safeguarders, the Scottish Children’s Reporter Administration (SCRA), CHS, COSLA and others – seeking views on proposals to make two changes to the 2011 Act through the Bill. These changes would: allow the National Convener to determine the number and location of Area Support Teams (“ASTs”) in consultation with local authorities and thereby remove the obligation to obtain consent from each authority before establishing ASTs; and place a duty on local authorities to provide such administrative assistance to ASTs as the National Convener considers appropriate. That informal consultation closed in January 2013.

38. A total of 27 responses were received, comprising five organisations, 11 groups and 11 individuals who work within the hearings system. A small majority of respondents favoured the proposals to amend the 2011 Act. The new powers were welcomed as a means of helping to ensure consistent support for panel members moving forward and a way of avoiding long, drawn-out discussions on AST structures in future. However, there was a feeling amongst some respondents that before any changes are made, ASTs must be given a chance to work following implementation of the 2011 Act in 2013. There was also a concern amongst some respondents, in particular COSLA, that the National Convener should not have the power to decide AST structures or to decide what constitutes “appropriate” local authority administrative support to ASTs. Having considered these responses, the Scottish Government has decided to bring forward provisions in sections 69 and 70 to the Bill to introduce the proposed changes.

Amendment to the Criminal Procedure (Scotland) Act 1995

39. The amendment to the Criminal Procedure (Scotland) Act 1995 (“the CPSA”) in section 71 to the Bill will provide a new right to appeal a local authority decision to place a child in secure accommodation following an order made by the sheriff to detain the child in residential accommodation. Substantial thought was given by stakeholders to the role of secure care as part of the Securing Our Future Initiative process and joint views were expressed and recommendations were agreed. The secure accommodation provisions in the 2011 Act give effect to some of those recommendations, and were the subject of debate during passage of the Bill through the Scottish Parliament. The amendment to the CPSA is simply intended to ensure that children who are placed in secure accommodation following an order being made under section 44 to that Act will have the same appeal rights as children who are placed in secure accommodation under the provisions of the 2011 Act. As only a small number of orders are actually made under section 44 of the CPSA, it is not considered that there will be significant resource implications, or that the change will be contentious among stakeholders.

Amendment to the Schools (Consultation) (Scotland) Act 2010

40. The amendment to the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) in section 72 derives from the extensive consultation process that the Commission on the Delivery of Rural Education carried out during 2011 and 2012 as part of its remit to examine and report on all aspects of education in rural areas - including to review the application of the 2010 Act; its final report is expected shortly. The Commission was established by the Scottish Government and COSLA and includes representatives from a wide range of interests. It gathered evidence in a number of ways, including a Call for Evidence which invited written responses from organisations and individuals with an interest in rural education, and through a programme of school visits and public meetings in the 12 local authorities with the greatest number of rural
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schools. The amendment to the 2010 Act in section 72 of the Bill anticipates a recommendation of the Commission.

POLICY OBJECTIVES: SPECIFIC PROVISIONS

Sections 1 – 4: The Rights of Children and Young People

41. The UNCRC was adopted by the General Assembly of the United Nations in 1989. It sets out the basic human rights of children, and consists of 54 Articles which encompass civil, political, economic, social and cultural rights. These Articles form a framework against which to evaluate legislation, policy and decision-making structures.

42. The UK Government ratified the Convention on 16 December 1991, with several declarations and reservations, and made its first report to the Committee on the Rights of the Child in January 1995.

43. The Scottish Ministers have made a clear commitment to recognising, respecting and promoting children’s rights in Scotland. The UNCRC already underpins the key legislation governing children’s services, including the Children (Scotland) Act 1995 (“the 1995 Act”). It has shaped many of the policies which affect children’s and young people’s lives, many of which are described in the Scottish Government’s progress report “Do the Right Thing”. The Scottish Government believes that legislative steps are essential in order to ensure that the Convention continues to influence legislation, policy and practice in the future.

Duties on the Scottish Ministers to further, promote and raise awareness of the UNCRC

44. The Bill explicitly recognises the Scottish Ministers’ responsibility to review their approach to implementing the UNCRC and to implement policies which they believe will support the effective realisation of children’s rights where possible. It achieves this by placing a duty on the Scottish Ministers to: keep under consideration whether there are any steps which might secure better effect of the rights set out in the UNCRC; and to take any steps they believe to be appropriate in consequence of that consideration.

45. The Scottish Ministers view the Bill as an important opportunity to make rights more “real” for children and young people in Scotland. This means empowering children themselves to exercise their rights. It also means highlighting the important role that professionals and communities must play in making this happen.

46. In order to achieve this change, there must be a greater understanding of the rights that children and young people have and how important they are for improving their lives. The Bill requires the Scottish Ministers to promote and raise awareness and understanding of the rights of children and young people. The Scottish Ministers are already subject to such a requirement implicitly by way of the UNCRC itself. However, statutory provision will make this explicit.

A reporting duty on the Scottish Ministers and the wider public sector

47. Understanding and knowing more about rights is one important step. It is just as important that the key bodies involved in protecting and promoting rights properly understand
the impact that their work is having. For that reason, the Bill place duties on the Scottish Ministers and public authorities (listed in schedule 1 to the Bill) to report on the measures they have taken which further the rights set out in the UNCRC. It is the responsibility of the Scottish Ministers and those public bodies respectively to identify the measures on which they will report.

48. Reports by the Scottish Ministers and the listed public bodies will be published on a three yearly basis. This timeframe will allow time for sufficient progress to be made between reports whilst also ensuring the availability of relevant material regarding the approaches being taken across Scotland. Reports prepared by the Scottish Ministers must be laid before the Scottish Parliament and published. Where a listed public body is required to contribute to the development of a children’s services integrated plan, the Scottish Ministers would encourage them to use this process as the mechanism for satisfying their reporting duty.

New powers for Scotland’s Commissioner for Children and Young People

49. The role of Scotland’s Commissioner for Children and Young People (“the Commissioner”) in embedding children’s rights is critical. As seen most recently in the “Big Blether”, the Commissioner has a powerful public role in eliciting and representing children’s interests, drawing attention to their rights and pointing out where bodies are failing to implement them fully. The Scottish Ministers believe that the Commissioner’s ability to deliver these aims could be strengthened further; therefore, the Bill will extend the powers of that office in order that the Commissioner may undertake investigations on behalf of individual children. This will be achieved through an amendment to the Commissioner for Children and Young People (Scotland) Act 2003 Act. The change will have the effect of introducing an additional mechanism to support children in seeking redress where they feel their rights, views and interests have not been properly taken into account.

50. Any investigation will focus on whether a service provider has had regard to the rights, views and interests of the child and can involve recommendations being made. Where recommendations are made, the Bill requires a service provider to respond to the Commissioner on the matters raised where such a response is requested. The Commissioner may also choose to lay before the Parliament the report of any investigation.

Benefits

51. The duty on the Scottish Ministers to keep under consideration and take appropriate steps will have the effect of recognising an existing international obligation on the part of the Scottish Ministers to implement the UNCRC. Furthermore, it will allow for increased scrutiny of how that international obligation is being satisfied. Finally, it will require that all future Scottish Governments adopt such an approach to UNCRC implementation, providing a safeguard in domestic law which ensures that the UNCRC will continue to influence decisions on public policy in the future.

52. Much like the duty to take appropriate steps, the duty on the Scottish Ministers to promote awareness and understanding will recognise an existing international obligation. It will allow for increased scrutiny of how that obligation is being taken forward and it will provide a

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24 [http://www.sccyp.org.uk/what-were-doing/a-right-blether/background-evaluation](http://www.sccyp.org.uk/what-were-doing/a-right-blether/background-evaluation)
mechanism in domestic law for ensuring that future Scottish Governments continue to take steps to promote awareness and understanding where appropriate. More generally, improved knowledge of the UNCRC is likely to result in an increase in its influence on the individual decisions being made by practitioners and decision makers working with and for children and young people.

53. The reporting duty on the Scottish Ministers and other public bodies is designed to support individual organisations in measuring the progress they are making with UNCRC implementation and to highlight potential areas where further activity might be necessary. The increased availability of public information at both local and national level will also increase transparency around UNCRC implementation, supporting the Scottish Government, the Parliament and the Commissioner to hold to account those who play a key role in making rights “real” for children in Scotland.

54. The Bill provides a new mechanism for raising and resolving concerns regarding the rights of individual children. The nature of the Commissioner’s work means it is highly likely that any investigation process will be more accessible and child friendly than a judicial process – a point raised consistently by stakeholders. The recommendations coming from investigations may also result in improved practice within organisations, ensuring that children in similar situations in future do not encounter the same issues. Finally, the findings of investigations are likely to inform the range of other research and policy activity which is taken forward by the Commissioner, strengthening its ability to effectively promote children’s rights more generally.

Sections 7 – 41, 73 – 74: Getting It Right for Every Child

55. The Scottish Government believes that consistent and full implementation of the Getting it right for every child (GIRFEC) approach across Scotland will improve the wellbeing and life chances of Scotland’s children and young people. GIRFEC is the Scottish Government’s programme for changing service delivery. It is a person-centred approach that builds on the strengths of children, young people and their families to address concerns and improve wellbeing. It supports a single system of service planning and delivery across children’s services. GIRFEC is rooted in cooperation between services with the child at the centre, encourages streamlining and collaboration, and prevents services working in isolation from each other. The GIRFEC approach ensures that children, young people and their families receive the holistic services they need and provides professionals working in children’s services, and adult services where they are working with parents or carers, with the understanding and the mechanisms they need to deliver these services.

56. The Bill will ensure that:

- A holistic definition of wellbeing underpins the various duties in the Bill and, through specific amendments of other legislation, to existing duties on public bodies when considering the planning and coordination of services in respect of children and young people;
- Public bodies work together to plan and deliver their services so that they advance the wellbeing of children and young people, and that they report on what this means for children and young people in their area through a common set of high level outcomes for them;
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- Children and young people from birth up to 18 (or beyond if they are still at school) have a Named Person and that relevant public bodies cooperate with the Named Person by sharing relevant information with the Named Person where there is a risk of the wellbeing of a child or young person being impaired; and
- A Child’s Plan is produced for every child who needs one, set in a single planning process to help those children and young people who need additional support or where the involvement of a range of services is required.

57. As the Bill contains key provisions to implement GIRFEC consistently across Scotland, the benefits of the provisions are considered collectively.

Definition of wellbeing

58. “Wellbeing” is a term commonly used about an individual’s development. It can mean different things, ranging from mental health to a wider vision of happiness. The term is used in the UNCRC, and by UNICEF when reporting on children’s issues. It captures the idea that a child’s or young person’s condition depends on a range of different factors. Wellbeing reflects the fact that different aspects of a child’s and young person’s quality of life will affect what they can achieve as they grow and develop and how well they are able to address any difficulties they may encounter. The better a child’s wellbeing, the better their outcomes will be. Wellbeing is not just about a child’s and young person’s economic status, health or educational attainment: it is also about how they take responsibility for their actions, their inclusion in the wider community and whether their views and voices are respected and heard.

59. In Scotland, under the GIRFEC approach, wellbeing is defined through eight Wellbeing Indicators, often known by the acronym, “SHANARRI”: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included. These capture the full range of factors that affect a child’s and young person’s life and reflect the Scottish Government’s view that it is essential for services to take a holistic approach.

60. The Bill provides for a number of duties that seek to safeguard, support and promote the wellbeing of children and young people. To ensure that these duties take a holistic view of what a child or young person needs, the Bill provides for a holistic definition of wellbeing by reference to SHANARRI (section 74).

Duties on public bodies to plan and deliver services to improve outcomes for children and young people

61. Children and young people need services that are not simply coordinated, but share this holistic approach towards wellbeing and early intervention. What they deserve are services – across all parts of Scotland – that routinely and consistently consider the spectrum of their needs. It should become the basic design principle in how the public sector supports all children and young people and their families including, where appropriate and necessary, the provision of consistent, high quality and coordinated advice and information.

62. In recent years there has been increasing integration in the way public bodies develop, plan and operate services in support of children and young people. Existing legislation already embeds the importance of joint working and cooperation across specific services. Consequently,
cooperation is linked to the responsibilities of these bodies in delivering those functions rather than considering how all relevant public services can support the whole wellbeing of children and young people in an area. Lack of clarity about who may be asked to do what can compound practical difficulties in cooperation.

63. The Bill sets out duties on local authorities and health boards, with the assistance of other public bodies and relevant third sector organisations, to work together to jointly plan and deliver their services to ensure that they focus on improving children’s and young people's wellbeing in their area. This will be done through the preparation on a three yearly basis of a children’s services plan. The intended effect will be that those bodies responsible for expenditure, planning and delivery of services will work together in considering how to improve the whole wellbeing of all children and young people in their area. It will also mean that the roles of frontline staff, who work most closely with children and young people and their families, will be set in a clear context of improving wellbeing.

**A duty on public bodies to report on outcomes for children and young people**

64. There are currently no requirements for public bodies to report collectively on how the lives of children and young people are improving. Existing legislation only places specific duties on certain individual bodies to report on the contributions of a particular service or specific elements of a child’s or young person’s wellbeing.

65. In order to give the public, and particularly children and young people, a full picture how their wellbeing is being promoted, supported and safeguarded at a local level, the Bill places a duty on local authorities and health boards to report on a one yearly basis on the extent to which they have achieved the aims of the children’s services plan to improve the wellbeing of the children and young people in their local government area. There will be a requirement for other service providers to participate in this reporting process. This will enhance the implementation of GIRFEC and make a direct, accountable link for the public between local services and outcomes for children and young people.

**The Named Person**

66. Where children and young people face issues that are not easily addressed by the practitioners with whom they and their families are in regular contact, it is not always clear who they can turn to for help.

67. The GIRFEC approach aims to have in place a network of support to safeguard, promote and support wellbeing so that children and young people get the right help at the right time. This network will always include family and/or carers, and it will include a role that the Bill puts into legislation: the Named Person.

68. The Named Person will usually be a practitioner from a health board or an education authority, and someone whose job will mean they are already working with the child. They can monitor what children and young people need, within the context of their professional responsibilities, link with the relevant services that can help them, and be a single point of contact for services that children and families can use, if they wish. The Named Person is in a position to intervene early to prevent difficulties escalating. The role offers a way for children
and young people to make sense of a complicated service environment as well as a way to prevent any problems or challenges they are facing in their lives remaining unaddressed due to professional service boundaries. Their job is to understand what children and young people need and quickly make the connection to those services that can help when extra help is needed.

69. Some parts of Scotland already have the Named Person role in place, but this role has not been implemented systematically across the whole country or across all universal services. This has resulted in inconsistent and patchy implementation of the GIRFEC approach, with different experiences for children and families dependant on where they live. Legislating for the role of Named Person will underpin the national approach and help ensure that children and their families can expect services to work with them in a structured and consistent way, regardless of where they live. When information is to be shared within and across boundaries, then it needs to be directed to the right person with the minimum of delay. This will lead to better coordination of existing services, as well as quicker identification of unmet needs.

70. The Bill aims to ensure that every child in Scotland has a Named Person. It will do this by placing duties on different bodies for ensuring the Named Person is in place at different stages in a child’s and young person’s life:

- From birth up to school age or when the child starts school, health boards will be responsible for ensuring all children have a Named Person and for the carrying out of the duties of the Named Person set out in the Bill; and
- From school age up until 18 or beyond if the child is still at school, local authorities or managers and proprietors of independent and grant-aided schools will be responsible for the Named Person and the accompanying duties. A young person who is in secure accommodation is also to have Named Persons provided for them by the managers of the establishment in which they are kept.

71. The Bill makes provision to ensure that certain groups of children and young people, with a less typical pattern of involvement with health or educational services, are provided with a Named Person. These include:

- Children and young persons in gypsy/traveller communities;
- Home educated children;
- Children and young persons who attend school outside Scotland;
- Children and young people with interrupted learning (i.e. those who are unable to maintain a regular pattern of school attendance, or require a period of time out with their normal learning setting, due to a range of factors including, family lifestyle, health issues or risk factors related to their behaviour); and
- Young people who leave school before the age of 18.

72. The Bill also includes provisions to ensure:

- Children, young people and families always know about the role of the Named Person and how to contact them; and
Other relevant public authorities can identify the Named Person for a particular child or young person quickly.

73. In addition to the duty on specific public authorities to put the Named Person in place, the Bill provides for a more wide-ranging duty on all relevant public authorities to cooperate with the Named Person in the conduct of their duties. This will be of particular importance in the following areas:

- **Information sharing.** The role of the Named Person will depend on the successful sharing of information between relevant public authorities where there are concerns about the wellbeing of individual children and young people;

- **Planning.** In developing a Child’s Plan or coordinating support for individual children and young people, the Named Person will require significant cooperation from a range of services; and

- **The role of public authorities.** Concerns about individual children and young people may often not come from children’s services, but from any of the public authorities listed in schedule 2 to the Bill. The duty to cooperate with the Named Person will extend across all services provided by the relevant public bodies, so that they understand their duty to share concerns with the Named Person, and other services as appropriate, about risks to the wellbeing of children and young people.

74. Where a relevant authority (or any person which can provide a Named Person, but is not providing a Named Person for the child or young person who the information is about) has information which it considers may be relevant to the exercise of the Named Person functions, the Bill ensures that the information will be passed to the Named Person unless doing so would prejudice the conduct of any criminal investigation or the prosecution of any offence.

**Alternative Approaches**

75. The proposal to provide a Named Person for every child and young person was strongly supported by stakeholders, both through the public consultation and the engagement undertaken. However, concern was expressed about the existing legal framework for information sharing. This was felt to be confusing and potentially insufficient to enable the role of the Named Person to operate as well as anticipated. In particular, there were concerns regarding the sharing of information about children where consent is not given, both between others and the Named Person, and the Named Person and other professionals. It was felt that this could lead to professionals being unsure as to when information should be shared.

76. Currently, information about a child may be shared where the child is at a significant risk of harm. However, the role of the Named Person is based on the idea that information on less critical concerns about a child’s wellbeing must be shared if a full picture of their wellbeing is to be put together and if action is to be taken to prevent these concerns developing into more serious issues. Without the necessary power to share that kind of information, the Named Person will not be able to act as effectively as is intended. This was a point raised consistently by practitioners and professionals.
77. Specific provisions in the Bill, therefore, set out arrangements on information sharing, to
give professionals and Named Persons the power to share information about those concerns.
Duties will be placed on public bodies working with children and adults to share a concern they
have about the child’s wellbeing with the Named Person, if it is necessary to safeguard, support
and promote the wellbeing of the child, and on the Named Person to share with other relevant
public bodies information appropriate to addressing relevant concerns.

The Child’s Plan

78. Assessment and planning are part of the everyday processes practitioners in health,
education, social work and third sector organisations employ to help children and their families.
Practitioners work with children and families to ensure they are linked to the most appropriate
help to meet their needs. Other services, such as the police, will share relevant information that
they have to assist others working with the child and family in understanding what is going on in
a child’s life in order for appropriate help to be organised.

79. However, where children and young people are involved with different services, they will
be part of different planning systems. This can be bewildering to the children, young people and
their families, particularly when the planning for these services is not joined up and they are
repeatedly asked for the same information by different services. There is a risk that children and
young people will experience a public sector that operates in an uncoordinated way towards
responding to their needs.

80. The Bill seeks to address this by ensuring these processes are coordinated. Section 31 of
the Bill will ensure that a Child’s Plan is created for every child and young person who requires
one. Not every child or young person needs a plan. Most will see their wellbeing needs
addressed through the services provided generally to all children and young people. But where
there is concern that a young person’s wellbeing will be adversely affected without a targeted
intervention then a Child’s Plan will be prepared. The Child’s Plan will set out an overview of
the young person’s needs, the actions which require to be provided to meet the assessed needs,
who will undertake those actions, and the desired outcomes. Whilst there will be a requirement
for the Child’s Plan to be kept under review, it is expected that review and monitoring of the Plan
will be largely driven by the child’s needs. In other words, the timing will be dependent on the
nature and intensity of needs and risks: the more severe, the more frequent the monitoring and
review.

81. These responsibilities are aligned with those for ensuring that the child or young person
has a Named Person. Health boards and local authorities have responsibility for producing a
Child’s Plan within their own agency when necessary, or to transfer responsibility should the
plan need to be coordinated by another agency because the child’s predominant needs no longer
lie within their service. Other public bodies will have a duty to cooperate as required in the
production of a Child’s Plan and its maintenance.

82. In introducing a statutory requirement for a Child’s Plan, the intention is not to alter the
specific statutory duties placed on agencies for particular purposes such as preparing a Co-
ordinated Support Plan or a plan for a child who is looked after. These other plans should be
considered as contributing to a broader framework of support for the wellbeing of the individual
child or young person.
Benefits

83. By setting out a holistic definition of wellbeing, the Bill will create a common understanding of the needs of children or young people between services and professionals, and consequently foster a collective responsibility to ensure these needs are being met. This will further underline the fact that a child’s or young person’s wellbeing needs are better met by services working together rather than individual services working in isolation.

84. When practitioners working with children, young people and their families come across something that lies outside their responsibility and ability, it is not always simple for them to identify who they should speak to, and how the issue should be addressed. Every inquiry into a child’s death in the UK over the last 20 years, including the 2002 “Report of the Child Protection Audit and Review”,\(^{25}\) across Scotland has demonstrated clearly that effective sharing of information within and between agencies is fundamental to improving the protection of children and young people. All have shown that some services had elements of information but none had the full picture. In all cases, early indications of a threat to wellbeing were missed, or not responded to at the earliest opportunity.

85. If a practitioner as Named Person understands their own role and responsibilities and the roles and responsibilities of other practitioners and services, as well as the language of wellbeing, they will be confident in acting early on concerns about a child and responding quickly when a child needs help. Understanding the role and responsibilities of the Named Person will lend confidence to practitioners from other services to share information with the Named Person, when a child needs help to promote their wellbeing and they are unable to provide that help themselves. Practitioners from all services should feel confident that sharing information to secure services in support of improved wellbeing is a positive choice for most families.

86. The role of the Named Person was a key element in the success of the Highland Pathfinder Project, which involved Highland Council and partners across the Highland area supporting the development of the GIRFEC approach.

87. The single planning approach was also introduced in the Highland Pathfinder, with a Child’s Plan that brought together the key information about a child’s or young person’s development, the activities to support that development, and the individuals responsible for delivering those activities. There is strong evidence from an independent evaluation that this approach produces better outcomes, reduces bureaucracy, releases resources to concentrate on the most vulnerable children and increases trust within and across agencies and with children and their families.\(^{26}\) There is also evidence that through the reduction in, amongst other things, duplication, it releases resources that can be diverted to focus on early intervention and prevention. Most importantly, the child and family have a better understanding of what is to be done by whom, when and for what purpose; what the responsibilities are of each of the partners to the plan (including their own); and what the desired outcome is for the child.


\(^{26}\) Scottish Government, Changing Professional Practice and Culture to Get it Right for Every Child (2009)
Based on the independent evaluation of the GIRFEC approach, a number of performance improvements were identified:

- The changes implemented in Highland meant that concerns about children were dealt with differently; for example, greater use of enhanced support through universal services or immediate involvement by social work if their needs were complex. As a result, the numbers of referrals of non-offence concerns about children made by the police to the Children’s Reporter fell by 70%. This trend has been reported in other areas such as Fife and Forth Valley where the GIRFEC approach has also been introduced;
- Highland Council and its partners reported an initial 50% reduction in the number of children and young people placed on the Child Protection Register. This is subject to ongoing review;
- The approach led to a reduction in time needed for meetings, a reduction in social work caseload and a decrease in total administrative activity;
- Social workers, with reduced caseloads were able to work with the most vulnerable children with the most complex needs and were able to spend more face to face time with children and their families;
- There was an improvement in the quality of information that was shared within and across agencies, and the speed with which it was shared meant that children’s needs were identified at an earlier stage and fewer subsequent requests for information;
- Of the 100 children sampled in the evaluation, two thirds showed improved outcomes, even where complex need was evident; and
- There was evidence that families liked the process as they understood better what was happening and the role of everyone involved, including their own.

By creating a single system of service planning and delivery across children’s services, setting out a clear and holistic definition of wellbeing by which a child’s needs should be assessed, and requiring specified public authorities to collectively report on their progress in improving outcomes, the potential benefits of the GIRFEC approach will be available across Scotland.

Sections 42 – 49: Early Learning and Childcare

The Scottish Government is committed to improving and increasing high quality, flexible and integrated early learning and childcare which is accessible and affordable for all, matching the best in Europe. The term “early learning and childcare” emphasises the holistic and seamless provision of nurture, care and development of social, emotional, physical and cognitive skills, abilities and wellbeing. The learning journey begins from birth and is influenced before that. It is essential that the promotion of experiences and interactions, important for the learning and development of wellbeing in young children, is delivered consistently through formal early learning and childcare wherever and however this is delivered; and that patterns of delivery support parents and families with work and economic security.

Currently, parents are juggling a range of childcare arrangements around a default pattern of 2.5 hours pre-school per day for 3 and 4 year olds, embedded within the school education
system of school days and term times; and, childcare is often seen as something less valuable than pre-school experiences. Parents have identified the need for free pre-school education hours to be more flexible and potentially extended for those who need it; and that they require help with costs, longer nursery hours and nursery placements that are more flexible and suit working hours.

92. The Scottish Government wants to increase the universal provision of early learning and childcare to improve outcomes for children, in particular those from disadvantaged backgrounds; to support parents to work, provide economic security for their families and routes out of unemployment and poverty; and to support parents with the costs of early learning and childcare.

*Increasing the amount and flexibility of funded early learning and childcare to meet local need*

93. Through the Bill, the Scottish Government seeks to improve and increase early learning and childcare for all, with an initial focus on the most vulnerable, by:

- Increasing the amount of funded early learning and childcare from 475 hours to a minimum of 600 hours for 3 and 4 year olds;
- Guaranteeing a minimum provision for any 2 year old who is, or has been at any time since turning 2, looked after or subject to a kinship care order;
- Improving the flexibility of provision in response to identified local need and the development of local strategies to reconfigure provision to increase options and choices for parents; and
- Setting the stage for more fundamental consideration of how to provide high quality early learning and childcare that meets the needs of all children, families, parents and employers in the future.

94. Specifically, the Bill places duties on local authorities to:

- Secure a minimum provision of 600 hours per annum early learning and childcare for 3 and 4 year olds and 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order;
- Provide alternative arrangements in relation to the child’s education and care for a 2 year old who is looked after where this better safeguards or promotes the child’s wellbeing; record the outcome of their assessment and identification of alternative arrangements in the Child’s Plan (Part 5 of the Bill); and continue to provide alternative arrangements for a 2 year old who ceases to become looked after, with agreement of a parent;
- Consult with locally representative populations of parents of children under school age every 2 years to identify what patterns of hours best suit parental early learning and childcare needs; and to respond to the views expressed through published local plans to re-configure services over time to meet those needs; and

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- Deliver those hours within broad parameters of no less than 2.5 hours a day; no more than 8 hours a day; and over no less than 38 weeks a year which are not confined to term time; and have regard to the desirability of ensuring that the method of delivery is flexible enough to allow parents an appropriate degree of choice when deciding to access the service.

95. Local authorities will, therefore, be obliged to provide flexible patterns of early learning and childcare within a minimum framework which will meet local need as identified by consultation and published plans or local strategies.

Benefits

96. There is a wide range of evidence indicating the potential benefits of this increase in the amount and quality of funded early learning and childcare:

- While all social groups benefit from high quality pre-school provision, children from the poorest families gain most from universal provision;\(^{29}\)
- The benefits of high quality early learning provision persist at age 14, with particular benefit for children whose families had a poor early years home learning environment;\(^{30}\)
- 15 year olds who attended pre-school education perform better than those who do not, even after accounting for their socio-economic backgrounds;\(^{31}\)
- Among 5 year olds, non-parental childcare in the early years is generally beneficial to cognitive development and a child’s vocabulary;\(^{32}\)
- Long-lasting effects from pre-school education lead to better cognitive scores at age 7 and 16;\(^{33}\)
- The more mental stimulation a child gets around the age of 4, the more developed the parts of their brains dedicated to language and cognition will be in the decades ahead.\(^{34}\)

97. There is also a strong evidence base to link the availability of affordable and accessible childcare to the employment opportunities parents can access.\(^{35}\) Research indicates that of those mothers who chose to stay at home after the birth of their baby, 59% (equating to 1.2 million women across the UK) did so because of the high cost of childcare.\(^{36}\) There are also potential

\(^{29}\) Mostafa, T. and Green, A., Measuring the Impact of Universal Pre-School Education and Care on Literacy Performance Scores. Institute of Education (2012)
\(^{30}\) Sylva, K., Melhuish, E., Sammons, P., Siraj-Blatchford, I., and Taggart. B., Effective Pre-school, Primary and Secondary Education 3-14 Project (EPPSE 3-14) Report from the Key Stage 3 Phase: Influences on Students' Development From Age 11. Institute of Education (2012)
\(^{31}\) OECD (2009)
\(^{36}\) Mintel Research, “1.2 million mums stay at home due to high childcare costs”, Mintel Oxygen Reports (2012)
benefits for parents seeking to balance work and childcare; and for those parents who are most economically vulnerable.

98. Investment in early learning and childcare also has key economic benefits:

- Provision of subsidised early learning and childcare increases female labour force participation and along with supply-side investment in the sector, promotes jobs growth, which in turn supplements income tax receipts for governments and alleviates pensions shortfalls for women. Several studies have estimated a positive net benefit in this regard;\(^\text{37}\)

- Where subsidised childcare removes barriers to employment, it can help lift families out of poverty and help parents gain further skills, enhancing their employability and future earnings, as well as economy-wide productivity;

- Such policies that promote motherhood and work, such as subsidised childcare, have positive and lasting impacts on country fertility rates, which in turn assure the availability of a future workforce and the financing of future services;\(^\text{38}\) and

- By serving a redistributive function, universal early learning and childcare mitigates the impacts of early economic and social disadvantage and promotes longer term economic benefits which are shared by all of society. The returns to such investments among vulnerable groups are well documented and stem from children’s improved cognitive and non-cognitive skills, which in turn feed through to improved educational, social and employment outcomes, reduced dependence on the state and reduced criminal behaviour.\(^\text{39}\)

99. By increasing the provision of early learning and childcare and developing provision better suited to families’ needs, the Bill aims to make a significant impact on these critical years of a child’s development; to remove barriers to work; and to improve economic outcomes for families and wider economic growth.

**Alternative Approaches**

100. The current system is embedded within the school education system, with less recognition of the wider needs of working parents, and of young children who receive other formal early learning and childcare. The consultation included a proposal to achieve more flexibility of provision in response to parent need by requiring local authorities to consult on and offer the same set of minimum options or patterns of provision. It was felt that this would guarantee consistency across different local authority areas.

101. While there was wide support for increased hours and flexibility, the consultation process identified concerns around how this flexibility would be achieved and delivered. The main arguments made against the proposal were that an overarching plan would: prevent flexibility in response to the local needs of parents; fail to take into account the local circumstances of each local authority (including issues around rurality); and stifle local creativity. One recurring

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\(^{38}\) OECD, *Doing Better for Families* (2011)

This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

suggestion from respondents both in favour of and against the proposal for a common set of options was that local authorities should work within a minimum framework, but thereafter have scope to tailor provision to meet local needs.

102. Taking these views into account, the original proposal has been amended to allow for local approaches to consulting, planning and managing local delivery of flexible options and choices for parents over time. This will ensure that provision is better suited to families’ needs while providing flexibility in response to local variation.

Sections 50 – 68: Getting It Right for Looked After Children

103. Scotland’s care system provides different options for children and young people in difficult family circumstances, but the options, and the system as a whole, needs to change if it is to do justice to a child’s and young person’s overall wellbeing. The Scottish Government believes Scotland needs a care system that provides effective, rapid support for children and young people, centred on their long-term as well as their short-term needs and focused on securing healthy, caring permanence. The Bill, therefore, provides for the following reforms:

• Creating a statutory regime of corporate parenting;
• Extending the age to which care leavers can receive support from their local authority from 21 up to and including 25;
• Supporting the parenting role of kinship carers through new legal entitlements and ensuring families in the early stages of distress can receive appropriate counselling; and
• Placing Scotland’s Adoption Register on a statutory footing and making its use by adoption agencies compulsory.

Defining corporate parenting and the public bodies to which this applies

104. “Corporate parenting” means the formal and local partnerships needed between all local authority departments and services, and associated agencies, which are responsible for working together to meet the needs of looked after children and young people and care-leavers. Guidance on corporate parenting is set out in “These Are Our Bairns: A Guide for Community Planning Partnerships on Being a Good Corporate Parent”.

105. Despite efforts to increase awareness of the concept among care sector leaders and practitioners, corporate parenting is implemented inconsistently across Scotland. There is a lack of shared understanding about the definition of corporate parenting, a lack of clarity about how the concept translates to professionals working within, for example health, housing and education, and a lack of clarity around powers to ensure partners are working together.

106. Section 52 of the Bill sets out a definition of corporate parenting responsibilities (and accompanying duties to plan and report in relation to those responsibilities) that captures a move away from “corporate” thinking to acting more like a “parent” would. Schedule 3 lists the

Scottish Ministers, local authorities and a range of other public bodies as being “corporate parents”. The Bill places a duty on corporate parents to collaborate with each other when exercising their corporate parenting responsibilities in relation to looked after children and young people and care leavers. The policy objective is to ensure that all looked after children and young people receive high quality corporate parenting and access to the same level of services and opportunities as a child would have if they were not looked after.

Benefits

107. There is a perception that local authorities and bodies responsible for the provision of services to looked after children and young people and care leavers view their responsibilities more as “corporate” responsibilities rather than as “parenting”. This was highlighted through the experiences of looked after children and young people described in “These Are Our Bairns”. As already noted, children and young people who need to come into care are more likely to have poorer outcomes than their peers. By setting out the definition of corporate parenting and to which bodies it applies, the Bill will ensure that these children and young people experience services that consistently are positive, outcomes-focused and aspirational.

Extending the age to which care leavers can receive support from their local authority

108. Local authorities currently have a statutory duty to prepare young people for when they will stop being looked after (known as “throughcare”) and to provide advice, guidance and assistance for young people who have ceased to be looked after (or “aftercare”) over school age up to 18, and a power to do so up to 21.

109. The current cut-off age of 21 for leaving care support is out of step with ordinary families, who provide support to their children throughout their early adult lives. It is clear that in typical families, support is provided beyond the age of 21: data from the Labour Force Survey for the UK, for example, suggests that at age 22 half of young men (53%) and 43% of young women live with their parents and by age 25 just over a third of young men (36%) and nearly a fifth of young women (18%) still live with their parents. The transition to independence is one where young care leavers are particularly vulnerable and councils, as their corporate parents, need to ensure that the right supports are in place.

110. Section 60 of the Bill amends the 1995 Act to provide young care leavers with the opportunity to continue to receive local authority support up to and including the age of 25. Care leavers will have a right to request advice, guidance and assistance from a local authority, and the local authority will then be under a duty to conduct an assessment of the needs of that care leaver. If the care leaver is found to have “eligible needs”, then the local authority must provide support to meet those needs. “Eligible needs” will be specified in an order to be made by Scottish Ministers, however, it is anticipated that those needs will be those essential to daily living. This change will not affect a young person’s right to opt out of receiving support if they do not want it.

41 Office for National Statistics, Young Adults Living with Parents in the UK 2011 (2012)
Benefits

111. Young people who have been looked after may face particular challenges compared with other young people in terms of employment, education, training and housing. In 2010/11, on leaving school, 64% of looked after children were in a positive destination (education, employment or training) compared to 89% of all school leavers. After six months, for looked after children the figure had fallen by 9 points to 55%, compared to just a 2 point drop for all care leavers to 87%.\footnote{Scottish Government, \textit{Educational Outcomes for Scotland’s Looked After Children 2010/11} (2012)} Looking at all looked after children eligible for aftercare services in 2011 (aged 15-21) just over a third of those whose economic activity status was known were in education, employment or training.\footnote{Scottish Government \textit{Children’s Social Work Statistics Scotland, No 1: 2012 Edition} (2012)} In addition, care leavers are disproportionately represented in statistics on socially excluded youth, even though they account for less than 1% of the population.\footnote{The Institute for Research and Innovation in Social Services, \textit{Redesigning Support for Care Leavers} (2012)}

112. This is also borne out in qualitative evidence from care leavers themselves about the challenges they face, including more emotional challenges, greater financial worries, a lack of family and friendship networks, greater challenges around employment and further education and the challenges arising from a very wide range of, often unstable, accommodation types where young people might live when they leave care.\footnote{For example, The Debate Project, \textit{“Life after Care” Conference 2009: Young People’s Views on Leaving Care} (2009)} The transition to independence is one where young people are particularly vulnerable and councils, as their corporate parents, need to ensure that the right supports are in place. Through the provision of support to an age that is reflective of ordinary families, care leavers will be assisted in making a successful transition to independent living when they are ready to do so.

Alternative Approaches

113. The consultation paper proposed an amendment of the 1995 Act to extend the right of young people leaving care to request help from a local authority, and the opportunity to provide financial assistance to young people leaving care, up to the age of 25. There was strong support for this proposal. However, a number of stakeholders noted that a right to request support would not oblige the local authority to actually provide it, and, therefore, may not be very beneficial to the young person.

114. Thirty-four respondents from eight different sectors (including 23 third sector respondents) stated that although young people had a right to request assistance, unless local authorities had a “duty” and not merely a “power” to provide assistance this may not come to fruition.

115. In direct response to the views put forward by stakeholders, the original proposal has been amended in the Bill from a right of care leavers to request support to a duty on local authority to assess the needs of a young person who requests support and, should their needs be eligible, to provide it.
Supporting kinship carers and families in the early stages of distress

116. As of 31 July 2011 there were 3,917 children living in formal kinship care - a rise of 87% since 2007. A widespread criticism by kinship carers of existing residence and parental responsibilities and right orders has been that they offer no certainty of support. This can act as a disincentive to families from moving proactively to prevent a child from becoming looked after, or from cooperating fully in enabling the removal of such status.

117. Through the kinship care order, the Bill makes provision for additional support to be provided to kinship carers, in recognition of their parenting role, the bond between the child and carer and the different expectations in relation to, and circumstances experienced by, kinship carers, as opposed to other types of carers. The rationale for legislative change is to encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting and whose long term wellbeing is best served by being cared for in such a way.

118. Under the Bill, a kinship care order is any order made under section 11(1) of the 1995 Act that grants parental rights and responsibilities to a qualifying person or a residence order which has the effect that the child lives with (or is to live with) a qualifying person. By placing a duty on local authorities, the Bill ensures that those who apply for, consider applying for, have obtained, or are subject to a kinship care order will be entitled to assistance if the relevant eligibility test is met. This will also apply to eligible children who have reached the age of 16, but who were subject to a kinship care order immediately prior to turning this age. The type of assistance will be prescribed by the Scottish Ministers in secondary legislation.

119. Through the Bill, all 2 year olds who are or have been subject to a kinship care order at any time since turning 2 will be eligible for early learning and childcare as set out in Part 6. In addition, secondary legislation will make provision for supporting those kinship carers who wish to apply for a kinship care order and those who require advice or assistance from their local authority in relation to that application.

120. The Scottish Ministers intend to provide for specific support through secondary legislation in the form of a package of entitlements. In most cases, determining the risk to a child of becoming looked after will happen through a form of parenting capacity assessment by the local authority. The package of entitlements is focused on overcoming key issues that left unresolved can disrupt care placements and increase such a risk. To achieve this policy aim the final package of entitlements might need to be adjusted following further discussion with local authorities and kinship carers.

121. For certain types of support (e.g. financial support) local authorities may be able to take account of the means of the carer in determining what support is needed. This will be important in cases where it is agreed that a carer should continue to receive allowances when a child in their care ceases to be looked after. For example, a carer would seek financial support from the UK Benefits system in the normal way before any agreed top-up allowance by the local authority. (The Bill does not alter carers’ existing entitlements to allowances – these are the subject of a separate review by the Scottish Government.)

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122. The right to transitional support attempts to address a potential concern among those kinship carers who can provide long term care for a child currently looked after, that they will still be able to access support currently provided by the authority if a child leaves care onto a kinship care order. Secondary legislation may specify that an authority must explain to a carer what support will be provided before they commit to an order, and for how long. As the intention of the kinship care order is to promote strong families, the assumption would be that support would last no longer than three years in most circumstances.

123. The Bill also introduces a duty on local authorities to ensure that families in the early stages of distress who seek help are provided with appropriate forms of counselling (for example, family group conferencing or support with substance misuse). This will be available where a child’s wellbeing would be at risk of being impaired - in particular where the child is at risk of becoming looked after - and is intended to act as an early and effective support mechanism; and, where appropriate, it can be used to promote the role of a kinship carer. An important feature of this entitlement to counselling is that families must be willing to engage with their issues and motivated to take control over the challenges they face.

124. Discretion will be afforded through secondary legislation to local authorities to determine the best form of therapeutic intervention for the circumstances of the family. Local authorities’ duties in this regard could be met through “passporting” to a pre-existing service (including those funded by other bodies).

125. By offering clearer support to eligible kinship carers, the Bill will encourage kinship carers to apply for parental responsibilities and rights where the child would otherwise be at risk of becoming unnecessarily looked after or remaining in care. It will, therefore, help to slow the rapid growth in children becoming formally looked after children, and contribute meaningfully to a more focused, therapeutic and cost effective care system.

Benefits

126. Kinship carers are fulfilling the role of a parent; providing children with warm and loving relationships and enabling them to remain part of a family unit. Kinship care, therefore, provides continuity for children not only in their family unit but also in their communities, allows for the preservation of links to their parents and minimises disruption in their lives and reinforces children’s sense of identity and self-esteem.

127. Emerging evidence also indicates that in many cases children and young people who have been looked after in a kinship care arrangement do better at school and have better life outcomes than their peers in more formal care arrangements. By supporting kinship carers and ensuring alternatives to formal care, children and young people will be more likely to avoid the loss of continuity and associated poorer outcomes that come with the impermanent early care that can occur by being formally looked after.

Alternative Approaches.

128. To achieve the aims of the Bill in relation to kinship care, the consultation paper originally proposed creating a new court order aimed at kinship carers which, if granted, would have transferred parental responsibilities and rights to them. It would also have acted as a
vehicle to provide additional support to kinship carers in order to build the family's capacity to resolve the issues that could lead to a child coming into formal care. It would have offered a right to assessment of need of the child and a duty on the local authority to provide for that need.

129. While generally agreeing with the aims of the policy intention, many stakeholders questioned the specific means of delivering it. In particular, local authorities and some kinship carers suggested that: 1) in order to deliver this policy intention, existing legislation should be built upon to minimise any complexity or potential duplication; and 2) much more specificity was required about any additional support kinship carers would receive, in order to make the provisions genuinely effective.

130. The original proposal has, therefore, been altered in the Bill so that the kinship care order will build on existing legislation and provide specific new legal entitlements to additional support that should help wider families tackle issues that, if left unchecked, could lead to a child becoming looked after.

**Putting Scotland’s National Adoption Register on a statutory footing**

131. The care system should meet the needs of all children who require it, and the earlier a stable placement is found for a looked after child, the better their life chances. Increasing the proportion of children leaving care to stable and secure placements will lead to a decrease in the number of children entering care each year.

132. There is clear evidence that timescales for making decisions about a looked after child’s permanent future home can take too long. A report by the Scottish Children’s Reporter Administration showed that it takes on average over two years to secure an adoption from first involvement with state services, and in extreme cases, has taken up to 10 years. The report, demonstrated that some of the processes and decisions requiring to be made could be completed more efficiently if clearer support and guidance was provided, and the systems in place focused on the needs of the child and not the needs of the system. It also found that children in care were experiencing more placements as a result of poor care planning.

133. Scotland's National Adoption Register (the Register) is a non-statutory service which was set up in 2011 and is designed to increase the numbers of adoptions and to speed up the adoption process for children, once adoption is identified as the best way to secure a permanent home. The British Association of Adoption and Fostering in Scotland runs and maintains the service. The Register is already used by a number of adoption agencies and is used to match children with families on a national basis (rather than the current, more localised arrangements) and its aim is to increase, diversify and speed up adoptions for children for whom adoption is the best option for a permanent home.

134. The Scottish Government is committed to increasing the number of adoptions from care and keeping placements to a minimum. The Bill will put the Register on a statutory footing and will require all adoption agencies to provide the Scottish Ministers (who will have legal responsibility for establishing and maintaining the register) with information in relation to

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children who ought to be placed for adoption and prospective approved adoptive parents, as prescribed by the Scottish Ministers in regulations. It also establishes an offence of disclosing any information derived from the register otherwise than in accordance with regulations.

Benefits

135. As well as increasing the number of adoptions, the change will lift expectations in the looked after children sector for children who could be adopted but traditionally are viewed as “hard to place”; in particular black and ethnic minority children, children with disabilities, older children and sibling groups. It will also: significantly improve the evidence base for policy making; enable the sector to target prospective adopters effectively; and ensure that all adoption agencies are required to provide information to the Scottish Ministers for the register on an ongoing basis.

136. Early evidence from the Register indicates that some families who have been involved in one of the Register’s services, Adoption Exchange Days, have been willing to “stretch” their capacity approval after being exposed to children available for adoption. Many adopters reported that they would have found it beneficial to attend an event prior to approval as they would have been more realistic regarding the age range and level of need of the children they could consider. This is a key part of the behavioural change sought by adopters given the current mismatch between approved adopters and available children. In 2010/11, 294 children were adopted from care in Scotland compared with 199 the year before. The total number of matches achieved as a result of work by the Register to date is 31, a third of which happened after the recent Adoption Exchange Days in September 2012. It is envisaged that having the Adoption Register in statute will result in more children and prospective adoptive parents being referred to the Register (as all adoption agencies will be required to provide the relevant information to the Register) and subsequently more prospective adoptive parents and adoptive children attending such days.

Section 69 – 70: Children’s Hearings

137. The Children’s Hearings System is Scotland’s unique, integrated approach to child care and justice that has operated successfully since 1971. The 2011 Act and wider reforms are an improvement programme built on the current system’s strengths. Further improvements to the system will be achieved through the Bill by amendments to paragraphs 12, 13 and 14 of schedule 1 to the 2011 Act.

Relieving the National Convener of the obligation to obtain consent from each authority before establishing ASTs

138. By amending the 2011 Act, the Bill will relieve the National Convener of Children’s Hearings Scotland of the obligation to obtain the consent of each constituent authority before establishing or making changes to the future configuration of ASTs. The current obligation will be replaced by a requirement to consult with each constituent local authority. The initial process of the establishment of ASTs in support of the timely implementation of the 2011 Act has proven inconsistent across the country and delayed in certain areas, mainly as a consequence of the

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varied ways in which local authorities have interacted with the process. This has proved problematic for the National Convener/CHS with the result being uncertainty and hiatus for children’s panel and CPAC volunteers and designated AST members throughout the initial establishment phase. Therefore, replacing the requirement for consent with a requirement to consult should result in a simpler, more streamlined process which is quicker, more efficient and nationally consistent.

139. The process change will have no bearing on the initial AST establishment activity, but will bring certainty to the review of ASTs and partnership agreements. The first fundamental review will likely take place after the first phase of operation of these non-statutory agreements (4 years from implementation in June 2013). The provisions enable the National Convener to set in hand a sensible planned review process at that point, and also to adapt quickly to any emerging resource or relationship issues between multi-authority ASTs or within single-authority ASTs in the intervening period. The National Convener can then bring forward proposals to secure the necessary support for AST volunteers in a transparent and public manner. The stability of support arrangements is central to the National Convener delivering their mission of consistent excellence in administrative support and, through that, in children’s panel practice. The National Convener’s principal focus is on the needs of Children’s Panel and AST volunteers. The Bill seeks to ensure consistent and stable oversight and supervision of children’s panel volunteers, thereby contributing to a more independent Tribunal, with consistent support nationally designed but locally delivered.

Requiring local authorities to provide ASTs with administrative support

140. A further amendment to schedule 1 to the 2011 Act will require local authorities to provide ASTs (whose function is to select members of the children’s hearings) with such administrative support as the National Convener considers appropriate. Administrative support will include staff, property or other services which the National Convener considers are required to facilitate the carrying out by an AST of its functions. At present authorities may choose how much or how little support to provide to ASTs (if any) via non-statutory partnership agreements, as they are under no statutory duty to provide it. The amendment will, therefore, impose such a duty on local authorities and will ensure that the provision of support will be more standardised across the country.

Reversing unintended repeals by the Children’s Hearings (Scotland) Act 2011

141. The Bill also corrects an unintended repeal of section 44 of the 1995 Act. Schedule 6 to the 2011 Act repeals section 44 of the 1995 Act in its entirety. Section 44 is the provision which sets out the prohibition of publication of proceedings at children’s hearings. Whilst there is a broadly equivalent replacement provision made in section 182 (publishing restrictions) of the 2011 Act, it does not cover exclusion order hearings which continue under section 76 of the 1995 Act. Under schedule 4 to the Bill, the repeal of section 44 is reversed and the section is then amended so that going forward it will apply only to exclusion order proceedings which continue under section 76 of the 1995 Act.

Benefits

142. Bringing greater stability and certainty in relation to the establishment of ASTs and requiring local authorities to provide them with administrative support will improve their ability
to carry out their functions of selecting children’s hearing members equipped to make effective, evidence based decisions for children and young people. This should result in a more nationally consistent process which will as stated above, assist the efficiency and operation of the children’s hearing system overall.

Section 71: Amendments to the Criminal Procedure (Scotland) Act 1995

*A right to appeal a local authority decision to place a child in secure accommodation*

143. In terms of the 2011 Act, a secure accommodation authorisation (SAA) enables a child to be placed and kept in secure accommodation within a specified residential establishment. An SAA is made by a children’s hearing and may only be made in conjunction with a relevant order, such as a compulsory supervision order. Section 162 of the 2011 Act provides a right of appeal to the sheriff against a decision made by the chief social work officer of a local authority to either implement the SAA, not to implement the SAA, or to remove the child from secure accommodation.

144. Section 44 of the CPSA provides that a sheriff may grant an order detaining a child in residential accommodation by the appropriate local authority in such place as the local authority may, from time to time consider appropriate, if a child appears before the sheriff in summary proceedings and pleads guilty to, or is found guilty of an offence to which the section applies. Section 44(5) provides that the Scottish Ministers may by regulation make such provision as they consider necessary as regards the detention of such a child in secure accommodation. Therefore, section 44(5) envisages that a local authority may decide that the child should be placed in secure accommodation. In terms of the Secure Accommodation (Scotland) Regulations 1996, a local authority may place the child in secure only if specific criteria are met. Although there is a review process provided for in these regulations in relation to this decision, there is no appeal route back to the sheriff. The amendment to the CPSA in the Bill will provide such an appeal route.

Benefits

145. The provision in the Bill will have a positive impact in that it will ensure that children who are placed in secure accommodation under section 44 of the CPSA will be subject to the same protections as children who are placed in secure accommodation under the provisions of the 2011 Act when it comes into operation in June 2013.

Section 72: Amendment to the Schools (Consultation) (Scotland) Act 2010

*Increasing the time available for the Scottish Ministers to issue a call-in notice*

146. The amendment to the 2010 Act set out in section 72 makes a minor change to the administrative process provided for by that Act when a school closure proposal is made. The amendment will increase the time available for the Scottish Ministers to issue a call-in notice from six to eight weeks. Because Scottish Ministers are under a duty to take account of any relevant representations made to them within the first three weeks of this period, the effect is to increase the time available to the Scottish Ministers to consider these representations from three to five weeks.
Benefits

147. The small extension to the period for the Scottish Ministers to consider whether or not to call-in a closure proposal will be of benefit to communities and education authorities by allowing more thorough consideration of representations thus reducing the likelihood of decisions being called-in unnecessarily. This change is not expected to have any financial impact.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal Opportunities

148. An Equality Impact Assessment (EQIA) has been carried out and will be published on the Scottish Government website. The Scottish Government considered the potential impacts, both positive and negative, across the protected characteristics required for EQIAs.

149. To develop and inform the EQIA, on 3 September 2012 the Scottish Government held a workshop to discuss the impact of the Bill on equalities issues. Stakeholders from organisations including Stonewall Scotland, Scottish Refugee Council, CEMVO Scotland, Roshni and Inclusion Scotland were in attendance. Separate meetings were held with two faith groups (CARE for Scotland and the Humanist Society Scotland) and with LGBT Youth Scotland. Views were also obtained from the Director of the Scottish Travellers Education Programme.

150. The EQIA concluded that the Bill's provisions are neither directly or indirectly discriminatory on the basis of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment. It also found that there are a number of potential benefits to the proposals and positive impacts on individual groups that share a protected characteristic, and these include:

- The promotion of children’s wellbeing, and how actions and activities may improve their wellbeing should better engage all parents;
- Young children, including 2 year olds who are looked after or subject to a kinship care order, or have been at any time since turning 2, will benefit from additional hours of early learning and childcare;
- The increased flexibility of how early learning and childcare is provided will bring particular benefits for women as the primary carers, specifically in terms of cost and accessibility of childcare which can often act as a barrier to return to work;
- The proposals will be the key to furthering and promoting knowledge of rights for children and young people under the age of 18;
- The proposals will help diversify the age of children being adopted through putting Scotland’s National Adoption Register on a statutory footing;
- There will be promotion of equality for young people leaving care by extending the age of support from 21 to 25 years of age; and
- The GIRFEC approach should be a positive tool in achieving equality of treatment, opportunity and, crucially, of outcomes.
151. The Scottish Government does not propose making significant changes to the policy as a result of the assessment, because the evidence and data gathered indicate that the Bill will have an overall positive impact on all children and young people and on equality issues.

152. Gaps were identified in the current evidence base around the effects of the Bill on groups that share certain characteristics. In particular, our research and consultation identified gaps in our knowledge around gender reassignment and the experiences of transgender children and parents. The consultation process reinforced the need to make appropriate arrangements for the Named Person for gypsy/traveller children. Work with equality organisations also highlighted a perceived lack of a “rights” culture in specific minority ethnic communities. These issues will be taken into account as we continue to create diverse ways of raising awareness of children’s rights among different communities.

**Human Rights**

153. The amendments in the Bill to the 2011 Act and to the CPSA potentially raise issues with regard to Article 6 of the European Convention on Human Rights. However, it is considered that in the former case, the amendments have no impact on the children’s hearings themselves and in the latter, the amendment makes secure accommodation authorisations more Article 6 compliant. Therefore, neither breach Article 6.

154. The information sharing provisions in relation to the Named Person and Scotland’s Adoption Register potentially engage Article 8, but it is considered that they are compliant as they have a legitimate aim, they are proportionate and have appropriate safeguards in place. The widening of access to early learning and childcare for certain 2 year olds potentially engages Article 8, Article 2 of the First Protocol and Article 14, but again the measures in the Bill are a proportionate means of achieving the legitimate aim of improving outcomes for the most vulnerable or disadvantaged children and ensuring those children are properly looked after. Therefore, the Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

155. Consideration has been given as to whether the Bill’s provisions on data sharing raise any issues in relation to the European Convention on Human Rights, and particularly in relation to the Article 8 right to respect for private and family life. To the extent that the policy will engage this right, the Scottish Government is satisfied that it pursues a legitimate aim which is necessary in a democratic society and that the means chosen to achieve the aim are proportionate.

156. The Scottish Government has also considered if privacy implications would arise as a result of the Bill, specifically in relation to data-sharing, and to that end has completed a Privacy Impact Assessment (PIA). The PIA is a living document that will be revisited and reviewed throughout the life of the Bill. There is currently no evidence that any aspect of the Bill should be reconsidered as a result of privacy concerns.

157. It is anticipated that any potential risks can be satisfactorily addressed through adherence to best practice advice from appropriate bodies such as the Information Commissioner and through statutory guidance.
158. As part of the assessment process a number of workshops were held with representative groups of children and young people. One group consisting of current and former looked after children voiced particularly strong support for the proposed improvements on information sharing, the role of the Named Person and a single planning system. These children and young people were able to relate the Bill’s provisions to aspects to their own life journey, and how they could have benefited had these provisions been in place.

Island Communities

159. The Bill will apply to all communities across Scotland, including island communities. Comhairle nan Eilean Siar and Shetland Island Council both submitted formal consultation responses, and Scottish Government officials held positive discussions with officials from Comhairle nan Eilean Siar via videoconference. No differential impact on island communities was identified.

Local Government

160. The Bill will directly impact on local authorities in discharging their duties, and this effect is already set out in this Policy Memorandum and in the other Accompanying Documents to the Bill.

161. Thirty local authorities submitted formal responses to the consultation on the Bill proposals. Significant numbers of local government professionals attended the national engagement events, with 23% (the highest) identified as being from a social work background, and 16% from an education background.

162. Engagement has been undertaken with COSLA, the Association of Directors of Social Work (ADSW) and the Association of Directors of Education (ADES), both on a Ministerial, official and informal level. These organisations and specific local authorities have been extensively engaged during development of the provisions of the Bill and the production of the Financial Memorandum.

Sustainable Development and Environmental Issues

163. It is considered that the Bill is likely to have minimal effect in relation to the environment and, as such, is exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005. A pre-screening report has been completed. This confirmed that the Bill will have minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment did not need to be undertaken. The pre-screening report is published on the Scottish Government website under case number PRE\00468.
This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders in relation to the Children and Young People (Scotland) Bill. It describes the purpose of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill Provisions

3. It is the aspiration of the Scottish Government for Scotland to be the best place to grow up in. The objective of the Children and Young People (Scotland) Bill is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.

- Reflect in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services by placing duties on the Scottish Ministers and the wider public sector, and strengthening the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people;

- Improve the way services work to support children, young people and families by: ensuring there is a single planning approach for children who need additional support from services; creating a single point of contact around every child or young person; ensuring coordinated planning and delivery of services with a focus on outcomes, and providing a holistic and shared understanding of a child’s or young person’s wellbeing;

- Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds, and 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order;

- Ensure better permanence planning for looked after children by: extending corporate parenting across the public sector; extending support to young people leaving care for longer (up to and including the age of 25); supporting families and the parenting role of
This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

kinship carers through new legal entitlements; and putting Scotland’s National Adoption Register on a statutory footing; and

- Strengthen existing legislation that affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical changes in the areas of children’s hearings support arrangements and school closures.

Rationale for subordinate legislation

4. The Bill contains a number of delegated powers which are explained later in this document. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has had regard to the need to:

- Strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances with the benefit of experience, without the need for primary legislation;

- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;

- Make proper use of valuable Parliamentary time;

- Allow detailed administrative arrangements to be kept up to date with the basic structures and principles set out in the primary legislation; and

- Consider the likely frequency of amendment.

Delegated Powers

Part 1 - The Rights of Children

Section 3 – Authorities to which section 2 applies
Subsection (2) – Power to modify schedule 1
Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

5. Section 3 provides that the Scottish Ministers may, by order, modify schedule 1 which lists the public authorities that section 2 applies to. This could be by adding a person or description of persons, removing an entry or modifying an entry listed in it.

Reason for taking this power
6. Section 2 provides that a public authority subject to the duty must publish a report every 3 years setting out what it has done in that period to give better or further effect within its area of responsibility to the UNCRC requirements. Schedule 1 lists the public authorities to which this provision applies. The reason for taking this power is so that the Scottish Ministers can amend the list in schedule 1 which will be useful if any new public authority is created in the future to whom the duty should apply. It will also be useful if any of the public authorities in schedule 1 change their name or cease to exist.

7. The power to amend the schedule by order will give Scottish Ministers flexibility to specify additional persons or amend the list to reflect changed circumstances in the nature or status of specified persons without the need for further primary legislation.

Choice of procedure

8. The order is subject to affirmative procedure (by virtue of section 77(2)) because it is considered that a more detailed level of Parliamentary scrutiny would be appropriate in order to determine whether the changes are required and given that the order may be used to amend primary legislation.

Section 4—Interpretation of Part 1

Subsection (4) – Power to modify subsection (1) definitions.
Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

9. Section 4(4) provides that the Scottish Ministers may, by order, modify subsection (1) as they consider appropriate to take account of any future optional protocol of the UNCRC which the United Kingdom chooses to ratify or any amendment of a document mentioned in the subsection at that time.

Reason for taking this power

10. The reason for including this power is to ensure that, once in force, the Act can be amended without further primary legislation to recognise any future changes to the content of the UNCRC or the establishment of any additional optional protocols to the UNCRC which the United Kingdom chooses to ratify. The United Kingdom has currently ratified two of the three optional protocols to the Convention.

Choice of procedure

11. The order is subject to negative procedure. The aim of this provision is to keep the definition of “the rights of children” and “the UNCRC requirements” up to date to take account of changes in the UNCRC and optional protocols to the UNCRC ratified by the United Kingdom over time.
This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

It is anticipated that changes that are affected by this power are unlikely to be controversial and consequently it should not be necessary to require a debate on each occasion that it is used. Clearly, however, the opportunity to debate any Order made under this power in the event that its use is controversial is retained using the negative procedure.

**Part 3 – Children’s Services Planning**

**Section 7 – Introductory**

Subsection (3) – Power to specify services which are considered to be included within or excluded from the definition of “children’s service” or “related service” and matters in relation to services which are considered to be included within or excluded from those services

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order made by Scottish statutory instrument
- **Parliamentary Procedure:** Negative

**Provision**

12. Section 7(3) provides that the Scottish Ministers may, by order, specify the services that are to be considered to be included within or excluded from the definition of “children’s service” or “related service”, and matters in relation to services which are to be considered to be included or excluded from those services.

**Reason for taking this power**

13. It would be useful to provide the Scottish Ministers with the flexibility to change the list in section 7(3) to account for any future changes to children’s services or related services.

**Choice of procedure**

14. The order is subject to negative procedure which is considered appropriate. It is considered that a more detailed level of Parliamentary scrutiny is not required to make these changes. Before making any changes, the Scottish Ministers will have to consult with health boards, local authorities and, where the service concerned is provided by one of the other service providers, that service provider.

**Subsection (5) – Power to modify the definition of “other service provider” in section 7(1)**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order made by Scottish statutory instrument
- **Parliamentary Procedure:** Affirmative

**Provision**
15. Section 7(5) provides that the Scottish Ministers may, by order, modify the definition of “other service provider” in section 7(1) by adding a person or description of persons, removing an entry or varying an entry listed in it.

Reason for taking this power

16. It would be useful to provide the Scottish Ministers with the flexibility to change the list in section 7(1) to account for any future changes to children’s or related services.

Choice of procedure

17. The order is subject to affirmative procedure (by virtue of section 77(2)) which is considered appropriate as it will provide a more detailed level of Parliamentary scrutiny given that the order may modify primary legislation.

Section 8 – Requirement to prepare children’s services plan

Subsection (1) – Power to determine commencement of the 3 year period for the purposes of section 8

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

18. This provides that the Scottish Ministers may specify, by order, when the first 3 year period which is to be covered by a children’s services plan is to begin.

Reason for taking this power

19. The reason for taking this power is to enable the Scottish Ministers, in collaboration with stakeholders, to determine when would be the most suitable date for commencement of the 3 year period that the children’s services plan is to cover.

Choice of procedure

20. This is subject to negative procedure which is considered appropriate. It is considered that a more detailed level of Parliamentary scrutiny is not required for a provision of this nature.
This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

21. The Scottish Ministers may, by order, prescribe outcomes in relation to the wellbeing of children in the area that can be used to measure the extent to which the provision of children’s services and related services in the area have contributed to an improvement in the wellbeing of children in the area.

Reason for taking this power

22. This is to allow the reports to reflect any changes in children’s services, related services or the measures of wellbeing.

Choice of procedure

23. This order is subject to negative procedure which is considered appropriate as it is not considered that a more detailed level of Parliamentary scrutiny will be required to make these changes.

Section 17 –Children’s services planning: default powers of Scottish Ministers

Subsection (6)– Power for the Scottish Ministers to constitute a joint board of the local authority and health board where they consider that a direction under subsection (2) has been insufficient or would be insufficient

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

24. This provides the Scottish Ministers with an order making power to constitute a joint board of the local authority and health board for the area where they consider a direction under 17(2) has been or would be insufficient. The joint board would then carry out the function.

Reason for taking this power

25. The direction making power under section 17 provides that if the Scottish Ministers consider the local authority and health board in a local government area are not carrying out a function conferred on them by this Part or in carrying out a function are not complying with section 15(1), then the Scottish Ministers can direct that the function is carried out in a particular way or that it is to be carried out by other persons as the Scottish Ministers consider appropriate. Where the Scottish Ministers consider that such a direction has been or would be insufficient in the particular circumstances, they may, following consultation, constitute a joint board of the local authority and each relevant health board to exercise the function.
Choice of procedure

26. The order is subject to affirmative procedure (by virtue of section 77(2)) which allows for a more detailed level of Parliamentary scrutiny which is considered appropriate for a provision of this nature.

Part 4 – Provision of Named Persons

Section 19 – Named person service

Subsection (3)(b) – Power to specify training, qualifications, experience or position requirements

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

27. This subsection provides that the Scottish Ministers may, by order, make requirements as to training, qualifications, experience or position of named persons.

Reason for taking this power

28. It would be useful to provide the Scottish Ministers with the power to be able to require named persons to have specific skills and training to enable them to carry out the role and to provide for the position within an organisation that named persons are required to hold. Training requirements or provision may change in the future; therefore it would be useful for the Scottish Ministers to be able to specify these requirements through an order, to provide them with flexibility to adapt to future needs.

Choice of procedure

29. The order is subject to negative procedure which is considered appropriate given the nature of the provision and the fact that its use will not involve the amendment of primary legislation.

Section 30– Interpretation of Part 4

Subsection (2) – Power to modify schedule 2

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision
30. This provision provides that the Scottish Ministers may, by order, modify schedule 2 to add a person or description of persons, remove an entry in it or vary an entry in it.

Reason for taking this power

31. The reason for taking this power is so that the services providers in schedule 2 can be modified in the future should new relevant authorities be created, or current service provider’s names changed.

Choice of procedure

32. The order is subject to affirmative procedure (by virtue of section 77(2)) which allows for a more detailed level of Parliamentary scrutiny which is considered appropriate given that the order may be used to modify primary legislation.

Part 5 – Child’s Plan

Section 32 – Content of a child’s plan

Subsection (2) – Power to make provision as to information that is or is not to be contained in, and the form of, the child’s plan

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<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>Order made by Scottish statutory instrument</td>
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<tr>
<td>Parliamentary Procedure:</td>
<td>Negative</td>
</tr>
</tbody>
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Provision

33. Section 32(2) provides that the Scottish Ministers may, by order, make provision as to other information which is or is not to be contained in a child’s plan and the form of the plan.

Reason for taking this power

34. The provision of services and needs of children and young people may change in the future, therefore it is important that the Scottish Ministers have the ability and flexibility to amend what should be included in the plan, and the form in which the information should be set out.

Choice of procedure

35. The order is subject to negative procedure which is considered appropriate as it is not considered that a more detailed level of Parliamentary scrutiny will be required to make these changes.

Section 33 – Preparation of a child’s plan
Subsection (8) – Power to make further provision about the preparation of the child’s plan

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

36. This subsection provides that the Scottish Ministers may, by order, make further provision as to the preparation of child’s plan.

Reason for taking this power

37. The reason for taking this power is to enable the Scottish Ministers to have the flexibility to make further provision about the details of how a child’s plan is to be prepared to reflect any future changes in children’s services. This is important, for example, if the responsibilities of health boards or local authorities change.

Choice of procedure

38. The order is subject to negative procedure which is considered appropriate as it is not considered that a more detailed level of Parliamentary scrutiny will be required to make these changes.

Section 35– Responsible authority: special cases

Subsection (5) – Power to modify section 35 so as to make further or different provision as to circumstances in which section 34(1) does not apply in relation to a child

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

39. Section 35(5) provides that the Scottish Ministers may, by order, modify this section so as to make further or different provision as to when the responsible authority is a health board or a local authority or a directing authority, depending on the circumstances.

Reason for taking this power

40. It would be useful to provide the Scottish Ministers with the flexibility to require, in particular circumstances, a different body to be the responsible authority instead of the default position that will apply to children generally (see section 34(1)). This will help ensure that particular groups of children that may come to light in the future will have their wellbeing looked after by the most appropriate body.
Choice of procedure

41. The order is to be subject to affirmative procedure (by virtue of section 77(2)) as it will allow a more detailed level of Parliamentary scrutiny which is considered appropriate given that the order may modify primary legislation.

Section 37 – Child’s plan: management

Subsection (5) – Power to make provision about the management of the child’s plan

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

42. Section 37(5) provides that the Scottish Ministers may, by order, make provision about the management of child’s plans, including provision about: when and how a child’s plan is to be reviewed in accordance with subsection (1); who is to be the managing authority of a child’s plan; when and to whom management of a child’s plan is to or may transfer under subsection (4)(b); when and how a new targeted intervention may be included in a child’s plan; and the keeping, disclosure and destruction of child’s plans.

Reason for taking this power

43. The provision of services and also the needs of children and young people may change in the future, therefore it is important that the Scottish Ministers have the ability and flexibility to amend how the plan should be managed in future to take account of any such changes.

Choice of procedure

44. The order is subject to negative procedure which is considered appropriate as it is not considered that a more detailed level of Parliamentary scrutiny will be required to make these changes.

Part 6 – Early Learning and Childcare

Section 43– Duty to secure provision of early learning and childcare

Subsection (2)(c)(ii) – Power to specify additional categories of eligible pre-school child

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative
Provision

45. Section 43(2) sets out the children who are to be eligible for the mandatory amount of early learning and childcare in accordance with subsection (1); such children are referred to as “eligible pre-school children” and under the Bill they are those children who are under school age and who have not commenced primary school and either fall within subsection (3) (that is they are 2 or over and are, or have been at any time since their 2nd birthday, looked after or subject to a kinship care order) or are within such age range, or are of such description, as the Scottish Ministers may by order specify (subsection (2)(c)(ii)).

46. Section 43(2)(c)(ii) enables the Scottish Ministers to specify by order additional categories of “eligible pre-school child” in relation to whom early learning and childcare will be made by reference to the description of such children and their ages. It is likely that the power will be used to specify that 3 and 4 year olds will be eligible for early learning and childcare from the first term after their 3rd birthday in a similar way in which the current law does so by virtue of the order made under section 1(1A) of the Education (Scotland) Act 1980 (the 1980 Act) (which the Bill amends).

47. Subsection (4) provides that an order under section 43(2)(c)(ii) may subdelegate the function of determining eligibility criteria to an education authority so for example the order might provide that a child is an “eligible pre-school child” only if the education authority is satisfied as to any matter relating to the child which is specified in the order.

Reason for taking this power

48. The current policy is part of a longer term ambition to increase and improve early learning and childcare for all children. The power will allow the Scottish Ministers to specify additional categories of “eligible pre-school child” in the future, which provides maximum flexibility and enables work towards this longer term ambition.

Choice of Procedure

49. The order is subject to negative procedure given that the power is simply being used to further specify entitlement to early learning and childcare as opposed to changing the manner in which early learning and childcare is provided, and therefore it is considered that negative procedure provides an appropriate level of scrutiny. Further, this level of scrutiny is consistent with the predecessor to this power, namely that contained in section 1(1A) and(1B) of the 1980 Act which was also subject to negative procedure (by virtue of section 1(4A) of the 1980 Act). The negative procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.
Section 44 – Mandatory amount of early learning and childcare

Subsection(2) – Power to modify the mandatory amount of early learning and childcare

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

50. Section 44(1) sets out the “mandatory amount” of early learning and childcare for the purposes of section 43(1) which means that an education authority must in pursuance of its duty under section 1(1) of the 1980 Act secure that 600 hours in each year (or a pro rata amount for part of a year) is made available for each “eligible pre-school child”. Section 44(2) provides that the Scottish Ministers may, by order, modify subsection (1) so as to alter the amount of early learning and childcare which is to be made available in pursuance of section 43(1). The order may make different provision in relation to different types of eligible pre-school children so for example the power to modify the mandatory amount could be used to provide differing amounts for different types of children (e.g. children of different ages). Subsection (3) is without prejudice to the power in section 77(1)(a).

Reason for taking this power

51. The reason for taking this power is to ensure, should future requirements change, that the Scottish Ministers have the ability to amend the amount of hours of early learning and childcare which education authorities are obliged to provide. For example, the order could be used to increase the amount of hours. As noted above, the current policy is part of a longer term ambition to increase and improve early learning and childcare for all children, and that could potentially mean there will be a need to change the mandatory amount, and therefore the flexibility to do so is required.

Choice of procedure

52. The order is subject to affirmative procedure (by virtue of section 77(2)) as it will provide a more detailed level of Parliamentary scrutiny which is considered appropriate given that the order may be used to modify primary legislation.

Section 46 – Duty to consult and plan on delivery of early learning and childcare

Subsection (2) – Power to modify the regularity within which an education authority must consult and plan

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

53. Section 46(1)(a) requires an education authority to consult in its area about how it should make early learning and childcare available. Subsection (1)(b) requires the authority, after having had regard to views expressed in that consultation, to prepare and publish a plan for how it intends to make early learning and childcare available. The education authority is required to consult and plan at least once every 2 years. Section 46(2) provides that the Scottish Ministers may, by order, modify subsection (1) so as to vary the regularity within which an education authority must consult and plan in pursuance of this subsection.

Reason for taking this power

54. The reason for taking this power is to provide the Scottish Ministers with a degree of flexibility over the frequency of the requirement to consult and plan. 2 years is necessary in the first instance to achieve momentum on the re-configuration of services required in response to initial consultations and to meet the current policy of improving and increasing flexibility of provision. The regularity with which authorities are required to consult and plan could be reduced if successive consultations were producing similar findings, or if a wide range of flexible provision had been achieved. Conversely, the regularity could be increased if there was, for example, a major policy change emerging in response to local consultations.

Choice of procedure

55. The order is subject to negative procedure which is considered appropriate. The power is not being used to change any of the requirements to consult and plan but only the regularity with which that consultation and planning is to take place and therefore it is considered that the level of Parliamentary scrutiny afforded by negative procedure is sufficient. The negative procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

Section 47 – Method of delivery of early learning and childcare

Subsection (2) – Power to modify the method of delivering early learning and childcare

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

56. Section 47(1) sets out the minimum framework within which early learning and childcare must be delivered by education authorities. An education authority must ensure that it makes early learning and childcare available by way of sessions which are between 2.5 hours and 8 hours and which are provided during at least 38 weeks of every calendar year. Section 47(2)
provides that the Scottish Ministers may, by order, modify subsection (1) so as to vary the
method of delivering early learning and childcare (i.e. the minimum framework).

Reason for taking this power

57. The reason for taking this power is to provide the Scottish Ministers with a degree of
flexibility for amending this section as a result of changes in the future. For example, it may be
that in the light of local consultation exercises evidence emerges that indicates parents’ early
learning and childcare needs are changing and that other or additional delivery mechanisms
should be considered and consulted upon. Therefore, this power will ensure that the minimum
framework is capable of amendment in response to future changes in policy or parental early
learning and childcare needs.

Choice of procedure

58. The order is subject to affirmative procedure (by virtue of section 77(2)) as it will provide a
more detailed level of Parliamentary scrutiny which is considered appropriate given that the
order may be used to modify primary legislation.

Part 7 – Corporate Parenting

Section 50– Corporate parents

Subsection (2) – Power to modify schedule 3

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

59. Section 50(2) provides that the Scottish Ministers may modify, by order, schedule 3 which
lists the persons or description of persons who are corporate parents for the purposes of Part 6.

Reason for taking this power

60. It would be useful to allow the Scottish Ministers to change the list in schedule 3 to specify
additional persons or change the list to reflect changed circumstances in the nature or status of
specified persons. This would be helpful, for example, if any new public body is created which
should be considered a corporate parent, or if any of the public bodies listed in the schedule
change their name or cease to exist.

Choice of procedure

61. The order is subject to affirmative procedure (by virtue of section 77(2)) as it is a power to
amend primary legislation and so it is considered that a more detailed level of Parliamentary
scrutiny would be appropriate in order to determine whether the changes are required.
Part 8 – Aftercare

Section 60 – Provision of aftercare to young people

Subsection (2)(e) – Power to specify what “eligible needs” are for the purposes of new section 29(5A)(a) of the Children (Scotland) Act 1995 (“the 1995 Act”).

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

 Provision

62. Section 60(2) makes various amendments to section 29 of the 1995 Act, with the effect that a person between the ages of 19 and 26 who was formerly looked after by a local authority may apply to the authority to request that they provide them with advice, guidance and assistance. A local authority is under a duty to assess that person’s needs under section 29(5). After carrying out the assessment, new subsection (5A)(a) provides that the local authority must, if satisfied that the person has eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs.

63. Section 60(2)(e) inserts new subsections (8) and (9) into section 29 to give the Scottish Ministers a power to specify by order what “eligible needs” are for the purposes of new subsection (5A)(a).

Reason for taking this power

64. It is anticipated that the definition of what are to be considered “eligible needs” for the duty in new subsection (5A)(a) will need to be changed from time to time as circumstances change. For example, as current and future UK welfare reforms affecting this group come into effect, changes may be required to deal with any unintended consequences. It is therefore preferable to take a power to specify “eligible needs” in secondary legislation with the flexibility to amend them as circumstances change rather than requiring further primary legislation to make the necessary adjustments.

Choice of procedure

65. The order is subject to affirmative procedure (by virtue of section 29(9) of the 1995 Act (as inserted by section 60(2)(e) of the Bill)) which will allow a more detailed level of Parliamentary scrutiny which is considered appropriate for a provision of this nature.

Consequential amendment to regulation-making power in Regulation of Care (Scotland) Act 2001
66. In consequence of the provision made at section 60, paragraph 6 of schedule 4 makes a minor modification to an existing regulation-making power contained in section 73(2)(a) of the Regulation of Care (Scotland) Act 2001 (asp 8). This power allows the Scottish Ministers, in regulations, to specify the manner in which assistance may be provided under subsections (1) and (2) of section 29 of the 1995 Act. The power at section 73(2)(a) of the 2001 Act is amended so that it is exercisable in relation to the duties in new subsections (5A) and (5B) of section 29 of the 1995 Act.

67. It is thought necessary to adjust this power so that it may be used in the future to specify the manner in which assistance may be given under the new duties in section 29 inserted by section 60. This is an existing regulation-making power subject to negative procedure and, as these amendments do not alter the nature of that power, this is still considered to be an appropriate level of scrutiny for these regulations.

**Part 9 – Counselling Services**

**Section 61– Provision of counselling services to parents and others**

**Subsection (1) – Power to specify the description of counselling services a local authority must secure for persons residing in a local authority area**

Power conferred on: The Scottish Ministers  
Power exercisable by: Order made by Scottish statutory instrument  
Parliamentary Procedure: Negative

**Provision**

68. This subsection provides that a local authority must make arrangements to secure that counselling services of such description as the Scottish Ministers may, by order, specify are made available for persons residing in its area who fall within subsection (2).

**Reason for taking this power**

69. This power allows the Scottish Ministers to specify by order different descriptions of counselling service and gives the Scottish Ministers the flexibility to add to the number or amend the type of counselling services that might be required in different circumstances, or which is required to assist with different issues.

**Choice of procedure**

70. This power is subject to negative procedure which is considered appropriate. It is considered that it is not necessary to require the Parliament to carry out a more detailed level of scrutiny and to agree to the specification by order of every different type of counselling service that might be considered appropriate in relation to different types of family circumstance or issues.
Subsection (3) – Power to specify the definition of “eligible child”

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

71. This subsection provides that the Scottish Ministers may, by order, specify the description of “eligible child” for the purposes of subsection (2) (the parents or persons with parental rights and responsibilities in relation to such a child, will be eligible for counselling services).

Reason for taking this power

72. The reason for taking this power is to ensure that counselling services are always targeted at the appropriate families i.e. those in greatest need. It is highly desirable to retain flexibility to amend any eligibility test to ensure it achieves its aim of focusing support on the intended recipients and in order to avoid unintended consequences.

Choice of procedure

73. This power is subject to negative procedure which is considered an appropriate level of Parliamentary scrutiny because it is likely that the “eligibility” test will require to be amended from time to time to ensure that the counselling services are always targeted at the appropriate families i.e. those in greatest need.

Section 62 – Counselling services: further provision

Subsection (1) – Power to make provision about counselling services

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

74. This subsection provides that the Scottish Ministers may, by order, make provision about when or how counselling services specified in an order under section 61(1) are to be provided; when or how a local authority is to consider whether a child is an eligible child for the purpose of section 61(2); when or how a local authority is to review whether a child continues to be an eligible child for the purposes of 61(2); and such other matters about the provision of counselling services specified in an order under section 61(1) as the Scottish Ministers consider appropriate.

Reason for taking this power

75. The reason for taking this power is that it is considered more appropriate for the detail as to when or how counselling services are to be provided by a local authority, as to how a local
authority is to decide whether a child is “eligible” for the counselling services and as to such other practical matters about the provision of the services as the Scottish Ministers may consider appropriate, to be specified in secondary legislation. It also provides the Scottish Ministers with the flexibility to amend the detail to meet the changing needs of families and as the process develops.

Choice of procedure

76. This power is subject to negative procedure which is considered appropriate. It is considered that it is not necessary to provide the Parliament with a more detailed level of scrutiny in relation to how a local authority decides when and how to provide the counselling services etc. to families given it is likely that the “eligibility” test in particular will be subject to change to reflect the changing needs of families, and therefore the provision as to how a local authority assesses eligibility will likely require to be amended also.

Part 10 – Support for Kinship Care

Section 64 – Assistance in relation to kinship care orders

Subsection (2) – Power to specify kinship care assistance which local authorities must make arrangements to provide for those persons residing in their areas

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

77. This order making power allows the Scottish Ministers to specify the description of kinship care assistance that local authorities must make arrangements to secure, for persons that fall within subsection (3).

Reasons for taking this power

78. It would be useful to provide the Scottish Ministers with the flexibility to amend the elements of support available to eligible kinship carers to reflect changing circumstances or the future identification of further support needs.

Choice of Procedure

79. This order making power is subject to negative procedure which is considered appropriate. It is not considered necessary to provide the Parliament with a more detailed level of parliamentary scrutiny to have to consider each time the description of assistance that local authorities are required to provide is added to or amended.
This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Subsection (4) – Power to specify the description of child who is considered an “eligible child”

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

80. This subsection provides that the Scottish Ministers may, by order, specify the description of child that is an “eligible child” for the purposes of subsection (3).

Reasons for taking this power

81. It would be helpful to provide the Scottish Ministers with the flexibility to amend the eligibility criteria in relation to the receipt of kinship care assistance, in the future, should that be deemed necessary. It is reasonably likely some minor changes will be required to ensure the assistance targets the appropriate groups of children.

Choice of procedure

82. The order is subject to negative procedure which is considered appropriate. It is considered that it would not be necessary or appropriate for the Parliament to have a more detailed level of parliamentary scrutiny to consider each use of the order making power, when it is simply being used to add to or amend one or more of the eligibility criteria.

Section 65 – Orders which are kinship care orders

Subsection (2) – Power to specify a further category of “qualifying person” who has obtained an order under the Children (Scotland) Act 1995, a “kinship care order”.

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

83. This subsection provides that the Scottish Ministers may, by order, specify such other relationship to or connection with a child, a person has which makes them a qualifying person for the purposes of subsection (1) (a person who has one of the orders under subsection (1), to be known as a “kinship care order” for the purposes of this provision, which entitles them to assistance from the local authority).

84. It would be helpful to provide the Scottish Ministers with the flexibility to specify an additional category of person who could be considered a qualified person, for the purposes of subsection (1), which therefore entitles them to support from the local authority, in order to adapt to the changing family environment.
Reasons for taking this power

85. It would be helpful to provide the Scottish Ministers with the flexibility to specify an additional category of person who could be considered a qualified person, for the purposes of subsection (1), which therefore entitles them to support from the local authority, in order to adapt to the changing family environment.

Choice of procedure

86. The order is subject to negative procedure which is considered appropriate. It is considered that it would not be necessary or appropriate for the Parliament to have a more detailed level of parliamentary scrutiny to consider each use of the order making power, when it is simply being used to add a new category of person who could be entitled to support from the local authority.

Section 66 – Kinship care assistance: further provision

Subsection (3) – Power to make provision specifying when or how assistance is to be provided by a local authority

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Negative

Provision

87. This subsection provides that the Scottish Ministers may, by order make provision about when or how kinship care assistance may be provided; when or how a local authority is to consider whether a child is eligible; when or how a local authority is to review whether a child continues to be an eligible child for the purposes of section 64(3); and such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.

88. It is considered that it is appropriate for the detail as to when or how assistance to kinship carers is to be provided by a local authority, as to how a local authority is to decide whether a child is “eligible” for the assistance; and as to such other practical matters about the provision of the assistance as the Scottish Ministers may consider appropriate, to be specified in secondary legislation.

It provides the Scottish Ministers with the flexibility to amend the detail to meet the changing needs of families and as the process develops.

Choice of procedure

89. This power is subject to negative procedure which is considered appropriate. It is not considered necessary for the Parliament to be provided with a more detailed level of scrutiny
given it is likely that the “eligibility” test in particular will be subject to change to reflect the changing needs of families, and therefore provision about how the local authority considers whether a child is eligible is likely to require to be amended also.

**Part 11 – Adoption Register**

**Section 68 – Scotland’s Adoption Register**

Section 68 inserts section 13A into the Adoption and Children (Scotland) Act 2007 - Section 13A(2) – Power to prescribe information to be included in the Register

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by Scottish statutory instrument  
**Parliamentary Procedure:** Affirmative

**Provision**

90. Section 68 inserts section 13A into the Adoption and Children (Scotland) Act 2007 (the 2007 Act). Section 13A(2) provides that the Scottish Ministers may, by regulations, prescribe information which is, or types of information which are, to be included in the Register. This may include information relating to: children who adoption agencies consider ought to be placed for adoption; persons considered by adoption agencies as suitable to have a child placed with them for adoption; matters relating to such children or persons which arise after information about them is included in the Register; or children or prospective adopters outwith Scotland. The Scottish Ministers may also, by regulation, provide for how information is to be retained in the Register, and make such further provision in relation to the Register as they consider appropriate.

**Reason for taking this power**

91. This is a power to prescribe information to be included in the Register, how this information is to be retained in the Register, and such other further provision in relation to the Register as the Scottish Ministers consider appropriate. Given this is likely to be a lengthy list of very detailed information, and given the information which is prescribed is likely to be amended from time to time as the adoption process changes, it is more appropriate for it to be in regulations than the Bill.

**Choice of Procedure**

92. The order is subject to affirmative procedure by virtue of section 117(5)(ia) of the 2007 Act (as inserted by paragraph 9(5) of schedule 4 to the Bill). It may be that the use of the Register will change in future and may alter and extend beyond containing information in relation to children and adopters, as currently proposed. Affirmative procedure allows for a more detailed level of Parliamentary scrutiny, which it is considered is appropriate if it is proposed to change the original use and purpose of the Register.
Section 68 inserts section 13E into the Adoption and Children (Scotland) Act 2007 - Section 13E(1) – Power to authorise a registration organisation to act as agent for payment or receipt of sums payable

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

93. Section 68 inserts section 13E into the Adoption and Children (Scotland) Act 2007 (the 2007 Act). Section 13E(1) provides that the Scottish Ministers may, by regulations, authorise a registration organisation to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

Reason for taking this power

94. The Scottish Ministers may or may not choose to exercise this power. However, if they do, they may wish to amend the registration organisation which they authorise to act on their behalf. As such, a regulation making power is required.

Choice of procedure

95. The order is subject to affirmative procedure (by virtue of section 117(5)(ib) of the 2007 Act (as inserted by paragraph 9(5) of schedule 4 to the Bill). This will afford the Parliament a more detailed level of scrutiny which is considered appropriate given it involves the Scottish Ministers delegating their powers in relation to the payment or receipt of sums payable by adoption agencies to other adoption agencies, and potentially in relation to the payment or receipt of such sums through the organisation.

Part 12 – Other Reforms
Section 71 – Appeal against detention of child in secure accommodation

Section 71 inserts section 44A into the Criminal Procedure (Scotland) Act 1995 - Section 44A(3) – Power to make further provision about appeals

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

96. Section 71 inserts section 44A into the Criminal Procedure (Scotland) Act 1995. Section 44A(1) provides that a child, or relevant person in relation to the child, may appeal to the sheriff against a decision by a local authority to detain the child in secure accommodation in pursuance
of an order made under section 44. Section 44A(3) provides that the Scottish Ministers may, by regulations, make further provision about appeals under section 44A(1). Subsection (4) provides that regulations under subsection (3) may in particular specify the period within which an appeal may be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

Reasons for taking this power

97. It is considered that it is more appropriate to provide for the administrative, evidential and procedural aspects in relation to appeals under section 44A(1) in regulations as opposed to the Bill, given the level of detail likely to be required. It is also considered that it would be useful to have the flexibility to change the administrative aspects of the appeal process if the need arises.

Choice of procedure

98. The regulations are subject to affirmative procedure (by virtue of subsection (5) of section 44A). It is considered appropriate in relation to this regulation making power to allow the Parliament a more detailed level of scrutiny given the potential effect of an unsuccessful appeal on the child and on his or her family.

Part 13 – General

Section 74 – Assessment of wellbeing

Subsection (6) – Power to modify the list of wellbeing indicators

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary Procedure: Affirmative

Provision

99. Section 74(6) provides that the Scottish Ministers may, by order, modify the list of wellbeing indicators set out in subsection (2).

Reason for taking this power

100. The reason for taking this power is to allow the Scottish Ministers a degree of flexibility should there be new evidence in the future on childhood development that may require the wellbeing indicators to be amended.

Choice of procedure

101. The order is subject to affirmative procedure (by virtue of section 77(2)) which will allow for a more detailed level of Parliamentary scrutiny which is considered appropriate given that the order may be used to modify primary legislation.
This document relates to the Children and Young People (Scotland) Bill (SP Bill 27) as introduced in the Scottish Parliament on 17 April 2013

Section 78 – Ancillary provision

Subsection (1)(a) – Power to make ancillary provision as is appropriate for the purposes of, in connection with, or for giving full effect to any provision of the Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Generally negative but affirmative procedure if making textual changes to an Act.

Provision

102. Section 77(1)(a) of the Bill confers on the Scottish Ministers a power to make, by order, such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, the Bill.

Reason for taking this power

103. As with any new body of law, this Bill may give rise to a need for a range of ancillary provisions. For example, consequential provision may be required in order to make necessary changes to related legislation – a number of consequential amendments are identified in the Bill as introduced (see schedule 4) – but this power would allow the Scottish Ministers to make further consequential changes as may be required. We consider the order making power to be necessary to allow for this flexibility. We consider that the power to make such provision should extend to the modification of enactments.

Without the power to make supplementary, incidental and consequential provision, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill.

104. That would not be an efficient use of resources by the Parliament or the Scottish Government. The power whilst potentially wide, is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate to do so, for the purposes of, or in connection with, or for the purposes of giving full effect to any provision made by, or by virtue of, the Bill.

Choice of procedure

105. Section 77(3) of the Bill provides that any order made under section 78 will be subject to affirmative procedure if it contains provisions which makes textual changes to an Act. Otherwise, it will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation.
Subsection (1)(b) – Power to make transitional, transitory or saving provision as the Scottish Ministers consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: Negative

Provision

106. Section 77(1)(b) of the Bill provides power for the Scottish Ministers to make, by order, such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of the Bill.

Reason for taking this power

107. The Scottish Government considers the order making power to be necessary to allow for flexibility as provisions within the Bill are brought into force, to make required transitional, transitory or savings arrangements. Without the power, it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with a matter which could be dealt with through this power. That would not be an efficient use of resources by the Parliament or the Scottish Government. The power, whilst potentially wide is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, or in connection with, the coming into force of any provision of the Bill.

Choice of procedure

108. An order made under section 77(1)(b) of the Bill will be subject to negative procedure which is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny of a provision of this nature.

Section 79 – Commencement

Subsection (2) – Power to commence provisions of the Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Parliamentary procedure: No procedure

Provision

109. Section 79(2) provides that the Scottish Ministers may, by order, appoint days on which the provisions in the Bill may come into force. Part 12 of the Bill (apart from sections 74, 75 and 76) comes into force on the day after Royal Assent. Subsection (3) provides that an order under section 78 may include transitional, transitory or saving provision.
Reason for taking this power

110. The power will enable the Scottish Ministers to bring the provisions of the Bill into force.

Choice of procedure

111. Section 77(5) has the effect that any such commencement order will not be subject to Parliamentary procedure. This is typical of commencement powers.
Education and Culture Committee

11th Report, 2013 (Session 4)

Stage 1 Report on the Children and Young People (Scotland) Bill

Published by the Scottish Parliament on 14 November 2013
## Remit and membership

### Report

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Remit:

The remit of the Committee is to consider and report on further and higher education, lifelong learning, schools, pre-school care, skills and other matters falling within the responsibility of the Cabinet Secretary for Education and Lifelong Learning and matters relating to culture and the arts falling within the responsibility of the Cabinet Secretary for Culture and External Affairs.

Membership:

George Adam
Clare Adamson
Jayne Baxter (Member since 3 September 2013)
Colin Beattie
Neil Bibby (Deputy Convener)
Neil Findlay (Member from 22 December 2011 to 3 September 2013)
Stewart Maxwell (Convener)
Joan McAlpine
Liam McArthur
Liz Smith

Committee Clerking Team:

Clerk to the Committee
David Cullum

Senior Assistant Clerk
Terry Shevlin

Assistant Clerk
Lewis McNaughton

Committee Assistant
Fiona Sinclair
Education and Culture Committee

11th Report, 2013 (Session 4)

Stage 1 Report on the Children and Young People (Scotland) Bill

The Committee reports to the Parliament as follows—

INTRODUCTION

1. The Children and Young People (Scotland) Bill was introduced in the Scottish Parliament on 17 April 2013. It covers a wide range of provisions, across 13 Parts, each of which seeks to improve support services for children and young people in Scotland.

2. We were the lead committee in scrutinising the Bill at Stage 1. To support us, we received reports from the Local Government and Regeneration Committee, the Finance Committee and the Delegated Powers and Law Reform Committee.

Our approach to scrutiny

3. We took a considerable amount of evidence at Stage 1. We received over 180 written submissions and took oral evidence in relation to the key provisions in the Bill from 25 June to 8 October 2013.

4. Whilst we took oral evidence from many interest groups, it was not possible to hear from everyone. As ever, we have taken account of all the written submissions provided. The input of all those organisations and individuals who submitted their views to us has been essential and we thank everyone who contributed.

5. Throughout Stage 1 we raised a number of specific concerns about the Bill directly with the Scottish Government seeking additional information and clarification in various areas and have placed all of that in the public domain. We

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1 General information relating to our scrutiny of the Bill is available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/63073.aspx
2 The written submissions received are available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx
3 The Official Reports of each of the evidence sessions together with associated papers are available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29802.aspx
would like to record our thanks to the Scottish Government for responding to our concerns within the necessarily short timescales.

**The general principles of the Bill**

6. At Stage 1 our task is to report on the general principles of the Bill and this report discusses each Part of the Bill in the context of the evidence we received.

7. We support the principles underlying the Bill. Our view reflects the many positive responses we received about the Bill in general. However, we have some concerns about aspects of the proposed legislation and highlight areas that could be improved or where further clarification is needed ahead of Stage 2.

8. Our scrutiny of the Bill follows on from our recent inquiries into the educational attainment of looked after children and decision making on whether to take children into care. Those inquiries have informed our scrutiny and we hope our suggestions in this report contribute to the central aim of improving outcomes for children and young people.

9. At the outset, we highlight a number of topics representing overarching challenges in the context of the whole Bill. This provides context for the more detailed analysis that follows in the body of our report, and aims to assist other Members’ consideration of the Bill.

**Early intervention and prevention**

10. As the Bill’s Policy Memorandum describes, the Bill “sets out fundamental reforms to children’s services in line with the report of the Christie Commission, which highlighted the importance of early years, prevention and personalised service delivery”.

11. Whilst we support this early intervention and prevention approach, we acknowledge the challenges – as indicated in the Financial Memorandum – associated with estimating how the preventative approach will result in future savings.

12. In its report on the Financial Memorandum, the Finance Committee highlighted a number of concerns in relation to the robustness of some of the estimates and assumptions upon which the Financial Memorandum is predicated.

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4 Liz Smith MSP dissented from this paragraph insofar as it includes Part 4, Provision of Named Persons.


7 Children and Young People (Scotland) Bill. Policy Memorandum (SP Bill 27 – PM, Session 4 (2013)), paragraph 6. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62233.aspx


9 Financial Memorandum, paragraph 4.
We invited the Scottish Government to respond to the Finance Committee’s findings and specific issues are discussed throughout our report.

**Reporting and planning duties**

13. The Bill includes a wide range of provisions many of which have overlapping requirements to publish plans, frameworks and reports. There are also varying timescales attached to these duties.

14. For example, the Bill requires publication of children’s services plans, early learning plans and corporate parenting plans. These involve different stakeholder groups and have different timescales for publication.\(^9\)

15. Throughout the report, we ask whether a more cohesive approach could be taken in relation to some of the reporting and planning duties in the Bill. We also consider whether there is scope to integrate some duties within the overall legislative framework of which the Bill is a part.

**Permeation of children’s rights throughout the Bill**

16. The Scottish Government originally intended to introduce two separate children’s bills, one exclusively on children’s rights\(^10\) and the other focusing on children’s services.

17. To inform its legislative intentions, the Scottish Government launched a consultation on the children’s rights proposals in 2011\(^11\). A further consultation followed in 2012\(^12\), which included children’s rights proposals along with wider policy issues on children’s services.

18. We received evidence saying that there needed to be better links between the children’s rights part of this Bill and the other Parts.

**Scottish Government consultation and the accompanying documents**

19. We note the extensive consultation that the Scottish Government has undertaken in relation to the Bill and particularly its efforts to obtain the views of children and young people. We welcome the Government’s continuing engagement with key stakeholders in relation to the development of regulations and guidance under the Bill.

20. This is a wide ranging Bill, which brings together various policies. The accompanying documents have assisted us in our scrutiny of the Bill and we refer to this throughout our report. Whilst we understand the Policy Memorandum is not intended to include the details of the Bill, we observe that some important policy

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\(^9\) Children’s services plans must be produced jointly by local authorities and health boards every three years, with annual reports (sections 8 and 13). Education authorities must produce early learning and childcare plans every two years (section 46). A wide range of organisations are to be required to publish corporate parenting plans in such a manner as those organisations consider appropriate (section 55).

\(^10\) Rights of Children and Young People Bill


information appears only in the Financial Memorandum. However, taken together, we consider the Policy Memorandum and accompanying documents contain adequate detail.

DISCUSSION AND FINDINGS

21. The sections of our report consider the main provisions of the Bill, largely in the order that they appear in the Bill.13

Part 1 – Rights of children

22. The Scottish Government’s policy intention is to ensure that the United Nations Convention on the Rights of the Child (UNCRC) “continues to influence legislation, policy and practice in the near future”14. Although the key principles and many of the individual rights are already reflected in domestic legislation15, as the Convention was ratified by the UK in 1991, the Scottish Government believes that further legislative steps are “essential”.

23. To achieve this, the Bill places duties on the Scottish Ministers to “keep under consideration” their approach to implementing the UNCRC; to promote public awareness and understanding of the rights of children; and to report (every three years) on the steps they have taken. In addition, the Bill requires certain public bodies to report, at least every three years, setting out the steps they have taken to “secure better or further effect” of the UNCRC requirements. The Bill does not, however, seek to impose on public bodies the wider duties that would apply to Scottish Ministers.

24. We received substantial comment on Part 1 of the Bill.

Limitations of the Bill

25. The Faculty of Advocates stated that, because the UK is already bound by international law to comply with the Convention, Part 1 of the Bill does not further develop the rights of children and young people in Scotland to a significant extent. It argued that the Scottish Government’s policy was already to reflect the provisions of the Convention in the development of policy and legislation16.

26. The Law Society of Scotland described the duty placed on Ministers in respect of the UNCRC as a “diluted version of the existing obligations”17. Scotland’s Commissioner for Children and Young People suggested that the duty in the Bill “is not a practical and effective measure to advance children’s rights,

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13 Part 13 (wellbeing), which underpins the Getting it right for every child (GIRFEC) policy, is discussed with Parts 3-5, which relate to GIRFEC.
14 Policy Memorandum, paragraph 43.
15 For example, the right to an education is included in the Standards in Scotland’s Schools etc. Act 2000; the courts and children’s hearings must regard children’s welfare as the paramount consideration and take a child’s views into account (Children (Scotland) Act 1995, section 16); local authorities must regard children’s welfare as the paramount consideration in relation to any looked after child (Children (Scotland) Act 1995, section 17).
17 Law Society of Scotland. Written submission
and it contains numerous qualifiers granting Ministers ample discretion”\(^\text{18}\). The Commissioner said that he would find “it difficult to imagine an effective legal challenge to the exercise of the duty”, which, he stated, “underlines the weakness of this provision”\(^\text{19}\). Others preferred the duty that had been proposed in the original children’s rights Bill in 2011\(^\text{20}\), which would have required Scottish Ministers “to have due regard” to the UNCRC.\(^\text{21}\)

27. Many children’s organisations and charities went further and called for incorporation of the UNCRC into domestic law. For example, Together\(^\text{22}\) suggested that incorporation would “embed clear and robust measures of accountability and provide the transparency needed to ensure key bodies understand the impact their work is having on protecting and promoting children’s rights”\(^\text{23}\). It suggested doing so would “provide a strong signal from the Scottish Government that all levels of government – and society at large – must take the UNCRC seriously”\(^\text{24}\). A number of other submissions\(^\text{25}\) indicated support for Together’s view.

28. The Scottish Human Rights Commission also supported incorporation of the UNCRC.\(^\text{26}\) However, it acknowledged that the Scotland Act 1998\(^\text{27}\) already requires Scotland to “observe and implement existing UK international legal obligations, one of which is to implement the UNCRC”\(^\text{28}\). The Commission also recognised, as did the Scottish Government, that any move to incorporate the UNCRC would be limited to devolved issues\(^\text{29}\).

29. We asked witnesses to describe the practical benefits arising from incorporation. Scotland’s Commissioner for Children and Young People told us he believed it would “lead to better outcomes for children and young people”\(^\text{30}\) and gave examples of where incorporation would be likely to make a difference. He considered that the principal effects would include: requiring Ministers and public authorities to act compatibly with the UNCRC, enabling redress through a range of accessible remedies for individuals and enabling the courts to declare unlawful legislation that is incompatible with UNCRC rights. For example, in relation to the

\(^{18}\) Scotland’s Commissioner for Children and Young People. Written submission.

\(^{19}\) Scotland’s Commissioner for Children and Young People. Written submission.

\(^{20}\) In its consultation, the Scottish Government had proposed a duty requiring Ministers to have “due regard” to the UNCRC, which some, such as SHRC and SCRA, believed was stronger than the wording in the Bill.

\(^{21}\) Scottish Human Rights Commission, Scottish Children’s Reporters Administration, Health and Social Care Alliance Scotland. Written submissions.

\(^{22}\) An alliance of children’s charities, which aims to improve the awareness, understanding and implementation of the UNCRC in Scotland.

\(^{23}\) Together. Written submission.

\(^{24}\) Together. Written submission.

\(^{25}\) Families Outside, Includem, LGBT Youth Scotland, NSPCC. Written submissions.

\(^{26}\) Scottish Human Rights Commission. Written submission.


\(^{29}\) Scottish Government. Written submission.

age of leaving care, he suggested that incorporation would put young people in a stronger position to ensure they have a substantial say in decisions about them.31

30. We also discussed the viability of incorporation with other witnesses. For example, Professor Kenneth Norrie opposed incorporation, suggesting it would be “bad policy, bad practice and bad law”32. Whilst the Convention was full of good aspirations for government, it had not, he said, been drafted to be legally enforceable in a court of law as it was “full of wide, broad statements that you cannot possibly ask judges to determine”33.

31. Professor Elaine Sutherland challenged Professor Norrie’s position. She stated that it was “incorrect to assert that the UN Convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system”. She supported incorporation and argued that the fundamental point to bear in mind was that “it was not anticipated that every article of the Convention would be incorporated and it will be for those drafting the statute to distinguish the solid from the aspirations and to find the appropriate means of incorporation”.

Improving the Bill
32. Whilst UNICEF UK supported full incorporation of UNCRC into Scots law, should that not be achieved, it proposed a number of practical improvements that it believed would strengthen the duties in the Bill.35 UNICEF UK agreed that Ministers should be required to demonstrate how they have fulfilled their duty to consider the UNCRC, but also suggested that public bodies should be required to act to implement the UNCRC and not just to report on the steps they have taken.

33. Also, in the absence of incorporation, the Children’s Commissioner suggested that Article 3 (child’s best interests to be a primary consideration in all matters affecting the child) and Article 12 (child’s view on all matters affecting them to be given due weight in decision-making) should be given effect through the Bill.36

34. The Minister for Children and Young People said she did not believe the case had been made for full incorporation, citing the comments made by Professor Norrie. She told us—

“The duty in the bill is a duty on ministers to reflect the UNCRC. That will child rights proof all our decisions. A tool will be developed to support that. We will take practical actions to increase awareness of children’s rights, whether through schools or with professionals or parents. As far as the practical impact is concerned, there will be a new duty on ministers to

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31 Scotland’s Commissioner for Children and Young People. Supplementary written submission.
34 Professor Elaine Sutherland. Written submission.
35 UNICEF UK. Written submission.
36 Scotland’s Commissioner for Children and Young People. Written submission.
properly reflect the UNCRC in the policies that we take forward as a Government.”

35. Scottish Government officials explained that, from the evidence Ministers had seen, the benefits of incorporation lay “primarily in relation to improved culture within [public] services and increased awareness of children's rights”. Those benefits, officials said, could be delivered through “changes in policy as well as improvements in frontline practice”, such as through effective embedding of GIRFEC.

36. We asked the Minister to respond to the suggestion from children’s organisations that the Bill does not do enough to ensure that public bodies will help to strengthen children’s rights. The Minister stated that “we have a commitment to raise awareness across the public bodies and there will also be reporting to ensure that we understand where they are on children's rights”.

Conclusions
37. From the evidence received, we understand that the main argument put forward by some witnesses for full incorporation was that it would put children at the centre of decision-making. However, we received little evidence about how it would do this in practice and whether full incorporation was vital to achieving improved outcomes for children.

38. We also note that the UNCRC is implemented in Scotland in a number of ways already, not least under our obligations in the Scotland Act 1998. In addition, as some supporters of incorporation noted, incorporation would be limited to the powers devolved to the Scottish Parliament.

39. We are not persuaded of the case for full incorporation of the UNCRC into Scots law, although there may be opportunities to improve the Bill by incorporating specific elements of the UNCRC (see paragraph 43). We agree that the benefits arising from incorporation of the UNCRC could be realised from improvements in policy and practice, such as through the implementation of GIRFEC.

40. However, we are concerned about evidence describing the duties in Part 1 as little more than a restatement of existing obligations. Therefore, we recommend that the Scottish Government provides an explanation of the practical actions it intends to take to increase awareness of children's rights, including details of the tool that will be developed. We also recommend that, in addition to reporting on the steps they have taken to fulfil their duties under Part 1, Ministers should be required to report on the activities they intend to undertake to further children’s rights in each three-year period.

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39 Scottish Government. Written submission.
41 See evidence from the Minister at paragraph 34
In relation to the duties placed on public authorities, we recognise there are different views on the wording of the Bill. We seek further clarification from the Scottish Government on why it has chosen not to include duties to ‘keep under consideration’ and thereafter, to ‘take steps identified by that consideration’.

We welcome the intention to allow public authorities to report under this Part in their annual reports. We note that there are a number of new reporting and planning duties in the Bill, which often fall to the same organisations. We therefore ask whether some of these duties could be better integrated.

We note that Article 42 is incorporated in the Bill and request the Scottish Government’s response to the Children’s Commissioner’s suggestion that Articles 3 and 12 also be included.

A number of organisations expressed disappointment that the Scottish Government did not undertake a Child Rights Impact Assessment (CRIA) on the Bill. We wrote to the Scottish Government on this matter. We accept the Scottish Government’s reason for not undertaking a CRIA in this case, which was due to the extensive engagement activities carried out during the Bill’s development. However, the Scottish Government should commit to undertaking CRIAs in relation to relevant future legislation.

The Bill proposes an extension to the Commissioner’s power of investigation, which would allow it to undertake investigations on behalf of individual children and young people (to be known as individual investigations). The Policy Memorandum describes the effect as “introducing an additional mechanism to support children in seeking redress where they feel their rights, views and interests have not been properly taken into account”.

As is currently the case, the Commissioner would be able to investigate any person or organisation in the public, private or voluntary sector that provides a service to children and young people. The difference is that the Commissioner would be able to do so in relation to individuals rather than only where an issue is of relevance to a group of children and young people. It is anticipated that this would give rise to a small number of investigations, perhaps 1 to 4 each year.

The Bill’s Financial Memorandum has estimated that the new functions would require additional funding of around £160,000 per year (except in the first year).

42 Article 42 of the UNCRC states that “The Government should make the Convention known to all parents and children”. The Bill aims to achieve this by the duty on Scottish Minister to “promote public awareness and understanding … of the rights of the child” (section 1(2)).
43 Currently, the Commissioner may only conduct an investigation where an issue is relevant to all children, or a specific group of children (general investigations).
44 Policy Memorandum, paragraph 49.
45 Explanatory Notes, paragraph 14
46 Financial Memorandum, paragraph 31.
47 In the first year, staff, travel and accommodation costs have been estimated at a level equivalent to half a year. The total estimated cost in the first year is £83,190, compared with £162,109 in subsequent years.
Most of this increase would fund costs associated with the Commissioner employing three additional full-time members of staff. All costs would fall on the Scottish Parliamentary Corporate Body.

Avoiding duplication with the functions of other bodies

48. The Bill proposes that, in line with the Commissioner’s existing power to conduct general investigations, the Commissioner would only be permitted to conduct an individual investigation that did not duplicate the function of another organisation.

49. The Scottish Public Services Ombudsman (SPSO) has responsibility for considering complaints and responding to concerns raised by members of the public. Whilst the SPSO welcomed the new powers of investigation it was concerned about the potential for overlap with its own functions. The SPSO referred to the Commissioner’s power to investigate as likely to “amount to service failure or maladministration, the categories which are the categories we judge complaints by”.

50. In response to these concerns, the Commissioner confirmed he was in active discussion with the SPSO and other scrutiny bodies. He also said he had discussed the operation of the proposed powers with several local authorities and that, between now and the Bill’s enactment, planned to “look at the detail and discuss how wide the scope will be, how we will interpret it and how it will sit with other investigatory bodies”.

51. The majority of those who submitted written evidence on this Part supported the extension of the Commissioner’s powers. However, some suggested the “considerable cost of staffing the Commissioner’s office to support more investigations” would be better spent on mediation services and other forms of legal redress for children and young people.

Flexibility to resolve cases without formal investigation

52. In addition to allowing the Commissioner to conduct individual investigations, the Bill would allow the Commissioner to resolve a matter without recourse to a formal investigation. It is intended that this new power would only apply to matters that are covered by the power to conduct an investigation.

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48 The Financial Memorandum indicates that the following staff will be required: a Head of Casework and Legal, an Investigator, and a Casework Support Officer.

49 The Explanatory Notes (paragraph 16) refer to the following organisations that have responsibility for considering complaints and responding to concerns raised by members of the public: the Scottish Public Services Ombudsman, the Care Inspectorate, and the Equality and Human Rights Commission.

50 SPSO. Written submission.


52 Scottish Parliament Education and Culture Committee. Official Report, 1 October 2013, Col 2903

53 Anne Black, an independent social work consultant

54 Fostering Network. Written submission.

55 Clan Childlaw. Written submission.

56 Scottish Government. Written submission.
53. The Commissioner said he expected most of the additional resources would be required in order to resolve cases without needing to conduct a full scale investigation. He estimated “this could involve hundreds of cases”.57

54. The Commissioner also described how the new power would give him discretion to become involved in cases at an early stage, possibly where local processes had not been exhausted. He considered that early resolution of cases was of crucial importance and that “making them [children and young people] exhaust all local complaints processes would not be the best approach”58. In such cases, he said his primary role would be to “refer and signpost [the complainant] back to existing complaints processes”59.

55. It appeared to us that the Commissioner had interpreted this power more widely than intended. We, therefore, invited the Scottish Government to clarify the position. It responded as follows—

“This provision is designed to offer the Commissioner some flexibility in dealing with a case which could otherwise be dealt with through an investigation. Paragraph 16 of the Explanatory Notes makes clear that the Commissioner may not undertake such an investigation where that would duplicate the work of any other complaint handling body. We would therefore not foresee there being a role for the Commissioner to have extensive, ongoing involvement in a case prior to local processes being exhausted and it is not our view that the Commissioner should take on any mediation-type role.”60

56. The Scottish Government did, however, accept that the proposed new power linked to individual investigations was likely to result in an increase in enquiries for support received by the Commissioner’s office. The Government felt it was important that the enquiry-handling service continued to be delivered, and recognised the resource implications associated with an increase in enquiries61.

Conclusions

57. We support the Commissioner’s work in representing children’s interests. We also welcome the Commissioner’s commitment to co-operate with the various complaints-handling bodies in order to ensure the Bill does not give rise to overlap or duplication of functions.

58. However, we are concerned by the misunderstanding about what the new power of investigation will allow. It appears that the Commissioner interprets the scope of the new power more widely than intended by the Scottish Government. We expect all parties to be clear about the interpretation of the

58 Scottish Parliament Education and Culture Committee. Official Report, 1 October 2013, Col 2903
60 Scottish Government. Written submission.
61 The Financial Memorandum states that the Commissioner’s office currently receives between 350 and 425 enquiries per year (paragraph 33).
Commissioner’s new powers and suggest that, if necessary, the Bill should be amended to ensure this.

59. The issue of resources is closely linked to the interpretation of the Commissioner’s new powers. If the resources are primarily aimed at funding staff to handle more enquiries, we question whether the proposed level of staffing is necessary. We are mindful of evidence indicating that the estimated £160,000p.a. could be better spent on, for example, greater access to mediation for children and young people, and are keen to ensure that any costs are fully justified. **We recommend that the Scottish Government gives further consideration to the volume and type of work that any extra enquiries will require.**

**Getting it right for every child (GIRFEC)**

60. Parts 3 to 5 and Part 13 of the Bill advance the Scottish Government’s policy of Getting it right for every child (GIRFEC). GIRFEC supports better-integrated and child-centred service planning and delivery across children’s services. It was developed in a number of Pathfinder areas in 2006 and, since 2011 the Scottish Government has expected it to be implemented by all local authorities.

61. Inconsistencies in the implementation of GIRFEC have been noted, therefore one of the stated aims of the Bill is to achieve greater consistency and build on good practice. We acknowledge the need for flexibility in order to allow local circumstances to be taken into account in the delivery of services for children and young people, however, we agree with the Scottish Government that GIRFEC should be implemented more consistently than it is at present.

62. The Bill includes a number of proposals relating to GIRFEC—

- a requirement for the joint preparation of children’s services plans (Part 3);
- an expectation that every child and young person shall have an assigned named person (Part 4);
- a duty to require the preparation of a child’s plan (Part 5); and
- a definition of “wellbeing”, which underpins GIRFEC and includes indicators (known as the SHANARRI indicators[^63]) to assess children’s needs (Part 13).

63. These provisions seek to deliver – in line with the Bill’s overall principles of early intervention and prevention – coordinated children’s services that will


[^63]: The SHANARRI indicators are: safe, healthy, achieving, nurtured, active, respected, responsible, and included.
improve the wellbeing and life chances of children and young people in Scotland. These are discussed in the following sections of our report.

64. In recognition of the fact that the definition of wellbeing underpins the GIRFEC provisions included in the Bill, this is discussed briefly here rather than at the end of the report. Although many organisations welcomed the statutory introduction of the term ‘wellbeing’ and the SHANARRI indicators, several organisations felt that it could cause confusion in that other children’s legislation refers to the term ‘welfare’. For example, the Law Society of Scotland stated that the correlation between the two terms was unclear. Professor Norrie, however, considered that the two concepts were different and that it was therefore appropriate to use the two different words in legislation.

Conclusion
65. We support the principles of GIRFEC and want to see GIRFEC implemented consistently and effectively throughout Scotland.

Part 3 – Children’s services planning
66. The Bill introduces a duty on local authorities and each relevant health board to prepare joint children’s services plans every three years. The Bill also introduces an annual reporting mechanism and detailed requirements about the consultation, purpose and aims of the plans. The intended effect is that “those bodies responsible for expenditure, planning and delivery of services will work together in considering how to improve the whole wellbeing of all children and young people in their area”.

67. Much of the evidence we received on this Part supported the principle of integrating children’s services planning. For example, COSLA said it had long-argued for better integration of public services locally. The North of Scotland Planning Group, a collaboration of six health boards, recognised the benefits of joint-working between local authorities and health boards, particularly in remote and rural areas, in the provision of children’s services. The Care Inspectorate also highlighted that, where third sector and independent service providers were integrated in children’s services planning, this helped to “harness their contribution, knowledge and expertise towards meeting local need”.

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64 Policy Memorandum, paragraph 55.
66 Falkirk Children’s Commission. Written submission.
67 Law Society of Scotland. Written submission.
68 Professor Kenneth Norrie. Written submission.
69 Currently, local authorities are required to develop singular children’s services plans under section 19 of the Children (Scotland) Act 1995.
70 Policy Memorandum, paragraph 63.
71 Policy Memorandum, paragraph 63.
73 North of Scotland Planning Group. Written submission.
74 Care Inspectorate. Written submission.
68. There were numerous calls for children’s services planning to be linked with the wider planning framework and, specifically, with community planning, single outcome agreements (SOAs), and other legislation. For example, Action for Children called for greater coordination at the planning stage and to defining outcomes for community planning and SOAs. COSLA wanted us to consider how the Bill would sit within the existing community planning landscape and the proposals expected in a community empowerment and renewal bill.

69. NSPCC Scotland highlighted links with the proposed Public Bodies (Joint Working) (Scotland) Bill and the recent Social Care (Self Directed Support) (Scotland) Act 2012, which had, or were expected to have, implications for the planning and delivery of children’s services. It argued that—

“The impact of this broader legislative landscape on children’s lived experiences must be a central consideration of the Children and Young People (Scotland) Bill.”

70. Others highlighted the importance of integrated service provision from the perspective of children and young people with disabilities and complex needs. For Scotland’s Disabled Children (FSDC) said there needed to be good planning when young people transition from children’s services to adult services or move between local authorities. Also, UNICEF UK wanted the GIRFEC approach to children’s services to be joined-up with the broader children’s rights framework and suggested that “a child rights framework needs to be introduced within children’s services planning, through which public bodies can safeguard, support and promote the rights and well-being of children in their area.”

71. COSLA called for section 17, which gives the Scottish Ministers discretionary power to constitute a joint board to undertake children’s services planning, to be removed from the Bill.

72. The Local Government and Regeneration (LGR) Committee scrutinised this Part of the Bill and reported to us. It highlighted that community planning partnerships (CPPs) would have a key role to play if the aims of the Bill were to be realised. In the context of the forthcoming legislation to strengthen the roles and responsibilities of CPPs, the LGR Committee sought clarity around the implementation of the Children and Young People Bill and how it would fit with the role of CPPs in the new partnerships and arrangements.

Conclusions
73. We support the better integration of children’s services planning. This is of particular importance in ensuring the smooth transition, between types of services

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75 Action for Children. Written submission.
76 COSLA. Written submission.
77 NSPCC Scotland. Written submission.
78 For Scotland’s Disabled Children. Written submission.
79 UNICEF UK. Written submission.
as well as geographically, for children and young people with disabilities or complex needs.

74. It is crucial, therefore, that the proposals in the Bill sit within an overall framework that is easy for service users and service providers to navigate.

75. **The Scottish Government should clearly illustrate how children’s service plans fit within the wider Government strategy to integrate service planning across for example, the Public Bodies (Joint Working) (Scotland) Bill, the proposed Community Empowerment (Scotland) Bill**\(^{81}\) and with Single Outcome Agreements and Community Planning Partnerships.

76. We agree with COSLA that the discretionary power conferred upon Scottish Ministers to constitute a joint board (section 17) is not the right approach. We welcome the Scottish Government’s confirmation that it intends to bring forward the necessary changes to the Bill at Stage 2.\(^{82}\)

77. On a separate issue, we received a public petition which called for the Bill to place a duty on local authorities to provide sufficient and satisfying play opportunities for children of all ages and abilities.\(^{83}\) The Scottish Government confirmed that Part 3 “would encompass the contributions that local authorities, health boards and other relevant service providers can make to supporting play opportunities for children”\(^{84}\). We welcome this confirmation from the Government as well as its work in developing the Play Strategy Action Plan\(^{85}\).

**Part 4 – Provision of named persons**

78. The Bill makes provision for every child and young person up to the age of 18 (or beyond if still at school) to have a named person. The Policy Memorandum says that named persons will be part of a network of support that will ensure children and young people “get the right help at the right time”\(^{86}\). The network of support will always include the family and/or carers.

79. Although the named person role is part of the wider GIRFEC policy and exists in some parts of Scotland, it “has not been implemented systematically across the whole country”\(^{87}\). The Policy Memorandum states that the provisions are designed to underpin the national GIRFEC approach and to help ensure that services for children and families are provided consistently nationwide.

80. The proposal for named persons has received substantial comment. Views ranged from opposition to the fundamental principle of having a named person on

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\(^{81}\) Consultation on the Community Empowerment (Scotland) Bill was launched 6 November 2013. Available at: [http://www.scotland.gov.uk/Topics/People/engage](http://www.scotland.gov.uk/Topics/People/engage)

\(^{82}\) Letter to the Delegated Powers and Law Reform Committee (17 September 2013)

\(^{83}\) Public Petition PE1440. Available at: [http://external.scottish.parliament.uk/GettingInvolved/Petitions/PlayScotland](http://external.scottish.parliament.uk/GettingInvolved/Petitions/PlayScotland) [Accessed 13 November 2013]

\(^{84}\) Scottish Government. Written submission.


\(^{86}\) Policy Memorandum, paragraph 67.

\(^{87}\) Policy Memorandum, paragraph 69.
the belief that it diminished the role of the parent and the suggestion that the needs of vulnerable children might get lost in the universal service, to backing for the early intervention approach of which the named person was felt to be an integral part. Many bodies highlighted practical and resource issues that needed to be resolved for the role to work effectively.

The role of parents

81. Some bodies opposed the named person role as they felt it did not recognise the role of the parent. The Faculty of Advocates stated it would “dilute the legal role of parents” whether or not there is any difficulty in the way that parents are fulfilling their statutory responsibilities”.

82. In response, the Minister acknowledged that “the parent is the most important person, and the most important educator, in a child’s life”, and said that the named person provisions were “about providing a support network and framework for families, if they need it”.

The role of named persons

83. Support for the principle of the named person role focused on the benefits of having a recognised professional who knew the family and acted as the main point-of-contact for them. Highland Council said that when GIRFEC began, the named person requirement was not included in the list of components, and it was “developed through practice and experience, and discussions with families and professionals”.

84. Highland Council described one of the key benefits of the named person role as delivering “earlier support and more effective intervention for more children”. Earlier interventions, it said, generally led to more successful outcomes. The Council also highlighted the role of the named person as providing a clear point of contact, which was important for the family and other professionals.

85. Scottish Government officials described the premise of the named person as the “idea of establishing a good, trusted relationship between the individual and someone whom ... the family know and see reasonably regularly”. Similarly, Highland Council regarded the named person as “someone who has a good understanding of the child and family’s circumstances”.

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88 Faculty of Advocates. Written submission.
89 Schoolhouse Home Education Association. Written submission.
90 SPTC. Written submission.
94 Highland Council. Written submission.
95 Scottish Parliament Education and Culture Committee. Official Report, 8 October 2013, Col 2954
96 Highland Council. Written submission.
86. At our meeting on 17 September, we asked witnesses whether, in a practical sense, the introduction of a named person would lead to a better service and therefore a reduction in neglect. All of those witnesses said it would. For example, the Royal College of Nursing referred to a growing evidence base, which suggested that “a comprehensive approach to universal services, with tiered support, would reduce neglect and improve mental health and attachment relationships later in a child’s life”.

87. In considering the implementation of the named person role for young people who have left school and are under the age of 18, it is notable that Highland Council had difficulties in assigning a named person. In its written evidence, the Council said “not only has this been difficult to achieve in practice, there are doubts about the desirability and necessity of this measure.”

88. Highland Council recognised its success in implementing GIRFEC was in part due to the positive culture of collaborating across different frontline services. Highland Council acknowledged that it enjoys an effective relationship with the police force and other bodies and has a very active third sector.

**Specific duties of the named person**

89. Some witnesses expressed uncertainty about the duties of the named person. Most evidence, including that from Highland Council, described the role of the named person as being that of a single point of contact.

90. The Bill sets out a number of fairly high-level duties that the named person will be expected to carry out, with further details to be provided in guidance.

91. In considering the details of how a named person would go about their work, however, there were some very different expectations about the role. For example, there was doubt around the level of involvement that the named person would be expected to have in complex child protection issues, such as where a child’s plan was required. Barnardo’s Scotland described the named person role as “a named co-ordination point” and considered that “the moment we start talking about managing a child’s plan, we move into lead professional territory.” Highland Council’s view was similar: “the named person would support early

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97 The following witnesses are referred to: Barnardo’s Scotland, Association of Headteachers and Deputies in Scotland, and Royal College of Nursing Scotland


100 Highland Council. Written submission.


102 The Bill specifies that a named person would be expected to carry out the following functions: advising, informing or supporting a child or a parent; helping a child or a parent to access services; and discussing or raising a matter about a child with a service provider (Section 19(5)).

interventions but as soon as more than one agency got involved the co-ordinating role would move to the lead professional.\footnote{Scottish Parliament Education and Culture Committee. \textit{Official Report, 24 September 2013}, Col 2857}

92. The Scottish Government indicated there would be some flexibility in the role of the named person—

“Where concerns about a child or young person’s wellbeing require to be addressed by co-ordinated intervention from more than one service or agency, then a Lead Professional can be identified to take on that co-ordinating role. The Named Person will either take on the role of Lead Professional themselves, or will agree with the partners involved in supporting the child/young person, who is most appropriate to take on the lead professional role to manage the multi-agency Child’s Plan.”\footnote{Scottish Government. Written submission.}

93. In addition, the Financial Memorandum seems to suggest there was more to the role of named person than simply acting as a point of contact for families. In relation to midwives and health visitors, it states that a named person’s responsibilities could potentially involve—

“holistic assessment based on information received and observed, any preparation towards the creation of a child’s plan where needed, and management of the plan through an on-going involvement with the child and family as required.”\footnote{Financial Memorandum, paragraph 59}

94. In oral evidence, the Minister concluded there was a need to develop “robust guidance” to accompany the Bill. This would “give greater clarity to professionals working with children and families across the country”.\footnote{Scottish Parliament Education and Culture Committee. \textit{Official Report, 8 October 2013}, Col 2955}

\textit{The professional who performs the role of named person}

95. We also received evidence that raised questions about which professionals should perform the role of named persons, and their capacity to do so.

96. Whilst the Bill does not specify those professionals who should have the role, it is envisaged that it will be performed by practitioners employed by health boards or education authorities. For a child who is below school age, the named person will be assigned by a health board and, depending on the age of the child, will be a midwife or a health visitor. For a child or young person of school age (and up to 18 years old), the named person will be assigned by the local authority and will be a senior teacher (normally the head or deputy head teacher). Specific provision is made for children and young people who attend independent or grant-aided schools, or who are in secure accommodation.

97. Concerns were raised about the capacity of staff and organisations to undertake the role of named persons. In particular, the Royal College of Nursing
stated that there was an insufficient number of health visitors in Scotland\textsuperscript{108} and 450 additional health posts would be required\textsuperscript{109}. Unison agreed, suggesting health visitors were already overworked and, with the addition of the named person role, the situation would be “almost critical”\textsuperscript{110}.

98. With health visitors having such heavy workloads, it appears that it would be difficult for them to maintain a close relationship with the families to which they had been assigned. However, NHS Lothian told us it was exploring “more creative ways” of ensuring the requirements of the Bill could be met. For example, it was looking at delegating some of the administrative functions under the Bill to other staff. This would free-up health visitors and midwives to undertake the necessary face-to-face assessments and other planning duties.\textsuperscript{111}

99. There were similar concerns about teachers’ capacity to take on the named person role in addition to their teaching duties. The Educational Institute of Scotland highlighted the pressures headteachers would have on their time and stated “only time will tell whether the duties of the named person simply quantify what is currently happening or increase their workload”\textsuperscript{112}.

100. However, Highland Council reported that teachers, health visitors and midwives felt that the named person role “does not change what they do but it changes how they are regarded”\textsuperscript{113}.

101. We also received evidence questioning how the named person role would operate during school holidays.\textsuperscript{114} The Scottish Government confirmed where a named person was not contactable during school holidays, the local authority would be required to make arrangements for another member of education services to deal with any concerns.\textsuperscript{115} These arrangements may not correspond with the premise that the named person should be someone who knows the child and has a good understanding of the family’s circumstances.

102. Other comments highlighted that named persons must be able to support the complex needs of vulnerable children and young people. Some questioned whether a named person would have the breadth of experience required to handle effectively the needs of children with speech, language or communication difficulties\textsuperscript{116}; who are deaf\textsuperscript{117}; or, who have learning disabilities\textsuperscript{118}.

\begin{flushright}
\textsuperscript{108} Royal College of Nursing Scotland. Written submission.
\textsuperscript{109} Scottish Parliament Finance Committee, \textit{Official Report, 18 September 2013}, Col 2972
\textsuperscript{110} Scottish Parliament Education and Culture Committee. \textit{Official Report, 10 September 2013}, Col 2694
\textsuperscript{111} NHS Lothian. Written submission.
\textsuperscript{112} Scottish Parliament Education and Culture Committee. \textit{Official Report, 10 September 2013}, Col 2696
\textsuperscript{115} Scottish Government. Written submission.
\textsuperscript{116} Royal College of Speech and Language Therapists. Written submission.
\textsuperscript{117} National Deaf Children’s Society. Written submission.
\end{flushright}
103. Others questioned whether a named person would be assigned to children who were educated at home\(^{119}\), whilst there was also a desire for children and young people to have a say in who their named person should be\(^{120}\). We note from the Policy Memorandum that the Bill will ensure that certain groups of children and young people with a less typical pattern of involvement with health or educational services, such as home-educated children, are provided with a named person\(^{121}\). In such cases the appointment of a named person will be left to local authorities.

**Resources and the cost of the named person role**

104. The Scottish Government expects the early intervention approach to save money after the first year of implementation. The Financial Memorandum estimates that for children (up to the age of five years) with “emerging or significant concerns\(^{122}\), the total additional hours required (by a midwife, health visitor or public health nurse) would be 50 hours (10 hours per year group) in the first year of implementation, decreasing to 34, 26 and 23 hours in subsequent years.\(^{123}\)

105. This assumption that savings would be realised after the first year and on such a scale was disputed in evidence to the Finance Committee.\(^{124}\) For example, the Royal College of Nursing Scotland stated “if the approach is effective, there might be a small reduction over time.”\(^{125}\)

106. Whilst NHS Lothian expressed confidence some savings would be achieved, it suggested “they were more likely to occur in services later in the life course”. It did not, however, expect to see a difference as quickly as the Scottish Government predicted and stated “the general consensus” among the child commissioners and the public health nursing advisory group was the financial model in Part 4 “is a bit off course.”\(^{126}\)

107. Similarly, Highland Council considered that, even now (three years after GIRFEC had been fully implemented), it was “fairly premature to look at the outcomes, but we are starting to see green shoots.”\(^{127}\) Highland Council did note, however, that the implementation of GIRFEC had brought savings, which it had decided to reinvest in early intervention and preventative services.\(^{128}\)

108. In response, Scottish Government officials told the Finance Committee they expected “intensive input” to result in a lesser requirement for support the following year—

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\(^{118}\) Muir Maxwell Trust. Written submission.

\(^{119}\) Law Society of Scotland. Written submission.

\(^{120}\) Scottish Youth Parliament, Includem. Written submissions.

\(^{121}\) Policy Memorandum, paragraph 71

\(^{122}\) According to the Financial Memorandum, 18% of children are categorised as having emerging or significant concerns, which would likely require additional work for the named person.

\(^{123}\) Financial Memorandum, Table 11

\(^{124}\) Finance Committee report, paragraphs 49-65

\(^{125}\) Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2981

\(^{126}\) Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2982

\(^{127}\) Scottish Parliament Education and Culture Committee. Official Report, 24 September 2013, Col 2850

“We would expect that early intervention will lead to less time being spent year on year ... The assumption is that the 10 hours that we invest on average ... will bear fruit and that such an intensive investment of health visitor time will not be needed as we go forward.” 129

109. The Finance Committee reported its concern about the disparity in evidence from health boards and the Scottish Government on costs and savings.

110. In response, the Scottish Government told us that “no health boards had taken a ‘big bang’ approach 130 to GIRFEC investment” and “so it is not possible to test the Financial Memorandum assumptions with real-world experience”. 131 Furthermore, the response refers to an evaluation of the implementation of GIRFEC 132, which indicated some savings in time had been identified because of fewer meetings and reports to write. However, as the evaluation found, it may be the case for many of these professionals that the savings are partially offset by their new responsibilities and tasks. 133

111. These comments indicate that there is some doubt as to whether the estimated savings will be realised in the timeframe set out in the Financial Memorandum.

112. The Financial Memorandum also refers to costs for training local authority and health board staff in relation to the named person role. It is assumed these would be one-off costs occurring in 2015-16 only. Whilst it acknowledges such training would also be required in future years, it states “going forward this training will then form part of standard Continued Professional Development (CPD), and be absorbed as part of the ongoing training requirements of these organisations” 134 135 However, COSLA considered ongoing training and support for teaching and other local authority staff “may not be simply addressed by one-off funding” 136.

Conclusions

113. We note that the implementation of GIRFEC in Highland was a success. That was, in part, as a result of the culture of integration and collaborative working across various frontline services. We invite the Scottish Government to provide details of the range of support it will make available to ensure that local authorities and health boards are able to replicate the successes experienced in Highland, recognising the different circumstances that will prevail in different parts of the country.

129 Scottish Parliament Finance Committee, Official Report, 18 September 2013, Col 2991
130 The Scottish Government describes a ‘big bang’ approach as embedding GIRFEC through an intensive investment.
131 Scottish Government, supplementary written submission (28 October 2013)
133 See page 27 of The Impact on Services and Agencies Part 2 (link included at previous footnote)
134 Financial Memorandum, paragraph 48
135 In its supplementary written submission, the Scottish Government stated that these assumptions had been based on consultation with those local areas furthest advanced in implementing GIRFEC (Highland, City of Edinburgh, Falkirk, Fife, South Ayrshire, and Perth and Kinross).
136 COSLA, supplementary written submission.
114. We believe the success of the named person role will depend on the Scottish Government’s ability to work with its local partners to clarify a number of practical issues, which we bring to the attention of the Parliament. These include the issues which a named person would be expected to handle outwith their core professional area; the types of intervention a named person would be expected to make; the point at which a named person would be expected to pass a case to a lead professional; the circumstances in which it would be appropriate for a named person to take on the role of lead professional; the ability of children and young people to have input into who is assigned as their named person; and the extent to which a named person would be expected to be involved with children and young persons for whom no support or intervention is required.

115. Concerns were expressed to us and the Finance Committee which cast doubt on the potential savings for health boards from the named person role. We note that this is, at least in part, due to a lack of real-world experience on which to base the financial assumptions. In view of this, we consider that further resource may be required for health boards to implement GIRFEC, and we recommend that the Scottish Government be prepared to make such support available where appropriate.

116. We also acknowledge the concerns about the capacity of health visitors and the numbers required to deliver the requirements in the Bill. This indicates to us that there are wider issues about health visitor numbers. The Scottish Government should therefore explain how it will ensure that the demands placed on health visitors across the entire policy landscape will be met.

117. We are concerned about the operation of the named person role during school holidays. This is an area that requires further consideration by the Scottish Government and its local partners.

118. Given Highland’s experience of implementing GIRFEC, the Scottish Government should explain how the proposal to assign a named person for young people who have left school and are under the age of 18 will work.

119. Finally, we note some views that the role of lead professional could usefully be included in the Bill. Whilst we understand the difficulties in legislating for the role, given that lead professionals may be employed from outside the public sector, we are concerned about the potential for confusion and lack of consistency in the way it will operate alongside the named person. We therefore recommend that the Scottish Government monitors the situation as these roles develop with a view to legislating for the lead professional in future, if necessary.

120. Whilst acknowledging the concerns raised in evidence about practical and resource issues, we support, in principle, the proposal to introduce the role of named person.\(^{137}\) \(^{138}\)

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137 Liz Smith MSP dissented from this paragraph.
138 Neil Bibby MSP and Jayne Baxter MSP suggested the following alternative wording for this paragraph, which was disagreed to: “We support, in principle, the proposal to introduce the role of
Part 4 – Information sharing

121. Where concerns about a child’s wellbeing exist, the Bill would allow information to be shared without the family’s consent. The current test for information sharing without consent is whether there is a ‘risk of significant harm’ to the child, although it has been shown that the application of the threshold can vary\textsuperscript{139}. The Bill proposes a lowering of the threshold and allows information to be shared without consent where there is a ‘concern about wellbeing’.\textsuperscript{140} Any information sharing would nevertheless have to be within the framework of the European Convention on Human Rights and the Data Protection Act 1998.

122. The decisions on whether to seek consent and what, if any, information to share, are left to the judgement of the professionals concerned, albeit with the aid of guidance. The Policy Memorandum explains that the power to share information in this way enables the named person to be able to perform their role effectively.\textsuperscript{141}

123. Our consideration has focused on understanding the circumstances in which a service provider or relevant authority ought to share information about wellbeing without consent, where there is no risk of significant harm to the child.

124. A number of witnesses voiced support for the proposals. Barnardo’s Scotland suggested that the lower threshold for sharing information would make it easier to identify concerns about a child at an earlier stage.\textsuperscript{142} Children in Scotland considered that, without the information-sharing provisions as proposed in the Bill, “we would not be able to achieve some of our aspirations for early intervention”.\textsuperscript{143}

125. However, the Govan Law Centre was concerned that the proposals would result in a diminution of an individual’s right to privacy. It described the Bill as proposing “a significant erosion of the right to privacy for children and families with few (if any) safeguards built in”.\textsuperscript{144} It also argued the broad definition of wellbeing would “inevitably leave the matter to subjective interpretation”, and questioned whether there was any justification for breaching an obligation of confidence and

\textsuperscript{139} The Privacy Impact Assessment (PIA), which accompanies the Bill states: “Currently, information about a child may be shared where the child is at a significant risk of harm. The meaning of ‘at risk of significant harm’ may be construed differently by different people; therefore, it is important that a common understanding is reached and shared amongst all who work with children or with adults who have significant access to children.” (Page 5). The PIA is available at: http://www.scotland.gov.uk/Resource/0041/00418731.pdf

\textsuperscript{140} The Bill requires information to be shared between service providers and relevant authorities (sections 26(1) and 26(3)). Relevant authorities are all those listed in Schedule 2. Service providers are health boards, local authorities, managers of independent and grant-aided schools and managers of secure accommodation (section 30).

\textsuperscript{141} Policy Memorandum, paragraph 76

\textsuperscript{142} Scottish Parliament Education and Culture Committee. Official Report, 17 September 2013, Col 2797 and 2799

\textsuperscript{143} Scottish Parliament Education and Culture Committee. Official Report, 10 September 2013, Col 2726

\textsuperscript{144} Govan Law Centre. Written submission.
sharing information about a “mild concern regarding any aspect of wellbeing”\textsuperscript{145}. In addition, the Law Centre criticised the Privacy Impact Assessment which accompanies the Bill, stating that it “does not demonstrate an appreciation of the purpose and requirements of data protection legislation (nor, indeed, other aspects of human rights legislation)”\textsuperscript{146}.

126. Other witnesses were concerned about the proposals’ impact on potentially vulnerable children and young people. For example, LGBT Youth Scotland felt that the Bill could exacerbate situations where the confidentiality and privacy of LGBT young people could be breached by allowing information about, for example, sexual orientation to be shared without consent.\textsuperscript{147} In relation to children and families living with domestic abuse, Scottish Women’s Aid was concerned that the proposal would be interpreted as “legislation for the sharing of any information about any child or young person, their family and family life and personal circumstances even where they are not considered to be at risk”.\textsuperscript{148}

127. Professor Kenneth Norrie referred to a lack of clarity in the Bill and described the drafting as having “huge ambiguities”\textsuperscript{149}. The terms ‘might be relevant’ and ‘ought to be shared’ that are used in section 26, were, he said, contradictory and so would leave it to the courts to strike the balance. He considered that section 27 was the worst part of the Bill and stated that “if you manage to strike it out and leave everything else, you will have achieved quite a lot”\textsuperscript{150}. His particular difficulty with section 27 was that it provided a “blanket defence to the prohibition on disclosing information”\textsuperscript{151}, which he felt, would significantly weaken the prohibitions included in other legislation\textsuperscript{152}.

128. The Information Commissioner’s Office (ICO) agreed with Professor Norrie’s concerns about section 27 and urged the Scottish Government to reconsider its content.\textsuperscript{153}

129. In addition, there was general agreement from witnesses representing the interests of education and health professionals that the drafting in sections 26 and 27 of the Bill would benefit from being “tightened up”\textsuperscript{154}. Overall, however, the witnesses felt that clear guidance would provide the necessary safeguards and

\textsuperscript{145}Govan Law Centre. Written submission.
\textsuperscript{146}Govan Law Centre. Written submission.
\textsuperscript{147}LGBT Youth Scotland. Written submission.
\textsuperscript{148}Scottish Women’s Aid. Written submission.
\textsuperscript{149}Scottish Parliament Education and Culture Committee. \textit{Official Report, 3 September 2013}, Col 2691
\textsuperscript{150}Scottish Parliament Education and Culture Committee. \textit{Official Report, 3 September 2013}, Col 2691
\textsuperscript{151}Professor Norrie. Written submission.
\textsuperscript{152}Professor Norrie specifically referred to the prohibitions in section 182 of the Children’s Hearings (Scotland) Act 2011 on any person publishing information that can identify a child (or his or her school) if the information concerns any children’s hearing or associated court process.
\textsuperscript{153}Ken Macdonald, Assistant Commissioner for Scotland and Northern Ireland, ICO, supplementary written submission.
give professionals confidence about what information they should and should not share.\textsuperscript{155}

130. In response to the general concerns about the information sharing provisions, the Minister emphasised the importance of establishing clear guidance, which would “enable and empower”\textsuperscript{156} professionals to make appropriate judgements on the information they share.

131. Following the evidence session, we invited the Minister to respond to the specific concerns about the breadth of sections 26 and 27. In relation to section 26, the Minister emphasised that the provisions “must be read in the context of being constrained by the ECHR and reserved legislation such as the data protection act”\textsuperscript{157}. She also referred to the work that the Government was doing to engage with various organisations to update the Privacy Impact Assessment, which included “exploring the potential impact of sections 26 and 27”\textsuperscript{158}. The Minister said this engagement activity and the evidence we received on information sharing would enable the Government to “fully consider all views on sections 26 and 27”\textsuperscript{159}.

Conclusions

132. We recognise the concerns raised by witnesses and welcome the Minister’s commitment to give further consideration to the information-sharing provisions in the Bill and, in particular, to “fully consider all views on sections 26 and 27”\textsuperscript{160}. We expect any necessary safeguards to be introduced at Stage 2. We suggest that, in considering what revisions to bring forward, the Scottish Government engages with those who have raised concerns about the drafting with us.

133. We agree that training and guidance for professionals will be absolutely crucial in determining the effectiveness of the proposals. All relevant service providers, including from the private and third sectors, must receive training and guidance in order to ensure there is a consistent approach to information-sharing. It is vital that the training and guidance engenders a common understanding of what constitutes proportionate, necessary information sharing.

134. Our expectation is that there should be a presumption that consent should be sought, however we recognise this will be left to the judgement of the professional concerned.

135. The Scottish Government is working with various groups to update the Privacy Impact Assessment (PIA) that accompanies the Bill. Given its


\textsuperscript{156} Scottish Parliament Education and Culture Committee. \textit{Official Report, 8 October 2013}, Col 2950

\textsuperscript{157} Scottish Government. Supplementary written submission.

\textsuperscript{158} Scottish Government. Supplementary written submission.

\textsuperscript{159} Scottish Government. Supplementary written submission.

\textsuperscript{160} Scottish Government. Supplementary written submission.
significance, we request the Scottish Government makes it available to us at the earliest opportunity.

136. On a related matter, we received evidence about electronic information sharing by public bodies. Highland Council highlighted the ability to share information electronically as an important factor in ensuring that accurate and up to date information could be accessed by those who needed it.\textsuperscript{161} NHS Lothian referred to the development of joint IT infrastructure and information sharing as a key challenge under the Bill\textsuperscript{162}, and Falkirk Children’s Commission said there was a “lack of national IT support or coherent guidance”\textsuperscript{163}. In response to these concerns, the Scottish Government referred to the work of the Information Sharing Board that was funding local initiatives to improve information sharing as part of GIRFEC.\textsuperscript{164}

137. We note the evidence we received in relation to electronic information sharing. Concerns about the ability of organisations to share information electronically were also raised with us during our inquiries this Session. We therefore urge the Scottish Government to consider what further support it can provide to public services to improve their ability to share information in relation to the Bill.

Part 5 – Child’s plan

138. The Bill proposes that a child’s plan must be created for any child who has a “wellbeing need” that requires “targeted intervention”.\textsuperscript{165} A child’s plan will require a local authority or health board to provide services to meet the wellbeing needs of a child, where those needs cannot be met by services provided to children generally.\textsuperscript{166}

139. The Bill does not alter the existing statutory duties on agencies to prepare co-ordinated support plans\textsuperscript{167} or plans for looked after children\textsuperscript{168}. This received some criticism. The Advisory Group for Additional Support for Learning considered that the Bill fell some way short of enabling a single co-ordinated approach to planning. It called for the opportunity to be taken to “harmonise the planning tools used for children into an efficient and coherent single plan”. Similarly, Glasgow City Council considered that, unless the child’s plan replaced existing plans under the Additional Support for Learning legislation, “we will continue to have a separate planning process and document”\textsuperscript{169}.

140. The importance of having a single child’s plan was also highlighted by a number of others. From its experience, Highland Council said the introduction of a

\textsuperscript{161} Scottish Parliament Education and Culture Committee. Official Report, 24 September 2013, Col 2862
\textsuperscript{162} NHS Lothian. Written submission.
\textsuperscript{163} Falkirk Children’s Commission. Written submission.
\textsuperscript{164} Scottish Government. Written submission.
\textsuperscript{165} Section 31(1) and (3)
\textsuperscript{166} Explanatory Notes, paragraph 80
\textsuperscript{167} Under the Education (Additional Support for Learning) (Scotland) Act 2004
\textsuperscript{168} Under the Looked After Children (Scotland) Regulations 2009
\textsuperscript{169} Glasgow City Council. Written submission.
single planning process and single plan had “achieved a transformational impact on assessment and action processes”\textsuperscript{170}.

141. Others commented that the child’s plan should include a dispute resolution process in the event of disagreement over its contents or delivery\textsuperscript{171}. It was also suggested that the views of children and young people should be taken into account in the development of a child’s plans\textsuperscript{172}.

142. The Minister confirmed the intention of the proposals in Part 5 was not to increase any bureaucracy, but to ensure there was a co-ordinated approach\textsuperscript{173}. She said the other statutory plans – the co-ordinated support plans and plans for looked after children – would be considered as part of the broader legislative framework for supporting the wellbeing of a child.\textsuperscript{174} However, she said cognisance would need to be taken of the new legislative landscape to “make sure that all the different parts of the legislation properly dovetail”\textsuperscript{175}.

**Conclusions**

143. *We recommend that the Scottish Government ensures the child’s plan can be produced in such a way as to allow the easy incorporation of other statutory requirements.*

144. *We also recommend the Scottish Government considers the suggestions made in evidence to us calling for the inclusion in the Bill of a mechanism to resolve disputes in relation to a child’s plans, and for children and young people’s views to be taken into account in developing child’s plans.*

**Part 6 – Early learning and childcare**

145. The Bill places a duty on local authorities to increase the amount of funded early learning and childcare\textsuperscript{176} from 475 hours per year to 600 hours, for 3 and 4 year olds. It would also extend provision for the most vulnerable 2 year olds who were or who had been, at any time since turning two, classed as ‘looked after’ or subject to a kinship care order (see Part 10).

\textsuperscript{170} Highland Council. Written submission.
\textsuperscript{171} Advisory Group for ASL, Govan Law Centre. Written submissions.
\textsuperscript{172} Barnardo’s Scotland, Down’s Syndrome Scotland, Aberlour Child Care Trust, Includem, Youthlink. Written submissions.
\textsuperscript{176} The current requirement for 475 hours is defined as school education for children under school age. Early learning and care is still ‘school education’ (schedule 4 para 2). An additional definition is added by the Bill: “a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting” (section 42).
Extending entitlement

146. Whilst there was support for this Part of the Bill, there were calls to extend the entitlement. For example, Save the Children was disappointed the Bill did not go further "to drive the fundamental transformation in Scotland’s childcare infrastructure required to support children and families". It called for the Bill to extend the entitlement to all 2 year old children living in poverty, with a view to entitling all 2 year olds in the future. Several others wanted to see the provision extended to include 2 year olds with additional support needs or with disabilities, and for school age children.

147. The Minister told us that although she was not prepared to announce an extension to the coverage, the Bill was a "first step in transforming childcare" and it provided the opportunity to extend coverage at a later date, if required. She stated that "we want it to be a quality offering, done in a manageable and sustainable way, and that is what we are achieving through the provisions in the Bill and the funding that goes along with it".

Additional flexibility

148. The Scottish Government consultation on the Bill proposed a prescriptive approach requiring local authorities to offer the same minimum set of options to achieve consistent flexibility of early learning and childcare provision. The Explanatory Notes state that concerns about that proposal were received and, as a result, the Bill gives "local authorities more flexibility to determine choices and options for patterns of delivery".

149. In evidence, a number of organisations highlighted the importance of flexibility in the provision of early learning and childcare. We heard how increased flexibility, including after-school care (which is not covered by the Bill) and the ability to use the provision across two full days, would make it easier for parents to take up employment.

150. We also, however, heard that a large degree of flexibility could raise some concerns. The course director of the BA in Childhood Practice at the University of Strathclyde said that if children attended an early years establishment for seven and a half hours over two days they could have "difficulties settling and the continuity of their educational experience could be delivered in a patchwork manner". In addition, the course director suggested that if the additional hours

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177 Save the Children. Written submission.
178 For Scotland’s Disabled Children, Scottish Children’s Services Coalition, Capability Scotland. Written submissions.
179 Children in Scotland, Children 1st. Written submissions.
182 Explanatory Notes, paragraphs 33-34
183 Scottish Parliament Education and Culture Committee. Official Report, 10 September 2013, Col 2751
184 Scottish Parliament Education and Culture Committee. Official Report, 10 September 2013, Col 2751
were to be broken up into small amounts and added to several days in the week this could reduce the time available to staff for planning and training.  

151. As COSLA stated, any flexibility in the pattern of service provision would be introduced incrementally—

“Following discussions with Scottish Government we agreed that the Bill would require local authorities to deliver the increased hours in as practical way as possible by August 2014 with no immediate requirement for more flexibility for parents. … In subsequent years additional flexibility will be introduced gradually, in consultation with parents, and within the overall resources made available by Scottish Government.”  

152. COSLA told us that local authorities had the professional expertise to ensure that the service is provided as flexibly as possible.  

153. The Minister said the reason for increasing the number of hours (from 475 to 600) was to provide more flexibility for parents and families who were struggling to balance work and life. She also said the Bill would allow families to have an input in the way in which the local authority configures its services.

**Resources and costs**

154. The provisions in Part 6 are the most expensive, with an estimated cost of £100m in the first full year of implementation. In its report on the Financial Memorandum, the Finance Committee raised a number of issues about the costs. It was particularly concerned about the partner provider payments made by local authorities to nurseries and sought further details from the Scottish Government on whether, for example, the costings were sustainable.

155. We also received evidence indicating a wide variation in partner provider payments. The National Day Nurseries Association (NDNA) suggested nurseries were underfunded to an average of £500 per child per year for early learning and childcare places. The NDNA also suggested the funding gap worked “against the objectives of a high quality professional workforce” because nurseries were “unable to provide salaries commensurate with a profession”. It called on the Scottish Government to “assess the level of funding needed centrally and explore

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187 COSLA. Written submission.  
190 Financial Memorandum, Table 17  
(Paragraph 74-85) [Accessed 13 November 2013]  
mechanisms to protect that investment at local level‖. One option it suggested was to reintroduce a minimum floor\textsuperscript{193}.

156. COSLA responded to the call for a standard rate of payments to partner providers and stated “as the Bill is currently framed, no resource would be available to adjust the floor”\textsuperscript{194}. Its view was “the decision on rates paid for this service must fall within local decision making by councils, as they have the best understanding of the resources available to deliver all services”.\textsuperscript{195} The Scottish Government is content to leave the decision to individual local authorities on how much to pay partner providers.\textsuperscript{196}

157. The Minister also referred to the quality of care. She emphasised it was important that what was being provided had “to be of a quality that will respond to the real needs of children”\textsuperscript{197}. She suggested the work undertaken over the last few years “to make sure that the workforce is appropriately trained is paying dividends” and she said “we can have confidence that we are delivering a quality offering for three and four-year-olds”\textsuperscript{198}

Conclusions

158. We note that early years intervention is generally regarded as being of crucial importance to a child’s development and we support its proposed expansion. We also support the general desirability of continuing to expand this to two year olds as quickly as possible.

159. We welcome the Bill as a first step in the expansion of early learning and childcare, although a minority of us would like the Bill to go further.

160. Whilst we accept local authorities will need some time to ascertain the level of need locally, we urge the Scottish Government and COSLA to work to ensure that flexible arrangements are made available as quickly as possible to enable families to take advantage of the new provision.

161. We note the suggestion some nurseries are underfunded. We emphasise that the increase in supported hours of early learning and childcare must not have a detrimental effect on the quality of the service that is provided, or the sustainability of provision in the voluntary and private sectors.

162. On a related point, we heard calls for the Bill to revise the point at which children’s entitlement to supported childcare would begin. Currently, children are entitled to use the service from the start of the school term following their third birthday. It has been suggested this system is unfair in that the amount of

\textsuperscript{193} Until 2007, Scottish Executive guidance had specified a recommended minimum payment to partner providers

\textsuperscript{194} Scottish Parliament Education and Culture Committee. \textit{Official Report, 17 September 2013, Col 2776}

\textsuperscript{195} COSLA. Supplementary written submission.

\textsuperscript{196} Scottish Government. Supplementary written submission.

\textsuperscript{197} Scottish Parliament Education and Culture Committee. \textit{Official Report, 8 October 2013, Col 2965}

\textsuperscript{198} Scottish Parliament Education and Culture Committee. \textit{Official Report, 8 October 2013, Col 2966}
childcare to which children are entitled depends on when their birthday falls.\(^\text{199}\) We wrote to the Scottish Government asking it to respond to those concerns and asking whether it intended to take any further action on the matter. The Government confirmed its policy intention was for the current entitlement to continue. It also stated that it encouraged local authorities to commence early learning and childcare closer to the child’s third birthday where they have capacity to do so. **We invite the Scottish Government to provide further explanation of why it is not appropriate for the Bill to include measures on this matter.**

### Part 7 – Corporate parenting

163. The Bill places duties on a range of organisations\(^\text{200}\) that are to be regarded as ‘corporate parents’ for the purpose of working to meet the needs of looked after children and young people and care-leavers.\(^\text{201}\) The Bill also sets out particular responsibilities of corporate parents (section 52) and requires organisations to develop plans (section 53) and reports (section 55).

164. Currently, local authorities have legal duties towards looked after children and Government guidance sets out how community planning partners can act as corporate parents.

165. The Scottish Government believes there is a need to legislate in order to ensure the concept of corporate parenting is implemented consistently across Scotland and to increase awareness of the concept.\(^\text{202}\)

166. There was wide support for the concept of corporate parenting. In particular, Who Cares? Scotland said the Bill conveyed the right message about the need for public services to take responsibility as corporate parents.\(^\text{203}\) They emphasised though, that without detailed guidance the current ambiguity surrounding the role of corporate parents would continue.\(^\text{204}\) Others also highlighted the need for clarity in relation to, for example, the roles and responsibilities of adult health services when dealing with 16-25 year olds.\(^\text{205}\)

167. A number of comments questioned whether all the organisations listed as corporate parents should have such a role. For example, the Scottish Children’s Reporter Administration felt the list had been too widely drawn and many of the organisations – including itself – should not be included. Also, it was concerned that conferring duties on such a wide list of organisations would run the risk of “diluting the core concept to the point that it loses all meaning”.\(^\text{206}\) Others too, did not see their roles as corresponding directly to the duties of a corporate parent, such as Children’s Hearings Scotland\(^\text{207}\) and the Scottish Court Service.\(^\text{208}\)

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\(^{199}\) Reform Scotland *“An equal start”*; Children in Scotland. Written submission.

\(^{200}\) Listed in Schedule 3

\(^{201}\) Policy Memorandum, paragraph 104

\(^{202}\) Policy Memorandum, paragraph 105


\(^{204}\) Who Cares? Scotland. Written submission.

\(^{205}\) NHS Ayrshire and Arran. Written submission.

\(^{206}\) Scottish Children’s Reporter Administration. Written submission.

\(^{207}\) Children’s Hearings Scotland. Written submission.
168. We asked the Scottish Government to explain why the list of organisations with corporate parenting duties had been drawn so widely. In response, it stated the list encompassed “as many organisations as possible that have a key role in the decision making processes that affect looked after children”\textsuperscript{209}.

**Conclusions**

169. **We note the evidence received indicating that several organisations do not agree with their inclusion on the list of corporate parents. This risks diluting the concept of corporate parenting. In the absence of specific criteria, we seek further clarification from the Scottish Government about the reasoning underpinning the decisions to identify those with corporate parenting responsibilities.**

**Part 8 – Aftercare**

170. The Bill places a duty on local authorities to continue to provide care-leavers with aftercare support up to the age of 26 (but only where they are classified as looked after at school-leaving age).\textsuperscript{210} If a person requests such additional support then a needs assessment\textsuperscript{211} must be carried out by the local authority.\textsuperscript{212}

171. We heard strong support for the proposal to extend aftercare, although several called for it to go even further. Who Cares? Scotland prepared a detailed proposal to give young care-leavers a right to return to care up to the age of 26. It argued for a care-leaver to be able to maintain their relationship with their core care provider, that is “someone who they know and trust”\textsuperscript{213}.\textsuperscript{214}

172. Others made similar points. The Fostering Network Scotland wanted young people in Scotland to have the opportunity to stay with their foster carers until the age of 21.\textsuperscript{215} Scotland’s Commissioner for Children and Young People felt the Bill should “give young people who leave care aged 16-17 years and who subsequently become homeless, a right to be looked after and accommodated by the local authority”\textsuperscript{216}.

173. Others supported strengthening the Bill through extending the qualifying criteria for receiving aftercare. For example, Aberlour Child Care Trust called for the removal of the requirement in the Bill for an individual to be classified as looked after at school-leaving age. It suggested this was necessary in order to ensure support would be available to those who had left care but still required

\textsuperscript{208} Scottish Court Service. Written submission.  
\textsuperscript{209} Scottish Government. Written submission.  
\textsuperscript{210} Currently, the Children (Scotland) Act 1995 requires local authorities to provide support up to the age of 18, and with discretion to do so up to 21.  
\textsuperscript{211} It is envisaged that ‘eligible needs’ will be those essential to daily living  
\textsuperscript{212} Policy Memorandum, paragraph 110  
\textsuperscript{213} Who Cares? Scotland. Written submission.  
\textsuperscript{214} Scottish Parliament Education and Culture Committee. *Official Report, 10 September 2013*, cols 2737-2739  
\textsuperscript{215} Fostering Network Scotland. Written submission.  
\textsuperscript{216} Scotland’s Commissioner for Children and Young People. Written submission.
support. Others wanted the duties to apply to young people with disabilities, those in kinship care, and those with additional support needs.

174. In addition, there were concerns that local authorities would be given too much discretion to decide whether to provide support, and a number commented that an appeals mechanism should be included in the Bill.

175. In response to the calls to strengthen Part 8, the Minister was clear that adequate support should be provided to young people as they make the transition from care to independence. She said she was interested in the view of Who Cares? Scotland about providing support to the age of 26, and wanted to “ensure that the support we have in place is adequate and allows the young folk in question to have outcomes that are no different from those of their peers who are not looked after.” In addition, the Minister said she was sympathetic to some of the evidence seeking an extension to the qualifying threshold.

Conclusions

176. We have spent significant time examining the educational attainment of looked after children and decision making on whether to take children into care. It is clear from these inquiries that further work is required to improve outcomes for looked after children.

177. We welcome the positive comments from the Minister about her aim to ensure young care-leavers receive the support they require. Whilst the Bill will go some way to achieving this aim, we consider the range of support for our most vulnerable young people could be further enhanced.

178. We acknowledge the evidence that we heard from Who Cares? Scotland and others and invite the Government to respond to their suggestions that the Bill should include a right for care-leavers to return to care up to the age of 26; allow young people who have spent time in care, but are not in care at school-leaving age, to be eligible for aftercare; and include a mechanism enabling care leavers to appeal against decisions taken about the level of care they receive.

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217 Aberlour Child Care Trust. Written submission.
218 For Scotland’s Disabled Children. Written submission.
219 Scottish Kinship Care Alliance. Written submission.
220 Scotland’s Children’s Services Coalition. Written submission.
221 Against the decision of a local authority about whether and what kind of support is required.
222 Aberlour Child Care Trust. Written submission; Action for Children. Written submission; Scottish Association of Social Work. Written submission.
Part 9 – Counselling services

179. This Part of the Bill would require local authorities to provide counselling services to parents (or individuals with parental rights and responsibilities) for an ‘eligible’ child.

180. There is minimal detail included in the Bill. The definition of an eligible child, together with descriptions of the types of services to be included, are to be specified in regulations. 226

181. We sought clarification from the Scottish Government about the intention of this Part of the Bill. In response, the Government confirmed counselling services would be available where a child’s wellbeing was at risk and particularly where a child was at risk of being taken into care. In such cases, access to counselling services would act as “an early and effective intervention to support parents.” 227

182. The lack of detail in the Bill was criticised by some who provided evidence. For example, COSLA suggested it was difficult for local authorities to be able to assess the impact of the proposals on the basis that “local authorities are to provide undefined counselling services to parents or those with parental rights and responsibilities of an undefined group of children.” 228

183. In its report to us on the delegated powers within the Bill, the Delegated Powers and Law Reform Committee considered that the order making powers providing for eligibility for counselling should be made under the affirmative procedure rather than negative procedure as specified in the Bill. 229

184. Other witnesses suggested the term ‘counselling services’ was unhelpful 230 and too prescriptive 231. In particular, the British Association for Counselling and Psychotherapy (BACP) highlighted references in the Financial Memorandum to family therapy, family mediation and family conferencing and appeared to suggest they had been incorrectly described as falling under the umbrella of counselling. The BACP also highlighted what it considered to be a significant omission, namely the absence of counselling support for children and young people themselves.

Conclusions

185. We note the calls for further information on the measures to be provided and request that the Scottish Government provides such information as early as possible.

186. We agree with the recommendation of the Delegated Powers and Law Reform Committee that, due to the significance of eligibility for these

226 Explanatory Notes, paragraphs 155-156
227 Scottish Government. Written submission.
228 COSLA. Written submission.
230 COSLA. Written submission.
matters, the affirmative procedure should apply rather than the negative procedure.

Part 10 – Support for kinship care

187. The Bill places a duty on local authorities to provide kinship care assistance to families that have obtained, or are in the process of obtaining, a kinship care order, for an eligible child.232

188. The Policy Memorandum states that the rationale for the legislative change is to “encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting”.233 The Financial Memorandum states that part of the purpose of the kinship care order and the accompanying measures “is to reduce unchecked growth in formal kinship care”.234

Context

189. As this section of our report refers to some specific terms, we provide a description of the main ones to assist understanding. Kinship care is the care of children by their extended family or a close friend of the family. Where the child is placed by the local authority, then the child is ‘looked after’ (also called formal kinship care). However, for the majority of children, kinship care arrangements are made privately between family members without local authority involvement (known as informal kinship care). In cases where there is some local authority involvement, unless the child is placed by the local authority as a looked after child, this is still informal kinship care.

190. There are a number of ways in which local authorities can provide support to kinship carers. Local authorities can provide discretionary support to any kinship carer, and this can include a financial allowance. For those in formal kinship care arrangements, the Looked After Children (Scotland) Regulations 2009 set out requirements for assessment and support. In neither case is there a set, national minimum payment.

191. Payments made to all kinship carers are disregarded as income under the UK Government benefits system. However, if a person is a kinship carer of a looked after child and receiving a local authority payment for accommodation or maintenance, they cannot claim child benefit and child tax credit for that child. This is to avoid the situation where double payments are made. They will however receive the income disregard for other benefits they might claim, such as housing or council tax benefit.

Detail of provisions

192. As the Financial Memorandum states, a kinship care order is not a new statutory order, but is the new name given to section 11 orders235, where such an

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232 Policy Memorandum, paragraph 118
233 Policy Memorandum, paragraph 117
234 Financial Memorandum, paragraph 128
235 These orders are made under section 11 of the Children (Scotland) Act 1995. Section 11’ orders regulate parental rights and responsibilities and can currently be applied for by kinship carers in order to give legal underpinning to the child’s residence with them
order is issued to a kinship carer. The main difference between the existing section 11 orders and the proposed kinship care orders is that the latter attaches, where the child is eligible, the provision of kinship care assistance.

193. The criteria for determining whether a child is eligible to receive kinship care assistance will be included in regulations. However, the Scottish Government told us its intention is that an eligible child will be one “whose wellbeing would be at risk of being impaired and, in particular, where they are at risk of coming into care, if the kinship care assistance is not made available”.

194. The types of support that will constitute kinship care assistance will also be included in regulations. However, the Bill specifies that such support could include counselling, advice or information, financial support, or any service provided by a local authority on a subsidised basis.

Financial support under a kinship care order

195. The range of support envisaged under the Bill, particularly the inclusion of financial support, was broadly welcomed. However, a number of organisations expressed concern about the level of support that would be provided to kinship carers.

196. The Scottish Kinship Care Alliance was particularly critical and believed that the kinship care order was “not fit for its stated purpose of supporting more kinship carers, or increasing permanence in kinship care placements”. It argued that the primary reason for this was “because there is no guarantee of additional support as part of the proposed kinship care order”.

197. The Scottish Kinship Care Alliance was also concerned that any support provided under a kinship care order would not be comparable to what was provided to kinship carers of looked after children. It called for the same level of support to be offered and specifically mentioned priority access to specialist psychological and educational services, through-care or after-care services, and passported benefits such as school meals and uniform allowances. Citizens Advice Scotland felt that not including ongoing financial assistance under the order, gave credence to the position that “looked after and not looked after children in kinship care fall neatly into two distinct groups, with the former having more serious care needs that require greater financial support”.

198. Another key concern was the level of local authority discretion in awarding any payments. The Child Poverty Action Group (CPAG) Scotland stated that “if local authorities are enabled rather than obliged to provide financial assistance to kinship carers, there will be a strong likelihood of a ‘postcode lottery’ of support developing.” Although the Association of Directors of Social Work acknowledged there were differences in the payments local authorities made to

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236 Financial Memorandum, paragraph 106
237 Scottish Government. Written submission.
238 Financial Memorandum, Table 23; Explanatory Notes, paragraph 163
239 Scottish Kinship Care Alliance. Written submission.
240 Scottish Kinship Care Alliance. Written submission.
241 Citizens Advice Scotland. Written submission.
kinship carers, it argued that there needed to be “significant local determination of what is required in an area”. 243

199. We asked the Scottish Government to respond to the concerns that kinship carers would not receive adequate support under the Bill. Government officials confirmed that they had begun to consult with stakeholders about the content of the regulations, and that some aspects of these concerns would be addressed in the context of its ongoing review of allowances paid to kinship carers of looked after children 244.

**Kinship care orders and the UK benefits system**

200. CPAG Scotland, and a number of others, questioned how the kinship care order would interact with the UK benefits system. Whilst the Bill should avoid most, if not all, of those difficulties (as children would no longer have looked after status), CPAG asked whether any financial assistance provided under a kinship care order would be disregarded as income under the benefits system. CPAG was concerned that if such payments were not disregarded, the financial assistance might simply be clawed back.

201. In written evidence, the Scottish Government stated that a holder of a kinship care order would be “recognised as any parent would be within the benefits system” 245. Therefore, the “kinship carer can claim the same benefits such as Child Benefit and Child Tax Credit as any parent would”.

202. We discussed the potential for claw-back with the Minister and Scottish Government officials in relation to transitional payments 246. They confirmed that where a kinship carer received a payment under the benefits system this would be deducted from any transitional payment made under a kinship care order.

203. We raised these issues with the UK Department for Work and Pensions and HM Revenue and Customs and extracts from their responses are included below.

204. Department for Work and Pensions—

“Without knowing the precise details and purpose of the financial support that will be provided to kinship carers under the new Bill, we cannot guarantee that it will have no effect on benefit entitlement. [...] If the intention is that the new payments broadly replace or replicate the purpose of these existing payments, it is very likely that we would recommend to our Ministers that they too would be disregarded. However, if the new

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244 The Scottish Government’s Kinship Care Financial Review is likely to announce its findings by the end of 2013.

245 Scottish Government. Written submission.

payments are significantly more generous or for a different purpose, we would need to consider whether a disregard could still be justified.\(^{247}\)

205. HM Revenue and Customs—

“Under the ‘informal’ Kinship Care proposals, and subject to receiving details of what payments will actually be made, it appears that the children will no longer be considered to be ‘looked after’ by the Local Authority and, as a consequence, the Kinship Carer would be able to claim Child Tax Credit. We would need to see your draft regulations to understand precisely what will be paid out before a final view could be given.

“Similarly, in relation to Child Benefit, it is not yet clear from the information provided what package of support will ultimately be available. We would need to look at this again once the secondary legislation has been drafted but our initial view is that Child Benefit would continue to be available to the Kinship Carer in respect of the children being informally looked after. There is one exception to this generalisation and that is in relation to the transition from ‘formal’ to ‘informal’ Kinship Care where a top-up payment of £70 per week could be paid for up to 3 years where equivalent support is not available through the UK benefits system. We’re not certain what that means in practice and would need to understand more about these payments before a final view could be given.”\(^{248}\)

Resources and the cost of kinship care orders

206. The Financial Memorandum predicts that from 2017-18 between 6% and 11% of kinship carers of looked after children would apply for kinship care orders; and that between 1.5% and 3.5% of kinship carers of not looked after children would apply for an order.

207. In its report, the Finance Committee highlighted evidence it received from local authorities, which “cast doubt” on these assumptions.\(^{249}\) The City of Edinburgh Council, for example, did not think there was robust evidence that families would move from a position in which their child is looked after (where they receive a set of resources to support that situation), to the new kinship care order. In relation to children who are not looked after, the Council felt the estimate in the Financial Memorandum was an underestimate and therefore the costs falling on local authorities would be greater than predicted. COSLA also highlighted what it saw as “considerable uncertainty over how many families will take up an order”

\(^{247}\) Correspondence from Department for Work and Pensions. 6 November 2013. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx [Accessed 13 November 2013]

\(^{248}\) Correspondence from HM Revenue and Customs. 1 November 2013. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/66626.aspx [Accessed 13 November 2013]

and considered that the financial risk facing local government was “potentially significant”.  

208. The Finance Committee specifically asked us to seek further details from the Scottish Government on the estimated costs associated with diverting children from formal kinship care. The Government’s response re-stated its belief that the order would be an attractive alternative to formal kinship carers. However, it also acknowledged that it was “very difficult to model [the costs/savings], because of the complex behaviour of children going in and out of care”.

Conclusions
209. We agree with the principle that children ought not to be classed as ‘looked after’ for any longer than is necessary and welcome the aim to reduce the number of children in formal kinship care.

210. However, we acknowledge concerns that ‘looked after’ status can sometimes be seen as a gateway to resources and support. We consider it is crucial that local authority support provided under the Bill’s kinship care order is based on the needs of the child rather than resources or legal status. The transition from being ‘looked after’ to not being ‘looked after’ should not mean the removal of support still required by kinship carers and their families. To this end, we welcome the kinship care order with its duty requiring local authorities to provide assistance and consider this has the potential to ensure any necessary support is provided.

211. We recognise, however, the concerns raised by some kinship carers about the level of support available under the kinship care order and that much will depend on the detail of the regulations and how local authorities implement the provisions. We therefore welcome the Scottish Government’s work in engaging with stakeholders, including local authorities and groups representing kinship carers, on the contents of the regulations and ask the Government to reassure kinship carers about the level of support they can expect to receive under the new arrangements.

212. The Scottish Government Financial Review of kinship care expects to report by the end of 2013. We will consider its findings in due course. The Government should ensure the findings can be easily integrated into the regulations being developed under the Bill.

213. We invite the Scottish Government to provide details of the action it is taking to ensure that payments under the kinship care order will be disregarded as income in terms of the benefits system. We would be concerned if such support was not disregarded in this way and urge the Scottish Government to work closely with the relevant UK Government departments on the development of the regulations under this Part, to ensure clarity about what kinship carers can and cannot expect to receive.

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250 COSLA. Written submission.
251 Scottish Government. Supplementary written submission.
Part 11 – Adoption register

214. The Bill will put Scotland’s Adoption Register\textsuperscript{252} on a statutory footing and give the Scottish Ministers responsibility for making arrangements for establishing and maintaining the Register. The Bill will require local authorities and registered adoption services to provide specified information for the Register so that there is a list of prospective adopters and children in respect of whom no match has been found.\textsuperscript{253}

215. The Policy Memorandum states this will increase the number of adoptions.\textsuperscript{254} Scottish Government officials said some adoption agencies were reluctant to refer their prospective adopters to the existing (non-statutory) Register, despite not being able to match them with any children locally. The Government stated that it envisaged “the statutory requirement on adoption agencies to use the Register will address this issue and increase the Register’s effectiveness.”\textsuperscript{255}

216. The organisations that responded on this Part supported a national register, although several questioned it being compulsory. For example, the British Association for Adoption and Fostering (BAAF), which is currently responsible for administering the existing non-statutory Register, did not consider it necessary to require mandatory referral of children to the Register, “as the current system operates satisfactorily without compulsion.”\textsuperscript{256}

217. The Association of Directors of Social Work (ADSW) preferred the use of “clear timescales and options”\textsuperscript{258} rather than the compulsory approach taken in the Bill. However, the ADSW Sub-Group on Adoption and Fostering acknowledged there could be a need for compulsion if guidance failed to increase referrals and use of the Register.\textsuperscript{259} COSLA also hesitated to support the proposal in the Bill and suggested that moving to a national adoption register through compulsion for local authorities “should only be considered where there is complete confidence that it is in the interests of children to do this.”\textsuperscript{260}

218. In addition, BAAF highlighted its concern about a technical provision, which would prohibit an adoption agency from disclosing information about a child who it considered ought to be placed for adoption, without the express consent of the child’s parent or guardian. BAAF felt this would “make referral to the Register much more difficult” and suggested adoption was possible against the wishes of parents where the court is satisfied their consent should be dispensed with. BAAF argued that, if consent was to be required before a child could be referred to the

\textsuperscript{252} Scotland’s Adoption Register: \url{http://www.scotlandsadoptionregister.org.uk/}
\textsuperscript{253} Financial Memorandum, paragraph 153
\textsuperscript{254} Policy Memorandum, paragraph 135
\textsuperscript{255} The Financial Memorandum states that two thirds of local authorities and three registered adoption services use the existing non-statutory Register.
\textsuperscript{256} Scottish Government. Written submission.
\textsuperscript{257} British Association for Adoption and Fostering. Written submission.
\textsuperscript{258} Association of Directors of Social Work. Written submission.
\textsuperscript{259} Association of Directors of Social Work Sub-Group on Adoption and Fostering. Written submission.
\textsuperscript{260} COSLA. Written submission.
Register, this would mean “an essentially administrative part of the pre-court procedure will be more restrictive than adoption court proceedings themselves”\textsuperscript{261}.

\textit{Conclusions}

219. \textbf{We support the aim of enabling more children, particularly those who are looked after, to be matched with suitable adopted families without having to experience delays. We consider the compulsory nature of the Register will mean the remainder of local authorities and adoption agencies will join the Register, thereby increasing the chances of a suitable match.}

220. \textbf{However, we note the concerns raised in evidence by, for example, the British Association for Adoption and Fostering and invite the Scottish Government to respond to these points.}

\textbf{Part 12 – Other reforms}

221. The Bill includes a number of smaller, less contentious issues that did not receive much, if any, comment in the evidence we received. A brief outline of those that received most interest is included below.

\textit{Children’s hearings}

222. The Bill proposes changes to the establishment and administration of Area Support Teams (ASTs)\textsuperscript{262}. It seeks to replace the existing obligation on the National Convener of Children’s Hearings Scotland (CHS) – to require the consent of each constituent local authority before making changes to the future configuration of ASTs – with a requirement to consult. The Policy Memorandum states this change will result in a “simpler, more streamlined process, which is quicker, more efficient and nationally consistent”\textsuperscript{263}. Secondly, the Bill places a duty on local authorities to provide ASTs with administrative support. This will ensure the provision of support is “more standardised across the country”\textsuperscript{264}.  

223. COSLA highlighted concern that these changes raised “an issue of principle about the head of a national body potentially acting against a decision of a democratically elected authority”\textsuperscript{265}.

224. CHS supported the proposals and stated it “recognised the crucial role played by local authorities in supporting panel members and within the Children’s Hearings System”\textsuperscript{266}. The Scottish Children’s Reporter Administration agreed and also emphasised that it would remain important for the Convener of CHS to seek to engage with local authorities and “wherever possible, to get their agreement”\textsuperscript{267}.

\textsuperscript{261} British Association for Adoption and Fostering, supplementary comments provided to the Committee Clerk  
\textsuperscript{262} An Area Support Team carries out functions on behalf of the National Convener to support members of the Children’s Panel who sit on children’s hearings in their area.  
\textsuperscript{263} Policy Memorandum, paragraph 138  
\textsuperscript{264} Policy Memorandum, paragraph 140  
\textsuperscript{265} COSLA. Written submission.  
\textsuperscript{266} Children’s Hearings Scotland. Written submission.  
\textsuperscript{267} Scottish Children’s Reporter Administration. Written submission.
Conclusion

225. On balance, we believe the proposals have the potential to streamline the establishment and administration of Area Support Teams (ASTs) and put the interests of children first, and note the requirement to consult on changes to ASTs.

Schools consultation

226. The Bill makes a minor change to the administrative process when a school closure proposal is made under the Schools (Consultation) Act 2010.268

227. However, the Scottish Government intends to lodge a number of amendments to this section at Stage 2.269 In a letter to us, the Cabinet Secretary for Education and Lifelong Learning said the purpose of the amendments is to implement recommendations from the Commission on the Delivery of Rural Education and the findings of the Court of Session in a judicial review concerning school closures in Comhairle nan Eilean Siar.

228. The amendments will relate to the following six topics—

- presumption against closure
- providing financial information in closure proposals
- clarifying and expanding Education Scotland’s role
- the basis for determining school closure proposals
- establishing an independent referral mechanism
- a five-year moratorium on repeating a school closure proposal

229. In order to inform our scrutiny of these matters, we will take evidence from key stakeholders before Stage 2 begins.

CONCLUSION

Overall conclusion on the Bill

230. We support the general principles of the Children and Young People (Scotland) Bill.270

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268 Policy Memorandum, paragraph 146
269 Correspondence from Michael Russell MSP, Cabinet Secretary for Education and Lifelong Learning (27 September 2013).
270 Liz Smith MSP dissented from this paragraph insofar as it includes Part 4, Provision of Named Persons.
Children and Young People (Scotland) Bill: The Committee considered its approach to the scrutiny of the Bill at Stage 1. A draft call for written evidence was agreed to.
Children and Young People (Scotland) Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1.
Children and Young People (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Susan Bolt, Early Learning and Childcare Team Leader, Elisabeth Campbell, Children’s Legislation Team Leader, David Blair, Head of Looked After Children Policy, Ruth Inglis, Solicitor, Scottish Government Legal Directorate, Boyd McAdam, Head of Better Life Chances Unit, Gordon McNicoll, Divisional Solicitor/Deputy Director, Communities and Education Division, Clare Morley, School Infrastructure Unit Team Leader, Stuart Robb, Head of Early Years Policy Delivery Unit, Lynn Townsend, Implementation Manager, Better Life Chances Unit, Scott Wood, Lead Policy Adviser, Children’s Rights, and Kit Wyeth, Head of Children’s Hearings Team, Scottish Government.
Children and Young People (Scotland) Bill: Stage 1

11:37

The Convener: Next is our first oral evidence on the Children and Young People (Scotland) Bill, from Scottish Government officials. Because of the number of issues that are raised by the bill, we will have two panels, the first of which will deal with parts 1 to 5, which cover rights, children's services planning and getting it right for every child. We will take further oral evidence in September and October, including from the Minister for Children and Young People. That meeting will be the opportunity for members to get ministers' views and comments on the detailed policy decisions.

I welcome our first panel. There are rather a lot of you, so I will not give everybody's title, if you do not mind. We have Elisabeth Campbell, Gordon McNicoll, Scott Wood, Boyd McAdam, Lynn Townsend and Stuart Robb, all from the Scottish Government. I invite Elisabeth Campbell to make a brief opening statement.

Elisabeth Campbell (Scottish Government): I am the bill team leader for the Children and Young People (Scotland) Bill, which my colleagues and I are grateful to be here to discuss. The provisions are fairly wide ranging, so a number of officials are present in order that we can answer your questions as fully as possible.

The bill is fundamental to the Scottish Government's aim of making Scotland the best place in the world to grow up. It will put children and young people at the heart of planning and delivery of services, and will ensure that their rights are respected across the public sector.

The bill will also ensure that children's rights properly influence the design and delivery of policies and services and it will increase the powers of Scotland’s Commissioner for Children and Young People. It will improve the way that services support children and families by promoting co-operation between services, and it will strengthen the role of early years support in children’s lives by increasing the amount and flexibility of funded early learning and childcare. It will also ensure better permanence planning for looked-after children by improving support for kinship carers, families and care leavers; extend corporate parenting across the public sector; and put Scotland's national adoption register on a statutory footing.

The scale of the Government's ambition for children and young people is significant, and the very strong response to the consultation on the bill makes it clear that the Scottish Government is not alone in holding such high aspirations for the children and young people of this country. The bill will bring about a step change in the way in which all services support children and young people, and it will inspire renewed debate and ambition for what Scotland’s children and young people can expect. There is clearly an appetite for that kind of change. My colleagues and I will be delighted to answer questions from the committee.

Liz Smith: I think that we all agree that one of the greatest difficulties and complexities that the committee is grappling with is partly ethical and partly legal: if we extend the rights of children, there are implications for the rights of parents and other groups. The committee would welcome information on where the Government and the bill team are in seeking advice on that.

Our briefing notes for this morning mention that there has been a request regarding the incorporation into Scots law of the United Nations Convention on the Rights of the Child. How are you addressing that issue? What stage are you at?

Scott Wood (Scottish Government): As regards the balancing of the rights and responsibilities of parents against those of children and young people, the UN convention is clear on parents having primary responsibility and taking the lead role in raising children and young people.

On the question of incorporating the convention, ministers are not against making targeted changes to domestic law that build on the requirements of the UNCRC. They will tend to make those changes where they think that they will directly benefit children and young people, and where they think that the changes will ultimately strengthen our approach to children’s rights overall.

Ministers are not supportive of wholesale incorporation of the convention—of lifting the convention in its entirety and dropping it directly into Scots law. They do not feel that that would necessarily take us forward from where we are at the moment. Very little evidence has been shared with ministers that sets out the benefits of taking that approach, and the limited evidence that we have seen suggests that benefits lie primarily in relation to improved culture within services and increased awareness of children’s rights. We want to deliver those benefits, but we do not think that wholesale incorporation necessarily represents the best and most effective way of going about that.

For instance, we are seeking, through the bill, to improve the culture within public services through effective embedding of getting it right for every child, which is an approach that builds on the principles of the convention. We are also taking steps through the bill to place a new duty on the
Scottish ministers to promote awareness and understanding.

There is some risk that wholesale incorporation could result in far too much emphasis being placed on the courts and on legal processes to address the range of often complex issues that can impact on this agenda.

Liz Smith: When could you provide us with the legal advice that you think is appropriate to the decision not to incorporate the whole convention?

Scott Wood: I do not think that we would seek to offer any legal advice to the committee on that issue. It is a policy decision for ministers whether they wish to pursue incorporation of the convention.

Liz Smith: We have to make a decision. If we extend the rights of children, which is part of the basis of the bill, we have to be clear about the implications for and knock-on effects on other rights. What I am driving at is that we have to make an informed decision, which depends partly on legal advice. If it is not the intention of the bill team to provide that, from where else would that advice be forthcoming prior to the start of stage 1?

Scott Wood: It is important to recognise that we are not seeking to extend the rights that are available to children and young people. Irrespective of whether the convention is incorporated into Scots law, the Scottish ministers have a responsibility to implement the UNCRC. The duty is about increasing transparency and accountability around how ministers go about that. It requires ministers to evidence how they are considering the convention when they are taking decisions that impact on children and young people.

Liz Smith: In some areas of the bill, particularly in respect of the named person, do the provisions not increase the rights of the child?

Scott Wood: I apologise. Perhaps it is better for Boyd McAdam or Lynn Townsend to comment specifically on named persons. I was talking in the context of part 1 of the bill, which focuses on the UNCRC.

11:45

Boyd McAdam (Scottish Government): The named person provisions set up a framework that is made available to children but does not give children additional rights; it provides a structure for services to support children. The rights issue is very much in relation to UNCRC. Article 3 recognises the rights of parents but does not indicate precisely how they are balanced. The UNCRC applies at present and there is no intention to adjust or extend that.

Liz Smith: So, there is no intention in the bill to extend the rights of children.

Boyd McAdam: No.

Neil Bibby: I believe that a number of organisations have requested that a children’s rights impact assessment be carried out on the bill, but I understand that that has not been done. Can you tell me the reasons behind that?

Elisabeth Campbell: Absolutely. It is essential to understand the impact of the bill on the rights of children and young people, which is why we engaged with over 2,400 of them during the bill’s development. A report on children’s views has been published on the Scottish Government website. In addition, we carried out an equality impact assessment on the bill, which looked at the impact on children and young people, based on a number of factors, including age, gender and religion. We also carried out a non-mandatory privacy impact assessment that looked at the impact on privacy factors for children and their families.

The children’s commissioner’s model for a stand-alone children’s rights impact assessment states that the point of it is to look at and raise awareness of children’s interests in policy or legislation. I feel that we have covered all of that by engaging with children and young people and doing all the other impact assessments that we did, and by explaining the rationale behind the bill’s proposals in the policy memorandum. We have not done it in a separate stand-alone document, but what we have done is more extensive than what would have been done for a stand-alone children’s rights impact assessment.

Neil Bibby: There are concerns that parts of the bill—for example, the named person aspect—could breach the UNCRC around the child’s right to privacy. Have you assessed that from a children’s rights point of view?

Boyd McAdam: On the impact of the provisions on the child and the family, there is a balance to be struck, particularly with regard to article 8 of the UNCRC on respect for family life. Part of the named person provisions and the information sharing provisions that relate to getting information to named persons are couched in terms of their being proportionate, appropriate and justified. Before sharing information, a practitioner must have a reason for doing so and must share appropriate information with the right person—that is covered by the Data Protection Act 1998. We feel that, given the proportionality element, the provisions are compliant with ECHR and the UNCRC.

Neil Bibby: I understand that, before the consultation, it was proposed that “due regard” would be given to the UNCRC but that people
responded in the consultation to say that that aspect should be strengthened. However, following the consultation, the bill uses the phrase “keep under consideration”. Can you tell me the reasons for that change?

Scott Wood: Yes. A couple points arise from that. First, I will focus on stakeholders’ views of our proposals. When we consulted last year on proposals to legislate on children’s rights, about 70 per cent of respondents to the consultation agreed that our proposals would help to strengthen transparency and accountability around ministers’ approach to the UNCRC, but only about 15 per cent felt that the proposals did not go far enough and that they would like to see incorporation of the UNCRC. That suggests to us that we have got the focus about right on the nature of the duties that we seek to place on ministers through the bill.

On a “due regard” duty, whenever we introduce a new duty for ministers or anyone else, it is important that we are clear about its likely impact. We feel that we do not have that clarity in respect of a “due regard” duty. The concept of having due regard to international law is a new one in Scotland; there is no legal precedent for it and there is no case law to support us in understanding how the courts might interpret a duty of that nature. We think that, in this instance, that lack of clarity is an unnecessary risk. We have therefore sought through the bill to formulate a duty that accurately reflects exactly what ministers are looking to deliver.

The Convener: Liam McArthur has a question. Is it a supplementary on this area?

Liam McArthur: Yes. I acknowledge what you said, Mr Wood, in relation to the non-incorporation in the bill of the UNCRC, and I think that I am right in saying that you reflected that one of the potential benefits of the bill will be cultural change. We have heard from the minister this morning, in relation to improving outcomes for looked-after children, about the importance of cultural change, so I do not think that it is terribly helpful to downgrade the importance of that cultural change.

Scott Wood: Absolutely not.

Liam McArthur: Therefore, I am still trying to get my head round why ministers have decided not to incorporate, but instead, in a sense, to cherry pick the elements of the UNCRC that they see a need to implement through the bill.

Scott Wood: One factor is that limited evidence has been presented to ministers that suggests that incorporation provides benefits in terms of culture change and improved awareness and understanding. It would be beneficial to have a more robust evidence base on which to form any future view about incorporation.

We also have to weigh up the benefits against the potential risks of incorporating the convention. As I said, we feel that there is potential for incorporation to place far too much emphasis on the courts and on legal processes. We certainly do not want to end up in a situation in which the courts are considered to be the go-to forum for addressing the range of issues that impact on children in Scotland. We think that we can deliver many of the benefits through other avenues—through other provisions that are set out in the bill. We do not think that incorporation represents the best way to progress the rights agenda at this time.

Liam McArthur: If you were to put the rights in legislation, I presume that there would still be a risk that the issue would ultimately end up in the courts anyway, in terms of testing the legal status of whatever the rights were.

Scott Wood: That would depend on the focus of the duty that was being introduced. Gordon will add something on that.

Gordon McNicoll (Scottish Government): It is certainly correct that if you impose any duty on anybody—on ministers in particular—there is a risk of litigation, because someone will argue that ministers have failed to fulfil whatever duty has been imposed on them.

The position that ministers have taken, however, is that the focus is on education—on changing the culture—as has been explained. It is considered that that will best be achieved through the approach that has been taken in the bill. Ministers would prefer not to see the emphasis being on pursuit of litigation through the courts on rights that, in their view, should more properly be developed through education and through a change of culture.

Liam McArthur: You have identified potential benefits—albeit not necessarily on as robust an evidence base as you may have wished for—so is it fair to say that, through the evidence process that the committee is embarking on now, there is still willingness among ministers to look again at the issue if such evidence were to be put forward?

Scott Wood: It would be premature of us to say what ministers’ future views might be in the light of emerging evidence. However, I can certainly state that based on the evidence that ministers have seen to date, their view is that incorporation does not represent the best way to progress the agenda at this time.

Neil Findlay: It is always dangerous to ask a question that you do not know the answer to, but I will anyway. What other countries have carried out full incorporation?
Scott Wood: We do not have an exhaustive list. I know that Ireland has recently made changes to its constitution to embed rights more effectively within that constitution. The United Nations Children’s Fund undertook some research last year that looked at the approach to legal implementation of the convention in 12 countries in total. Three of those 12 countries had taken the step of incorporating the convention into law. We do not have an exhaustive list of the range of countries that have progressed the issue, but I am certainly happy to share the UNICEF report with committee members if that would be helpful, so that you can see the range of different approaches that have been adopted in progressing the issue.

The Convener: That would be helpful. Liz, did you have a question?

Liz Smith: I was just going to say that it would be very helpful to see that report.

The Convener: Yes, I am sure that it would be.

The bill also gives the Scotland’s Commissioner for Children and Young People powers to investigate individual cases, which was pushed for back in 2003, when the post of children’s commissioner came into being, but did not happen at that time. What is the difference now as regards the children’s commissioner’s ability to undertake investigations?

Scott Wood: I can certainly talk a bit about the process that led to the development of the provisions in the bill. When ministers first proposed to legislate on children’s rights, they did not propose to extend the powers that are available to the children’s commissioner. Even without the question being asked, a significant number of stakeholders came back to us to suggest that we should actively consider including in the bill a provision on that.

We listened to that and we developed a set of proposals that were set out in a consultation that focused on the bill, which was published last June. Again, the majority of respondents suggested that there was scope for the new investigatory function to offer direct benefit to children and young people, and broader learning, in terms of practice in front-line services.

Since then, we have had a number of conversations with the other complaints-handling bodies in Scotland in order to understand better how the children’s commissioner’s investigatory power might add value, and how it should align with the range of other complaints-handling processes that are in place, because we do not want to duplicate activity. The feedback that we have had is that, by and large, there is consensus across the complaints-handling bodies that there is scope for the new investigatory power to add benefit to children and young people.

We think that the investigation function should be exercised in a fairly targeted and strategic way. That is based on the premise that we already have a fairly robust complaints-handling landscape in Scotland. We expect the number of instances in which it would be necessary for the commissioner to intervene to be quite limited.

We think that any investigation should offer benefit to the child or young person in question, but investigations should also offer wider learning and be targeted so as to inform the wider work of the children’s commissioner’s office. The approach should be strategic.

We recognise that it would be helpful to the committee to have particular examples of the types of investigations in which the children’s commissioner might be involved. We recently held a meeting with the complaints-handling bodies and the commissioner, at which it was agreed that they would develop some such examples over the summer, with a view to sharing them with the committee towards the end of the recess.

The Convener: That would be helpful.

I would like you to clarify something. As the bill stands, it proposes that investigations could, in effect, be undertaken only when they did not overlap with the work of others. I am struggling. A number of bodies undertake work in this area, so examples would help us understand what exactly the added value would be.

Scott Wood: Absolutely. We will be happy to share them as and when they become available.

Liam McArthur: The Finance Committee will look at the bill’s financial memorandum. However, if there is an agreed understanding of the level of activity, and therefore of the cost implications, that would be very helpful to us.

Scott Wood: The estimate that we set out in the financial memorandum was based on the premise that the commissioner would undertake a fairly small number of investigations—the assumption was that there would be between one and four—each year. We have shared that assumption with the commissioner and it has been the basis for our discussions until now.

Liam McArthur: The bill looks to put GIRFEC—a policy that has been in place since 2006—on a statutory footing. We heard earlier from the minister about the value that she could see in a number of cases of that move to provide a consistent approach. Can you explain where to date there have been inconsistencies? Are there geographic areas in which best practice has not been applied as it might have been? That is relevant to the committee’s inquiry, which we are drawing to a conclusion, as well as to the bill that we are about to embark on.
Boyd McAdam: The GIRFEC programme board has set up an implementation working group, which is engaging with community planning partnerships to get a better feel of where each area is on implementing GIRFEC. We are at a level at which everyone has corporate buy-in. Most areas are implementing the new processes into their key business areas, and two or three believe that they have progressed implementation to the point at which they are comfortable that they could comply with the proposed duties in the bill.

The areas that are looking for further assistance are looking for information and information-sharing materials around training, to help staff to understand how to move forward in consistent way. Lynn Townsend may speak a bit more about the work that we are doing on developing guidance. We are proposing a national training event in the next six to eight months to help people to understand how they can progress.

A report has just been issued by the implementation working group, which we can share with the committee. We are not identifying particular areas; everyone is at a different stage in their journey, but the key message is that work is well under way and we anticipate that by about this time next year implementation of GIRFEC will be well advanced.

12:00

Liam McArthur: What you describe would not necessarily require legislation, although I appreciate that it is a response to the legislation. Can you explain the rationale for going down the legislative route rather than for buttressing the policy guidance, the training and all the rest of it?

Boyd McAdam: Among the feedback that we have received as we have progressed to implementation is that people are looking for a structure within which all the activity will take place. Ministers were concerned that progress on implementation was not happening as fast as might have been anticipated. As Liam McArthur said, the GIRFEC policy has been around since 2005-06, although the actual GIRFEC approach was finalised only in 2009-10, following the pathfinder work in Highland and the learning partnerships.

We have been advocating change, but people need help to move forward. The approach is part of the big culture change that we are talking about around rights, and it requires a lot of planning, process and leadership. The bill provides the framework within which all that can happen, so that there is clarity about the role of the named person and about when information should be shared. We feel that those provisions should go in legislation, but there is still a lot of on-going activity around guidance to help people to understand what they need to do.

Liam McArthur: Concerns were expressed earlier about the UNCRC not being integrated wholesale into the legislation. I think that I am right in saying that we are not seeing wholesale integration of GIRFEC into legislation either. The absence of legislation for the lead professional to take over from the named person in complex cases is one example that has been cited. Given that some of GIRFEC will have a statutory underpinning and some of it will not, is there a potential problem in providing the consistency to which the minister—given her evidence this morning—clearly attaches considerable value?

Boyd McAdam: We describe the provisions in the bill as the key elements of GIRFEC and they are the elements on which we can legislate. A combination of practice change, systems change and culture change is required.

Liam McArthur: I am sorry for interrupting, but the phrase “on which we can legislate”

tends to suggest that this is a question of what lends itself to legislation as opposed to its being a policy choice. The provision on the lead professional appears to be a policy choice, rather than a choice based on ability to legislate. You are, after all, legislating for the named person.

Boyd McAdam: The rationale is that the named person is located within the universal services of health and education and we can place a statutory responsibility on those bodies to make arrangements to provide a named person. The lead professional will be the person who is best placed to address the needs and risk of the child, and so can be drawn from any service; they will not necessarily be located within health or education. It is therefore difficult to place a duty on an individual body to make the arrangements for the lead professional. We believe that how that system will work will best be sorted out by protocols across agencies in a community planning partnership.

Liam McArthur: Is there not a risk that you will create a two-tier dimension to GIRFEC, because some of it will have a statutory underpinning and some will not? There will always be a gravitational pull to the statutory elements, and inconsistencies will arise in relation to the non-statutory elements, whether it be in respect of the lead professional or other aspects?

Boyd McAdam: The guidance groups that are being developed are working with stakeholders from across all the services to ensure that what emerges is something that they are confident in, that will make a difference and that will deliver
consistency. Lynn Townsend might want to say a bit more about the guidance; there is a combination of statute and guidance.

**Lynn Townsend (Scottish Government):** The policy view on the provisions in the bill that cover a child’s plan and the named person was that the role of the lead professional follows from both those duties. Interestingly, in terms of implementation, most areas are already quite happy with the lead professional role, because that role has been around in practice for a number of years where an integrated assessment has been in place. The guidance will address management of the plan and the lead professional role will feature in how we frame the guidance.

**Clare Adamson:** Part 13 of the bill introduces a statutory definition of wellbeing. Given that welfare is already included in the Children (Scotland) Act 1995, will you explain the differences between welfare and wellbeing and say why a statutory definition of wellbeing is required?

**Boyd McAdam:** Part of the challenge that has been faced over the past 15 years or so is that welfare as provided for in the legislation has been interpreted around vulnerability and child protection. It was recognised in the 2001 report, “For Scotland’s Children” and in “It's everyone’s job to make sure I’m alright” that practice was operating with thresholds and that children and young people were not getting the service that they required until that threshold had been reached. Part of what we are seeking to achieve with the bill is the promotion of early intervention and prevention. Adopting the concept of wellbeing and taking a more holistic approach should encourage people to identify concerns at an earlier stage. It is about trying to shift the mindset.

My colleagues can maybe advise me, but I do not think that in legal terms there is that much difference between welfare and wellbeing. What we are proposing in the bill is a definition of wellbeing. Welfare is not defined in existing legislation. Part of what we are trying to bring about is a culture shift around early intervention.

**The Convener:** Do you want to move on to the issue of the named person, Clare?

**Clare Adamson:** Certainly, convener. The named person role has been mentioned already. It is one of the things that has hit the headlines and there is perhaps a bit of confusion about what it means. Will you give us a brief definition of the named person and what their duties will be?

**Lynn Townsend:** Yes. As Boyd McAdam said earlier, the named person will be somebody within the universal services of health or education. Health boards will have responsibility for children up to the age of five and local authorities will have it for children aged between five and 18.

In some ways, the named person will face in two directions. First, they will be a point of contact for the child and the family and will be there to offer support and to help them to negotiate their way through systems and gain access to services. The other side of their role will relate to the wider world. They will be a recognised point of contact for others who might have a concern about wellbeing. We know from experience and research that people sometimes have concerns about aspects of a child’s development but do not feel that they can go to somebody about them because they do not breach a threshold. With a named person in place, there will be somebody whom they can go to within universal services who will have an overview of the child and will be able to take one piece of the jigsaw—the information from the other person—bring it together with what they know and make a judgment about whether there is cause for concern. Those are the main functions of the named person.

The other thing to say is that the role will be quite layered. The named person in both health and education will have a role in relation to every child. It is about ensuring that the culture within an educational establishment or in which a health visitor works supports taking a holistic view of the child and of wellbeing, rather than just looking at the person or the patient in front of them. That will benefit every child.

Where a concern emerges, the named person will also have a role in looking to see whether they can offer support within the universal service from within the resources available to them or whether they need to look beyond their agency or service to the wider multi-agency arena for resources and support. They will be the person who can support the child and family through that process, take the case into a multi-agency arena and then look to the lead professional to co-ordinate multi-agency, targeted interventions.

**Boyd McAdam:** Having a holistic overview of the child and all the relevant information is important. We have developed a training exercise called GIRFEC Cluedo, in which people play the roles of practitioners. Interestingly, because only partial information is available, false assumptions tend to be made about what is going on in the child’s life. We need the overall picture to be able to understand what is relevant and appropriate and where to target the right help. If people’s perceptions are false, they will propose the wrong intervention and might begin to interfere with family life.

**Clare Adamson:** Although the financial memorandum gives some information about resources, they very much relate to time. As one of my colleagues will ask about the statutory duty on data sharing, you should perhaps steer clear of
that, but one of the key issues is consistency of data collection across the country to ensure that the same decisions are being made in different local authorities. Given that health boards and education departments are likely to be dealing with this issue, do you envisage the development of a common data-storage mechanism or, at least, best practice in data storage?

**Boyd McAdam**: We are not creating a central database for storing information. Instead, our fundamental approach is very much that agencies will continue to be responsible for the information that they hold; for example, a health professional will have information on their system and a teacher will have other information on theirs. We must ensure that the relevant bits, although not stored centrally, come together. After all, this information should be brought together for a particular purpose, either to address a concern or to help inform professional judgment.

In the Ayrshires, a programme called AYRshare has been developed to facilitate the electronic bringing together of information, but that is done for a particular purpose and within a particular locality. As I have said, there is no proposal to create a central database. We might specify minimum data sets to capture the relevant information that everyone needs to know, but the aim is to have proportionate sharing.

**Neil Bibby**: I have a practical question about the named person for a child from the age of five to 18 being a member of the education personnel. How do you expect education personnel, who will usually be teachers, to act as a named person during their 12 weeks’ holiday? If a child goes missing or is affected by an incident during the summer holidays, how will the teacher act as the point of contact?

**Lynn Townsend**: As the duty in the bill is on the local authority, it will have to put arrangements in place to ensure that the named person is available. Local authorities will build on current practice during the holidays; at the moment, someone based centrally in the education service will be the point of contact if, as you have suggested, a child goes missing. People will have access to school records and that type of information and will play a role in the multi-agency response to that kind of emergency situation.

In situations that are not an emergency—say, if a parent is looking for information about a course or what is happening in the school at the start of the new year—centrally deployed officers in every education department will be able to offer non-urgent advice, or not-so-urgent issues that parents wish to raise can be held over until the named person in the school returns. It is for local authorities to put the arrangements in place, but that is how we envisage the system working and we have had discussions with stakeholders on that.

**Neil Bibby**: What consideration has been given to the impact on staff workload and during the holiday period? For example, what sort of ratio would you be looking at, say, a school with 250 pupils that has only 12 members of staff during term time? I guess that, during the term, you could have one teacher per class but what would be the ratio outside term time if the local authority is expected to put someone else in place to cover that named person’s role?

12:15

**Lynn Townsend**: That brings me back to the concept of the layered approach for the named person, which I described earlier. In a school of 250 children, the vast majority will receive all the help and support that they need from their class teacher and the other services that are available in the school. It is unlikely that the named person would have to take any action over and above their current duties. The bill is predicated on the fact that, within education, there are already statutory duties around planning and around assessing and supporting children. That work goes on currently. The bill proposes an overarching framework within which that level of assessment and support will go on.

It is difficult to say and will depend on where the school is and current practice in the school but, during the school holidays, we would certainly not expect inquiries to any centrally based officer about the 250 children and their wellbeing.

**The Convener**: Neil Findlay and Liz Smith have quick questions on the issue.

**Neil Findlay**: How many pupils would the named person in a school be responsible for?

**Lynn Townsend**: As I said, it will be up to education authorities to decide how to make arrangements for named persons, but from the experience that we have so far, it seems likely that the headteacher will be the named person, particularly so that the outside world knows who the named person is. However, within a primary school, we would envisage that aspects of the role will be delegated to the depute and principal teacher levels, and similarly in a secondary school, as is current practice, there will be depute heads with a pupil support portfolio and pastoral care staff who know the young people and are involved in offering support. We envisage that is how it will operate.

**Neil Findlay**: So the named person in a primary school will be the headteacher.

**Lynn Townsend**: Yes, and I would imagine that that will also be the case in a secondary school,
for the purposes of people knowing whom to contact.

Neil Findlay: The financial memorandum says that, after the first year, teachers will not need any extra hours to act as the named person. Knowing the current workload of headteachers, I find that absolutely remarkable.

Lynn Townsend: We looked at the issues around capacity. Because the policy has been in place for a number of years and because some local authorities are already implementing it, it is difficult to say definitively what the resource implications will be. However, the current workload of headteachers, depute heads and pastoral care staff is around looking after young people, assessing, working with others, putting in support, working in a multi-agency forum and going to children’s panels.

What we have looked at is a systems change burden, if you like. At present, people work in a particular way. Through getting it right for every child, we are asking them to shift some of the ways in which they work. That usually brings an additional burden, hence the year’s transition, but there are benefits to the new way of working. That came out through the Highland pathfinder project. There should be fewer meetings and reports and a more co-ordinated approach to children having to go to children’s panels.

What provision is made in the private sector, which includes quite a few special schools? Obviously, no local authority is involved there.

Lynn Townsend: In the bill, we put parallel duties on independent and grant-aided schools. Some of the independent schools will be private schools, and it would be for the proprietor to put in place the arrangements for the named person and the child’s plan, in parallel with the duties on the local authority. Where the school is a special school, the young people will be placed by a local authority. Where the school is a private special school, the local authority has made the placement, again they will hold the responsibility through the lead professional role.

Joan McAlpine: My questions are about the statutory duty to share information. We have examined that subject extensively in our two inquiries into looked-after children. There seems to be a lot of confusion among professionals about when they can share information on a child. Some professionals think that that can be done only when a child is formally on the at-risk register. As Mr McAdam outlined, we need to be able to intervene earlier to nip things in the bud. However, that throws up an issue in relation to the ECHR and the rights to privacy.

You mentioned GIRFEC Cluedo, which I played at a Government event recently. Each table is a different person in the child’s life—a childminder, the father, the mother, the school and so on. Each table has a different piece of information, and the exercise highlights the difficulty of sharing that information. In the game of GIRFEC Cluedo that I played, the crucial piece of information was held by the mother’s general practitioner and related to the mother’s mental health. Under the new arrangements, can the GP share that information about the mother’s mental health with the schoolteacher or the child’s health visitor, for instance, without being in breach of the ECHR? I am not sure how they could do that.

Boyd McAdam: The area is complex. Article 8 of the ECHR, on the right to respect for private and family life, does not give a blanket exemption from families. Irrespective of what is proposed in the bill, there are a lot of issues under the existing law in relation to the Data Protection Act 1998 and professionals feeling unable to share information because of a breach of confidentiality or because of professional practice.

The Information Commissioner’s Office in Scotland clarified in April that, under the existing law, if there is a concern about a risk of harm to a child’s future wellbeing, the practitioner should share information, if that is proportionate. That comes down to professional judgment. In the example that you cited, if the GP had concerns that the mother’s mental wellbeing was impacting adversely on the child, that would be expected to be shared with the named person, who would be a professional in universal services.

My colleague Gordon McNicoll might wish to talk a bit more about article 8 of the convention. Part of the aim is to avoid all the information being made public. We are seeking to clarify that there is a responsibility to inform the named person when there is a concern about an impact on the child and when there might be a risk to their wellbeing. That is a judgment call.

Joan McAlpine: Would you expect professionals to be open to legal challenge?
whether information can or cannot be shared. It depends on the circumstances and on why they are sharing. All that we can say is that article 8 of the ECHR and the Data Protection Act 1998 do not absolutely prohibit something such as the sharing of information. Article 8 is not an absolute right to privacy. In some circumstances, that right does not apply. Whether that case will depend on the circumstances.

Joan McAlpine: In the GIRFEC Cluedo, I played the role of childminder. The mum had started to bring the child in late and the child seemed a bit clingy. I thought that something might not be quite right, but the mum said that she had a lot of work. Although there was a serious issue in that hypothetical case, it did not seem that the childminder would feel confident that the mum coming in late and a clingy child would necessitate sharing information and breaching the mother’s confidentiality, let alone going to the GP to find out whether the mother had a mental health problem.

Gordon McNicoll: In the situation that you describe, if the childminder had concerns that the child seemed clingy, I cannot see that they would disclose personal data relating to the mother or even the child; they would just observe, based on seeing the child every day, that something did not seem quite right. I do not see an article 8 issue there. The childminder would not disclose any personal information regarding the child; they would just make an observation about how the child appeared to them and possibly to those in the population at large who knew the child well enough.

Joan McAlpine: I am sorry to press the case, but the whole point of the exercise is that, if the childminder went to the named person with that information, which did not seem particularly serious, the named person should then be able to go to the GP. The GP would have the crucial information that the mother had a historical mental health problem. In that example, the child’s wellbeing was at stake, but we could see how, if the named person went to the GP with the childminder’s information, that might breach privacy if they did not have the full picture. Do you see what I am getting at?

Gordon McNicoll: The position depends on the circumstances. It is impossible to say in abstract whether information can or cannot be shared. It depends on the circumstances and the perceived risk to the child’s wellbeing.

Joan McAlpine: Is it not the case that trying to anticipate problems that might or might not exist will inevitably lead to breaches of privacy? Perhaps we should be honest about that and say that we will have breaches of privacy for quite a lot of families to protect the children who are at risk.

Boyd McAdam: Part of the early intervention agenda requires people to pick up concerns earlier, but it is proposed to do that in a framework that relies on the professional making a proportionate judgment. If there is a concern that someone is not comfortable with, the data protection advice is that they should share that. That is covered under data protection law, because it is a professional judgment.

The practice has to be that the person records the reason why they are sharing the information and explains why there is a concern. That will be done within the structure of the named person taking a view. All the evidence shows that, at present, information is known but not necessarily put together. The named person will provide that overview.

In the light of what the named person knows, the decision might be not to go further with an issue, but if the concern provided evidence that something was not right in the child’s life, the duties on public bodies to safeguard children and treat their welfare and wellbeing as paramount would cut in. There is an issue about what is not known, but the process should be followed in a proportionate and secure environment, to avoid more public knowledge about what is going on in the family’s life. If professionals are to make the judgment, they have to be aware of what is going on.

Joan McAlpine: I presume that professionals have to be aware that they could be open to legal challenge.

The Convener: I want to move on, because I am very aware of the time.

Colin Beattie: The bill provides for a number of additional plans and reports to be produced by a range of organisations relating to all sorts of things, such as children’s rights, corporate parenting, children’s services and early education, as well as individual child plans. Local authorities and perhaps health boards will be required to provide most of those, and other agencies will report on other things. Will that increase the bureaucracy and put more layers on top of what already exists? How will local authorities and other bodies cope with that?

Elisabeth Campbell: You are right that the bill contains a number of reporting and planning
duties. It is important to say that stakeholders broadly supported those duties through the consultation and subsequent engagement. We have been clear throughout the bill’s development that we do not want to place extra burdens unnecessarily on agencies or other organisations and that we certainly do not want to increase bureaucracy. Therefore, for a number of the reports that will be required under the bill, we expect organisations to use current mechanisms rather than create bespoke new reporting mechanisms.

For example, organisations can use current annual reports to include stuff on the rights duty on the public sector. The children’s services planning duty replaces a previous planning process, so it is not additional. The single child plan has been proven in the Highland pathfinder and in other areas to reduce the burden of paperwork and bureaucracy. Therefore, several aspects of the bill seek to reduce rather than increase bureaucracy.

Colin Beattie: Overall, will the bill increase or reduce the burden of paperwork?

Elisabeth Campbell: I think that that will probably balance out. Some new processes are replacing old processes, so the bill certainly should not increase bureaucracy.

The Convener: I thank our witnesses for coming. We will follow up a number of issues in writing, if you do not mind.

I suspend the meeting briefly while we change panels.

12:31
Meeting suspended.

12:34
On resuming—

The Convener: Our second panel will answer questions on parts 6 to 13 of the bill, which deal with early learning and childcare, looked-after children, children’s hearings and schools consultation. I welcome back Elisabeth Campbell, who has stayed with us from the previous panel, and David Blair, who was with us earlier, and I also welcome from the Scottish Government Kit Wyeth, Ruth Inglis, Susan Bolt and Clare Morley. If the witnesses do not mind, we will go straight to questions.

Liam McArthur: The bill, which will set in statute and extend the number of hours of childcare that are provided for, defines the phrase “early learning and childcare”. Will service provision have to include both learning and care instead of either education or care? I think that I am right in saying that the bill amends the existing definition of school education to include early learning and childcare. It would be useful to know what will change as a result and what the expectation is.

Susan Bolt (Scottish Government): The expectation is that provision will cover both learning and care. The bill defines early learning and childcare as a service that provides education and care and which promotes and supports “learning and development in a caring and nurturing setting.”

As a result, the two concepts are seen as indivisible. The fact is that, when education and care are integrated, the quality of provision is higher; that is why the Organisation for Economic Co-operation and Development and the European Commission strongly support and promote models of integrated education and care. We are following that model, although we are calling it learning and care to fit with our learning journey policy. The expectation is that any learning should take place in a nurturing and caring environment, and we also want care to consist of activities and interactions that support learning.

The definition simply reflects current good practice. We are trying to move away from a model that is based on blocks of education—pre-school provision, for example, might be seen in two-and-a-half-hour blocks—topped up with care, which might be seen as less important. For children in half-day or full-day sessions in a nursery, we would not expect education to start at a certain point in the day and finish two hours later, after which all the interactions, activities and relationships would change to something different called “care”. Instead, we want to promote consistent, high-quality provision for the child wherever their formal early learning and childcare take place and whoever delivers them. That is the aim of the new definition.

Liam McArthur: That is helpful. Another issue that has been raised and which we will probably come back to when we discuss the financial memorandum is the extent to which the statutory 600-hour allocation is fully funded. Is it your understanding that it is fully funded?

Susan Bolt: Yes.

Liam McArthur: The point about funding was made by, among others, Save the Children. Its initial submission picks up a point made by, I think, the Equal Opportunities Committee about the broader care that is required—in other words, not only early learning and childcare but out-of-school care. All committee members will have picked up the same point through different forums. What consideration has been given to putting a broader definition of care on a statutory footing?
Susan Bolt: The definition of early learning and childcare applies broadly to formal early learning and childcare provision, but we are still grappling with definitions. The Government is committed to developing and increasing early learning and childcare that covers all children of all ages and meets not only their needs but the needs of parents and families. More work is being done on that beyond the bill, and the definitions in the bill will support improvements in the quality of provision that is not necessarily covered in the bill.

Liam McArthur: Is there some budgetary rationale behind the delay over definitions or is there simply a concern that out-of-school care is not as well understood or defined as early learning and care, so more work needs to be done on the matter?

Susan Bolt: I do not think that there is such a concern. The Government's aim is to improve and increase provision for all, but ministers have decided in the bill to focus on and prioritise building up the current high-quality universal pre-school system and to build additional hours and flexibility into it. Local authorities are being asked to make a significant change.

We are doing work more widely—for example, on out-of-school care. We have a working group that is a sub-group of the early years task force, which is looking at childcare for all. That includes all partners that support organisations to develop a wider range of provision, such as staff banks, childminders or out-of-school care. We fund a number of organisations, such as the Scottish Out of School Care Network, the National Day Nurseries Association, the Scottish Childminding Association and the Care and Learning Alliance, which is a social enterprise. All those organisations share the same aim to increase and improve the range of models that deliver care for different age groups. Although that work is not focused through the bill, it is going on in parallel.

Liam McArthur: In terms of the age spectrum, we know that the bill makes provision for two-year-olds who are looked after or in kinship care. That is welcome, but we heard a heavy emphasis on early intervention from the minister this morning. Save the Children indicated its disappointment that the bill does not look to extend the provision for two-year-olds to those from the most disadvantaged backgrounds. Will you explain why that has not been incorporated in the bill and whether, as we take evidence at stage 1, there is an open mind to go back and look at that again?

Susan Bolt: The rationale for focusing on looked-after two-year-olds is that looked-after children have the worst outcomes—and the risk of the worst outcomes—of any group of children. The bill proposes to guarantee a minimum, sustained early learning and childcare provision for those children. The bill also focuses on two-year-olds in kinship care because they are often at risk, so we can prevent children from becoming looked after or provide a positive solution and bring them out of being looked after.

The provision for looked-after two-year-olds will be flexible to their individual needs. It will look at their family circumstances and allow for different models and arrangements. Working one to one with parents or on certain programmes will be okay, as long as that meets the child’s needs and wellbeing.

As for other two-year-olds who come from more deprived or poorer backgrounds, the evidence is strong that children from poorer backgrounds or poorer home learning environments benefit more from universal provision. That has a strong equalising influence and promotes social inclusion. That is why ministers are focusing on building up strong universal provision, from which children from poorer backgrounds will benefit most. That is the rationale.

Liam McArthur: One imagines that that argument could be sustained for children from looked-after backgrounds and those in kinship care, although I appreciate that those children are particularly vulnerable; we have certainly heard enough evidence to suggest that the outcomes for them are not as good and need to be addressed. However, the definition is very tight. Quality provision is clearly needed for the two-year-olds who get access to the services, but the interventions that we make before the age of three are critical, so it seems to be a missed opportunity not to expand provision to a wider cross-section of those who are disadvantaged. As I said, that certainly concerns Save the Children.

Susan Bolt: The provisions in the bill reflect certain priorities and go as far as they can within the current economic constraints. We are asking for significant changes from local authorities and we want those changes to be achievable, sustainable and affordable. Ministers have taken certain decisions about what to prioritise in order to deliver what they can, given the economic constraints within which they are working.

Neil Bibby: Early years education is funded through the pre-school education grant, which I understand does not currently cover childcare. Will the additional hours for early learning and care be funded in the same way?

12:45

Susan Bolt: Yes, they will be funded in the same way, so it will be for local authorities to secure provision, either through their own services or through partner providers. Local authorities will deliver that directly, under their education duties.
Neil Bibby: Will there be designated elements of funding for early learning and for childcare?

Susan Bolt: No. Those are seen as indivisible. There will be the same standards of high-quality, consistent early learning and childcare that we have already defined, so it will be for local authorities to ensure that those are provided, either through their own services or through partner providers, as I said.

Neil Bibby: On flexibility, what do you envisage parents being given if, for example, they wanted their 15 hours over two days? Do you also envisage them having that time on the days of the week that they want?

Susan Bolt: There is a wide range of ways in which you could cut the 600 hours, or around 16 hours a week, and it will be for local authorities to consult local populations on what their needs and preferences are. There is a minimum framework: sessions should be no less than two and a half hours a day, no more than eight hours a day, and delivered over no fewer than 38 weeks in a year, although that does not need to be confined to term times. Within those broad parameters, local authorities are free to reconfigure services to provide a range of choices. It is up to them to decide: it could be two eight-hour days a week, or five two-and-a-half-hour sessions, with additional sessions in non-term time. It really depends on the needs that parents identify, and local authorities will make decisions about what to reconfigure and what choices to offer on that basis.

Neil Bibby: Has any consideration been given to partner nurseries that may have financial difficulties if parents elect to take all their childcare time in nursery funded places, leaving no wraparound time for which the nursery can charge?

Susan Bolt: Whether they are in the public or private sector, nurseries can charge for wraparound care. They are free to do that.

Joan McAlpine: I have a supplementary question to Mr McArthur’s point about extending provision. You mentioned the financial constraints. I know that in Scotland we have a higher ratio of carers to children in pre-school and that that has been diluted in England and Wales. Will you say something about the importance of the ratio in Scotland?

Susan Bolt: There were proposals to change the ratio in England, but I do not think that they have gone ahead. In Scotland, we have checked with stakeholders and there is certainly no appetite for changing staff ratios here from what they are. That is another key thing to remember when we talk about the economic constraints. In all the changes that we put in place, we do not want to compromise on quality at all. Any increase must be in parallel with improved quality—that is fundamental to any changes that happen.

George Adam: I want to ask about kinship care and kinship care orders. I have had some experience of kinship carers, in constituency matters and as a councillor. The bill provides for residence orders that are kinship care orders. Paragraph 119 of the financial memorandum states:

“It is expected that a proportion of formal carers will apply for a kinship care order.”

Why would they do that? What would be the advantage to them? How would the support offered by the local authority differ?

David Blair: The answer is fairly straightforward. The policy comes from the quite extensive feedback that we have had from kinship carers, who will apply for the kinship care order because it will provide much more specific support than they are accustomed to. Currently, the support that is provided to a formal kinship carer is very much at the discretion of their local authority. Kinship carers find that difficult.

The incentive for a kinship carer to apply for the kinship care order goes back to the policy rationale, which is about providing an enhanced form of permanence within kinship care. A child who is subject to compulsory supervision and who is living with a kinship carer is not in permanence. The order enhances an existing route for permanence within kinship care.

Kinship carers tell us quite strongly that they want to do what is best for the child who is in their care; they want a form of permanence that means that their parenting is not constantly being monitored when that is not required. That is the policy rationale. There should be an incentive for kinship carers to apply for the order because it is much more specific.

George Adam: Okay.

The Government is undertaking a review of existing kinship care allowances. I know that all the findings are not expected to come out until the end of the year, but are there any early ones that you might be able to share with the committee at this stage?

David Blair: There is nothing that I can share at this point, although I can tell the committee that we have had to review the timetable owing to the complexity of the modelling that we have had to do. We are exploring a number of options based on the work that we have done to date. We have done quite a bit of detailed modelling, which is being considered at the moment. I am happy to come back to the committee and advise members as to when we can share some information about that.
Neil Bibby: The Children Act 1975, the Children (Scotland) Act 1995, and the Looked After Children (Scotland) Regulations 2009 have an impact on kinship carers and local authority support. Why did you decide to include additional provisions on kinship care? Is it not already covered in existing legislation? Could you not allow local authorities to apply for residence orders for kinship carers under existing legislation?

David Blair: Local authorities cannot apply for residence orders. They are petitioned for by kinship carers or by a range of people in different circumstances. We felt that there was a need for the kinship care order based on the feedback that we had from kinship carers and local authorities. Neither group seemed particularly happy with the status quo—part of that was to do with the continuing growth in formal kinship care, which, based on the feedback that we had, did not seem to represent people’s needs particularly well.

There was a feeling that children in formal kinship care were not necessarily comprehensively worse off or in greater need than those on the edge of care or at risk of becoming looked after at some point. That is a problem with how the system works. We felt that there was a need to enhance the route to permanence in kinship care and we took some feedback on that through the consultation process and in the years prior to the consultation process. This was the best mechanism that we could come up with.

Neil Bibby: When you talk about qualifying kinship carers in relation to the financial support criteria, which will be determined in—or left to—regulations, are you talking about kinship carers in relation to children who are at risk of being formally looked after?

David Blair: That is a consideration. We wanted to ensure that local authorities have some ability to focus support on families who need it most. That was one test that we thought about. We have put that into the documents accompanying the bill, but we think that the test really needs to be consulted on with practitioners through an extra piece of work that we are running now. There is good reason for that: we have to avoid stigmatising kinship care, but we also have to ensure that the test works and allows resources to be targeted at those who need it most, given the economic constraints.

Neil Bibby: The financial memorandum mentions savings being made through kinship care because there will be savings from children no longer being formally looked after unnecessarily. What evidence does the Scottish Government have that children are being looked after unnecessarily?

David Blair: That came through in the feedback that we had through the bill consultation. Also, we have been working with Children 1st for a number of years and we funded it to work with about 43 groups around the country specifically to gather useful information about how kinship care works in practice. We used that evidence to guide our policy making in the area.

Clare Adamson: For clarity—I am confused about this—will financial support be given only to kinship carers who have a formal order in place?

David Blair: Can you clarify what you mean by financial support, because the—

Clare Adamson: At present, local authorities have discretion to award kinship care payments, whether or not a residency order is in place. Does the bill remove that flexibility?

David Blair: No. At present, the expectation is that the kinship carer of a looked-after child will be entitled to an allowance, which covers a multitude of things. With kinship care orders, we are making that much more specific. We have said—we agreed this with COSLA for the purposes of the bill—that the kinship care order does not automatically extend the previous commitment to allowances for formal kinship carers. The review is looking at that aspect of things.

Clare Adamson: Okay. Thank you.

The Convener: Finally, Neil Bibby has some questions on the section on schools consultation.

Neil Bibby: The section seems out of place. Why has it been included in the bill?

Clare Morley (Scottish Government): It has been included in the bill, and it is proposed that the matter be dealt with in that way, because the bill provides an opportunity to deal with it quickly. The Government attaches importance to the area and there has been a large delay while the commission on the delivery of rural education considered the issues. Now that the commission has reported and the Government has responded to the report, we are anxious to move quickly. Also, a judicial review concluded recently and the Government wants to move to clarify the legislation. The bill is an opportunity to do that, which is not too far removed from the rest of the bill’s purpose, as it is to do with services for children.

Neil Bibby: Provisions on the matter will be added to the bill at stage 2. What consultation will there be, or has there been?

Clare Morley: We expect to issue shortly a public consultation paper on the amendments that we will produce. There will be a shorter timescale than the Government would normally like to apply, but we feel that it is important to achieve a degree
of public consultation. There will also be arrangements for meeting stakeholders during the summer to carry out as much consultation as possible. That will build on the extensive consultation that the commission on the delivery of rural education did. We feel that the issues have received some airing through that.

The Convener: So that the committee can plan its work, will you clarify when the results of that consultation and the Government’s response will be available?

Clare Morley: We expect to consult during July and August, and we expect to be in a position to respond and provide detail on the amendments that we will propose in good time for the session that we understand you have scheduled for 26 November to consider the bill after stage 1. The answer is during the autumn.

The Convener: That is why I asked, I suppose, because 26 November seems a little bit late. We have to take evidence on the bill during the stage 1 part of the bill process. Although you intend to introduce the provisions at stage 2, it would be helpful if we could take relevant evidence during stage 1. I am not convinced that it would be helpful for us not to know what is going to be inserted into the bill until after stage 1.

Clare Morley: We will want to allow as much time for the consultation as we can, and we think that that will be during July and August. I expect that ministers will be happy to write to you during September to give you as much indication as they can of what they have learned from the consultation, if that would be helpful.

The Convener: It would be helpful if we could have as much information as possible from the Government as early as possible, because we have to take evidence during stage 1 in September and October. I am thinking of the clerks in particular, as they have to get witnesses in place, and we have to ensure that there is enough time for us to properly scrutinise the bill and take evidence from witnesses. It is a large bill with many different areas and there is a tight timeline for us to do that work as it is, without any additional aspects. I would be grateful if we could get information as soon as possible.

Clare Morley: We appreciate the urgency.

The Convener: Thank you for coming along this morning and giving us some additional information at this early stage of the bill.

13:00

Meeting suspended.
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

21st Meeting, 2013 (Session 4)

Tuesday 3 September 2013

Present:

George Adam                       Clare Adamson
Colin Beattie                      Marco Biagi (Committee Substitute)
Neil Bibby                         Neil Findlay
Stewart Maxwell (Convener)         Liam McArthur
Liz Smith

Apologies were received from Joan McAlpine.

Children and Young People (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Mike Burns, Chair - Standing Committee on Children & Families, Association of Directors of Social Work;
Kenneth Norrie, Professor of Law, University of Strathclyde;
Susan Quinn, Ex-President, the Educational Institute of Scotland;
John Stevenson, Representative from Social Work Issues Group, UNISON Scotland.
Children and Young People (Scotland) Bill: Stage 1

10:01

The Convener: Our next item is an evidence-taking session on the Children and Young People (Scotland) Bill. I welcome to the committee Mike Burns from the Association of Directors of Social Work; Professor Kenneth Norrie from the University of Strathclyde; Susan Quinn from the Educational Institute of Scotland; and John Stevenson from Unison Scotland. In what is our second evidence session on the bill, we intend to cover its key principles and consider how it would work in practice. I thank the witnesses for their very interesting written submissions, which of course will inform some of our questions this morning.

Before I bring in other members, I want to ask the panel a general question. What, in your view, will be the practical effect of the bill’s proposed duties? What real difference will, for example, the report-writing duties make to people’s lives? In other words, my question is more about the bill’s practical effects than about its principles.

John Stevenson (Unison): It will very much depend. We would like the practical effects to be an integrated plan for every child and every child getting the help that they need when they need it but, as we have said in the introduction to our submission, the issue is resource critical and we need to know what resources will be available on the ground to deliver that in practice. The fact is that social work, health and education departments are inundated with reports, forms and assessments. I think that all the services are pretty good at assessments, but we are less good at delivering practical help on the ground, which after all requires resources to be in place.

The key issue for us is clarity about how all this will be funded. We absolutely support the approach in principle and know that there is already good practice around Scotland and that many local authorities are operating integrated assessments and such things to some or other level. As a result, the next step towards what the bill is proposing will not be a huge one, but the big issue is that we are going to uncover a whole lot of things that we did not know about and which will require action—which, in turn, will require resources.

Susan Quinn (Educational Institute of Scotland): I do not disagree with John Stevenson’s assessment of what might happen. The EIS sees very clear potential in a single assessment and plan for young people that carries across all the services. Indeed, one of the
challenges over the past few years has been the number of different assessments and plans, how they speak to each other and how we ensure that our young people get the best service available.

However, given the backdrop of the cuts and the difficulties facing education and all the services that will work together, the plans will need in some way to help us to deal with the issue that fewer people will be working in each of those services. We need to be clear about the need for the resources to ensure that that happens, particularly in education, given that a range of other initiatives across other aspects of our performance will be introduced at the same time. We are being called on not just to be the named person who delivers on an education support plan in conjunction with other services but to deliver the curriculum for excellence, the new qualifications and all the other aspects. Therefore, resources will be key. However, the potential is there for better communication within and across the services, if we can get that right.

Mike Burns (Association of Directors of Social Work): Echoing some of those points, I think that the duties in the bill will certainly consolidate getting it right for every child and the aspirations of the Christie commission. However, a critical issue was highlighted in the work that Susan Deacon did in relation to early years. She talked about the fact that, in Scotland, far too much time and attention is focused on the plan and not enough is focused on delivery. We would like to see the bill providing critical leverage in converting those aspirations into tangible outcomes for our most vulnerable children.

Professor Kenneth Norrie (University of Strathclyde): If the question is what practical effect the bill will have, it seems to me that it is almost impossible to give an answer at this stage, because there are so many ambiguities in the bill’s terminology and structure.

If the question is about the aspirations of the bill, as far as I can understand it, those are about creating a changed culture and changing people’s mindsets. The bill is about changing the way in which service providers throughout Scotland develop and deliver the services that they have been set up to provide so that the wellbeing of children and young people is put at the forefront of everybody’s minds. If, as a society, we are able to achieve that change of mindset, that will be a wholly good thing as a matter of principle. Whether legislation is the best way to go about achieving that mindset depends on the precise legal obligations and rights that the legislation encapsulates.

The Convener: Thank you very much. Before I open up the discussion to members, I want to ask Professor Norrie a specific question about the incorporation of the United Nations Convention on the Rights of the Child. Could you expand on the view that you expressed about that in your written submission and say why you think that that is unwelcome—if that is not too strong a word?

Professor Norrie: The UN Convention on the Rights of the Child itself is by no means unwelcome and I would not like to suggest that it was—

The Convener: Sorry, I meant why the convention’s incorporation would be unwelcome.

Professor Norrie: I think that to incorporate the convention into the domestic legal system of Scotland would be bad policy, bad practice and bad law. I say that primarily because the UN convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system.

The convention has an aspirational purpose that is attempting to change governmental mindsets across the world so that children are at the forefront of the attention of all Government policy. That is good—we want Governments to be able to do that—and that is what the UN convention tries to do. That is how it is drafted. However, if you take a document that has been drafted for one purpose and then try to pretend that it sets out strict legal rules that are enforceable in a court of law, you will get all sorts of complexities.

For example, judges would be given far more political power than we probably want them to have. To use an example that is given in my written evidence, article 4 provides:

“With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

That is really good, but do you want judges to determine the maximum extent of the state’s available resources? That is not a judicial matter but a matter for social policy and for the democratic process. That is for Parliaments to decide rather than for judges. The UN convention is full of good aspirations for government, but it is also full of wide, broad statements that you cannot possibly ask judges to determine.

Liam McArthur (Orkney Islands) (LD): I appreciate the basis of those concerns about incorporation, but it has been put to us that there are countries that have incorporated the UNCRC into their domestic law. Is there anything from their experience that would substantiate your concerns about the way in which that is then applied, or are there aspects of their legal systems that are different from ours to the extent that those concerns do not arise?
Professor Norrie: I do not know what problems those countries have had, but my understanding is that only a tiny number of countries—three or four at most—have incorporated the convention into their law.

Historically, the United Kingdom and what we call the common-law countries have been much more specific in the way that they design their legislation. European countries, for example, tend to go for grand statements and then leave it to the judges to work out what those statements mean. We do not tend to do that in our country. We like our legislation to be much more specific so that people can understand very precisely what Parliament is trying to do, and we leave it to the judges to give the proper interpretation with appropriate guidance. I suspect that countries that have incorporated the UN convention are countries that are much more comfortable than we are with legislative grand statements.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. Staying on the general principles of the bill, I want to ask Professor Norrie about his written submission, which states:

“The point is that defining a person as a ‘child’ increases the protections that the law offers them, but decreases their own personal freedoms. Section 75 of the Bill defines ‘child’ as a person who has not attained the age of 18 years. I should have been more comfortable if the limit of childhood were set at 16.”

Obviously, there are some issues there. Can you expand on your concerns about that?

Professor Norrie: My general concern, I suppose, is that growing up is a gradual process. The law likes clear cut-off points. In Scotland, we have always had a number of important ages at which a child increases the ability to take control of their own life. The age of 12 is important because you can make a will at the age of 12 and, for example, you can have a veto to an adoption order. The age of 16 is crucially important because that is the age of marriage and is basically the age at which compulsory education might come to an end. The age of 18 is actually less important, but one of the few remaining consequences of reaching the age of 18 is that you are allowed to vote—although even that might not last, at least in Scotland, for terribly much longer. The age of 25 is also important.

As the child increases in age, they increase in capacity. Another way of saying that is that they increase in self-determination and have an increased right to make their own decisions and to determine how they will lead their own lives. The flip-side of that is that the younger a child is, the more other people have control over them. A balance has to be struck so that we protect vulnerable people who cannot protect themselves—obviously, an infant needs full protection—but there comes a point at which the child or young person should properly be given the freedom to make their own mistakes. Traditionally, Scotland has taken the view that 16—previously, it was 12 or 14, but it was increased to 16 in the 1920s—is the age at which we tend to regard children as being free from adult interference.

10:15

Liz Smith: Would you prefer the bill to set the age at 16 rather than 18?

Professor Norrie: I would much prefer the bill to define “child” as a person up to the age of 16 and “young person” as a person between the age of 16 and whatever the upper limit is set at. That is slightly different, so one would then need to consider what the implications are of being a “young person”. However, I think that it would be more coherent to stick to the age of 16 and say that a “child” is a person under the age of 16.

Liz Smith: That is my next point. You and others have mentioned that the proposals are about trying to change a culture, so this is not necessarily about trying to change the law. The ambition behind the bill is about trying to develop a culture of thinking. Do you feel that the use of that terminology within a legal context—whether the age is 16 or 18—slightly complicates some aspects of the bill?

Professor Norrie: I think so, and I think that that is uncomfortable. An example that I gave in my written submission was children in the armed services. Children should not be in the armed services, but we actually think that 16-year-olds are not children but young people. If that is what we really think, why do we not call them “young people”?

Liz Smith: Let me probe a little bit further. On the issue of how much could be achieved without legislation in trying to adopt a new culture, both Mr Stevenson and Mrs Quinn have mentioned their concern that it will be difficult to bring in the measures in the bill without very substantial new resources in the wider dimension. Do you have any concern that, as it stands, the bill will take away resources from the most vulnerable children because we are trying to make it universal? Is that a concern?

John Stevenson: On the issue of complexity, what we so often see is that, although there are big principles at the beginning, once everything is drafted and the policy comes out the other end, there are unintended consequences and complexities. There was something clear about the all-encompassing Children (Scotland) Act 1995 when it was brought in. One issue is that there are all these other bits that create
complexities in terms of how things are delivered and what that means for delivery.

However, I am not sure that the bill will take resources away immediately. In order to operate, more resources will be needed. For example, the named persons will need more resources in order for people to have the time to do that, because it is not as if people are sitting around with space in their day.

My concern—you mentioned the issue of culture—is that there is a different culture across different services as to what they consider wellbeing and welfare to be. In their daily life, a social worker might see living conditions that they would assess to be good enough but which might not be viewed as such by a health visitor or by a teacher. The difficulty is where you draw the line or set the threshold. We could end up with an interference in people's family life at a very confused threshold between what is a welfare problem and what is a wellbeing problem. There would then be a risk that the resources that could have been used at the high end would be going into issues that could quite readily be sorted through other methods. A final point on that is that we already know from implementing GIRFEC that we will pick up high-end stuff at an early stage that we do not pick up at the moment.

Liz Smith: You made the very interesting point that the interpretation of welfare, as opposed to wellbeing, might be different at different ages. Will you elaborate on that?

John Stevenson: That is very difficult to do without giving an example. The interpretation of what is an acceptable family environment and what is the threshold for intervening can vary dramatically between police officers, social workers and health visitors who regularly go into people's houses. A house that might seem to a social worker to be not very clean and a bit chaotic might seem to a police officer to be a place in which a child should not be brought up.

Liz Smith: Right. Thank you. That is helpful.

Susan Quinn: On resources, work on the issue of the named person is on-going in schools. Every establishment will have someone who is responsible for ensuring that the very best is given when it comes to child protection and additional support needs. Time will tell whether the bill will change that and how much being responsible for every single child will take hold. A school would imagine that it already has a responsibility—a corporate parenting responsibility, if you like—for every single child or young person in it. From establishment to establishment there are differences in the number of young people who meet the criteria for child protection, additional support needs or wider partnership working. That is where the resource implication of what is new will have an impact.

In the beginning, the very immediate resource implication will be for additional training on what the new plan looks like. Whether it will be a single document that sits within one system or whether it will involve a number of systems talking to each other, if there is a change from the current situation, there will be a training implication for the relevant people in our schools and other education establishments. Training will be needed right from the outset. If we do not put in additional resource, one can only imagine that there will be a knock-on effect. One person in an establishment—or indeed more than one person—can only do what they can do. You cannot expand their day and their life so that they continue to take on additional things without taking things out or putting more resource in.

In the longer term, if the paperwork and plans take away some of the bureaucracy that we have mentioned in the past, that will be a good thing, which will mean that the resource can be used in a different way. However, at the very beginning of a new scheme you need to put in additional resource, as other panel members have said, to make sure that there is not an impact on what goes on elsewhere in establishments.

Liam McArthur: Susan Quinn has just articulated the resource implications very well. We have also heard from Professor Norrie about the risk that is inherent in incorporating the UNCRC wholesale into domestic law. We have heard quite a bit of evidence from stakeholders that the duties that are being introduced through the bill are not as wide ranging or significant as many had hoped and fall short of full incorporation. Do others share that view? If so, where might the duties be strengthened?

Professor Norrie: Part 1 of the bill is headed "Rights of children", but that is not an accurate description of what part 1 does, which is to impose duties—that is entirely appropriate and it is what legislation should do—on the Scottish ministers to make everybody aware and remind them that the legislation must take account of the UNCRC. That is all to the good, but the wording in section 1(1)(b) is very weak. Section 1(1)(a) states that

"Scottish Ministers must ... keep under consideration whether"

to take any other steps, but subsection (b) states they are to take such further steps only

"if they consider it appropriate to do so".

Therefore, the Scottish ministers are legally obliged to look at that, but then it is completely up to them and within the Government's discretion whether they do anything about it. That weakens very substantially the duty that is imposed. Even
without the incorporation of the UNCRC, you could do much more to strengthen the duties that the bill imposes.

Susan Quinn: In terms of specifics, the EIS has articulated its case about children at the pre-school stage having access to a General Teaching Council for Scotland-registered teacher. We continue to wish to see something in the bill that would strengthen the right to that access and quantify it in some way. Without that, what we see across the country is a clear reduction in the hours of access to a teacher at the pre-school stage.

We work very closely with our colleagues in the pre-school sector, but we continue to come back to the evidence that shows that quality early years education requires a teacher or someone who has pedagogy as part of their qualification, and the three-to-18 curriculum makes that even clearer. However, the extension of the hours for early years care and education does not make that clear. Access at the moment in some areas simply means that a teacher passes through once a fortnight or once a month to check the plans that are in place. The young people are never taught by the teacher in the terms that you would expect for a primary 1 child or, indeed, by somebody whose qualifications would allow them to do that. We continue to want to see that access as a much more specific aspect in the bill.

Mike Burns: There is also the point that social work has raised about the protection of rights, particularly for aftercare and support beyond the age of 18 and up to 25 or 26. Much more decisive action is being taken on thresholds in relation to children, and higher numbers of children are being looked after and accommodated across the country. The responsibility on us as corporate parents remains significant, as do the financial implications.

John Stevenson: We are disappointed that the initial stuff that came out about the bill was stronger on rights than the duty in the bill is. No matter what duty is applied at the level of ministers, the issue is what that translates to on the ground. Certainly, the sense of our members is that children’s rights, especially those of younger children whose welfare has been severely affected in one way or another, are not as up top as they were maybe five, six or seven years ago. The area has become much more litigious and there is much more accent in children’s hearings on thinking first about parent’s rights to contact than there is on children’s rights. Those are the things that seem real to us on the ground and which I hear about day in and day out.

The issue is not just to have a duty at the level of ministers, important though that is. We suggested in our written response that, whatever comes out of the bill, there must be some independent monitoring at the front line of whether it translates in reality to addressing the rights of children. The basic right to be protected is the most important one for younger children. Young people exercising their rights to aftercare services that they are entitled to is a different issue. We are speaking for the ones who in most circumstances cannot speak up for themselves.

10:30

Neil Bibby (West Scotland) (Lab): I will follow up on Liam McArthur’s question. Around 15 children’s charities, as well as Scotland’s Commissioner for Children and Young People, have called for a children’s rights impact assessment to be carried out on the bill. That would appear to be a reasonable request. If the bill is about changing culture, the Scottish Government could take a lead by agreeing to it. Do you agree with the request for a children’s rights impact assessment on the bill?

John Stevenson: Unison has supported that position before. We have asked some councils, in their reorganisations, to consider doing a children’s rights impact assessment. I am not aware of anyone having actually done one, but the commissioner’s website has an easy-to-follow system to do so. We would align ourselves with that approach with respect to the need to work out what is going to happen on the ground as opposed to just in principle.

The Convener: Not everybody has to answer. If you agree with that idea, fine; if you disagree, please speak up.

Mike Burns: From the point of view of the Association of Directors of Social Work, we would not be against that approach in any shape or form. Within the body of social work practice, social workers are out on the front line every day, promoting and seeking to protect the rights of children. The bill highlights, secures and promotes the right to protect the rights of children. The basic right to be protected is the most important one for younger children. Young people exercising their rights to aftercare services that they are entitled to is a different issue. We are speaking for the ones who in most circumstances cannot speak up for themselves.

Clare Adamson (Central Scotland) (SNP): I wish to examine the dichotomy between protecting privacy and promoting wellbeing, referring to some of the issues that have been raised in evidence.

In relation to the named person, the bill uses the language of information that “might be relevant” to a child’s wellbeing and that “ought to” be shared. We all agree that serious welfare concerns would be raised and shared with the named person; the issue is the general wellbeing of a young person. I am interested to know what implications there are for decision makers who are working with families
and young people and making the decisions as to when to share, and what impact the level of information might have on services.

**John Stevenson:** We are very concerned about that. On a day-to-day basis, it is unclear to people what they can share, how they can share it and how much they can share it. It is not clear to the people we work with, particularly the social workers, how much information is shared.

As we say in our written submission, the critical point is that, because of different thresholds for what is acceptable parenting and so on, there will be different thresholds for each professional as to what they think they should share. In some circumstances, we have a situation of almost blanket information sharing, particularly in child protection. You can understand why that is the case. If there is a real risk to a child, people do not want to leave out anything that might be relevant, so in practice everything is shared.

In theory, what should be shared is what needs to be shared for the purposes of what we are doing. The concern that our members have is that, if a woolly approach is taken and not enough guidance is given, they will, by default and in order to cover people's backs, end up sharing information that is not necessarily needed. At the moment, if there is a dispute in a household and the police are called, even if the child is not even there that information will be transmitted to the school, the social worker and the health visitor almost automatically—to what purpose I am sometimes not entirely sure.

There is also the individual responsibility of social workers. I have said for quite a long time that until someone takes some kind of data protection case—I am not aware of anyone having done that—we will never know where the rule lies. Many of our members feel somewhat at risk because of the tendency of lawyers in recent years to single out specific acts of social workers when they do appeals and so on, when social workers do not have a forum to reply. People are worried about that. The concern that not enough information was being shared is legitimate, but we need some guidance on what information needs to be shared or whether everything needs to be shared—and that will be extremely difficult.

**Susan Quinn:** In addition to the question of what is to be shared, there is the issue of consistency. The example was given that if the police are called to a household, even if the child is not there, information will be shared with the school automatically. In some areas of the country that is a threshold, but in others it is not, so the information is not shared automatically.

The training for all the groups involved needs to be clear in explaining what information it is appropriate to share at different levels of intervention. The same threshold needs to be applied across the country so that we are not in a position in which information is not shared automatically in a city area because there is a much higher level of police intervention in family disputes and to share information would mean a higher workload than there is in other parts of the country. The two parts need to go hand in hand: there needs to be a threshold, and it needs to be applied consistently across the country so that a teacher in Shetland will know to share the same kind of information as a teacher in the north-east of Glasgow or in the Scottish Borders.

We need consistency, because children—and families—move around the country. It quite often seems to be the case that our most vulnerable children are the ones who, for one reason or another, move around most often in our education system. We need to have thresholds, but we also need consistency, which will come only by having joined-up training for all the organisations involved. We all need to hear the same messages, and it is hard to deliver that consistency.

**Mike Burns:** The point about information sharing being proportionate is well made. I think that practice in Scotland at the moment is proportionate. On occasions, a genuine attempt is made by health visitors, early years educators and social work in localities to reflect on thresholds and the process. People in social work are very clear—that the Association of Directors of Social Work certainly is—that social work is not the panacea, nor does it seek to be involved inappropriately in individuals' lives.

In fact, the bill, in endeavouring to highlight the move from child protection to concern about children, is about saying that we need to intervene earlier and in a way that allows parents to exercise a degree of informed choice and which puts them in a position to draw down support. GIRFEC endeavours to provide a single system for drawing down support to a child at an early stage, and that may not involve social work. Therefore, we are seeing a much more proactive approach to providing assistance to children and to nipping problems in the bud that involves earlier intervention, more assertive outreach and the provision of critical support to parents at an early stage in a way that is, in a sense, open and part of a modern society. We welcome that, and we welcome the role of the named worker in that respect.

**Professor Norrie:** Conceptually this might be the most difficult part of the whole bill, and it taps into a number of issues that we have already discussed. Going back to Liz Smith’s question about children and young people, I should add that children and young people are entitled to privacy
and confidentiality; indeed, the older they are, the more important that becomes for each individual.

The issue also illustrates the huge ambiguities in the drafting of the bill, which, if passed in its current form, will lead only to lots and lots of litigation. That might be good for lawyers but not necessarily good for children and young people.

Section 26, for example, stipulates:

“A service provider or relevant authority must provide ... information”

that

“might be relevant”

and

“ought to be provided”.

Those terms are contradictory, and if you leave them in you will be leaving it to the courts to strike the balance.

The worst section in the bill is section 27. If you manage to strike it out and leave everything else, you will have achieved quite a lot. It states:

“The provision of information under this Part is not to be taken to breach any prohibition or restriction on the disclosure of information.”

In other words, it trumps every other piece of legislation from this or any other Parliament anywhere that provides law for Scotland. The Children’s Hearings (Scotland) Act 2011, which is now in force, contains a very strong prohibition on the publication of information about children who appear before a children’s hearing, because children are entitled to confidentiality. The idea seems to be that it is okay to disclose such information within the very ambiguous parameters of this bill. However, it is not okay.

Clare Adamson: May I ask a quick supplementary, convener?

The Convener: As long as it is quick and as long as we have quick answers from the panel. We have a lot that I am keen to get through.

Clare Adamson: Professor Norrie has made it clear that he would like the drafting of the bill to be changed, but could many of the ambiguities that he has highlighted be dealt with in guidelines?

Professor Norrie: The problem with leaving everything to guidelines is that, given the sort of bill that this is, the legislation itself is what will lead to court cases. It will be the interpretation of the legislation, not the guidance, that will give rise to litigation.

The Convener: I will now have to ask a supplementary on this issue myself. [Laughter.]

Given the points that you have raised, do you think that the bill is fundamentally unsound or are we merely talking about minor drafting issues?

Professor Norrie: The bill is fundamentally sound. It has good aspirations for Government, public services and Scottish society.

The Convener: So you are suggesting that amendments be made to the drafting because of the ambiguity of the language that has been used.

Professor Norrie: That would be my primary concern.

John Stevenson: I agree. However, I think that this exposes a problem relating partly to children’s privacy when they are quite young that does not arise simply from this bill but which is in fact a long-term problem.

In the case of a child who is a victim of a crime, it is not unusual for the procurator fiscal, the police and all the rest to requisition the files in order to find out everything about the child. Given the amount of confusion on the issue across all the legislation covering children’s services, we have to start thinking harder about how children exercise their right to privacy in a safe way.

Neil Bibby: We have already touched on the issue of resources and the named person. The EIS has highlighted the need for resources for the public sector to pursue the bill’s intentions and that “financial constraints” on local authorities lead to “barriers to effective” partnerships. Unison has already said that staff workload and lack of resources are an impediment to GIRFEC and that there is a need to increase the number of front-line staff. Is it fair to say that you do not believe that there are enough resources to realise the bill’s ambitions?

10:45

Susan Quinn: It is fair to say that we are very concerned about the possibility.

In our schools, the named person is not named at the moment even though they are doing the job—the job is already there. It will be the same with our social work colleagues; people are doing those jobs already. What we have indicated is that it will not be the named person’s sole, single job. If the named person is the headteacher of a primary school, they will have the whole school to oversee, financially and with regard to teaching, learning and staff development. If the named person is a depute head, a pastoral care teacher or someone else in the secondary sector, they will have teaching duties and other remits.

It would be unusual for a school to say that, because 25 per cent of their young people are involved in stages 3 and 4 of intervention, it is too
big a job for the named person to have anything else to do. Schools just will not have the resources to do that. The crunch point comes when attendance at a meeting is required but it clashes with one of the named person’s teaching commitments. If the school does not have anyone to cover, what is the crunch? Does the person attend the meeting and leave a class behind without somebody to teach them?

The Convener: What happens now? That must happen at the moment.

Susan Quinn: Until very recently, a supply teacher would have come in to provide cover—although that is a whole different debate that is going on at the moment. Such requirements would be covered internally or otherwise, but if the duties are increased and become clearer, as is possible under the bill, there will be problems.

Our concern is that, as the impact of the cuts in resources has taken a bite in our establishments, schools have found it much more difficult. Before, members of a senior management team in a secondary school would not have routine class commitments and would rarely be called on to do a “please take”, but we are now seeing evidence of that happening more and more. Teaching commitments for all members of staff in schools are becoming tighter, and that has an impact on what else can be done.

Another concern that we raised in relation to the named person is what happens beyond the school year, into the holiday period. That has been a great cause of concern to me in my job as a headteacher. If there are going to be routine commitments for all members of a senior management team in a school, that would make the situation almost critical.

Neil Bibby: I understand that the Scottish Government has said that, for school staff, it is expected that after initial training there will be no increased time commitment. What would you say to the Scottish Government in response to that?

Susan Quinn: I would say that, if there is no increased time commitment, that is fine if schools are working on the same resource as they had five or 10 years ago, but we are not working on the same resource. It is the same in other areas. Schools are squeezed in terms of what they can deliver in relation to the school day and beyond.

It will be fine if duties are not increased and the resource level remains the same. Our organisation and others want more resources, but resources are tighter and it is harder for our establishments. Only time will tell whether an increased level of work will be required—and we will not know that until the changes are in place.

Mike Burns: There is also an assumption that early intervention is less intense. However, what we see on the ground—most welcome though this is—is the emergence and referral on of earlier difficulties. Therefore, it is no less intense. To address, divert and secure better outcomes for children involves significant additional resource on occasions.

Neil Findlay: I am beginning to feel that my departure from the committee is rather timely. I sense that, as was the case with the Post-16 Education (Scotland) Bill, a blizzard of amendments will be lodged. Good luck with that. [Laughter.]

The financial memorandum estimates that for most children the additional role of the named person described in the bill will result in an extra two hours a year per child from midwives and one hour a year per child from health visitors. I am not very good at maths, but I have worked it out that that will mean midwives get two and a half minutes with each child a week and health visitors will get just over a minute with each child a week. What will that contribute?

John Stevenson: We have said that a significant input of resources for health visitors and other health staff will be required. We are in a position in which health visitors are overworked. The refocusing of health visiting towards the most vulnerable has meant that things such as the two-year check are missed out and lots of developmental issues are not picked up. The reintroduction of that check without the required resources alongside it, but with the named person role on top, will make the situation almost critical for health visitors and midwives on the ground.

We are aware that the pilots in Edinburgh have been with pre-school children. Where the system is working already, people find it difficult to get their head round it but they are fine once they have done so—although we are then stuck with a lack of time to carry out the role. Health visitors have sizeable case loads. As a named person, they might have to attend several meetings a week relating to children, which is time that they will not be out visiting children. A significant and on-going investment of resources is needed; it cannot just be a one-off investment.

Neil Findlay: The reality is that it has taken you longer to give that answer than health staff will have each week to address the issues. Even so, those staff will be time rich compared with teachers because, apparently, they will not need any extra time to carry out the role. On a basic
level, it is incredible that that has been said. If I train a person to do something and then they go and do it, that must take some time. Perhaps we need Professor Hawking to come before us to explain the physics behind doing something that does not take any time. It must take time for teachers to act as a named person.

Susan Quinn: That probably reflects the fact that many of the areas in which we are to be trained under the bill are already dealt with in schools. Our difficulty is that, in the beginning, people will possibly become more concerned about or afraid of litigation. Therefore, more time will be taken to ensure that any new legislation or processes are embedded.

Time has been spent training staff, which is why additional time will not be required. However, the time requirement has not necessarily been resourced. We must consider how we resource and, in particular, staff our schools based on need.

Over the years, things have changed in terms of what is recognised in deciding staffing levels in schools that are in areas that are high on the index of multiple deprivation. There has been a move to using the free school meals and clothing grants entitlement, rather than the deprivation index, as the fraction that is factored in. That approach changes quite significantly the resource that our schools get in relation to staffing levels for the named person role. Although that is not the only thing that will determine the level of need and the workload of a named person, it is quite clear that it has an impact.

It may well be that there is not any additional work, but the reality is that the work is on-going and, as I have said before, it is only one part of the job that the named person will be doing. Although some of my colleagues might like to have a named person who only does that job, in reality the person will be doing a plethora of other things in relation to the wellbeing, teaching, learning and so on of young people. The named person role will become part of those things.

Whether the role becomes overwhelming in that person’s workload really depends on the make-up of their establishment at any one time. Schools might see a greater need one year and then the need could change—that is where things become difficult. We would argue again that resource has been squeezed over the years, which affects people’s roles. A secondary school that had five depute heads in the past may well now have only three. Those three have a bigger workload than they had when there were five depute heads.

Neil Findlay: In some of the large secondary schools, we are talking about rolls of a few thousand. Are we really trying to say that there will be a named person in such a school who is responsible for, say, up to 3,000 young people and that that role is not going to take any extra time? I am sorry—I just do not wear that at all.

The Convener: I want to clarify something, given that line of questioning and the statements that have been made. I presume that much of this work—as I think Susan Quinn has indicated—already goes on. We have teachers who take on a pastoral care role as part of their current duties. Is it not the case that, in effect, we are quantifying and focusing the responsibility more accurately and detailing what the role is in order to ensure that what already happens with good teachers happens across the country? Is that not what we are attempting to do?

Susan Quinn: That may well be the intention of the bill, but only time will tell what the impact is and whether that happens, because the detail of the duties of the named person is massive.

It is not just a matter of the impact of the bill in its own right and whether it comes with no additional resource. We also have to set the bill in the current context that our establishments find themselves in: yes, we have teachers who take on a pastoral care role, but in lots of areas their role has changed over the years. Their teaching commitment has increased in recent years compared with the past, with a knock-on effect. Therefore, only time will tell whether the duties of the named person simply quantify what is currently happening or increase their workload. We will not know until we see what everything looks like on the ground.

The Convener: Okay. Thank you very much. Time is rushing on, so we need to move on.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will touch again on a point that Professor Norrie raised in connection with a single child’s plan. The bill provides for a child’s plan to be developed if an individual child has a “wellbeing need” that requires a targeted intervention. Professor Norrie indicated that there are some deficiencies in that, and that if guidelines were laid down by the Government they would not compensate for those deficiencies because the bill does not make any reference to existing legislative duties. I am interested to hear a little bit more about that, and whether the whole panel agrees with that.

Professor Norrie: If you are referring to my written evidence, the point that I was making was about when we should take account of the child’s views. The bill suggests that we should take account of the child’s views when deciding whether a child’s plan is necessary. It struck me that it is much more important to take account of the child’s views when we are designing the content of the child’s plan.
11:00

That taps into a slightly broader concern that I had about children's views. Most child law of the past 20 or 30 years traces the duty from article 12 of the UNCRC and most of our children's legislation specifically requires bodies to take account of the views of the child, but there is very little of that in the bill. I would have preferred there to be more of a requirement on service providers—in drawing up not only the children's plans, but their general strategies—to speak to children and find out what they need in particular areas.

**Colin Beattie:** I appreciate that. However, we have existing legislative requirements. Do they adequately feed in to the bill? With no specific reference to those legislative requirements, will guidelines compensate?

**Professor Norrie:** In that context, guidelines serve a useful purpose.

**Mike Burns:** Core social work practice—and what we do when we are working with children—has to have at its heart the views of the child. A plan is most effective when its focus is specifically on what the child needs.

There are sufficient safeguards in the system, through child protection reviews, looked-after and accommodated reviews, relationships with schools and health visitors, and the children's hearing system itself, to ensure that core practice—whether it involves issues to do with wellbeing or welfare—has at its heart the securing of the child's view, irrespective of his or her age. Even when a child is very young, the social worker and the other professionals who are around the child are obliged to think with empathy about the absolute needs of the child and to convert some of those needs into the plan.

**Susan Quinn:** On the single plan relating to wellbeing, we have raised the point that education services will have plans that relate to additional support needs but not to wellbeing. We had hoped that the bill would free us from having different plans for different things, but if the plan is simply about wellbeing, there is no potential for that.

The Education (Additional Support for Learning) (Scotland) Act 2009 requires that a young person's voice is heard in their plan. That is used and developed in our schools. We hope that we will not have one plan that looks one way, at wellbeing, and another that looks a different way, at additional support needs; we hope that there will be a single document so that a plan in relation to overtaking education-related barriers to learning would look the same as a plan in relation to overtaking wellbeing barriers to learning. It would be the same document, so that if anything changes in the young person's life, people would not have to redraft the whole thing. The document will just provide the information, but expectations need to be made clear.

If that is not what comes out, and there is simply one single plan that relates to the concern about wellbeing, it will not change my members' workload, because people will still have to have a separate plan under the Education (Additional Support for Learning) (Scotland) Act 2009. We hope that the two will start to look the same.

**John Stevenson:** The issue for us was the sharing of information without consent and how we define that in terms of wellbeing. Good practice means sharing with consent and engaging people in the process. If you start off by excluding the child from the decision about whether to share their information, the next step will be a bit of an uphill struggle.

**Professor Norrie:** Legal guidelines compensate?

**John Stevenson:** We need the single child's plan to pull together. There are sufficient safeguards in the system through child protection reviews, looked-after and accommodated reviews, relationships with schools and health visitors, and the children's hearing system itself. That should not be considered to be a separate structure; it should be ground into every part of the structure from its roots upwards.

We are looking at a system that takes a universal approach to children's wellbeing using services that have, by and large, been targeted in the past. For example, health visitor services and social work services serve only parts of the population. Schools serve the whole population and the bill is a major issue for them. We need to get our heads around the universality of the service that we are providing, which will bring into the net a whole lot of people who in the past had no connection with agencies at all.

**Colin Beattie:** From your experience, do you think that the practical issues around combining the child's plan with other existing plans might turn out to be bigger than we think?

**John Stevenson:** In giving evidence on other legislation previously, Unison made the point that we discovered that in one local authority, for a child to come into care something like 11 different forms needed to be filled in. That situation has got much better.

We have also guarded against the oversimplification of a single child's plan. The temptation is to come up with a bureaucracy and with a form that is so simplistic that it tells us nothing. We need the single child's plan to pull...
together all specialist plans. We would not expect a paediatrician to be able to do their report on a single sheet of paper and we would not expect an education plan to be done in that way either. The single child’s plan needs to be a hub that brings such reports together but does not replace them. Unfortunately, we sometimes see on the ground attempts being made to replace those reports with something far more simplistic.

Colin Beattie: Do you think that there is enough clarity about which organisation might be responsible for providing and paying for the services that would be required under the child’s plan? I am thinking of instances when children might use services outside their own local authority area.

Mike Burns: If the bill captures current practice, there are well established arrangements for the team of professionals. I cannot think of a time when there has been significant dispute. There is often clarity, and professionals need to work together to be clear about how a child’s needs will be best served by the local resources that are at their disposal. The system works well at the moment.

Neil Findlay: In a previous job, I was responsible for writing individual education plans, and refreshing them made for what were probably the hardest couple of weeks of the year. It was time consuming and very difficult, at times. When I first went into the job, the plans were written in very dry education terminology and mentioned numeracy, phonics, linguistics and all the rest. They were sent to parents to be signed off and agreed, but many of the parents had not a clue what they were about. The plans would come back signed, but if we discussed them with parents, we found that they did not know what they had signed. It was not until the school completely revamped the process so that the plans were written alongside the child, who could say, “I can do this and that, but I need help with that other thing”, that the parents and the children began to realise what they were all about. That was very refreshing.

I acknowledge John Stevenson’s caution against making the plans overly simplistic. However, we need to rethink how we engage the people whom the plans are supposed to be assisting and how we get them to buy into the process. Simplifying the plans does not necessarily mean throwing out a lot of information, but the information must be presented in a way that allows people to understand what is being said.

Susan Quinn: The changes to the way in which plans are developed in schools mean that we now involve parents and young people through face-to-face meetings. However, that is a real challenge for schools, because it has to be done during the school day. We cannot say to children, “Go and wait behind, will you, so I can sit down with you, because I have had to take the class today?”

Neil Findlay mentioned large secondaries with large numbers of pupils. Some of our smaller schools face even greater challenges. Although the numbers of young people are lower, the school might have a teaching head; if they are teaching during the day, they cannot sit down with a young person or a parent and listen to their views on a plan, because they have people in front of them. Real challenges already exist in the current system.

It does not particularly matter what the paperwork looks like; teachers need time without a class in front of them to discuss a plan. Our members have said that it has in the past few years become harder to find the time for that in the school day, because there are things that they have to do. The head can sit with the class teacher at the end or the beginning of the day and develop strategies, but the part that involves young people must take place when they are there during the school day. Otherwise, we are asking our most vulnerable children to get a detention and stay behind so that we can work on their support needs. That is where the squeeze with regard to people having a bigger role has had an impact.

Mike Burns: To go back to one of the first points, the law and the plan by themselves will not deliver the cultural change that we are seeking. The important element is the ethos and the thinking behind the bill, particularly with regard to getting it right for every child, which concerns the set of attributes that early years educators and health visitors can, without a doubt, bring to the table. The third sector is critical in early engagement, and a social worker simply filling in a plan or a report by themselves will not secure the necessary engagement and outcomes. It is the set of attributes and the quality that are critical.

Marco Biagi (Edinburgh Central) (SNP): Panel members should feel free to give yes or no answers, as I am aware of the time.

The difference between welfare and wellbeing has been mentioned quite a bit today. Professor Norrie’s written submission characterises the difference as being that welfare is an imperative—almost a tripwire to trigger intervention—whereas wellbeing is much broader and is about maximising good things in a child’s life. Do the other panel members agree with that?

11:15

Professor Norrie: That is a fair summation of my view. The critical distinction that is traditionally
used with regard to the state stepping in to do something compulsorily—to interfere with family life, if you want to put it that way—is the welfare test. As far as I understand it, the bill is more about avoiding the need for compulsory state intervention, which is a quite different process. Indeed, it uses the term “wellbeing” instead of “welfare”, which struck me as being quite useful.

Marco Biagi: Given that I managed to get that right, I wonder whether Mike Burns also finds that to be useful.

Mike Burns: It is certainly helpful; in fact, it is critical that we in Scotland enhance wellbeing in order to deal with some of our welfare and child protection issues. As a collective community, we need to parent better and to see parenting as a kind of active citizenship. I understand—indeed, I adhere to—the views that have been expressed about differentiating with regard to family life and protecting privacy, but the point is that a lot of situations that we have had to deal with have ended up as very acute child protection issues when the system collectively could have—and should have—intervened earlier on the basis of wellbeing.

Marco Biagi: Do the other two panel members disagree with that?

John Stevenson: I disagree only with regard to definitions and where the threshold should be set. As we have said, that will be tested in the same way that welfare continues to be tested by lawyers arguing more and more at children's hearings. We do not disagree with the principle, except on the compulsory sharing of information, which is a state intervention with regard to wellbeing.

Marco Biagi: Does the duty to promote wellbeing complement or conflict with other duties—for example, corporate parenting and supporting and promoting welfare?

Mike Burns: I do not think that that would be an issue.

Marco Biagi: Lastly, some of the written evidence has commented on the use of the safe, healthy, achieving, nurtured, active, respected, responsible and included—or SHANARRI—indicators. Do any of you have views on that matter?

John Stevenson: Unison has commented not on whether the SHANARRI indicators themselves are good but on whether thresholds might be considerably blurred as a result of one person thinking that they might or might not be good. Going back to Neil Findlay’s earlier point about forms, the fact is that things are much better when people are involved right at the beginning. The best way of involving people is through co-operation, but our concern is that if something that should be enabling or involving merely becomes a way for officialdom to share information, we will lose them at the beginning of the process.

Susan Quinn: My only concern about the SHANARRI indicators is that we do not change them. People in schools are only now getting to grips with them in their current form, so if you were to come along and say, “Actually, we’re going to have to change them before you’ve even started to use them for anything much”, their heads might explode.

The Convener: We could not have that.

Susan Quinn: The SHANARRI aspect of GIRFEC has taken a while to permeate through many of our systems. The indicators provide a general service, but other aspects of SHANARRI will lead to much more precise and considered interventions than we have at the moment.

Marco Biagi: Would putting each of the SHANARRI indicators into the bill as headings provide people with some confidence that the system will be used, and avoid the danger of anyone’s head exploding in the near future?

Susan Quinn: Yes—having the indicators in the legislation would achieve that aim. It comes back to whether the indicators need to be in the legislation or the guidance. If the indicators are in the guidance, that will—provided that the guidance is clear—give people in our schools confidence that that is where we are going in the future and that the indicators match what we are doing in the curriculum and other aspects of our work. People will therefore begin to gain confidence in use of the indicators, which are not the only assessment tools and plans that are considered under GIRFEC, but are only one part of what schools use.

George Adam (Paisley) (SNP): Good morning. My question, which is about kinship care, is for Mike Burns. Kinship care is a massive issue and I know about the challenges at local authority level and the difficulties that families face when they try to navigate the administrative minefield that is put before them. What discretion should local authorities have over how they support kinship carers, and to what level?

Mike Burns: Our submission says that kinship carers have made a very positive contribution and that we welcome the securing of kinship carers through the financial support that they have been given. We have said that it is critical that the provision in the bill, rather than referring to counselling, should be about assessed need alongside the role of kinship carers and the informal supports that kinship carers have access to—or to which they have access on occasion.
A big effort has been made in three cities to try to facilitate the pathway to support to which George Adam refers. Carers whom I speak to often say that it is almost as if they have to break down barriers to get support, whether in relation to welfare rights or legal issues. We seek to provide much more assistance and much quicker access to support.

There should be significant local determination of what is required in an area. Kinship carers refer to a number of issues—such as trauma or loss—that might require counselling, but there can also be significant issues about establishing routines for meal times or sleep, about family group conferencing and about contact.

To be too prescriptive—rather than saying that counselling is part of the assessed need and bearing in mind some of the principles that we have discussed—may, in a sense, narrow what is required for the child.

George Adam: You mentioned welfare rights. Nine times out of 10 it becomes quite difficult for the kinship carer to look after the family financially. We have agreed that it is quite difficult for carers to go through the system. If the benefits system does not support the families financially, do local authorities have the right to step in to support them?

Mike Burns: A number of authorities have provided kinship care payments specifically on the basis that access to payments that would be made through the Department for Work and Pensions and so on is protected. There is probably still a postcode lottery to some degree; there are differences between authorities. The differences are partly down to the fact that some local authorities have viewed kinship carers as being similar to foster carers, whereas other local authorities took the view that kinship carers are different and felt that they had to ensure that the financial burden was not simply assumed by the local authority and that finances that would otherwise have been available to kinship carers were protected and, indeed, enhanced if the local authority decided that, in the circumstances, the child could not remain with his or her parents.

The decision comes back to the principle of the protection of private life, which we discussed. If that threshold is met, the local authority intervenes to move the child, whether it is to the aunt, the uncle or the grandparents. The kinship care payment should be made at that point. It has made a significant contribution to supporting such children. We have looked at and even audited such things and many children have, through that payment, remained within their extended family, which is to be welcomed.

Neil Bibby: I want to ask the ADSW about its submission. The start of the submission mentions the “Removal of functions” and what it interprets as “a very centralising power” that could take away the planning for children’s services and transfer assets and money from local authorities to a joint body or board. What case has the Scottish Government made to you on the need to do that?

Mike Burns: We commented on the fact that that did not form part of the consultation. We wanted to flag up that a lot of the work that the Scottish Government has led on in relation to the early years collaborative, which really does capture the GIRFEC principles and the direction of travel in the legislation, says that we need to look specifically at communities, neighbourhoods, access to services and the points that we have raised about kinship care and bringing local resources to people.

Even in my local authority—Glasgow City Council—there is at times the notion of the centralised plan, but what remains critical for me is my ability to convert that meaningfully to Possil and Drumchapel.

All that we flagged up was the fact that the deficit in performance is not often in relation to the quality of the plan. I have looked at many plans that are incredibly well written; many bright people have been at the back of them, and their aspirations and what they want for children are excellent. The critical thing is to convert those aspirations into tangible outcomes on the ground in neighbourhoods. We flagged that up in order to say that it seemed to be incongruent with the direction of travel of the early years collaborative and the GIRFEC principles to say that there will at times be a centralised solution to what could be the local determination of local issues. That was our issue.

The Convener: Thank you very much for that.

I thank all the witnesses very much for their evidence at the start of our in-depth look at the Children and Young People (Scotland) Bill. The meeting has been a helpful start. Again, I thank the witnesses for the written evidence that they supplied to the committee before their appearance this morning.

That concludes the public part of the meeting. Earlier, the committee agreed to take agenda item 3 in private.

11:28

Meeting continued in private until 12:45.
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

22nd Meeting, 2013 (Session 4)

Tuesday 10 September 2013

Present:

George Adam
Jayne Baxter
Neil Bibby (Deputy Convener)
Joan McAlpine
Liz Smith

Clare Adamson
Colin Beattie
Stewart Maxwell (Convener)
Liam McArthur

Children and Young People (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from witnesses representing children’s perspectives—

Jackie Brock, Chief Executive, Children in Scotland;
Alex Cole-Hamilton, Head of Policy, Aberlour Child Care Trust;
Duncan Dunlop, Chief Executive, Who Cares? Scotland;

and then from witnesses representing parents’ perspectives—

Clare Simpson, Project Manager, Parenting across Scotland;
Lori Summers;
Claire Telfer, Head of Policy, Advocacy & Campaigns (Scotland), Save the Children;
Caroline Wilson.
The Convener: Under our next agenda item we will hear evidence on the Children and Young People (Scotland) Bill. We have two panels of witnesses today, the first of which includes organisations representing the perspectives of children.

I welcome to the committee Jackie Brock from Children in Scotland, Alex Cole-Hamilton from Aberlour Child Care Trust, and Duncan Dunlop from Who Cares? Scotland. I thank the witnesses for their written submissions, which will inform our lines of questioning. Clearly, we have quite a lot of areas to cover this morning, so I want to get straight to the questions.

I remind members that quick, precise questions would be helpful and those answering the questions that precise answers would be equally helpful. Also, if somebody else has covered a question, you do not need to answer twice. If we could all do that, it would be very helpful. I ask Liam McArthur to start us off.

Liam McArthur (Orkney Islands) (LD): I will start with the general issue of rights. We have already heard about issues about whether or not a children’s rights impact assessment should be carried out in relation to the bill, and we have had a response from the Scottish Government on that. It would be helpful to get your views on what has not been carried out, and what the deficiency is in that respect.

The other issue that we covered last week was in relation to the incorporation of the United Nations Convention on the Rights of the Child. We heard in particular from Professor Norrie about what he saw as the complications of incorporating it wholesale into Scots law. I know that this has been one of the priorities for a number of groups operating in this field, and it would be helpful to know the basis on which you believe full incorporation to be the best route and to hear about examples that we can learn from of where it has been done in other countries that would give us confidence that it could be done in this country without too many problems.

The Convener: I know that the panel was not specifically asked here today to answer questions on this area, but it would be helpful to get your responses.

Alex Cole-Hamilton (Aberlour Child Care Trust): I will take the first question about the children’s rights impact assessment. When the legislative programme was originally mooted, this
The interpretation of those aspirations, and law, which itself is more literal and more precise, sign up to, by incorporating it wholesale into Scots a series of aspirations that, obviously, we can all last week was that, whereas the UNCRC sets out specific concern that Professor Norrie articulated the best place in the world to grow up in. The international standard for what that means is the creation of a rights-based framework and approach to legislation that means that all decisions by ministers or by public bodies in the delivery of a service are taken in a transparent and accountable way that has the best interests of the child at heart, listens to the voice of the child and takes account of the impact that any particular policy might have. That would give the power of access to justice to children and a right to redress, through either judicial or non-judicial means. It would also create a framework within which we could monitor and evaluate the observance of those rights in conducting our public policy.

For us, the most elegant roadmap to that, and the most elegant solution against the international standard, is to incorporate the United Nations Convention on the Rights of the Child into Scots law. Until we do something like that, or we build the provisions into the way in which we make policy, we will forever be behind those countries that have already incorporated the UNCRC—countries to which we look, such as Norway and Belgium, where the UNCRC has been incorporated for several years now, and whose judicial systems still function absolutely normally, but with children’s rights at their very core. Without that, we will not have achieved the ambition to be the best place in the world to grow up in.

Liam McArthur: That is helpful. I think that the specific concern that Professor Norrie articulated last week was that, whereas the UNCRC sets out a series of aspirations that, obviously, we can all sign up to, by incorporating it wholesale into Scots law, which itself is more literal and more precise, we would run the risk of handing responsibility for the interpretation of those aspirations, and whether they have been fully reflected, to judges as opposed to legislators. You do not believe that that is a risk.

Alex Cole-Hamilton: That has certainly not been the case in the countries that have incorporated it. I named two, but there are many others. There are countries throughout Europe that automatically incorporate UN treaties, as that is just the way their legislative process works. This is about—

The Convener: Sorry—can I interrupt you? Just to be clear about this, Liam is quite right that Professor Norrie raised this issue last week. The reason why it is—I do not want to use the word “easy”—easier for some other countries to do so is that their style of law is very different from the style of law that we have. Our law is very specific and very detailed, and interpretation is done by legislators, whereas other countries have much more general ambitions in their law, and incorporation is therefore relatively straightforward. It fits with their law, whereas it does not really fit with our law. We can achieve the same ends, therefore, not by incorporation but by making changes in legislation. There is a clear difference in the style of the law that we have compared with that in other countries.

Alex Cole-Hamilton: We have a legal opinion on this point, which was commissioned by UNICEF and which we can make available to the committee. It is from Aidan O’Neill, who said that incorporating the UNCRC into Scots law is entirely compatible with Scots law both in its everyday practice and the common-law aspects that you described.

The Convener: Does anybody else want to make a very brief comment on that, or are you content with that answer?

Jackie Brock (Children in Scotland): I would very briefly point out that the vast majority of Children in Scotland’s members—400 plus—favoured incorporation and, equally, a children’s rights impact assessment. They are, quite frankly, baffled as to why the vast majority of responses, which said that they favour incorporation, have not been responded to adequately. We do not know why there is not a children’s rights impact assessment. There does not seem to be a good reason for it. In many ways, that really could have helped with a lot of the, frankly, guddle that has come through, for example the misunderstanding about information sharing and confidentiality. If we had had an impact assessment at the outset, it might well have given us a clear line of sight through some of the issues that have subsequently become quite controversial.

The Convener: Okay; thank you. I am going to move on and ask Jayne Baxter to contribute.
**Jayne Baxter:** Good morning. If we are going to give priority to the voices of children in this legislation, do you think that the level of engagement with children and young people that the Scottish Government has had, and continues to have, in relation to the bill has been adequate?

**The Convener:** Can we start with Duncan Dunlop? He has not spoken yet.

**Duncan Dunlop (Who Cares? Scotland):** Naturally, I have an interest in the process, and you have a vested interest in why we want to give evidence today, and that is because Who Cares? Scotland represents the voice of looked-after children and young people and those who have been in care.

Real credit needs to be given to this entire committee for the way in which it has sought to engage proactively not just the voices of looked-after children and young people on this bill but in how the Government heard what young people were saying their needs were. In the past two years, the committee has had a specific inquiry into why their outcomes have been so poor and I give real credit for that, in that we believe that their voice is truly being heard. We saw that in the way in which the committee questioned the Minister for Children and Young People at the end of the last term. We could see from the questioning that the issue is about relationships, their need for love and how we can maintain for them the needs that all other children—or the majority of other children—have within their birth family.

I truly believe that through the process of listening to children and young people, and through the process of this bill, in the conversations that there have been and in the evidence that has been gathered, we are at a point of understanding the issue and knowing what the solution is. So, for us, to a degree, the Government has listened very well, and it is now time for the Government to act to ensure that it is effective and is exercised about those children and young people.

From what the young people told us, the main issue for them is relationships and their need to continue to be cared for by those people with whom they have had a link from their early teens, so that relationships do not end relatively abruptly when they get to the age of 16, or when the supervision order is lifted, and they can continue to get support from those people. Yes, that might mean staying with them for another year or two more, but it was about their being allowed to maintain that relationship and be supported in that, as many of your children and our children have been and will be—when returning for their holidays, between jobs, coming for Christmas dinner, or looking for that emotional support that is a really key ingredient in what is happening.

Our real proposal to the committee is this: can we please work with you and look at how we can make this bill slightly more progressive to ensure that it can fulfil its ambition of making this the best place to grow up in for those looked-after young people? For us, that is about continuing to care for them and giving them a right to that, on their terms, to the age of 26.

**Jackie Brock:** I would echo a lot of that. As Jayne Baxter will be aware, the Government commissioned specific child and young people consultation and engagement, and it has certainly listened to many of the views from Children in Scotland, from others and from all our partners. As Duncan has said, the key thing is therefore whether the Government actually listens and feeds that in effectively by acting on what those children and young people have told us.

**Alex Cole-Hamilton:** I believe that the Government has consulted 2,500 children in the course of preparing for the bill, and consultation is still on-going. Aberlour Child Care Trust has a service user forum called youth voice, which is web-based and through which young people and services right across our country meet via webcam on a regular basis to discuss issues of importance to them. The Government has asked us to conduct a questionnaire on a privacy assessment that the Government wants to perform on the information-sharing provisions in the bill in particular. This consultation is on-going.

**Jayne Baxter:** Duncan Dunlop has outlined what the young people whom he represents have articulated. Do any of the other witnesses want to say what the concerns of children and young people are in relation to the bill?

**Jackie Brock:** I will just add a couple of things and build on some of Duncan’s points on the wellbeing of children and young people, particularly on the inclusion of disabled children and those with additional support needs, as that is crucial. Those children want to be like other children, but they need additional support in some areas, and funding is a key area where disadvantage is being reinforced at the moment. So, it is about how we look at those provisions in the bill, but also, crucially, about the guidance on implementation.

That relates to another area. A lot of children and young people will not get exercised about many of these provisions; they will want to see action. For example, with the child’s plan, you may quibble over some of the wording, but the commitment there is to have a plan to act and to intervene, and to ensure that it is effective and is what children need. Those who have additional
needs, whatever those might be, want to see action taken so that they can resume their lives or ensure that disadvantages are removed.

Those are the two key things that have come through from our work with children and young people.

10:15

**Alex Cole-Hamilton:** If you ask children what they think, one of the most important things for them is to have their views heard and acted upon. As I mentioned in my opening remarks around the child’s plan in section 33, we believe that that section would not have stood up to scrutiny had there been a children’s rights impact assessment. In effect, it gives local authorities the option to disregard a child’s views based on age and immaturity, whereas we believe that, actually, any child that is capable of making a view known should have that view listened to, where possible.

**Neil Bibby (West Scotland) (Lab):** Just following on from the questions about consultation and listening to children’s and young people’s concerns about the bill, how does what is in the bill compare with your original expectations?

**Alex Cole-Hamilton:** We are pleasantly surprised. The Government has moved some distance on this. This is a much better bill than was originally consulted on in the summer of last year. We are very supportive, particularly of the provisions around aftercare for children leaving care. I hope that we will come on to that in more depth. We are satisfied that the bill, if passed in its current form, will help to move us on that journey towards making this country the best place in the world to grow up in.

**Jackie Brock:** We would build on it—for example, in early learning and childcare. There are excellent statements of intent, and particularly on flexibility in childcare. However, we would like to see those strengthened and a marker being laid down for exactly where children and their families can get the support that they need in those early years. Equally, we hugely welcome the endorsement and the putting into statute of the principles of early intervention, and the expectations that we have of universal services through the getting it right for every child principles, and the child’s plans. I absolutely echo Alex’s and Duncan’s points on aftercare and rights. Those have come through strongly for us.

**Duncan Dunlop:** The only thing that I would add is that it is great to see a term like “corporate parenting” actually put on the legislative agenda. There could be a little bit more work on refining what that actually looks like, and we are suggesting what could be done and what those continuing care services ought to look like, but what has been great is the way in which the conversation has evolved and that we are getting a piece of legislation that should be fit for purpose for the young people whom we are concerned with. I have confidence that it will happen.

**The Convener:** I want to move on now, and I will bring in Liz Smith.

**Liz Smith (Mid Scotland and Fife) (Con):** Good morning. I want to direct attention to the named person issue, which has, as you know, elicited a wide range of views, from those who are immensely supportive to those who are very much against it because, in their view, it is undermining the role of the parent. Ms Brock, you said in your evidence that, actually, it was just a formalisation of the existing practice. What is it in the bill that you expect to improve things if we are largely doing these things already?

**Jackie Brock:** I am delighted that we are looking at a bill that is going to endorse the excellent practice that is going on. I can give you countless examples across our universal services, such as schools and health visitors, where there is clarity for the first time for parents and children about the responsibilities that services have to ensure their child’s wellbeing. However, the implementation of that is simply not moving quickly or consistently enough.

You asked in your inquiry on looked-after children at home—and no doubt you have asked after frequent child protection reviews looking at the need for additional support—why professionals are not listening and talking to each other, why they are not listening to children and young people, and why they are not taking action. Having the duties in statute will ensure that it is the responsibility of universal services to respond and take action where necessary, where it is in the child’s best interest that they do so.

Undoubtedly, the duties as currently presented require further clarification, but this will be a hugely significant step forward in what children can expect. You should remember the consensus that you have around the GIRFEC principles across teachers, nurses, social workers, the police force and the third sector. We are at an exciting point, but we have to look at what we need in statute to get rid of some of the inconsistent practice and inconsistent funding decisions that are being made by authorities, so that services can respond effectively to prevent the situations that you talked about—such as looked-after children at home and neglect further down the line if we do not intervene earlier.

**Liz Smith:** Could I just develop that? Obviously, a large number of submissions that have been largely supportive of the principle of the named person have raised serious concerns about the
practicalities and especially about the cost. At last week’s meeting, we were told that, by definition, it would involve an awful lot more children being in the system than there are currently. Do you have any concerns about the cost?

**Jackie Brock:** We have to respect the evidence that you heard last week and the views on capacity and resources, but the named person service is already happening. It is saving resources in many parts of the country, and I am sure that you have seen the evidence on that. Where it is working well, there are more streamlined systems and processes and it is reducing the bureaucracy and weeding out children and young people who should not be in the system—or should not be in the system for as long—because of the greater clarity around joint working and sharing.

Do I have concerns about costs? I absolutely do, in terms of the financial pressures that our universal services are under. Do I think that GIRFEC is going to sink the system? No, I do not, because where it is working well—where there is a commitment to proper training and implementation and there is a proper child-centred approach—we are seeing efficiencies in the system that will address some of those concerns. However, with some of the action that we are looking to take, there will be costs and we need to be realistic about that.

**Liz Smith:** Do you have sympathy with the view of groups such as the Educational Institute of Scotland and Unison, which feel there are substantial costs involved in additional training?

**Jackie Brock:** Those are our members, and I always express sympathy for the huge range of pressures that they are under, but this is part of their job. A teacher’s job is to look at the wide needs of a child’s wellbeing. We do need to ensure that training takes place, as it has been over the last seven years, and of course we need further investment, but those concerns have not been fully realised because we have been able to absorb a lot of the training as part of what teachers do and as part of their professional development. There are similar issues in relation to health.

**Liz Smith:** There are some who believe that the child should have an input into who the named person is, and others who say that that is not the right thing to do. What are your views on that process? If the answer to that is that the child should be involved, what are the implications? If the answer is no, what are the implications of that decision?

**Alex Cole-Hamilton:** First, I echo Jackie Brock’s remarks in support of the named person service, in that the bill codifies what should be happening anyway. An anxiety has developed because of confusion between the roles of the lead professional, who is traditionally a social worker, and the named person. That has led to some of the anxiety that the committee has heard about.

With regard to flexibility around who the named person is, we have had some detailed discussions with the Government about exactly that point. Particularly in rural schools, for example, where the senior teacher might be related to one of the children in their care in the school, it would be inappropriate for that teacher to be the named person for that child. Similarly, if there is a fractious relationship between a specific child and the senior teacher to whom they are assigned as the named person, there needs to be a flexibility in the system so that that can be changed.

I believe that the Government is alive to that issue. It has informed us that flexibility will underpin the guidance, and that it will be part of the system. Obviously, in any school and particularly in secondary schools, there can be a large senior teaching staff. They have maybe three or four deputy heads, and not necessarily one named person for the entire cohort of children in their care.

**Liz Smith:** In principle, would it be a better system if the child had greater input as to who the named person was, or should that be controlled more by services?

**Alex Cole-Hamilton:** The voice of the child always needs to be heard. In the vast majority of cases, there will be very little interface between the child and the named person, or between the family and the named person. There is a single point of contact through which families can access wider support should they need it, but we believe—as happens now, where this best practice is working—that there will be very little interface between a child or a family and their named person.

The child and family will obviously be informed as to who their named person is, and if there is some massive, strenuous objection on the part of the child to that named person being assigned, I believe that we need to listen to that and find a way of using some flexibility in the teaching staff or other universal services over who can perform the named person role for that particular child.

**Duncan Dunlop:** For the looked-after population, the issue is more about the lead professional. It is where that link will be and how long that lead professional—who is mainly the social worker, as Alex Cole-Hamilton rightly says—will maintain a link with that person. Is the case closed when the supervision order is lifted, or are they able to reconnect with that person...
because they have had that relationship for a number of years?

Too often, young people have too many different social workers and too many different relationships. We need to truly hear what they want, because they are the experts on their life. We might want to put them in a box, but they do not want to be in that box, and they are not necessarily going to conform to wishes unless they trust the relationship with the person who is advising them and supporting them through the process.

The young person’s voice needs to be heard in relation to the crucial decision makers who will help them work out their way forward in life and the services they get; otherwise they just will not participate. They might be present physically, but they will not necessarily connect. They need to have some say.

Liz Smith: I will finish my questioning on the role of the parent. Should the parent be instrumental in having input as to who the named person should be?

Jackie Brock: The purpose of the named person is to support the parent as well, so there is a named contact to check in with the school or the health service if they are a bit worried about their child. How many of us have had experiences when we thought, “Things are a bit tricky at home; I am just going to check in and ask the school to keep an eye on my child”?

If, for any reason, a parent makes that contact and feels betrayed or let down because of action then taken, there will need to be some action taken, and the parent should have a role in who the named person should be. However, we need to be sensible, pragmatic and understanding of what this role is. Why make more complex the interactions between parents and those professionals working with their children? This is about ensuring that, where a parent or a child has a concern, or where a professional has a concern, they can work to take action to make sure that those problems do not get any worse.

Liz Smith: Do you dismiss the very strong complaints that have been made by some parents groups that this whole process undermines their responsibilities and that of the family?

Jackie Brock: I am not saying that the system cannot be strengthened, and I would like to work with the Government and with you on this, but these provisions—the plan, the work of the named person and so on—are all about working in partnership with due regard to children and parents.

A lot of the concerns that have been raised have possibly been brought about by bad practice or difficult relationships between parents and teachers, but I do not think that that bad practice should dictate the law on how the named person is going to work. It is about supporting family life and supporting parents to ensure that their children are nourished. We need absolutely to make sure that there is no threat in that, but I think that it is about how we can communicate better. How can schools, health services and others make sure that parents see them as the ones to help them in their central, pre-eminent role of parenting and looking after their children?

10:30

Alex Cole-Hamilton: The spirit of the named person is that it will be somebody who is known to that family, and they will be the first or single point of contact so that, if there is ever a need in the family to access support or be signposted to some intervention or assistance, it is somebody they know. The discussions that we have had with the Government have given us confidence that, should the identity of that named person be revealed to the family and the family has a visceral reaction to that and says, “We have never got on with that person,” there will be flexibility built into the system to have that altered.

Once again, I understand where some of the anxiety on the part of parents groups comes from. It is fuelled by some unhelpful tabloid headlines about there being a social worker for every child. That is not what we are talking about here. We are talking about what should be happening among the senior teaching staff of every school as it is happening right now: keeping an eye on all the children for any signs that things might not be going as well as they could be, or being there should parents ask for advice or support in relation to any aspect of state provision.

The Convener: Before we move on, I would like to address this issue head on.

Alex, you have raised the matter of the “unhelpful”, as you put it, tabloid headlines. I will play devil’s advocate for a minute. I am a parent, I am married, we have a child at school, there are no alcohol or drugs problems, there are no family problems and I have never had any contact with the social work department—I am a Joe Average parent. Why does the state have a right to intervene in and snoop around my family? I am paraphrasing the unhelpful headlines that you referred to, but that is the fear that is created by those headlines. What do you say to those who have that fear?

Jackie Brock: What right to intervene or snoop is being allowed for in this bill? There is absolutely no such right. If that is what those headlines referred to, I can say that there is no right to
intervene in your life. Where your child has not told you about their unhappiness in your family life, their drug habit, or their problems with alcohol but they choose to reveal that to a professional, then the professional, acting in the best interests of the child, needs to decide what action will be taken. However, right now, there is nothing in the bill that suggests any unwarranted interference in any aspect of family life.

The Convener: Why does my family need a named person, then?

Alex Cole-Hamilton: Technically, you already have one; it is just that there is better practice in some areas than in others.

There is always somebody looking out for your child, and you would hope that, when your child goes to school, if they appear at school with a black eye, somebody is asking questions about that. If your wife went to that person at the school gate and said, “Look, I need some help to find financial advice or access another aspect of state provision—who should I turn to?” that teacher would have the answers for them. This bill codifies what should be best practice in every school in the country right now.

Joan McAlpine (South Scotland) (SNP): I want to raise a very specific but important issue that is raised in the written evidence by LGBT Youth Scotland. It is concerned about the information-sharing aspect, in relation to both the named person and the child’s plan. It states that, while working with services, particularly education services, it has encountered widespread misunderstanding regarding the rights to privacy of lesbian, gay, bisexual and transgender young people. A specific example was given in which a young person was being bullied at school because of their sexual orientation and, in the spirit of being helpful, that information was shared with the parents, who had not known. There are apparently many instances of that. Do you think that the legislation needs to be tinkered with in any way to provide a safeguard for those particular young people?

Alex Cole-Hamilton: I was part of the cohort of people in the voluntary sector who helped to bring down part 3 of the Protection of Vulnerable Groups (Scotland) Bill because it had a section on information sharing that was disproportionate and really did impact on privacy and the right to confidentiality. In our opinion, this section of this bill is far more measured.

As I mentioned earlier, we are engaging with the Government on a privacy assessment. The right to privacy and confidentiality is absolutely at the heart of what we believe in and will strive to achieve. We are satisfied that the provisions in this bill will help to focus the information that is shared. In some cases, it will reduce the amount of information that is shared, because people will be clearer about the thresholds at which they should share, what they should be sharing, and who they should be sharing it with—namely, the named person. Therefore, we have struck a fine balance here. We remain vigilant about the way in which that will be implemented and we will be working very closely with the Government on the guidance.

You asked about tinkering; if we had any mild anxiety about anything, it is the extension of risk to wellbeing and the point at which risk to wellbeing is triggered and information is shared. That is not an insurmountable problem; it is about looking at the safe, healthy, active, nurtured, achieving, respected, responsible and included wellbeing indicators and asking at which point, if a child presents and their indicators in the SHANARRI triangle are not being met, we need to act. That is where the balance needs to be struck. However, we are content that what is in the bill will lead to more focused and proportionate sharing of information.

Jackie Brock: We need to be very mindful of the examples that LGBT Youth Scotland and others have given regarding inappropriate information sharing, but I would worry if we were then to conclude that we should write off, in the example that you gave, Ms McAlpine, the entire secondary schools workforce.

What we have to aspire to, surely, is a confident, competent children’s services workforce that is given the right tools. At the moment, it is being fatally undermined by the complexity and the overlaying and conflicting duties on information sharing that exist within the professional protocols of, for example, some of the royal colleges, the teaching profession and others. It is a mess.

Equally importantly if you are supportive of wellbeing, those protocols do not reflect the duties relating to wellbeing. The current legislation is focused on child protection, which is good, but if we were not to introduce this duty, we would need to look at the legislation to ensure that we are sure that it is robust. However, we would not be able to achieve some of our aspirations for early intervention if these provisions were not introduced.

We have to look at the way in which this bill and the guidance will address some of the poor practice issues. However, in your example, the teacher genuinely thought that they were helping the child. They ought to have been helping, so how do we harness that in line with the age and stage of a child? Teenagers have very different needs and requirements from children under five, for example. We need a better understanding of how we work with teenagers. That is true across the children’s services workforce. However, let us
not get rid of a vital tool of information sharing that is needed to do the job better for the sake of worrying about some bad examples that absolutely have to be eradicated. The implementation of this approach is the way forward.

**Neil Bibby:** I would like to go back to discuss the practical effects of the named person provision. Obviously, you are all signed up to the principle of the named person, but we have heard practical concerns about how it will be implemented and also requests for more detail. Would you sum up the key changes that you would suggest to the legislation and specifically say what resources and information you think are needed to make the named person effective?

**Alex Cole-Hamilton:** There is very little that we would change in the bill with regard to the named person section. The only thing that I would reiterate is our caution about extending the risk to wellbeing. We support that, but we think that that needs to be underpinned by robust training and definitions as to the thresholds in the SHANARRI indicators at which a child who is expressing distress under any of those indicators triggers the sharing of information or the work of the named person.

**Jackie Brock:** We need to look at information sharing and think about the valid concerns that have been expressed by many. For example, we need to ensure that it is in the best interests of the child and we need to think about how the accompanying guidance can support that. There has already been a huge amount of information and communication training.

I would hope that the Government—and we also need to take responsibility across the children’s sector workforce—will be thoughtful about the lessons that can be learned from some of the recent stuff in the media over the summer and the way in which some of those myths managed to get some traction. We need to do a better job, collectively, of communicating the excitement and potential of having a named person and getting it right for every child.

The final matter for us relates to the point that I made earlier about the approach that we need to take in order to move from this rather more ad hoc, inconsistent approach to roll-out and implementation of GIRFEC. We need the statutory duties to ensure that this rather more laissez-faire approach is ended and that we have commitment across the country among the children’s services workforce for robust, professional training about implementation. I hope that that will be spurred on by enacting these provisions.

**Liam McArthur:** I would like to pick up on some of the things that Liz Smith was touching on earlier in relation to resources. Clearly, we want to improve the bill where we can, but we need to be realistic about any piece of legislation effectively being a silver bullet; putting an end to inconsistencies may be something that simply remains an aspiration.

The point in relation to resources—Alex Cole-Hamilton touched on some of the points about extending the risk to wellbeing—is whether there is a risk that the available resources will be spread more thinly and therefore that the areas of most serious risk, which are more to do with welfare than with wellbeing, do not necessarily get the attention that they should in those areas where there remains inconsistent application. Is that concern justified? Is there anything we can do to ensure that that does not happen?

**Jackie Brock:** I appreciate that it is important that you want us to be pragmatic, and I would want to do everything from Children in Scotland’s perspective to ensure that we are but, when we talk about inconsistencies, I am talking not just about provision being ad hoc but about neighbouring authorities and community planning partnerships having a very different approach. That has to end. I recognise that every child getting an equal service across Scotland is a good aspiration—and let us be ambitious—but we should also be realistic.

**Alex Cole-Hamilton:** In the application of any legislation, there are hurdles to be overcome and a lot of the detail in the guidance attached to this section will be incredibly important. Once again, I reiterate my earlier point that this codifies what should be happening anyway. The extension of risk to wellbeing is an important one, but it is also something that we need to do in a very measured way. We cannot just have a situation where somebody with a body mass index of over 30 walks into the classroom of a guidance teacher and the guidance teacher says, “Well, their needs are not being met by universal services, so I need to instigate a child’s plan or share information across the piece.” We need to take a rational approach but to understand that the SHANARRI wellbeing indicators are an important tool for identifying children who are at risk.

**Liam McArthur:** In any change process, there is always a risk that the nature of the change and the thing that you are trying to do differently becomes more of a focus. Therefore, is there a risk that those who, until now, have been the subject of greater focus in terms of having a named person and being subject to the interventions that we are talking about have a little less resource applied to them than they do currently? In trying to make things better, will we increase the level of risk for some of those who
probably need that intervention more than anybody else?

**Jackie Brock:** That is a legitimate concern. Scotland has taken a leap of faith in relation to early years, so there is a very welcome, significant investment going into early years in the hope that, over time, some of the huge costs—financial costs and costs to people—later on will be mitigated. We are asking for an extension of that to all children in the early years and calling for action to be taken. It might not be a service; it might just be a matter of having an additional person looking out for them. We do not see it as being necessarily hugely significant.

We recognise the priorities and we hope that you will be supportive of the leaving care provisions. We face a challenge in what we are doing, but there is ample evidence to suggest that early intervention will be an approach that will save Scotland resources in the long run. However, we recognise absolutely the tensions, which you have described very well.

10:45

**The Convener:** Thank you. I should have asked this earlier, when we discussed what a parent could do if they were not happy with the named person and whether there could perhaps be some flexibility and so on. Do parents have a right to access the information that is provided to the named person by another professional?

**Alex Cole-Hamilton:** Information about the child?

**The Convener:** Yes.

**Alex Cole-Hamilton:** I do not have an absolute answer on that. I imagine that that would fall within the bounds of freedom of information—or rather, data protection. Sorry.

**The Convener:** Would it? I would be slightly surprised if it did.

**Alex Cole-Hamilton:** I do not have an answer to that, I am afraid.

**The Convener:** Does anybody have the answer to that question?

**Jackie Brock:** It depends on the age and stage of the child and on what information has been given. At the moment, a parent has a right to access information within health and within education; they have a right to see school records. You have, however, illustrated the problem and, frankly, we do not know for sure. I suspect that you would get the same answer from the vast majority of the children’s sector workforce. It is ridiculous; parents and children need clarity, as do professionals.

**The Convener:** Liam, did you have a question?

**Liam McArthur:** It was on that, but I think Clare Adamson will ask about information sharing.

**The Convener:** I will move on to information sharing in a moment. I am sure that we will pursue that matter as we go through the evidence.

I want to take you back to the evidence that we received last week on section 26(2)(a) and (b), and particularly Professor Norrie’s evidence, which pointed to the issue of the phrases “it must be provided”, “might be relevant” and “ought to be provided”. In other words, with regard to the language and terminology that is used in the bill, I wonder whether or not you either share his views on that particular section—section 27, which he said was the “worst section in the bill”—or whether you think that marginal amendments are required. What are your views on the detail in the bill about how information sharing should be carried out?

**Alex Cole-Hamilton:** I would not presume to tell the committee that I am a legal draftsman, nor that I have anything like the experience of Professor Norrie. If he believes that this is in any way unsound, then I defer to that. We support the spirit of the section and you will obviously have an opportunity to amend it. However, if it is not amended, then I hope that terms like “ought” and the thresholds at which information is shared will have greater definition and be more clearly spelled out, as I suggested earlier.

**The Convener:** It is interesting that you defer to Professor Norrie on this, but not on the incorporation.

**Alex Cole-Hamilton:** I have another lawyer to defer to on that. [Laughter.]

**Jackie Brock:** I noted in Professor Norrie’s evidence that he accepts that the law needs to be changed in relation to information sharing around wellbeing and that he values the attempt by Government to make those changes and to enshrine them in legislation. That is great. He values having the principles of early intervention supported through this duty. I think that is great. We have a huge range of experts—Professor Norrie and others—in the children’s sector within Government who can help us to get this right and I cannot see that the issue is insurmountable. If your committee endorses the principle, we on this side of the table would certainly want to do everything that we can to work with Government to get this right.

**The Convener:** Thank you, Liam, you had a question on information sharing.

**Liam McArthur:** I do not know whether Clare Adamson will come in on this subject, but one of the most strenuous points that Professor Norrie made was in relation to section 27, which appears
to override data protection and any other legal requirements. That does, on the face of it, seem to be a rather bold move and one that should cause us all to have pause for thought. Would you offer any reflections in response to what he was saying?

**Jackie Brock:** We know from working with Government on various advisory groups that it has worked incredibly hard with the information commissioner to provide clarity to the professionals and get advice around data protection. If section 27 is not quite right, then, with all due respect to Professor Norrie, it can be sorted out. I do not know the detail of why he does not think it is quite right, but, given the close working, officials could be instructed to go away and sort it out.

**Liam McArthur:** The point is that which Joan McAlpine made earlier about LGBT. That is the sort of thing where you could understand why concerns would arise very quickly about the extent of the powers in the bill as compared with some of the protections that people might reasonably expect under other provisions.

**Duncan Dunlop:** All this comes down to the fact that we will never get a failsafe system. We are dealing with professionals who have to work on the basis of trust. They have to earn their trustworthiness and we have to believe in them and that they can do the best for our children and young people. There will be mistakes along the way. What Joan McAlpine described was clearly an example of completely inappropriate practice: why did they not ask the child or young person whether their parents knew that they were gay or lesbian? That was a crass mistake at that level. One piece of poor practice does not mean that the entire principle behind what will be achieved here should be scrapped.

We must look at whether we have quality professionals out in the field and whether they have the right to be trusted with the wellbeing of our children. If so, we need to give them the space and autonomy to get on with the job and they need to do it appropriately. Where they do not do it appropriately, we need to address that. However, you must look at the voice of the child or young person in the process.

**Alex Cole-Hamilton:** The only reflection that I would add is about the situation that we have now. We have anecdotal evidence from various actors within the state whom this would cover, who are either expressing concern that colleagues are sharing too much information, because they are not clear on what should be shared and with whom, or they are sharing too little at the expense of the welfare of the child because of anxieties about the Data Protection Act 1998. The bill will cut through that and deliver a line of sight for all professionals who are working with children so that they understand what it is to share information, when it is right to do so, and how proportionately they should do it.

**Duncan Dunlop:** The system cannot inhibit the intuition of a professional who has learned and understands what is necessary for that child or young person at that time. They need to make sure that they are making appropriate decisions in the way they are supervised and managed, or to look at the way in which they are doing that.

**The Convener:** That is very helpful. I will make one final point on this; I think Professor Norrie’s concern around section 27 is particularly at section 27(1), which I will read for clarity. It says:

> “The provision of information under this Part is not to be taken to breach any prohibition or restriction on the disclosure of information.”

In other words, it is not to be taken to breach any prohibition or restriction on the disclosure of information. His concern and why he would be concerned about that is quite clear, given that it seems to be an absolutist position. Even if you cannot answer today, perhaps you should reflect on it, and if you think that you have something to add, you could write to us afterwards, if that is helpful. Okay?

**Jackie Brock:** Yes.

**Alex Cole-Hamilton:** Yes.

**The Convener:** Thank you very much; we will move on now to Colin Beattie.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Thank you, convener. Part 5 of the bill allows for a child’s plan to be developed in circumstances in which the child has a “wellbeing need” that requires intervention. However, there seem to be many statutory and non-statutory plans in place already—that perhaps reflects, to some extent, the sheer number of bodies and organisations that are involved with each child—which is an argument for trimming them back. The bill does not seem to bring all that together. Where do you see that provision working and where do you see a complication in it?

**Jackie Brock:** There is a significant complication in relation to the way in which this bill will work hand in hand with the Education (Additional Support for Learning) (Scotland) Act 2009, which requires a co-ordinated support plan for children. There is lots of talk about how guidance will show how you can lock those plans together, but it will undoubtedly add further complexity. In terms of looking at the needs of children in the round, it is a really unfortunate division. It would have been good to look at how we could bring together both pieces of legislation.
I hope that our submission made it clear that we are very concerned about the increasing layers of bureaucracy being placed on the children’s services workforce, both within local authorities and at CPP level around the number of plans that there are for children, and also at a local level in terms of how you are planning the resources and services more effectively. Certainly, a really good scrub out of some of the stuff in this bill and elsewhere, to create a more co-ordinated approach, would be helpful and more efficient in terms of resources.

Colin Beattie: Would it be correct to say, from what you are stating, that there is scope to reduce the number of plans that already exist from all the different bodies? Is there that capability? Are they all essential?

Jackie Brock: I think that they all grew up out of individual essential purposes, but we are now moving in Scotland to a far more co-ordinated, integrated approach that is signalled by getting it right for every child, and also the early years framework, and potentially around throughcare and aftercare. The initial purpose for these things was right, and they were essential, but now we have a more sophisticated understanding of how plans need to be more effective in relation to the child and also at a CPP level. I think that the time has come to modernise and update our thinking around that.

Duncan Dunlop: A care leaver should get a pathway plan, but about 20 to 30 per cent of them will not get that plan. It is meant to guide what happens to them as they leave care and enter their adult life. In terms of having it on the statute book, or in guidance or policy, the plan would be in place if they were helped by a proper relationship that they trusted, respected and heard when they were filling it in, so that they actually owned it. That ownership will come only via the relationship, so the piece of paper that may show that the worker has done their job is not necessarily fulfilling a need for the young person, who needs what is on that piece of paper to make a life-changing difference for them.

Alex Cole-Hamilton: Our chief concern is about part 5, and particularly sections 31 and 33, with regard to hearing the voice of the child, and indeed the voice of the family. In fact, this spills into our views about the corporate parenting section as well. There is a lot in the bill about the actors that should be brought together to plan in a connected way, but very little is said about other key stakeholders, particularly in the journey of a looked-after child. In the bill, when a child’s plan is looking at provisions for a child who has become looked after, there is little reference to the role of the birth parent or to the people who put that child to bed at night—the actual care provider.

First, in terms of the voice of the child, there are sections in part 5 that would afford the authority the opportunity to disregard the views of the child, as I mentioned earlier, in the formation of the child’s plan. The authority is also to try to elicit the views, “so far as reasonably practicable”, of the family concerned. However, that is a very subjective term, so we have concerns about that.

With regard to the actors who sit around the table, there is a very long list in Schedule 2 of those who form the corporate parent, and that includes all registered public bodies, quangos and the rest of it. However, it makes no reference to the care provider. It may not be appropriate to have somebody who has a contractual relationship with a local authority included in that list.

However, there are problems with the process of the child’s plan that this bill could ameliorate. For example, in the foster care world we have many examples of families who are affected by drift and delay because they need the social worker to liaise with the birth family to see whether the child can have his or her hair cut, can go on holiday, or can appeal their school placement decision. This leads to placement breakdown and it reduces the number of foster carers that we have in the cohort because people find that a very frustrating situation. We believe that the bill, particularly in the child’s plan section, could afford, at the very start, a greater role for those care providers, in terms of identifying the level at which they should have autonomy and decision-making, and also should perhaps afford them the right to call for a review of the child’s plan at some point if they feel that the situation is breaking down.

11:00

Colin Beattie: Based on what you are all saying, is the child’s plan practicable, with all these other plans roundabout? How are they brought together? Are you confident that they can be brought together? We are already hearing about disconnects and so on throughout the system. How will this work?

Jackie Brock: You cannot have the named person provision without the child’s plan. The point of the plan is that the child has a need and you need something to be done; you need action.

To answer your question, yes, the child’s plan is needed and necessary, but what would be very helpful for this committee to signal, either in guidance or in further discussion as part of the bill or in due course, is what the whole planning landscape is, both in relation to an individual child and across children’s services, and how it can be streamlined and made more effective. At the moment, there is undoubtedly concern and
additional layers of bureaucracy being placed in the way of meeting a child’s full wellbeing needs.

**Colin Beattie:** Do you think that, given the introduction of the child’s plan, there might be disputes from time to time? Should there be some sort of dispute resolution process in there?

**Alex Cole-Hamilton:** We have suggested that there needs to be clarity about what happens when elements within the corporate parent and those actors around the table who formulated the child’s plan disagree. So, yes, we would support that.

**Clare Adamson (Central Scotland) (SNP):** In terms of the child’s plan and information sharing, delivery will happen at a local level, but we know from our engagement with children who have been taken into care that they are quite often moved between local authorities, so how do you ensure that the practice is accepted throughout Scotland and that the terminology and the practices used in this area are universal?

**Duncan Dunlop:** That is part of the issue. The plan, in those terms, needs to have the primary carer involved. Alex mentioned that if a child is in foster care, for instance, the foster carer needs to be one of the key people helping to create and develop a plan with the young person, because if it is an effective placement the foster carer is the person with whom the young person will have the best relationship. That is the person who the young person or child will best buy into and who will enable them to understand what is in that plan and ensure that it will have a beneficial impact on them. The foster carer, as far as possible, needs to link in with the social worker, the named person, or the lead professional at that juncture to ensure that the plan is implemented in that way.

When young people or children are moved from pillar to post, it is a different issue. That is where we come back to the value of the relationship rather than the plan, or the bureaucracy or piece of documentation. If the bill focuses more on relationships and ensures that a key principle in it is that our aspiration for children and young people throughout Scotland, and what will best benefit their wellbeing, is for them to be in a loving, caring, stable family or carer relationship. That ought to be given primacy in any decision making about that young person if we are sure that it is a healthy place to be. If that was the overarching principle of this bill, all this would be a bit more straightforward. Rather than putting it on different professionals, we would be looking to the carer in the first instance to hold a lot of these relationships, we would not have placements break down as regularly and children and young people would not be moved around different local authorities as often.

**Jackie Brock:** You have highlighted the crux of why some of this needs to be in statute. Of course, we cannot guarantee any child or family that if they move from one area to another they will get exactly the same service, but at least what we will get from this bill is a core set of expectations and responsibilities, and expectations of the universal services to which parents and children will have a right wherever in Scotland they live. There might be some different approaches and priorities in practice, but at the very core of it we have principles that apply throughout Scotland. Of course, there are resource issues, but there must also be a requirement for some of the professional associations, for example, to share good practice across the Association of Directors of Social Work, the Association of Directors of Education in Scotland and the health colleges and so on, to ensure that we are minimising, wherever possible, the core service—the relationships and so on—that children get across Scotland.

**Alex Cole-Hamilton:** I understand your question and your concern, but I suggest that the bill is part of the solution and that the problems exist already across local authorities. Local authorities have different thresholds and different practices when certain things will be triggered. Codifying best practice and drawing a clear line of sight as to what is appropriate sharing of information, the triggers for a child’s plan and what an extension of risk to wellbeing means in terms of a child who presents to you on a Friday night are the things that are currently problematic and that it is hoped the bill will ameliorate.

**George Adam (Paisley) (SNP):** Good morning. I will ask Duncan two questions about care leavers. Who Cares? Scotland proposes amendments to

"create a right to return to care up to the age of 26" and

"remove the assessment by the local authority."

In your submission, you say:

"We envisage that these amendments would take 5 years to implement in practice from the enactment of the Bill."

Looking at the other bits and pieces, I see that there is some really good stuff. Obviously, you have done a lot of work with the committee on previous inquiries. Coming from a local government background and with my constituency work, I am aware of the situations that we have to deal with regarding young people when they hit the age of 16, what happens after that stage and the issue of support. I agree with and quite like some of the stuff that you have in your submission. Young people who leave care, mostly at 16 years of age, are expected to take care of themselves. Yes, there are organisations and
professionals from whom they can get help and support; yes, there is welfare support that they can access; yes, they can access education and employment opportunities; yes, they can access housing, and yes, they can dream for the future like anyone else, but you go on to say that they need someone to guide them through that whole process.

Correct me if I am wrong, but are you saying that social work departments in local authorities can no longer give that kind of support from age 16 onwards? Have we given up on the social work departments of local authorities? Given that you also said that it would take five years to implement, have you spoken to local authorities about the resource implications?

Duncan Dunlop: There are several points. We are very excited about this and, as I said in starting off the evidence today, this is a culmination of a lot of conversations, thoughts and processes distilled down. We take a lot of the conversations back to young people and care leavers; some of them who gave us evidence are here today. The point is that they told their stories because they believed that they would be listened to—they took a punt on that and want their views to be acted on.

What has come out of this is that we have talked to a lot of other providers around Scotland—leading children’s charities, Scotland’s Commissioner for Children and Young People and even ADSW—who now recognise the principle that we need to be able to continue to care for these children and young people up to the age of 26. That means continuing the care relationship; it is not necessarily about continuing care in a very high cost residential bed until the age of 26. We are looking at the principle of this. Everyone we have talked to who has understood it has agreed on the principle of this, as have a lot of care leavers who reflected that it would have made a difference to them.

We talk about a five-year period because we have realised that there will be a supply and demand issue. For instance, you are a foster carer and you need to maintain a relationship with a young person, and within certain local authorities there is pressure on foster carers for that young person to leave at 16—or 18 at the most—because that bed is needed for a three-year-old or another young person coming into the system. But that 16 or 18-year-old is not ready to go out on their own. We are suggesting that we need to alter the supply and demand of care in Scotland.

These great, informative discussions have happened in a cocoon. I do not know how informed each of you is about the situation for young people in care, but most of Scotland does not know about it. If we took this issue outwith the Parliament and those involved in the sector—there is probably a maximum of 5 to 10 per cent of Scots who understand these young people’s needs and issues—we truly believe that Scotland would engage and back the issue. We would have a far more supportive infrastructure, communities and society; the ultimate corporate parent is the electorate who votes our councillors, members of the Scottish Parliament and so on into office and they in turn hold a legislative mandate. We must get Scotland engaged with this issue.

The five-year period is something that we think should happen potentially over three sessions of Parliament. We understand that we need to get to the age of 26; we cannot click our fingers and have it done tomorrow, but we know that we need to get there. What that would mean is that in this session of Parliament we go to the age of 18, in the next session we get to the age of 21 and in the following session we potentially get to the age of 26. We know that this is agreed with.

What this approach does is simplify things: we have throughcare teams, third-sector provision here for employability, this for housing there, this for child and adolescent mental health services and on and off support for that, this for teenage pregnancy and this for homelessness. All those emergency services are coming in because a young person is leaving care, and, as we heard, a trap door shuts behind them. It is very difficult when they go out there bold as brass, at age 16, which is when the majority leave care, and say, “I can take on the big wide world”. As we all know from our own experiences, or our children’s experiences, it is pretty tough out there.

The relationships that supported them up to that age are no longer there for them. They might well be there, informally, and there is real credit deserved out there for some care providers and individuals who do maintain those links. We have seen the significant benefit that that has for the young person, when they can go back and say, “Hang on a minute, I cannot cope”. We have also seen, and know that young people who have been off a supervision order have come back and said, “Please can I go back into care,” and one month later they were dead, because they were not able to do that.

We are asking whether we could please look at a system that elongates their ability to maintain—and says it is right to maintain—that relationship with their core care provider. As parents, we look after a child from when they are in nappies, through primary school, high school, college and maybe into further education, and they leave home as a process, not at a point in time. We are suggesting that we should be able to afford that to our care leavers.
The Association of Directors of Social Work supported this in principle. The point is that we know that this will come with upfront potential cost, but the savings would be immense. We have done some provisional research on this—it is very difficult because the statistics that we track for young care leavers are inadequate—and this is a very conservative estimate, but we are looking at a cost benefit ratio of at least 1:6. For every £1 we spend on this, we will save at least £6. The cost of making somebody homeless is £20,000 plus. Barnado’s Scotland opened a project three years ago in Polmont Young Offenders Institution—where 1.48 per cent of our care population is—and found that 88 per cent of them had been in care. They have been in our care, and we have spent a fortune on them, and they end up in poor places that cost us more money.

The sense is that if we enable the young person to maintain the core relationship and let them know that they can maintain it and that the relationship will be there as long as it takes for them, they will not end the relationship; or when they think that they can go out there and survive and thrive in the world, then realise that they need support, they can come back and get it. This is as close as we will get to a silver bullet to reforming the care system at a relatively low cost. We have estimated it at something like £2 million per cohort per annum, on average, for the eight years if you extend it up to the age of 26. That is not a big outlay. There are huge savings in terms of health, housing and justice that this country will get from it and it would place Scotland as the global leader in terms of care provision across the world.

We looked at the main leaders in this in Scandinavia, to which Scotland often aspires in some of our social justice work, where they do it up to the age of 22 or 23. Looking at one or two other pilot studies, we see only about 23 per cent of young people actually taking up the provision for a year or two more and staying in that care placement. It is about going home for your tea and going home for your Sunday dinner and it is about having somewhere to go for Christmas. It is about someone calling you to ask how you are doing and saying, “That is great; you are getting up for college”. It is all of that support that they want from the same person; not a different professional.

George Adam: I still have to do that with my daughter to try to get her to college in the morning. [Laughter.]

I still cannot see how your amendments will make the connection for all the organisations and everything else. Maybe it is me; perhaps I am not picking it up, but I cannot see how the amendments will make the difference. Nine times out of 10, the local authority has been the continual involvement throughout the looked-after person’s childhood, so would it not be the natural progression for it to be the anchor and the one that takes them to the next level?

Duncan Dunlop: The person who the child or young person in care sees as being the active corporate parent, or carer, is the foster carer, or the residential worker. It is the person who they have lived with and whose house they have slept in and who they have eaten their breakfast, lunch and dinner with. It is the person who helps them get off to school. That is the person. The local authority might well be paying or giving the resources to sustain that placement, but that placement ends and that relationship ends. The young person does not have a relationship with the local authority directly in terms of the way that they see it. They have a relationship with the carer; an individual; a person. That is who they want to maintain the link with and the carer wants that too. We are still coming across it. I know one or two great residential houses, where they foster and encourage young people to come back and stay in touch. I know others where, when a young person rings them after they have left care, the response is “No,” and they hang up the telephone.

George Adam: I want to ask about foster parents. I do not think that there is any statutory reason why they cannot keep a relationship with the young person when they become 16, is there?

11:15

Duncan Dunlop: There is no statutory obligation, but the child or young person and the foster carer may not think that it is right for them to leave at 16. It is the system that determines that they no longer need to be under a supervision order, that they no longer need formal support and that it is okay for them to return to their family home. It may be that no work has been done to improve the circumstance in the family home, that the great work that was done in the foster family or residential house is rapidly undone and that the young person cannot return to the foster family straightforwardly.

Our suggestion is that we should have a bit more flex in the system and the resource for the foster carer—that is the example that we are using—to maintain the relationship with the young person. It might be that they stay in the house for another year or 18 months, but at least the foster carer will not have to deal with 60, 70 or 80 relationships with different young people. They will have a more manageable case load of foster children.

That brings me back to the question of the time period. We think that we should do this over, potentially, three sessions of Parliament, because we have to do a far better job in engaging
Scotland with this conversation. The Scottish Government, to its credit, gave Who Cares? Scotland £30,000 this year to go out there and talk about our anti-stigma campaign and to listen, and a lot of organisations have signed up to it, which is great. There is a £4.5 million tender out for the Scottish Government and the national health service in relation to the see me mental health campaign. That is engaging Scots, who are talking about it. We have to seriously consider how we can get Scotland engaged with the conversation.

When I talk to people about this and they hear the story, many of them say, “I didn’t know that”, as I am sure some of you did when you read the evidence that you have received. All that we have to do is to inform Scots, and I am sure that we can get the 1 per cent of Scottish households that we need to get involved in terms of fostering alone for us to have nearly an excess of supply and demand. Having “Foster me” on taxis in Edinburgh does not connect people to the issue; it does not connect them to the story of how the young person lost their identity and struggled in childhood, yet we still blame them for some of their behaviours. We need Scotland to own these children and young people, and then we will have a greater supply of Scots who care about them. We can then extend placements to include those people and we will not have this excruciating pressure on our supply and demand situation.

That is why we are saying, “Put it in the bill.” Let us maintain those relationships and give local authorities, along with the sector, the space and scope to work out what this will actually look like. It is a credit to people from the directors of social work to different charities that they have signed up to the proposal. They do not know what it will look like yet, but they know that it means change and we will not have this excruciating pressure on our supply and demand situation.

Alex Cole-Hamilton: I support what Duncan says. If the committee takes something from this evidence about how to proceed with the bill, regardless of what the amendments look like, it should be the principle. In an earlier iteration of the consultation, we talked about wanting to treat looked-after children in the same way that a birth family would treat them, regardless of the baggage attached to that term.

In law, a young person can leave their family home at 16, but their family still has an obligation to care for them up to the age of 18, which means that they can come back and the family will still look after them. Similarly, the age of leaving the parental home in Scotland is 24, yet the age of leaving care, as we all well know, is 16. We are depriving these children of a third of their childhood, or their adolescence, if you will. We need to move forward with the principle in mind.

Right now, we may be creating the best place in the world to grow up, but not for care leavers.

I would like to make a specific point on eligibility criteria, but maybe we will come to that in a minute.

The Convener: We are already over time. Two people still want to come in on this issue, so I will take them first. I ask for brief questions and, particularly, brief answers, if you do not mind.

Duncan Dunlop: When we look at corporate parents—I will be brief on this—I think that it is a great idea that we are naming so many of these public services. It is like saying, “Come on, Scotland—we actually employ you, therefore you can have a responsibility as a corporate parent.” We might need to work out who is the corporate parent, who is the great-aunt and who is the second cousin, because there is a differentiation in the responsibilities for those people, but we need to get all Scots to know that they are responsible for this. That will come in the guidance, but it is important that we go in the right direction.

Liam McArthur: Duncan Dunlop has made a compelling argument for principles that I would certainly sign up to, and I think that the committee would sign up to them as well. Specifically in relation to removing the local authority assessment of need, you talked about a wide range of possible contact from coming round for Christmas dinner to possibly going back into a residential care facility. Does that not, to some extent, pre-suppose some sort of assessment at some stage, particularly at the upper end of what that intervention might mean in due course?

Also, just because Alex Cole-Hamilton teed me up on this, maybe you could give us your views on eligibility as well.

Duncan Dunlop: A broad-brush point is that we have a perfect storm of opportunity here. The committee has spent about two years looking at the issue. I do not think that a committee—I am relatively naive on this, so I am not saying that I am totally right—will be as well informed about an issue that comes in front of it, or about a bill. This is the chance to get this right, and it really will not cost a lot. It is a challenge to us as a sector, but the sector has said that it is up for it. Let us do it.

The point about the assessment is that a lot of the young people who use throughcare services do so when they are in crisis. It is when they desperately need a hand-out, such as a bag of shopping because they do not have anything to eat that night, or when they are going to be
homeless and they have to be put into an emergency bed and breakfast. That is not the progressive approach that we would want for our children and young people who are taking the next step forward in their lives.

Local authorities, along with the sector, will have to look at what returning to continuing care provision would mean—for instance, if the person has not been in it for a couple of years. However, things can also change. We had a young lad who went off to Australia travelling at 23. He came back after having a great experience and wanted to go to university, and he realised that he had to go through the homelessness route. Potentially, he would have had to go and stay in a B and B. He did not do that, as he used his informal links and relationships to stay with another foster family that he knew of, but there was no provision for that young man to be supported.

Liam McArthur: The point is not that there should necessarily be an assessment before any contact can be had, but that, particularly if the young person is going back into residential care, there should be at least some discussion about whether that is the most sensible route or whether there are others. To me, that seems to suggest that some kind of assessment needs to be undertaken but not that it needs to be done before anything else can happen. That speaks to your point that the principle needs to be about re-engagement, and we can then sort out the detail of that.

Duncan Dunlop: Exactly. Our issue is that, although there is a duty for the young person to be assessed under the bill, there is no duty for provision to be made, depending on the assessment, which would probably differ from local authority to local authority, in the way that we currently see care provision delivered across Scotland. Also, a 24-year-old will not necessarily want to go back to a residential house where there is a 12 or 13-year-old. That is not necessarily what they are looking for. We are not looking for just an extension of care as it is. It is not the way that we worked and developed as young adults.

Jackie Brock: Can I add something?

The Convener: Please be very brief.

Jackie Brock: Looking at section 60 and thinking about how the state treats looked-after children, I note that, in a sense, we are sunk by the amount of bureaucracy. For care leavers alone, Duncan has already mentioned throughcare and aftercare regulations, and the additional bit of bureaucracy under section 60 does not get close to what children and young people are saying that they need.

Whatever the amendments contain, if you can, you should stay true to some of the principles that you have been adhering to in the inquiry into children who are looked after at home around the quality of relationships and forget the list of individual organisations as corporate parents. It is a nonsense to pretend that that was going to put in the action that care leavers need. How can we almost totally rethink the legislative umbrella under which care leavers are supported?

The Convener: You have one minute, Alex.

Alex Cole-Hamilton: Even if the bill was passed as it is, the provisions on aftercare would be a welcome addition. The problem is the eligibility criteria. Eligibility is defined in terms of school-leaving age, which can fall between 15 years and eight months and 16 years and three months. It is arbitrary and it could fail vulnerable care leavers. We heard on “Good Morning Scotland” this morning of a care leaver who left care three months before his 16th birthday but had not left school, so he would not qualify for aftercare assistance.

Care is not the problem. Being in care on a certain date should not trigger aftercare. There should be a much broader assessment of the trauma that led to the young person going into care in the first place and what happened to them on coming out of it.

Donald Forrester from the University of Cambridge did a literature review that said that public care is largely improving children’s wellbeing and welfare and is not the problem. We would look to have a more sophisticated approach to when aftercare is triggered. It should be not when the young person leaves school, but perhaps their 16th birthday, and there should be another threshold after an agreed period of time in care at some point in the run-up to their 16th birthday as well.

The Convener: I thank all the witnesses for their evidence this morning. It has been extremely illuminating and interesting and I am sure that it will help us in our consideration of the bill. I suspend the meeting briefly to allow a changeover of witnesses.

11:25

Meeting suspended.
On resuming—

The Convener: I welcome to the committee Clare Simpson from parenting across Scotland, Claire Telfer from Save the Children, and Lori Summers and Caroline Wilson. Good morning to you all.

Lori Summers and Caroline Wilson have kindly agreed to attend today and to speak about the implications of the bill for parents. As such, their comments will be focused on part 6 of the bill, which deals with early education and childcare. I also thank the witnesses for their written submissions, which they sent to the committee in advance of their appearance.

We have quite a lot to cover so we will move straight to questions. We begin with Jayne Baxter.

Jayne Baxter: Would any of the witnesses like to comment on the level of engagement with parents and groups representing parents that the Scottish Government has had and continues to have in relation to this bill?

Clare Simpson (Parenting across Scotland): There has obviously been the formal consultation, which was open to reply, but given that so many bits of the bill already exist—GIRFEC and the named person, for example—there has been continued engagement and consultation with parents locally through that process, which has been fed in through the bill team.

There has been a review of kinship care, which is on-going and which has been fed into the bill. There has also been a substantial engagement with looked-after children, corporate parents and organisations such as Who Cares? Scotland.

Organisations such as ourselves are a partnership. There are nine different organisations within our partnership that deal with children and families. They range from, for example, Children 1st, Aberlour and One Parent Families Scotland, to Relationships Scotland and Scottish Marriage Care. Some of those organisations have helplines and all of them work with parents. They have also fed in to the bill.

I therefore think that there have been a number of opportunities and ways of engagement. There is also a lot of evidence through academic study and so on, which has been made available to the bill team.

Claire Telfer (Save the Children): I echo what Clare Simpson said in relation to engagement with families on the bill. In particular, the work that the Government did ahead of the national parenting strategy, in which more than 1,500 parents were consulted about some of the key issues that affect them, provided some really useful insights into the support that parents are keen on receiving. That lends itself to some of the elements of the bill in which the Government has considered the needs of parents and how they can best be addressed.

I also reiterate the point that, as well as direct consultation on proposals, it is important that as part of the process we think about what evidence already exists. That includes the research that is out there, examples from Highland in relation to GIRFEC, and the evaluations of the pathfinders that have engaged families on the impact of some of the proposals. All of that information on views from parents and the family perspective needs to be brought together to inform the process.

Colin Beattie: A couple of groups have been particularly critical of the named person service—the Schoolhouse Home Education Association and the Scottish Parent Teacher Council in particular. They have said that the named person proposal seeks to usurp the role of the parent. What do you feel about that? Do you think that that is accurate?

Clare Simpson: I do not feel that that is accurate at all. Parents’ rights and responsibilities are firmly enshrined in law.

The GIRFEC guidance says that the named person is the first point of contact. We have regularly carried out MORI polls of parents that are representative of parents in Scotland. I think that it was the 2010 MORI poll that said that 72 per cent of parents did not know where to go for help, and the figure rose to 84 per cent in deprived areas. I therefore think that there is a real need for parents to know where to go for help.

The system is also one that all parties have agreed to and which we have been working to deliver throughout Scotland. As has already been said, there is somewhat patchy and inconsistent practice, which is why the legislation has come forward.

I presume that the committee will be getting evidence from the Highland Council about how the named person approach operates there. When it started to implement GIRFEC, there was no such thing as a named person within the guidance, and it was actually parents themselves who said, “We would like a first point of contact; we want to know where to go for help if we need it”. That is where the named person came from: parents themselves.

I see the named person as a first point of contact. When practitioners are working with families, they work in partnership with them, and they would always try to get informed consent when necessary. They would take things forward—information sharing, for example—only when there was a risk of significant harm. If parents are refusing consent but there are issues and concerns, work would be taken forward—but I
think that we would all agree that, in that situation, it would need to be taken forward.

I also point out that parents are not a homogeneous group: there are lots of views. I would imagine that a great number of you are parents, but you probably do not all have similar views on the named-person approach or on the bill.

Claire Telfer: Again, I echo what Clare Simpson has said in relation to the named person. Save the Children sees the approach as an extra support for families, both children and parents.

In the consultation on the national parenting strategy, some of the key issues that parents raised were on lack of communication and not knowing who to turn to if they need support. There is a very complex service landscape in terms of children and family support, and support to navigate through it is helpful for parents.

There is evidence, particularly from the Highland model, of the impact of using the named person and how that has benefited children and families. The evaluations show that parents, as well as children, have valued the extra support of a first point of contact, as somebody with whom they can raise issues at an early stage and who can support them to get a clearer idea of what is going on with their child or with any support that they might need. I therefore urge the committee, as Clare has already said, to look at the example from Highland and how the system has worked in practice.

Colin Beattie: The bill provides for a child’s plan. What happens if parents disagree with the child’s plan? How do you see that situation working? Do you have any concerns about how the plan might operate if there is disagreement?

Clare Simpson: I go back to something that Alex Cole-Hamilton said: I would really like to see the caveat “so far as reasonably practicable” taken out of the bill.

I think that there should be consultation. Good practice dictates that the plan should be drawn up in partnership with the family. I suggest also that the consultation should be on the design, content and review process, which the bill currently does not allow for. Parents should be involved throughout the process.

As you indicate, there may sometimes be areas of disagreement. When there is disagreement, I think that, rather than another tribunal or adversarial system being set up, there should be some form of alternative dispute resolution that allows parents to have advocacy, particularly if they have communication difficulties or learning disabilities. Parents should be enabled to have a voice in the process, and when there is disagreement they should be listened to.

Colin Beattie: What sort of alternative dispute resolution do you envisage?

Clare Simpson: To be honest, I am not sure. I think that that is for the detail of guidance and so on, but it really needs to be looked at. I think that there could be forms of mediation, and advocacy could be looked at for the parents, but it should involve parents having a role in sitting down and talking through the issues on a level playing field with professionals. All families are unique and different, but they are all the experts on their child’s upbringing.

The Convener: May I interrupt for a second? You said that we should move from the bill using the phrase, “so far as reasonably practicable”, to a situation in which the plan must be drawn up in some sort of relationship or co-operation with the parents, but that cannot always happen. There are obviously circumstances in which that cannot happen, so surely it is not practicably possible to have a situation in which the plan must be drawn up with the parents.

Clare Simpson: I suppose that, rather than the phrase, “so far as reasonably practicable”, which is a real get-out clause, the bill should use something like “unless there are grounds of safety or significant harm” or “unless parents cannot be involved”. It is a matter of setting the bar higher. When there are reasons of safety—for example, domestic abuse—or parents cannot be involved, it is obviously not practicable to require it, but I think that at the moment the bar is set too low.

The Convener: Thank you.

Colin Beattie: I have one other question on the back of that. We have heard in previous evidence sessions that, increasingly, lawyers and so on are becoming involved with children’s issues—on behalf of parents in particular. If there is a dispute with the child’s plan and lawyers are involved, there will have to be a pretty robust resolution process. How would that work?

Clare Simpson: Many alternative dispute resolution forms involve lawyers, so that may be a route. At the moment, the mechanism is judicial review, and I would imagine that that route would still be available; if it was, that is where the involvement of lawyers would be paramount.

Claire Telfer: I want to make a broader point about the participation of children and parents and ensuring that their views are heard within the bill as a whole.

There are a number of elements of the bill in which it is really important that we work with families. That is the case with developing the child’s plan, with the duty in part 6 of the bill to
consult representatives of parents on how early learning and childcare services are provided, and with the named-person duties. However, it seems to me that the bill, from the way it is currently written, is not standard throughout in how we engage with and work with families on all these different elements, unlike the Children (Scotland) Act 1995, which has a general principle that children’s views must be heard and taken into account. I urge the committee to look at whether the engagement could be more consistent throughout the bill.

**Jayne Baxter:** I would briefly like to go back to something that Claire Telfer said. I agree wholeheartedly that families operate in complex environments—it is quite a scary world out there for many families. The named person could have a crucial role to play. Do you think that there is a need for named persons to have additional training or knowledge, given the circumstances in which families operate? I am thinking particularly in terms of financial inclusion, welfare reform or housing; there are issues that impact on families on which they need information. Do you think that there is a resource implication in that?

**Claire Telfer:** Yes. As you heard in the first evidence session this morning, there is agreement on the principle of the named person, but there are some practical concerns—I know that they were raised in last week’s evidence session as well. Training is vital in relation to being able to support parents and families effectively, so we need to look at how that can be done, as well as in the broader sense when we are talking about supporting children’s wellbeing. There will be resource implications, but we must also remember that the approach is already working in many areas. It is a matter of building on that good practice and ensuring consistency across the country.

**Clare Simpson:** I reiterate what Claire Telfer said. In particular, where the system is working, it is sometimes not about extra layers of knowledge and expertise—we would not expect anyone to be the font of all that—but about there being a first point of contact.

There is some training to be done, and some of that is about the other services that exist. However, the first point of contact may be a health visitor or teacher, and Highland has found that those people have said, “This is the job we are paid to do anyway; we are about guidance and we are about the wellbeing of the child”. They welcome the recognition of that role, but the system also allows them to pass on cases to a more appropriate person and, as Claire has said, to help parents navigate what is often a complex system.

**Neil Bibby:** Both Save the Children and parenting across Scotland have welcomed the increase in hours of childcare to 600 for three and four-year-olds. I broadly welcome that as well, as did many of my colleagues in 2007, when it was first promised. Evidence suggests, however, that there is a real lack of focus on childcare for children from zero to the age of three, and there is basically nothing to help with childcare for children who are primary school age. I have a broad question to all witnesses, including the parents: is this bill a missed opportunity?

11:45

**Claire Telfer:** I will kick off on that. We welcome the proposals in the bill to extend early education to 600 hours for all three and four-year-olds and some two-year-olds, and the importance of the flexibility of that provision. The points that you have raised on supporting younger children and out-of-school care are consistently raised with us by parents in relation to their child’s care needs and the difficulties, particularly for parents living on lower incomes, of accessing that support for their children from a young age.

There are many issues, and we would like to see the bill go further in looking at the childcare system as a whole. There are very welcome statements from the Scottish Government in the policy memorandum about seeing the bill as a first step and setting the stage for future developments in relation to childcare. Although we welcome that, I think that it is fair to say that we would have liked slightly more progress to be made in this bill.

We are conscious of the work that the Equal Opportunities Committee did on women and work. One of its recommendations was on a right to childcare for families in Scotland, which would approach childcare in a broader sense. Although there are definitely positives from what is already in the bill, and although families will benefit, a lot more needs to be done to ensure that all families can access the childcare they need, in order to support children to grow, learn, develop and have the opportunities that benefit them, to support families to take up work and study, and, ultimately, to support family incomes and tackle poverty and some of the bigger issues that we need to grapple with.

That is one reason why we support the elements of the bill on childcare. We see childcare as a vital service in tackling child poverty in Scotland, which is one of the biggest barriers to Scotland achieving the aim of being the best country in which to grow up.

In summary, the bill is a good step forward but we would like further progress to be made through it and in future sessions of Parliament.
Caroline Wilson: As a parent, I welcome the extra hours, as I think that they will be of real benefit. I have children of primary school age, and it would be difficult for me to have a job and be back in time to pick them up from school. If the childcare extended to after-school care, it would benefit more families and help people to get back into work, because it would help with all childcare costs and not just those for pre-school children.

Lori Summers: I like the fact that the bill is increasing the hours of childcare—that is good—but it needs to be more flexible so that a place is available not just in the morning or afternoon but, for example, for two full days.

That would help people to work because most jobs are not from 9 to 11 in the morning, five days a week. People are more likely to be able to get a part-time job for two full days a week. If you could get the childcare to support that, it would help financially if your child could be in a free place on the days that you need it. Otherwise, you will have to pay for them and you will be left out of pocket at the end. That would not really be helping.

Clare Simpson: We support the extension of childcare. We see it as part of a long-term vision—we believe that it should be the first step. We should work towards making Scotland a leader in childcare, as, we believe, that will improve the outcomes of children. We also believe that it is important for parents to have options and choice.

We would support an extension to two-year-olds. There is so much evidence to show that, by the time children get to the age of three and enter nursery, disadvantaged children from poorer backgrounds are often already far behind their peers.

On the issue of out-of-school care, I should point out that childcare responsibilities do not end when children go to school; parents still need childcare.

On flexibility, there is an obligation to consult bodies that represent parents. We would like to see that strengthened so that the consultation is with parents in different family sizes and shapes and, in particular, includes diversity and, within that, disability. We know that 84 per cent of working parents of disabled children rely on grandparents or other family members because—and I think that 60 per cent of the 84 per cent said this—they are unable to find accessible childcare because of their child’s disability.

Neil Bibby: I suppose that we can debate how big a step it is as a first step, but I will ask about the provision for two-year-olds. The bill refers to looked-after children, and it has been mentioned that the provision means that 1 or 2 per cent of two-year-olds in Scotland will be entitled to early learning and childcare. In England, we have heard proposals to go much further than that. You have mentioned that the bill should go further in the provision of childcare for two-year-olds. What would you like to see?

Claire Telfer: Save the Children has been calling for an extension to early learning and childcare for all two-year-olds, starting with children living in poverty. There are a number of arguments for that. One is based on the benefits that early education care services can have in relation to improving outcomes for children and tackling inequalities in the early years.

There is a lot of strong and compelling evidence on that issue. Save the Children’s “Thrive at Five” research last year showed that children living in poverty are twice as likely as their peers to have development difficulties across a range of areas, whether in communication and cognitive development or physical health. That is backed up by findings in the growing up in Scotland survey, for example. The evidence is really strong on the gap that we can see between children living in poverty and their peers at age five.

What is also strong in the evidence is the difference that early learning and childcare services can make in turning that situation around. If we look at the evidence from the EPPE—effective provision of pre-school education—study, which looked at short and long-term outcomes, we see the impact of even a month of early learning and childcare support from the age of two. The difference that that support can make—in the early years, by the time a child starts school and again when the child leaves school—is really significant. It is for those reasons that we support an extension to two-year-olds living in poverty.

Over the past 18 months, we have been doing a lot of work with parents, speaking to them about their childcare needs, what their experience and views are of using childcare in Scotland, and where they feel improvements need to be made. We did not ask specifically about an extension of childcare to two-year-olds, but a really strong theme that has come out of those conversations is that parents, particularly those living in more deprived areas or on lower incomes, would value the opportunity for their children to be able to use early learning and childcare services from a younger age.

Those comments are on the benefit that early learning and childcare can bring to children, and Lori and Caroline can maybe say a little more about that. A lot of the parents we have spoken to cannot afford to pay for services that currently exist and, therefore, feel that their children are missing out on the opportunities to play and socialise with other young people and on all the benefits that the services can bring.
There is also an economic argument for providing support in terms of the preventative spending agenda. We know that the critical years are from nought to three, and yet the bill in part 6 is very limited in that it provides support only to looked-after children. We very much welcome that support, because we know that those children’s outcomes are particularly lower than those of others, but this is an opportunity to extend the support to a group of children who would also really benefit from it. It would save us money in the long term and meet the aims of the bill in supporting children from more disadvantaged backgrounds. We therefore back the idea of looking at the extension of support and, in particular, providing it to the most disadvantaged initially.

The Convener: How much would it cost to extend childcare to all two-year-olds?

Claire Telfer: That is a very good question, and I do not have an answer. Extending to all two-year-olds would obviously have significant cost implications, as we would want the services to be of high quality and to benefit children and young people.

I would urge the committee to ask the Scottish Government how much it would estimate the extension costing. We have been looking at different models for extending childcare to children from more deprived backgrounds, and the cost would depend on how we define that group of children and young people. For example, it could be based on an area-based approach, looking at the Scottish index of multiple deprivation, or we could go down the route of looking at household income.

I cannot give the committee an exact figure at the moment. It is certainly something that needs to be looked at, but I think that, at this stage of the bill, the important thing is whether we agree with the principle of extending childcare to two-year-olds living in poverty.

The Convener: Thank you. I will bring in Joan McAlpine.

Joan McAlpine: There is a lot of consensus in the sense that we all want to tackle the issue of child poverty and child development. You will all be aware of the recent report by the National Children’s Bureau, which showed that 1.5 million more children are living in poverty across the UK than were in 1973. I think that it is fairly widely recognised that that is due to the UK economic model, which is one that encourages inequality.

Perhaps you would want to reflect on the fact that the economic powers that cause inequality to get worse are exercised at the UK level. Scotland will need those economic powers if we are going to tackle child poverty in the future. I think that there is a consensus that we all have the same priorities in terms of ending child poverty. If we want to do that, we need to have the economic powers to make Scotland a more equal society, rather than following economic models set in London.

The Convener: That was not specifically about the bill, and I think it was more of a statement than a question, so I will move on to Liam McArthur.

Claire Telfer: May I make a point in response?

The Convener: Yes.

Claire Telfer: It is helpful to look at how this bill supports families in Scotland that are experiencing poverty and how it helps us to tackle child poverty within the existing arrangements for Scotland. Childcare is one way of doing that by supporting children and, if the flexibility elements of the bill are delivered, it could also support parents to take up work and employment—I think that Caroline and Lori could say a little more on that.

We also support Barnardo’s Scotland, which has talked about the wellbeing provisions in the bill. If wellbeing is being enshrined in how we think about supporting children and young people, the impact of poverty needs to be a crucial factor that is taken into account.

The Government has said that child poverty is covered in the SHANARRI indicators under “included”. I hope that the bill can take forward more support for families who are experiencing poverty. I urge the committee to look at how the bill can support delivery of the child poverty strategy that already exists in Scotland and at how, for example, elements of part 3 of the bill, on children’s services planning, can link into delivery at a local level.

Joan McAlpine: May I come in—

The Convener: I will bring you back in after Liam.

Liam McArthur: That was very elegantly and diplomatically put, Claire.

I will return to the topic that Neil Bibby introduced. You have made clear your views on extending childcare to a greater number of two-year-olds, and you pointed to a range of evidence, which is also supported by the findings of Professor James Heckman, a Nobel laureate. You have also talked about the way in which it might be phased in over a period, starting with the most disadvantaged, and how, for even a limited number of hours per month, it can deliver a real advantage.

Is there anything specifically that we should be pushing the Government on in terms of the roll-out and time frames? Neil Bibby talked about the 1 or 2 per cent of children who will be covered under
the bill, compared with provision south of the border that phases in coverage of around 40 per cent over a period. Is there a phasing that we should be looking at for this bill, recognising, as the convener said, that blanket coverage of all two-year-olds under the provisions of the bill does not appear to be a realistic proposition?

12:00

Claire Telfer: Save the Children’s position is clear: we support priority being given to children living in poverty. We want to see that taken forward immediately, looking at how and whether that is possible.

For a time frame, we would say “as soon as possible”. We urge the committee to look at what might be possible in this session of the Parliament, while looking towards the next session and how we might want to extend coverage to younger children. What is important is that we agree the principle of younger children having access and entitlement to the support. We would be supportive of a staged process if that were deemed the most appropriate way given the current economic context.

12:00

Liam McArthur: The convener’s point about the resource implications is one that we need always to be seized of. We are focusing on the principles behind the bill, delivery of which is likely to require changes to the budget. Should we, as we look ahead to the budget later this month, be prioritising that, in terms of spend?

Claire Telfer: Yes.

Liam McArthur: Thank you.

The Convener: Joan—I said that I would bring you back in. Please be brief.

Joan McAlpine: I would like to return to the point about resources. Once again, we all agree that the bill is a good starting point and that we would all like to go further. Do you acknowledge that the Scottish Government lives off a fixed income and has no economic control? If so, how will we find the resources, given that the UK Government has, under its austerity programme, cut Scotland’s money quite considerably? The Scottish Government has had to come in with anti-poverty measures to address that; for example, by increasing the budget for Citizens Advice Scotland and bridging the gap in council tax benefit, which has been cut. We all agree that it is going to be very expensive to further increase early-years care, even though we would like to do that. How can we do that when we live off a fixed income that has been cut by Westminster?

Clare Simpson: That is a political debate for the politicians. Obviously we would like more investment in the early years. The situation has depended on the complexion of the UK Government; there have been reductions in child poverty under some Governments, but not others.

The main thing is that we are dealing with poverty, so the bill must link up provision and improve children’s lives. The points that Claire Telfer made about vulnerable two-year-olds were well made and I agree with them.

I also reiterate, and perhaps thereby reassure the committee, that there is a section in the bill that talks about the appropriateness of care for two-year-olds. It may not always be appropriate for a two-year-old to be brought in to a nursery setting; that is not what they need if they have added layers of vulnerability. Models such as community child-minding, care in the home and especially work on parenting with vulnerable parents has really helped with vulnerable two-year-olds in moving them up and narrowing the gap in attainment between them and their peers. People may campaign for one or the other, but we are talking about children who are living in poverty, and we have to work with what we have now.

The Convener: I call Liz Smith.

Liz Smith: I am okay, convener. The two questions that I was going to ask have been covered.

The Convener: What difficulties are the two parents here today faced with relative to the current childcare arrangements and their ability to get out to work, even if that work is part time?

Caroline Wilson: Work is limited to the two and a half hours for which the child is in nursery, if they are of nursery age, or to school hours, if you have a school-age child. The flexibility to choose your 16 or 15 hours, or whatever, would make it easier to get a job, because people cannot find something that fits into those two and a half hours, which includes time to travel, and so on. It is also quite expensive to pay for that, especially if you are living on the minimum wage; travel can take up quite a lot of that wage. Flexibility is important.

The Convener: Joan.

Joan McAlpine: I would like to return to the point about economic control. We have heard about the need to protect family life, because both parents could work during
the day and have more family time outwith that, rather than working different shifts in order to cover the childcare.

Lori Summers: Financially, more free childcare would be good. I also feel that it would be much better if local authority nurseries could provide more spaces for people who are willing to pay for childcare for their children, because local authority childcare provides higher quality care than private nurseries, and is less expensive for parents, who could then get back to work and start earning to provide more for their kids instead of sitting at home on benefits.

The Convener: Interestingly, the bill requires local authorities to ascertain the views of people who represent parents when establishing the pattern of early learning and childcare provision. I am not quite sure how they will do that, but the bill requires an attempt to provide that flexibility.

I read the relevant section just before you came in and it does not seem to suggest that the pattern that you described has to be provided—that is, the two and a half hours per day. Rather, there has to be a minimum of two and a half hours, so it looks as though that is a decision for the local authority and is not subject to enforcement through the bill. Can the witnesses say whether the ability to provide that flexibility varies across local authorities, or is there everywhere in Scotland two and a half hours per day?

Claire Telfer: I can speak from the Scottish perspective in terms of the engagement with parents that I talked about. One of the striking things to have come out of that is the degree of difference in availability. In some areas, parents described an abundance of local services and stated that they experienced great choice in childcare that they were able to use. That provision, particularly in the early years, was delivered in bundles over one or two days.

In other areas, a completely different picture was painted, of a lack of services and lack of choice and flexibility. It is important that we consider local flexibility in relation to how services are provided.

A key theme that has come through during discussions with parents is that there is similarity in the issues that they raise in relation to childcare—namely affordability, out-of-school care and the services that are available. There are a number of issues that we need to look at at Scotland level as well. It is a matter of how we marry up that local flexibility and in how services are provided with the national issues that need to be addressed right across Scotland.

From Save the Children’s point of view, consulting parents locally about their needs and what would support them is a step forward. We would like to see that being extended beyond the early years to out-of-school care. That would be a positive step towards a better understanding of the services that are available at local level in out-of-school care. It would also facilitate a better understanding of parents’ needs and demands at local level, which would help with local planning of services. That is something that parents would also welcome.

The Convener: The policy memorandum is quite clear; it talks about “Improving the flexibility of provision in response to identified local need”. I will not repeat what I said earlier about local authorities having to ascertain the views of parents and so on in relation to flexibility. The explanatory note also states that “The increasing flexibility will require a re-configuration of services in response to locally identified need and this will be achieved incrementally.”

Clearly, the intention in the bill is to move in that direction and to provide that flexibility. However, as we would all agree, it cannot be done overnight or instantly. Is the determination to move in that direction through the bill to be welcomed?

Clare Simpson: That is very definitely to be welcomed, but we have heard about needs including the unusual fact that although parents still need childcare once their children are in school, that is not accounted for anywhere. At the moment, the obligation to consult relates to parents of children under five years old. Even if, at the moment, we cannot provide childcare of the required standard or we cannot extend it to as many parents as we would like, if we are to have a long-term vision, we need to know what parents want, what would help them with childcare and what would help them get to work and get out of poverty. That extends beyond five-year-olds right through to, as the Equal Opportunities Committee said, 15-year-olds. We need to know what those needs are, so that even if we cannot meet them now, as you said, we can work incrementally towards meeting those needs.

Claire Telfer: Flexibility in how early learning and childcare services are provided is key, and we warmly welcome it. Parents have told us that flexibility is potentially more important than the extra hours, because it could enable them to balance their caring responsibilities with taking up work and employment. We need to be careful not to see it as being either/or in terms of extension of hours and flexibility.

The Scottish Government’s initial proposals on flexibility talked about having minimum standards and what could be achieved in relation to that. My understanding is that, at the moment, local authorities and other providers can choose to
deliver early-years services in different ways—it does not have to be two and a half hours over five days. We need to look at what the bill will provide in addition that will drive forward the flexibility that is so desired by parents.

The Convener: Liam McArthur has a short question.

Liam McArthur: Having listened to witnesses’ testimony, it has occurred to me that we might be struggling a bit with the conflation of two bills. In a sense, we have a children and young people’s rights bill, and the discussion is about what benefits children and young people. Undoubtedly, being in a home environment where parents have enough income is to their benefit. The benefit of the nursery and childcare to the individual child is ultimately, I presume, what we are driving at in this legislation. Is that fair? The benefit in terms of allowing parents to go out to work is incidental compared with the direct benefit of the child getting the cognitive development, socialising skills and all the rest of it that perhaps come with nursery and childcare provision.

Claire Telfer: We should absolutely be focused on the benefit to the child. We also need to see the family in the round and look at how we can provide a service that benefits children, but which also benefits the wider family and deals with some of the issues that we have been grappling with and which have been raised by parents, such as access to work and ways to balance their caring responsibilities. We should not separate them, so to speak; we should look for best way to support families in the round, including the benefits of early learning and childcare as well as out-of-school care.

The outcomes that we want to achieve for families in Scotland can be delivered through the one service, in terms of the benefits that it brings to children’s learning development and tackling inequalities, in addition to the benefits that it has in relation to supporting parents, maximising their income and tackling poverty. We need to look at the matter in that much wider sense.

In addition, we should consider what savings could be made in terms of early years provision, through supporting children from a young age and preventing issues from escalating in the longer term.

Clare Adamson: I would like to ask about the definitions of the types of parent, specifically corporate parents. That term has come up quite a bit in today’s evidence, as it did last time. Schedule 3 to the bill states that corporate parents include all the public bodies that are listed in that schedule. Will the creation of many corporate parents lead to confusion and tensions with the parents of looked-after and vulnerable children?

Clare Simpson: Duncan Dunlop has already said that perhaps thought should be given to amendments to the bill’s schedules, and we would back that. There are people who are in direct contact with children, who are looking after them on behalf of the state, who have particular duties and responsibilities, and who should, as far as possible, act like good parents; that is, acting as the rest of us—we hope—act in giving children care. There are others who should, within their responsibilities, be taking cognisance of looked-after children and, probably, other children as well.

12:15 There are a number of confusing things. Among looked-after children there are huge variety and complexity in terms of status, from children who are looked after at home, to kinship carers and so on. Within that, some birth parents retain some responsibilities, so it needs to be teased out in guidance and regulation, and in consultation with key groups—in particular groups of parents—where rights remain, what relationships should be, what consents they have and what input they can offer.

Care leavers, who may have been away from home until they are 16, are entitled to go home, quite often to what has previously been a chaotic family life and may still be a chaotic family life. If those birth parents were somehow to be involved, and if that were to include parenting support and parenting education, when that child goes home at 16, his or her parents would at least be better prepared to meet their needs.

Clare Adamson: Part 10 of the bill is on kinship care and sets out the framework for local authorities to support kinship carers who have, or who are applying for, section 11 orders. I would like a general opinion on whether the provision for kinship care represents an enhanced level of support for kinship carers.

Clare Simpson: On the kinship care order, at the moment, as I am sure the committee knows, there is a huge variability in financial provision and so on throughout Scotland. If people are getting financial provision at all, they can be getting from the local authority anywhere from £50 to £150. We would probably all agree that it is a fairly unacceptable state of affairs that the amount depends on where you live. The kinship care order will allow eligibility for other things, like leisure opportunities and free school meals. The opening up of both doors is very welcome.

There is also an ongoing review of financial arrangements for kinship care; I hope that the two things—the bill and what the Government recommends with regard to financial arrangements—can dovetail. I believe that the
committee will have a meeting on kinship care at which Children 1st will give evidence. I also draw members’ attention to the evidence of Citizens Advice Scotland, which has a specialist kinship care service. It is a very complex area, but the bill goes some way towards opening up new rights for kinship carers and allowing them to access the support that they need.

The Convener: I thank the witnesses for coming along this morning. Your evidence has been very helpful to our consideration of the bill.

Item 5 was to have been consideration of petition PE1395, but we have agreed to defer that until next week. That concludes the public part of our meeting.

12:19
Meeting continued in private until 12:50.
Children and Young People (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Councillor Douglas Chapman, Spokesperson for Education, Children and Young People, and Robert Nicol, Chief Officer, Children and Young People, COSLA;

Joan Martlew, Course Director, BA in Childhood Practice, University of Strathclyde;

Purnima Tanuku OBE, Chief Executive, National Day Nurseries Association (Scotland);

Martin Crewe, Director, Barnardo’s Scotland;

Greg Dempster, General Secretary, Association of Headteachers and Deputes in Scotland;

Clare Mayo, Policy Adviser, Royal College of Nursing Scotland;

Jackie Mitchell, National Officer, Royal College of Midwives Scotland.
Scottish Parliament
Education and Culture Committee
Tuesday 17 September 2013

[The Convener opened the meeting at 09:39]

Children and Young People (Scotland) Bill: Stage 1

The Convener (Stewart Maxwell): Good morning and welcome to the 23rd meeting in 2013 of the Education and Culture Committee. I remind everyone that all electronic devices, particularly mobile phones, should be switched off at all times while the committee is in session.

Our first item is continuation of our evidence taking on the Children and Young People (Scotland) Bill. Our first panel will focus on the issue of early learning and childcare, and I welcome to the meeting Councillor Douglas Chapman and Robert Nicol from the Convention of Scottish Local Authorities; Joan Martlew, course director of the bachelor of arts degree in childhood practice at the University of Strathclyde; and Purnima Tanuku, chief executive of the National Day Nurseries Association Scotland.

As we have a lot to cover this morning, we will move straight to questions. George Adam will begin.

George Adam (Paisley) (SNP): What effect will the change from 475 hours of mandatory pre-school education to 600 have on child development? Do you want to kick off, Douglas?

Councillor Chapman: Thanks very much for the starter for 10.

As has been widely recognised in all the evidence that has been produced to date and all the discussions about preventative spend that the Christie commission and so on have had, Scotland’s investment in early years will be important. Indeed, it is the main reason why we are pursuing more hours of education for the very earliest years. As the committee knows, the funding covers three to four-year-olds as well as vulnerable two-year-olds and, although I am sure that many people would like that provision to be extended, it is very much a welcome step in the right direction and something that we happily support in the bill.

Purnima Tanuku OBE (National Day Nurseries Association): We fully support this move by the Scottish Government, but the question of how the funding is passed to front-line providers needs to be looked at very carefully. Private, voluntary and independent day nurseries care for 60,000 children or approximately half of the children in nursery places and, in fact, that proportion increases with the under-threes. There are 40,000 under-threes in care and early learning in private and voluntary day nurseries and with the local authority funding that they receive those nurseries are making losses of about £550 per child per year. Those cost implications need to be considered in extending the amount of mandatory pre-school education to 600 hours.

Joan Martlew (University of Strathclyde): I, too, welcome the additional hours of pre-school education. Those 600 hours are important because, as far as child development is concerned, additional time in a high-quality early years environment can only enhance children’s social, emotional, cognitive and indeed all-round development. My concern, however, is where the 600 hours are going to come from, whether they are just going to be an add-on and how local authorities are going to manage all this if there is no direct guidance from the Scottish Government.

George Adam: Can you give us some guidance on those questions, Douglas?

Councillor Chapman: I will ask Robert Nicol to respond in a moment but, as members will see, flexibility is built into the bill with regard to the funding stream in the period up to 2020. I know that the Association of Directors of Education in Scotland is working up different delivery models and, as the funding streams come through, local authorities will be able to develop more flexible models in the interests of parents and—obviously—children. I take the point that the real focus for this should be high-quality education and care and I hope that, over time, we will see significant improvements in the development of young children in our communities.

Robert Nicol (Convention of Scottish Local Authorities): I can take the last couple of points, about the management issue, and where the 600 hours come from. We are not starting with a blank sheet of paper here. Local authorities have been delivering education and childcare for many years. We are looking to build on what has already been well established in Scotland.

As Douglas Chapman said, an element of flexibility is built into the proposal, so we are not looking for one particular model to be delivered; we are looking at adapting what works to local areas. There will have to be an element of flexibility for delivery.

The issue of management and guidance was raised. We are working closely with the Government on what will become the statutory
guidance for the act, although obviously the act has to be written first. The development of the guidance will be based on the discussions in this committee and in Parliament. That will inform what councils do. The element of flexibility is important, not just for authorities but for parents and families.

George Adam: Joan Martlew mentioned the high-quality environment that you were hoping for. Will the employment of a teacher rather than a childhood practitioner make a difference to that quality of environment?

Joan Martlew: Definitely. In any reports in the past couple of years, Her Majesty’s inspectors of education have indicated that there is a difference where there is high-quality staff training. The effective provision of pre-school education—EPPE—study has indicated that where the lead professional is educated to degree level, children have a higher-quality and better learning environment.

The Convener: You mentioned the EPPE study. Is it not the case that the study did not compare teachers and childhood practitioners?

Joan Martlew: It looked at employees who had a degree qualification, not just teachers.

The Convener: It did not make a direct comparison between teachers and childhood practitioners.

Joan Martlew: No, it did not.

The Convener: We just have to be clear about exactly what was compared in the EPPE study.

Clare Adamson (Central Scotland) (SNP): I ask Joan Martlew to expand on her concern that the 600 hours would just be an add-on. What would your ideal be?

Joan Martlew: I would have great concerns if there was such a degree of flexibility that children could attend an early years establishment for education purposes for seven and a half hours a day over two days, which would be their 15 hours. Children would have difficulties settling and the continuity of their educational experience could be delivered in a patchwork manner.

My other concern is that if an extra half hour is added on to the two and a half hours that children receive when they go to mainstream nursery school, that has implications for staff planning and staff training. At the moment, the two and a half hours per child per day allows staff to undertake planning and additional training. I would have concerns if they were to lose an hour a day as a result of delivering another half hour per child. It is vitally important that early years professionals have planning time.

Purnima Tanuku: One of our major concerns about the bill is the lack of parental choice. Local authorities decide which settings get funding. A parent will take their child to a setting not of their choice but of the local authority’s choice, which is funded. As a result, the parent has to take their child there first and then take them to an aftercare setting or another nursery to be looked after. If a parent wants to take their child somewhere nearer to their workplace, they sometimes do not have that choice. We operate across the three nations and we think that that is the biggest difference that is not covered in the bill. We feel that the funding should follow the child and that the parent should have a choice, provided the standards are met by the setting—whether it is private, voluntary or independent—and the quality is high. Unfortunately, that is not covered in the bill.

The Convener: I ask Douglas Chapman to comment on some of those points.

Councillor Chapman: That is something that we have not really looked at in any great detail because it is not part of the proposal that is before us. Local authorities already work with partner providers in the private sector and the third sector. A huge amount of early years work goes on in local authorities. The system that we have allows intricate planning of the places that are available to children and parents. If the money follows the child, that starts to eat away at the proper planning of early years provision across the board. That has been our view and that of local authorities across Scotland. I know that Robert Nicol has been in close contact with local authorities about the subject.

Robert Nicol: I will back that up. Our point, which touches on what the other panellists have said, is that quality is the important thing. We absolutely want to deliver quality; we do not expect the flexibility or the options that are delivered to be pursued to the extent that they start to erode the quality of the service that parents and families get. Any educationist—I have spoken to them while the bill has been developed—would share the concern about pursuing options that would deliver a poorer-quality service. That is the bottom line for local government.

As for money following the child, an element of planning must go into all education delivery, as Douglas Chapman said. After all, the curriculum is for children from three to 18. It is important that local government can look at the best way of delivering in its area, which varies according to the partner providers that are present and the area’s geographical make-up.

It is important that planning can take place to ensure not just quality but improvement. Registration is important, but on-going planning,
development, staff development and improvement are all part of education delivery at pre-school, primary school and secondary school levels.

**The Convener:** Can I clarify something with Joan Martlew? You said that you do not support the idea of extra hours being split over two days, for example—correct me if I am wrong. I think that you said that that would be disruptive. Last week, parents told the committee that such an arrangement was exactly what they wanted, because they wanted to be able to get a part-time job. They could get a job for two days a week, but it is almost impossible to get a job that is for an hour and a half a day.

**Joan Martlew:** My concern is that, if children attended nursery only for two full days, they would put in longer days in an educational establishment than their counterparts in primary and secondary schools do, and they would not have access to provision for another five days. I understand that parents would like flexibility but, if we put the child at the centre of their learning, attending for only two full days would be detrimental to their development.

**Joan McAlpine (South Scotland) (SNP):** I will return to the point that the convener made about childhood practitioners and teachers. In the past, outcomes for children were far better if they had access to a teacher, but I understand that that has changed now because of courses such as the University of Strathclyde's degree course. Will you tell us a little more about that and about what childhood practitioners bring that perhaps teachers do not bring?

**Joan Martlew:** When childhood practitioners do the BA in childhood practice, they must have their initial childcare qualification, whether it is a higher national certificate in early education and childcare or a Scottish vocational qualification at level 3. They must also have two years' post-qualifying experience of working with children who are under five.

Teachers do not have to have such a background. In their training, teachers have only four weeks' practical student experience in a nursery. Teachers who exit with a BEd might have worked only as a student with children who are under five.

BACP practitioners have their initial qualification and they attend university to undertake a degree course that provides them with the opportunity to be more critically analytical of what they are doing and to investigate a wide range of topics, such as psychological approaches to working with children. Most of their outcomes relate to their workplace practice, so they must reflect on the theory and demonstrate the ability to apply it in their workplace practice.

**Joan McAlpine:** It seems from what you are saying that, if a child is being educated at nursery stage by people who have a degree in childhood practice, the obligation to give them access to a teacher is perhaps not as important as it has been in the past.

**Joan Martlew:** I do not think that it is as important, particularly given that—as I mentioned—not all teachers who are placed in nursery have experience of working in a nursery situation. Childhood practice practitioners have experience, as they must have it before they are able to take the course.

One recent addition that we have made to the University of Strathclyde's BA in childhood practice is that we have revalidated the degree and included the option of an additional honours year, which means that students can exit with the same level of qualification as teachers.

**Joan McAlpine:** Is there a difference between what we are providing in Scotland on those types of courses and what is provided in England?

**Purnima Tanuku:** A highly skilled qualified workforce is crucial to child development. However, it is not just having teachers and graduates that is important but having teachers and graduates with early years experience. Approximately 98 per cent of the early years workforce is female, and it includes mature people who may not have the qualifications but who are wonderful at caring for young children. We need to consider the balance between having a highly skilled qualified workforce and employing mature people.

If a parent goes into a nursery, they are not looking for it to be staffed purely by 18 or 17-year-olds—they want a balance between experienced practitioners and a mature workforce. That needs to be recognised, and there must be some support for the workforce. At present, given the local authority cuts, the availability of training providers has been cut at a local level, but that type of investment needs to be made.

To answer Joan McAlpine’s question, there is definitely a difference between the situation in England and Wales and that in Scotland. The Government in England is moving towards introducing early years teachers and educators, which are a slightly different level of practitioner, and there are already early years practitioners working in early years settings. The key is people with early years experience, and not just teachers per se.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I want to focus specifically on resources. Part 6 is probably the most expensive part of the bill, as it will cost approximately £100 million. We have heard
Purnima Tanuku: It certainly has affected the wage structure. The cost of childcare is increasing all the time, and you will have seen the statistics in the annual Scottish childcare costs survey. The cost—certainly for private and voluntary providers—includes rates, rent, utility bills and everything else, but 80 per cent of the costs in a nursery is workforce and staffing costs. In Scotland, business rates have increased by 100 to 150 per cent, making them highest in the UK, so that has become the second biggest cost for day nurseries.

All of that has an impact on the parental fees and on the salaries that are paid to staff. When we conducted our recent survey, we found that the amount of funding that is allocated differs a great deal between local authorities. It is laudable that the Scottish Government is investing huge amounts of money, but it is important to ensure that the money is spent on early years provision for childcare on the front line. That is the biggest challenge for day nurseries.

A lot of day nurseries are struggling, and sustainability is a big issue. The occupancy level is only between 70 and 80 per cent, depending on where a nursery is located. In isolated rural areas—in the Highlands, for example—parents need to have a choice but, unfortunately, people are not able to set up a nursery there because it is not a sustainable business.

Colin Beattie: A comment was made earlier about nurseries being underfunded by an average of £550 per child. Can you explain how that figure is worked up?

Purnima Tanuku: Yes. There is a cost per hour per child. Sometimes nurseries offer very good flexibility, such as half-day sessions and full-day sessions, and they all have a cost that the nurseries need to recover. That cost is based on all the other costs that the nurseries have, including staff wages.

There is a big difference between the rate that the nurseries charge parents and the rate that they are getting for funded hours. The Finance Committee will consider that issue tomorrow. The assumption is made that places are funded at £4.02 per hour, but since the advisory floor targets were introduced in 2007, the funding has not kept up with inflation. People are still getting the same level of funding. On average, it works out at around £3.40 to £3.50 per hour across the country. There is no way that that is adding up to the cost of childcare. Nurseries therefore end up subsidising that from the parents who are using the nurseries more than the funded hours or full time. There is no such thing as full-time day care any more. Parental choice is very different now. A lot of children are being cared for by friends, relatives and grandparents because of the cost of childcare, and that is the big conundrum.

Local authorities need some very clear guidance. I agree with my COSLA colleagues about flexibility, but there is capacity in the PVIS, so let us not reinvent the wheel. Where there is capacity, we should use it. Many local authorities work very well with PVI providers, but when some local authorities see the private sector with a big P, they still see the stigma, even though the nurseries are very small and community based.

Colin Beattie: Mention was made of the advisory floor. What would the resource implications be if that was reinstated?

Purnima Tanuku: When it was introduced in 2007, the assumption was made that if we put in a minimum level of funding, all local authorities would give a little bit more than that and pay the real cost. That did not happen. We would strongly advise the introduction of that level because the rate that is paid across the different local authorities is very different. People pay a lot more than £3.40 per hour for babysitters.

Colin Beattie: You must have some sort of a figure in mind that would be a reasonable floor.

Purnima Tanuku: That needs to be worked out across the board, taking into consideration the actual cost of childcare. We would be very happy to be part of that dialogue.

Colin Beattie: What would the cash implications be if we used childhood practitioners rather than teachers?

Joan Martlew: A childhood practitioner in a lead practitioner role might earn up to £25,000. Teachers who have years of experience might earn up to £30,000. There might therefore be some cash saving at the current rates. Again, I would need to look at more detailed figures to be able to provide that information. I do not know whether COSLA has any more information about that.

The Convener: Does COSLA have any view on the views that have been expressed by Purnima Tanuku? Do you have anything to add, or agree or disagree with?

Councillor Chapman: The advisory floor has been discussed within COSLA. As the bill is currently framed, no resource would be available to adjust the floor. Each local authority comes to its own agreement with its partner provider and we
would endorse that arrangement remaining in place, unless additional resources or funding are made available to cover the additional costs.

**The Convener:** The minister sent a letter to the convener of the Finance Committee on 12 September, which said:

“The Financial Memorandum includes an estimate of £1.2 million for uprating partner provider payments in line with inflation from 2007.”

It goes on to say:

“We now think this figure should be in region of £2 million”.

We received that letter only this morning, but it sounds like there is a recognition of the situation and an increase in the amount of money that will be available for partner provider payments.

**Councillor Chapman:** Robert Nicol has been in close discussion with civil servants about the bill.

**Robert Nicol:** We are aware of the increase that you mention. The important point is that there is money within the costings in the financial memorandum for a variety of things, including staffing costs. However, delivery costs will always be slightly different. It is important that councils have the flexibility to judge for themselves, with their partner providers, what is a fair settlement locally in terms of investment and funding. You are right that there is money within the costings in the financial memorandum. However, as our submission highlights, the actual cash that local government will get in future years cannot always be determined, so it is important that, at the time of delivery, authorities are able to weigh up all the options and the issues that they face before they decide what they can afford to invest.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** Good morning. I will ask about flexibility and parental choice. We have already talked quite a lot about those matters, but I will ask my questions anyway for the record. If you feel that you have given a sufficient answer, do not feel obliged to say more.

Section 48 requires that local authorities

“must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available in pursuance of this Part is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service.”

COSLA has stated that, although there are timescale and resource implications, it feels that it can take a reasonable approach. Given what we heard last week from parents about the importance of flexibility, how quickly can local authorities move towards implementation?

**Councillor Chapman:** Again, the issue is resource based. Even in your own region of Mid Scotland and Fife, there are some areas that are hugely rural and centres of population where delivery of early years education will be totally different. We need to think about having the flexibility to deal with those differences.

Local authorities have the professional expertise to ensure that the service is provided as flexibly as we can. That means that, for most local authorities, the number of hours will be increased from 475 to 600 in year 1, in August 2014. I am not sure how much flexibility will be available in that first year but, as you can see from the resource flow, as more resources come in we will be able to make more changes to the service delivery available to parents. I hope that each local authority can have a discussion with parents in its area to ensure that it tries to meet the need.

I am not sure that, at the end of five or six years, we will be able to satisfy absolutely everyone—you never can—but, as I said, the increase in the number of hours is a step in the right direction. Some people might want to take another step, but that is very much in the future.

**Purnima Tanuku:** Flexibility and parental choice as very closely linked together. COSLA’s submission agrees and also states that “increased flexibility is more complex and costs more money as a result”.

The PVIS sector has been delivering such flexibility for a number of years, but the bill does not give a parent the right to use a particular provider. That is the big difference.

If I am a parent who works across the border in a different local authority—let alone across the border between the countries of England and Scotland—there are already issues about how the child is funded. Some providers operate across those borders, so there are big issues about cross-border funding for children. Parents cannot take the child to the provider of their choice based on where they live or work, because the local authority has decided to use a certain provider. That is the biggest problem, so flexibility is very much interlinked with parental choice.

**Joan Martlew:** I think that a lot of local authorities are already moving towards more flexibility through the closure of nursery schools and the expansion of family and day centres, which are open for extended hours and are not restricted to term time. Such a move helps with flexibility and with upholding the rights of parents as well as the rights and needs of the child.

**Robert Nicol:** On that last point, it will be interesting for the committee to know that—certainly from our experience—authorities are thinking ahead about what it will mean to deliver flexibility in the future years. As Douglas Chapman
was saying, the very first year will probably be about 600 hours with no additional flexibility. However, authorities are now thinking about flexibility and about whether they can perhaps move more quickly than is set out in the bill. Obviously, they will want to do that, but it will be a local choice and it will depend on the resources that they have available.

An important point to get across is that authorities will, we hope, be funded through the money that is within the financial memorandum and they will have to work within that budget. There is no more money available to deliver the flexibility, so we will just have to deliver what is possible.

**Jayne Baxter:** If resources allowed, do you think that parents should be able to choose which days and which nursery their child attends for the 600 hours?

**Purnima Tanuku:** I do not think that it is a question of “if resources allowed” because that choice happens in other countries. Every parent is different; every child is different. Parents’ circumstances and working patterns are different, so they should have a choice, provided that the provider delivers high quality.

From a resource point of view, it does not matter which setting the child goes to—a maintained nursery or a private or voluntary day nursery—as long as that setting is funded accordingly to deliver the high quality because, at the end of the day, what is important for children is achieving the best outcomes for all children.

**Joan Martlew:** I agree with that. Flexibility is of crucial importance and parents should have the right to choose, but we should not lose sight of what is best for the child.

**Robert Nicol:** The only thing that I would add is that we have to be careful in advocating such a position. We do not want to end up undermining the position that we have already established in Scotland through high-quality local authority early learning and childcare. The quality element is obviously the number 1 priority from a local authority point of view.

Yes, we absolutely want choice for parents, but not if it comes at the expense of quality. There is the importance of being able to plan across an entire area. What is being advocated is akin to a market-delivered solution and that approach does not always work out in the long run, as we have seen with other market-delivered solutions. Such a position would have to be very carefully considered so that it did not end up undermining the success that we have already been delivering.

**The Convener:** I will pick up where Robert Nicol left off. Is there not a danger of the law of unintended consequences kicking in here? Clearly, there are popular and less popular areas for parents. For example, many primary schools have nurseries attached to them. Children will go to the nursery and then move on to the primary school and the secondary school.

I live in a very popular area where there is huge demand. There is demand from parents outwith that area—parents who do not live in the council area—to get their children into the nursery school, so that they can then move on to the primary school and therefore be in that particular education system.

How do you deal with those pressures and deal with that kind of difficulty if you go down the market-driven route that Robert Nicol mentioned, when the local authority has to manage the level of demand with the level of supply in its area?

**Purnima Tanuku:** It is important to look at the mixed economy that already exists in Scotland. As I said, more than 60,000 under-twos and 40,000 three and four-year-olds are being looked after in the PVI sector.

As regards the unintended consequences, we need to be careful that we do not reinvent the wheel—we have given some relevant case studies in our submission. Where there is high-quality provision, we should be able to use that provision. We must be very careful: in the case of some local authorities, the providers are being told, “Thank you very much, we don’t need you any more because we are going to set up a nursery within the school,” or within the local authority catchment area. That threatens the sustainability of the high-quality provision that already exists.

When we are looking at limited resources, we must consider how we spend those resources and where there is existing provision. There must be gaps. In some areas there will be gaps; in others there will be overprovision or underprovision. That mapping needs to be done very carefully.

10:15

As an example, in England, when the children’s centres agenda first started about four years ago a lot of capital funding was spent on building brand new children’s centres right next door to existing high-quality provision. I am sure that the committee is very aware of what happened to those centres: less than 2 per cent of childcare is now delivered through them. It is important to learn the lesson not to duplicate provision but to make sure that the existing provision is utilised, provided that it is of high quality and that it meets all the standards.
Joan McAlpine: I would like to talk about some of the differences in England that have already been brought up. The Family and Childcare Trust has suggested that many nurseries in England are closing and that the targets that the United Kingdom Government set for educating children—two-year-olds in particular—may not be met because of the nursery closures.

Purnima Tanuku: Absolutely. Sustainability is a big issue across England, Scotland and Wales for the reasons that I highlighted earlier. It is the same in England in terms of the hourly rate that is paid to the nurseries in some areas. That is why the minister recently introduced a minimum level of funding for two-year-olds, and we have monitored that quite closely. There is a huge capacity issue for two-year-olds: in some local authority areas the targets can be met; in others they cannot.

It is really important that, when the 600 hours extension takes place, it is properly financed and calculated. A mapping exercise needs to be done to see where there are gaps in provision. I am sure that local authorities are already doing that work. It is important that they work together in strong partnership with the PVI providers across the country.

Joan McAlpine: You are quoted today in Children & Young People Now as saying that the proposals for one-year-olds to get 10 free hours of childcare a week are “unsustainable”.

Purnima Tanuku: The Lib Dems have just announced that as their aspiration for the next general election. What is important is that, if the current extension is not properly funded, we will increase that problem. We have estimated that in Scotland, if that level of funding does not improve, the figure for the extension will increase from a loss of £500 to a loss of £750 per child per year. We need to look at why the rates have not even kept up with inflation, never mind increased over the past four years.

Joan McAlpine: The Child Poverty Action Group and Barnardo’s have criticised some of the UK Government’s initiatives, such as income tax breaks to fund childcare, as being biased in favour of wealthier families while the poorer families are missing out. Would anyone care to comment on that criticism?

Robert Nicol: We are more interested in what happens in Scotland, and we are especially interested in making sure that the bill is funded as we have received agreement from Government for that. It is dangerous to make too many comparisons with the rest of the UK. Scotland has a different education system and rightly so. We do things because we think that they are best for Scotland, and that breaks down to local level.

I agree with the other witnesses about the planning matters. We do not want to create a great number of white elephants. It is important that planning happens at the local level to ensure that the mixed market that COSLA supports can be best utilised. We argue that local authorities are best placed to do just that.

Liam McArthur (Orkney Islands) (LD): I assure Mr Nicol and the rest of the panel that the majority of this committee is interested in the bill rather than in necessarily spurious comparisons with other parts of the country.

Earlier on in today’s evidence we touched on the benefits—which came up in the evidence last week—of some exposure to nursery and early education in the pre-three-year-old age group. The EPPE study, to which Ms Martlew referred, suggested that “Duration of attendance (in months) is important” and that “an earlier start (under age 3 years) is related to better intellectual development.”

That was substantiated by Professor Lisa Woolfson’s evidence to the committee.

Although the bill will provide additional free provision for those who are looked after or subject to a kinship care order, concerns have been raised about the relatively small number of children who will be covered. Do you have observations on how that number might be increased, now or in future, and on where the priority areas might be? We need to recognise that, although a substantial number of two-year-olds already have access to nursery education, the presumption is that they are more likely to be from better-off backgrounds than from poorer backgrounds.

Purnima Tanuku: The fact that the Government is targeting looked-after children brings in a lot of issues for practitioners, because many of those children come with behavioural issues and a host of other issues. Practitioners have to attend case conferences and have meetings with the local authority about child protection and safeguarding people. Some two-year-olds therefore require time-consuming and intense activity. We must not underestimate the amount of time that is needed to support those children.

Liam McArthur: Does that perhaps in part explain the comment in the letter from the Minister for Children and Young People, which the convener mentioned earlier, on an increase in funding following discussions with COSLA to help cover the costs of provision for two-year-olds who are looked after or subject to a kinship care order? Is it your understanding that the additional funding reflects the additional workload that goes into delivery for that particular group and that the
money is not for an expansion of the overall numbers or the coverage but simply reflects a more accurate cost basis for delivery?

Purnima Tanuku: Absolutely. It has to be recognised that those children need a lot of one-to-one care. As well as that, a lot of support for parents is required from early years practitioners. Working with the families and not just the children is time consuming and requires a lot of skill and expertise.

Liam McArthur: The point has been made that, beyond those who are looked after or subject to a kinship care order, there are other children who have additional support needs but are not covered by the bill. Have any of our witnesses been involved in discussions on that? Everybody recognises that we are talking about a first step, and I presume that there is an aspiration to go further in due course. Has there been discussion about whether we could do more now, as part of that first step?

Purnima Tanuku: Absolutely.

Joan Martlew: I have a concern about the expansion of nursery provision for looked-after two-year-olds, as I do not know whether that is necessarily the best solution. Looked-after two-year-olds will come with a degree of disruption and separation in their families. If we place them in a nursery setting, where they could be cared for by a large variety of people, that begs the question of whether that is the best place for them. I suggest that it might be better for the child to consider a more flexible provision with supported childminding that is attached to a local nursery, so that children can form close relationships and bond with a carer rather than have a variety of carers.

Liam McArthur: So, in your mind, there is not sufficient flexibility in the bill to deliver that.

Joan Martlew: There might be flexibility. Again, it depends on how local authorities interpret the bill.

The Convener: Let us ask them, then.

Robert Nicol: I was just looking at the bill. I am not a draftsman, but section 45(2) gives an element of flexibility, although whether it satisfies colleagues is for them to say. Our reading is that it gives local authorities the ability to tailor support for looked-after children if, for instance, it would not be appropriate to give them the same level of childcare that a non-looked-after two-and-a-half-year-old would receive.

The Convener: For everybody’s benefit, section 45(2)(b), to which I think Mr Nicol is referring, says that a local authority

“must make such alternative arrangements in relation to the child’s education and care as it considers appropriate for the purposes of safeguarding or promoting the child’s wellbeing.”

Robert Nicol: My other point is that it is important that we do not regard this as being a specific or single service. Obviously, there is a section in the bill relating to corporate parenting. We would argue that it is the community planning partnership that would have ownership of support for the looked-after child. The breadth of the support that can be brought to bear is obviously highly important.

Purnima Tanuku: I urge the committee to consider the importance of giving clear guidance to local authorities. Unfortunately, the inconsistency comes from how different local authorities interpret the guidance. That is why it is very important to have clear guidelines. I agree that local authorities must plan according to what is required in their local communities, but the guidance is absolutely crucial. We would be happy to work with the Convention of Scottish Local Authorities and others to provide support on the guidance.

Liam McArthur: The letter from the minister to the convener of the Finance Committee alludes to the additional funding, which appears to have been drawn from the early years change fund. I do not know whether COSLA can shed any light on whether that means that something that was going to happen is now not going to happen. We are constantly told that there is no additional funding. I am delighted that, if this area was underresourced previously, additional funding has been found to ensure that at least it is delivered.

In terms of the bill and the fact that we are going into a budget process, we heard from Save the Children last week that it felt that extending the provision to a wider group of two-year-olds, particularly those from more disadvantaged backgrounds, should be a budget priority. Do you share that view?

Purnima Tanuku: Absolutely.

Liam McArthur: Are there particular groups within the more disadvantaged groups that we should prioritise first, whether it is those with additional support needs or those identified on the basis of the Scottish index of multiple deprivation? Have you given any thought to that?

Purnima Tanuku: There are different ways of looking at deprivation. For example, in other countries, free school meals are used as a guideline.

The professionals who work with young people in early intervention can spot the warning signs. Things might look absolutely fine on the surface—we heard earlier about the unfortunate case in
Birmingham—but there might be a number of issues underneath. A lot of skilled practitioners in the workforce are required in order to be able to identify and highlight such situations.

We need to ensure that, because of the intense nature of the work with some young children and their families, any extensions of support are properly costed and funded. It is important that local authorities and providers work closely together to support the children and families.

**The Convener:** Can we hear from COSLA on the issue that Liam McArthur just raised of where the money referred to in the minister's letter comes from?

**Councillor Chapman:** With your permission, convener, I want to refer first to the point that Robert Nicol made about the community planning partnerships. As all committee members will be aware, the CPPs in their own areas are at various stages of development and success. However, local authorities are working closely with the national health service on matters such as the early years collaborative work. All such work is pushing the whole agenda in a direction that, from our point of view, is very positive.

To answer your specific question, convener, I believe that the funding was additional funding to take nursery provision from 475 hours to 600. I do not know whether Robert Nicol has any further information on that.

**Robert Nicol:** I do not have the letter in front of me. However, my understanding is that local authorities have been funded for a year or two now for the delivery of early learning and childcare for looked-after two-year-olds. I assume that the letter refers to additional moneys in order to bring the provision up to the 600 hours.

**Liam McArthur:** What the letter refers to is "an estimate of £1.1 million for extending funded early learning and childcare to two year olds who are looked after or subject to a kinship care order. Following helpful discussions with COSLA we have decided to increase the amount allocated to local government for this priority area by £3.4 million to total £4.5 million."

The letter goes on to suggest that that is from integrated moneys via the early years change fund.

That appears to be where it has come from. Given that this support was previously underfunded in the financial memorandum, it is welcome that it has been addressed at an early stage of scrutiny of the bill. However, we are constantly told that there is no further funding. Given that this funding appears to have been brought in, does that mean that something else is not being done elsewhere, or was that always the intention?

10:30

**The Convener:** If you do not have the facts in front of you, I am sure that the committee would be very grateful if you could write to us with the detail of how the extra money has come about. I do not want you to jump in with an answer if you are unsure. If you can answer the question, please do so, but if you need to write to us afterwards, that would be helpful.

**Robert Nicol:** I would be more than happy to clarify the position. The point to make about the financial memorandum is that we want to ensure that the delivery on the ground is achievable—we have said that it takes a number of years for some implementation issues to be worked out—but we are satisfied with the resources, certainly for the 600 hours element. I will go away, check the letter and come back to the committee.

**The Convener:** It would be helpful for the committee if you could clarify the position in writing.

Clare Adamson has a brief question.

**Clare Adamson:** I think that this has partially been answered, but I just want to check for complete clarity. We are not suggesting that this funding is intended to cover everything in the bill. Early intervention and other necessary work with looked-after children will still go ahead. It is not expected that all that will happen in the context of the nursery.

**Councillor Chapman:** From your constituencies, you will know of local authorities that are setting up family centres and so on to support nought to three-year-olds. That is an important departure from what has happened in the past. They are there to support this agenda as well.

**Joan Martlew:** That is a very welcome move. When it comes to looked-after children, a lot of family support is required, which mainstream nursery very often cannot provide.

**Liz Smith (Mid Scotland and Fife) (Con):** I turn attention to the issue of the named person and the implications for resources and communication between the respective professionals. On resources, we have had a variety of submissions and I know that some people on the second panel will provide more evidence on this. There is concern about the degree of additional resources that will be required to implement the named person provisions satisfactorily. The Royal College of Nursing made it clear in its submission that "health visiting capacity across Scotland needs to be reviewed. The number of health visitors must reflect the workload associated with the Named Person role."
The Association of Headteachers and Deputes in Scotland has said that it is very concerned about the “additional burdens on school leadership teams”.

Groups such as Barnardo’s Scotland have made it clear that they have concerns about resource, too.

What are the panel’s thoughts about the extent of the additional resources that will be required and how that can be funded?

Robert Nicol: We know that a number of assumptions have been made in order to try and cost up the totality of the bill. That is set out in the financial memorandum.

On the named person, which COSLA supports in principle, we do not know for sure whether the assumptions are accurate. We hope that they are and, if they are, the costs of the bill will be met. One of the reasons why we have argued that we need to keep a close eye on expenditure on the bill is that although some of the assumptions are as well made as they can be, some of them are difficult. It may yet be that, on delivery, the implementation costs will outstrip what is in the financial memorandum.

Liz Smith: Can you be a bit more specific about why you think that those assumptions are particularly difficult?

Robert Nicol: The costs are trickier to estimate, because they come down to the number of hours that we expect to be spent carrying out the role and because there is an element of travel for rural areas. There are a few elements to consider. We know that the Government has made its best estimates, but they might be slightly off the mark when it comes to delivery. That is what worries us. When local authorities and other parts of the public sector come to implement some of this—which might be in 2017 for some elements of GIRFEC, which is some way off—we will need to be absolutely sure that there are sufficient resources to match whatever the requirements are.

Purnima Tanuku: Many day nurseries in the PVI sector already operate a key worker system, whereby a child is looked after by a key person. That operates across all three nations and is a standard procedure in many nurseries.

Under the bill, for the early years, I believe that the health visitor will be responsible for under-fives. We fully support that, but we need to consider the skills, expertise and training that people will need to be able to identify not the health and wellbeing issues that a health visitor would normally need to identify for a child, but the added difficulties that families have and that a child might have.

That is a huge responsibility for one individual. I agree with what the other submissions say about the importance of communication between different professionals. Whenever there is an unfortunate incident, everything falls down because of a lack of communication between professionals. It is really important that capacity be considered and that the individuals’ training and expertise be examined.

Liz Smith: What must be achieved to ensure that the communication between the lead professionals—particularly communication between the health visitor and the nursery teacher or, on going into primary school, the transfer of information on to the named person in primary school—is better than communication in the existing system?

Purnima Tanuku: Throughout Scotland, there are PVI provider networks that work closely with local authorities. Sometimes, local authorities coordinate those networks locally. Those are the kinds of places where people communicate about some such needs. We must appreciate that some of the information that needs to be shared is confidential, but there are existing forums. However, there needs to be a much more structured and streamlined system at a local level to enable such communication, because the transition from an early years setting to primary school is really important.

Liz Smith: How do you envisage structure developing to produce that?

Purnima Tanuku: It can happen. We have worked with local authorities in a number of areas. Setting up a network in a local authority area can work, as can two or three local authorities working together to establish a network to enable the sharing of best practice and not-so-good practice, which is how we learn.

Liz Smith: You mentioned the possibility of problems arising, which they inevitably do from time to time. Do you have any concerns about who is liable for passing on information about a problem in the new set-up? You said that the communication would have to be first class to ensure that there is not a problem. What is your understanding of the process for spreading the named person principle throughout all Scotland? Is there any issue related to liability for passing on information?

Purnima Tanuku: Absolutely, there are issues with liability, and not only around the legal implications for individuals. Many practitioners are scared to highlight to a parent that Johnny is having problems because the parent might react completely differently and said, “How dare you suggest that my child has an issue.”
Practitioners have to have confidence and think about how they are going to get the message across. If there is a named person, that is a good route. The professional can have a dialogue with that individual, say that they are really concerned about something and ask how they should handle it and get the message across.

Many early years practitioners are really worried about the legal implications, legal challenges and complaints to the regulator as a result. That happens regularly.

Liz Smith: Do the local authorities have concerns about the legality of that aspect and about what happens with confidentiality?

Robert Nicol: No such issues have been highlighted to us. For some time, local authorities have operated a variety of approaches to integrate services, so the approach does not come straight from leftfield, so to speak; it builds on what councils have been operating.

Those two particular issues have not been highlighted to us.

Liz Smith: A reasonable number of submissions to the committee have raised that concern. Should local authorities be in the front line of addressing that or should it be left to lawyers and solicitors?

Robert Nicol: I have to be careful—I am not sure that much should be left to lawyers. If there are genuine issues, they have to come out in the debate in committee. That concern in particular has not been highlighted to us but if it was, we would want to take the issue up with Government to ensure that the implementation of this happens as smoothly as possible because, in the end, that is what we would want.

Liz Smith: Finally, broadly speaking, there is a reasonable degree of support in the submissions for the principle of the named person. That is less true when it comes to the practicalities; in fact there is a lot of concern about those. Are local authorities comfortable that they can overcome those difficulties without substantial additional costs? There are also issues with confidentiality around data sharing. Are you confident that the practicalities can be overcome?

Robert Nicol: As I said before, to some extent it is in the implementation that many of the issues might come to the fore. Obviously, we want to iron out any issues as quickly as possible, but we will need to keep a close eye on all the implementation costs so that local authorities have sufficient resources to implement the bill.

Purnima Tanuku: The private and voluntary providers will feel very vulnerable because it affects their business—their livelihood. If a child is funded and goes into a setting, there needs to be some support from the local authority to help providers through the process.

Joan Martlew: Could I make a comment?

The Convener: If it is a brief one.

Joan Martlew: When I worked in family centres, they had a link health visitor and a link social worker who were the first point of contact. It would be quite a good idea if the key worker in an establishment could approach their link or liaison person, who could transfer the information. All key workers are bound by confidentiality and are used to working in those situations.

The Convener: I thank Purnima Tanuku and Joan Martlew for the moment. We have some specific questions for COSLA on other aspects of the bill, so, if you do not mind, we will direct some questions to Douglas Chapman and Robert Nicol.

Neil Bibby (West Scotland) (Lab): I have some questions on the relationship between local government and national Government. COSLA has raised concerns about the effect on local democracy, particularly of section 17 in part 3 and the proposals to give ministerial powers to establish joint boards for the planning of children’s services. Ministers could also transfer property assets and staff without the agreement of the local authority. COSLA has stated in its evidence that it understands why the Government wants to implement its policies successfully but that it does not support those provisions.

What other options or penalties would be available to the Scottish Government to enforce implementation of its policies if local authorities are not following guidance?

Councillor Chapman: First, there has been considerable movement from the Government since the report was submitted. We have had a fairly robust debate in COSLA on that section of the bill.

Where we are now is that the Minister for Local Government and Planning, Derek Mackay, wrote to the president of COSLA on 28 August to say that that section of the bill would be withdrawn. I think that Robert Nicol is still in discussion with civil servants about that. We are in a much better position now than we were before, when the bill contained unacceptable conditions for the imposition of joint boards and so on. It was never clear how those boards would be set up and who would drive them forward.

That is where we are on the bill, but obviously other amendments will come forward and we will wait to make sure that the letter that we have had from Mr Mackay is followed through in amendments.
Neil Bibby: Okay. So you are happy.

George Adam: Sorted.

Neil Bibby: Everyone is happy with that.

George Adam: That is how COSLA works.

Robert Nicoll: I have one last point to make. In terms of our desire for integrating services there is not much in part 3 that we would not want to support. There is a strong desire on the part of local government to get the integration of services, planning for children and community planning absolutely right. The main reason for not supporting the section of the bill that you referred to was that we felt that the position would be worse than we wanted. We are in discussion with the Government on some remaining issues; as Douglas Chapman said, we have made significant progress with the Government and we hope that the remaining issues will be resolved.

Neil Bibby: Another area that I wanted to ask about is the children’s hearings system. During the passage of the Children’s Hearings (Scotland) Bill, the Scottish Parliament gave local authorities the right to reach agreement on resources for children’s hearings and area support teams. The bill would remove this and give the national convener the power to compel local authorities to provide resources. Have the current arrangements made implementation more difficult or has that been sorted as well?

Robert Nicoll: Sadly that one has not been sorted. Members who have been involved in this area for some time will remember that we did not support many of the changes in the Children’s Hearings (Scotland) Act 2011. One of our chief concerns, which we have highlighted in our submission, was the ability of the national convener in effect to compel authorities either to become part of an area support team or to transfer staff and budgets. We recognise that the act is in force and authorities have been working with Children’s Hearings Scotland to put the new arrangements in place. However, we would argue that it is far better to reach mutual agreement with the various parties than to have any one side try to compel the other to do something that for good reasons they do not think is appropriate. We think that the 2011 act should be left as it is and that certain sections of this bill should not go forward. However, we understand that the Government takes a different view. I dare say that we will still be making these points and presenting our evidence at stage 2.

Neil Bibby: On part 11 of the bill, COSLA has raised concerns about the requirement that local authorities use the national adoption register. In what circumstances would it not be in the interests of the children to have access to the largest pool of adoptive parents?

Robert Nicoll: On this issue our position is a pragmatic one. We certainly have no problem in principle with the national adoption register. However, we recognise that there are some local arrangements that work well and believe that if such arrangements are meeting the needs of children, they should be able to continue. Obviously there will be times when it will be important to be able to access a larger group of potential families. We are saying that if local arrangements work well, we should not be compelling people to change to something else unless that can be demonstrated genuinely to add value.

The Convener: We look forward with interest to the amendment that the Government will bring forward on the joint boards issue. I am sure that you do, too. Are there any other issues that you want to raise at this point?

Robert Nicoll: No. I think that we have covered most of the issues. The chief issue that we have highlighted is that although we are satisfied that there are sufficient resources for the 600 hours’ provision, there are other parts of the bill where the financial assumptions are genuinely complex. Only when we start to deliver on the ground will we realise what the resource implications will be. The point that we will need to keep a close eye on things is the single most important one from our point of view.

The Convener: Okay. Thank you very much. I thank all the witnesses for coming along this morning. This has been a very helpful evidence session. I will suspend the meeting briefly so that we can change witness panels.

10:49

Meeting suspended.

10:54

On resuming—

The Convener: I welcome to the committee our second panel of witnesses, who will, in the main focus, on the issues of the named person and the child’s plan, although I am sure that we will also cover one or two other areas.

I welcome Martin Crewe from Barnardo’s Scotland; Greg Dempster from the Association of Headteachers and Deputies in Scotland; Clare Mayo from the Royal College of Nursing Scotland; and Jackie Mitchell from the Royal College of Midwives Scotland.

Given the length of our agenda this morning, we will move straight to questions.
Liz Smith: I return to the theme of resources and named person issues. There has been huge variation in the evidence. Some people argue that, effectively, existing practice is being formalised so there is not a huge extra cost, whereas others argue that substantial extra resources will be required. I ask the witnesses to comment specifically on their concerns about the resource aspect to the introduction of the named person universally across Scotland.

Greg Dempster (Association of Headteachers and Deputies in Scotland): Our concern is about the projections in the financial memorandum that accompanies the bill. With reference to training, it says that there are no costs associated with backfilling for headteachers, and there is a backfill assumption of 10 per cent for depute posts and 30 per cent for principal teacher posts. That last estimate might be accurate, but deputes around the country are in class a lot more than they were in previous years. In recent years, a couple of authorities have increased the threshold for the number of pupils in a school before the school qualifies for a depute or a second depute, which means that people spend more time in class and there is less scope to get management time out for free than the financial memorandum supposes. We are talking about two days of training.

Highland Council, for example, moved a couple of years ago from a position in which teaching heads had three days of non-class-contact time to effectively one day of non-class-contact time. It surprises me somewhat that it is being suggested that there is no cost to a two-day training course for those staff. At a very simple level, the assumption must be that everybody would take a flask and a packed lunch to the training, and there are no costings for meeting rooms, trainers and so on. The financial memorandum does not seem to get into the detail.

I was interested in COSLA’s comments in the previous evidence session that it knows that costs around the named person are hard to quantify and so the figures in the financial memorandum are less reliable than the figures for the 600 hours for early learning and childcare. Some elements of the costs could certainly be quantified a bit better than they are now.

Moving on to how the system will operate, going by the projected costs, the suggestion seems to be that they are one-year costs and that the approach will then be rolled forward, so there will be no renewed costs for training and so on. That seems wholly unlikely—

The Convener: Can I interrupt briefly? On the specific point about renewed training costs, surely in future years such training will be rolled into the normal training that individuals undertake—they will not have to undertake additional, separate training. Therefore, the costs are effectively start-up costs.

Greg Dempster: What other training will be dropped to make that cost neutral? If you are saying that this is an additional thing that people need to be trained to do, a cost is associated with that. I do not see that the fact that it becomes part of people’s normal training somehow makes it free in future years.

The Convener: Part of Liz Smith’s original question was whether you view this area as part of somebody’s job now. We are not starting from year zero; surely a lot of the work is already done.

Greg Dempster: Absolutely. I agree with that point in part—well, I wholly agree with the first part. We are not starting from year zero. Scotland is on a getting it right for every child implementation journey. Different authorities are at different places on that journey and will therefore have different training costs. However, there is a difference between the landscape now, the landscape in which people have been trained and the landscape that will exist after the bill is enacted. The bill could force changes in practice in different authorities and could certainly mean that there would be a need for more training for those who have already been trained—and, indeed, for new training to be developed on things such as information sharing protocols, which I am sure we will come on to.

The Convener: Indeed.

11:00

Liz Smith: Does anyone else want to comment on resources?

Clare Mayo (Royal College of Nursing Scotland): The Royal College of Nursing welcomes the Children and Young People (Scotland) Bill and the opportunities that it presents to make a real difference to children’s rights and children’s services.

The implementation of the provisions in the bill on the named person and the child’s plan requires significant funding to enable the named person to form a meaningful relationship with families and children. That also requires time.

We welcome the figures that are set out in the financial memorandum. The Scottish Government has worked hard to come up with figures that represent the time involved. You may have seen our evidence to the Finance Committee. We have some comments about the way in which those calculations were developed. The first and most important one is that there is an insufficient number of health visitors in Scotland to undertake the role, so a significant sum needs to be made
available to train more health visitors. That is not taken into account.

There is no allocation of implementation costs until 2016-17 and all the professional time has been calculated on an hourly basis, which does not take into account associated employment costs. The Scottish Government’s calculation for the employment costs of going from hourly rates to developing a workforce is an additional 22.5 per cent, which allows for annual leave, sick leave, maternity leave and so on. That 22.5 per cent has not been factored in and therefore a further 22.5 per cent is required if the number of additional hours mentioned in the financial memorandum is to be made available.

We have questioned other assumptions. No additional administrative support is budgeted for NHS staff. As the GIRFEC approach beds in, it is anticipated that costs will decrease year on year at a rate of about 20 per cent. We believe that that overstates the reduction as time goes on because the level of funding that is allocated in the first instance will need to be sustained for a significant period before we see the benefits of the GIRFEC approach.

Jackie Mitchell (Royal College of Midwives Scotland): I echo a lot of that. The position is quite similar for midwives. Obviously, midwives do not have much input with the child after it is born; we look after it for only about the first 10 days and then hand the care over to the health visitor. However, we have a significant input in the antenatal period, which is where, through the GIRFEC programme, we are looking at doing a lot of the initial assessments and identifying needs.

GIRFEC is not being rolled out in maternity services unilaterally across all health boards. Some use the programme particularly well, but in other areas, there is not much input into GIRFEC. Midwives will tell you that they know what GIRFEC is about but are not using it. That is partly because they have not been trained in its use or the systems are not there. Training needs to be accounted for.

Martin Crewe (Barnardo’s Scotland): There has been somewhat of a mixed message here. As the other panellists have said, there is an initial training period. One of the things to get into perspective is how much GIRFEC is being rolled out now. As well as my Barnardo’s experience, I am deputy chair of the GIRFEC programme board. We have recently assessed the current state of roll-out across all 32 community planning partnerships.

With regard to the named person, two CPPs describe it as embedded, another four talk about being well on the way to implementing it, and another 19 are in the development phase. Clearly, CPPs are now moving ahead with named persons and addressing some of those issues as part of what they are doing.

In the longer term, we are seeing in Highland and elsewhere that resource demands move in the system. One of the most powerful arguments around GIRFEC is that non-offence referral rates to the reporter have dropped significantly, which means that there is less pressure on some parts of the system, so the system is more efficient for children and young people. However, in the short term, there will be pressure on other parts of the system. It is worth remembering the comment of John Carnochan, the head of the violence reduction unit, that in the long run, having 1,000 extra health visitors is more effective than having 1,000 extra police officers.

Liz Smith: You mentioned 19 local authorities, plus four, plus two. That leaves seven, I think. Have some not responded, or is there a problem with them?

Martin Crewe: Everybody responded, but they are at different stages of development. GIRFEC has been around for a number of years. One thing that is absolutely clear is that the bill has galvanised people’s efforts to implement GIRFEC. I would say that we have made more progress in the past year than we did in the previous five years.

Liz Smith: Is there any concern about the seven authorities that you did not put into one of the categories?

Martin Crewe: They are further back in the process. It is a self-assessment process, but everybody is now focused on how they are going to make things happen for 2015.

Liz Smith: I will ask the second question that I asked the previous panel. Will you comment on the need for more effective communication between the named person and the professionals? Mr Dempster, I know that you have concerns about data sharing. What do we have to do to make the system work better?

Greg Dempster: It looks like I will answer first again.

A lot of concern has been expressed about information sharing, both in different pieces of evidence that have been submitted to the committee and in the media. As an association, we do not share a lot of those concerns; our concerns are slightly different. We do not think that issues of confidentiality are huge issues that cannot be overcome. To me, the response from the Information Commissioner’s Office to the committee highlighted that it was talking about the bill requiring minor tweaks rather than wholesale
changes on information sharing and confidentiality.

The information-sharing protocols that are put in place and the guidance that accompanies the bill about sharing information with the named person and what the named person does with that information will be very important. Beyond seeking clarity on that, I do not have a great deal more to say on that issue.

Martin Crewe: It is important to remember that there is a presumption of confidentiality when information is shared with the named person. They are then the gatekeeper of that information. One of the problems in the current system is that because people are less certain about whom they should take the information to—I am thinking particularly of agencies that do not share information regularly, such as the fire brigade—they will end up sending the information to four or five different agencies. The advantage of having a named person is that they are clearly the person who co-ordinates the information. That professional then has to make an informed decision about whom they share that information with. There are presumptions of confidentiality all along the way, so what is proposed is potentially a better system than what we have currently.

Liz Smith: Is that because under the present system there is a lack of clarity about how or with whom to share information, or because people are not sufficiently aware of their responsibilities?

Martin Crewe: I think that people lack confidence. A subgroup of the GIRFEC programme board met Ken Macdonald from the Information Commissioner’s Office at the end of last year to clarify some of this. People do not know how the Data Protection Act 1998 works. We got very useful clarification, which was sent out to statutory agencies in March and which says very clearly that if professionals believe that there is a risk to a child or young person that may lead to harm, they should share that information. That very much supports the move to more of a wellbeing approach.

It was said earlier that, whenever there is a significant case review, it always seems to come out that somebody had information that, had another professional known about it, would have affected how they would have behaved.

Liz Smith: So from your discussions with the Information Commissioner’s Office, is it your understanding that, if a problem arises, it is the responsibility of the named person to explain why it arose in the final result?

Martin Crewe: The named person has responsibility as a professional to make an informed decision on whom to share the information with. That is effectively greater clarity of the current position.

The Convener: I want to clarify a point that I raised with Greg Dempster. Is the named person approach brand new, does it effectively quantify what staff and professionals already do, or is it somewhere between the two?

Greg Dempster: I suppose that it is the third option—it is somewhere between the two. Every authority is at a different point in the implementation of GIRFEC, as Martin Crewe said, so the named person role is new, or newer, in some areas. Largely, what a person would do as a named person would be expected to have been done previously, but there is a training aspect because a legislative aspect is coming in, and there will be specific provisions around information, for example, that will need to be addressed and which people will need to be made aware of so that they can be the new version of the named person, as it were.

The Convener: Does that sum up the position for others?

Clare Mayo: Yes, I think so. The role has been developed within getting it right for every child. As Clare Simpson said last week, the request for a single point of contact came from parents, who said that they did not know whom to get in touch with in a complex, multi-agency landscape. The request for a named person—a named midwife, a named health visitor and a named teacher—was made so that there is clarity for everyone about who the first point of contact is.

The Convener: We started to talk about information sharing a little bit earlier than I intended. I will bring in Clare Adamson to expand on that issue.

Clare Adamson: The bill requires service providers to share information with the named person and vice versa where “it might be relevant” to a child’s wellbeing and “ought to be” shared. Are you content that we will reach a common understanding of a child’s wellbeing in the process? Is there a danger that that might mean different things in different local authority areas?

Clare Mayo: A huge amount of work has been done in GIRFEC implementation on development, training and consistency. In the areas in which GIRFEC is well implemented, there have been significant improvements in information sharing, and professionals are now confident about what needs to be shared with whom and how that is to be done.

One of GIRFEC’s real successes is the way in which professionals work together and share information effectively. We need to be quite careful about how the bill is worded, but we need caveats
and clarification around confidentiality, consent and involving children and families in what is shared. In practice, a huge amount of work has been done, and there is good guidance and good training that we can build on as the implementation rolls out.

**Jackie Mitchell:** Building on that in the rolling out is important. Midwives are quite clear about their responsibilities on information sharing, particularly in child protection cases, but sometimes when needs or vulnerability issues are not quite as severe as child protection issues, people are perhaps not quite sure and perhaps they give too much information. There is still a bit of a learning curve out there.

11:15

**Martin Crewe:** I echo some of Clare Mayo’s comments. GIRFEC has been around for some time. There is a danger that, for those who are coming to it fresh, “wellbeing” sounds a rather fluffy, ill-defined term. In fact, the definitions of wellbeing are very clearly established around what are called the SHANARRI—safe, healthy, achieving, nurtured, active, respected, responsible and included—indicators. The tools that have been developed have been widely accepted across agencies. Having a common language is a real benefit.

On the threshold issue, working at a wellbeing level addresses some of the issues around the fact that we are not always sure when something relating to a child is a matter of concern. If we have such a high threshold that something has to be harmful, that gives rise to a concern that we will not pick things up early enough.

**Greg Dempster:** I echo what has been said. When I speak about the bill with my members—school leaders from primaries, nurseries and special schools—they often refer to difficulties with the current delivery of GIRFEC. They struggle to get other partners to share information or get round the table. The duty to share information and help the named person is one that they welcome.

**Clare Adamson:** You mentioned training and training requirements. Is it necessary to ensure that all front-line staff will be able to make good judgments about the information that ought to be shared? Is there a significant amount of training still to be done, or is that very much established, because of GIRFEC?

**Greg Dempster:** There is training in place and we have covered that point to a degree. However, my concern is that the bill changes the landscape—depending on what ends up in the bill and in the guidance. Revision and further training may be required.

**Liam McArthur:** Jackie Mitchell mentioned potential problems with an excessive amount of information being provided—although everybody has alluded to problems in serious case reviews where not enough information was provided, or it was not provided in a timely fashion. Is there a risk of creating a degree of white noise, so that filtering out the most relevant information becomes more difficult? Could a quantum of information be created that adds further time and resource problems for other professionals involved in the process?

**Jackie Mitchell:** That was indeed the point that I was trying to make. That can sometimes be the case. With education and training, however—and initially with support mechanisms, as the measures are rolled out—things will improve.

**The Convener:** I wish to clarify a couple of points in this area. Last week, we had some evidence—I will call it evidence, but there was confusion over whether or not parents would be able to access the information that is in effect being provided by professionals about their child. What is your understanding of the issue? Will parents be allowed to access that shared information? Will parents be among the people with whom information is shared?

I detect the same level of confusion, given the silence.

**Martin Crewe:** It will depend on the circumstances. We would want to give due regard to parental views and the views of children, but it will depend on the circumstances.

**Clare Mayo:** There is current guidance around access to medical records. That is already there—that stands.

Another thing to say in this context is that GIRFEC principles are about involving parents and children. No one is trying to hide information. The whole ethos of getting it right for every child is to have the child and family at the heart of everything that is planned. Everything is done collaboratively as far as possible.

There are clearly circumstances when things get complicated, and that takes us into different territory but, as a principle, GIRFEC and, I therefore assume, the named person approach, is about working with children and families, so information is always shared in the spirit of partnership and working together in the best interests of a child.

**Jackie Mitchell:** Certainly from a midwifery point of view—of course the child has not yet been born—the assessment is in the woman’s hand-held maternity records, which she carries about with her. She has the full information and can input into it.
Liam McArthur: Clare Mayo said that much of the approach to access to information is established in precedent. When Professor Norrie gave evidence, he said that there is a fear that section 27 will override data protection rules and all the rest of it, so the bill might go considerably further than established practice on information sharing. Is that a risk? Do section 27 and aspects of section 26 need to be amended?

Clare Mayo: The language of sections 26 and 27 needs to be tightened up. We need absolute clarity. I understand that all existing data protection law stands and that everything in the bill is compatible with existing legislation, but it is for the lawyers to ensure that the wording is clear. I would like additional caveats around consent to and permission for information sharing.

The Convener: I presume that the other witnesses agree—I see that you do.

Clare Adamson: In a previous evidence session we were given the example of a teenager who had said that they were lesbian or gay—I cannot remember the circumstances—and the information was imparted to the parents without the young person's consent. Are you content for such issues to be resolved through guidance and some tightening up of the wording, or is there a danger that under the bill the balance in relation to a child's right to privacy is out of kilter?

Clare Mayo: It is hard to legislate for such practice issues. There should be clear guidance, to ensure that the situation that you described would not happen. We cannot legislate for every eventuality.

Joan McAlpine: Mr Crewe said that wellbeing is assessed by using the SHANARRI indicators—I understand that that stands for “safe, healthy, achieving, nurtured, active, respected, responsible and included”. Someone could come along and say, “This child is not achieving, so there is a threat to their wellbeing. That is a trigger for information sharing.” Surely that could apply to every child in the country.

Martin Crewe: It could do, potentially, but we need to consider how our systems currently work. They tend to work well at crisis points. We have good crisis intervention and we have good universal support, but we are less good at the gap in between, when we want to go beyond universal support and give a little extra help to families as early as possible. If concern about a child's achievement can be addressed by offering a bit of support, that is absolutely appropriate.

Joan McAlpine: What if someone decides that a child is not active enough? It is all quite subjective, is it not?
Clare Mayo: Our view is that there should be a named midwife, a named health visitor and a named teacher at the appropriate times. I think that, for all under-fives, the named person should be a health visitor, as health visitors are the only group who have universal access to children and families, and who have the skills that are required to support early years development, health and wellbeing. We would like to see an additional provision in the bill that gave every family in Scotland the right to universal health visiting services, and I think that that could be inserted into section 20(1).

Neil Bibby: You stated in your written evidence—and mentioned earlier today—that “health visiting capacity ... needs to be reviewed” and that “The number of health visitors must reflect the workload associated with the Named Person role”.

At this moment in time, could the health visiting service take on that role effectively?

Clare Mayo: The service needs rapid investment. I believe that it is the right workforce to take on that role, but significant investment is required. The financial memorandum makes the case really well that a failure to intervene effectively to address complex needs in the early years of an individual's life results in a ninefold increase in public costs over the long term. If we are going to invest in early years, as the policy memorandum states, we need to do so now so that there is universal support for every child in Scotland in the early years in order that people can intervene early and provide the support that makes a difference as soon as possible.

In answer to your question: no, we do not have the capacity right now, which is why we need urgent investment.

11:30

Neil Bibby: Can you give us an estimated number of additional health visitors that you think we need in order to implement the named person provision effectively?

Clare Mayo: The financial memorandum sets out the number of additional hours of health visiting time that the Government believes is required, and we suggest—as I mentioned earlier—that an additional 22.5 per cent needs to be added to that. One cannot pluck hours out of the air: they need to be posts, and, in order to create posts from those hours, we need to build in that additional capacity.

If we divide what the Scottish Government believes the number of hours should be by full-time hours, the result is approximately 350 additional health visitors. If we add the 22.5 per cent, we are looking at something in the region of 450 additional health visitors across Scotland.

Neil Bibby: Concerns have been raised about the named person at school. Children spend 38 weeks a year at school, but for 14 weeks a year they are not there. What practical problems would that create, and how accessible would the named person be for those 14 weeks?

We have heard that the role might move to somebody in the education department of the local authority. Would that undermine the effectiveness of the named person?

Greg Dempster: The situation has moved on from the discussions on the Scottish Government’s initial proposals. The bill as drafted refers to a “named person service”, which clarifies the point. The named person will come from education, so during school term time it will most likely be someone from school, and outside term time the service will have to be provided from elsewhere in the authority.

How effective such a system will be remains to be seen. It is more effective to have a plan that enables someone from the authority to offer support than to assume that somebody will be available while they are on holiday.

The Convener: This might seem a rather simplistic question. Are you all of the view that the introduction of a named person will reduce the amount of neglect that children in Scotland have to suffer?

Greg Dempster: Yes.

Martin Crewe: That would be important, yes.

Clare Mayo: Yes.

The Convener: That would be my hope too, but I am asking whether you think that, in a practical sense, the introduction of a named person will actually lead to a better service, and therefore a reduction in neglect?

Clare Mayo: There is a growing evidence base from the UK and internationally on the importance of early years intervention, much of which has already been examined as the bill was being drafted. Increasingly, there is robust evidence that if we take a comprehensive approach to universal services with tiered support, we will be investing in the future of children’s lives and consequently reducing neglect and improving mental health and attachment relationships. Those are things that we know make a difference to children as they move into adolescence and become adults themselves.

I believe that the bill is an opportunity to invest in the life of every child in Scotland by providing the type of universal support that is required, with the additional tiered services that have been
shown to make a difference elsewhere in the world.

**Martin Crewe:** That is the fundamental argument towards which we have been moving for some years now, with the early years initiatives, the Christie commission and all those things that have enabled us to ask how we can get into the preventative area.

Last week I talked to Mike Burns from Glasgow’s social work department, which has carried out an internal assessment of 18 of the most high-end cases, in which a young person goes into secure accommodation or residential care at the age of 15, costing £200,000 a year each or more. Of those 18 young people, at least 12 were known at age three to display problematic behaviour in nursery. We could have gone in much earlier there, and that is where we need to focus our resources.

**Greg Dempster:** The bill is designed to head off issues at an earlier stage and I believe that it will achieve that, so the answer is yes.

**Jackie Mitchell:** Yes: early identification and support at the very early stages.

**Clare Mayo:** I will read a tiny quote from a case study that is on the RCN health visitors for Scotland website. This is from a health visitor who is working with a family in NHS Ayrshire and Arran, which is one of the areas that is well advanced in implementing GIRFEC. She is working with a family of four children. Mum and dad have long-standing heroin issues and the health visitor is heavily involved.

The health visitor is working with them, looking at their goals for their children, and she has been seeing the family every two weeks, and more often if necessary. Both parents are now in a methadone programme and are doing really well. At the same time their self-esteem is raised and now they are able to do things for themselves that they have never been able to do. They are booking their own appointments and attending without support. She said:

“When I visit them I can see them with their shoulders back, they speak better, they make eye contact and the children and mum and dad are happy to attend groups at school. In addition, the older children’s school attendance and school work has improved dramatically and, whereas before, they went to school periodically and were not well-dressed or clean, now it’s the opposite. The baby is also thriving and well attached to mum and dad. And for the first time in her life, the mum is considering her own future and thinking about training for a career.”

That is the kind of difference that we are hoping to make.

**Colin Beattie:** I would like to explore the bureaucracy around part of this bill. The bill allows for a child’s plan in certain cases where intervention is necessary but it does not actually allow for any changes to existing assessments and plans that are in place. One of the previous witnesses said that 11 different assessments must be made for every child. How will this work? GIRFEC is supposed to reduce bureaucracy and it is supposed to achieve a single child’s plan. The bill does not require that. It does not refer to that at all. How will this work?

**Martin Crewe:** In terms of GIRFEC implementation, having a single child’s planning system and a single child’s plan is absolutely essential. There is one area of the bill on which we would like some more clarification—the additional support for learning plans—because clearly it is in a child’s best interests that we have a single plan in place.

**Colin Beattie:** How does the child’s plan feed into all the other plans and assessments that are supposedly out there?

**Greg Dempster:** My understanding is that they would sit within the child’s plan, but I agree that it would be useful if the child’s plan brought a bit more coherence to that process. It is expressed really well in paragraphs 17 to 19 of the evidence that the advisory group for additional support for learning submitted to the committee, which summarises my position well. It is a question of bringing coherence to the process, and the ambition of achieving that single plan.

**Clare Mayo:** I am hearing from our members that the GIRFEC approach is reducing bureaucracy rather than increasing it. Where several years ago there might have been a large case conference with a room full of professionals, the SHANARRI approach, the wellbeing approach and the assessments that are in place mean that the right information is fed to the named person. Instead of having a large case conference, which is very intimidating for parents, the named person and the lead professional will sit down with the family in their own home and go through the child’s plan. That is much better and less bureaucratic than some of the systems that were in place before now.

**Colin Beattie:** Are we clear about the relationship between lead professionals and named persons?

**Martin Crewe:** I think we are. The guidance is very clear that the named person is the co-ordination point and is so only up to the point of co-ordinating some additional support. The moment that we start talking about managing a child’s plan, we move into lead professional territory. The statutory guidance behind the bill will reflect what is now quite a large body of information on how best this approach works,
which we have established across a number of CPPs.

Jackie Mitchell: The relationship is a lot clearer now. In the earlier days, when GIRFEC was rolled out, there were concerns about the lead professional and the named person, but the position is now clear among practitioners.

Greg Dempster: I echo that. The only qualification that I add is that I have not seen the guidance that will support the bill, so I do not know what is in it. If it reflects the current understanding about the roles, it will be clear.

Liam McArthur: There has been a lot of focus on different aspects of the bill. I am particularly pleased that part 8 will increase from 21 to 26 the age limit for aftercare for people who leave care. It is only fair to acknowledge the work that Barnardo’s Scotland and Aberlour Child Care Trust have put into prosecuting the case for that increase.

Although the change is welcome, I am aware of concerns about clarity over whether the aftercare provisions will apply to people who are looked after at home and over the anomaly that relates to when a child may leave school and whether they are deemed to be in care, which might affect how the aftercare provisions apply and the eligibility for aftercare. Dispute resolution mechanisms also seem to be absent—I am not sure whether that is for the bill or for guidance. Does Martin Crewe have points that it would help the committee to bear in mind? That could apply to stage 2 amendments, but it would help to have a bit more detail for our consideration of the general principles.

Martin Crewe: We are very supportive of supporting care leavers up to the age of 26. We have broad experience in that area. There is no doubt that, although young people often want to leave care at 16, they are not suited to that. It takes them some years to get on to a stable path, often after many problems with accommodation and other things that they must try and fail at before finding their way.

We would like to submit separately to the committee a number of detailed comments on the issue. As you said, we want to ensure that aftercare is available for all looked-after children, including those who have been not accommodated but looked after at home, and we want to address the eligibility criteria that relate to birth dates. A young person who has been in care for a substantial period of their young life but is not in care at 16 should still be eligible for support. We will need some sort of dispute resolution process, in which it will be important for young people to have access to advocacy on their behalf.

There are a number of issues. If a young person who was being supported in aftercare dies, that should lead to a significant case review, as it would if they had been in care. We would like a number of measures to be tightened up and we will submit details in writing.

The Convener: That would be helpful; I am sure that the committee would appreciate that—and the sooner, the better.

I thank the witnesses very much for coming along. The session has been helpful for our examination of the bill.

I suspend the meeting briefly while we clear the table.

11:44

Meeting suspended.
Present:

George Adam
Jayne Baxter
Neil Bibby (Deputy Convener)
Joan McAlpine
Liz Smith

Clare Adamson
Colin Beattie
Stewart Maxwell (Convener)
Liam McArthur

Children and Young People (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

May Barker, Chairperson, Clacks Kinship Carers;
Alison Gillies, Welfare Rights Worker, Child Poverty Action Group (Scotland);
Kate Higgins, Policy and Communications Manager, Children 1st;
Anne Swartz, Chair, Scottish Kinship Care Alliance;
Bill Alexander, Director of Health and Social Care, Highland Council.
Scottish Parliament
Education and Culture Committee

Tuesday 24 September 2013

[The Convener opened the meeting at 10:00]

Children and Young People (Scotland) Bill: Stage 1

The Convener (Stewart Maxwell): Good morning, everybody, and welcome to the 24th meeting in 2013 of the Education and Culture Committee. I remind all who are present that electronic devices, in particular mobile phones, should be switched off at all times because they interfere with the sound system, and we would prefer that that did not happen.

Our first item is continued evidence taking on the Children and Young People (Scotland) Bill. The theme for our first panel of witnesses is kinship care. I welcome to the meeting May Barker from Clacks kinship carers; Alison Gillies from the Child Poverty Action Group in Scotland; Kate Higgins from Children 1st; and Anne Swartz from the Scottish kinship care alliance. Good morning to you all.

Before the rest of the committee ask questions, I want to start with a general background question. Perhaps you can all give brief answers, if you do not mind, as we have quite a lot on the agenda and we want to get through as much as possible. Can you all give us, from the point of view of organisations and individuals, a potted history of what has happened and what has changed for kinship carers over the past 10 years—since devolution, in effect? It is clear that the issue has come up a number of times in Parliament and in society in general, and that there have been a number of changes.

Anne Swartz (Scottish Kinship Care Alliance): There has been kinship care for a long time, but there have been many changes in kinship care legislation in the past 10 years, particularly since 2007. The Scottish kinship care alliance was formed partly to look at those issues.

The Convener: What have the changes been?

Anne Swartz: In 2007, a policy was put in place to the effect that all children in kinship care would be treated equally with children in foster care. That was changed in 2008, so that only looked-after children in kinship care would be provided for.

The Convener: Is that the only change that you are aware of?

Anne Swartz: No. Can I pass the question along to someone else?

The Convener: Okay.

Kate Higgins (Children 1st): Anne is absolutely right to identify a big shift in 2007, when kinship care was recognised in its own right as an appropriate arrangement for children who cannot live at home with their parents. The movement towards that recognition began when a reference group was set up to look at the needs of both kinship carers and foster carers. It emerged from that group that kinship carers have distinct needs.

In 2007 the Government entered into the concordat with local government and, as Anne pointed out, one of the commitments that it made was to pay an allowance for kinship carers and to place responsibility on local authorities to meet the needs of kinship carers. When local authorities translated that into action they decided to apply it only to families with looked-after children.

When the Government and Parliament wanted to formalise kinship care for the first time in legislation, a question arose about what can be put in regulations or set down in law. It was necessary to have a mechanism that identified the children whom we are talking about; the mechanism used looked-after status. At the time, everybody supported that mechanism because those were the children with the greatest needs and we needed to make sure that they were assessed when placed in kinship care and that some kind of rules applied to how those children and families were treated.

Every action, however, creates a reaction, and we have discovered that while there are almost 4,000 children formally looked after in kinship care, the estimates suggest that at least another 15,000 or 16,000 are in informal kinship care. It is probably a conservative estimate. They might be in families who are known to social workers and local authorities but in which the children do not require looked-after status. Also, kinship carers argue that they know of families who should get support but do not, simply because local authorities want to manage resources. Often, too, families keep themselves below the radar because they do not want what they see as interference by local authorities.

There has been a lot of change and a lot of movement since 2007. Alison Gillies can tell you of some changes on the financial side, and the action, reaction and consequences.

Alison Gillies (Child Poverty Action Group): My area of expertise is financial allowances—in particular, the thorny issue of the interaction between the financial allowances and the United Kingdom benefits system. As we have heard already, there have been significant changes since...
2007 and the concordat agreement. The initial agreement, which was to pay kinship carers of looked-after children at a rate equivalent to that for foster carers, has not become a reality, but all local authorities have shifted to a position where they are making payments of some sort to kinship carers of looked-after children. Quite a few local authorities are also making payments at some level to kinship carers of non-looked-after children.

I will focus briefly for the moment on two issues that are affecting looked-after children. There is wide variation in levels of payment across the 32 local authorities, from very low payments of around £50 a week up to payments that are equivalent to fostering allowances. There is also variation in the legal powers that local authorities use to make payments. You may think that does not matter, but it affects the ability of families to claim child or family-related welfare benefits. I will speak briefly about that for the moment.

The Convener: We will come back to that point in some detail later.

Alison Gillies: Good. Suffice it to say that it was obvious from the outset—or it ought to have been—that there would likely be a very complex interaction with the UK benefits system. That is one of the reasons why it is so good that some forward planning is being done in relation to changes. Although local authorities have, in many instances, stepped up to the mark and have made payments to kinship carers of looked-after children, the kinship carers are not necessarily gaining fully from that payment because of the interaction with the benefits system. That results in a complex picture across the country, in which, in some extreme cases, kinship carers would be unable to accept a payment from the local authority because it would simply not be worth their while to do so; there would be no net gain.

Other local authorities might be paying what look like quite considerable kinship care allowances, but the kinship carer’s net gain is not the whole of that payment because of the interaction with the benefits system. That is a development since 2007.

May Barker (Clacks Kinship Carers): My area of expertise is in being a kinship carer. I have learned everything the hard way, down at the pit face, as it were. I have been involved in this only since 2010. Like a lot of other people out there, I did not even know what kinship care was. It was a phrase that I had heard, but I had not thought any more about it.

Clackmannanshire kinship carers became heavily involved in what is going on because we got a sum of money that was then cut. We also found that councils were all paying different amounts when we had thought that the same amount would be being paid all over Scotland and it would not be at the discretion of councils.

The Convener: We will come to details as we go through the evidence. I just want a general feel for what has changed over the years. There has been a lot of work done in this area.

Kate Higgins: It was a bit remiss of me not to say that as well as the legislative journey and the concordat, the Scottish Government picked up on other recommendations from the reference group and funded Mentor UK to work with kinship carers to produce a guide to kinship care. The guide is pretty useful and all of us disseminate it to kinship carers. The Scottish Government also funded Children 1st to run a national service to provide advice and support to kinship carers.

The initial investment in 2007 also resulted in local authorities putting in place more support generally. There was a lot of inconsistency in how that was done, but generally there was an increase in support at local authority level—certainly in the first years. However, a lot of that is being cut back. A good example is East Lothian Council, which had a really good set-up to support kinship carers, but which has in the past 12 months gone down to one part-time worker.

All of what has been done has helped to support kinship carers to support themselves. There are an awful lot more groups, some of which are quite informal—little loose groups—and some of which are quite formal. As Anne Swartz pointed out, that has given rise to the formation of the kinship care alliance. So, there is peer support, and formal national and local support.

May Barker: Could I also say—

The Convener: I am sorry, May. I am going to stop you there because I want to get on to the questioning. I know that members are keen to go through a lot of the detail. It would not be reasonable for it just to be an exchange between the panel and me. I am sure that the other members of the committee would object quite strongly. Liam, do you have a supplementary question?

Liam McArthur (Orkney Islands) (LD): Yes. I want to follow up on the explanation of the chronology from Kate Higgins and Alison Gillies. With the concordat, there was quite a wide basis of coverage. Subsequently, drilling down on where need was greatest, looked-after children in kinship care were, in a sense, seen as the priority. You can understand the reason for that.

Can you shed any light on why the concordat was framed as it was? Was there discussion about the resource implications of such an open-ended commitment, or was there a misunderstanding or an inadequate assessment of how wide the net
would have to be cast in order to honour that commitment?

10:15

Alison Gillies: I might hand over to Kate Higgins on that. My understanding—I could be wrong and other people might know better than I do—was that the concordat contained a commitment to kinship carers of looked-after children. Prior to that, there was a wider discussion about where resources should be targeted. Looking from the outside in at what the logic might have been, I think, as Kate Higgins has said, that it related to the idea that the commitment would focus support on the children who are most in need of support. Whether that is borne out in reality is another matter, and Kate Higgins might have more to say about that.

Anne Swartz: A lot of the problems arose when the legislation was changed to separate looked-after children in kinship care from non-looked-after children in kinship care. We had formal and informal kinship care, but there are two levels of informal care. Some informal care is based on residence orders and some is based on no orders whatever, which is where the water starts to get muddied because we then have looked-after children and non-looked-after children. All the children have comparable needs, whether or not they have looked-after status, but the way in which the bill has been written means that a lot of children with looked-after status will be moved over to non-looked-after status, so even more of their support will disappear. We need to look at those issues.

The Convener: I am sure that we will discuss much of that as we go through our questions.

Joan McAlpine (South Scotland) (SNP): My question is on the point that Anne Swartz just made about kinship care. In your written submission and in your comments, you have raised some questions about the proposed kinship care order. However, I understand that it will not be a new order, as the initial proposal was, but will now be an adaptation of the existing section 11 order. Your written submission suggests that the kinship care order will last only three years, but a section 11 order—which is what, in effect, the new kinship care order will be—lasts indefinitely. Would you care to respond to that?

Anne Swartz: Yes—a section 11 order lasts indefinitely. The point about the new kinship care order lasting for three and a half years is that the support will, at the end of that time, cease for the children in kinship care.

The Convener: Can I just clarify something? Let us be clear about what we are discussing. I do not want us to confuse all the different orders. The support that is in place, in terms of the specific point about the order, is transitional support.

Anne Swartz: Yes, it is transitional support. However, we get the impression that, at the end of the three and a half years, when that transitional phase is over, there will not be anything in place. Because of the way in which the new order has been written, looked-after status will move further towards non-looked-after status. At the end of the three and a half years, there will be more children with non-looked-after status than with looked-after status, yet their needs are comparable.

Joan McAlpine: That is not how, in your opening statements, you described the direction of travel in policy on kinship carers in Scotland. You seemed to say that, although there are problems, the direction of travel has since 2007 been towards more support for kinship carers. I would be surprised if that suddenly went into reverse, which is what you seem to be describing now.

Anne Swartz: Our general feeling is that that is the direction in which provision is going, given all the disparity in local authorities. One local authority does one thing, while another does something else. There is no consistency out there: we need consistency.

Joan McAlpine: What kind of consistency are you looking for? Should kinship carers get exactly the same support as foster carers?

Anne Swartz: Absolutely not. We are not and would never purport to be foster carers. We are kinship carers, and the children are kinship children. However, both foster children and kinship children can in certain circumstances be on the same legal order. Foster carers receive a higher level of support, in comparison with kinship carers and their children, who receive negligible support from some authorities. That is where we see a lot of disparity, and that is the situation that we are seeking to rectify.

Joan McAlpine: Someone observed in their opening remarks that quite a number of kinship carers prefer not to have any involvement from the authorities. If a kinship carer wants financial support, can they reasonably ask for it without being assessed in the same way that a foster carer receiving such support might have been? After all, that might not be what everyone wants.

Anne Swartz: That support is not available at the moment. I accept that not everyone might want it but things should be written in such a way as to make that support open to people without their having to jump through a lot of hoops with the local authority to get access to the services that children need. In order to get such services, a child needs looked-after status; if they do not have that, those services are very difficult to obtain.
Kate Higgins: Having made the remarks that Joan McAlpine referred to, I should perhaps provide some explanation. In the two and a half years we have been running the national service—and indeed for many years before that—Children 1st has had a relationship with kinship or family-based carers to support children who cannot live at home. We have had lots of engagement with kinship carers and their families. I believe that we have shared most of that information with the committee, although there might be one piece on the financial review that we have not shared with you.

According to the most recent survey, most kinship carers—I think that the figure was 60 per cent—support the idea of a kinship care order. When we explored with kinship carers their status and their feelings about how they are being supported, two issues emerged. First, the way in which the Government established the looked-after regulations turned looked-after status into almost a gateway to support and assistance. Such an approach has not been helpful because it effectively encourages more children to enter formal care settings; after all, looked-after status means state-based care. The aspirations of most kinship carers is to get the support that their children need to get a better start in life and have ordinary childhoods, and the support that they themselves need to function as normal families. Looked-after status does not help to meet those aspirations because it means that the authorities are constantly engaging in the carer’s life and their children’s lives. We know of cases in which families have fought really hard on this issue; the child in question is quite clearly no longer at risk of significant harm and therefore does not need to be continually looked at or looked after. On the other hand, because support comes with looked-after status, some families have fought against its removal. It is not healthy to have children being unnecessarily subject to state intervention, and the kinship care order is partly an attempt to provide support in a different way that does not create such artificial barriers.

The second issue that emerged was about the recognition of kinship care in its own right as a legitimate arrangement for children who can no longer stay at home. It has always been seen as kind of like looked-after status or foster care or as a step into—but not quite—formal care.

I hope that we would all recognise family-based care as a legitimate and appropriate way forward for children who cannot live at home with their parents any more. Children 1st aspires—as we all should—to view kinship care in its own right. We must ensure that the legislation around it covers as many bases—formal and informal—as possible. The legislation should enable children to be moved from being looked after to a more permanent setting. That would provide the stability that kinship care families want, while enabling those families that currently stay below the radar because they do not want people coming into their lives to get a kinship care order through the courts, which will provide some stability and permanence in their own and their children’s lives.

We found that the additional support needs legislation and framework, which should be working for all those children who are looked after and in kinship care, and the children who have what Anne Swartz described as “comparable needs” in the form of learning support needs, are not providing the necessary support.

If the framework was working more effectively, some of the issues that have come out of our engagement, such as children not getting help and support and families not feeling properly supported, would go away, because education would rightly provide support and make use of the legislative framework to support children’s learning needs.

Joan McAlpine: From what you and previous witnesses have said about the confusion and lack of parity throughout the country, it seems that the kinship care order might provide the clarity that has been lacking.

Alison Gillies: It appears from the bill’s accompanying documents that there is a desire to shift the direction of travel slightly away from applying looked-after status where it is not absolutely necessary, which would be a correct use of the least-intervention principle. I will not reiterate what Kate Higgins has just said, but we are left with a problem. One of the bill’s objectives is to provide better support for kinship carers, but it is a bit difficult to see how that will work as things stand because there is no clear message about the support that will be attached to the new kinship care order.

I realise that it is a thorny and difficult issue, but it is difficult for us to find our way through and answer questions such as “How is this going to be better?” and “Will it be better than the existing situation?” without having some more clarity.

My fear—which is probably echoed by other organisations and individuals—is that we may end up with a situation that, by and large, replicates the current situation, in which there is a huge disparity in the treatment of kinship carers in different local authorities throughout Scotland. I am very focused on the issue of financial support—I realise that that is not the be-all and end-all, but it is my area—and there is certainly no indication at present that there will be any obligation on local authorities to provide a minimum level of financial support.
We are already in that situation with regard to looked-after children in kinship care: there is a commitment, but no legal obligation or minimum payment. We can see what has happened with that with the huge variation throughout the country in how kinship carers of looked-after children are treated. It is difficult to see how that will not be replicated unless there is a shift. That is a major concern, not least in terms of equality for kinship carers in different local authorities throughout Scotland.

Joan McAlpine: I understand what you are saying. The situation is patchy at the moment and you are concerned that it could remain so. However, I also understand that there is more cover in Scotland than there is south of the border.

10:30
Alison Gillies: I am not an expert on the situation south of the border, but I have looked at it in some detail.

I am sorry—I just leapt in there; is that okay?

Joan McAlpine: That is fine.

Alison Gillies: As I understand the situation south of the border, a kinship carer of a looked-after child is assessed as a foster carer. There are legal differences between Scotland and England—and, I assume, Wales. As a result of some hard-fought cases, case law has established that in England and Wales such people are paid a fostering allowance that is equivalent to the allowance paid to an unrelated foster carer. The position of kinship carers of looked-after children south of the border is better and more clear cut. That is the situation if we are comparing those two groups.

From research into the English and Welsh context, I know that kinship carers of children who are not looked after, such as people who have a residence order or a special guardian’s order—which does not exist in Scotland—are struggling. Local authorities have discretion over whether to pay what is called a residence allowance or a special guardian’s allowance. There are lessons to be learned from that.

Liam McArthur: Alison Gillies has been talking about uncertainty, but is that a reflection of what is not in the bill but will come about through regulation? We cannot have a bill that is laden down, with every i dotted and t crossed, but are some of your concerns about issues that might be better dealt with and clarified by the bill rather than detailed regulation?

Alison Gillies: There are lots of concerns and, as I say, I am very focused on the finance issues. My concern is about whether secondary legislation will put local authorities under a legal obligation to financially support kinship carers who have a kinship care order. Given current indications, I would be surprised if that was the intention, although I guess that it would be possible. If local authorities are not legally obliged in that way, there is likely to be a postcode lottery.

Liam McArthur: Presumably, we do not need to detail that financial support, but it would help if the policy intent was made clearer in the bill.

Alison Gillies: If we are working out how things might look, what the implications might be and whether what is proposed is likely to be better than what we have at the moment, a bit more detail would be helpful.

Liam McArthur: Anne Swartz wants to make a point.

The Convener: Please be brief; we have a lot of questions.

Anne Swartz: We cannot compare English and Welsh services to Scottish services because they are all entirely different. I have looked into the situation quite a lot. They struggle as much as we do with the inconsistencies.

The local authority will have the discretion to decide how the new kinship care order is written, what support will be available and whether someone can access a kinship care order. On the legal side of obtaining the kinship care order, it will be left to the individual to get that and to pay. There are a lot of inconsistencies throughout—

The Convener: Sorry to interrupt again, but this is very confusing. My understanding is that if somebody gets a kinship care order—in other words, an amended section 11 order—we move from a situation in which local authority support is discretionary to one in which the local authority is required to provide support. However, you just said the opposite.

Anne Swartz: Yes. I have asked to have that point clarified. Will somebody who has a residence order just now be automatically granted a kinship care order and get access to support? Some of those who have section 11 residence orders get no support at all. Will they automatically obtain the support that goes with the new kinship care order, or will they have to be assessed? If they must be assessed, how will that be done so that they get support?

The Convener: My understanding is that there is a requirement, so I am still slightly confused. Does Kate Higgins want to say something?

Kate Higgins: Yes. I will try to pick up on both points. The position is not clear yet, but it will be addressed in secondary legislation. The only assurance that can be given is that the Scottish Government is engaging with all the organisations
and with kinship carers themselves on what the secondary legislation should look like.

The suggestion of the start-up grant came from kinship carers telling us that it is difficult to find support for clothes and so on for children when they arrive in their family. The idea of the start-up grant is a sign that everybody is listening; the grant is an example of the support that carers would be expected to get.

We have concerns, because we know how things are interpreted by local authorities. We have seen huge disparities between authorities with regard to the local allowance, for example. We are concerned that local authorities might pick and choose from a menu of support, if you like, creating another layer of inconsistency for families, which is what everybody wants to avoid.

This is not just about support through the kinship care order. There has been a lot of debate about the appropriateness of the term “counselling services” in section 62 and whether it describes the provision’s intention. However, the provision is entirely based on what kinship carers have told us, and what the Government has found, about the need for a mechanism that enables early intervention when a placement, particularly a kinship care placement, is at risk of breaking down. We know that there is concern on the local authority and professional sides about where the provision has come from, what it is intended to do and its resource implications. However, we make a huge plea to keep the provision in the bill. It might not be kept where it is in the bill or be termed “counselling services”, but it is an absolutely vital provision if we are to take further the idea of early intervention in families where a child is at risk, instead of waiting for a crisis point to be reached.

Neil Bibby (West Scotland) (Lab): In relation to kinship care orders, a £500 start-up grant and some transitional support for three years have been mentioned. However, as we have heard, some councils give kinship carers weekly amounts on an on-going basis. Presumably kinship carers get that support because they need it on an on-going basis in order to keep their children. Without that on-going weekly support, would kinship carers be able to look after their children? If transitional payments were to end after three years, is it the case that kinship care orders would not be beneficial for some kinship carers?

Anne Swartz: It is not just about financial support. In the research that I have done, I have found that there can be stability for two, three or four years for a child but then the situation destabilises, for whatever reason. If children are not on any sort of legal order or under social work support, whether they can get back into the system for access to services and support through the new kinship care order, which should be possible at any time down the road for those children, will be left to local authority discretion. We need to look at the wording.

The Convener: I am sorry for my confusion, but how would that work if it was automatic? Surely it has to be discretionary. I cannot see how there could be an automatic right. Surely somebody has to be assessed at that stage. We cannot have a system where those who might want to be in receipt of support just decide that they will get it.

Anne Swartz: What I am saying is that the discretion to assess children will be at the local authority level. That is the case at the moment and it causes a lot of difficulties in a lot of local authorities, so we need to look at tightening things up in some way. I do not know how, but we have to do that.

May Barker: As a kinship carer, I definitely could not manage without some form of financial help. I am on a state pension and I just would not have the money to look after the teenage girl that I have and bring her up in the way that other children are brought up so that she can join in and be the same as everybody else. That is what we are looking for.

However, it is not just about money, because we also need psychological services, and we want respite for both children and adults—if one goes, the other gets respite. At the beginning, especially when we were fighting head to head and toe to toe, I would have been glad to have a weekend. It has quietened down a bit now, but it was not quiet at the beginning. She did not like rules. There have to be rules, but she had not had any. I would have been glad of even an afternoon away. It is not just money that is involved, but I could not have managed without some form of financial help.

The Convener: I ask Kate Higgins to be brief because I want to move on.

Kate Higgins: It would be helpful to seek clarity from the Scottish Government on the matter. Our understanding is that the allowance that goes with the kinship care order is temporary transitional support for three years. That will not prevent those children who are still looked after from receiving a kinship care allowance through the looked-after regulations, nor will it prevent local authorities from continuing—as most of them do, and it has not been the most helpful thing that they have done—to make payments and give support through section 50 of the Children Act 1975 and section 22 of the Children (Scotland) Act 1995.

We find overwhelmingly that kinship carers believe that there should be no differences—that every kinship care family, both formal and informal, should get an allowance and that they
should all get the same amount. They would prefer to see a national allowance. It is unfortunate that the financial review has not caught up quickly enough to allow us to address some of those issues in the bill, put them to rest and take things forward. It is almost the elephant in the room, in that it gets in the way of everything else. It is inequitable that we have local authorities paying different amounts. That is not what kinship carers want, and they recognise that. They want everybody to receive the same amount, and we should listen to that.

The Convener: Thank you.

Clare Adamson (Central Scotland) (SNP): Many of the points that I was going to raise have been covered, but I have a question that is particularly for Kate Higgins.

Kate, you mentioned that the additional support needs framework does not work as well as it should. Getting it right for every child is key to the provisions in the bill. Will the passing of the bill and the implementation of GIRFEC address some of those problems?

10:45

Kate Higgins: I would like to think so. How people will get access to the kinship care order and the support allowance is key. Under the bill, it will be if someone is a qualifying person and if the child is eligible. We advocate that an eligible child should be identified under the definition of wellbeing in the bill, as that would put all children on a level playing field, which is the direction of travel for when services should kick in to support children. That means that there should be access where a child’s wellbeing might be compromised or need to be promoted or invested in in respect of the SHANARRI indicators—safe, healthy, active, nurtured, achieving, respected, responsible and included. That would enable GIRFEC to apply.

There are wider issues about the relationship between GIRFEC and additional support needs, and how both frameworks come together. I am not sure that those issues have been fully resolved, but I know that, where councils are implementing GIRFEC very well, they have got over that—the committee might hear about that from Highland Council. We should try to learn from that and put the lessons into practice.

What May Barker said about the kind of support that she would have welcomed in her family is there in evidence. Anne Swartz had the same issues. There is evidence about what families are looking for from engagement: they are looking for help from health services and schools.

In 2011, we did a session on additional support needs in our regional forums. A number of kinship carers had never heard before that they had the right to go to their local school and ask for their child’s learning support needs to be assessed, nor that the authorities in education rather than in social work should provide support for their children.

The approach is not currently working. GIRFEC should help. It helps where things are done well in the country and it is an aspiration, but we need to make it work better for families, particularly kinship care families.

Liz Smith (Mid Scotland and Fife) (Con): I want to turn attention to the situation in which a child moves from looked-after kinship care to a non-looked-after situation. Mrs Swartz, the Scottish kinship care alliance said clearly in its evidence:

“Support should last longer than three years if it is to encourage permanence and respond to the needs of the child.”

Could you provide us with clear-cut evidence on why that support should be extended? Where is the evidence that would help the committee to understand why support should be beyond three years?

Anne Swartz: It is quite difficult to get clear-cut evidence, but from speaking to members of the Scottish kinship care alliance, it has become quite clear that, as I said earlier, there are cases in which support must remain in place because there is instability. The children’s needs are comparable with those of children who go into foster care. They can have foetal alcohol syndrome and issues with withdrawal from drugs. They have all the issues and more compared with children who go into foster care and, ultimately, they could have gone into foster care at great cost to the Government.

However, it is not all about money. We need access for those children and, to obtain that access, there needs to be looked-after status; otherwise, it is extremely difficult to get that at the local level. That is why we want to see support continuing throughout the child’s life.

Liz Smith: Are you saying that there is more urgency about financial support beyond three years or about psychological or social support?

Anne Swartz: I think that they are both equal. Many kinship carers have had to give up their employment. There is such inconsistency in local authorities. Many carers have used all their savings and are told to go to the Department for Work and Pensions when their savings run out, even though the children are on the official looked-after register.

Liz Smith: I would like to ask Mrs Gillies a question. From the points that you have made, it
seems that your expertise is very much in the financial area. The committee wants to get to grips with the facts that prove the case that all four of you have stated, which is that we have not quite got things right. Where is the best factual, statistical evidence to prove the case that you are making?

**Alison Gillies:** I refer the committee to the “Kinship Care: Fostering effective family and friends placements” research by Farmer and Moyers in 2008, which I referred to in my written evidence. That indicated—I do not think that this will be very surprising—that financial security and some enhanced financial support improve the stability of kinship care arrangements and the eventual outcomes for children.

There is a dearth of longitudinal and comparative studies in this area but the indications from that research—which, as I have said, are not surprising—are that increasing financial support in addition to other support increases the likelihood of kinship care arrangements succeeding for the child.

One question that we all have to ask ourselves is: why are kinship care arrangements different? Why—to put it bluntly—do they need extra support? A lot of information in that respect has already been given this morning, but I think there are a number of reasons. First of all, statistically speaking, kinship carers are likely to be poorer than the general population and, indeed, official foster carers. They are also likely to be caring for children at a time in their lives when they might not have been expecting to do so. I am not the expert in this area but I also think that a lot of kinship carers will have had to give up employment or might not be at a stage in their lives when they are able to contemplate employment to boost their income. For all of those reasons—and given the particular needs and experiences of at least a good proportion of the children in kinship care arrangements—additional financial and other support are likely to be necessary. The research that I mentioned is interesting and useful in pointing us in that direction.

**Liz Smith:** With respect, however, we—and, indeed, the Government in putting together the financial memorandum—have to take a view on the amount of money that needs to be made available to address the issue. To make a sensible decision, we must ensure that evidence lies behind all of this and that we can prove that, by spending the money, we are making things better. Where should the committee be steered to ensure that we can get the best possible knowledge and evidence to allow us to come to an informed opinion?

**Alison Gillies:** In a slightly promoting-of-CPAG way, I refer you to our recent report entitled “The cost of a child in 2013”. I will leave it so that you have the references and so on. Obviously, that report does not relate specifically to kinship care but it does relate to the cost of bringing up a child. I am sure that the committee has that information at its disposal anyway but it might be useful to have in the background to thoughts on this.

**Kate Higgins:** Echoing what Alison Gillies just said, I believe that there is a dearth of longitudinal research on the outcomes for children in kinship care. The evidence is what we already know. If it is good enough for our own children to grow up in family-based care—if it gives them the best chance of a better start in life—it is good enough for kinship care children.

There is also what we know about the outcomes for children who grow up in residential care. The committee has done an inquiry into the educational attainment of looked-after children. One of your findings was that there has not been so much progress as for those children looked after at home. Partly that is about where the resources have been invested; it is two sides of the same coin.

There are families here telling you that they are not getting enough support. We know, from our...
engagement, that the additional support needs framework is not working well for them. The committee has found that there has not been a significant improvement for looked-after children. There is your chain, in effect—it is one of the impacts of poverty.

On the inquiry into taking children into care, another issue was about acting early enough. These children are compromised by a poor start in life, in their earliest years, and by the impact of poverty. There is loads of evidence on the impact of poverty on children. We know what will happen if all that we are doing, as a state, is taking children out of one deprived situation—I mean deprived in a range of ways; not just income related—and placing them into another care arrangement in which they are still not getting any more money. We are not being fair to those children and giving them the best start in life and we know the consequences of that.

We are increasingly hearing from local authorities about the cost of kinship care and about how it is becoming unaffordable. This goes back to the issue of preventative spending. We know that the cost of kinship care placements is tiny compared with the cost of residential care or even foster care placements. We have to get local authorities to recognise the value of kinship care. We know that times are tough and budgets are constrained but kinship care arrangements save all of us a lot of money in the long term. They should not be done on the cheap. These children have the same rights as other children to grow up not in poverty.

The Convener: We are rapidly running out of time and we still have to address a number of issues. I want to clarify something in the policy memorandum. When Anne Swartz was speaking earlier about the transitional arrangements, I got the impression that those would last three years and then finish.

Anne Swartz: Yes. That was our understanding.

The Convener: That was what I thought you said. Paragraph 122 on page 29 of the policy memorandum says:

“Secondary legislation may specify that an authority must explain to a carer what support will be provided before they commit to an order, and for how long. As the intention of the kinship care order is to promote strong families, the assumption would be that support would last no longer than three years in most circumstances.”

That does not sound like an automatic cut-off. Would you agree?

Anne Swartz: The fact that it "would last no longer than three years in most circumstances" would say to me that at the end of three years, in the majority of circumstances, it would cease to function.

The Convener: Yes, but it says “most circumstances” so it is not automatic.

Anne Swartz: No, it is not automatic.

The Convener: That is the question that I asked you. Secondly, the sentence before that says that the local authority “must explain ... what support will be provided before they commit to an order, and for how long.”

Clearly, the information must be available before the process is agreed upon.

Anne Swartz: Yes, but in the majority of kinship circumstances, you get the knock at the door at 2 or 3 o’clock in the morning, with someone saying, “If you don’t take these children they’ll go to foster care.”

The Convener: Sorry, Anne—we are talking about transitional arrangements, not the 2 or 3 o’clock in the morning stuff.

Anne Swartz: Right—okay.

The Convener: Do you agree that the cut-off is not the cliff face that you seemed to be describing earlier?

Anne Swartz: How much of a duty to explain the support will be placed on local authorities?

11:00

The Convener: The policy memorandum’s wording seems to be different from what you were saying. I just wanted to clarify—because it is an important point—whether the three-year cut-off is absolute or not. Those are two different circumstances, and we have to be clear about that. The issue is complicated and important, and we all need clarity—as Liz Smith said earlier—on exactly what is happening.

I am keen for us to move on. Colin Beattie will go next.

Colin Beattie (Midlothian North and Musselburgh) (SNP): The panel members have highlighted the fact that there is a considerable discrepancy between different local authorities in the type of support that kinship carers are given.

Will the bill do anything to improve that consistency? [Interuption.]

The Convener: Hold on for a second, Colin—whoever has their phone on should switch it off, please.

Colin Beattie: Do the panel members think that the bill will do anything to improve consistency between the 32 local councils?
Alison Gillies: Not as it stands. I may be wrong about this, but at present the bill implies that the subsequent secondary legislation will give local authorities an obligation without specifying levels of support. My understanding, from the information that is currently available, is that, in all likelihood, there will be a great deal of discretion at local authority level.

Under the system to date, local authorities have committed to assisting approved kinship carers, but there is huge discretion at a local level in how that assistance is delivered. Given what we know about how that has panned out in the past five years, my fear is that a similar pattern of differences between local authorities might develop.

My next comment might not relate precisely to your question, but I hope that it is useful information.

One area in which the bill might assist, if we are comparing the current situation with the proposed kinship care order, is in the interaction with the benefits system.

At present, the heart of the issue is a child’s looked-after status, which, in conjunction with the payments from the local authority for accommodation and/or maintenance, is problematic in relation to benefits and tax credits. That leads a number of kinship carers of looked-after children into a situation in which they are not able to claim all—or some—of the family-related benefits. The system therefore creates a great deal of complication and confusion at the moment.

If the new kinship care order comes into being, and those children no longer have looked-after status, a lot of the complexity of the interaction with the benefits system will disappear. That is a positive, but the question remains as to what local authorities will do with that new power. There might still be huge variation between local authorities, but there is unlikely to be the same complexity in that regard.

That said, my final point on the issue is that for kinship carers of looked-after children, which will obviously be quite a large group of people, all of that complexity will still exist and, in fact, is likely to become even more problematic with the advent of universal benefits. However, that is probably enough about that for the moment.

Colin Beattie: The Government's review of kinship care allowances is expected to finish towards the end of the year. What are the panel’s expectations in that respect?

Kate Higgins: I would just repeat what I said earlier about kinship carers’ aspirations. They want every kinship care family, no matter their status, to get a national allowance paid at the same amount and equity and parity across all families. That would not stop local authorities looking at particular needs and—going back to your previous question and picking up on Clare Adamson’s point—I think that we would have more consistency if there were greater alignment with GIRFEC and if we had a more child-centred approach based on individual children’s needs. Although everything would be an individualised package from the menu of options, that would mean that how things are assessed and applied would be more consistent.

There is something else that we would like and which could be done in this bill. As we uncovered from our engagement with kinship carers, some local authorities that pay a kinship care allowance deduct the value of child benefit from it, which means that families do not receive the full value of their allowance and are actually being means-tested on what until very recent times was one of the few remaining universal benefits. We would like legislation to prevent such behaviour, because it is simply not fair. We do not do that to families who, for example, qualify for free school meals or clothing grant vouchers, so why do we do it to kinship care families? Removing such options and anomalies would help the situation.

Colin Beattie: Given the bill’s provisions and hopefully the progress that is being made, is Clacks kinship carers reconsidering the need for its petition?

May Barker: We cannot reconsider that until the bill has come to fruition. We will have to discuss the matter. Given that the legislation is still going through the Parliament, we cannot take such a decision at the moment.

Colin Beattie: If the bill went through, would that influence your decision about pressing on with the petition? I am just curious to know.

May Barker: I can speak only for me, because I am the only one you can ask. Until I go back and put the question to the committee, I cannot give you an honest answer. All I can say is that we would consider the matter.

George Adam (Paisley) (SNP): My questions are about the benefits system, which I know has already been raised this morning. In fact, Alison Gillies almost answered all my questions in the first five minutes of the session.

Alison Gillies: Oh, good.

George Adam: I am going to ask my questions anyway.

Alison Gillies: That is fine. There is a lot more I can say about the subject, unfortunately.

George Adam: I agree with not only Alison Gillies but Anne Swartz and May Barker that this is
not just about money but about other kinds of support. As a constituency MSP, I constantly get families like Anne’s and May’s coming to me, and I know that for kinship carers the benefits system is a financial minefield. Obviously, the system itself is Westminster-based but, if we were starting from day 1, with a clean sheet of paper and any other cliché I might fling in, what would be the best way forward for kinship carers in Scotland?

Alison Gillies: Are you talking about kinship carers of looked-after children?

George Adam: I am talking about kinship carers in general. How would you make things easier for them?

Alison Gillies: I will need to separate the two kinds of carers. Are we assuming that the current UK benefits system is still in place in your day 1 scenario?

George Adam: For the time being.

Alison Gillies: If we still have that and if—there are a lot of ifs and buts—we all accept for the moment anyway that kinship carers of looked-after children need and ought to get some additional financial support from the local authority, a way of working would be for the local authority to make the additional payment in a way that means the payment is not for accommodation or maintenance. That would circumvent some of the existing difficulties.

By way of a very brief explanation, my opinion is that the rules in the benefits system that are problematic to kinship carers are ones that are intended primarily to prevent, for example, anybody getting benefits for a child in foster care or in a residential unit—a child who is in the ordinary sense looked after and accommodated by the local authority. The rules are all about double funding.

Unfortunately, in certain circumstances kinship carers are caught by those rules. A way for kinship carers not to be caught by those rules is therefore for additional financial support from the local authority to be for needs that are additional to accommodation and maintenance. That is a way round the problem, but it is not a fundamental solution to the problem—a solution would lie elsewhere in the benefits system.

There are not such huge difficulties in the benefits system for kinship carers of non-looked-after children. My understanding from anecdotal evidence is that the complexities for those kinship carers mainly relate to issues such as delays in getting benefits sorted out. Problems might arise when there are competing claims for benefits—if, for example, the child’s parent still receives child benefit and child tax credit—but those are administrative difficulties rather than a fundamental issue of not being entitled. For kinship carers of non-looked-after children—even those who receive some kind of allowance from the local authority, as some do—the difficulties in relation to the benefits system are therefore not so great and are more easily overcome.

The remaining issue, which a lot of people—including me—focused on at the outset of the concordat when we were thinking about the whole issue, is whether a payment from a local authority counts as income in respect of means-tested benefits. However, that is not an issue any more. All the payments that are available to local authorities to make to kinship carers, under either section 50 of the 1975 act, section 22 of the 1995 act or regulation 33 of the Looked After Children (Scotland) Regulations 2009, are disregarded as income in relation to means-tested benefits and tax credits. That is therefore not really an issue.

The issue is that, for some kinship carers of looked-after children, the very fact of looked-after status combined with a payment that relates to accommodation or maintenance come together to disentitle entirely the kinship carer from, in particular, child tax credit, which is a significant source of income if they are on a low income.

Do my comments help at all?

George Adam: Yes. Would anyone else like to comment?

Kate Higgins: Sorry, what was your question?

Alison Gillies: It was just asking us to rethink the whole benefits system.

George Adam: Yes, if it was day 1 and you had the opportunity to reshape the benefits system, how would you make it work for kinship carers?

The Convener: In 140 characters or less. [Laughter.]

Alison Gillies: Currently, the answer is that the payment should not be for accommodation or maintenance. However, I would just add that there is a problem under universal credit.

Universal credit is slightly receding into the distance at the moment, but, as things stand, the universal credit regulations will be very problematic because they say that someone will not receive universal credit for a child if the child is looked after by the local authority. There are some exceptions to that: for example, if a child is looked after but living with their parents or someone who has parental responsibility for them. As I understand it from my reading of the universal credit regulations, a kinship carer of a looked-after child would not be able to get the child element of universal credit, regardless of any payment from the local authority. It does not matter if the local authority is paying nothing; that rule will have an
impact. We hope that that approach might shift before universal credit comes into being for most people.

11:15

**George Adam:** The Children and Young People (Scotland) Bill comes from the Scottish Government, and there has been a change in the definition in Scotland since 2007 such that kinship carers are accepted. Could it therefore be argued that, if we had more powers over welfare in the Parliament, we would have the opportunity to make the difference for the individuals here, too?

**Anne Swartz:** The proposed kinship care order directs that the majority of kinship carers will end up receiving support from the Department for Work and Pensions for the children. I reiterate the point about the comparable needs of these children and those of foster children. Foster carers are not directed towards the DWP to provide support for these children, so why should kinship care families be sent in that direction?

The new kinship order directs them there and the majority will receive benefits from the DWP. I do not want to be too political but, if Scotland does become independent, would it then expect the UK Government to support Scottish children financially and otherwise? I do not think that that is the right approach.

**George Adam:** I do not think that would be the case.

**The Convener:** We know that that would not be the case. They would be two separate countries, so I do not quite see how that fits. To be frank, we have gone off on a tangent.

**Anne Swartz:** Yes, I know I was being a bit political.

**The Convener:** It was not all your fault, Anne.

**Anne Swartz:** I could not resist it. I am sorry.

**The Convener:** Let us stick to the bill in question. Kate, you may speak very briefly. Other people want to come in.

**Kate Higgins:** I want to make three quick points that focus on the here and now.

First, as part of our financial review engagement with kinship carers, we were surprised to find out how few of them receive the benefits to which they are entitled. There is a point about income maximisation when people become kinship carers and making sure that they can access everything to which they are entitled. We tried to do some work on that before the bedroom tax came in, to promote income maximisation to members and local authorities, particularly around council tax benefit and housing benefit.

The second point is that we have wrongly assumed, like everybody else, that because an awful lot of the kinship carers are grandparents they are therefore pensioners. Our engagement underscored the fact that they are not all pensioners and that many are of working age. As is evidenced by May and Anne, the carers are youthful and not necessarily of pensionable age. We need to be alert to the impact of welfare reform. We were successful when we worked together to get some degree of exemption for kinship carers from the bedroom tax.

Finally, we have raised the point at the Welfare Reform Committee that, because some of the powers have been passed on to Scotland, there is an opportunity to examine whether passported benefits, such as free school meals, clothing grants and access to leisure, work for all of the groups for which they should work. These are all things that kinship carers have told us would be of benefit to them: they would help them out and give additional support and income. We would encourage the Welfare Reform Committee—and the Government, when it makes new rules for these benefits—to consider whether kinship carers can benefit from them.

**The Convener:** Clare Adamson may ask a very brief question and get a very brief response.

**Clare Adamson:** Let us have complete clarity. From what has been said, I understand that for non-looked-after children there is no problem with the DWP and that—universal credit aside—for looked-after children it is the working practice of the local authority that can solve the problem.

**Anne Swartz:** It is a bit more complex than that.

**The Convener:** I do not want to open the whole debate up again but, frankly, it seems that reclassifying the way in which support is paid will not solve the problem entirely. We found exactly the same problem in discussing the bedroom tax.

**Alison Gillies:** You are right about the situation of kinship carers of non-looked-after children. There are no difficult or complex rules within the benefits system that impact on those people; the issues are more administrative.

The other issue is much trickier. All that I would say—finally and, I hope, briefly—is that the rules that exist within the benefits system currently say that, if there is a combination of a looked-after child and a payment from the local authority in respect of accommodation and/or maintenance, that is a problem. What local authorities might or might not do is beyond what I want to comment on, but that is the situation with the benefits system.

**Clare Adamson:** Do all local authorities pay in that way? Have some changed their practice?
Alison Gillies: Probably the majority pay under a power in section 50 of the Children Act 1975, which relates specifically to maintenance. By definition, the payment is for maintenance because that is what section 50 of that act says that it is for. I understand that only two or three local authorities use the power under regulation 33 of the Looked After Children (Scotland) Regulations 2009, which causes particular problems in relation to the benefits system. A group of about six or seven local authorities, I think, use the power in section 22 of the Children (Scotland) Act 1995. However, as you will be aware, that is a very broad power, and payment under that power can be for a number of different things. That is the current situation as I understand it.

The Convener: I will bring in Neil Bibby, but I must clarify something first. Following what you have just said, if all local authorities that are paying under the difficult areas—under section 50 of the 1975 act and section 22 of the 1995 act—

Alison Gillies: It is under regulation 33 of the 2009 regulations. Those are the difficult payments.

The Convener: Sorry, I meant under regulation 33. If they suddenly shifted to paying in a way that is less difficult, would the DWP not spot that and deal with it, as it does?

Alison Gillies: If a local authority pays under section 50 of the 1975 act, the payment is, by definition, for maintenance—that is what it says it is for. However, I understand your point. If the local authority paid under section 22 of the 1995 act and said that the payment was for something else, would it be accepted that it was for something else? You would probably have to ask somebody else that question. At the moment, some local authorities are making payments under section 22 of the 1995 act and are specifically categorising those payments as not for accommodation or maintenance but for additional needs that are separate from those things.

The Convener: Okay. Thank you for that.

Neil Bibby: In terms of transitional support, what benefits would those who have achieved the kinship care order, which has been modelled at £70 a week, be automatically entitled to? The financial memorandum to the bill states:

“Support will only be provided if it is not automatically provided elsewhere through universal services in Scotland or across the UK (including through the UK benefits system).”

Is it conceivable that the whole £70 would be paid by the UK benefits system?

Alison Gillies: I can answer in terms of the amount of money, but I do not know what the intention is regarding payment by local authorities for anything in addition.

If someone had little or no income and they were dependent on state benefits, they would ordinarily get around £83 per week for one child. That is a combination of child benefit, which is £20.30 for the oldest child, and child tax credit. That amount could rise by up to another approximately £80 if, for example, the child has a severe disability.

Ordinarily, therefore, the money that is specifically related to the child via child benefit and child tax credit amounts to around £83 per week. Under the proposed new system, if the local authority made a payment in addition to that and it was using a current power such as that under section 50 or section 22, the additional payment would be disregarded as income for the purposes of claiming child tax credit; child benefit is not means tested.

Your other question is really about whether the local authority would therefore not make the payment, and I cannot answer that. I do not think that any of us can.

The Convener: Liam McArthur is next.

Liam McArthur: I think this question is for Kate Higgins specifically.

Kate, you were talking earlier about the appearance of a potential threat that the counselling aspects of the bill might be lost. We have heard no evidence to that effect, but clearly there are inconsistencies in the framing of the bill, which mentions counselling, while the policy memorandum extends to family group counselling and family mediation, which is a broader definition of counselling. The bill also leaves eligibility to future regulation, but the policy and financial memoranda link it to kinship carers. The policy memorandum says that counselling “can be used to promote the role of a kinship carer.”

How can the bill’s wording be improved to get better consistency of language and to help understanding of what is meant by the provisions?

Kate Higgins: The concern is centred on the word “counselling” because our understanding is that it has quite a specific definition and connotations for practice. The aspirations of the provisions are absolutely legitimate.

Counselling has been identified as desirable in relation to kinship care because, as Anne Swartz said, placements can be very last minute when it is simply no longer safe for a child to stay in their family. People are regularly phoned up out of the blue and asked to take a child that night. Our experience, as standard-bearers for activities such as the family group conference, is that when we
bring families together to plan for when a child is at risk of going into care the families tend to reach family-based settlements that are also sustainable. We are doing some research in that area to look at the longer term outcomes of such settlements.

Some of our concern is motivated by that experience, but it is also a matter of early intervention and the kind of support that either enables a child to go into a sustainable, non-formal care setting or prevents them from moving into a care setting. We are therefore looking for wording around early intervention or family support services.

What comes through in the secondary legislation will be key. My understanding is that the Scottish Government has highlighted family group conferencing and family mediation in the policy memorandum, but it would not prevent parent programmes or anything that would help kinship carers and others who are providing informal care, such as foster carers or others, or helping children to stay with their parents from moving that step forward.

11:30

Liam McArthur: Given what you say about the precise definition of counselling and what you say about the understanding of what might come through in secondary legislation, are you comfortable with the way in which the bill is phrased, sitting alongside the policy memorandum, or are there things that we should be looking to firm up that might help with the secondary legislation process?

Kate Higgins: There are two things that we would like. First, we would like “counselling services” to be changed to another name. Everybody has a different view on what it should be, but we all talk to each other in the voluntary sector and there have been discussions on the matter. We would be happy to go away and produce some options that we think better describe the intention. Apart from the reference to “counselling services”, the sections that we are discussing are okay because they legitimately give effect to the intention.

The other thing that would be helpful is to move the provisions from where they sit in the bill and make them part of the GIRFEC parts because they should be seen as relating to that. In effect, they are about early intervention: they almost enshrine in the law a duty to act early rather than wait until a child is moving into care, and they absolutely fit with the GIRFEC intentions. It would give greater clarity as to why the provisions have been included in the bill if they were moved into the GIRFEC parts rather than left sitting where they are at the moment.

Liam McArthur: The financial memorandum mentions costs of between £2 million and £6 million. That money could be spread quite thinly. Should we pursue the intentions with the Scottish Government, whether or not counselling is broadened out beyond kinship care? Are there specific priorities as far as you are concerned, given where conferencing or mediation can deliver the most effective results?

Kate Higgins: The most obvious starting point would be when kinship care is being considered. We should encourage local authorities to plan more effectively for those arrangements. That would support kinship carers because, rather than their being landed with something that they were not expecting, everybody would have time to become involved. Crucial to that is the child-centred approach whereby the child or young person, if they are able to express a view, can give their views on what should happen.

We would argue that the starting point should be kinship care, but the provisions should be worded in such a way that they do not prevent the approach from being used in other circumstances. For example, family group conferences have been used successfully in arranging safe contact, and also where there has been a breakdown in contact and residence between parents. Family mediation works similarly—where there has been a breakdown in contact with grandparents, for example. It can be used in a variety of ways to get families round the table and encourage them to take responsibility for decisions about what is in the best interests of children.

We will go back and have a look at the wording, and we will perhaps make a recommendation to the Government. We have provided some costings given our knowledge of the costs of family group conferences and how to do them, and we think that the estimate is fairly accurate in so far as it applies to kinship care.

The Convener: I thank the panel of witnesses for their evidence. We spent a lot more time than we originally scheduled, but kinship care is an important and complicated issue and area of the bill, so I hope that you do not mind that we took some extra time this morning to discuss it.

I say to members that, given the difficulty that we had in getting clarity on some of the questions, it might be worth our while—I throw out this suggestion—to write to the Scottish Government and ask it a number of the questions now. In that way, we will have clarity on them before we get the minister in for questioning, rather than go through the whole scenario again. Do members agree to that approach?

Members indicated agreement.

The Convener: We will do that. Thank you.
I suspend the meeting briefly while we change panels.

11:34

Meeting suspended.

11:39

On resuming—

The Convener: I welcome to the committee Bill Alexander, director of health and social care with Highland Council, which was of course the national pathfinder for the implementation of getting it right for every child. The council’s experience of that is obviously relevant to our scrutiny of the bill. We will go straight to questions, and will start with Liam McArthur.

Liam McArthur: Good morning, Mr Alexander. Highland Council’s experience will obviously be helpful for our understanding of the bill’s implications and any refinements that it needs.

The decrease in the number of referrals in Highland to the children’s reporter seems a positive indicator, but I understand that the number of hearings, proofs, child protection orders and so on has not decreased. That suggests that the financial savings realised through your application of GIRFEC have perhaps not been particularly significant. Is that a fair reflection of your experience?

Bill Alexander (Highland Council): Good morning to you, Mr McArthur, and to everyone. I am very pleased to be here.

Financial savings are a complex issue. The bottom line is that our policy has been not to take financial savings out of children’s services because of the implementation of getting it right for every child, but that does not mean that we could not have done so. We reinvested the money in early intervention and preventative services. For example, the case loads of social workers have been significantly reduced. We could have reduced the number of social workers, but we did not. We invested in front-line workers who can undertake preventative work. We are about to invest in additional health visitors.

We believe that such investment not only makes good professional sense because it means better outcomes for children and families, but is the long game in terms of financial savings. The number of child protection registrations and looked-after children is already going down, so there will be savings from there being fewer children with higher-level needs.

Liam McArthur: The figures that I have in front of me indicate that the number of child protection registrations in Highland was 125 in 2007 and 111 in 2012, which is a small reduction. In 2008, the number of registrations was down to 60, and in 2009 the number was 69, but it nudged back up towards three figures in subsequent years. Is there any detail around why that pattern occurred?

Bill Alexander: Our numbers were generally 100 to 150 over the years preceding GIRFEC, but post-GIRFEC implementation they have been between 75 or 80 and 100. They have dropped to quite a low number. There is nothing precise about how many children we have on the register, because a lot of children might be a good thing and a few children might be a good thing. When the figure bounces around, that poses questions about services. The figure sometimes bounces around in Highland because of inward migration, large families or other particular issues that are relevant to Highland.

The drop in numbers around the time of GIRFEC implementation was about confidence in the system. The key issue is not the number of children on the register, but confidence in the system. Hundreds and thousands of people work around children’s services and hundreds and thousands of people can press a red button for child protection services. We would be pretty foolish to ignore someone pressing that red button; we take that seriously and err on the side of caution. If that means that we apply a child protection registration label, we do that. Clearly, though, that is not sensible in the long run, because we could not have every child in an authority on the child protection register—that would be nonsense. We must focus on the children who we believe are at greatest risk of significant harm. If the numbers come down, that suggests that there is more confidence in the system and that we are getting things right. I think that is what we have achieved.

Liam McArthur: You said that there was a move towards having additional health visitors in due course. One of the questions around a pilot area is whether additional resources have been put in to trial particular approaches. Did you have to put in additional resources in Highland because of what you were planning to do? If so, does that teach us anything that could apply to the Scotland-wide roll-out of GIRFEC? The issue of resources has come up in relation to specific aspects, so the experience of Highland is crucial for understanding how that might play out.

Bill Alexander: It is a critical issue. There are two sets of issues around resources: the resources in the system that we need to sustain the model and the resources that we need to support a complex process of change. Are you asking about both of those?

Liam McArthur: Yes.
Bill Alexander: As Stewart Maxwell said, Highland Council was the Scottish pathfinder in the process of change. There was some other pathfinder activity, such as the domestic abuse pilots that were associated with the introduction of multi-agency risk assessment conferences, but Highland Council took a whole-system approach that included police, social care, education, health, the third sector and families. The Scottish Government funded professionals in all those areas, so we had a teacher, a social worker, a health visitor and a representative from the third sector, and they considered what the implementation of GIRFEC meant for all those professions.

Integrated working is not about some big homogenous blob, but about the joins between the different professional groups, and we had to get it right for each of those groups. Each of the professionals, apart from some people who were seconded to the Scottish Government during that period, was located within the Highland area.

That activity enabled the development of the GIRFEC components, as well as national guidance and training materials that other authorities could use. It allowed us to network with a range of authorities up and down the country, and we held road shows and all sorts of events.

In the period from 2006-07, the Scottish Government invested between £150,000 and £250,000 a year in those posts. Over the programme’s entire duration, up to 2010, approximately £640,000 was invested. That was the cost for the national pathfinder, and I am often asked how much of that each new authority would need to replicate. A lot of it would not need to be replicated, because much of the basic work has been done. However, authorities would have to go through some of the processes, because Inverness is not Glasgow, Dundee or Angus, and authorities must consider their own circumstances and context.

When GIRFEC began and we got the list of components from the Scottish Government, the named person requirement did not feature. It was developed through practice and experience, and discussions with families and professionals.

Other people do not need to do that work, because we have done it, but they still need to do some work. Critically, an authority would need an implementation plan and a training model, and would need to develop new guidance that reflects its own practice. That said, authorities already have a training programme and have to produce guidance for whatever practice model they have, so some of those costs already exist. However, there would be some additional funding to support that change, and my understanding is that it is being made available for that purpose.

Liam McArthur: The implementation of GIRFEC was, as I understand it, not finalised through the pathfinder process until around 2010, but some of the earlier improvements—in child protection registrations, for example—were being ascribed to that process prior to it being fully bedded in. What level of confidence do you have in making the link between the embedding of GIRFEC and the delivery of some of those outcomes?

Bill Alexander: Improvements in outcomes take time. Even now, it is fairly premature to look at the outcomes, but we are starting to see green shoots and various process changes. We are also seeing some changes in the number of children who use alcohol and who self-report as using drugs or smoking, and in the number of exclusions from school and so on, but some of the outcomes will take time.

The University of Edinburgh undertook a helpful evaluation that saw us through the implementation process. We had three different implementation plans, and I am happy to talk about that. The first two were not effective, but the third one was. It started in the city of Inverness, which is a contained area, and involved newborns. We started assessing newborns using the assessment framework that contained the named person and child’s plan requirements. We extended that assessment to the early years and then to school-age children, and subsequently to children with high-level needs who were already in the system.

We had a manageable group that we could look at and which was different from other areas in the Highlands. The University of Edinburgh evaluation focused on children in Inverness, and the researchers could look at the data because we had begun to implement that assessment in 2008.

Liam McArthur: Some of the outcomes for care leavers look much the same as they did in 2008. Presumably you would argue that those who fall into the final group that you mentioned are part of a strategy to deliver longer-term objectives.

Bill Alexander: I think so. Our looked-after children numbers went up at the same rate as those in most of the rest of the country until around 18 to 20 months ago. The first group whose numbers started to come down significantly were children who were looked after at home. Initially, that worried me because I thought, “No, that’s early intervention. Those numbers shouldn’t be going down.” I had many arguments with colleagues and practitioners in the children’s hearings system about why that was happening, and they convinced me that it was because the children’s hearings system was confident that a
plan was in place, there were partnerships with families, and we did not require compulsory measures. It was therefore sensible that that was where the first impact was.

The next impact was on accommodated children, because they are already at the top of the system. They already have high-level needs, and things cannot be turned around overnight. Those numbers are now starting to drop significantly, and that is different from the situation in much of the rest of Scotland.

The approach has still not impacted on the number of children in specialist placements outwith the authority. I think that that will take longer.

Those are all early signs of the approach working. We continue to see the numbers coming down. I think that the number of children who are on supervision at home will shortly be under 100. That is astonishing for an authority the size of Highland Council, which used to have 600 looked-after children. The number of persistent young offenders and the number of offence referrals are dropping dramatically. We have around a third fewer offence referrals every year. The numbers continue to drop at that rate. I do not know for how long they will drop—I believe that they will plateau at some point—but that is the rate at which they are dropping now.

The Convener: The number of children who are accommodated is dropping. Where do they go? How are they classified now?

Bill Alexander: Three things are happening. First, some children are moving into permanence more quickly. That might be through kinship care arrangements, which the committee has just discussed.

Secondly, some children are returning home more successfully. My colleagues tell me—this is relevant to the report that the committee published this week—that when children become accommodated in Highland, that is because they need to be accommodated and they do not bounce back and forth, so we do not have the effect that you identified in your report. It is appalling that children bounce back and forth and it has happened in Scotland for many years.

Thirdly, fewer children need to become accommodated for the first time.

All three streams cannot be turned around overnight, but they are now being turned around. Fewer children are being accommodated, more children are moving into permanence, and more children are returning home successfully.

The Convener: That sounds pretty good, given the report that the committee published yesterday.

Bill Alexander: I did not come here to tell the committee about an untested product; I am here to tell you about our practice model. We are not perfect, we do not get everything right, and we still make mistakes. We are not complacent, and we are working to try to make sense of what is happening while we do the day job. This might sound a bit selfish, but, frankly, we are more interested in doing the day job than in explaining, evaluating and making sense of what is happening for everyone else. However, everyone in Highland passionately believes that the approach works and that it makes more sense.

As I said in my submission, I do not get complaints from people about the approach working; I get complaints only about its not working. We are not complacent.

The Convener: I am sure that you are not. Obviously, we are keen to understand whether the approach works and why it works. You said that children are returning home successfully. Where is the evidence for that? Where is the evidence that children are not simply going back to circumstances that are the same or similar to those that they were in before? The evidence from other parts of the country that we have received during our inquiry is that they are doing that.

Bill Alexander: We do not have children yo-yo-ing in and out of care, as you identified in your report. We are much clearer that, when children become accommodated, that is because it is the appropriate step to take and other options are either not available or there is a good reason why we should not do those things. It might be that we have attempted certain interventions that have not been successful, so the person becomes accommodated, but things are much clearer and people are much firmer. Our social work case loads now are much firmer and social workers are not wrestling with a whole range of cases, some of which, frankly, used to be inappropriate. They are able to concentrate on critical work with the most vulnerable.

Clare Adamson: Mr Alexander, GIRFEC will not be in the statute book until the bill goes through, so the situation in which you have been piloting it is anomalous. I would like to ask specifically about information sharing and whether Highland experienced any difficulties using the current legislation to share information and whether, given your experience, you feel that sections 26 and 27 in the bill on information sharing are required.

Bill Alexander: I have watched the webcasts and seen some of the detailed discussion of particular terminology. I will perhaps not get into that, but will try to answer your question from the point of view of a practitioner. As I understand it, what is proposed in the bill is what the Information
Commissioner’s Office regards as best practice and I suggest that that is what we do.

As a practitioner, I will emphasise two points. First, people have always both shared information and had concerns about sharing information. In the old days, that led to information not being shared when it should have been. It also led to a scatter-gun approach, because when people thought that they should pass something on they were totally unclear about who they should pass it to, so it was often passed on, not only to every agency but also within each agency to a range of different people. When I started in my post as a head of children’s services, 12 years ago, I would get an email every day about someone who had a concern about a child. That is totally inappropriate. It reflects a blockage in the system. Someone does not know where to go and therefore sprays the gun so wide that the message even goes to senior managers who do not know the first thing about that particular situation. That is entirely inappropriate.

The other thing that would happen was a referral to the children’s hearings system. Someone had a concern and thought that was how to proceed—that if you had a concern you made a referral to the children’s hearings system. That would be posted and, with due respect to the children’s reporter, it would sit in the children’s reporter’s inbox for a few days, perhaps even a couple of weeks. The children’s reporter would get around to looking at it and if there was some merit in it, would probably consider that they should ask for reports. They would write a letter to a range of different agencies, appropriate or not, and in the process of asking for the report, someone who should have that information might work out that there was a concern there and take it a bit further. That is how we used to share information. We now do it directly through named persons and lead professionals.

The lead professional issue is very relevant and if there is an opportunity to talk about it I would like to do so.

I suggest that we have actually done what the bill proposes. Why then does it need to be in legislation? Well, it is not happening elsewhere, is it? GIRFEC was published in 2006. It works. It is evaluated. Yet here we are in 2013 and children in Scotland are still not safe and their wellbeing is not being protected because it is not a fundamental entitlement that children and families can expect in Scotland. If the only way to get it done so that all children get that entitlement is to put it into legislation—even though we have done it without legislation—I accept that we need the legislation.

Clare Adamson: Was the pilot able to look at the wellbeing concern as well as child protection in terms of implementation at this stage? Have you any insight to give us on that question?

Bill Alexander: We do not use the word threshold in Highland but I guess that you mean the word threshold.

Clare Adamson: It is obvious that the bill brings in that idea of wellbeing as well as child protection. Was wellbeing included in your training for the information hearings?

Bill Alexander: We have great respect for the phrase child protection, but it suggests an awful black line—either you are on this side or that side. That is not the real world. A child is not on one or the other side of that black line. Children live in families and communities, they have a range of circumstances, a range of protective factors and a range of risk factors, and you have to look at the whole picture. If you wait until you believe that someone is on the cusp of crossing that black line it will be very difficult to address some of the risk factors in the child’s life.

12:00

That said, you do not share information unless you need to and, unless that information is about significant harm, you should never share it without the consent of the family and, depending on the age, the child or young person. There has to be a point to it; you do not rush around sharing information just for the sake of it. Mostly, you will share it because, with the family’s agreement—and indeed often at their request—you are seeking support, help or advice from another agency. Occasionally, you will need to share it because you need to take radical measures to protect a child and, in such circumstances, you do not stop to ask for consent. You simply have to take that serious action.

The whole information-sharing process has to be built on, first, the reasons for sharing that information and, secondly, the consent model, to ensure that you are doing all this in partnership with the family, except where there is risk of significant harm.

Liz Smith: Many people think that Highland’s success is down not only to ensuring that the local authority’s different departments work pretty seamlessly, but to the very good culture in the local authority. Indeed, that is perhaps one of the reasons why you have not required legislation in this area. Do you think that other local authorities have not performed so well because they have not had the same culture?

Bill Alexander: I take it that you want me to stay friends with my colleagues up and down the country.
It is a very good question. You are absolutely right to suggest that the implementation of a practice model cannot be untangled from the relationships between services, leadership in different services and how front-line practitioners already get on and collaborate. Coming back to an earlier question on outcomes, I think that a number of factors, not just the practice model, should be taken into account but the model itself is about the front-line delivery of a joined-up service. This is not just about the culture in the leadership of agencies but about people getting together on the front line, and the fact is that people in deprived communities or on remote islands in Highland are used to getting together, collaborating and getting on with things.

As for the question why this has not happened elsewhere in Scotland, the answer is that such an approach is difficult and requires a certain amount of political bottle. Indeed, the committee has called—in the report that it published this week— for leadership from Government. What we did in Highland required political bottle by NHS Highland and Highland Council, in particular, to decide to go down this road. It is easy just to go in every day, do things as they have always been done, cross your fingers and hope that it will all be all right; it is very difficult to develop a new practice model, and we had political support in doing that.

Northern Constabulary was a major player, too. We had a very effective relationship with the constabulary’s chief constables, who also had the bottle and passionately believed in improving outcomes for children and families. In addition, we have a very active third sector and good engagement with children and families. We had a number of things in our favour, but those things might not exist everywhere else. In any case, it is not for me to sit and analyse the situation in other parts of Scotland.

**Colin Beattie:** The committee has previously taken evidence on the single child’s plan and, indeed, concerns about the sheer volume of assessments, plans and so on that are already in place and how the plan will bring all those together. I am greatly interested in hearing about your success in bringing together those things in the Highlands. Have you encountered any difficulties in achieving that or has the process been relatively easy? Where do the other plans sit in relation to that central plan?

**Bill Alexander:** There are no other plans—there is only one. However, it is a really great question.

When in 1980 I started work in a busy children’s unit in Glasgow, I did not understand why the more complex a child’s life was the more plans they had. The child could have a looked-after plan; if they were on the child protection register, they could have a child protection plan; if they had a disability, they often had a respite plan; and they also had an education plan and a health plan. That was at the very least; the more complicated their life was, the more different plans they had.

Moreover, there were different processes around those plans. We would meet to look at a looked-after child plan one week, and the next week, we might meet to look at the child protection plan, potentially with a different group of people, some of whom would not know what had been decided at the previous week’s meeting. The process was complicated, and was very difficult to manage.

We had to change all that and move away from it. We talk about the single plan, but the single process is critical. There were half a dozen different processes to go through, including the education review, the health review, the learning disability review, the looked-after review, and the child protection review. We had to consolidate all those processes into a single process.

We have a plan, and I have the format for it in front of me. We spent a lot of time getting to version 1 of the plan, although it was not easy. We ran it for a year, after which we decided that we wanted to modify the plan and reduce its size. Version 2 went live about six months ago.

Stopping the processes was much more difficult. I remember going to a meeting with teachers in Wick and saying, “Single plan, single process”; they said, “That’s fine, but why have I got all these other meetings in my diary?” I told them that it was because they put them there and they should take them out. They should not have them. As well as introducing the new, we have to get rid of the old. I could not take those meetings out of those teachers’ diaries, but they had permission to stop it. That was very difficult.

The committee will probably come on to the co-ordinated support plan, so I will talk about that now. The advice that we got at the start was that we could include the co-ordinated support plan in the single plan. There are only some elements in the statutory guidance that are absolutely critical to the plan. Version 1 of the plan had that and a co-ordinated support plan was embedded in the plan. The plan is now modular and there is a page for the individualised education plan. If children also need the co-ordinated support plan, the additional demographic detail is in there. It works; it is fine.

I have talked to families and colleagues up and down Scotland, so I know that people still struggle with the requirements of the legislation on additional support for learning. There are worries that when it comes to tribunals, there will be difficulties and conflict. That might be right,
because it looks as though we currently have two sets of legislation.

I also know that parents want to be reassured. Before we rolled out getting it right for every child, there were 250 children in Highland with education plans. There are now 1,200, so there are 1,200 plans whereas there were 250 of the old model, including the CSPs. We now have 1,200, although we believe that we should have 1,500. Some children in Highland schools are still getting additional support for their learning without having a plan. That should not be happening, but we are up to about 70 per cent and we want to get to 100 per cent. That is 1,200 plans in the new version as opposed to 250 old-world education plans.

Colin Beattie: You have certainly picked up on my next question. What about the looked-after child plan?

Bill Alexander: That is in the plan. The plan for a looked-after child will be a complex document that is prepared by a lead professional, who will be a social worker. If a child needs a little bit of additional support in school, the plan will be thin, proportionate, and prepared by the named person in the school. The format will be the same.

When a child is assessed for the first time by a health visitor, they get a single assessment, which goes with them and is built up throughout their life. We never move away from the three sides of the my world triangle. Every practitioner uses the same assessment framework. Some practitioners are specialists. A psychologist or psychiatrist will do additional specialist assessment, but every child has a core assessment.

Colin Beattie: You have achieved all this without the need for legislation. Do you think that the bill would benefit from anything further to ensure or to encourage integration of the different plans, or is that covered already?

Bill Alexander: A couple of things that are in the bill around getting it right for every child are not entirely helpful. We have not managed to make assigning a named person after school-leaving age work, nor are we convinced that that is desirable.

We suggested a couple of elements that should be in the bill. One of those is the assessment framework, but I do not think that that needs to be statutory. The second element is the lead professional. The named person is absolutely critical, but the named person does not deal with the more complex and vulnerable children; that has to be a lead professional.

Under the GIRFEC guidance, the named person would support early interventions but as soon as more than one agency got involved the coordinating role would move to a lead professional. Moreover, with more complex needs such as those of children who are looked after, children with significant health needs or children on the child protection register, a lead professional would always be involved.

We contract with a number of third sector partners to deliver the lead professional role for us. Going back to an earlier point, I should say that we use Barnardo’s for our throughcare services because the approach just does not work with a social worker. After all, some social workers still wear suits and ties as lead professionals for a 17 or 18-year-old who has just left care. It is much better to leave such work to a third sector agency.

We have been told that it is more difficult to draft a lead professional provision because the role is multi-agency and more complex, and that the named person role is more important. I agree entirely, but if we are legislating for the child’s plan why can we not legislate for the lead professional who prepares the more complex child’s plans? As for any challenges that might emerge, one of our two or three particular challenges is the threshold at which the named person becomes a lead professional.

Let me talk you through this: a school headteacher who is also a named person can call on a social work resource and the social work manager cannot say no to that request. However, if, after that social work resource goes in, it turns out that the situation is more difficult, more complex or worse than had been thought and will take a bit more work, that responsibility might need to be passed to a social worker. We have various mechanisms in place to deal with that transfer point and to check, say, that the headteacher is not getting involved in stuff that is not really their business and which actually goes far beyond what you would expect that person to handle. If the lead professional is not legislated for, we will also need to ensure that the named person does not stay involved for too long.

Colin Beattie: I am interested in hearing more about what you said did not work with regard to the named person. I am trying to remember what you said, but I believe that it had to do with older children or older young people.

The Convener: I think that Mr Alexander mentioned young people post-school.

Bill Alexander: I do not understand how my daughter, who is 17 and doing performing arts in Manchester, could have a named person; she will not need or want one. There are young people who are in the system, and we have proportionate ways of managing them through it. For example, someone with an activity agreement has an activity co-ordinator and a looked-after child who has left care has a lead professional through
Barnardo’s as well as a multi-agency plan. I do not know why a named person would be needed for most children who have left school and, as I have said, I do not think that they would want one. Indeed, I think that Ken Norrie made similar comments to the committee.

Colin Beattie: Would a certain proportion of young people benefit from having a named person for a longer period?

Bill Alexander: Yes.

Colin Beattie: Do you identify them?

Bill Alexander: We endeavour to. Some young people who leave school still need additional support. Many of them will continue to have social workers—they will pass from a children’s social worker to an adult social worker—while others might be supported in youth work, which is increasingly focusing on vulnerable groups as well as universal services. We have a process in which youth workers support certain groups of young people in certain communities. A range of young people should still need that kind of support post-school, but I am not sure whether it is a workable universal solution.

Jayne Baxter (Mid Scotland and Fife) (Lab): Thank you for your submission and, in particular, for the comments on the named person role. I found them very simply written and easy to understand, and they informed my understanding of the issue.

If the named person is, say, a health visitor with a heavy case load, the headteacher of a large school—or a council official during the school holidays—will they really be able to know the family in question well? Will those resource implications weaken the role?

Bill Alexander: This comes back to Mr McArthur’s second question, which was on the resource issue for sustaining the model and which I did not get round to answering.

There are perhaps two bits to this question. First of all, we would all like more resources and there are always people who will take any opportunity to say, “Let’s get more resources.” We all do that; indeed, I do it every opportunity I get. However, that should not stop us doing things that are right anyway. We do not ask for resources for GIRFEC—we just do it with the resources that we have. At the same time, we are also trying to recycle resources and turn them into preventative resources. We can invest all the money in the children with high-level needs—and we should—but investing in those children will not prevent more children from having those high-level needs. Therefore, we should always invest in more.

12:15

Being the named person is the day job. It is what the health visitor does when she carries out her assessments and it is what the school does when it undertakes its examinations, assessments and reports home—they are being the named person. That is the role. It is what the school does when a teacher picks up the phone to a social worker and says, “Can we talk this through?” That is being the named person—it is the day job. You would not say that schools should not do that. Highland schools and Scottish schools have always done that.

A second issue is whether we have enough health visitors and the right staff in our schools. Highland Council believes that we should have more health visitors. It has had responsibility for health visiting since April last year, and I was delighted when one of its early decisions, on the back of the earliest collaborative work, was to invest an additional £2 million in those services. That is important, as it will enhance what we can do in our services for children. It is not about the named person; it is just that we think that it is a valuable service that will make a significant difference.

I do not accept the argument that it is somehow possible to get by without a structured practice model, with lots of meetings, with half a dozen different plans and without knowing what the person in the next office, never mind the next service, is doing with the same child, and that that is somehow more resource effective than having a structured model in which there is clarity about who has responsibility and about where information goes, as well as a single plan, and in which, if a meeting is needed—frankly, we took half the meetings out of people’s diaries—it takes place once and is not repeated the next week with another bunch of people. How anyone can argue the advantages of the ad hoc and chaotic system over the structured and rational system, in terms of resource allocation, I do not know.

I will always argue for more resources. My job is to use the resources that I have as effectively and efficiently as I can, and that is what the practice model gives me. I heard one contributor say that in Highland we have reduced management times in schools. Yes, we have and that is regrettable, but we do GIRFEC. We do GIRFEC although we have less management time in schools, and thank God we do. If we were still doing things the way we used to, we might have gone under.

Jayne Baxter: There will be times when a named person picks up on concerns that are critical of parents. How have parents in Highland reacted when a named person has collated or passed on information that has questioned parents’ actions or capacities?
Bill Alexander: Some courageous conversations are now happening that probably did not use to happen, and that has been challenging for teachers. Unless that concern was about possible significant harm, teachers would always want to discuss that with the family. It is particularly difficult in smaller communities where people know each other, but teachers know that that is their job and they know that it works. It is also very helpful for them in doing their job.

A previous minister, Adam Ingram, asked to come out to schools because he really did not believe that the teachers would welcome the named person policy and he wanted to meet some of them. I took him round a few schools, and he asked, “How are you coping with all the information that you’re now getting, and how are you coping with having to talk to the families about these issues?” The teachers looked at him and said, “Don’t be crazy. It’s much easier to know than not to know.” It is much easier to understand what is going on and be able to respond to it than either not to be able to respond or to respond by doing the same thing.

One thing that transformed the situation overnight for teachers was the introduction of the police concern forms. Teachers in Highland, like teachers elsewhere in Scotland, often tell me that things happen on a Monday morning that are out of control and cannot be predicted because the children have been at home, back in the communities, over the weekend. Wednesdays, Thursdays and Fridays are pretty predictable, but on Monday they have to pick up whatever has gone on in the family or the community at the weekend. We have had suicide attempts, serious violence and all sorts of things go on, and the teachers have had to work in ignorance of what has happened.

The school now knows on the Monday whether there has been a significant situation for a family over the weekend and whether the child has had a traumatic experience. It can then decide whether it is something that it should discuss with the family, whether it can be left or whether it is a significant harm issue on the basis of something else that it knows and it should be passed on. The school is much happier having that information and being able to make that judgment.

Jayne Baxter: Do you think that acting as a named person and being a point of contact is having an influence on and changing the day jobs of people who have that role? The bill requires named persons to support, advise and help children and families. That is more than just being a point of contact.

Bill Alexander: Teachers, health visitors and midwives tell me that it does not change what they do but it changes how they are regarded. That goes back to how the role developed. We had the child’s plan, the lead professional and the super-social worker, but teachers and health visitors said, “Actually, it is us who know children and families, talk to the parents and deal with the basic issues. What do you call us?” Families said, “We don’t want a social worker, with due respect to social workers. We want to go in and talk about this with the teacher who teaches our child in school. What do we call them?” The phrase “named person” came up. The other thing that teachers said was, “If we say something to a social worker, we want it to be valued. We’re passing it on because we have a relationship with the family, we’ve discussed it with them and we believe it’s important.”

Having the named person role has not changed what people do, but they feel that it has empowered them. I have often used the example of a pre-school child—I will try to say this without mentioning any personal circumstances—whose behaviour was challenging. The parents were distraught and distressed and they were doing the phoning round of every agency saying, “My child’s not bad. Something else is going on. Please listen.” The behaviour continued, but when they spoke to the health visitor, that person felt empowered to draw on specialist clinicians—people senior to her—and say, “There’s something here. I believe there’s a different issue.” A hearing impairment was diagnosed and it was addressed. The child does not have bad behaviour any more. That was the power of the named person.

Jayne Baxter: Thank you.

Neil Bibby: To sum up, what do councils need to do other than to follow the letter of the legislation in implementing GIRFEC? What else is required from local authorities to ensure that GIRFEC works and that we do get it right for every child?

Bill Alexander: There are other things that we need to crack. With due respect to all my colleagues, there are still some who prefer to work much more autonomously, sometimes including specialist clinicians such as paediatricians and psychiatrists. We do not yet have the full family round the child. We need to persevere with that. General practitioners would never be named persons, but we need to do more work to ensure that they fully understand what it is all about and can use the practice model to the greatest benefit of the child and family.

Going back to the information sharing issue, I think that our greatest failure as authorities, agencies and—I have to say—the Scottish Government over the past 10 years has been our failure to achieve electronic information sharing. Because I have access to an electronic social work system, from my desk I can look at the plan
of any child on the child protection register, but a colleague in a different discipline who might need to know what is happening with that child today cannot do that. They will have a copy of the latest plan, but someone will have had to go to the computer, print it out, staple it, put it into an envelope, take it to a post office and post it, and the person cannot be quite sure that the plan that they have in their drawer is the latest one. That is unsafe and we really have to address it. We all tweet and Facebook and watch football on our phones, so I do not understand why we cannot do that.

There is still much to be done. The key components in getting it right are in the bill. I would have liked to have seen the lead professional there, as that is critical. I think that Scotland is now using the assessment framework, but it is important that we all use it. Scotland has something that works and we should be proud of it, and the bill will take us forward significantly.

**The Convener:** Thank you for that explanation of what is happening in Highland and the pathfinder project that you have been involved in.

I suspend the meeting briefly while we change panels.

12:24

*Meeting suspended.*
Present:

George Adam     Clare Adamson
Jayne Baxter     Colin Beattie
Marco Biagi (Committee Substitute)  Neil Bibby (Deputy Convener)
Stewart Maxwell (Convener)   Liam McArthur
Liz Smith

Apologies were received from Joan McAlpine.

**Children and Young People (Scotland) Bill:** The Committee took evidence on the Bill at Stage 1 from—

- Tam Baillie, Scotland’s Commissioner for Children and Young People;
- Juliet Harris, Director, Together;
- Alan Miller, Chair, Scottish Human Rights Commission;
- Sam Whyte, Domestic Policy and Parliamentary Manager, UNICEF UK.

**Children and Young People (Scotland) Bill (in private):** The Committee reviewed the evidence heard at Stage 1.
The Convener: Our next agenda item is continuation of our evidence taking on the Children and Young People (Scotland) Bill. I welcome back Marco Biagi, who is here as substitute for Joan McAlpine.

I also welcome the panel: Tam Baillie is Scotland’s Commissioner for Children and Young People; Juliet Harris is director of Together; Alan Miller is chair of the Scottish Human Rights Commission; and Sam Whyte is domestic policy and parliamentary manager for UNICEF UK.

This morning, we intend to explore a number of themes, including the duties that relate to the United Nations Convention on the Rights of the Child, the extension of the children’s commissioner’s powers, the named person and information sharing. Those will be our main areas of interest, although other issues might pop up.

We will start the questioning straight away, because we have a lot to get through this morning, including some budget scrutiny. I invite Jayne Baxter to begin.

Jayne Baxter (Mid Scotland and Fife) (Lab): Good morning. I begin by asking the witnesses whether they think that implementation of the United Nations Convention on the Rights of the Child requires that it be incorporated into Scots law.

Tam Baillie (Scotland’s Commissioner for Children and Young People): I will kick off.

First, I welcome the Scottish Government’s intention of further embedding the UNCRC in the legislation, although—as my written submission makes clear—I think that the end point of that process should be incorporation. In fact, I have called on the Government to give us a road map to incorporation. The reason why is quite simply that I think that it will lead to better outcomes for children and young people. I have given some examples in the supplementary evidence on leaving care. The early age at which young people leave care is an issue that has taxed the committee. If UNCRC were to be incorporated into Scots law, it would be much easier for young people to seek redress when they leave care.

I know that the committee has had legal opinion—with respect, you have had one legal opinion—that questions the feasibility or the appropriateness of having the UNCRC incorporated into law. That is one legal opinion among many. Other lawyers and academics are of
the view that it is possible to incorporate the UNCRC into Scots law.

However, it is a complex issue for a number of reasons. First, because there are 54 articles in UNCRC, careful consideration would have to be given to how we could transpose our international obligations into Scots law and embed them appropriately and effectively.

Secondly, the articles cover a range of responsibilities, some of which are devolved, such as those that relate to education and health; some of which are devolved and reserved—for example, Westminster and the Scottish Parliament both have powers that relate to the standard of living—and some of which are clearly reserved, such as those that relate to asylum seekers. Another complication is that consideration would need to be given to what means of redress, in the event of breaches of the UNCRC, would be built in.

I have looked at the evidence, and I think that it must be quite difficult to make sense of the conflicting views on incorporation. The committee could use its report to suggest a parliamentary inquiry into the feasibility of incorporation of the UNCRC, which would provide the basis for teasing out some of the differences of opinion, and would allow proper consideration of incorporation rather than just seeing it as part of a complicated and wide-ranging bill. That is my first point.

My second point is about the ministerial powers. I have already given evidence that that element of the bill is rather weak, and the committee has heard evidence from others who concur with that perspective. The bill is weak on that because there are so many areas of discretion that it is difficult to see how the ministerial duty would be enforceable if it was not upheld.

We should go back to the UNCRC and look at the articles that could reasonably be included in the bill. For example, we already have “best interests” in our legislation because it is narrowly defined in the Children (Scotland) Act 1995. Best interests could reasonably be considered as something that could become part of the ministerial duty. We already have practices in Scotland that mean that the views of children and young people are sought and are seen to be relevant to the development of policy and practice, and the views of children and young people could reasonably be part of the duties that are included in the bill. In fact, I am giving the committee advance notice of amendments on which I would be prepared to do some work for stage 2.

My final point—

The Convener: Very quickly please.

Tam Baillie: The bill’s stated intention is that Scotland should become “the best country in the world for children to grow up in.” The Scottish Parliament has a proud record on children’s rights. There is my institution—Scotland’s Commissioner for Children and Young People—and the Scottish Human Rights Commission. Last week, I was at a meeting in the European Parliament as part of the new network of European ombudspersons and children’s commissioners, and I was at the table with members of the European Parliament who were thumping the table and saying that we need to make sure that the UNCRC is as firmly embedded in our legislation as possible. In their view, that is what will make the difference to outcomes for children and young people across Europe. I hope, therefore, that we can have much more discourse about the UNCRC and the potential for it to become more firmly embedded than some of the measures that are currently within the bill.

The Convener: Thank you. Do other witnesses wish to comment?

Professor Alan Miller (Scottish Human Rights Commission): Thank you convener and members of the committee for inviting the SHRC.

I want to pick up on the question and on Tam Baillie’s answer, with which I agree. This committee, the Parliament and the Scottish Government need to engage much more with the international human rights system, including the UNCRC, and with the experience of other countries and what they have done.

The part of the bill that we are debating and its hesitancy or reluctance to engage with the international human rights system is not of these times. It is an inhibited and inward-looking approach to the best way of promoting and protecting the human rights of children. I say that the approach is not of these times because we in Scotland are at a time when everyone is looking at the kind of country that we want to be in the future. What kind of Scotland do we want to be? What is children’s place in it? What is the place of human rights in it?

Even if after the referendum we have more devolution, we need only look down the road to Wales, which has, under devolution, taken a more positive approach through a duty of due regard to the UNCRC. If there is a yes vote in the referendum and we have independence, Scotland will be a member of the United Nations; we will have to be quite fast in understanding what the UN, the human rights system and the UNCRC entail, and what our obligations are. Even under the Scotland Act 1998, we have an obligation to observe and implement the United Kingdom’s international human rights obligations. We really ought to be thinking bigger. The bill and its retreat
from a previous consultation on incorporation of the UNCRC is not of these times.

As Tam Baillie said, this is an opportunity for us to get our hands much more around the human rights system and not to follow the path that the United Kingdom has taken, which has been to refuse repeated recommendations from the UN to incorporate the UNCRC, as well as other international human rights obligations. We should be much more outward and forward looking, particularly in these times.

**Juliet Harris (Together):** I echo what Tam Baillie and Allan Miller have said. I agree that now is the time for the Scottish Government to be ambitious about what we want to achieve for our children and young people. As you know, we keep on bringing incorporation to the committee's and to everybody's attention. If we are going to make rights real, and if we really want Scotland to be a better place in which to grow up, we need to be brave and to show that commitment in legislation.

We keep talking about incorporation because we see it as the way in which we can have a strong legal framework that enables the protection and provision of rights for children, and their participation in civil society and the decisions that affect them. Systematic, accountable and transparent consideration of children's rights is essential if we are to succeed in making children's rights real.

We want us all to have a common knowledge and understanding of what children's rights are and what they mean. It is important that adults, as well as children and young people themselves, understand children's rights. We need to know whether we are making rights real and what impact legislation will have on them. We also need to know that clear and consistent monitoring frameworks are in place so that we can see what impact legislation is having on children's outcomes.

For us, incorporation is the way in which we will achieve those aims, but we can take many steps on the road map towards incorporation. I urge the committee to consider some of the steps that can be taken, to look at the big picture and to be ambitious. If we are going to make rights real for children and young people, we have to look at what we are trying to achieve through incorporation and try to include that in the bill.

**Sam Whyte (UNICEF UK):** I will make a couple of brief additional points. First, UNICEF UK last year did a big piece of research on international examples of incorporation. One reason why was so that we could be clear about its impact on children. After all, that is why we are all here and that is what it is all about. We found that when countries had incorporated the UNCRC or had in place legal measures on children's rights, that made a real difference because there was a cultural change and a legal shift for children whereby policy and legislation were developed differently and had a much stronger impact on children's services at local level.

There are examples of incorporation of the UNCRC in a number of countries, and there are examples of incorporation of its general principles. The clear message from the research is that the decision to give legal force to children's rights, whatever form that force takes, is the decisive factor in making a difference for children.

Obviously, UNICEF UK supports direct incorporation of the convention. We are of the view that civil and political rights, and economic, social and cultural rights are justiciable. I know that there have been some questions about that, but the UN Committee on the Rights of the Child is clear that economic, social and cultural rights can as appropriately interpreted by the courts as civil and political rights, so incorporation is certainly something that we would like to happen.

Briefly, on the duties in the bill, the fact that the Scottish Government is putting forward a statutory expression of children's rights is very important and it is not usual: across the world, state parties fail to do that. That principle is therefore very important in itself, but the duties that underpin that expression need to be strong and we feel that there is a long way to go in the bill.

**Jayne Baxter:** Which individual rights do you think are not already reflected in some way in domestic legislation?

**Tam Baillie:** I gave two examples of best interest. Children's best interests are paramount through the 1995 act, but we are trying to look much wider than that. To its credit, the ministerial duty will be across all ministerial functions.

**The Convener:** I am sorry; I would like you to clarify something. Jayne Baxter's question was very specific: she asked which parts of incorporation are not already reflected in some way in domestic legislation. You said that you had given an example from the 1995 act. Surely that means that it is already reflected in some way in domestic legislation.

**Tam Baillie:** Yes, but that does not apply to all matters concerning children; it concerns matters that are covered in the 1995 act. So, the intention—

**The Convener:** So, the UNCRC is reflected in some way in legislation.
Tam Baillie: It is reflected in a very narrowly—that was the word that I used—through the 1995 act. The UNCRC is not considered, for instance, in planning applications; the best interests of children do not have to be taken into account in such matters. The expansion of the best-interests criterion across all our considerations of children would be very worthwhile. You do not have to consider the best interests of children in setting the budget; you will simply discuss the budget. For a host of areas, if we really and truly want to put children and young people at the centre of our policy making and concerns, we must have a much wider perspective than is shown in how we have incrementally built up our legislation. That refers to just one of the UNCRC’s articles, but it is one that I feel quite strongly about.

The views of children and young people are rarely embedded in legislation in a consistent way, but it is commonly accepted that our practices are about listening to the views of children and young people. We are in a different place now compared to where we were 10 or 15 years ago, but that is not properly reflected in all our statutes. However, there is an opportunity to include that in the bill as part of the ministerial duty. That would be a much stronger basis than anything that exists just now. Those are just two examples.

The Convener: Does anybody have a view that differs from that? No. Okay—I want to keep this moving along because we have a lot of areas to cover. Do you have further questions, Jayne?

Jayne Baxter: I am happy with what has been said.

Clare Adamson (Central Scotland) (SNP): I have a question for Mr Miller, who opened up the hypothetical situations for the future. At the moment, we obviously have a devolved Government, so certain aspects of legislation are not within the control of the Scottish Government. However, you raised the concern that the United Kingdom Government might go in a different direction, and there have been reports this week that it might actually drop the European convention on human rights. How will that impact on what we put in legislation in Scotland in terms of the UNCRC?

Professor Miller: Under the Scotland Act 1998 as it stands, there is an obligation on the Scottish Government to observe and implement the UK’s international human rights legal obligations. The UK Government has said—or, at least, part of the coalition Government has said—that it will go into the next election with a manifesto commitment to repeal the Human Rights Act 1998 and possibly to withdraw from the European convention on human rights.

Liam McArthur (Orkney Islands) (LD): Excuse me, but it is the Conservative party that has made that commitment.

Professor Miller: Yes—I said “part of” the UK Government.

Liam McArthur: Yes, but it is the Conservative Party that has made that commitment.

Professor Miller: Yes.

Liam McArthur: Just for the record.

The Convener: I think that was what Mr Miller said.

Liam McArthur: He said “part of the coalition Government”.

I like to be explicit about that.

George Adam (Paisley) (SNP): You are a bit touchy.

Liam McArthur: Well, I am no more touchy than you are.

Professor Miller: If that is an indication that the Liberal Democrats are clearly not going to take that position, I would certainly welcome that.

Liam McArthur: Nick Clegg made that explicit at our conference a week ago.

Professor Miller: I would certainly welcome that. However, if a future UK Government’s position was as I described, that would not take away the responsibility of Scotland, if it continued to be a devolved part of the UK, to do what the Scotland Act 1998 says, which is to observe and implement existing UK international legal obligations, part of which is to implement the UNCRC. In all devolved areas, it would be open to the Scottish Government—and it would be its responsibility—to take a different direction from that of future UK Governments by doing more to implement the rights of children.

The Convener: I would like clarification on a couple of points. Some witnesses have called for full incorporation, but how can we possibly fully incorporate the UNCRC under the current settlement? It has already been stated that some requirements are devolved, some are reserved and devolved, and some are reserved, so how could we fully incorporate the UNCRC? It does not seem possible to me.

Tam Baillie: You can incorporate the UNCRC as far as the devolved powers allow. However, I suggested that we have a parliamentary inquiry in order to tease out what can be done under the current constitutional settlement. The timing of such an inquiry might well open up other possibilities.
Parliamentarians—in particular, this committee—have an opportunity to consider seriously the steps that we could take towards incorporation. You are right: that is the very reason why I have highlighted the different levels of devolved and reserved powers.

That is not the only matter which makes incorporation of the UNCRC complex. I would warmly welcome the committee’s recommendation of the UNCRC. It would help us to map out what can and cannot be done within whatever constitutional settlement we reside.

Sam Whyte: The Human Rights Act 1998 is domestic law. If that act is repealed—we strongly hope that it will not be because it applies equally to children and adults—the international obligation would still apply, unless the United Kingdom Government were to withdraw from the European convention on human rights, and it would certainly still apply to the UNCRC.

It is probably worth noting that the UNCRC would need to be incorporated with regard to devolved matters, and that most things that would affect children in their day-to-day lives are devolved matters. It is quite important to remember that. The UK Government has also recognised that children should be able to raise concerns, whether they relate to reserved or devolved matters, with the Scotland’s Commissioner for Children and Young People, because children do not care about that distinction, but are concerned with what goes on in their lives now. There is an element of flexibility there, as well.

The Convener: I have one final question before I bring in Neil Bibby. Let us take the right to play as an example. Are you really saying that if we incorporate the UNCRC in domestic legislation and there is then a challenge, with somebody saying that their rights were somehow breached because they were forbidden to play, or their play was stopped, it would be a matter for the courts to decide?

Tam Baillie: I would not start with the challenge. I would start with the impact that that right has on our approach to play.

The Convener: That is not my question. The question is: are you saying that if the right to play is incorporated in domestic legislation in the way that seems to be suggested and there is then a challenge, that would be a matter for the courts to decide?

Tam Baillie: As an end point. I will go back. The purpose of having a rights—

The Convener: That is a yes.

Tam Baillie: It is a yes, but the real impact will be on the approach that we take to children’s exercise of that right to play. As of now, to be honest, we pay lip service to children’s access to play, particularly that of children with disabilities. They come at the tail end of every consideration.

Yes, the end point may well be a right of redress through the courts, but the real impact will be on the way that we approach play and serve our children by paying proper attention to cognitive and social development through play. We do not pay nearly enough attention to that. In fact, there has been general guidance to state parties that are signatories to the UNCRC on how they can give better effect to that. The real impact will come not through whether this is challengeable through the courts but through how we deal with our children. It is how we make sure that their developmental needs are met through, in this instance—

The Convener: I am sure that we accept that we have to look at both ends of the problem.

Tam Baillie: Yes.

The Convener: Although I accept what you are saying in terms of the cognitive development and rights of children, particularly disabled children, I am posing a hypothesis when I ask whether we are really saying that we want our courts to be involved in considering a potential breach of the right to play.

Tam Baillie: At the end of the day, rights of redress would be built in, but those would not determine what action we take to make sure that children actually enjoy that right to play. That will rest with policies and implementation at the local level. Effectively, the impact will be an improvement to the attention that we give, and how we deal with, children’s enjoyment of the right to play. That is the intention of the right—it is not to look just at the end point.

The Convener: I ask Sam Whyte to be brief as I want to move on. I just wanted to clarify that point.

Sam Whyte: In countries where children have enforceable rights, there is no evidence of a massive increase in strategic litigation or children going to the courts. It is rarely in children’s best interests to end up in a court environment. That would be looked into in relation to any roll-out of incorporation.

The Convener: Thank you.

Neil Bibby (West Scotland) (Lab): Concerns have been expressed in written evidence and this morning about the weakness of the proposed duty on ministers, which states that they must keep the UNCRC requirements “under consideration”. I hope that they do that at the moment. Stronger duties have been suggested, such as duties to have due regard to or act compatibly with the convention. What is your preferred duty, and what
would be the practical effects of changing the duty from keeping the requirements under consideration to the one that you propose?

Tam Baillie: I have already commented on that.

Juliet Harris: We need to look at the qualities of the duty that we want. We want a duty that gives children’s rights systematic, accountable and transparent consideration. We want to be able to see, when ministers are considering children’s rights, how they are doing that. Are they doing it in every instance? How are they accountable for children in their consideration?

We want to see not only the systematic consideration of children’s rights in ministerial decision making, but the impact of that systematic consideration in the decisions that they make around children, and how that decision making translates in terms of policy, legislation and service provision.

I cannot go into detail on exactly what duty we want, but it is really important that, whatever duty we get under the bill, it requires systematic consideration of children’s rights across all areas of policy making, including, for example, in relation to the environment and transport, and not just those things that directly relate to children. Ministers should be held to account so that we know what has been involved in their decision making, and we need to see the results and what they found out through the decision in the practical application of legislation.

From our perspective, a duty to act compatibly with the UNCRC would be a strong duty that had all those qualities.

Professor Miller: It is a good question that points to what we said earlier about the need to have a more open, honest and mature debate about the different ways in which incorporation can take place.

We are fortunate in Scotland in that we have quite a lot of experience of devolution through the Scotland Act 1998 and the Human Rights Act 1998 and how they combine as part of the existing constitutional arrangements in Scotland. There has been a lot of learning and, by and large, it would be agreed that the combination of the two acts has worked pretty well. The Parliament is used to the requirement to comply with the European convention on human rights in its legislation, and public authorities understand their duty to act in a manner that is compatible with the ECHR, as do the courts.

A duty to act compatibly with the UNCRC would be similar to the arrangements under the Human Rights Act 1998 in relation to the European convention on human rights. That is just one approach and we need to have an open and mature debate and learn from the experiences of other countries, but given our experience under devolution, that is one path to be explored.

Sam Whyte: UNICEF UK would like a stronger duty on ministers across Government. As Juliet Harris mentioned, the duty needs to be meaningful and a real departure from the status quo. Fundamentally, we want a duty that covers both process and outcomes. A duty to act compatibly with the UNCRC would work reasonably well, but there are other examples. The original duty that the Scottish Government proposed was a due regard duty. That reflects the legislation in Wales, which has had a transformative impact on the Welsh Government and its approach to children’s legislation and policy.

10:30

There are many types of duty, but the principle is to get systematic consideration of children’s rights not only in areas that deal with children’s services but in areas that do not do that day to day. The key thing for us is to ask about the underpinning mechanisms that make the duty work in practice. At the moment, it feels as if those things that will achieve that systematic consideration, whether that is a child rights impact assessment or a really detailed reporting duty.

The bill asks ministers to report on what they have done to implement the convention, so it does not monitor how they are delivering the duty, which is a weakness in holding Government to account. In Wales, one thing that has helped to roll out the duty and to make a difference across Government is a children’s scheme that sets out how the duty works in practice. We would welcome more clarity from the minister on how the consideration duty will work in practice. The wording is rather unusual.

Neil Bibby: Sam Whyte mentioned the original proposal in Scotland to have a due regard duty, as there is in Wales. Why does Wales have a due regard duty and we do not? He also mentioned the children’s scheme in Wales, and I understand that the Welsh also have child rights impact assessments and that UNICEF has called for those to be in the bill. What difference would child rights impact assessments have?

Tam Baillie: Your first question was why there is no due regard duty in the bill, which has to be a question for the minister. The Government produced a rights for children and young people bill, in which that was the main proposal, but now it is not in this bill, so I think that that is a matter for the minister.

The second question was about child rights impact assessments. We have consistently called
for such an impact assessment, because that would provide a better understanding of the impact of the Government’s proposals. I still say at this stage that I would encourage the Government to look at doing that; again, that is something that you might want to put to the minister.

I would like to add something about the ministerial duty, which I have already commented on. This is not just about a ministerial duty but about what happens at the local level. It is public bodies that make a difference and have the responsibility to do their best by our children and young people. It may be worth considering, at stage 2, how we can strengthen the duty on public bodies, because they are the ones that, day in, day out, either realise children’s rights or do not.

**Juliet Harris:** I would like to answer the second part of Neil Bibby’s question, about child rights impact assessments. As you know, we have written to the committee on behalf of Together and its members about the need to undertake a child rights impact assessment on the bill. We feel strongly that there is a need for child rights impact assessments to be introduced as routine, in relation to not just this bill but all future legislation, because that would ensure that any unintended consequences of legislation were considered, predicted, monitored and, if necessary, avoided or mitigated.

The committee has spent a lot of time talking about the named person and information sharing, and there is still a debate going on about where the balance lies between the child’s best interests, the right to privacy and the need to share information in relation to early intervention. That should really have been picked up earlier in the process, and it would have been if a child rights impact assessment had been undertaken in the early stages of the bill’s development. That is a key example to bring to the committee’s attention. It highlights the importance of ensuring that child rights impact assessments are introduced in the bill and are routine from now on, to ensure that children’s rights are considered in every piece of policy making and that those debates take place earlier on, when legislation is first put together, rather than at this later stage.

**Sam Whyte:** One of the interesting things about child rights impact assessments is that they are used as a tool worldwide. They are not a new concept and they are very much seen as a way to help develop policy that really works for children. They are used in Wales, and there have been some significant changes there, not least through the increased involvement of children in shaping and developing policy and in being engaged in budget discussions. They are also well used in Sweden, Norway and Belgium, where they have impacted on how Government works.

There are also examples of local child rights impact assessments, not only in Australia and Canada, for example, but here in Scotland. We are working with Glasgow City Council, which helped to develop a child rights-based approach to the delivery of services. Such ideas are being introduced elsewhere, in places such as Fife and Edinburgh. The process is fairly familiar to most people who develop policy or services.

**The Convener:** You will have seen the correspondence from the Government on the issue. Its view is that much of the work that would have been done through a child rights impact assessment has been done through the work that it has carried out—the consultations and all the other stuff that it has done. Why is it necessary to carry out a child rights impact assessment if all the work has been done but is just not called that?

**Tam Baillie:** I do not agree with that assessment. It would be much more comprehensive to work through the document methodically with regard to the proposals’ impact on children’s rights. If what you suggest is the case, it should be no problem for the Government to produce a child rights impact assessment on the basis of the work that it has already done. Despite repeated requests, it has failed to do that, and its reluctance to carry out a child rights impact assessment on the very piece of proposed legislation that is designed to progress children’s rights is mystifying. To me, it does not make sense that the Government has not produced a child rights impact assessment, although we have offered it plenty of assistance.

**Juliet Harris:** In the letter that we received from the minister in which she explained the reasons why a child rights impact assessment of the bill had not taken place, she listed the impact assessments that have taken place: the privacy impact assessment, the equalities impact assessment and the business and regulatory impact assessment. The one thing that is missing there is the specific needs of children and the impact of the legislation on children of different ages. The minister talks about the equalities impact assessment and the fact that the bill has been assessed according to its impact on lesbian, gay, bisexual and transgender children and children with a disability, but that does not take into account how the bill will affect children of different ages. The needs of a very young child are very different from the rights of a teenage child. The bill needs to recognise the different ages and stages of child development, and that would have been unpicked in a child rights impact assessment.

**Professor Miller:** I will comment briefly, as I know that the convener wants to move on to the
other areas that were identified at the beginning of the meeting.

I agree with the previous comments and will add one thing. On impact assessments, one of the lessons from how Parliament has operated since devolution is that, no matter who is in government, more transparency and more explanations need to be given to the public, not just about views received through consultation but about what the Government made of those views, what analysis it carried out and what reasons it has for agreeing with one point and not another.

As regards the Children and Young People (Scotland) Bill, one of the Government’s reasons for not doing more to incorporate the UNCRC was that that might have been in conflict with the perceived rights of parents under the European convention on human rights. A lot of consultation submissions, including one from the Human Rights Commission, said that that created a false conflict, and that the two instruments can be harmonised. If that is the reason for the Government’s being hesitant on incorporation, it should be taken off the table. If the Government does not agree with that, let us hear more of its reasons and arguments. We have not had that sort of engagement, transparency or open debate, and that makes it difficult to accept that there has been adequate impact assessment, even on something so straightforward. The issue has not been brought out into discourse, nor has satisfaction been given.

**Liz Smith (Mid Scotland and Fife) (Con):** Mr Baillie, I take you back to some interesting remarks that you made in your opening statement about one of the difficulties with the bill, which is that there is potentially conflicting legal advice. You said that it was perhaps inadvisable that the committee had taken only one piece of legal advice on this, and implied that other people who wish the UNCRC to be incorporated had different advice. Where do you think that there is a point of conflict between the advice that you have had and the advice that has been given to us on why it is not appropriate to incorporate the convention? I am not asking you to define—

**Tam Baillie:** No—that is okay.

**Liz Smith:** Where are the issues regarding a disputed legal opinion?

**Tam Baillie:** There has been very broad criticism that it is bad law, bad policy and bad practice, but that is simply not the case in the view of other academics and legal experts. As I said previously, I think that the committee should facilitate the opportunity for the conflicting views to come across. The advice that I have had is that it would be possible, within the devolved powers of the Scottish Parliament, to look at the incorporation of the UNCRC, notwithstanding the point that was raised earlier about the differences between devolved and reserved powers.

**Liz Smith:** Can I push you a bit further on that? When you say that something is bad law or good law—

**Tam Baillie:** It was not my phrase; I was paraphrasing.

**Liz Smith:** There are different interpretations of those words. Do you think that any of the legal opinion that we have been given about specific areas of the bill is not accurate?

**Tam Baillie:** The blanket statement about it being bad law, bad policy and bad practice has been made. The Government is hesitant—I hope that the committee is not—about going for something more substantial in terms of the UNCRC. I want to dispel that and give the committee confidence that it could go further. I understand some of the reluctance to do so, which is because of the advice and the discourse so far.

**Liz Smith:** Do you believe that the people who are advising you and others who want incorporation dispute some of the content of the Government’s spelling out of why it does not think that the UNCRC should be incorporated? Is there a dispute about that?

**Tam Baillie:** Yes. I am not clear what the Government’s hesitancy is about. I do not think that it has been made explicit. I would be most interested to hear the Government’s explanation of, for instance, why it did not go for the option of a due regard duty or why the ministerial duty is framed as it is and is not firmer in terms of what is expected of our ministers. I think that the Government has stepped back from the option of a due regard duty. I gave a cautious welcome to that proposal, although it is not perfect. However, the proposal in the bill is a much weaker ministerial duty. The point of dispute is that we could go beyond where the ministerial duty sits just now. Our legal advice is that we could go beyond that and, even within the confines of devolved powers, look at incorporation.

**The Convener:** I will bring in Liam McArthur at this stage.

**Liam McArthur:** I am interested in what Alan Miller said about the interaction between human rights legislation and the Scotland Act 1998. Professor Norrie has probably been the most outspoken critic of incorporation among the witnesses that we have had so far. He suggested that the common-law structure of Scots law makes it inadvisable to go down the route of full incorporation. Just to be clear, is it your opinion that the interaction of human rights legislation with our common-law structure should allay any fears
that incorporation would pose perils and all the rest of it, as has been suggested?

Professor Miller: Yes, absolutely. I know that everyone has their views about this or that case or that judicial decision, but the Human Rights Act 1998 and the Scotland Act 1998 have by and large worked well as pillars of the constitutional arrangements of a devolved Scotland. We are all quite familiar now with what that means for each of us. In addition, there is a provision in the Scotland Act 1998, which is perhaps one of the secrets of that act, for the Scottish Government to observe and implement the UK’s international obligations. We can have different legal opinions about incorporation and different interpretations of the implications of that but, from the point of view of the rights of children and outcomes for them, it is ultimately implementation of the UNCRC that really matters. That is already a duty under the Scotland Act 1998 and it really needs to be put into practice much more.

The Convener: Sorry, but can I come in on that crucial point? Many people have said that we have to incorporate the UNCRC, but Professor Miller has just suggested that we have to ensure that those duties, principles and rights are taken forward in Scotland through our domestic law but not necessarily through incorporation. I was going to ask a question to ascertain the practical impact of incorporation as opposed to the cultural impact. Many of you have mentioned the cultural change, but I want to look at what the practical impact of incorporation would be versus doing all the same sort of stuff through domestic legislation without actually going for incorporation. What is the difference?

10:45

Sam Whyte: I will try to answer all those points at once. In common-law countries, the principles of incorporation hold. It is about realising children’s rights. The agenda is progressive, but it is legally possible. The Human Rights Act 1998 provides a good model, but it is not the only model and some of the principles that Tam Baillie is seeking, particularly in relation to UNCRC article 3, on best interests, and article 12, on the right to express views, could be incorporated into Scots law for all children.

There is confusion around what we mean by incorporation, whether it is the direct transposition of the UNCRC into Scots law, or something else. UNICEF UK is certainly not suggesting that you should take the UNCRC as written and put it into Scots law. However, we should look at creative drafting and at where we can build on the standards that already exist in Scots law. Certainly the UNCRC was designed to be a minimum standard, so if there are stronger standards in Scots law, such as best interests being paramount rather than a primary consideration, they trump the UNCRC; that is quite an important point.

Ultimately, some of these discussions come down to economic, social and cultural rights, which are substantive and well-articulated rights. They have been made justiciable in all manner of ways and in all manner of countries, including in UK legislation under the Child Poverty Act 2010.

We therefore have examples of where incorporation is possible. You could go all the way and have direct incorporation, or you could go with principles or ministerial duties. However, the challenge in Scotland and, more widely in Wales and the rest of the UK, is that taking a completely non-legal approach to implementing children’s rights means that there can be gaps; some children will have access only to certain rights in certain settings, and things can get missed. That is an issue for children in Scotland in the future.

Professor Miller: I will be very brief because I know that you want to move on, convener. To answer the direct question, there are different models of incorporation around the world. The best practice and most modern trend of incorporation is giving constitutional protection to international human rights treaties. Incorporation can be done in other, less effective ways through specific legislation or administrative means, but giving constitutional status is regarded as modern best practice.

What that means in Scotland pre and post-referendum is where we are at just now. If we get devolution, one way would be to give status to the UNCRC and other international human rights treaty obligations within the Scotland Act 1998, or writing into a piece of legislation such as the bill that the overarching framework and direction should be implementation of the UNCRC.

The Convener: We cannot do that. We cannot put that into the Scotland Act 1998. The UK Government would have to do that.

Professor Miller: That is right. If we have an independent Scotland, it could be part of a written constitution.

The Convener: I am sure that you are very keen to speak, Tam, but surely that has covered the point.

Tam Baillie: I will pass on it.

The Convener: Thank you. I want to move because we want to cover a number of areas.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I want to look at the part of the bill that enables the children’s commissioner to investigate individual complaints. One of the first things that jump out is the assumption in the
financial memorandum that there will be between one and four investigations per year but that that will require three extra staff and £160,000. That seems to me, as a layman, to be an awful lot of money. Is it in line with what other bodies require for individual investigations?

Tam Baillie: That would be true if the power to investigate were the only power to be introduced, but two powers will be introduced for the children’s commissioner. The first is a power of investigation, which it is estimated will be used between one and four times per year, although the financial memorandum says that that figure is “speculative”. Underneath that, there will be a power to investigate without recourse to formal investigation. In my estimation, that will involve hundreds of cases; I say that from the experience of my office not having an investigatory power but still getting hundreds of inquiries, many of which could be regarded as complaints under the new arrangements. Even if there are only one to four formal investigations using the full powers of investigation, there is another section in the proposed legislation on the handling of individual complaints, and you need only look at the number of complaints handled by our complaint scrutinising bodies to see how I arrived at my estimation of where the major resource implications will be for the office. Hundreds of complaints will come in that can be stopped short and dealt with without going for full investigation.

Colin Beattie: Would three extra staff handle hundreds of investigations?

Tam Baillie: I have been in discussion with the Scottish Government about the resources that would be required. I am reassured by some of the measures that the Government says it will review, such as information technology and staffing requirements. There is a certain amount of estimating going on, but it would be wrong to look at the additional resources to the commissioner’s office just through that lens of formal investigations. The main impact will come from those cases that come to the office as a result of complaints being made that do not require full investigation.

Colin Beattie: Under the proposed new powers, the commissioner will have powers only of recommendation in relation to complaints. How is that going to work?

Tam Baillie: That refers to the powers of recommendation following full investigations. If you look at our scrutiny landscape and ask any of the scrutiny bodies, you will see that there is an absence of complaints from children and young people. I think that it is my responsibility to build on the work that has already been done on direct contact with children and young people. This is not about an investigatory power of last resort; it is about early resolution, so that we improve children’s situations without having recourse to formal complaints procedures. In the majority of instances, I would expect to be liaising with local public bodies, as I said earlier, because they are the authorities that will improve children’s lives. That effort will not just be focused on the investigatory power.

Colin Beattie: Do you feel that having the power to make recommendations is sufficient?

Tam Baillie: Yes. If that is how we conduct a full investigation, I would expect recommendations to be made with timescales for review and the opportunity for public bodies to report back on what action they have taken as a result of the recommendations. I would not put it more strongly than that, but in the majority of instances it will be about early resolution by agreement.

Colin Beattie: The bill does not allow the commissioner to investigate issues that could be investigated by somebody else. Can you give some examples of how that would arise?

Tam Baillie: That is already in the existing power. In fact, I have been encouraged by the discussions with other scrutiny bodies, facilitated by the Scottish Government. The power is framed in such a way that an investigation can take place where rights, views and interests have not been properly taken into account. That is a wide-ranging scope of responsibility, and if those powers are agreed by Parliament, part of the responsibility on me will be to narrow that down so that it makes sense to children and young people and so that it makes sense in what is quite a complicated scrutiny landscape.

Colin Beattie: One area where there is potential for overlap is with the Scottish Public Services Ombudsman, whose written evidence states:

“It is not immediately clear from the legislation where the boundaries between their and our role will be.”

The ombudsman covers the public sector, but the commissioner covers the voluntary and private sectors as well. How do you see those overlaps being resolved?

Tam Baillie: We are in active discussion with the Scottish Public Services Ombudsman and with the other scrutiny bodies to ensure that the powers are neither too wide, so that it becomes unmanageable for the office, nor too narrow, so that it does not achieve the redress that the Scottish Government has stated in its framing of the powers in the bill.

Colin Beattie: On a general basis, do you know of cases that you would have wished to follow up but were not able to follow up?
Tam Baillie: There are several instances where cases come into the office and I tentatively send probing letters to those concerned while knowing full well that I do not have power of investigation as it stands now. We have to respond to those cases because people often come with legitimate concerns when they feel that the rights of the child or children about whom they are concerned have not been taken into account. Those cases get a response at local level, but I could take them further if there was an investigatory power. In fact, I want early resolution of complaints. I do not want complaints to come up routinely to the commissioner when they could and should be dealt with at local level.

The Convener: Thank you. May I push you a little bit on some of that? You said at the beginning of that line of questioning that you would expect there to be hundreds of complaints that you might want to look at—

Tam Baillie: That may come to the office.

The Convener: I am trying to get to the nub of this because the bill is quite clear. I have it in front of me and you know well that, as it is drafted—it is in section 5(2)(2A)—you cannot investigate an issue that someone else could investigate. Could you give some specific examples of those cases that you mention that could not be investigated by somebody else?

Tam Baillie: The Scottish Public Services Ombudsman considers process. Much of that consideration of a complaint is whether proper processes have been followed. I would get in at an earlier stage, where there are legitimate complaints that children may make. Take for instance the example that I gave at the top of my evidence, of children leaving care at too early an age, who are then out of the care system but feel that they are of an age when they should be provided with additional supports, even with additional care placements. The committee has that under consideration now, with the leaving care proposals. That is the kind of instance in which I would consider there was a role for the commissioner, in terms of the full investigation.

The Convener: If a young person leaves care, the current rules are pretty clear, no matter what we think about the age at which they leave care. They can ask for help and that is assessed by a local authority and so on. What is your role in that case?

Tam Baillie: If they are still 16 or 17 and leave care and subsequently become homeless, it is arguable that they are the on-going responsibility of the local authority. Right now, those young people languish in those particular placements. We do not revisit young people who are in that position. You asked for an example.

The Convener: Is that not the role of somebody else? Is there nobody else who would be involved in that case?

Tam Baillie: I am not aware of anybody else picking up those cases.

The Convener: If that is the case, that is an example of one that nobody else is investigating. What would be the purpose of your investigation in that case? What outcome would you expect of that investigation given that, under the rules, nothing would have gone wrong?

Tam Baillie: I come back to the different levels of power. We elevate complaints to the level of investigation only in exceptional instances. Most of this is about resolution at an early stage. Given early notice and the speed to be able to respond to it, we should get in at that early stage without taking it through formal investigation.

The Convener: We are going around in a circle here. What is this formal investigation? What are the specific examples of formal investigations that you would undertake that nobody else could undertake?

11:00

Tam Baillie: We are still developing those criteria, but they will relate to serious breaches of children’s rights of such significance that they would have an impact on the practice of public bodies in general. In all likelihood, such cases will have gone through other complaints processes. After all, my objective is to ensure that local complaints processes are, where possible, used at the earliest possible stage.

The Convener: Given that definition of what you would investigate, which I would agree with, it sounds as if we would be talking about a very small number of cases.

Tam Baillie: It is still a matter of speculation whether we are talking about one to four cases, but I point out that those are the formal investigations, not the complaints. The complaints will be resolved early on or will be elevated to full investigation. We still have to work things out in that respect. I have provided a very rough outline of the kind of criteria that I would be looking at for formal investigations, but the key point is that the bulk of the work that will take place under the individual complaints-handling procedure will consist of individual complaints that have not been elevated to full investigation status.

The Convener: Thank you. Liam McArthur has a supplementary question.

Liam McArthur: On a similar theme, my understanding is that in referring complaints to, for example, the ombudsman the person in question
must demonstrate that all local avenues have been exhausted. From your comments about early intervention and resolution, it appears that that will not be a requirement on a complaint that is brought to the commissioner.

Tam Baillie: We need to act speedily on complaints from children and young people, and making them exhaust all local complaints processes would not be the best approach. It might be that I will have to refer a high number of cases back to those local processes, but I do not think that setting such a criterion would assist children and young people who wish to make complaints and who wish the commissioner to handle those complaints.

Liam McArthur: But are you not running the risk that those local avenues might be routinely circumvented? Are there not good and sound reasons why all local avenues should be exhausted first? Perhaps—and I suspect that the ombudsman will agree—early intervention might prevent a situation from reaching a certain extent by the time it is referred to him.

Tam Baillie: The answer is no because of the judgment that my office will be exercising. I have mentioned several times that we will refer and signpost back to existing complaints processes; in fact, those processes are my preferred option.

Having discussed the operation of this approach with several local authorities, I have in the main been encouraged by their response with regard to setting it up. Some time between now and the bill’s enactment, we will look at the detail and discuss how wide the scope will be, how we will interpret it and how it will sit with other investigatory bodies. I think that memorandums of understanding will form the basis of our relationship with those bodies, and we will need to be clear about how we look at cases that should have but which have not been dealt with at a local level. It would definitely be my preference for local complaints processes to be used.

Liam McArthur: So you do not think that there is a risk that you would be intercepting processes that would otherwise be followed by the ombudsman or, indeed, that you may subsequently act as a point of contact for those who have exhausted their lines of inquiry with the ombudsman and are looking to challenge findings.

Tam Baillie: I do not want to create another complaint-handling layer; I am interested in resolving the problems of children and young people at the earliest stage. You are right to suggest that judgment must be exercised to ensure that the power is not seen as meddlesome. As I said earlier, we will ensure that we refer back to what is happening at local level, because that is where changes and improvements can be made in children’s lives.

The Convener: I want to pick up on this issue, because I am still not clear about it. You said that this would be a judgment and you mentioned what your preference would be. Are you saying that you have the right to decide whether to intervene in these cases at an early stage? That is not the case with other bodies that investigate such matters, which automatically send back cases that have not gone through the proper and full process.

Tam Baillie: Yes. As the bill is framed at present, it gives discretion to the office of the commissioner. I am saying that I will use careful judgment in how it is exercised.

The Convener: So you will have that discretion. If you took up a case at an early stage because you decided that it was right to do that rather than refer it back through the full process, and then you investigated it and it went through whatever process—

Tam Baillie: I would case handle it at that stage rather than—

The Convener: Okay—you would not investigate it, but you would be involved in it. If, at the end of the day, it came back to you as a formal complaint for investigation, where would that leave you? You would have looked at it at an early stage, and then you would look at it again at a later stage.

Tam Baillie: Yes. That is a fair point. In setting up the complaints function, I will have to look at that possibility. It is quite a tricky process. We are considering it now and we have an opportunity to continue doing that as the bill proceeds, but it is a fair point and one that I need to attend to in setting up the function and considering how it will operate so that we do not compromise the formal investigation.

The Convener: Indeed. In effect, you need to do that for your own protection.

Tam Baillie: I agree.

The Convener: Thank you. We have questions from George Adam.

George Adam: Good morning. My question is about named persons and information sharing. Last week, Bill Alexander from Highland Council told us that, as a practitioner, things have moved on dramatically for him with the model that the council now uses in that it can get information and proactively deal with children and young people’s issues.

Section 26 states:

“A service provider or relevant authority must provide to the service provider ... any information which ... the
information holder considers ... might be relevant to the exercise of the named person functions”.

Are the provisions on information sharing needed in order to ensure that the named person service works properly?

The Convener: We will start with someone other than Tam Baillie, if he does not mind. I will give him a rest.

Juliet Harris: I am afraid that I will not be very good at answering the question. We have been debating the issue among Together’s membership and there are mixed perspectives on whether the provisions in sections 26 and 27 are needed or whether it would be possible for the named person function to operate effectively within the current information sharing parameters.

As a membership organisation, we do not have a consistent view among our membership on whether we need sections 26 and 27 or whether robust, clear and concise guidance would fulfil the role instead. We agree that it is essential to get the right balance between the child’s right to privacy and the need to share information, and we also need to ensure that we consider the best interests of the child. Whatever information sharing provisions are introduced through the bill, they must ensure that practitioners can make clear, good judgments about when to share information and also when to act on it when it is shared. We must ensure that any information sharing is appropriate, relevant and in the best interests of the child.

I am afraid that we do not have an exact position on whether sections 26 and 27 are needed, but there is agreement that they are not precise and clear and that the wording needs to be changed if they are to be included in the legislation.

Sam Whyte: I concur with all of that. I simply add that the right to privacy, whether it is under the ECHR and the Human Rights Act 1998 or the UNCRC, is really important for children’s confidence in approaching services when they have a problem in their lives. There is something missing from the bill—if indeed it is necessary to lower the threshold from significant harm to concern about wellbeing—in that there is an issue of informed consent, particularly in relation to children. They need to know where the information will go, what it will be used for and where it will end up. That principle needs to be at the heart of any child rights approach to looking at information sharing.

Professor Miller: Going back to our earlier discussion, one of the advantages of having an overarching rights-based framework is very relevant to the bill. The named persons provisions, as regards both the information sharing and any intervention by a named person, have the potential of interfering with the rights of both parents and the child unless the bill is consistent with the existing human rights framework and an element of proportionality is used. That is required under the Human Rights Act 1998. The bill needs to be interpreted and applied in a way that is consistent with the right to respect for private and family life, which governs information sharing and state intervention into family life.

It could be clearer. One would hope that training and guidance can address the connection between the bill and the existing framework of the European convention on human rights—let alone the UNCRC, to refer to the discussion that we had earlier. The lack of a clear recognition of the framework in which the bill sits understandably gives rise to some concerns. It can be made to work, but it would be made to work most effectively if more explicit references were made to the existing law whereby any intervention or information sharing must be done when it is proportionate—the minimum necessary to achieve the aim, whether that is preventing harm to the child or ensuring the child’s privacy or that of the parents.

More explicit guidance is needed, if not in the bill—which is preferable—then certainly in training, guidance, best practice and so on.

The Convener: In March this year, the information commissioner stated:

“proportionate sharing of information is unlikely to constitute a breach of the [Data Protection] Act in such circumstances.”

That was in reference to a risk to a child or young person that may lead to harm. In other words, it was not that the harm was actually happening but that it might happen. We are talking about the wellbeing point in the cycle, and the information commissioner seems to think that, as long as the sharing of information is proportionate, it is a reasonable thing to do. Would you agree with that?

Professor Miller: Yes, but it would be better if that were more clearly understood and shared by practitioners, and if they did not think that there was some distinction between what the bill is trying to do and where the threshold is, and what I am saying and what the information commissioner is saying. There needs to be more coherence.

Tam Baillie: I support the named person provisions, although they are not perfect. A named person must be considered for three to four-year-olds, who spend a lot of their time in nursery provision, through private, partnership or state providers. That point needs to be considered.

The key point is about the resources for health visitors. It is not a matter of whether or not they
can carry out the function of named person; it is about whether they can carry out the function of health visitor. The Government has chosen to overlap that with the function of named person. I endorse the previous evidence that you have received from the Royal College of Nursing and others regarding the urgent need for us to do something about health visiting. In principle, however, I absolutely support the named person provisions.

I wish to comment on how section 26 is framed. You have rightly made the point, convener, about the issue being one of wellbeing, which we define as safe, healthy, active, nurtured, achieving, respected, responsible and included—

The Convener: You are better just saying “SHANARRI”.

Tam Baillie: That definition is very wide. The duty as currently framed is that, if some information might be relevant, it ought to be shared. That is a very wide scope, and it is a significant shift from instances in which there is a risk of harm.

Therefore, you may be advised to consider amendments at stage 2 regarding how specific that wording could be, particularly the word “might”. The provisions read as if there is virtually no information that someone would not share, just in case it “might be relevant”. There is a responsibility that information holders ought to share it. There is potential to tighten up the bill so that the provisions become proportionate; I think that the way in which they sit now is disproportionate to the intention. The provisions are well intentioned. We want to capture those children whose wellbeing is being compromised and who are living in neglectful situations. That is exactly what we want to do—but we do not want to have too much information.

11:15

We have examples of where too much information causes difficulty. Through the 2000s we had a year-on-year increase in referrals to the Scottish Children’s Reporter Administration, mainly on the back of the police automatically referring children who were involved in domestic abuse incidents. That almost brought our system to its knees. You heard last week about the better management of that process through pre-referral screening to sort out the children who we are genuinely concerned about from those who are just caught in the system. We must give serious consideration to the issue. I agree that there should be an increase in information sharing, but it must be proportionate to the objective that we are trying to achieve.

George Adam: I am a practical man and I am trying to establish how we can make the system work in the real world. Bill Alexander told us how the system worked in Highland Council. The only issue that Highland Council seemed to have with the named person was when the process was not enacted. Once people involved in the process understood what it was about and what it could offer, they saw it in a positive light. He also mentioned that the whole system is based on the getting it right for every child principles and that information sharing is done according to best practice in line with the information commissioner’s ideals. With all that in mind, is that not a practical, sensible, successful way for the model to go forward?

Tam Baillie: Yes. You must remember that Highland Council has developed the model over 10 years and has done it in the absence of legislation. If we are to try to have consistent practice in Scotland—I understand why that is the case—we have to be very clear about which duties we put in the bill and how they will be enacted. I flag up that the committee might want to look at some amendments to the precise wording of section 26 so that it has the same intention as the current provision but a much more proportionate impact on people at local level.

The Convener: Before I bring in Liam McArthur, you said that section 26(2)(a) is disproportionate where it refers to information that “might be relevant”. Section 26(4) states that “Information falls within this subsection if the information holder considers that”—

and goes on to describe and define how that provision would operate. Do you not think that that is sufficient?

Tam Baillie: We are getting into a stage 2 debate. I would prefer it if section 26(2) said “which is relevant” or “is considered relevant” as that would tighten the definition. You must remember that you are putting duties on people where they ought to share information, so you want to be as clear as possible, particularly since the definition is that of SHANARRI, which is very wide-ranging. The intention is still the same: it is to ensure that we capture the children who we are concerned about in relation to whom the sharing of information does not take place. It is a debate for stage 2.

The Convener: I am concerned that, if we tighten the wording up in the way that you suggest, we effectively will not make the progress that we all want to make.

Tam Baillie: That is a matter for debate. As the provision sits at present, you will have to be very clear in the guidance about exactly what pieces of information ought to be shared. My understanding
of SHANARRI is that it is a deliberately wide-ranging definition of wellbeing for our children.

Liam McArthur: I will follow up on that point. You have talked about the risks that are associated with the broad terms of SHANARRI. The other element is the lack of consent for the information sharing. Is there a risk that when consent should not be a factor — when there is perhaps a risk of harm — the bill casts a degree of doubt about information sharing generally and therefore people will not make a distinction between welfare and wellbeing, which poses problems? The point that you made about Bill Alexander’s evidence is pertinent, as Highland Council is operating in a pre-bill environment, but when you start putting stuff into legislation it becomes a bit clunky and is rather a blunt instrument, so we must get the wording right. Is there a risk that the question of consent bleeds into cases where the issue is welfare?

Tam Baillie: You have to carry parents with you. We are principally talking about parents when the information is shared. By and large, good practice would be that people are aware of information sharing, that it is consensual and that people know exactly what is happening. You would need to build that into the guidance, given that there could be a wide scope for information sharing. I do not think that it is the bill’s intention to have such a wide scope for information sharing, but my reading of it is that that could be its impact. You could avoid some of the difficulties of too much information being shared if you narrowed down the definition.

Liam McArthur: In terms of welfare, it is very easy to see why you would not necessarily want to go down the route of securing consent, but I struggle to see why that might be relevant in the case of wellbeing. Can you help me on that?

Tam Baillie: I return to what you will put in the bill and the expectations of the officers or workers who are responsible for trying to interpret what they ought to share. It is not so much about the sharing of information but about what people do with the information. The Western Isles report shows that information was shared time and again but not acted on. The guidance must indicate the purpose of sharing information and there should be an expectation that action would flow from that. Focusing on information sharing per se might mean that some key aspects would be neglected. What is required is more informed action for children whose wellbeing might be compromised.

Clare Adamson: I want to ask about children’s rights and getting it right for every child. Given that GIRFEC will be put in statute as a result of the bill, the Government has produced a recent report, which states:

“The GIRFEC approach has been built up from the UNCRC. Accordingly, ensuring that the approach applies in the way public services operate will put the UNCRC into practice for each child.”

The report has done quite comprehensive mapping of SHANARRI within the GIRFEC principles and the UNCRC. Do you agree with the Government’s position on that? If not, can you say what you think is missing in the Government’s rights perspective on GIRFEC?

The Convener: Professor Miller, if you do not mind.

Professor Miller: Sorry, but I thought that the question was directed at Tam Baillie.

The Convener: I am sure that he will contribute in a moment

Professor Miller: Tam Baillie might say more on the specifics, but more broadly, I think that there is a lack of consistency between different parts of the bill. For example, we had a discussion earlier about the investigative and complaint handling powers that are given to SCCYP, the section 1 duty and the UNCRC. Parts of the bill talk about wellbeing, the named persons and the service plans, other parts talk about the duty on the Scottish ministers and other parts talk about SCCYP being given the power to take into account the rights, views and interests of the child. There is no consistency. I think that that is the Scottish Human Rights Commission’s concern.

Whether we are talking about information sharing, intervention, or how Tam Baillie and his colleagues go about using the powers that they are given, those powers can best be used only in the shadow of what the law is. If you do not have a law that enshrines the rights, views and interests of the child, that will impact on the effectiveness with which you can handle complaints or conduct investigations. Therefore, there must be greater consistency throughout the different parts of the bill. As we said at the outset, if the bill had a more explicit reference to the UNCRC and to the existing human rights framework that is provided by the Human Rights Act 1998 and the European convention on human rights, a lot of the bill’s inconsistencies could be reconciled in a way that would make the bill much more effective and lead to better outcomes for children.

Sam Whyte: One of the realities for children is that rights come into their own at a local level in their day-to-day lives. We were quite disappointed not to see in the bill a duty on public authorities to implement the UNCRC, which would reflect the duty that has been proposed for ministers. There is a reporting duty on public authorities in relation to the UNCRC, which is very welcome, but it is limited in that it does not require an action. One would hope that best practice in the
One of the reasons for the lack of a child rights framework permeating the whole bill is the fact that the original two bills have been merged into one. There are some obvious points in part 3 of the bill at which you could begin to build that child rights framework at a local level to support the full roll-out of GIRFEC across Scotland, whether that is done by stating explicitly in the bill that children and young people need to be consulted when children’s services are being planned throughout the local area, or whether there is an explicit requirement to consult a child on the content of his or her individual plan.

**Juliet Harris:** I echo what Alan Miller and Sam Whyte have said. Together believes that there is much scope for greater consistency and coherence across the different parts of the bill. That is missing as a result of the fact that, rather than GIRFEC coming from the UN convention, Jane Aldgate’s research, to which you referred, shows what GIRFEC is and maps the convention into it, instead of having the convention as an overarching framework for children’s rights by which GIRFEC is underpinned. It is a bit of a back-to-front exercise and that is why the bill lacks coherence.

There is a lot of scope in part 3, and we welcome the duties around children’s services planning, but the aims of a children’s services plan are all framed around wellbeing and we feel that, although part 1 concentrates on children’s rights, part 3 is about delivery of services that have a greater day-to-day impact on children’s lives, as Sam Whyte said, and they are underpinned by wellbeing. We think that there is therefore scope to bring the rights duties into part 3, so that children’s services planning is underpinned by rights and wellbeing. In that way, we can have coherence between the ambitions of GIRFEC in promoting children’s wellbeing and the principles that are enshrined in the UNCRC around children’s rights.

At stage 2, there will be a lot of scope for amendments to bring together rights and wellbeing, to ensure that all elements of the bill, from the aims of children’s services planning and of named persons, are underpinned by rights as well as by wellbeing.

**Tam Baillie:** In many instances, children’s rights are realised in Scotland—you can put together documents to show where their rights have been realised—but too often, they are not. Part 1 of the bill contains a requirement to produce reports on the steps that public bodies have taken to better realise children’s rights. I think that you could improve on that by requiring action as a result of that, rather than just having a reporting requirement. In that way, you will get some of the consistency that witnesses have talked about and you will marry up ministerial duties and duties at local level, because it is at local level that that really counts. I strongly recommend that the committee look at the place of public bodies in the ambitions that have been laid out in the bill about Scotland being the best place in the world for children to grow up.

**The Convener:** I thank the witnesses for their evidence, which has been very interesting indeed. We have covered a lot of issues, and I appreciate you taking the time to come to the committee to give us your views.

Our final evidence-taking session on the bill will be next Tuesday, when we will hear from the Minister for Children and Young People. I am sure that many of the issues that have been raised today and in other oral evidence sessions, and in all the written submissions, will be put to the minister next week. I thank all those who have given oral and written evidence for their contribution to our work.

11:29  
*Meeting suspended.*
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

26th Meeting, 2013 (Session 4)

Tuesday 8 October 2013

Present:

George Adam    Clare Adamson
Jayne Baxter    Colin Beattie
Neil Bibby (Deputy Convener)  Stewart Maxwell (Convener)
Joan McAlpine    Liam McArthur
Liz Smith

Decision on taking business in private: The Committee agreed to consider its draft reports on the Children and Young People (Scotland) Bill and the Draft Budget 2014-15 in private at future meetings.

Children and Young People (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Aileen Campbell, Minister for Children and Young People, David Blair, Head of Looked After Children, Phil Raines, Head of Child Protection, and Gordon McNicoll, Divisional Solicitor/Deputy Director, Communities and Education Division, Scottish Government.
The next item is to continue our evidence taking on the Children and Young People (Scotland) Bill. I welcome to the meeting the Minister for Children and Young People, Aileen Campbell, and her supporting officials from the Scottish Government. Phil Raines is head of child protection; David Blair is head of looked-after children; and Gordon McNicoll is a solicitor in the solicitors communities and education division.

I place on record the committee’s thanks to the minister and officials for responding in a short timescale to a range of questions from the committee from last week. I am sure that that helpful response will be covered in the questioning. Before we ask questions, I invite the minister to make a short opening statement.

**The Minister for Children and Young People (Aileen Campbell):** Thank you, convener. Good morning and thank you for inviting me to give evidence on the Children and Young People (Scotland) Bill.

For the past eight weeks, the committee has heard evidence on a wide range of issues in quite a complex bill. We will talk about those issues today. I want to set the tone with some remarks about what binds those issues together.

With the bill, we have set out our ambition to make Scotland the best place in the world to grow up in. I think that we all share that ambition. The bill advances the ambition by drawing on well-established policies and strategies. It takes forward our long-standing recognition that we need to make a bigger impact in our children’s early years, not least through early learning and childcare. It lifts to a new level Scotland’s unique and internationally lauded approach to helping children and young people through getting it right for every child. Over the years, the Parliament has regularly endorsed that approach. GIRFEC has already taken seed in parts of Scotland, and we believe that the time is right for its fruits to be enjoyed by all our families.

The bill advances our national determination to improve the lives of our most vulnerable children and young people. Our proposals for looked-after children are rooted in what is needed by children who are in care, by children who are at risk of going into care and by young people who have moved on from care. The bill gives our natural and deeply embedded respect for the rights of children a statutory grounding in a way that fits Scotland’s traditions and looks to our future aspirations.
bill builds on the best practice and experience of what we have already achieved in Scotland. Our proposals and our costs are drawn from extensive experience across the country.

However, the bill is not simply a series of small steps forward. It is a huge leap, not into the unknown but towards what the evidence tells us is the right thing to do for children. That is particularly true of its commitment to early intervention. We know that a light touch applied when concerns first arise can often avoid a descent into difficulties that necessitate heavy formal measures. The preventative approach usually leads to far better outcomes for the child and their family. That is why we want to set in statute the crucial principles of proportionate, preventative and child-focused support for all children. They are the principles that Parliament espouses and we have set out what we think will best achieve those principles. As we have done throughout the huge consultation on the bill, we will continue to listen and stand ready to improve the bill where necessary.

Thank you for inviting me here today. I am happy to answer any questions—I am sure that members will have many.

The Convener: You will not be surprised to know that we do have many questions. The bill is very important and we want to cover a lot of important issues. Before we get into the detail of the bill, there are some wider points that members would like to hear your response on. Liz Smith will ask those questions.

Liz Smith (Mid Scotland and Fife) (Con): Good morning, minister, and thank you for your opening remarks. The bill is complex and, as the convener said, it is a big bill, so we must get it right.

Some of the written evidence has pointed out to the committee that there are certain points of law on which there is a difference of opinion between what the Scottish Government’s advice has been and what certain groups are saying. For example, there is a difference of opinion between Scotland’s Commissioner for Children and Young People and the Scottish Government about the legal advice on whether we should incorporate the United Nations Convention on the Rights of the Child into Scots law. There has also been a difference of opinion between the Faculty of Advocates and the Scottish Government over part 4 of the bill. There have also been some questions about legislative competence from the information commissioner. Is the Scottish Government confident that the legal advice that it has been given on those points of law is accurate?

Aileen Campbell: Thank you for the question. I cannot go into detail about the legal advice that we get. We know that every piece of legislation that the Government introduces is competent, and that is no less true for this bill. I cannot comment on the legal advice that the committee has been given. I am sure that it will come out in the stage 1 report that the committee publishes. The bill is competent and that is true of any legislation that the Government proposes.

Liz Smith: I want to home in on the point that there is a difference of interpretation of some points of law. For example, the Faculty of Advocates argues very clearly that the named person provisions in part 4 attempt to dilute the legal role of parents. That is clearly not the Government’s view. The Faculty of Advocates submission says:

“It undermines family autonomy. It provides a potential platform for interference with private and family life in a way that could violate article 8 of the European Convention on Human Rights.”

The Government believes differently; how have you come to that different conclusion?

Aileen Campbell: When services intervene in a child’s life, the pendulum often has to swing between the parents’ rights and the child’s rights. The named person provisions are about providing a support network and framework for families, if they need it, and it is their right to choose to seek advice from the named person. For more complex levels of need, the named person will be there to see whether there is a cause for concern. At that point, they will seek the appropriate support to ensure that the child gets the help that they need.

On the point of law to which you point, the bill is legally competent, as is every bit of legislation that the Government introduces.

Liz Smith: I do not think that the Faculty of Advocates is arguing about the legislative competence of that part of the bill. It is making the point that it believes that there is a dilution of the role of parents.

Aileen Campbell: There is no dilution of the role of parents. The role of the named person is very different from that of the parent. We know that the parent is the most important person, and the most important educator, in a child’s life. The named person offers a framework for the provision of additional support if a family decides that it needs it or for the identification of issues that might be a cause for concern. At such a point, the named person can seek to support the child to ensure that they have better outcomes in life. There is no dilution in the role of parents, which is set out clearly in the Children (Scotland) Act 1995. That is not diluted either.

Liz Smith: So the Scottish Government has no concerns about the issue that the Faculty of Advocates has raised.
Aileen Campbell: As with any proposed piece of legislation that goes through the three parliamentary stages, we will listen carefully and closely to what people have to say, but we know that the bill is competent. The named person provisions in no way dilute the role of the parent.

The Convener: An issue that is central to the bill is the UNCRC duties. Some witnesses have supported the idea of full incorporation of the UNCRC into Scots law, while others have taken a very different point of view and have said that that would not be particularly helpful or sensible. What is the Government’s view of the duties that you are placing on ministers in the bill? What practical difference will those ministerial duties make to children?

Aileen Campbell: I was interested to read Kenneth Norrie’s submission and the remarks that he made to the committee.

The duty in the bill is a duty on ministers to reflect the UNCRC. That will child rights proof all our decisions. A tool will be developed to support that. We will take practical actions to increase awareness of children’s rights, whether through schools or with professionals or parents. As far as the practical impact is concerned, there will be a new duty on ministers to properly reflect the UNCRC in the policies that we take forward as a Government.

The Convener: That is helpful, but what will the bill allow you to do that you could not do at the moment? What difference will it make in ensuring that ministers carry out such duties? What duties are you not carrying out at the moment that the bill will force you to carry out?

Aileen Campbell: There will be a duty to ensure that the UNCRC is properly reflected in the policies that we take forward. We will have to ensure that Parliament understands that that is what we are doing. Parliament will carry out scrutiny to ensure that we have reflected the UNCRC in our policies.

The duty will child rights proof all the decisions not just of the present Government but of future Governments, so it is not just about ensuring that the present Government does all that it can to reflect the UNCRC; it is also about ensuring that, in the future, all subsequent Governments do that.

In addition, we want to ensure that we raise awareness of children’s rights not just in the work that we do in government, but right across the public sector. There needs to be an understanding of the UNCRC before we can reflect the good practice and the culture in the decisions that we take.

The Convener: I want to move on to the nub of some of the argument. As I said, there is a difference of opinion on whether the bill should incorporate the UNCRC into Scots law or whether it should incorporate the principles of the UNCRC. Why has the Government come down on the side of moving forward with some of the principles that underlie the UNCRC without going the full way and incorporating the whole convention?

Aileen Campbell: The whole premise of the bill is to ensure that we make a practical difference to children’s lives. The approach that we have taken is to ensure that rights are made real for children and that there is tangible recognition that a child’s rights are important in the policy decisions that we take. That has been the premise. We believe that the balance that we have struck in the bill achieves that without getting caught up in legal wrangling. This is about making rights real.

The approach that is taken in the bill sits better with Scots law. I refer again to what Professor Kenneth Norrie said. He said:

"to incorporate the convention into the domestic legal system of Scotland would be bad policy, bad practice and bad law."—[Official Report, Education and Culture Committee, 3 September 2013; c 2682.]

We want to ensure that this is a good move that makes rights real for children across Scotland and we believe that the bill strikes the right balance in that respect.

09:45

The Convener: I have a final question before I open it up to members. You will have seen evidence that we have received about the situation in Wales, where ministers are under a duty to pay “due regard” to the UNCRC. Why did the Scottish Government change the duty from “due regard” to “keep under consideration”?

Aileen Campbell: We have never had a duty to pay due regard to an international treaty. As I said at the start, our policy has not changed; we are committed to introducing legislation that requires a systematic consideration of children’s rights, which is what our initial proposals provided for and what the bill delivers.

The Convener: But was the phrase “due regard” not mentioned in the consultation?

Aileen Campbell: Absolutely, but we want to ensure that children’s rights are real and think that the approach in the bill strikes the right balance. Moreover, there was no consensus about the approach that was set out in the consultation process. What we have now is a bill that makes children’s rights real without our getting caught up in legal wranglings and uncertainty about how the courts might interpret that due regard duty.

The Convener: I want to pursue this a little bit further. What is the difference between “due
regard” and “keep under consideration”? The committee has received evidence from witnesses that a duty to pay due regard to something is stronger than a duty to keep it under consideration. Do you accept that? If not—and I presume that you do not—can you explain why?

Aileen Campbell: I will ask Gordon McNicoll to comment on the more legal aspects.

Gordon McNicoll (Scottish Government): There is an interesting question about what a requirement to have due regard to anything is. For example, how much regard do you have to pay to something? In the bill, the Government has set out exactly what it wants itself, its ministers and other public authorities to do. One might argue that a requirement to pay due regard to an international legal obligation means that you must comply with it, but is that actually what we want to do? The Government’s view is that it is important not to get hung up on particular words but to set out in the bill the exact scope of the duty that we want to create for ministers and other public authorities.

Neil Bibby (West Scotland) (Lab): Children’s organisations have expressed concern that the bill does not do enough to ensure that public bodies will help to strengthen children’s rights. What action is the Scottish Government prepared to take to strengthen the duty on public bodies in the bill with regard to children’s rights?

Aileen Campbell: We have a commitment to raise awareness across the public bodies and there will also be reporting to ensure that we understand where they are on children’s rights.

Neil Bibby: A number of questions have been raised about children’s rights impact assessments. What commitment will the Scottish Government give that future legislation impacting on children and young people and their families will be subject to such an assessment?

Aileen Campbell: I am sorry—I did not catch the question.

Neil Bibby: There was concern about children’s rights impact assessments—

Aileen Campbell: With regard to subsequent pieces of legislation?

Neil Bibby: Yes. Will the Government consider carrying out such assessments for future legislation?

Aileen Campbell: We are developing a tool for a children’s rights impact assessment to enable us to understand how subsequent legislation might impact on children’s rights.

Joan McAlpine (South Scotland) (SNP): I have a few questions about the bill’s information-sharing provisions. My understanding is that we are moving from the kind of information that can be shared without consent, and I wonder whether you can explain how the bill changes the type of information that is shared and why such a move is necessary.

Aileen Campbell: Good practice dictates that one should always seek the consent of the parent and, where appropriate, the child, but recent advice from the information commissioner clarified that sharing without consent information about concerns of a risk to a child’s wellbeing that might lead to harm does not breach the Data Protection Act 1998, provided that the sharing is proportionate and considered. That is the key phrase—it is a matter of ensuring that that professional judgment is proportionate and considered. The commissioner has already provided clarity that, where there is a risk of harm, information can be shared, but it is always good practice to seek consent from the parent and, where appropriate, from the child, too.

Joan McAlpine: My understanding is that there is a difference between risk of harm and risk to wellbeing.

Aileen Campbell: Yes. The whole premise of the bill is about early intervention. When there are concerns about a child’s wellbeing, the information should be proportionately shared, and at an appropriate time. Those are the trigger points, and a professional would be able to make a judgment about the appropriateness of sharing the information.

Joan McAlpine: Is there not a danger that some individual information holders, such as teachers or health visitors, will have to decide on their own whether sharing information about wellbeing would breach ECHR article 8?

Aileen Campbell: There is a lot of room for ensuring clarity in the guidance that we will produce to accompany the bill so as to enable and empower professionals to make the appropriate judgment on the information that they share. Aside from the bill, the information commissioner’s letter provided useful clarity that will empower professionals to make the correct judgment. However, that needs to be strengthened and made robust in the guidance accompanying the bill, recognising the issues and concerns that have been raised with the committee. We will work with stakeholders to develop that guidance.

Bill Alexander’s evidence to you indicated that, before GIRFEC, there was “a scatter-gun approach” to sharing some information, but the approach under the bill allows that to be done in a much better way—in a much more systematic and coherent way—so that the appropriate services are provided to the child for their long-term wellbeing.
Joan McAlpine: When will we see the guidance?

Aileen Campbell: The guidance will be developed alongside the bill. I ask Phil Raines to elaborate on that.

Phil Raines (Scottish Government): Quite a lot of work has been done by the responsible teams in the Scottish Government to develop the guidance in consultation with a wide range of stakeholders. A lot of that has been done through the GIRFEC programme board, which you are probably aware of. The board has general oversight for the development of the guidance. My understanding is that the guidance has now reached the draft stage, and I think that consultation will begin over the coming months. The intention is for the guidance and the whole range of duties with respect to GIRFEC to be well in place before the commencement of any provisions.

Joan McAlpine: LGBT Youth Scotland raised the specific concern that young people’s privacy could be compromised by information sharing. Perhaps teachers sharing information—with the best of intentions—about a young person’s sexuality would breach that person’s privacy. Can you give any reassurance to LGBT Youth Scotland that the privacy of young people will be protected?

Aileen Campbell: The whole premise of the bill is to work with the whole child and to ensure that best practice is adhered to. That involves consulting and speaking with the child. I am absolutely able to give that confirmation, and I can work with those groups as we develop guidance in the course of the bill’s progression.

Liam McArthur (Orkney Islands) (LD): Apologies for my delayed arrival, which was due to flight problems.

I wish to follow up the concerns that Joan McAlpine has raised. Earlier, minister, you prayed in aid Professor Norrie in relation to the incorporation of the UNCRC. The professor’s evidence to the committee was equally lurid in relation to sections 26 and 27, and he encouraged us to remove section 27 entirely, as that would serve the public very well.

I would not necessarily go that far, but we have now had evidence from a range of witnesses who have expressed concerns about the breadth of the provisions in section 27 in respect of how far they go on information sharing and the absence of consent for that information sharing in areas where the issue is wellbeing as opposed to welfare. Are you prepared to look at that again?

Aileen Campbell: We are happy to look at the evidence that the committee has received and that has been presented in the evidence sessions on the bill. We are absolutely happy to listen to people such as Ken Norrie, who has a huge wealth of knowledge on the issues that we are considering.

Liam McArthur: Do you accept Ken Norrie’s assessment that, at the moment, section 27 is potentially too open-ended with regard to how people who are exercising their professional judgment may come to the right decisions? Is the way that the section is phrased at the moment too open and vague—

Aileen Campbell: As I say, we want to make the bill the best that it can be, so we need to listen to the evidence that you have received. No doubt, the committee’s stage 1 report will enable us to ensure that the bill is the best that it can be. People such as Ken Norrie, who have given of their time and knowledge to enable you to prepare that report, are well worth listening to and we give you a commitment that we will look at the evidence in detail.

The Convener: I want to follow up Liam McArthur’s line of questioning. I quote Ken Macdonald, the assistant commissioner for Scotland and Northern Ireland at the Information Commissioner’s Office, in the light of Professor Norrie’s comments, which we have just been discussing. In his written supplementary evidence, talking about section 27, he states:

“As written, the section would override all statutory bars on the disclosure of information, many of which have been enacted in order to give children protection and it may also have implications for the independence of the judiciary where court orders prohibit disclosure. We would therefore urge that the content of this section is reconsidered.”

That is quite strong language from the assistant commissioner for Scotland and Northern Ireland. What are the Government’s views on both Professor Norrie’s comments and Ken Macdonald’s supplementary evidence to the committee?

Aileen Campbell: Gordon McNicoll can respond to those questions.

Gordon McNicoll: It is important to remember, as a starting point in addressing the question in more detail, that the provision—like any other provision—must be read in accordance with the ECHR. There can be no question of the provision overriding the ECHR; neither can it override data protection, as that would be outwith competence. As for any legislation that is passed by the Scottish Parliament, any powers conferred must be read as being constrained by the ECHR and reserved legislation such as the Data Protection Act 1998. Therefore, although in principle the power to disclose information appears relatively wide, it must be read in that context. In the
Government’s view, read in that way, it is not as broad as might be suggested.

The Convener: I accept what you say. I am, therefore, slightly surprised that the assistant commissioner wrote to us as he did. He says that the issue has been reconsidered in the light of Professor Norrie’s comments. I will not read out his supplementary evidence again, but he takes a very different view from the one that you have just stated. Perhaps we could get some clarity on the matter from the Government in writing, if that would be helpful to the committee. Clearly, there is a difference of opinion.

Aileen Campbell: Absolutely. We can get back to you on anything in writing. However, I make the point again that we are listening to the evidence that the committee is receiving and will use that evidence to make the bill the best that it can be.

The Convener: It would help the committee in writing its stage 1 report to have that clarity.

Aileen Campbell: Absolutely. I give that commitment. I am just making the point that we are listening to what you are being told and taking any issues seriously.

The Convener: Let us move on briefly to section 26. Professor Norrie told the committee that there are

“huge ambiguities in the drafting of the bill, which, if passed in its current form, will lead only to lots and lots of litigation.”—[Official Report, Education and Culture Committee, 3 September 2013; c 2691.]

He went on to talk about the section in not the most shining light. His concern with section 26, among others, seems to relate particularly to section 26(1), which uses the phrase “must provide”; section 26(2)(a), which uses the phrase “might be relevant”; and section 26(2)(b), which uses the phrase “ought to be provided”. He said that he had some difficulty with the clarity of those phrases. What is the Government’s view of Professor Norrie’s evidence to the committee on section 26?

Aileen Campbell: We will listen to the points that he raises but the bill is drafted to enable the appropriate, proportionate and timely information-sharing to happen.

I would like clarity on whether there is room for improvement here or whether the Government’s view is that the provision is correct as it is drafted. Will the individuals who will have to take the practical decision on the ground about what they should or should not share be clear about what those three phrases mean?

Aileen Campbell: It is worth while remembering that guidance will be developed in consultation with the folk who know best, who will be the people who work on the ground, to ensure that, alongside the bill, the guidance is robust enough to empower the practitioners and professionals who make these decisions.

There is always room to study the bill and, if there are real concerns, again we can listen to the comments that the committee has received. Along with that, we will have guidance to enable practitioners and professionals to make the best judgments in the interests of the child with whom they are dealing.

The Convener: Thank you very much for that.

Clare Adamson (Central Scotland) (SNP): I would like to ask further questions about the named person. The matter has been covered and you, minister, have been quite robust in stating that you do not see any tensions between the named person and the rights and responsibilities of the parents as set out in the Children (Scotland) Act 1995. Where disputes between parents, young people and the named person arise about what is best for a child or young person, what method will be used to resolve those conflicts?

Aileen Campbell: As I say, there is often a pendulum that swings between the parent and the child. The aim is to make sure that the best interests of the child and family are at the heart of the decisions taken. We want to make sure that the process is absolutely right.

Would you like to come in on that, Phil?

Phil Raines: There are three ways to think about the named person. First, the premise of the named person is the idea of establishing a good, trusted relationship between the individual and someone whom, based on the evidence that you have heard, the family know and see reasonably regularly. The structure is predicated on the idea that there are good communications and relationships, but that will not work in all circumstances. There exist mechanisms to raise grievances and challenge issues that arise from many of the roles that these people provide. We have talked about the named person being a teacher, health visitor or what have you.

At the moment we are considering whether it makes sense to use those mechanisms or whether there is a need for a more bespoke
mechanism. We are in listening mode and are conscious that we do not want to clutter the landscape further with regard to how people can challenge the decisions or conduct of those in this kind of role in the public service.

Clare Adamson: Thank you. During the consultation there was a considerable amount of support: 72 per cent of respondents were in favour of having a named person role in the bill. The bill states that the named person would be responsible for support and advice to parents. How do you envisage that that will happen? What kind of support and advice will be available? What implications will that have for the capacity and the role of the named person at any particular time?

Aileen Campbell: The support and advice to parents could take several different forms, for instance for the health visitor it could be about toilet training or it could be as simple as signposting to an appropriate service within the local area. In school, it could be about identifying whether there is a need for assistance with homework. It could be as light touch as that.

Of course, where there is greater need there will be a real bonus in having the named person to coordinate services appropriately and enable the child at a timely moment to get the best support that they can get in a co-ordinated way. There are a number of ways in which the named person can help a child and can direct and advise a family as appropriate, if the family decides that they need to seek that advice and help.

Neil Bibby: One issue raised with us is the anxiety that has developed because of a confusion between the roles of the lead professional, who is traditionally a social worker, and the named person. Do you agree that the role of the named person must be clearly defined and differentiated from that of the lead professional?

Aileen Campbell: The named person will have a statutory footing in the bill. There will also be a need to develop robust guidance to go along with the bill, to give greater clarity to professionals working with children and families across the country.

The Convener: Can I follow up on something that struck me as you were answering that question about the difference between a lead professional and a named person? Who ultimately is responsible when things go wrong? Does the named person have some sort of legal responsibility?

Aileen Campbell: No, it will be the service provider. We need to ensure that the named person is supported, but it is the department, health board or local authority that they come from that is responsible. The named person is not to be held legally to account for things that go wrong, but we want to ensure that the named person is empowered to make decisions at an early stage, to avoid things going wrong in the first place. That is the whole point of preventative spending and of early and effective intervention.

The Convener: Absolutely. I could not agree more and I support that philosophy and direction of travel in policy, but I am trying to clarify for those who might be in that position what their level of responsibility is. If they fail, for whatever reason, to share vital information, what level of responsibility does that named person have? We are adding a level of responsibility to the role of the named person, whether they be a headteacher or a health visitor; that is the purpose at the core of the proposal. Therefore, it seems to follow logically that they must have some sort of responsibility for the actions that they take or do not take.

Aileen Campbell: That is still true regardless of the bill. People have a duty of care for the child that they are looking out for. As you will have seen from the tragic incidents in other parts of the United Kingdom, when information is not shared stock must be taken of the situation to figure out what to do and how to improve systems. The named person provides a framework for sharing information in a much more co-ordinated and appropriate way, to enable the right services to intervene at the appropriate time to stop and avoid the sort of horrible things that we have seen recently happening to children.

Phil Raines will answer the convener’s specific point about responsibility lying squarely with the named person.

Phil Raines: I might distinguish it in two ways. The bill makes it clear that the legal responsibility for the named person duties lies with what we call the named person service provider. Therefore, for teachers or what have you in respect of kids in schools, it would lie with the local authority. In the case of health visitors, it would lie with the health service. So it is clear that it is a corporate responsibility.

I suspect that what you are getting at, convener, is more to do with the sense of responsibility for day-to-day business and conduct, and that must be thought of in terms of the existing mechanisms for setting standards of professional conduct and—linking back to an earlier point—for grievance or redress.

Building on what the minister said, I think that one of the ways to think about it is to say that there is already a sense of responsibility in place. Many individuals are carrying out these functions already, and they are managed within the existing architecture in terms of how their roles are defined and how they are held to account. We are building
on good practice and on the architecture that is already out there.

Aileen Campbell: The committee should remember that Bill Alexander said:

“Teachers … and midwives tell me that it does not change what they do but it changes how they are regarded … they feel that it has empowered them.”—[Official Report, Education and Culture Committee, 24 September 2013; c 2861-2.]

That is an important message as well.

The Convener: That is helpful. Thank you, minister.

Liz Smith: The Finance Committee produced its report on the financial memorandum on the bill last week. It begins by saying that there are significant concerns about the robustness of the methodology and the forecasting that have been used for the financial memorandum. Will you comment on that quite severe criticism, minister?

Aileen Campbell: In developing any financial memorandum, we have to engage with the experts and base the memorandum on the research and the discussions that we have had. That is the way in which the financial memorandum was produced—in close dialogue with people who know best.

Liz Smith: Will you provide the committee with information on the methodology for compiling the statistics? Why do you consider that what the Government has produced is a satisfactory basis for estimating the financial implications of the bill?

Aileen Campbell: As I said, the financial memorandum was drafted after close dialogue and close working with the people who know best—the experts around the country who work in the day-to-day lives of children. The financial memorandum is robust and it is there for the committees to scrutinise.

Liz Smith: There are lots of different elements to the bill, so it would be interesting to know which areas concern you in particular. Do you have an issue around one element and the methodology behind it? If so, it would be interesting to know what that is in specific terms.

Liz Smith: Yes, I do. At last week’s meeting of the Finance Committee, there were questions from John Mason, Michael McMahon, Kenny Gibson, Malcolm Chisholm and Gavin Brown, all of whom asked for specific figures to support certain policies. They said, to varying degrees, that what the Scottish Government has put forward is based on best estimates and on committee evidence that is not particularly robust. They said that, because figures are patchy in some areas and non-existent in others, it is difficult for the Finance Committee to understand what the Government believes are the statistics that make the bill financially viable.

Aileen Campbell: Are you asking me to tell you the methodology that we used for a particular part of the bill?

Liz Smith: At the Finance Committee, the bill team was repeatedly asked to come up with the figures that would support the Government’s implementation of the policy, but the information appeared not to be forthcoming. I wonder whether you can give those to us now.

Aileen Campbell: On early learning and childcare, for example, there were discussions with the Convention of Scottish Local Authorities to agree the appropriate figures in the financial memorandum, which we believe will enable us to increase provision to 600 hours.

Liz Smith: I am sorry, minister, but on some aspects of this, I really want to get at what the Finance Committee has asked for. It asked for specific evidence on training and costs. It is clear that—

Aileen Campbell: Training and costs. You talked about the bill in general, but there are many different elements to it, and many different discussions have been held with many different stakeholders to enable us to come up with the best financial memorandum that we can have. I gave as an example the discussions that we had to deliver 600 hours. If you are asking about training—

Liz Smith: The financial memorandum looks at the costs that underpin the bill. It is clear that Lothian NHS Board, the Royal College of Nursing and the City of Edinburgh Council feel that the Scottish Government is not providing sufficient money to support the ambitions of the bill. Do you agree with their concerns?

Aileen Campbell: I take it that you are homing in on the GIRFEC side of the bill as opposed to any other part of it.

Liz Smith: Well, in part, but there are other issues as well.

Aileen Campbell: Okay. I just wanted to find out which part of the bill you want to examine. Again, we liaised closely with the relevant people to ensure that the financial memorandum that we provided to accompany the bill is as good as it can be. We take on board all the different views and opinions that are going around about the financial memorandum, but we believe that we have produced the right costings to cope adequately with the implementation of the GIRFEC provisions in the bill.

Would Phil Raines like to comment further?
Phil Raines: I will comment specifically on training issues. There is clearly a different answer for different sets of costs. I am happy to provide the costs for any specific issues, but with respect to training—Liz Smith mentioned health—as the minister said, the people whom we consulted are the people who have the most experience of designing a training course, implementing it and establishing how it may develop over time.

Specific groups that we spoke to about health training include a group of managers designated by each health board who have dedicated responsibility for implementing GIRFEC in their own health board. As you will be aware, GIRFEC is not something new for health boards; it has been around as a result of chief executive letter 29 and Hall 4—“Health for All Children 4”. There is therefore quite a lot of experience of thinking about how this might roll out. We also spoke to the children, young people and families nursing advisory group. It is quite difficult to remember all these complicated acronyms and names.

There are a different set of issues with regard to local authorities, some of which perhaps have made the same criticisms about training. As you would expect, again we spoke to the people who have quite a lot of experience of putting these things into practice rather than considering the issues in the abstract. We spoke to Highland Council, the City of Edinburgh Council, South Ayrshire Council, East Lothian Council, Midlothian Council, Falkirk Council and Angus Council, which are at different stages of implementing GIRFEC.

You will notice from the evidence submitted to the committee by councils who are well advanced in implementing GIRFEC, not least the City of Edinburgh Council and South Ayrshire Council, that they have no problems with the assumptions that have been made about GIRFEC costs.

Liz Smith: Forgive me for saying so, but the Finance Committee has a problem and so do some other witnesses, who say that they believe that the money that is being put forward for GIRFEC may support it in the first instance but is not nearly enough to support it on an on-going basis. Several submissions make the same comment.

Secondly, when it comes to the provision of health visitors, the RCN has made it clear that to implement the named person provision in full would require another 450 health visitors across Scotland. It claims that there is not sufficient money to fund that. Are you absolutely confident that the research that you have done is sufficiently robust to ensure that the bill has the right amount of money behind it to support the costs?

Aileen Campbell: We have been very clear about what we believe is required of health boards to fulfil the GIRFEC duties. We have worked out the additional hours required. Phil Raines has talked about the discussions that we have had with expert groups who have expertise and knowledge of implementing GIRFEC. It is about ensuring that it is not an additional thing that people and services do but is hard-wired into the daily practice of the services, which is how we expect GIRFEC to be carried out.

Liz Smith: Okay, minister. Why then was the Finance Committee—which has members from all parties—so strong in its criticism of the financial memorandum?

Aileen Campbell: A number of different people provided evidence to the Finance Committee and it has reflected that in its report. As I say, we will listen to and look at the evidence that has been provided to you as the lead committee and ensure that, at the end of the process, we have a bill of which we can all be proud. As Phil Raines said, our approach to the financial memorandum has been to engage with the people who know best and to reflect on what they have told us in order to develop a robust methodology.

Liz Smith: I will finish on this point: do you believe that the bill has sufficient money behind it or will it need to have more behind it?

Aileen Campbell: We have a financial memorandum that we believe sets out the way in which we can deliver the bill’s aspirations.

The Convener: Clare Adamson has a question.

Clare Adamson: Sorry, convener—I was listening to the minister and have lost my train of thought.

The Convener: Do you want me to come back to you?

Clare Adamson: Yes, please. Thank you.

George Adam (Paisley) (SNP): Good morning. We are asking questions about the financial memorandum. The process that you have gone through is basically the same process that would be gone through with any bill. You work with partner organisations to ensure that they are given the opportunity to provide some input to the bill and to work out how to make the bill work out there in the real world.

Aileen Campbell: Absolutely. The financial memorandum takes the same approach that is taken by any financial memorandum. It is about ensuring that we engage with the experts who know best so that we get the right information to develop something that will work alongside a bill that is being developed in policy terms.
Clare Adamson: The Finance Committee’s report picked up on savings that are planned through the implementation of GIRFEC. Will you give us a bit more information about the evidence that the local authorities have given on those savings?

Aileen Campbell: There has been real evidence from the Highland pathfinder of not only cost savings, but savings in time in relation to meetings and all the different things that can perhaps impede the getting it right for every child service. Even after a short period of time, clear benefits have been generated from the GIRFEC approach. There is a lot of evidence to show that it has worked with respect to inappropriate referrals to the children’s panel and such like, and that local authorities have had real benefits and savings.

Clare Adamson: Okay. There has also been evidence that questions whether the front-loaded additional moneys for year one are sufficient. Does the evidence from the roll-out in the Highland area suggest that those moneys will be enough to get the approach embedded in the normal working practices and job descriptions of the people involved so that it becomes part of their professional development?

Aileen Campbell: Yes. The evidence that the committee received from Bill Alexander was quite compelling. We are not starting from a static standpoint. A lot of work has been done through the GIRFEC implementation board and by the Government to finance greater awareness of the GIRFEC approach and its implementation. Now that we have the accompanying financial memorandum, we will have the transitional training and thereafter professionals will have that as part of their on-going training and continuing professional development. Discussions with the City of Edinburgh Council and South Ayrshire Council about the roll-out of that have been useful in helping us to develop the financial memorandum and the approach that we have outlined in the bill.

Neil Bibby: I want to follow up on the issue of resources. You are saying that you believe that there are adequate resources in the financial memorandum. However, given the concerns that the Finance Committee has raised and other concerns that the committee has heard that relate to resources, would you consider reviewing the associated costs in the financial memorandum? Concerns have been raised about the named person element of the bill and training, administration and support issues.

Aileen Campbell: We always monitor what is going on with a bill. It is important for members to realise that there is continual engagement between health boards and the Cabinet Secretary for Health and Wellbeing, for instance on ensuring that people have the capacity to deliver the aspirations that we have set out in the bill.

The Convener: I would like to follow up on one or two questions. You have talked about the money that is required to deal with some of the issues, such as the costs of training. I want to ask about the profile of the additional hours. You have mentioned the Highland area several times. Highland Council has talked about “green shoots”, which suggests that it is still early days in relation to financial savings. Given the current profile of the additional hours, the assumption in the financial memorandum about reduced training hours after the first year in relation to the named person provisions certainly seemed to a number of people who have spoken and written to us to be overly optimistic. What is your response to that?

Aileen Campbell: I have outlined some of the benefits that are already being experienced over quite a short period of time, which have been evidenced in the research on the Highland pathfinder. We have also done our own bespoke economic modelling. Every pound that is invested in the early years saves £9 in cures. A number of bits of research show us that we will see financial benefits after the initial investment in the early years has been made.

I ask Phil Raines to comment on the specific points that the convener has raised.

Phil Raines: There are different ways of thinking about this, depending on whether you are thinking more about the local authority side or the health side. It might be helpful to start with the health side. It is noticeable that there is an ongoing cost associated with the role of health in implementing the GIRFEC provisions in the bill. We recognise that if we really want to make a difference in a child’s life we must do so in the first couple of years of their life. It is assumed that that kind of major impact and the fact that it will be there year on year going forward will be reflected in their lives later. We therefore expect a tapering effect. We expect that, as the GIRFEC role beds down universally, there will be efficiencies and economies of scale from people getting better at doing their jobs. For example, midwives will get better at doing pre-birth screening, conferencing and handing over to health visitors, who will get very good at being able to do things in the first year of a child’s life. We therefore expect that, in the second, third and fourth years of the child’s life, there will be less need to support families—in particular, some of the crisis families.

When responsibility is handed over to local authorities in their role as the named person for education, we expect the early work to bear fruit and perhaps kick in quite early. The additional work that is done in the first year of a child’s life should start to bear fruit in subsequent years.
The Convener: That is interesting. Obviously, we all hope that early intervention will have a knock-on effect. My top priority would not be financial savings in particular; it would be the impact on the individual’s life. I am sure that we share that view.

I want to drill down a bit into how early on financial savings can be achieved from GIRFEC. Can you give us specific examples of the savings that we are talking about? Are we talking about bureaucratic savings in relation to the amount of paperwork? Are we talking about the expectation that we will not have to intervene in the child’s life to the same extent in future years? How exactly will the savings be made? Will they be financial savings, time savings, or both? Are we really confident that, having made interventions in year one, we will almost immediately get savings in years two and three? That is pretty quick.

Aileen Campbell: Yes. The benefits for families should be greater clarity about which professionals to contact and earlier support to prevent problems from getting worse. There should therefore be a cost saving in terms of meetings and bureaucracy, and professionals should benefit because they should be able to free up more of their time to work with more vulnerable families. Therefore, by implementing GIRFEC, there should be clear benefits for families as well as savings in costs and professionals’ time. For example, family nurse partnerships are being rolled out across the country for first-time teenage mothers and some of the evidence from that has shown that the mothers do not have subsequent children quickly after their first child. That is a quick saving, and the mothers feel empowered and are much better at being a parent. There are therefore real savings for the child and their mother. I hope that that information is helpful.

The Convener: Before we move on to another section of the bill, I have a final question, which is on health visitors. We have touched on the issue already, but can you provide the committee with some detail around the workforce planning that the Scottish Government is undertaking on health visitors? It has come up repeatedly in evidence that the bill and its various accompanying documents do not provide for sufficient health visitor cover for successful implementation of the bill’s provisions—the Government might agree or disagree with that evidence. What workforce planning is being undertaken to ensure that we have the correct number of health visitors? Never mind midwives and others; let us focus on health visitors for a moment.

Aileen Campbell: In a lot of the work that we do, we inform health boards about their responsibilities with regard to workforce planning. Nurse directors and chief executives of national health service boards will make the appropriate provision in light of the fact that there is a new bill on the landscape. There will also be regular discussions with the cabinet secretary through his regular contact with NHS boards.

The Convener: Irrespective of the bill and the roll-out of family nurse partnerships, there has been comment to this committee and in the press that we have an insufficient number of health visitors, on whom there is already pressure. In what way will the bill and the roll-out of family nurse partnerships impact on individual health visitors? Are we sure that we have sufficient numbers to achieve the ends that we all want?

10:30

Aileen Campbell: I go back to what Bill Alexander said. Health visitors in Highland feel empowered and much more highly regarded for their professional work. We are already seeing growth in the profession. There are other issues. The ratio of health visitors to the children they deal with is quite healthy in Scotland. Phil Raines might like to comment on that.

Phil Raines: Some specific things are going on. The financial memorandum sets out a cost but it does not set out the funding required. As you would expect, it does not say how the work that will be generated through the bill will be taken forward by individual health boards. That is something that health boards have to reflect on and bring into discussion as part of the natural process of budget negotiations.

It is important to recognise that the bill sits among a number of other issues with regard to health visitors, their workload and our expectations of them. A lot of work has been going on with the children, young people and families nursing advisory group, which I mentioned earlier, to develop tools that will enable health boards, given all the possible demands in future with regard to health visitors, to assess much more quickly what demand might look like and how it might translate into the numbers that are needed. As you would expect, that work will feed into future budget negotiations. Clearly, given the commencement of the duties that we are talking about, those budgets are not envisaged at the moment.

Workforce planning is going on. To be honest, health boards have been well aware of the need to do that. Ever since Hall 4 and CEL 29, they have known that GIRFEC was coming and they have been putting mechanisms in place to think about what GIRFEC might look like locally.

George Adam: I would like to ask about early education and care. The minister talked about the 600 hours of nursery care that the Government is offering, which will give parents greater flexibility.
In evidence to the committee, Lori Summers said that childcare

“needs to be more flexible so that a place is available not just in the morning or afternoon”.—[Official Report, Education and Culture Committee, 10 September 2013; c 2751.]

Do you believe that what you have put in place offers that flexibility to people such as Lori Summers?

**Aileen Campbell**: The reason for increasing the hours is to help families who are struggling to balance work and life. The flexibility should help families, and they will be able to have an input in the way in which the local authority configures services, which will enable parents to enter work or training. That is why that flexibility and the way in which the additional hours are delivered will be crucial. This is an important part of the bill. It is not just about adding on extra hours; it is about changing the way in which services are delivered.

**George Adam**: I want to ask another question, just so that we have your answer on the record. Obviously, you will have to work with partner organisations to deliver on this part of the bill. You have had conversations with COSLA. Are things at a reasonable stage so that it will be delivered?

**Aileen Campbell**: Yes, absolutely. There has been close working with COSLA to develop the figures.

Aside from work on the bill, there is the early years task force, of which COSLA is part and parcel. In fact, COSLA co-chairs it with me and the chief medical officer. An enormous amount of work has been done on the delivery of early learning and childcare and to develop the financial memorandum. This is about close working. We have to recognise that COSLA is a big partner in delivering the aspiration to increase both hours and flexibility.

**George Adam**: Another point that has been made is that the scheme will offer children more access to qualified teachers. At the same time, not just qualified teachers will be involved. Can you explain some of that thinking?

**Aileen Campbell**: The other reason for making sure that we deliver this in a good way is that we recognise that it has to be a quality offering to children during their earliest years. Teachers are part of the workforce, but those who have a BA in childhood practice and nursery managers are also a crucial part of the mix of professionals who work with children. A lot of work is being done to make sure that those professionals have the appropriate skills to allow us to be confident that children are being offered a quality service.

Last year, Education Scotland published a report that showed the positive benefits of upskilling the workforce. It also showed how good progress is being made with the delivery of something that will be good for the development of three and four-year-olds.

**George Adam**: You are saying that, regardless of the make-up of nursery staff, the quality of the service that is being delivered on the ground is the most important thing.

**Aileen Campbell**: Absolutely. We have talked about how we want to deliver the service in a flexible way for families, but what is being provided has to be of a quality that will respond to the real needs of children of that age. Last year’s Education Scotland report was useful because it showed that the work that has been on-going in Scotland for a number of years to make sure that the workforce is appropriately trained is paying dividends. It also showed that there is a real need for a mix of abilities within the workforce—a mix of professionals—so that we can have confidence that we are delivering a quality offering for three and four-year-olds, as well as being flexible and meeting the needs of parents and carers.

**Liam McArthur**: I want to follow up the point about quality. As Liz Smith and Neil Bibby have indicated, the Finance Committee’s assessment of the financial memorandum raises some very serious questions. I cannot remember seeing a Finance Committee report that raised quite so many serious concerns about a bill.

One of those concerns is about funding for partner providers, which I presume is linked to the issue of the quality of provision to which George Adam referred. In its evidence to the Finance Committee and to this committee, the National Day Nurseries Association highlighted fairly significant discrepancies in the rates that are paid. The average is £3.28 per child per hour, but it goes from £4.09 per hour at the top end to £2.72 per hour—which Glasgow pays—at the low end. Given that the uprating process is based on assumptions about payments made, what is the status of those presumed rates? Does more need to be done to ensure that adequate payments are being made to allow for provision of the quality that we want to see?

**Aileen Campbell**: It is up to local authorities to decide fair and sustainable settlements with partner providers. The budget that is associated with the bill covers an uplift for the additional 125 hours that local authorities will pay partner providers.

**Liam McArthur**: But you are making assumptions about the funding that is required, and there is an assumed rationale behind the figures on payments to partner providers. Ought there to be more consistency in what is paid?

There might not need to be payment at a specific
rate, but there should not be discrepancies between payments of £4.09 per child per hour and £2.72 per child per hour.

**Aileen Campbell:** It is for local authorities to decide with their partner providers what the settlement will look like. From my point of view, the settlement must be fair and sustainable, and it is in the best interests of the child for the local authority to secure good-quality provision. The financial memorandum covers the uplift for the additional 125 hours.

**Liam McArthur:** Another issue that has been flagged up with the Finance Committee and which I think raises concerns about the assumptions made in the financial memorandum is the provision for looked-after two-year-olds.

Last month, you announced that funding for that provision was being increased from £1.1 million to £4.5 million. Although that is welcome as it addresses concerns that had been raised with you directly about the costs of providing for this group, a witness told the Finance Committee:

“If one element of costs can go up fourfold after they have been thought about more, can other elements of costs do the same? If they could, the shortfall would be significant.”—[Official Report, Finance Committee, 18 September 2013; c 2956.]

Can you explain the thinking or the process that resulted in a fourfold increase in the funding for this element of the bill?

**Aileen Campbell:** I set out our reasons for reaching that decision in my letter to the Finance Committee. We are integrating money as well as providing additional new money, which would ordinarily be recognised as a good thing.

**Liam McArthur:** I do not dispute that—and it is better that it is done now than at some point hence. However, as you will understand, it has raised concerns about the adequacy of the assumptions that were made when the bill and its financial memorandum were put together. You have indicated that the £3.4 million increase is additional funding rather than a realignment of funding through the early years change fund. Is that correct?

**Aileen Campbell:** Again, I would have thought people would welcome our putting in additional money to ensure that we can deliver for our looked-after two-year-olds something that we are proud of. I made it clear in my letter to the Finance Committee that it is to be read alongside the financial memorandum, and we have developed many of these figures in conjunction with COSLA.

**Liam McArthur:** That is fine.

Mr Raines suggested that to make a major impact you need to intervene in the first couple of years of a child’s life. Clearly that is being addressed with regard to looked-after two-year-olds, but it will be no secret to the minister that, on the basis of the evidence that we have received, I believe that we ought to go further—

**George Adam:** This is Liam’s party piece.

**Liam McArthur:** As opposed to your party piece, George. Unlike you, I am trying to hold the Government to account.

**Members:** Oh!

**Liam McArthur:** Save the Children has said that it supports

“an extension to ... all two-year-olds, starting with children living in poverty”

as much as anything

“to tackle inequalities in the early years”.—[Official Report, Education and Culture Committee, 10 September 2013; c 2752.]

That is in recognition of the fact that many two-year-olds from better-off backgrounds already enjoy early education and nursery provision.

Are you prepared to concede any ground in this area? I ask that not least given Claire Telfer’s subsequent comment:

“we support priority being given to children living in poverty. We want to see that taken forward immediately, looking at how and whether that is possible ... in this session of Parliament”.—[Official Report, Education and Culture Committee, 10 September 2013; c 2755.]

**Aileen Campbell:** As I have said to George Adam, I am keen to deliver something with quality as its hallmark to the children whom we are dealing with—in other words, three and four-year-olds and looked-after two-year-olds, who are the most vulnerable two-year-olds in society—and to ensure that we can do so in a sustainable and manageable way. I am not prepared to announce something that we cannot deliver on later, as has been the case in other parts of the UK, where announcements have been made, only for the sectors then to say that they cannot deliver on them and that they are beyond capacity.

**Liam McArthur:** To be honest and with all due respect, minister, I think that you are guilty of doing that. You published a bill and a financial memorandum in which the funding for provision to looked-after two-year-olds was a quarter of what was actually required.

**Aileen Campbell:** We are putting forward a bill with a financial memorandum. I have announced extra money to go into that, which COSLA is content with—we have worked in conjunction with COSLA. In the bill, I have announced a system of childcare that will deliver for three and four-year-olds, which is not contrary to the capacity that we have in the country and which will ensure that, at the end of the bill, 600 hours will be delivered in a
quality way to three and four-year-olds and looked-after two-year-olds.

There is provision in the bill to extend that coverage at a later date, if we need to, but this is a first step in transforming childcare. Making sure that we make that step in a sustainable way is important, because we do not want to say something that we cannot deliver on when the bill is enacted.

**The Convener:** This is your last question, Liam.

**Liam McArthur:** I have to say that on the basis that the announcement was made without the adequate funding—

**Aileen Campbell:** No; we have made this financial memorandum—

**The Convener:** I am going to interrupt you, minister. Liam McArthur can ask his question, and then you can come back briefly.

**Aileen Campbell:** Okay. I apologise.

10:45

**Liam McArthur:** I appreciate that any bill of this nature is likely to introduce something in a phased way. Save the Children is telling us that part of the phased introduction of early learning and childcare can be done by extending it to two-year-olds living in poverty over the course of this parliamentary session. Therefore, I am trying to ascertain whether you are in any way open to listening to those arguments and looking to review whether the bill in its current form can be extended to include such support.

**Aileen Campbell:** It can be extended with secondary legislation.

**Liam McArthur:** So you are not prepared to do that as part—

**Aileen Campbell:** What I am doing is making sure that what we deliver for three and four-year-olds and looked-after two-year-olds is done in a manageable way. What I do not want is to see headlines in the paper like we have seen in other parts of the UK, where the sector has said that the capacity is not there. We have seen arguments over ratios and uncertainty there. I am not prepared to allow that when we are delivering childcare for three and four-year-olds. We want it to be a quality offering, done in a manageable and sustainable way, and that is what we are achieving through the provisions in the bill and the funding that goes along with it.

**Liam McArthur:** Okay. In a country where the issues are higher—

**The Convener:** I am sorry, Liam. I interrupted the minister and I am going to interrupt you. We will conclude it there and move on to the next area of questioning. We are running out of time, and I want to get through some important issues.

**Jayne Baxter (Mid Scotland and Fife) (Lab):** Good morning. Will the minister support the proposal by Who Cares? Scotland, Aberlour Child Care Trust and Barnardo’s Scotland to rename “aftercare” as “continuing care services” for the purpose of part 8? The bill seeks to align part 8 with part 7’s corporate parenting duties, which place a continued duty on corporate parents towards young care leavers to 26 years of age.

**Aileen Campbell:** I have been listening with real interest to the discussions that you have had with the providers of the information that you have. I have looked with real interest at and valued the committee’s input in terms of looked-after children as well—particularly the issue of throughcare and aftercare, because that is crucial. We want to get things right, based on the needs of the child, and provide throughcare and aftercare at a point that is relevant to that child.

We can look at and discuss amendments at stage 2. We would welcome the committee’s views in its stage 1 report and will continue to take a real interest in the on-going discussions on that issue.

**Jayne Baxter:** The minister will be aware that birth parents have a legal duty to care for their children up to the age of 18, even if that child leaves at the age of 16 and decides to return home for further support. Why does the corporate parent’s duty of care to looked-after children finish when those children turn 16?

**Aileen Campbell:** As I said, we want to make sure that decisions taken about when a child leaves care are made in the child’s best interests and are sensitive to the child’s needs. It is not our policy to encourage young people to leave care before they are ready, and that is reflected in all our current regulations and guidance.

**Jayne Baxter:** Would the minister agree therefore that part 8, as it is currently proposed, places an unnecessary responsibility on vulnerable young people to seek the help that they need? Do you think that it would be better for them to be consistently, routinely and appropriately assessed, rather than for them to have to seek out the help they need on an on-going basis?

**Aileen Campbell:** The point at which a young person makes the transition into independent living is a time when they are very vulnerable and need to be supported. If they want that help, they can get it. We want to make sure that, when they make the transition to independence at that very vulnerable point in their lives, they have the
necessary support that they want, to enable them to flourish.

Jayne Baxter: Do you agree that they might need additional support to know what facilities and resources are available to them? Should it be up to them to go and find them? Should someone be looking out for them?

Aileen Campbell: If there is a need for support at the point they transition to independence, that need should be met. There are provisions throughout the bill—in terms of the named person and other elements and areas of the bill—to make sure that that support is provided to the young person.

I am interested in the dialogue and discussions that the committee has been having with the likes of Who Cares? Scotland and others about how we can ensure that we get part 8 of the bill absolutely right. Far too often, we hear stories in which support has not always been there. We need to ensure that that support is in place.

I am also interested in the discussions that the committee is having about support being provided until someone is 26 years old to ensure that the support that we have in place is adequate and allows the young folk in question to have outcomes that are no different from those of their peers who are not looked after.

Jayne Baxter: The eligibility criteria are fundamental to that. The criteria for aftercare set the qualifying threshold for support as being in care on the day that the child can legally leave school. Do you agree that the qualifying threshold for aftercare support should recognise the impact of a child’s journey through the care system, regardless of when they cease to be looked after?

Aileen Campbell: Yet again, I am sympathetic to some of the views that are coming through as the bill makes its way through Parliament. I stress my keen interest in the discussions that the committee has been having on that area, which we need to get right if we are to enable those young people who leave care to get the right support and to go on and have the outcomes that they deserve.

The Convener: Liam McArthur has a brief supplementary question.

Liam McArthur: I echo the sentiments of Jayne Baxter, and I am grateful for the willingness that the minister has shown to take them on board.

I have a follow-up question on the role that local authorities have in, and the decisions that they take about, the care that is provided. Some concern has been expressed about the scope for appealing decisions by local authorities. It has been suggested that steps need to be taken to address that and that, as part of that, consideration should perhaps be given to advocacy support so that such cases can be prosecuted as effectively as possible. Are those areas in which work is being done, or would you be prepared to look at them at stages 2 and 3?

Aileen Campbell: Work has been done on advocacy. During the summer, there was a consultation on it, which we will reflect on.

I go back to the point that we want to make the bill work. If there are gaps in the provisions that we have laid out, we will listen to what the committee has been told and to what it says in its report.

David Blair might like to comment on some of the specifics. Where did you suggest that there might be a gap?

Liam McArthur: In relation to how decisions that local authorities take might be appealed when there is a lack of provision or inadequate provision.

David Blair (Scottish Government): We have been working with Who Cares? Scotland on that issue in relation to care leavers in particular. We are trying to avoid creating more and more bureaucratic systems to compensate for the existing bureaucratic systems. The whole principle of the care-leaving provisions is about normalising the care experience for young people who leave care. One of the things that we are looking at—is this not Government policy; it is about the legitimate work that we are doing to help pin down exactly what is sought—is moving in the direction of putting more emphasis on the quality of the relationship between the social worker or the relevant person in the child’s life who makes a decision and the child or young person.

What that means is another question, which requires a bit more work. It would be preferable from the point of view of what we are trying to achieve with the bill if we could move to a system more like that, because that would replicate the sort of relationship that a child in a normal family has when they ask for something from a parent. That is what we are trying to get at. We are working with Who Cares? on some of the detail in advance of stage 2 to help put some meat on the bones so that we know how to scope the issue and react.

The Convener: Thank you very much—that was helpful.

Neil Bibby: I want to ask a couple of questions about kinship care. Some kinship carers—particularly the kinship carers of looked-after children—have expressed concern that they might get a lower level of support if they were to obtain a kinship care order. What is the incentive for a kinship carer of a looked-after child to apply for one of the new kinship care orders?
Aileen Campbell: The kinship care order is about providing an enhanced form of permanence in kinship care. It is also about recognising the best interests of the child and the fact that they are not always best served by having the formal looked-after status. The order would allow anyone making the transition from being formally looked after into an informal kinship care setting to receive support. That recognises that there might be issues in areas where the family needs support, but without the intrusive intervention of the state, which is what being formally looked after means.

Neil Bibby: If the child is moved from looked-after to non-looked-after status, the kinship carer may gain entitlement to welfare benefits such as child tax credit and child benefit. Can you clarify whether the value of those benefits would be deducted from any transitional financial allowance paid by the local authority?

Aileen Campbell: The bill contains a right to transitional support, so the package of support that existed for the child and carer continues for a period once the child leaves care. There are details on page 28 of the policy memorandum.

As regards financial support, in general, carers of looked-after children are not eligible for child benefit or child tax credit. The local authority pays allowances. Informal carers, including those with a kinship care order, are generally eligible. The kinship care order should help to shift some of the burden to the benefits system.

Neil Bibby: So the benefits gained from the Department for Work and Pensions would be deducted from any transitional financial allowance paid by the local authority.

Aileen Campbell: For an informal or formal carer?

Neil Bibby: If a child is moved from looked-after to non-looked-after status through the kinship care order, the carer would be entitled to benefits, as you have said. Can you clarify whether those benefits would be deducted from the transitional financial allowance paid by the local authority?

Aileen Campbell: There should not be a problem with informal kinship carers interacting with the DWP. The issue is always around the formal kinship carer. David Blair has an example.

David Blair: We did not design the measures to be complicated. I refer to paragraph 121 on page 28 of the policy memorandum. Where a kinship carer has petitioned for a kinship care order and the effect of it is that a child leaves care, the carer is not currently entitled to any on-going financial support.

Let us suppose, for instance, that a carer had an allowance of about £150 a week from a local authority while the child was looked after. Once the child leaves care, we would expect the carer, if they rely on benefits, to have a cleaner relationship with the benefits system. They would claim child benefit and child tax credit in the normal course of things, which would take them up to a certain level. We modelled a top-up payment from local authorities to ensure that there was parity while the carer received transitional support. That is what the measures are designed to do.

Neil Bibby: So the benefits would be deducted.

David Blair: The carers would not be entitled to the same allowance under the kinship care order. It would not make any sense to squeeze out of the benefits system people who would have an underlying entitlement.

The Convener: For absolute clarity, if things were not done in the way that you have suggested, it would possibly mean that moving from looked-after status to non-looked-after status would result in an increase in payments.

David Blair: Yes.

The Convener: And that would be rather perverse.

David Blair: Yes.

The Convener: The effect is to level out the payments. That is the purpose.

David Blair: Yes.

The Convener: That is helpful. Thank you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Part 5 of the bill allows for a child’s plan, should a child require targeted intervention. A number of submissions have been made to the committee, expressing concern about how that might work. In particular, there is concern about how a child’s plan would operate alongside statutory and non-statutory plans, which are also required. How would that all be brought together into one plan? Does the bill adequately address that situation?

Aileen Campbell: The bill is not intended to increase any bureaucracy; it aims to ensure that what we have in the end is much more co-ordinated in its approach. The intention is not to alter the specific statutory duties to prepare a co-ordinated support plan or a plan for a child who is looked after. All those plans would be considered part of the broader framework in supporting the wellbeing of the individual or young person. Much of the detail would be included in any subordinate legislation that we make or in any guidance that we prepare.

Colin Beattie: Is it an obstacle to GIRFEC being adequately introduced if the integration that is detailed in the bill does not happen?
Aileen Campbell: The bill provides a framework to ensure that adequate integration allows the child to benefit from the best possible service. Again, I point to the information that the committee has had from Bill Alexander and Highland about how the much more co-ordinated approach has reduced bureaucracy and cut out a lot of the things that prevent a child from getting the right services that they need. The bill is intended to enhance the service that children get.

Colin Beattie: Does the framework of wellbeing and the introduction of the child’s plan create a need to review the Education (Additional Support for Learning) (Scotland) Act 2004 and the Looked After Children (Scotland) Regulations 2009, as well as the guidance and assessment reporting on curriculum for excellence? Is there a knock-on effect?

Aileen Campbell: GIRFEC is not something that is added on to the way in which we deal with young people and children in Scotland. We are making it part and parcel of how we do business. Cognisance will therefore need to be taken of the new legislative landscape once the bill is passed. For the child’s plan, we will need to make sure that all the different parts of the legislation properly dovetail to enable the best possible service to be given to a child.

Neil Bibby: On the financial memorandum, obviously you believe that there are sufficient resources to implement the provisions in the bill. Given the points raised by the Finance Committee and the evidence that we have heard, I urge you to review the costs as laid out in the financial memorandum. What happens if there are not sufficient resources? What is the Government’s back-up plan if extra resources are required for implementation of the bill?

Aileen Campbell: We will always monitor the impact. Aside from what is set out in the financial memorandum, the Government has regular dialogue with appropriate providers about budgets.

Neil Bibby: I hear you saying that you will monitor the situation. The Scottish Government has undertaken to fully fund the implementation of the provisions in the bill, but if there is not enough money for that, what will happen? Will the costs fall to be paid by local authorities or will the Scottish Government step in? Is there a contingency plan for what will happen if there is not enough money?

Aileen Campbell: The provisions in the financial memorandum sit apart from the fact that, in the new legislative landscape, there will be ongoing and regular dialogue about budgets between Government and the local authorities and health boards.
Children and Young People (Scotland) Bill (in private): The Committee considered a draft Stage 1 report and agreed various changes. The Committee agreed to consider a revised draft, in private, at its next meeting.
Present:

George Adam    Clare Adamson
Jayne Baxter    Colin Beattie
Neil Bibby (Deputy Convener)    Stewart Maxwell (Convener)
Joan McAlpine    Liam McArthur
Liz Smith

Children and Young People (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to, and the report was agreed for publication.
WRITTEN SUBMISSIONS TO THE EDUCATION AND CULTURE COMMITTEE

Aberlour Child Care Trust
Action for Children
Advisory Group for Additional Support for Learning
Angus Council
Arndt, Dorothy
Arndt, Matthew
Association of Directors of Education in Scotland
Association of Directors of Social Work
Association of Directors of Social Work – Sub-Group on Adoption and Fostering
Association of Headteachers and Deputes in Scotland
Association of Scottish Principal Educational Psychologists
Autism Rights
Barnardo’s Scotland
Barnardo's Scotland, Who Cares? Scotland, & Aberlour Child Care Trust (supplementary)
Befriending Networks
Black, Anne
Braterman, P; McLaren, R; Marsh, C
British Association for Adoption and Fostering Scotland
British Association for Counselling and Psychotherapy
British Medical Association Scotland
Campbell, Natalie
Capability Scotland
CARE for Scotland
Care Inspectorate
Centre for Excellence for Looked after Children in Scotland
Centre for Research on Families and Relationships
Child Poverty Action Group Scotland
Children 1st
Children 1st (views of parents and kinship carers)
Children in Scotland
Children’s Hearings Scotland
Children’s Parliament
Church of Scotland
Circle
Citizens Advice Scotland
City of Edinburgh Council
Clacks Kinship Carers
clan childlaw
clan childlaw (views on information sharing)
CLIC Sargent
Coalition of Care and Support Providers in Scotland
College of Occupational Therapists
Collins, Kerry
COSLA
COSLA (supplementary)
Cramer, April
Crossroads Youth and Community Association
Curley, Dawn
Davis, Kelly
Department for Work and Pensions
Dierberger, Bill and Sharon
Down’s Syndrome Scotland
Educational Institute of Scotland
Faculty of Advocates
Faculty of Sport & Exercise Medicine
Falkirk Children’s Commission
Families Outside
Farina, David
Fisher, Laura
For Scotland’s Disabled Children
Forte, Carolyn
Fostering Network Scotland
General Medical Council
George Heriot’s School
Getting it Right for Every Midlothian Child
Gilmour, Keith
Gilmour, Sheila
Glasgow City Council
Gleason, Rita
Govan Law Centre
Grandparents Apart UK
Guinn, Edward
Haberstock, Karen
Haile, Brian and Isla
Health and Social Care Alliance Scotland
Helme, Hope
Highland Council
HM Revenue and Customs (kinship care - tax credits and child benefit)
HM Revenue and Customs (kinship care - income tax)
Homeless Action Scotland
Hudson, Bonnie Rose
Hughes, Halyn
Human Rights Consortium Scotland
Includem
Information Commissioner's Office
Information Commissioner's Office (Scotland)
Kearney, Sheriff B
Kennedy, Mr and Mrs Ben M
Klussman, Susan
Law Society of Scotland
Lewis, Carmen
LGBT Youth Scotland
Lieberman, Marshall
Llewellyn Jones, Tristram C
McCamish, Patrick and Dawn
McDermott, Janet
Mack, Mary
Muir Maxwell Trust
National Day Nurseries Association
National Deaf Children’s Society
NHS Ayrshire and Arran
NHS Greater Glasgow and Clyde
NHS Lothian
Norrie, Prof Kenneth McK
North Ayrshire Council
North Lanarkshire Council
North Lanarkshire Council Psychological Service
North of Scotland Planning Group
NSPCC Scotland
O’Connor, Monica
PAMIS
Parenting Across Scotland
Penrose, Crystal
Perth and Kinross Council
Place2Be
Planning Aid for Scotland
Play Scotland
Prince’s Trust Scotland
Reform Scotland
Rogers, Tiffany
roshni
Royal College of Nursing Scotland
Royal College of Nursing Scotland (supplementary)
Royal College of Psychiatrists in Scotland
Royal College of Speech and Language Therapists
Royal Society for the Prevention of Accidents Scotland
Ruggles, William
Save the Children
Schachterle, Diane
Schoolhouse Home Education Association
Schuetz, L M
Scotland’s Adoption Register
Scotland’s Commissioner for Children and Young People
Scotland’s Commissioner for Children and Young People (Incorporation of the UNCRC)
Scottish Association of Social Work
Scottish Child Law Centre
Scottish Child Protection & Vulnerable Children Lead Nurse Executive Group
Scottish Childminding Association
Scottish Children’s Reporter Administration
Scottish Children’s Services Coalition
Scottish Council of Independent Schools
Scottish Court Service
Scottish Directors of Public Health
Scottish Government
Scottish Government (supplementary)
Scottish Human Rights Commission
Scottish Independent Advocacy Alliance
Scottish Information Commissioner
Scottish Kinship Care Alliance
Scottish Out of School Care Network
Scottish Parent Teacher Council
Scottish Public Services Ombudsman
Scottish Social Services Council
Scottish Women’s Aid
Scottish Youth Parliament
Shakti Women’s Aid
Sithibandith, Erin
Skills Development Scotland
Slezak, Sonya
Smith, Diane
Smith, Edward and Kathleen
Smith, Kolleen
Smith, Rachel
Smith, Shadrach and Family
Steffen, Carrie
Stachowiak, Catherine M
Sutherland, Prof. Elaine E.
Threlkeld, Connie
Together
UNICEF UK
UNICEF UK (supplementary)
UNISON Scotland
VanHooser, Shannon
Vegas, Christina
Vis, Collin
Voice
Waiton, Dr Stuart
Who Cares? Scotland
Williams, Cristina
Wilson, Prof Philip
Withall, Robert
Wooley, Stephanie
Woolfson, Prof Lisa
Working Group on Legal Representation of Vulnerable Children including Separated Children
Worldwide Alternatives to Violence (WAVE) Trust Scotland
Worldwide Alternatives to Violence (WAVE) Trust Scotland (supplementary)
Young Scot and Scottish Youth Parliament (consultation)
Your Voice
YouthLink Scotland
Introduction

1. As Scotland’s largest solely Scottish children’s charity, we warmly welcome the publication of the draft Children and Young People Bill and the opportunity to submit evidence around its general principles at stage 1. We broadly support the Bill and its provisions, but would like to offer some minor observations and suggestions for amendment that we believe would enhance and strengthen the provisions of the Bill.

General points:

Lack of a Children’s Rights Impact Assessment

2. Initially, this Bill was to be brought to Parliament following the passage of the Rights of Children and Young People Bill and in the new legislative context that would present. Proceeding on this basis would have ensured that consideration and promotion of children’s rights remained at the very heart of the Children and Young People Bill and throughout its provisions. It is regrettable that Scottish Government has elected not to undertake a Children’s Rights Impact Assessment on the Bill. Such an omission leads us to act when exactly CRIA’s are to be used if not in the passage and preparation of such a flagship Bill.

Definition of a service provider

3. We are concerned that the term ‘service provider’ is used interchangeably throughout the Bill to mean different groups of providers. At times, the term will include voluntary sector service providers and at others it is limited solely to statutory providers. We would suggest that clearer nomenclature is considered to better define the groups referred to in each section of the Bill. For instance: ‘statutory service providers’ or ‘all service providers’.

Comments and suggested changes to the draft Bill

Part 1: Rights of Children and Young People

Full Incorporation of the UN Convention on the Rights of the Child into Scots Law:

4. Aberlour seeks the full incorporation of the UN Convention on the Rights of the Child into Scots law and we believe this bill represents an opportunity for the Scottish Government to lead the United Kingdom in enabling Scotland to be the first nation to fully incorporate.

5. Part 1 as it stands will do very little to further children’s rights in Scotland and should in our opinion be replaced with a new part which fully incorporates the UNCRC into Scots law. This could be done either by placing a duty on Scottish Ministers and public bodies to ‘act compatibly’ with the UNCRC or to fully legally
incorporate the convention into statute, in a similar manner to the incorporation of the European Convention on Human Rights in the UK Human Rights Act.

6. We support the work of Together (The Scottish alliance for Children’s Right’s), of which we are members, to press for an amendment which will bring about incorporation or, should such an amendment fall, a much stronger part 1 which will give children and young people access to legal redress should their rights be violated through action or inaction by the state.

Part 2: Commissioner for Children and Young People in Scotland

7. We fully support the proposals within the Bill to extend the powers of the Children’s Commissioner but would respectfully ask that the committee consider the following extension to the proposals:

   Extending the powers of the Commissioner to allow them to investigate matters pertaining to a reserved power:

8. Investigations by the Commissioner (Section 5) proposes to repeal part of the Commissioner for Children and Young People Act (Scotland) 2003 to allow the investigation of cases pertaining to an individual child and we fully support this. We would however like to see the Bill go further to also omit Section 7, subsection 3 paragraph (a) which currently prohibits the Commissioner from undertaking investigation into anything relating to a matter reserved to Westminster. We believe there is an argument for allowing the Commissioner to investigate cases relating to reserved matters, such as those pertaining to welfare reform and issues affecting separated children seeking asylum in Scotland, omitting paragraph (a) would lift this restriction.

   Requiring parliament to consider the report of an investigation by the Commissioner:

9. Part 2: Section 5 clause 4 of the draft Bill includes additions to the 2003 Act which provide for the commissioner to lay reports of general and individual investigations before the parliament. Again, we welcome these additions but feel the Bill should extend the 2003 Act to include a duty on Parliament to consider such a report either in full chamber through a debate, or by the Committee deemed most relevant to the subject matter of the report.

Part 3: Children's Services planning

   Requiring Authorities and CPPs to reflect the Children’s Services Plan in the Single Outcome Agreement

10. Section 12 - Implementation of children’s services plan, puts requirement on local authorities to provide services in accordance with the children’s services plan. We warmly welcome the joined up approach to planning and service delivery that such a provision seeks to foster, but believe that this could be further strengthened with direct references to community planning and the development of the Single Outcome Agreement.
11. It is clear from the recent government review of community planning that the Single Outcome Agreement still represents the principle strategic document for local government in terms of the delivery of local outcomes. If this is the case, then it would seem logical to require local authorities and community planning partnerships to link the children’s services plan to the single outcome agreement, and ensure the mutual compatibility of both in primary legislation.

12. This could be done through amendment to both sections 12 and 13. Section 13 makes provision for reporting and we would like to see reference to delivery of the outcomes pertaining to the children’s services plan described in the Single Outcome Agreement.

Part 4: Provision of named persons

13. **General comment 1**: Aberlour firmly supports the legislative basis for Getting It Right For Every Child that this draft Bill proposes to create. We note there has been a campaign opposing part 4 by special interest groups and we feel such a campaign is both misinformed and risks undermining the piece of legislation which is both timely and wholly compatible with the rights, interests and welfare of both children and their families.

14. **General comment 2**: There is no provision in the Bill for reassigning a named person when there is a conflict of interests for the original named person or when their relationship with the child breaks down irreparably. A conflict of interests might exist for example when the head teacher of a rural primary school is named person for all of the children in their School, and their own children attend that school. It would not seem appropriate for a parent to be the named person for their child. Similarly, if the named person were to start a relationship with the child’s parent, they would no longer be able to discharge their duties dispassionately and we feel the Bill should make provision for reassigning a named person.

**Ensuring that the named person service, will not be ‘contracted out’**

15. Section 19 (3) (a) defines those people who can provide a named person service. It is the second sub clause in this section: 19 (3) (a) (ii) which causes us some concern, it seems to suggest that the named person service could be delivered by someone at arms-length from the actual service being delivered to the child: ‘is, or is an employee of, a person who exercises any function on behalf of the service provider’. We, along with others in the sector, would like assurances that this does not suggest that the named person service could be ‘contracted out’ as this could prove incompatible with the spirit of the named person service as being a point of contact for the family who is already known to them.

**Provision of named persons for babies in prison**

16. Section 20 in Part 4 - Named person service in relation to pre-school child, stipulates that it is up to the health board to assign a named person to each pre-school age child in their jurisdiction. We endorse this but would query whether this is sufficient to ensure that all children in this category will be covered.
Aberlour gives staffing support to Scotland’s only Mother and Baby unit at HMP Cornton Vale. It is not clear to us as to how a health board appointed named person would interface with a mother and her baby who were in custody, and we would suggest that in these exceptional circumstances, the Scottish Prison Service might appoint a named person from among their staff to act as named person for the duration of that families’ sentence.

**Ensuring children with profound disabilities who live in hospital or another residential care setting are allocated a named person**

17. Section 21 - Named person service in relation to children not falling within section 20, lists groups of school age children that would not otherwise be allocated a named person under section 20. We believe that this list should be expanded to include those children who, due to profound disability or long term illness do not go to school and reside in hospital or another residential care setting. This would need to be reflected in Section 30 – interpretation of Part 4. The Committee may wish to consider other groups that may not fall within section 20, such as children in the Gypsy Traveller community or those educated at home.

**The appropriate sharing of relevant information regarding parents**

18. Section 26 - Information sharing; requires a service provider or relevant authority to share information relevant to a child’s welfare and wellbeing. We cautiously support this, so long as sufficient safeguards exist to promote and protect the child’s right to privacy. We also feel that this should include a duty on adult service providers to share relevant information about parents which might have a material impact on the wellbeing of a child. This is because information of relevance to a child’s wellbeing may not solely be about them but other things like parental mental health, or domestic living arrangements.

**Relationship between named person and lead professional**

19. In section 28, we feel there is a lack of clarity around the relationship between the named person and the lead professional and that this lack of clarity has fuelled some of the negative campaigns against part 4. Perhaps a new section is required which clearly sets out the relationship between the named person, underpinned by statutory guidance defining each role.

**Part 5: Child’s Plan**

**Ensuring the views of children and their parents are properly obtained and regarded**

20. Section 31 Child’s plan: requirement- requires the responsible authority to ascertain and have regard to the views of the child and the child’s parents 'so far as reasonably practicable'. We are concerned that this term: ‘so far as reasonably practicable’ might allow Local Authorities to avoid going to any trouble to ascertain the views of the family. We would recommend the deletion of this phrase.

**Not using maturity as an excuse to disregard the views of a child**
21. **Section 33 Preparation of a child’s plan** (7) reads:

   In having regard to the views of the child the authority preparing the child’s plan is to take account of the child’s age and maturity

22. This suggests that when it is considering the views of a child, the authority can choose to ignore these views on grounds of maturity. We don’t think authorities should ever be able to use maturity of as grounds to dismiss the views of a child, but we do think they should consider the child’s maturity when considering the best way to seek the views of the child as such we recommend section 7 be amended to read:

   (7) In **obtaining** the views of the child the authority preparing the child’s plan is to take account of the child’s age and maturity

23. This amendment should be applied to section 37 (3) for the same reasons.

**Part 7 Corporate parenting**

*Allowing residential and foster care providers, to hold corporate parental responsibilities by application*

24. Section 50 - Corporate parenting: refers to a list contained in schedule 3 of some 26 individuals or groups who make up the corporate parent. We ask that a 27th group be added to include residential and foster care providers who can join the corporate parent by application.

25. Residential and foster carers take daily parenting decisions as a matter of course but are not allowed to take official decisions or will have to seek approval from social work to allow the child to engage in a range of activities from going on holiday, to appealing school placement decisions. This can cause significant delays, increased work-loads for social workers and unnecessary tension between social work and carers.

26. If we are content to place the day to day wellbeing and safety of these young people in the care of foster and residential care providers then we would suggest that they be afforded full parental decision making powers. We suggest that this be by application as some foster carers may not feel comfortable in having this level of responsibility.

   *Expanding the defined responsibilities of the Corporate Parent to ensure the child is communicated with and made aware of the support available to them.*

27. Section 52 Corporate parenting responsibilities: includes a list of the responsibilities of the corporate parent. We support these responsibilities but believe that it should be expanded to include responsibilities to:

   - Maintain appropriate levels of communication with the child or young person to whom the order applies
   - And to make those children and young people aware of the support available to them both during and after their time in care
Addressing conflict between elements of the corporate parent, either in statute or guidance

28. Section 54 Collaborative working among corporate parents defines the duties of collaboration incumbent on all actors who form the corporate parent. We believe that this section requires either a third party or statutory guidance which sets out means of resolving conflict between those individuals who form part of the corporate parent who may from time to time disagree on the delivery of the child’s plan or around a key decision pertaining to the child.

Part 8 Aftercare

29. **General comment**: This represents one of the most important sections of the draft Bill and the one which we feel will make the most positive impact of any of the draft proposals. We thank the Government for its plans to improve provision in this critical area and bolster earlier commitments and offer our full support.

Broadening the definition of care leaver to include those who have been looked after, but were no longer looked after at the age they leave school

30. Section 60: Provision of aftercare: Amends the 1995 Act to provide support to Care leavers up to the age of 26. We support all the proposed amendments to the 1995 Act, but suggest that this Bill should also seek in section 29 of the 1995 act — subsection (1) to delete “at the time when they ceased to be of school age or any subsequent time”

31. We feel this further amendment is necessary as it seeks to expand those young people who could be classified as a ‘care-leaver’ by removing the proviso that to receive this classification they were in the care system at the point at which they ceased to be of School age or at some point thereafter. This is necessary as it will ensure support is still offered to those for whom an order may have ended before they have left school but still may require support.

Giving care leavers a route of appeal and redress when a local authority decides they are not eligible for after care support

32. We feel there should be some means of redress and appeal on the part of the care leaver against the decision of the local authority both in section 29 (3) of the 1995 Act and perhaps through a new section 5(a) of the new Bill.

Automatic serious case reviews when care leavers die.

33. We have been working with Barnardos Scotland and others to see the inclusion in section 60 of a new clause which will amend the 2009 Looked After Children regulations (specifically regulation 6) to ensure that a serious case review is conducted in the event of the death of a care leaver up to the age of 36.

Creating a duty on LAs to provide age appropriate refuge to young runaways who ask for it
34. This proposed change strengthens the 95 Act, by changing the power conferred to authorities to provide refuge to young runaways that ask for it, into a duty to provide refuge. Very few local authorities currently act on this power and provide refuge under section 38.

35. **After part 8 at line 31 we suggest the insertion of a new: Part 8 (a)**

   61: Short term refuges for children at risk of harm: the 1995 Act is amended as follows.

36. **In section 38- (a) in subsection 1(a) ‘for may’ substitute ‘must’**

   Alex Cole-Hamilton  
   Head of Policy, Aberlour Child Care Trust  
   5 July 2013
1. Action for Children Scotland is committed to helping the most vulnerable children and young people break through injustice, deprivation and inequality, so they can achieve their full potential. Through our work and through speaking out, we empower children to overcome the obstacles in their lives and hold them back. We work directly with thousands of children and young people in 75 services across Scotland. We also promote social justice by lobbying and campaigning for change. We tailor our work to local circumstances, in partnership with children and young people, families, communities and local organisations.

General comments

2. Action for Children is very supportive of the broad policy reforms proposed in this Bill. Our comments are intended to inform the effective implementation of the measures included.

3. Action for Children supports stronger legislative measures to fully incorporate the UNCRC into Scots law and the calls for a Child Rights Impact Assessment to be undertaken on the Bill. We also support the increased responsibility of the role of Scotland’s Children Commissioner (Part 2) to be able to consider individual cases. Monitoring action and making public (where appropriate) the findings and responses from all formal investigations will be essential.

4. We strongly support proposals to put GIRFEC on a statutory footing and are particularly supportive of the focus on early intervention and family support within the Bill. In research on child neglect undertaken by the University of Stirling in partnership with Action for Children, we found that there was broad and genuine support for GIRFEC, but that it needs time to embed. Specifically there needs to be a far greater connection between the ‘child protection system’ and the GIRFEC framework as there still appears to be a gap between the developments defined as falling within the GIRFEC remit and developments associated with the child protection system. To support children’s wellbeing their needs should be seen as a continuum with help offered at the earliest possible stage; promoting a wider understanding of wellbeing that works across ‘systems’ will be a helpful step towards addressing this.

5. Action for Children supports the SHANARRI Wellbeing Indicators. This is a well-established and positive tool with a helpful focus on the range of protective factors. In addition the domains included resonate well with children and young people themselves. It is important that the existing outcomes frameworks are able to overlap and work with SHANARRI.

6. We are also supportive of proposals to increase the number of hours of funded early learning and childcare, but would like to see the priority afforded to 2 year-olds who are looked after broadened to all children in need. Finally, we support proposals that care-leavers should have greater entitlements to request care and
support, but also believe that the Bill should be amended to firm up their entitlements as well as to afford these young people the choice to remain in care until they are 26.

**Comments on specific provisions**

**Part 3, Sections 10, 12, 13, 14 – Implementation of children’s services plan**

7. Action for Children is strongly supportive of the Bill’s aim to improve joint working and planning to improve children and young people’s wellbeing. Without this local tie-up agencies will find it increasingly difficult to plan together for the long-term.

8. At a time of increasingly scarce resources it will be important that the ‘delivery’ aspect of the proposed duty is given as much, if not more attention as the elements that relate to design and planning.

9. We strongly recommend that measures to improve joint working through children’s services planning include a duty of enforcement particularly around the delivery of outcomes and for accountability. More specific details are required in terms of the implications of these duties for the delivery of services and reporting on outcomes across different ‘systems’ or agencies, particularly in contract partnerships between the third sector organisations and local authorities.

10. Partners need to feel responsible for action being taken and for actually improving the lives of children and young people, rather than just a requirement to contribute to information sharing or joint assessment processes. We would be happy to contribute our experience from working across a range of local areas in partnership with public bodies and provide examples of our robust accountability and best practice methods. As major providers of services for children, young people and families, the role of the voluntary sector will need to be worked into new duties and any guidance that follows. This is crucial to ensuring that all agencies delivering and planning services are accountable and considered as equal players within the joint arrangements.

11. We note that there is nothing in statute, or any proposals in the Bill, linking children’s service planning to the Single Outcome Agreement (SOA). Measures should be included in the Bill to ensure that the children’s service planning is reflected in Community Planning and the SOA, ensuring compatibility between these frameworks. We recommend that children’s service planning is coordinated with Community Planning and the SOA in both the planning stage and in defined outcomes (under sections 12 and 13).

12. A healthy approach to integration with broader community planning may be to view a duty on joint design, planning and service delivery (Part 3) through the lens of early intervention, and to specifically express the aim to provide preventative and early help through the new duty, making the link to the broader benefits inherent to community planning on that basis.
Part 4 – Provision of Named Persons

13. Action for Children supports the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role if this is delivered in a way that recognises and encourages trusted professional relationships with children and young people. The Named Person’s ability to take on the responsibilities listed will be dependent on time, training, resources and organisational support. We suggest that flexibility is needed to include robust arrangements for children who are educated at home and for children with particular vulnerabilities/needs.

14. Further clarity is needed in the Bill as to the working relationship between the Lead Professional and the Named Person, underpinned by statutory guidance defining each role. Consideration also needs to be given to the potential conflict of interest if the Named Person, who has a duty to advocate on behalf of a child, is also a member of a public body and has a role in decisions about access to services. We recognise that the Named Person could be helpful in addressing problems at the interface between universal and statutory ‘protection’ services, especially when parents do not accept the concerns.

Part 5 – Child’s Plan

15. Action for Children supports the single Child’s Plan. Existing good practice should be identified and shared, particularly where areas have successfully engaged agencies or professionals who had been resistant to the joint planning. The voluntary sector will have an important role to play in this process, often we serve to facilitate dialogue between agencies. For example, Action for Children currently has monthly-six week progress meetings with some local authorities.

16. Monitoring will be vital as it is not the production of the plan that will make a difference to children’s lives but rather its successful implementation. We need to learn lessons from previous initiatives where joint assessment and planning frameworks have not consistently translated into action. We feel that the child, young person and family should have a leading role in the development of the plan and have rights of access to the plan. These processes and rights should be set out in guidance not legislation as they will need to be both flexible and detailed (for example to include procedures where there are conflicts of interest between agencies over thresholds – or between parents and children).

17. Through our own consultations with children and young people regarding the Child’s Plan they were clear that plans must be written in accessible language and should include the child’s point of view. A number of person centred planning tools are already used with disabled children. These may be helpful not only to ensure disabled children and young people are involved, but as a guide when working with all children. A person centred planning pilot in one of Action for Children’s services has been evaluated, available at: http://www.actionforchildren.org.uk/media/144053/person_centred_planning_pilot.pdf
Part 6 – Early learning and childcare

18. Action for Children strongly supports the measures in the Bill to extend childcare entitlement to free early learning and childcare to 600 hours per annum, provided that there is a focus on quality provision. We believe that investing in child care, paid parental leave and effective family support services is the most effective way to improve child outcomes over the long term. Early learning and child care must be high quality, flexible, accessible and non-stigmatised.

19. Section 43, (3) outlines the extended 600 hours entitlement is to be applied to looked-after 2 year olds or those to whom kinship care orders apply. Action for Children welcomes this step but would highlight other groups of vulnerable children to whom this should be extended. These groups include: other vulnerable 2 year-olds who are not looked after (particularly those in poverty); children with additional support needs; and ideally all looked after children from birth onwards. When working with looked after and other vulnerable children it is essential that there is sufficient provision of specialist help to provide what is most needed, for example physiotherapy and speech and language therapy. We would also highlight the need for further support for out of school care for school age children, which is not mentioned in the Bill.

20. Section 48 outlines measures regarding flexibility to meet the needs of families, but flexibility is also required to meet the diverse needs of children. A report published on 25 July 2013 by the Family and Childcare Trust and Children in Scotland indicates that of the local authorities that have some knowledge about the supply of childcare in their area, there is a particular shortage of childcare for disabled children. It would be helpful if the Bill made specific reference to the support of disabled children. We are concerned that additional measures should be taken to ensure disabled children are afforded the same rights to child care as their non-disabled peers. Action for Children would be happy to discuss the practicalities of addressing childcare needs of disabled children.

Part 8 – Section 60 - Provision of aftercare to young people

21. Action for Children supports the proposals to extend the entitlements to support and assistance for looked after young people and care leavers. We would recommend that care-leavers should be able to request assistance from their local authority up to and including the age of 26. We also recommend that the Bill is amended to include a clause whereby a choice is offered to young people to remain in care until they are 26. We recognise that local authorities would need to develop both the infrastructure and resources to deliver on this. Furthermore we strongly recommend that there should be included in the Bill a means of redress and appeal on the part of the care leaver against the decision of the local authority if they determine that a young person is not eligible for after care support.

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22. Action for Children works with vulnerable children and young people across Scotland. We know that many of the children in care we work with are still very vulnerable at 21 years of age and are not able to suddenly cope on their own. In our experience in Scotland, vulnerable young people have had to move into their own accommodation with no resources to fall back on. We have had cases where young people have become vulnerable to friends, and possibly birth family members, who have taken advantage of their circumstances.

23. We know that many foster carers are willing to continue to support the young people in their care, as they know the young person is not ready for independent living and they have built strong bonds which cannot simply be severed when the young person turns 21. If this proposal can help provide continuity in such circumstances it is to be strongly welcomed, but it will depend on the receipt of on-going local arrangements, not just the request for them. For this to be effective it will need to be proactively enforced in local areas. A key role for the Named Person should be to inform young people of their entitlements and ensure that help is offered once requested.

Part 10 – Support for kinship care

24. Action for Children supports the Bill’s intention to better acknowledge and meet the needs of kinship carers. We recommend a fuller consultation process whereby kinship carers and the affected children and young people are directly engaged. This group of children is particularly vulnerable and often they are not visible enough within our existing systems. The order should work to ensure that kinship carers are aware of the support that they are entitled to. But in addition to this it should serve to make these children visible within the system so that if safeguarding issues arise they can be addressed at the earliest possible stage.

25. We believe Part 10 of the Bill could be amended to make it more child focused. Ensuring that entitlements to support are effective and communicated will be the key consideration. Balancing this support to carers, while also ensuring that the wellbeing and protection of these vulnerable children is central to all decision making, will be the difficult issue in practice. This cannot be covered by legislation but again looking at the wellbeing domains in relation to these children and tracking their progress will ultimately be the most effective way to determine the success of the order.

26. We hope that you find our submission helpful. Please do not hesitate to contact us if you have any questions about any of the comments or suggestions we have made. We would be very pleased to expand on our evidence via oral evidence to the Committee and share our expertise and learning from working with children and families in Scotland.

Carol Iddon, Director of Children’s Services
Kay Steven, Campaigns and Public Affairs Officer (Scotland)
Action for Children
26 July 2013
Preliminary Comments

1. The Advisory Group for Additional Support for Learning (AGASL) advise Scottish Ministers on matters relating to the implementation of the Additional Support for Learning legislation. Its membership includes organisations representing a very wide range of stakeholders, and it is therefore well placed to offer a broad, strategic overview of issues arising from the Bill which are relevant to the existing Additional Support for Learning framework.

2. The Children and Young People (Scotland) Bill does not repeal, replace or significantly amend the Additional Support for Learning legislation. Given the multi-agency nature of the policy intention, it is therefore crucial that proper consideration is given to how these two legislative schemes will work together in getting it right for every child.

3. The Advisory Group notes that the Bill does not resolve the inconsistency in the definition of a parent in education legislation and the Children (Scotland) Act 1995. This has significant implications given the proposals for information sharing between agencies and the prominent role of education practitioners as named persons. It is particularly significant given the parental rights of access as set out in the Pupils Educational Records (Scotland) Regulations 2003. People who would not be recognised as parents in the Children (Scotland) Act will potentially have access to the files held by the Named Person in school.

4. With so many references within the Bill to matters yet to be decided by Scottish Ministers, it is essential that as these matters are progressed they are subject to further consultation. Some of these apply to fundamental areas of innovation (the Children’s Services Plan, the Named Person and the Child’s Plan) and will require particular attention to detail when so many hopes are pinned upon the success of this legislation leading to excellent practice in Scotland. This is especially the case in the absence of legislative overriding principles to assist practitioners. We need to be alert to the danger of unintended consequences, which may be avoided by full consultation on such matters.

Part 1 – Rights of Children

5. There is an inconsistency across relevant legislation with regard to the capacity of a child to make decisions. Currently, the ability to consent to medical intervention is presumed at age 12, yet a child cannot make a school placing request or take other decisions in relation to additional support for learning until the age of 16. In most instances education legislation affords rights to parents rather than the child. As part of the Scottish Government’s commitment to the United Nations Convention of the Rights of the Child (UNCRC), this legislation should be amended to provide the child with equivalent rights. Scottish Ministers
have previously indicated\(^1\) that they looked favourably on proposals to grant children rights of appeal under the Education (Additional Support for Learning) (Scotland) Act 2004 and this Bill would seem to be an ideal legislative vehicle for that amendment.

6. The Advisory Group would like to see the relevant rights from the United Nations Convention “hardwired” into the Bill, in the same way that Article 29 has been in the Additional Support for Learning Act. This makes the commitment of Parliament tangible, giving the rights a practical reality and allowing children to rely on them directly.

7. Reporting duties proposed by the Bill should be accompanied by duties on public bodies, including the Scottish Government, to implement the United Nations Convention on the Rights of the Child.

Part 3 – Children’s Services Planning

8. Post school transitions for young people with additional support needs should have a higher profile within Community Planning structures to support better planning of post school services up to age 25 and to provide oversight and accountability.

9. A variety of evaluations and reports demonstrate that children’s transition to adult services is a general concern and in particular transitions within health and social care. There is a great deal of scope for agencies to further plan and develop integrated approaches to assessment and intervention by care agencies, education staff and the voluntary sector – including individuals making use of Self Directed Support. Where strategic planning does not take place early enough, young people and their parents often fall through the gaps between child and adult services. The Advisory Group have recommended that the Scottish Government develop an overall policy development framework which will ensure emerging, current and future policies impacting on the post school transitions of young people with additional support needs are aligned and integrated.

10. The duties of Scottish Ministers in relation to the rights of children outlined in Part 1 of the Bill are welcome. The Advisory Group expects that through these duties the Scottish Government would ensure that its directorates and policy teams would work closely to produce the required coherence.

11. The Advisory Group found that policy initiatives across education, social work, employability and health lacked cohesion in their design and implementation. Each was set within their own legislative framework and funded from different sources. As a result, at a local level, parents and young people too often found the services provided by the different agencies and professional disciplines did not join-up effectively making them difficult to access and navigate.

12. The Advisory Group is therefore very supportive of Part 3 of the Bill which will extend the existing duty to co-operate about the new children’s services plan to a

\(^1\) Letter from Angela Constance MSP dated 3 August 2011 (Ref: 2011/1008973)
wider range of bodies, voluntary organisations and services. This means services provided specifically to children must be planned with the aim of being integrated and representing efficient use of resources. Some young people cannot progress in their learning beyond school without other support. However, in our view the eligibility criteria for resources to support those with more complex needs has adverse consequences for forward planning and securing positive destinations for young people as they approach the transition to the adult world. Although services for adults are not included, section 9 of the Bill does set out the aims of plans in some detail to encompass those adult services capable of having a significant effect on children’s wellbeing. Our understanding is that relevant adult services should therefore be planned with a view to their impact on children’s wellbeing and this should be made clear in the Bill.

13. The Advisory Group considers that in order to further consolidate joined up transitional experiences for young people the Public Bodies (Joint Working) (Scotland) Bill to establish “integration joint boards” between Health and Social Care should include children’s services (including education) as well as adult services in order to support later transitions beyond the scope of this Bill.

Part 4 – Provision of Named Persons

14. The Advisory Group notes that there are no recommendations in the Bill about who within a local authority might perform the named person role for those who leave school at 16. This includes a group of very vulnerable young people who are at a high risk of being ‘not in education, employment or training’. All young people participating in post-16 learning, training or work should have access to a Named Person Service.

Part 5 – Child’s Plan

15. The Advisory Group notes that there is a need for considerable integration between all legislative frameworks which cover statutory plans for children and young people.

16. The Bill falls some way short of enabling one co-ordinated approach to planning. For example, a child’s plan will address outcomes, an Individualised Educational Programme sets targets and a Co-ordinated Support Plan refers to objectives. This represents a confusing picture to all, an inefficient use of resources and compromises transparency and accountability. The opportunity to harmonise the planning tools used for children into an efficient and coherent single plan must not be squandered.

17. The additional support for learning specialists on the Advisory Group consider that the Child’s Plan under this legislation must include and subsume the legal requirements for Co-ordinated Support Plans if the ‘One Child - One Plan’ objective is to be achieved. This will not work as a half measure – by simply embedding the existing legal requirement for a Co-ordinated Support Plan within a new planning format. ‘One Child One Plan’ will require amendment to other legislation if children and families are not to be perpetually engaged in different planning, review and appeal mechanisms.
18. The Advisory Group recommends a single plan in which each agency is responsible for its contributions. This needs to be supported by accessible, direct and proportionate means of redress. All agencies should be equally accountable under processes of dispute resolution rather than the uneven position (with a focus on Education Services within local authorities) that currently prevails.

19. An effective, independent dispute resolution mechanism must be available in the event of disagreement over the contents or delivery of such a plan. This should include an extension of the availability of mediation, independent adjudication and the Additional Support Needs Tribunal (for prescribed types of dispute). Judgements made in such disputes should make reference to the Children’s Service’s Plan.

20. The provisions to support information sharing must be appropriate, proportionate and timely and protect the child’s right to privacy. It should also protect parents’ rights to privacy, as far as this is consistent with the best interests of the child. The proposed threshold for sharing sensitive personal data about children is set too low in the Bill. The proposed statutory test that information to be shared “might be relevant” provides insufficient protection of the child’s right to privacy, whilst offering nothing that might allow others to act in the child’s best interests. The Advisory Group recognises that this is a difficult issue, but leaving the difficult decisions to be taken by individuals exercising subjective judgements on an ad hoc basis across Scotland is inefficient. We need the courage to provide the strong and positive guidance on data sharing that is essential for the concept of a Team Around the Child to be successful.

21. In any event, detailed guidance on information sharing will be essential. Safeguards, guidance and training will be required to ensure that sensitive personal data and confidential information is disclosed when necessary and agreed to; that the child’s and parents’ right to privacy is respected; and local authorities and other bodies do not increase their vulnerability to complaints of improper data handling. (See para 3, above)

22. The Advisory Group welcomes the duty to seek and take account of views of the child or young person, and the parent or carer. The Additional Support for Learning Code of Practice has helpful sections on good practice for consulting children, and working with parents. We would recommend that this is taken as a starting point in the preparation of a single statement of guidance for all children’s services.

Part 6 – Early Learning and Childcare

23. There needs to be a clear basis to prevent the child’s right under Article 29 becoming obscured in the integration of education with care and both Ministers and public bodies need to be accountable for this. There needs to be clear guidance on how the provisions of the Additional Support for Learning Act would be applicable in these circumstances. It will be challenging to determine when “school education” is being provided and when it is not. Guidance should also address safeguards to prevent a child’s educational entitlements being undermined by parental needs for flexible childcare.
24. The Advisory Group considers that further embedding the UN Convention within the Bill (see paragraph 6 above) would strengthen the rights of very young children to start school with age appropriate skills.

25. Whilst we welcome the focus within this Bill on early learning and care, the Advisory Group wishes to highlight the need for an appropriately skilled workforce to make the most of this opportunity in terms of early interventions and preventative care.

26. In order that the ASL framework can kick in as early as possible for young children who require additional support, and that transition into primary school is as smooth as possible, Scotland requires a skilled early years workforce, confident in identifying potential barriers to learning and knowledgeable about assessment or referral routes. This is a particular challenge for independent nursery providers. Education Scotland research further suggests that health visitor’s confidence in their abilities to assess/refer is patchy. Strong guidance making clear the links to the ASL referral and assessment processes, and training will be required to make the most of this opportunity for Scotland’s children.

27. Further, in order to secure the best possible outcomes for all children and young people, the Advisory Group recognises the fact that in the early years, the home is the primary learning environment in the majority of cases. Parents therefore are the primary educators, yet their needs are not mentioned in this Bill.

28. Where parents may themselves have potential barriers to parenting, via a variety of circumstances including addiction, disability, communication, or self identified parenting support needs, the Advisory Group believes that local support services should be provided to support the family as a whole, with the child’s needs firmly at the centre.

29. It would be helpful therefore if local children’s services planning and commissioning processes outlined elsewhere in the Bill (Part 3) therefore reflected the provision of parenting support, with a particular focus on early learning and childcare.

**Part 13 – General**

30. The Advisory Group welcomes the adoption of a universal definition of wellbeing and the basis on which this is done (SHANARRI indicators).

*Advisory Group for Additional Support for Learning*

*19 July 2013*
I refer to the consultation on the above Bill. Elected Members in Angus when considering the officer’s response to the consultation asked me to write and highlight three specific points.

1. **Concerns regarding funding the implementation of the Bill.** Elected members noted that the Cabinet Secretary has given a commitment to COSLA that the Bill will be fully funded from new money and will not come at any detriment to existing local government grant. However given that at this time it is difficult to calculate with any degree of accuracy how much implementation will cost without more detailed guidance on specific aspects of the Bill, Elected members are keen to get assurances that this commitment will be maintained as the costs of implementation become clearer. Elected members asked me to highlight that if the Bill is not fully funded then it will be extremely challenging to implement aspects of the Bill without detriment to other services.

2. **Amendments to the Children’s Hearings (Scotland) Act.** During the passage of the Children’s Hearings (Scotland) Act 2011 through Parliament COSLA successfully argued for an amendment whereby the National Convener of Children’s Hearing Scotland must reach agreement with local authorities over the makeup of Area Support Team (replacements for Children’s Panel Advisory Groups). This replaced a much weaker clause which indicated the National Convener only had to consult with local authorities on the establishment of Area Support Teams. This safeguard was considered essential to stop local authorities being forced into unsuitable area support teams. The Bill now seeks to reverse COSLA’s amendment to the 2011 Act. Elected members are concerned that significant effort was put into working with neighbouring authorities and the national convener to reach agreement about a Tayside Area Support Team. Any amendments could mean that these agreements are changed without reference to the local authorities or the panel members involved. In Angus there is a long history of effective joint working between the local authority and the children’s panel and concern is expressed that the amendments proposed within the Bill will undermine these arrangements and will ultimately be to the detriment of the panel systems and the children and young people in Angus.

3. **Concerns regarding Section 17(6) of the Bill.** The Bill as published contains the proposal that where Scottish Ministers are not satisfied with joint working locally between local authorities and the NHS around children services planning they may “… constitute a joint board of the local authority and each relevant health board”. Concerns are expressed that there has been no previous consultation or discussions with COSLA on this proposal and that it could place Councils and local services at risk by creating a situation where significant restructuring of existing services could be undertaken by Ministers without the need for further legislation or consultation.
I trust that the Education and Culture Committee will consider the issues raised by the Elected Members in Angus and give them due consideration in their deliberations.

Margo Williamson
Strategic Director – People, Angus Council
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
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Education and Culture Committee
Children and Young People (Scotland) Bill

Association of Directors of Education in Scotland

Part 1 Children’s Rights

1. ADES is fully committed to the developing and embedding of children’s rights. However it has to be acknowledged that many of the barriers to this are cultural and attitudinal rather than legal. Although the Bill supports this, there is a broader agenda of promoting children’s rights and providing genuine opportunities for having their individual and collective voices heard in all decisions which affect them.

2. While the focus on children’s rights is welcome we require greater clarity on what is meant by ‘give better or further effect to children’s rights’. This duty appears to be a duty to report on steps taken rather than a verification that policies are compliant with UNCRC or that they are having an impact on the lives of children. We do not believe that this is as sharply focussed as a requirement for compliance with UNCRC.

3. We believe that the range of scrutiny and audit activities in place ie School Inspections, Children’s Services Inspections, Audit Scotland, CPP Audits can provide appropriate reassurance to Government that Children’s Rights are being implemented and embedded in practice An additional reporting mechanism is not required.

Part 2 Investigation by the Commissioner

4. While there may be circumstances which would benefit from the power of the Commissioner to undertake general or individual investigations it should be noted that this is in the context of a confusing and overlapping range of mechanisms by which children and their parents can seek reviews and make appeals around entitlements, decisions or provisions of service. The ASN Act (Scotland) 2004 Revised 2009, offers parents and young people opportunities to challenge providers about their education, care and welfare and includes dispute resolution, mediation as well as the ASN Tribunal. The Children’s Hearing System in Scotland offers children and families the opportunity to have their voice heard within that context and legally binding decisions can be made that will ensure effective provision is implemented.

5. Local authorities also have well established complaints procedures which are available to parents, children and young people. We believe that the Bill should have addressed how a single protection of rights based on GIRFEC could ease some of the complexities inherent in the current system which parents, young people and professionals can find difficult to navigate.
Part 3 Children’s Services Planning

6. We support the requirement, the aims and the process indicated for the Children’s Services Plan. However, in section 13, we believe that the prime aim should be to focus on the outcomes for children and young people.

7. In relation to guidance in Children’s Services Planning, it would be important to ensure that there are long term evaluations rather than reportable short term proxy measures which may divert attention from the long term aims of the legislation. We have significant concerns around section 17 and the default powers of the Scottish Ministers. This appears to be focussed almost entirely on the role of Scottish Ministers to change structures and to direct resources rather than a consultative and meditative role where they feel that Councils and Health Boards are not achieving best outcomes required for children. This has significant implications for local authorities which were not made explicit during the consultation period.

Part 4 Provision of Named Person

8. The concept of the named person function, as defined, of itself presents no difficulties. However in the majority of circumstances a named person would be an education professional. While the profession recognises their responsibilities to be vigilant as to children’s wellbeing, provide support and ensure that appropriate support is accessed, issues of capacity to undertake the coordination and assessment around this role remain.

9. However, we believe that this should be for the service to identify an appropriate person with appropriate qualifications and not to be directed by the Scottish Ministers as outlined in 58, subsection 2 and 3.

10. In relation to 3-5 year olds, it would seem more appropriate that where children are taking up their entitlement to early education and care provision, which will increase, that this service should provide the named person for children aged three years and over. This makes more sense as over 90% of children take up their full entitlement and are seen on a daily basis by professional staff. Where this is not the case it would be appropriate for the named person to remain the Health Visitor.

11. We are concerned that in terms of allocating a named person, despite the fact that the Bill is quite clear that the named person function cannot be carried out by the parent of the child or young person, that the Bill remains silent on who the named person for children educated at home may be. It would be helpful to have clear direction for this.

12. We particularly welcome the duty to help the named person placed on a wider range of organisations.
Part 5 Child’s Plan

13. We fully support the development of a Child’s Plan where a wellbeing need has been identified. It will be important that the guidance recognises and supports this straightforward and practical approach to the development of a Child’s Plan and they do not become too bureaucratic or onerous. We recognise that paragraph 83, sub section 1, it is important that the Child’s Plan includes a statement of the child’s wellbeing and that the targeted intervention which requires to be provided in relation to the child to address the wellbeing need. Our concerns remain that the opportunity has not been taken to appropriately simplify planning in relation to the additional support for learning legislation and care planning.

Part 6 Early Learning and Childcare

14. We welcome the extension of universal early education and care provision. We welcome the greater flexibility in how this is delivered and believe that the parameters of a minimum of 2.5 hours and a maximum of 8 hours are appropriate. While greater flexibility and choice may be able to be delivered in the large urban areas with large private sector providers this could be challenging in rural areas or areas where partner nurseries are mainly in the voluntary sector. Many local enterprise and voluntary early years providers have ceased trading over the last year which means that local authorities are picking up greater costs for this.

15. A key issue will be increasing the provision whilst maintaining the quality and improving the capacity of early years providers to offer a wide range of supports to families.

Part 7 Corporate Parenting

16. We support the clarification of the concept of corporate parenting. It is helpful that this is more directly specified and the authorities to which it applies identified clearly. It is also important that these groups are planning together to ensure that all services are focussed on the wellbeing of these children who are our responsibility.

Association of Directors of Education in Scotland
12 August 2013
General

1. The Association of Directors of Social Work welcome the opportunity to provide this written evidence to the Education and Culture Committee on this Bill and looks forward to giving oral evidence to the Committee in September.

2. The Bill itself covers a large range of diverse issues and is therefore a complex piece of legislation. Overall, ADSW supports the policy direction and principles of the Bill, but would like to use this opportunity to explain to the Committee some of the concerns we have about both the content of the Bill, the proposed methods of implementation and highlight areas where we think the Bill can go further.

Removal of functions

3. This section of the Bill has prompted a lot of discussion both within ADSW and between ourselves and COSLA. This section, if implemented, would mean that Ministers would have the power to establish joint bodies to deliver integrated children’s services planning if they felt that local authorities and the NHS were not making significant progress in that area.

4. This power, which could be used without the need for further primary legislation would include the ability to transfer property, rights or liabilities of the local authority or relevant health boards, staff and supply of services or facilities to a joint body.

5. ADSW interpret this as a very centralising power, which could effectively remove functions from local authorities including social work services. It is unclear why this power has been included and it is also unclear the circumstances in which it might be used.

6. While there have been assurances from The Scottish Government to COSLA that they do not intend to use the power at the point of enactment of the legislation, there is the possibility that these powers can be invoked at any point after that and also may be used quite differently by subsequent administrations.

7. ADSW is also concerned that a similar provision is present in the Public Bodies (Joint Working) (Scotland) Bill and is disappointed that ministers see fit to include provisions in the Bill which anticipate failure.

Part one – rights of the child

8. ADSW welcomes the promotion and articulation of children’s rights within the Bill. Moreover, the consolidation of the UNCRC reflects not only the appropriate protection of children’s rights within Scotland, but the need to see such rights actively enhanced and promoted. With such rights however, the Bill must equally promote responsibilities’ and active citizenship.
9. Social work practice, with daily decisions and interventions being made, already attempt to balance such rights and responsibilities. Being in locum parentis, involves exercising fine judgements around risk management, personal responsibility and safeguarding. In addressing such rights, the profession seeks to mentor, influence and guide young people towards an appropriate exercise of their rights and their place in society.

10. In accepting the proposal set out in part one of the Bill, the profession would seek to highlight this complex context.

Part two – commissioner for children and young people

11. ADSW would seek further clarification on the parameters of the extended power/intervention of this office. The view from the Association is that significant scrutiny and regulation is currently in place. In addition, Local Authorities have established complaint processes to regulate the quality of care/support to children/young people.

12. Advocacy is not a separate or unique activity to frontline social work practice. Advocacy remains a core task in effective social work practice. While, as a matter of routine there are disputes between social work (the adult/locum parentis) and the child/young person, these are often the very focus of our involvement/intervention and consequently a natural component of the work we do.

13. ADSW believes that the role and availability of mediation should be enhanced to reconcile disputes and different views. The role of the commissioner and the additional powers should be both explicit and exceptional.

Part three – children service planning

14. It should be noted there are many good examples of locality planning and local collaboration to improve and secure better outcomes for children.

15. This Bill should be considered and strengthened within the context of the Early Years Collaborative, concentrating on the needs of localities and embedding support and co-ordination into local communities.

16. Early intervention, breaking the cycle of poverty and impacting on the damaging relationship many people have with alcohol and drugs is most effectively tackled at a local level and predicated on local partnerships having the right resources and investment to address need. Perceived deficits in performance often have a strong correlation with a deficit in resources.

17. In ADSW’s operational experience, the deficit is less to do with the quality and effectiveness of the plan or the planning process and more to do with the scale of the challenge around poverty, deprivation and social need. Rectifying the plan at the expense of resources and local democracy is not helpful and significantly compromises the positive elements of the Bill.
Part four – provision of named person

18. ADSW remains supportive of the Getting It Right For Every Child initiative, further clarification is required to dovetail any guidance from the Bill with the already significant material available on the Government website for GIRFEC.

Part five – child’s plan

19. ADSW endorses and supports a single plan for a child, however further guidance/co-ordination with elements of the Education (Additional Support for Learning) (Scotland) Act 2004 will be necessary to achieve this.

Part six – early learning and child care

20. ADSW recognises the critical role of early learning and the significant contribution of our colleagues in Education in ‘breaking the cycle’ and securing better outcomes for our most disadvantaged and marginalised children. ADSW is eager to support early learning as a mechanism to enhance earlier and effective intervention.

21. The Financial Memorandum will require further scrutiny to ensure the Bill delivers the aspiration of 600 hours. Funding to deliver this will be critical.

22. ADSW is disappointed, however, that children with disabilities is scarcely mentioned in the Bill.

Part seven – corporate parenting

23. ADSW welcomes the Bill’s desire to strengthen and extend corporate parenting. The Association has many examples of good practice to highlight that the aspirations are already well understood. Never the less, the concept of corporate parenting across public bodies will need to be carefully defined. Increasing expectation will still require prioritisation against committed resources.

Part eight – after care

24. Clarification around eligibility is critical and relative to welfare reform. Moreover, coherence with the Social Care (Self-directed Support) (Scotland) Act 2013 is critical.

Part nine – council and services

25. ADSW views the term ‘counselling’ as too prescriptive and likely to undermine the critical assessment process. Likewise the reference to family group conferencing is unhelpful. ADSW would seek to assist to clarify any guidance around this support.

Part ten – support for kinship care

26. ADSW is concerned that the primary objective of reducing formal care and thus the financial cost to councils is unlikely to be secured within the parameters of this Bill. The Bill and any secondary legislation need to clarify the role and
responsibility of the council in these matters, the role of the carers and family life and the distinction between formal and informal kinship care.

27. In reality, the incentive to secure an order will be predicated on confidence around ongoing financial support and the contribution from DWP. Again, a read across to current welfare reform and in particular the ‘bedroom tax’ will be critical.

Part eleven – the national adoption register

28. ADSW maintains that providing clear timescales and options for using the national adoption register would be preferable to making use of the register statutory at the point adopters are approved or when children are registered as being in need of adoption.

29. Sensitive application of any statutory penalties for not using the register in the required timescales should be considered further. The matching of children with families demands great skill and flexibility and can not be accelerated to the detriment of children or families.

Financial implications

30. We have assurances from the Scottish Government that the Bill will be fully funded. However, some aspects of the Bill may generate demand that is difficult to quantify at this stage. ADSW supports fully the following aspects of the Bill and would accept a position where full funding was based on monitoring of take-up as opposed to estimating unknown costs.

- **Kinship care**: the Scottish Government estimate a cost of £2.6m across Scotland for implementation costs with no recurring cost. One of our members, Glasgow City Council, has calculated an estimated cost for assessment and start up, if all of our carers were to apply for the new order, of £0.442m, with some of this recurring dependent on the nature of ongoing support.

- **Supporting carers**: the cost of supporting carers to apply for the new order is unknown, but if we based this on costs to support Adoption orders, there would be a considerable cost to Councils. It would appear the assumption is that once carers have applied for the order and receive a start up grant they would then be no longer in receipt of payment from the Local Authority. It is difficult therefore to estimate how many kinship carers would apply for the new order. Moreover, without a definition of 'support' the assumption that this may not include financial support could be challenged by carers.

- **Support to care leavers from 21 to 25**: the Scottish Government have estimated a national funding requirement of £3.87 in 2015/16, £4.03 in 2016/17, £4.03 in 2017/18 and £1.77m in both 2018/19 and 2019/20. Glasgow City Council have estimated costs to the council, based on the average financial payment for young people and costs associated with additional staffing to provide an aftercare service to young people as: £0.353m in 2015/16 rising to an additional annual cost of £1.4m.
Definitions

31. There are some concerns over lack of clear definitions in the Bill. If terms are not clearly defined it is difficult to plan and cost the implementation of the legislation. We require further definitions of the following terms:

- Part 9 - 'eligible child' in relation to counselling services
- Part 10 - 'kinship care assistance'
- Section 65 - in relation to kinship care orders the term 'related' requires to be defined

Assistance to care leavers

32. ADSW, along with the Scottish Government have been involved in the campaign to end discrimination against children in care and leaving care.

33. These young people are not service users, they are children who have been looked after by the state and therefore the local authority has corporate parental responsibilities for them. In order to assist them to achieve the same outcomes that are taken for granted by many other children, ADSW would like the committee to consider whether this bill could go further to support them.

34. Perhaps rather than assessing children from a care background prioritising their needs and sign-posting them to services and treating them as any other user of services we should consider how we can use this opportunity in legislation to enable professionals to have more of a parental relationship with children within and leaving the care system.

35. Any amendments would need to be fully costed and funded, but we understand that Who Cares? Scotland will be bringing forward an amendment at Stage 2 to this effect. In conclusion ADSW welcomes the new Bill, much of which reflects and reinforces good practice across Scotland we remain eager however, to support the Bill and is available to provide oral evidence to clarify both guidance and any secondary legislation.

Association of Directors of Social Work
30 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill

Association of Directors of Social Work – Sub-Group on Adoption and Fostering

This is intended to complement the more general ADSW submission.

Comments of the provisions

**Provision 1: Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland’s Commissioner for Children and Young People**

1. ADSW continues to support the determination of the Government to ensure that children’s rights are fully recognised in the design and delivery of public services. Tensions in relation to parental rights can emerge in some legal settings and it is important that the wellbeing of the child determines the outcomes.

2. As indicated in our response to the consultation on the Bill, the promotion of children’s rights needs to be set within the context of a broader strategy for meeting children’s needs and addressing the social issues relating to poverty and deprivation which affect many families and children.

3. ADSW has some concerns that the focus on children exercising their rights may mean that some older young people try to exercise their rights but fail to consider the responsibilities that go along with those rights.

4. We believe it is important not to create an ethos where getting their own rights become the focus of their energies rather than being aware of the wider community needs and their responsibilities.

5. Whilst the extension to the Powers of the Children’s Commissioner is welcomed, there needs to be clear delineation about the kind of individual issues that are appropriate for the office to investigate. Concerns remain regarding the interface between these powers and already existing powers of redress (ASL Act; Children’s Hearing; “Who Cares?” Scotland; Care Inspectorate; Local Authority complaints procedures; Local Children’s Rights Services; Ombudsman). It is crucial that the guidance clarifies that this is only one of several options for redress, and clear criteria will be required to avoid duplication.

6. It is noted that it is anticipated that the Children’s Commissioner would only undertake 1 to 4 individual investigations per year. These investigations should only be undertaken where an individual’s situation will have a national resonance.

7. The proposed increased resources for the office of the Children’s Commissioner seems excessive given the projected minimum level of impact and particularly in light of ongoing concerns regarding potential under-funding of other parts of the Bill.
8. ADSW believes that the role and availability of mediation should be enhanced to try to resolve differences of view.

9. There is a need to ensure that multiple investigations of a young person’s individual issues are avoided and that systems work together to try to resolve issues rather than them being escalated to the SCCYP.

Provision 2: Improve the way services support children and families by promoting cooperation between services, with the child at the centre

10. ADSW supports this as a goal, recognising that acting early to prevent families experiencing serious problems and children’s lives being disrupted is in the best interests of children.

11. ADSW recognises the intense pressures on all universal services and specialist services and the continuing need to balance continuing to try to meet the needs of children and families already experiencing serious problems, against working with families at an early stage before they reach such critical points. There is a need to recognise that costs will have to continue to be incurred for both these areas of work for many years.

12. Adult services need to play a full part in the preventive spending but they too will need continue to provide services for people with very complex needs as well as trying to intervene earlier with others.

13. ADSW notes that the development of children’s services plans is highlighted and legislated for. The complexity of planning with so many partners has to be commensurate with the outcomes achievable.

14. Preparing such diverse plans will be time-consuming as will the annual review reports. It will be important to look at all the other demands on public services to report to a range of regulatory bodies and that this is factored into the time required to meet a statutory requirement to report but also to ensure that duplication of reporting is avoided.

15. The preparation of a child’s plan is welcomed so long as they are prepared where there is need for one and that they do not sacrifice detail where the needs are complex. Many children already require a plan in other regulations - looked after children, Individual Education plans and Child protection plans to highlight a few. The interfaces among these plans needs to be managed effectively and coordinated for action.

16. The notion of a ‘single plan’ should be pursued. There is an opportunity for the legislation to bring together all of these requirements.

Provision 3: Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare

17. This provision is welcome and ADSW is pleased to see the approach includes flexibility of provision as parenting support alongside childcare and early learning
will be required for many families if it is to impact positively on outcomes for children.

18. Underlying severe poverty continues to be a very real challenge for many of the families with whom public services work. Relieving serious poverty would lead to better outcomes for children and more choices in meals/food and activities could be available to young families and guidance through parenting initiatives would complement efforts.

19. Early years services need to tackle some of the growing health problems of children particularly diabetes and obesity.

20. Children with disabilities could be included in addition to the two year olds who should receive 600 hours of free early learning and care. ADSW is disappointed that children with disabilities get scarce mention in the Bill.

Provision 4: Ensure better permanence planning for looked after children by improving support for kinship carers, families and care leavers, extending corporate parenting across the public sector, and putting Scotland’s National Adoption Register on a statutory footing

21. ADSW is working closely with the Permanence Team at CELCIS to address delays in planning for permanence and the obstacles services face as they try to achieve better outcomes for children.

22. Decision making involving Children’s Hearings and Courts continues to mean some duplication of efforts and delays. ADSW is keen to see changes that would make legal systems more sensitive and responsive to the needs of children through speedier processes and less adversarial systems. The increased litigious approach to resolving children’s permanent care has a negative impact on children and carers and is costly in expenses and time.

23. Within local authorities, efforts continue to ensure that their planning systems have children’s needs at their heart and reduce any avoidable delays in their journey to permanence.

24. In relation to support for kinship carers, ADSW believes that the vision for kinship care should be that children should be cared for by suitable members of their extended family or friends without statutory intervention unless that is needed to protect the child. ADSW recognises the many stresses on kinship carers and children and would welcome Councils being able to use their resources to provide better support and specialist help to kinship carers and direct services for children rather than continue to be a major provider of income maintenance to kinship care families.

25. ADSW believes that families should not have to rely on local authority services for an adequate income to bring up the child in their family and the parallels with accessing a “Guardian’s Allowance” have formerly been raised in many communications over kinship care matters.
26. ADSW welcomes the introduction of specific mention of kinship carers within Section 11 orders giving children and carers greater security and parental rights and responsibilities.

27. The financial consequences for local authorities of supporting a high number of possibly currently unknown kinship carers through the legal processes and beyond will require careful assessment of the resources required, though we recognise the role that Legal Aid will have in some cases.

28. Whilst ADSW believes that responsibility for financial support should not lie with local authorities, should such a system of support continue there is a need for greater clarity about the cross boundary issues. These arrangements could mirror those in place in relation to adoption allowances.

29. The explanatory notes and financial memorandum suggest a menu of support for kinship carers, including financial support. Whilst such supports may be appropriate in some cases, there needs to be caution about promoting this as an entitlement to kinship carers. The provision of services should be linked to an assessment of need by local authorities. It does not seem appropriate to give blanket entitlement to specific supports regardless of need, particularly when there will be other children in need who will not have such automatic entitlement, such as children looked after at home, who, as a group have the poorest outcomes for looked after children.

30. The role of foster carers in providing looked after children with greater permanence should be enhanced. The use of Permanence Orders in favour of foster carers should be promoted and the routes to achieving those orders simplified if possible. In many cases the child will be of an age to have to give their consent and if that is the child’s wish then we need to find ways to achieve that more quickly.

31. Attention to care leavers is essential; many young people still leave care ill equipped and supported for greater independence. Earlier planning is needed for some young people to identify who will provide their ongoing support. Accommodation choices need to be improved as housing in areas which are already hard to let puts young people at higher risk.

32. The significance of a trusted adult well known to care leavers should be recognised and continuing support from that person as the young person leaves formal care can greatly enhance outcomes.

33. This has cost implications and when coupled with the increase in age of eligibility could be considerable. Some local authorities pay young care leavers higher levels of allowance than those proposed in the Bill. It is important that this Bill is fully funded

34. Services to 16-21 year olds need to be strengthened and resources invested here as well.

35. Extending the age where young people who have left care can ask for an assessment of need is a positive step but providing greater support and services
will need to be properly resourced so that young people are not left to fail in the adult world.

36. Highlighting the importance of Corporate parenting is welcomed and ways of making that real and accessible rather than solely verbal commitments will require a lot of work.

37. Getting into employment as a young person is so important and councils could be a rich source of employment but this will be in tension with the reducing service levels in many public services as budget cuts continue.

38. In relation to the National Adoption Register, ADSW welcomed the Register in Scotland and it is being used for many children. The reality is still that finding adopters for hard to place children, older children and sibling groups is very difficult and the register in itself cannot resolve that.

39. ADSW responded to the Bill’s proposals on making the NAR mandatory saying that they felt that providing clear timescales and options for using the NAR would be preferable to making the use of the NAR statutory at the point adopters are approved or when children are registered as in need of adoption.

40. This continues to be our position but ADSW would acknowledge that there may be a need for the NAR becoming mandatory if the guidance fails to create increasing referrals and use of the Register. The current system of paying inter-agency fees may be an impediment to the placement of children, particularly with the voluntary adoption agencies, and should be reviewed.

41. Sensitive application of any statutory penalties for not using the NAR in the required timescales should be discussed. The matching of children with families demands great skill and flexibility and cannot be accelerated to the detriment of children or adoptive families.

42. ADSW commented previously about the areas in the consultation on better foster care

43. ADSW recognises that the Review of Foster Care is now dealing with many of these areas and will welcome the opportunity to comment on the report of the Review in due course to assess whether the review recommendations cover the points ADSW made in its consultation response.

**Other provisions**

44. On a general point, ADSW Fostering and Adoption sub group is concerned about the numbers of plans the new Bill proposes:

- The Children’s Services Plan- extensive and multi-agency
- Early learning plan
- Corporate Parenting Plan
45. Several areas of commonality and relationships with other significant plans will require to be clarified.

46. Although the Committee has not asked for views on GIRFEC, wellbeing and named persons, ADSW does see the GIRFEC approach as achieving better outcomes for children so long as all the relevant services commit to a plan for the child.

47. Wellbeing as defined through SHANARRI is well established and covers key aspects of positive outcomes for children. It needs to be considered if the framework adequately measures positive outcomes for children with disabilities or if these children require some additional goals.

48. In relation to the Named Person, there is some concern about the realities of people being expected to take on that role in some settings, and being able to fulfil the role fully and that would require ongoing monitoring. What happens during school holidays if the named person is a teacher? What views do parents have about mandatory named persons? There has been a mixed reception to this in the press.

49. In relation to children with disabilities, would a lead professional be better to be introduced at the early stages rather than named person?

50. Does the definition of lead professional need to be enshrined in law?

51. ADSW has concerns about the section relating to the provision of counselling. This needs to be clearly defined – counselling is a very specific type of provision and is different from more general support or a Family Group Conferencing process. It would be more appropriate to refer to the more general provision of support. Any specific service should be provided based on an assessment of need, and counselling services may be part of the output from that assessment. There needs to be greater clarity about eligibility. It is unclear if it is intended that kinship carers should be specifically targeted, or if such provision should be linked to the assessment of need, in which case other vulnerable children, who might have greater need, could also be eligible. Such powers already exist under exiting legislation. It is not clear why further legislation is required.

52. The Children’s Hearing Act does not integrate terminology of GIRFEC. Is there an opportunity to rectify this in the Children’s Bill e.g. for Reporters to request an integrated assessment/child’s plan rather than an IER/SBR. Is it appropriate to extend the time interval to allow for the time required to undertake this assessment?

53. ADSW is concerned at the amount of aspects of the bill which remain to be defined in secondary legislation and the difficulty in commenting on the implications of the bill without this information. It will be important that there is further consultation on the guidance in terms of implementation of the provision of the act.

Association of Directors of Social Work – Sub-Group on Adoption & Fostering

13 August 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  

Association of Headteachers and Deputes in Scotland

1. Thank you for the opportunity to provide evidence to the Committee on this important Bill.

2. AHDS supports the Government intent with this legislation. However, we have some concerns in relation to the second and third aims as listed in your call for evidence:

   - Improve the way services support children and families by promoting cooperation between services, with the child at the centre.
   - Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare.

3. Undoubtedly this is what the Children and Young People (Scotland) Bill (CYPB) sets out to achieve. AHDS is wholly in support of this aspiration. Indeed, these aspirations are not new – the CYPB seeks to give life to such arrangements by introducing a legal underpinning. So, on the whole, we are supportive.

4. We have two areas of concern in relation to the legislation as set out – potential workload implications without adequate resources and implementation following enactment.

Workload/Resources

5. We are concerned that the role of Named Person will create additional burdens on school leadership teams (administrative, organisational and in pushing forward provision for children) which are not properly accounted for in the analysis of costs for this legislation. The focus, in some areas, is currently on getting the paperwork rather than the processes of support right and this risks the creation of resource intensive bureaucracy.

6. We are unconvinced that the training costs identified are adequate for successful implementation of this legislation. In the context of declining resources, if the costs of this legislation are not more accurately identified and provided for then this Bill should not proceed.

Implementation

7. Aside from resource issues noted above we are concerned that with thirty-two local authorities will come thirty-two different ways of managing implementation. These will vary in quality and in the pressures that they add to the role of school leaders through administrative burdens and barriers. In addition to resulting in different levels of provision around Scotland, this likely multitude of
implementation models will also risk confusion when a child moves from one local authority to another.

8. **Strengthen the role of early years support in children's and families' lives by increasing the amount and flexibility of funded early learning and childcare.**

9. AHDS is persuaded by the argument that high quality pre-school settings result in better behavioural and cognitive outcomes for children. For that reason we are supportive of the principle of increased free pre-school education proposed in this Bill. However, the evidence also makes clear that the highest quality pre-school settings most often include qualified teachers on their staff. To ensure that education, rather than care alone, is at the core of these extended hours we believe it should be accompanied by a commitment that all preschool pupils should have meaningful, sustained access to a nursery teacher as well as other early years professionals. We would prefer that this was full-time access.

**Association of Headteachers and Deputes in Scotland**

1 July 2013
Association of Scottish Principal Educational Psychologists

1. ASPEP welcomes in principle the spirit of the Bill which seeks to strengthen children and young people's rights, safeguard and promote their wellbeing through increased ministerial duties, and new powers for the Commissioner for children and young people, as well as introducing mechanisms for the reporting of wellbeing by Community Planning Partnerships. We embrace the Getting It Right for Every Child (GIRFEC) approach which promotes cooperation between services and we recognise the key role for educational psychologists to play in improving partnership working to ensure children get the help they need when they need it.

Part 1: Rights of Children

2. ASPEP supports the clear commitment to recognising, respecting and promoting children's rights in Scotland. We also support the intention to empower children to exercise their rights and recognise the role of professionals, in making this happen. However, ASPEP does question how well the Bill actually incorporates the United Nations Convention on the Rights of the Child (UNCRC). Does it go far enough? It would be helpful if the reporting mechanism was clarified through guidance to Local Authorities. Also, if the agreed reporting process highlights poor practice or non-compliance, what powers will the Scottish Government or Commissioner for Children and Young People have here?

Part 2: Commissioner for Children and Young People in Scotland

3. Whilst ASPEP supports the rights of individual children, the question raised is whether providing new powers to the Commissioner to undertake investigations on behalf of individual children is practicable? How will this be resourced? ASPEP looks forward to the Scottish Government clarifying how costs will be met in light of these additional powers and how these will fit with other national investigating bodies.

Part 3: Children's Services Planning

4. As Local Authorities already engage in integrated planning and produce Integrated Children's Services Plans, these aspects of the Bill are not envisaged to be problematic. Given that educational psychologists already are integral in supporting schools and partner agencies to assess and address the key ‘SHANARRI’ indicators for children and young people, the emphasis on improving the wellbeing of children and young people is welcomed by ASPEP. With regard to the reporting of this, support and guidance from Scottish Government, on meaningful measures of wellbeing improvement would be helpful to Local Authorities.
5. ASPEP supports the Scottish Government’s statement regarding wellbeing:

6. ‘Wellbeing is not just about a child and young person’s economic status, health or educational attainment: it is also about how they take responsibility for their actions, their inclusion in the wider community and whether their views are respected and heard’ (Policy Memorandum Children and Young Peoples’ Bill 2013).

7. ASPEP will continue to encourage and support Scottish psychological services to advise and support educational establishments how best to ensure the optimum well being of all pupils.

Part 4: Provision of Named Persons

8. ASPEP supports the principles of the GIRFEC approach and recognises the significant role of educational psychologists in both the strategic and operational delivery of these. ASPEP welcomes the role of Named Person within universal services. However, following Hall 4, there are concerns regarding Health’s readiness and in particular, the capacity of Health Visitors to assume the role of named person. Guidance on information sharing between Health and Education at the point of transfer of the named person would be helpful. Guidance would also be welcome about the named person for those groups of children whose engagement with universal services is interrupted e.g. gypsy travellers/ home educated/ young people who leave school before 18yrs etc.

9. ASPEP welcomes the adoption of a shared holistic definition of wellbeing. It is recognised that some Local Authorities are already making good progress with the implementation of GIRFEC and it is therefore hoped that the legislation enhances such developments. However, it is also hoped that legislating for the Child’s Plan, for example, and introducing further routes to redress, does not impede progress made to date.

Part 5: Child’s Plan

10. The introduction of a holistic Child’s Plan is welcome. However, the emphasis on the assessment of need within a clearly defined staged intervention process, as a clear pathway to a Child’s Plan is necessary.

11. The Bill does not sufficiently describe how other plans such as Co-ordinated Support Plans (CSPs) and Individual Education Plans (IEPs) fit with the Child’s Plan. Inevitable confusions and misinterpretations of the legislation will result without this being clarified. Given that a review of current Additional Support for Learning (ASL) legislation is unlikely, guidance regarding how the requirements of both the Children and Young People Bill and the Additional Support for Learning (Scotland) Act 2009 can be met within the context of streamlining processes, is required. Again it is worth noting that, in terms of ensuring effective assessment of ASN in schools for children and young people, educational psychologists are key to an effective assessment.
process. ASPEP envisage significant difficulties in local authorities being able to fulfil their statutory duties in a context of declining availability of educational psychologists.

12. The Bill does not include clarification of the role and responsibilities of the Lead Professional in relation to the Child’s Plan. ASPEP would welcome guidance on the role of the lead professional. Specifically it would be helpful for the Scottish Government to outline the parameters regarding best practice in terms of the lead professional’s role, responsibilities and outcomes given differing local authority contexts. This role is crucial in ensuring the co-ordination and delivery of the Child’s Plan where there is, by definition, multi-agency involvement. The role and responsibilities of the named person could be vulnerable to being misinterpreted without clear guidance with the named person being left to carry out tasks by default or beyond their competencies rather than those professionals best placed to deliver on a task. This is particularly important for those children and young people who are moved out with their home authority to another host authority eg a LAAC young person moved for purposes of care. It would be helpful if such forthcoming guidelines were to offer a clear statement clarifying the difference in role and function between the named person and the lead professional.

13. The issue of redress regarding the Child’s Plan requires attention. ASPEP would advocate early and solution focused local mediation as opposed to an adversarial system and would strongly caution against the ASN Tribunal becoming the route to redress. If mediation/dispute resolution services are being considered then these should be provided by nationally recognised organisations with sufficient infrastructure. Properly commissioned service providers should be suitably professionally qualified and recognised thereby ensuring the necessary safeguards for vulnerable families. A new re-dress system would be both costly and unnecessary especially when there are a number of redress options already available such as the ASN Tribunal and the Ombudsman. A single redress system integrated with other forms of hearing and review for children and families as is currently being proposed with regard to all tribunals by the Scottish Government would be beneficial. There is an opportunity within this Bill and the Code of Practice to establish a coherent framework to address this.

14. With regard to the requirements of the Child’s Plan, is a standardised format or minimum data set likely to be determined by the Scottish Government? Has consideration been given to how the impact of the Child’s Plan is to be evaluated? It would be helpful to have this clarified given variations in practice and thinking.

Part 6: Early Learning and Childcare

15. ASPEP is of the view that the extension to 600hrs for 3 & 4 year olds, and LAC aged 2yrs, should also be extended to other ‘vulnerable’ children who have additional support needs. However, it is the quality of the additional hours that is crucial in promoting positive child development. There is a
considerable body of evidence from longitudinal studies that early years education and child care promote outcomes best with a highly trained and qualified workforce. There is an opportunity within the Bill and accompanying Code of Practice to establish minimum quality standards. The impact on rural authorities regarding what is possible in terms of providing flexibility and choice for parents should be highlighted. Are Local Authorities and Health Boards being supported to develop additional forms of early learning and childcare other than nursery provision?

Part 7: Corporate Parenting

16. ASPEP welcomes a definition of corporate parenting which includes the collective responsibilities of public bodies in meeting the needs of looked after children. We also welcome the raising of aspirations for looked after children and care leavers. Good examples of this working in practice would be helpful. Particular attention is required to monitor what happens to LAAC children and young people placed out with their home authority for purposes of care. ASPEP members have consistent experience of this happening to young people without multi-agency planning and without the appropriate checks and balances in place to ensure the young person has access to appropriate education and other support services. Often the only educational representative for young people placed out with their home authority is the case educational psychologist. ASPEP have a concern that if there is a combination of further reduced educational psychology capacity and an absence of a clear framework of corporate duties, this group of vulnerable youngsters may be subject to further difficulties in terms of receiving effective provision to meet their needs. It would be helpful to have a clear framework for practice which facilitates appropriate assessment and planning practice and resource provision.

Part 8: Aftercare

17. ASPEP welcomes the extension of the age range to 25 years for care leavers requesting support from local authorities, to be more in line with the transition to independence for those not looked after. Whilst the duty is to assess ‘eligible need’, a definition of such would be helpful. Guidance should also be provided which signposts how a young person is empowered to make such a request and access appropriate support. More streamlined pathways into adult services would be helpful. It is likely that the extension to 25 years will have financial implications for Local Authorities. Is additional funding to be available?

Part 9: Counselling Services

18. The rationale for this inclusion in the Bill is not clear. The terminology refers to therapeutic intervention for families in distress and, although duties can be met through ‘passporting’ to pre-existing services, there are likely to be financial implications for local authorities.
Part 10: Support for Kinship Care

19. ASPEP welcome the recognition of kinship carers and their role in preventing children requiring alternative permanent care. However, there is uncertainty as to whether a new legal order is required and if this will strengthen the legal and financial position in relation to what already exists.

Part 11: Adoption Register

20. ASPEP supports the promotion of the National Adoption Register which some Local Authorities already make good use of in an attempt to avoid drift in achieving permanence for children.

Part 12: Other Reforms

21. Within the new Children’s Hearings (Scotland) Act 2011, the key principles of strengthening the place and participation of children, and ensuring consistency of practice nationally, are supported. However, there is some scepticism around realistic timescales and protocols in relation to appealing secure orders.

Part 13: General

22. Within the Bill there is basic description of the assessment of wellbeing and defining this in relation to the indicators of wellbeing, Safe, Healthy, Achieving, Nurtured, Active, Responsible, Respected and Included. It is well established that the assessment of the child needs to take account of their circumstance and context as well as the role of the key adults in promoting their outcomes. By defining in legislation what is to be assessed, there is a risk that a more holistic assessment is overlooked. It would be helpful if this section could be amended to state:

23. “The person is to assess the wellbeing of the child or young person and their circumstances and context, by reference to the extent to which the child or young person is or, as the case may be, would be…”

24. It is recognised that accompanying guidance on this matter will play a crucial role. ASPEP would be delighted to contribute to the development of the accompanying guidance.

The Role of Educational Psychologists in Supporting the Children’s & Young People’s Legislation

25. Educational psychologists are keen to support and facilitate initiatives and legislation which supports and empowers children and young people and ASPEP is fully supportive of Scottish Government’s policy drive in this area. It should be noted that in addition to being integral to establishing and maintaining the structures and processes of integrated working in local authorities, educational psychologists are responsible for the initiation and evaluation of the majority of the wellbeing related initiatives, as defined above,
currently delivered in schools eg literacy initiatives, positive behaviour approaches, de-escalation, nurture, reducing exclusions, improving child participation etc (HMIe ASPECT Report 2010). There is a longstanding, record of this contribution which has led to many of the current improvements in Scottish Education. Due to loss of training funding and a decline in numbers of educational psychologists in Scotland, a shortage of educational psychologists is already apparent in a number of areas in Scotland. Given the age profile of the profession, the decline in numbers of Educational psychologists is likely to have a significant impact on local authorities’ capacity to deliver on all aspects of the aspirations of the Children and Young People’s Bill.

26. ASPEP agrees with the policy memorandum’s comment about children and young people in Scotland:

27. ‘What they deserve are services-across all parts of Scotland-that routinely and consistently consider the spectrum of their needs.’

28. It already has already been documented (eg BBC News) that a number of areas, particularly more rural areas are already struggling to provide a comprehensive service due to shortages of educational psychologists).

29. In summary, ASPEP would wish to highlight the following as the main themes arising from this Bill;

- Balancing children/ young people’s rights and parents’ rights through relevant but potentially conflicting legislation
- Redress for children and young people, and families - mechanisms and resourcing for this?
- The need for gathering measurable evidence of outcomes
- Clarity and guidance regarding information sharing systems and processes
- The omission of lead professional duties
- Financial implications of the Bill
- The integral contribution made by educational psychologists throughout many aspects of the Bill’s intentions and the real impact likely resulting from declining availability of educational psychologists across Scotland

Association of Scottish Principal Educational Psychologists
17 July 2013
Autism Rights

1. Autism Rights would like to make a brief submission to the committee's consultation on the above Bill.

2. We lack the time to go through this Bill with a fine toothcomb, but very much disagree with the Bill's proposals for Named Persons for EVERY child in Scotland.

3. We think this proposal is as unhealthy as it is impracticable.

4. 'Named Persons' were devised by Baroness Warnock as part of her investigations resulting in the 1980 Education Act (1981 for Scotland). They were, however, to be people chosen by parents to help and advise them in applying for the necessary supports for children with Special Educational Needs.

5. There are direct and obvious conflicts of interest inherent in the current proposals. He Who Pays the Piper Ca's the Tune. Parents of children with special educational needs continue to find that necessary supports are withheld from our children because of the aversion of local and central government to expenditure on disabled children. We will not accept that a Named Person, chosen by the very local authorities that we are forced to battle with, should abrogate our role as parents.

6. We will fight this all the way, and hope that the committee takes our comments with the seriousness that they deserve. For further information, the committee may wish to study our 'Briefing Paper' of 2007, which details some of the problems within the system, including the issue of data sharing which, in combination with the current 'Named Person' proposals, represent particular threats to the wellbeing of our children and young people. This paper is on our website, the address for which is below.

www.autismrights.org.uk/drupal/node/6

Autism Rights
13 July 2013
1. Barnardo’s Scotland welcomes the opportunity to comment on the Children and Young People (Scotland) Bill. This Bill has the potential to be one of the most far-reaching and influential bills considered in this session of the Parliament. At the heart of the Bill is a vision that Barnardo’s strongly shares - making Scotland the best place in the world for children to grow up.

2. We have welcomed all the opportunities we have had to engage with the Bill as it has been in development; we feel these discussions have helped strengthen the proposals. We look forward to continuing this work with the committee to ensure that we maximise the potential of the Bill to improve the outcomes for vulnerable children in Scotland.

**Key elements of the Bill**

3. For Barnardo’s, the key principle underlying the Bill is a desire to put the needs and wellbeing of the child at the centre of how we deliver services to children. This represents a massive culture shift for everyone who works with children.

4. We therefore welcome the proposals to put elements of GIRFEC into law. GIRFEC has been a great success where it has been fully implemented and it is right that the Bill should seek to secure its wider adoption.

5. We also welcome moves to reflect in Scots Law the role of the UNCRC in influencing the design of children’s services, and to increase the powers of the Commissioner for Children and Young People.

6. The Bill also proposes enhanced protection for some of the most vulnerable children and young people in Scotland. Support for care leavers up to the age of 26 and stronger corporate parenting will help ensure that the care system delivers better long-term support and improved outcomes.

7. Barnardo’s Scotland supports the Scottish Government’s commitment to increase the number of childcare hours to 600 per year for every 3 and 4 year old.

8. The Bill’s provision of a more coherent framework for kinship care will also help address the needs of this vulnerable group, by strengthening existing legislative provision in the Children (Scotland) Act 1995.

**Putting GIRFEC into law**

9. We are aware that some aspects of the Bill, in particular the proposed ‘named person’ service set out in Part 4, are being questioned. Barnardo’s Scotland supports the concept of the named person and believes it should be in the proposed Bill. From our perspective, the named person should simply be a point of contact for children and families, helping them to get the best support possible.
from public services. The Bill will place existing good practice on a statutory footing: teachers and health visitors already look out for the children they work with beyond their health or education remit. They should therefore be in a position to spot concerns at an early stage, listen to issues raised by children or their parents, and work with them to find solutions before these issues become more serious and damaging.

10. The named person role has already been implemented with great success in the Highland Council area. Barnardo’s Scotland staff in Highland report that the system has helped ensure children get the support they need, when they need it. There has also been a significant reduction in the number of non-offence concerns referred to the Children’s Reporter and, as a consequence, less time is spent on writing reports because the named person can deal more effectively with many situations at an earlier stage. It is right that the proven benefits of this approach are now rolled out across Scotland to ensure all children and families get this support.

11. More broadly, putting GIRFEC into law will strengthen the culture shift towards putting children at the centre of service delivery. The mere fact that the Scottish Government has signalled its intention to legislate has already led to greater focus on implementing GIRFEC at a local level.

**Areas for improvement and clarification**

12. As stated earlier, Barnardo’s Scotland supports the aims and principles of the Bill. However, in order to maximise the potential of the Bill, Barnardo’s Scotland has highlighted certain areas where we think the legislation could be strengthened.

**Poverty (Part 1 and Part 13)**

13. The biggest challenge to making Scotland the best place in the world to grow up is the persistence of child poverty. Key elements of the Bill relate to child poverty, in particular Article 27 of the UNCRC: ‘states Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development’. The ‘included’ element of the wellbeing indicators set out in Part 13 is described in Scottish Government guidance as covering overcoming social, educational, physical and economic inequalities. However, we would like the Scottish Government to be more explicit about how the proposals in this Bill will address child poverty, and in particular how the children’s services planning framework in Part 3 will link to the Scottish Child Poverty Strategy.

**Children’s rights (Part 1 and Parts 3, 4, 5, 8 and 9)**

14. There is a lack of connection between the rights-based approach set out in Part 1 and the other parts of the Bill. In particular, we believe that Parts 3, 4, 5, 8 and 9 of the Bill need to make stronger provision for involving children, young people and parents in decision-making processes. In addition, rights to advocacy, tribunals and legal remedies need to be built in to deal with issues where the views of children and young people (or their parents) are in conflict with those of local authorities, health boards and other public bodies. Currently the
requirements to consult children and their parents, for example on the preparation of a child’s plan in 33 (6), is weak and needs to be strengthened. ‘Reasonably practicable’ is an unhelpful phrase and not in line with children’s rights principles.

15. This needs to be part of a more general link between the principle set out in the Children’s Hearings (Scotland) Act 2011 that hearings ‘need to safeguard and promote the welfare of the child throughout the child’s childhood as the paramount consideration’ and the wellbeing assessment set out in section 74.

16. Barnardo’s Scotland’s response to ‘A Scotland for Children: A Consultation on the Children and Young People Bill’ in September 2012 highlighted that we remain committed to the idea that the process of embedding the UNCRC into policy and practice will only be completed by incorporation, and therefore see the new duties in Part 1 as steps in a process, rather than an end point. The UN Committee on the Rights of the Child has twice called for the UK Government as a signatory to the Convention to fully incorporate the rights, principles and provisions of the UNCRC into domestic law. We therefore endorse Together’s submission for the Scottish Government to match its commitment to ‘making rights real’ by at least taking the steps it previously proposed and preferably setting a new benchmark for children’s rights in the UK by establishing a roadmap for the implementation of the UN Committee’s recommendation in full.

Putting GIRFEC into law (Parts 3, 4 and 5)

17. The Bill currently focuses on the child’s relationship with the state, without always fully taking into account the role of non-state actors involved in the life of the child, such as parents, voluntary organisations and faith groups. For example, section 32 (1) (c) limits a child’s plan to only cover interventions delivered by relevant authorities (i.e. public bodies). However, parents may pay directly for interventions or they may be provided by voluntary organisations, whether under contract or through charitable provision. Greater clarity is required as to how these interventions should feature in the single child’s plan.

18. The roles and responsibilities of non-statutory service providers need to be factored in to Parts 3, 4 and 5 of the Bill. In particular there needs to be a clarification of what can reasonably be expected of voluntary and private sector children’s service providers. This would include section 14, which places a duty on voluntary and private sector children’s service providers to comply with reasonable requests for assistance in preparing children’s services plans, and section 26, which requires voluntary and private sector children’s service providers who deliver work on behalf of public bodies to share any information they hold that might affect a child’s wellbeing with any relevant public body.

19. Some of the terminology in the Bill differs between parts, or is not defined clearly. For example, ‘relevant authority’ in Part 5 is defined in section 41 as covering...
only health boards, local authorities and independent school managers, while in Part 6 the same term is used for a large number of public bodies set out schedule 3. The Principal Reporter is mentioned as a service provider in section 7 (1) (c) of Part 3, but not in the list of relevant authorities for Part 4 listed in schedule 2. We would recommend a single schedule of relevant bodies to replace schedules 1, 2 and 3 and a wider section 75 allowing more consistent use of terminology.

20. There is a recognition in section 10 (2) (b) that it is possible for private and voluntary sector bodies to deliver services which, if they were delivered by a public body, would be classified as children’s services within the definition of the Bill. However, private and voluntary organisations are treated very inconsistently in the Bill and are sometimes included as service providers and sometimes not. Duties are placed on these bodies, for example to share information, without any recognition that they are private bodies or that such information sharing can be costly and complicated. There needs to be a clearly defined relationship for non-state bodies which are involved in service delivery.

21. It is currently not clear how the proposed single child’s plans will co-exist with other plans enshrined in statute. In particular, it is not clear how the single child’s plan will relate to the child protection system, and orders made under the Children Hearings (Scotland) Act such as child protection orders.

22. It is also not clear how the children’s services plans established by Part 3 relate to other community and local authority planning processes, such as Community Planning Partnership Single Outcome Agreements, integrated health and social care plans and strategic commissioning plans. We would ask for the Scottish Government to set out clearly how all these plans interrelate and what the overall proposed planning regime will look like once the Act has been implemented.

Named person service (Part 4)

23. While recognising the established benefits of the named person system, we are concerned that section 19 (3) (a) (ii) appears to allow the named person role to be carried out by organisations delivering services on behalf of health boards or local authorities. We are unclear in what circumstances this clause would be relevant, but would be concerned at any provisions that would allow the outsourcing of this function. Greater clarity will also be required in guidance as to the relationship between named persons and lead professionals.

Information sharing (Part 4)

24. We recognise the importance of information sharing, particularly with regard to the successful operation of a named person service. However, we are concerned that section 26 of the Bill (named person: information sharing) covers two different aspects of information sharing. Section 26 (1) and 26 (2) cover requirements to share information in relation to the exercise of the named person functions. Section 26 (5) and 26 (6) appear to cover voluntary information sharing, which is also appropriate.
25. However sections 26 (3) and 26 (4) require service providers, which would include a large number of voluntary and private organisations by virtue of 26 (7), to share any information which might be relevant to the exercise of a public function and which may affect the wellbeing of a child or young person. These appear to be very broad information sharing responsibilities and would seem to cover a very large amount of information. We would therefore suggest that, as a minimum, sections 26 (3) and 26 (4) be dealt with separately, and we would like to see the responsibilities under these clauses much more tightly defined. We would also like to see more information about which organisations, and which activities of organisations would be covered by section 26 (7).

Care leavers (Part 8)

26. While we welcome and strongly support many of the proposals in the Bill, we believe that more could still be done to support care leavers and vulnerable children in the care system.

27. The proposals in section 60 to extend eligibility for aftercare are welcome, but we are worried that the actual level of support that could be made available to care leavers appears to be entirely at the discretion of the local authority. We believe that a process will be necessary to manage any differences between care leavers and local authorities over eligibility and levels of support required. Care leavers should also be able to access advocacy support when in this process.

28. The current regulations on supporting young people leaving care in Scotland state that, 'The provision of regular financial support should be limited to those who are under 18, have been looked after away from home for over 13 weeks since the age of 14 and ceased to be looked after over school age'. Barnardo's Scotland believes this is unduly restrictive even if the age limit is increased to 26, as is proposed in the Bill. We believe that aftercare, including financial support, should be open to a wider group of care leavers, including those looked after at home and those who left care shortly before school leaving age. School leaving age can be between 15 years and 8 months and 16 years and 3 months, and we believe that greater clarity would come from standardising on 16th birthday. However, we believe that some form of aftercare should also be open to those who have spent at least 13 weeks in care at any point in their lives. Consideration should also be given to legislating to ensure that the option of a return to being accommodated is available to young care leavers under 26.

29. The legislation also needs to ensure aftercare is available to care leavers in the local authority area in which they reside, and not just in the local area where they left care.

30. We would also like to see the use of significant case reviews for all care leaver deaths, as is currently routine practice in cases of deaths among children in the care system.
Early years (Part 9)

31. We welcome the Scottish Government’s recent focus on early years with the Early Years Collaborative and commitment within the Single Outcome Agreement framework used by the Community Planning Partnership. However, at the moment there is little in the Bill, apart from the new role for health visitors as named persons, that seeks to address the needs of children under the age of three. We would therefore like to see Part 9 broadened to cover greater provision of optional parenting support and parenting education for those families which would see themselves as benefiting, as well as counselling services.

32. While we support the proposals for extending eligibility for early learning and childcare to looked after children and those subject to a kinship care order, we are concerned that this may create an incentive for some children to become looked after or subject to a kinship care order, which would go against the ‘no order’ principle.

Conclusion

33. We look forward to working with Committee and Parliament to deal with the issues highlighted above, in the context of our strong support for the general principles and aims of the Bill.

Barnardo’s Scotland
1 August 2013
Barnardo’s Scotland, Who Cares? Scotland and Aberlour Childcare Trust all highlighted in their oral evidence the potentially very positive impact of Part 7 and Part 8 of the Children and Young People (Scotland) Bill on outcomes for young people leaving the care system. We have therefore prepared this supplementary evidence on this part of the bill, to provide additional detail for the committee’s consideration on the points we raised. We all welcome the Scottish Government proposal to increase from 21 to 26 the age limit for young people leaving care to have a right to be assessed for aftercare, and the proposal that corporate parents also have a responsibility to those who have been in care. However, we would like to see elements of what is currently proposed clarified, strengthened and improved.

1) Strengthening the current proposals

As well as the more transformative changes laid out below, there are a series of improvements that could be made to the current proposals in the bill to ensure that the proposed extension of eligibility for aftercare is available to all those that need it, and that the needs of care leavers are more effectively recognised. These include:

- Aftercare should be available to all care leavers who need it, regardless of care setting. At the moment financial support as a part of aftercare is normally limited to young people who have been looked after and accommodated. Given the particularly poor outcomes for children looked after at home, it should be made clear that all care leavers will be treated equally in the proposed assessment of need.

- A key issue for care leavers is the lack of continuity in the relationships they have developed in care when they leave care. Section 51 of the draft bill states that the responsibilities of corporate parenting cover those who have been in care, and section 52 sets out what these responsibilities are. There should be a new duty in section 52 to ensure relationships with care professionals built up when a child is in care are maintained when young people leave care, to ensure these relationships can be used to access support, guidance and services, as dictated by the young person, up to the age of 26.

- At the moment aftercare is available to young people if they are in care at school leaving age, which can be any point between 15 years 8 months and 16 years 3 months. This means a young person can leave care at 16 but still not be eligible for any aftercare, because they had not reached school leaving age when they left care. This should be simplified to ensure aftercare is available to all young people in care on their 16th (or 18th – see part 2) birthday. This should be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.
The eligibility criteria for aftercare need to be widened to also cover children who have spent several years in care, even if they are not in care at school leaving age (or 16/18th birthday). At the moment one young person can be in care for the first 15 years and 6 months of their life, but have an entitlement to aftercare, while another young person can be in care for 3 months before school leaving age and be entitled, under the proposals in this bill, to a decade of aftercare support. Being in care for a number of years should lead to an entitlement to aftercare. As first step, if a child has spent at least two years in care by the age of 11, or has been in care for at least 13 weeks after that point, they should be eligible for assessment for aftercare. This should also be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.

There needs to be a disputes resolution process, with advocacy support, in cases where there is a difference between a local authority’s assessment of the support it needs to give a young person and the young care leavers assessment of the support they need to receive. The framework for this process needs to be laid out on the face of the bill. This should be mirrored in clause 51 (b) (ii) of part 7 in terms of the corporate parenting responsibilities.

The death of a young person receiving aftercare should trigger a significant case review, in the same way that it would for a child in care.

2) Raising the normal age of leaving care

At the moment aftercare eligibility starts at school leaving age i.e. immediately before or after the young person’s 16th birthday. However section 75 of the draft bill states that ‘child’ means ‘a person who has not yet attained the age of 18 years’. We believe that aftercare should start when young people stop being children, and the normal minimum age of leaving care should be 18. Changing the eligibility criteria, as described above, would play a major role in this, allowing for a longer term planning process for children in care. Young people who do choose to leave care before they turn 18 should be able to return directly to care if they wish. Statutory reporting and monitoring of this change would also be required, along with staff training and development, especially around transition and working effectively with older young people.

3) Transforming aftercare to continuing care

Section 51 of the bill makes it clear that corporate parents have a continuing responsibility to young care leavers under the age of 26. This is entirely appropriate, given that most young people now do not leave their parental home until their mid-twenties. Rather than a model of care for those under 16 (or 18) followed by a period of ‘aftercare’, we want to see a move to a system of ‘formal care’ for children under the age of 18, followed by a period of ‘continuing care and support’ for young adults who have been in care.

This would be part of a process of transforming aftercare into a much stronger form of continuing care, which combines the continuation of support and the continuation of the strong relationships that young people in care have come to rely on. We recognise that this transformation is an ambitious task, and will take years to deliver. However there are some key elements of the bill that could be amended, clarified and improved to help facilitate this transformation.
The name of part 8 and section 60 should be changed from describing ‘aftercare’ to better reflect a model of continuing care for young adult care leavers.

At the moment the proposed new section 5A of the 1995 Act set out in section 60 (2) (c) of the draft bill appears to give complete discretion to local authorities to determine what support they offer young care leavers who are deemed to have eligible needs. This needs to change, to avoid a postcode lottery of provision. We recognise that many local authorities are working very effectively to deliver support to formerly looked after young people, and provisions for minimum standards of aftercare in this bill would build on good work that is already being done, and encourage good practice to be taken up by all local authorities and other corporate parents.

Scottish Ministers should have the power to set minimum standards for the delivery of advice, guidance and support offered by local authorities to young adult care leavers. These standards should be about norms of support, based on a set of codified rights in areas such as accommodation, employment, education and health, rather than a model based around detailed needs assessments. A ‘reasonableness’ test would be the appropriate way to deal with situations where there were different expectations of support between the care leaver and the local authority.

In the drawing up of guidance around advice, guidance and support, Scottish Ministers should engage with young care leavers and the organisations they work with to help create a vision of what services provision should look like, in line with the vision of a move from aftercare to continuing care we would like. Local authorities and other corporate parents should also work together to provide a dedicated continued care provision in relation to accommodation, employment, education and health services.

1 October 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Befriending Networks

1. Befriending Networks is an umbrella body providing support and guidance to a wide range of befriending projects and including in Scotland, 62 member services who work with children and/or young people.

2. Befriending Networks welcomes the increased focus on children’s rights that the Bill is proposing in the duties it sets out for Scottish Ministers and public bodies, in the design and delivery of policies and services. We feel that with sufficient awareness raising aimed at children and young people, this aspect of the Bill, may provide children and young people with a sense of “ownership” about the changes it brings and could lead to increased confidence around challenging policies or services against this yardstick.

3. Improving cooperation between services for children and families can only bring benefits to all parties. Children and families should gain from this synergistic approach and receive the support they need with fewer delays. It should also, through the Named Person role, help children and families view the practitioners offering support as more of a unified team working with them, than as fragmented silos of support.

4. For befriending services, this will help to avoid duplication of effort and will allow them to focus on their area of expertise, confident in the knowledge that the child or young person they are working with is getting support in other areas as needed. A key element to the success of this working in practice would seem to be the relationship that is developed with the Lead Professional – a role not to be included in the legislation. It is to be hoped that sufficient guidance will be offered to enable uptake of this role in a way which is supportive and respectful to other practitioners involved in a case. We believe cooperation between the practitioners from different agencies will best be fostered by a facilitating rather than hierarchical approach – especially as the Lead Professional acts as the information gatekeeper in terms of the Child’s Plan. We understand that by not being prescriptive over eligibility to take on the Lead Professional role, the Bill will leave this open to interpretation in the hope that this will result in the most appropriate worker being selected for the role. This flexibility has definite advantages, but could prove counter-productive for the child or young person if there is insufficient guidance offered when a Lead Professional is not obviously or harmoniously emerging, as this would cause delays and be contrary to GIRFEC principles.

5. Befriending Networks welcomes the provision in the Bill for strengthening the early years support available. This move will bolster the development of preschool children, which can only improve their chances of achieving their potential.

6. Befriending Networks also welcomes the provisions for extending the duty of care on statutory services for looked after children, as they face particular
vulnerabilities at points of transition. Befriending services can offer emotional support during times of transition and help children and young people achieve their potential, but the intervention needs some stability to be most effective with evidence suggesting that relationships lasting at least 1 year are most beneficial. We would therefore welcome these changes as providing a vulnerable group with a better chance to engage effectively with the services our members provide.

Befriending Networks
22 July 2013
Proposals relating to children’s rights

1. I want to acknowledge the strong commitment of the Government to ensure that children’s rights are fully recognised in the design and delivery of public services. Many tensions with parental rights emerge in legal settings and it is important that the wellbeing of the child determines the outcomes.

2. Tensions will emerge relating to the financial constraints and consequential impact on services which could support children’s rights more fully.

3. I feel that the promotion of children’s rights needs to be set within the context of a broader strategy for meeting children’s needs and addressing the social issues relating to poverty and deprivation which affect many families and children. The child’s basic rights to an adequate standard of living and housing need to come first.

4. For many years I have had some concerns that the focus on children exercising their rights may mean that some older young people expect to exercise their rights but have not been required to consider the responsibilities that go along with those rights. I think that it is important not to create an ethos where getting one’s own rights become the focus to the exclusion of considering the wider community needs and the young person’s responsibilities to that community.

5. There are currently many routes for young people to raise concerns. I feel that it is important to explore why people feel that they are not working well enough before the powers of the Commissioner are extended to individual issues. There needs to be a clear delineation of what kind of individual issues are appropriate for the office to investigate. The number of individual investigations projected is of 1-4 per year. The explanatory notes say this will require 3 additional staff and incur a considerable cost. Might more availability of mediation help to resolve differences of view, rather than increasing the staff at SCCYP to do more investigations?

6. Any changes in the role of the Commissioner need to ensure that multiple investigations of a young person’s individual issues are avoided and that agencies work together to try to resolve issues rather than them being escalated to the SCCYP.

Proposals to improve the way services support children and families by promoting cooperation between services, with the child at the centre

7. I fully support this as a goal recognising that acting early to prevent families experiencing serious problems and children’s lives being disrupted is in the best interests of children.
8. I am also very aware of the intense pressures on all universal services and specialist services. It is essential that families and children already being provided with services or children who are in looked after care experience no reduction in the help they need so that there can be a release of funds for others through early intervention. Recognition is needed that costs will have to continue to be incurred for both these areas of work for many years.

9. Early intervention will need major investment in universal services and putting into practice across the whole of Scotland, the GIRFEC approach to working with children and families.

10. The response of adult services will also be crucial if children’s lives are to be improved as many parents struggle with complex problems which impact adversely on the children in their care.

11. The development of Children’s Services Plans is time-consuming and costly. Caution is needed to ensure that the time spent on the complexity of planning with so many partners is commensurate with the outcomes achievable.

12. The numbers of reviews of services noted in the Bill in addition to existing ones for example from the Care Inspectorate inevitably add pressures and divert scarce resources from direct services.

13. Similarly the preparation of a Child’s Plan needs to dovetail with any other existing plans and the interfaces need to work well so that where there are complex needs every agency provides their part in the plan in collaboration with each other.

**Strengthening the role of early years support in the lives of children and families by increasing the amount and flexibility of funded early learning and childcare**

14. The increased amount and flexibility of funded early learning and childcare is going to have a positive impact on many children. Flexibility particularly for looked after two year olds and other 2 year olds with complex needs including those children with disabilities should be ensured. Supporting families to provide stimulating early learning opportunities is going to be more positive for many than being in a daycare setting so that secure attachments can be built rather than a range of child care workers caring for a young child.

15. Early years services also need to tackle some of the growing health problems of children particularly diabetes and obesity. This is only one example of National initiatives with which early years services will have to collaborate.

**Ensure better permanence planning**

16. Improvements at local service levels to reduce any avoidable delays and to make positive plans for children as early as possible will all help to achieve better permanency plans for looked after children so that they can establish secure
attachments to their permanent carers as early as possible. Foster carers are often the most secure person in a child's life and they need support to enable them to seek permanence orders to give the child and them greater stability of placement. Allowances like Adoption Allowances will be needed for many of these placements.

17. Legal systems also need to work to speedier processes and develop less adversarial systems which delay the child and carers having the security of legal permanence. An increasingly litigious approach to resolving children's permanent care has been evident I feel in the past years and legislative changes need to be addressing how to reduce that negative impact on children and carers and the financial burdens such litigation imposes.

Support for kinship carers

18. Having been involved closely with the work of Moving Forward and its focus on Kinship care I still believe that the vision for kinship care should be children cared for by suitable members of their extended family or friends without statutory intervention unless that is needed to protect the child. Being a kinship carer brings many stresses and if Councils were no longer providing income maintenance for some 4000 kinship carers and children I believe that Councils could use their resources to provide better support and specialist help to kinship carers and direct services for children.

19. I do not think that kinship care families should have to rely on Councils for an adequate income to bring up the child in their family. Extension of the criteria for a "Guardian's Allowance" have already been explored but I believe still merit more consideration.

20. Keeping Section 11 orders as the core legal basis for children in kinship care with the new Kinship Care order will clarify security and parental rights and responsibilities. Greater legal security will be important in many kinship care settings but rehabilitation should not be overlooked when that could be a safe option for the child's future care.

21. Transitions for kinship carers from current allowances would need to be well managed as many of these carers already experience serious financial hardship as allowances are worked out.

Care Leavers

22. I would support extending the age for care leavers to be able to request an assessment of need but assessments will be worthless if the services assessed as needed by the care leaver cannot be made available. This should not detract from better planning much earlier for young people reaching adulthood.

23. The significance of a trusted adult well known to care leavers should be central to decisions about where they will settle and to where they can return.
24. Highlighting the importance of Corporate parenting and looking at ways of making that real and accessible rather than solely verbal commitments will require a lot of work.

25. Getting into employment as a young person is so important and councils could be a rich source of employment although this will be in tension with the reducing service levels in many public services as budget cuts continue.

The continuing need for improved resourcing and support for fostering services continues to be debated in the Foster Care review

26. I am concerned that the key role of foster carers as the best people to provide a trusting and lasting loving relationship for many looked after young people may not get the resourcing and prominence it needs now that fostering issues are removed from the C and YP Bill. I hope that the Review of Foster Care findings will give the Scottish Government a clear message about the value of fostering as an essential service for children and young people who have to be looked after by Councils. Improvements that the Review will be likely to suggest will be welcome but need the backing of Government and adequate resourcing to make outcomes the best possible for children growing up in the care of agencies across Scotland.

27. If disparities in conditions for foster carers continue there may be a need to revisit legislation to enforce the provisions

GIRFEC

28. I see the GIRFEC framework continuing to provide a sound basis for collaborative work but to work services have to be resourced to provide early and if necessary intensive services if the SHANARRI outcomes are to be achieved for all children.

29. While the Bill makes no specific reference to children with disabilities, they do need to be able to access as a priority early learning and childcare appropriate to their needs as well as families being able to access counselling to help them cope with the stress of caring for a child with disabilities.

30. They also need good respite care as a preventive resource to reduce the stress on families.

31. There are many more aspects of the Bill for comment but the above comments relate to the issues about which I feel most familiar.

Anne Black
Independent Social Work Consultant
17 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Paul Braterman, Ron McLaren and Clare Marsh

1. We welcome the proposed introduction of this new bill and hope it will provide for children, the rights which have so far been largely ignored. We propose to limit our comments to those which directly affect the rights of the child, as outlined in Article 14 of the UNCRC.

2. Article 14:
   - States Parties shall respect the right of the child to freedom of thought, conscience and religion.
   - States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. ‘CURRICULUM FOR EXCELLENCE – PROVISION OF RELIGIOUS OBSERVANCE IN SCHOOLS’ states:

   “…….we can expect Scotland to become increasingly diverse in the range of faith and belief traditions represented. Religious Observance needs to be developed in a way which reflects and understands this diversity. It must be sensitive to individual spiritual needs and beliefs, whether these come from a faith or non-faith perspective.”

4. The Review Group on Religious Observance speaks of Religious Observance as both an individual and communal activity, providing the opportunity for individual reflection on what the core beliefs and values of their community mean to them as individuals, and how they can contribute and are influenced by them. However, in much of the primary sector, many schools simply ignore this. A single religion is practised as the one true and/or locally predominant faith, excluding all others, involving a religious minister/priest or cleric who presides over a specific religious service in a whole school assembly. We see that as contrary to the awareness and acceptance of the diversity that we seek.

5. ‘CURRICULUM FOR EXCELLENCE – PROVISION OF RELIGIOUS AND MORAL EDUCATION IN NON-DENOMINATIONAL SCHOOLS and RELIGIOUS EDUCATION IN ROMAN CATHOLIC SCHOOLS’ states:

   “Education about faith and belief in non-denominational schools, and education about faith in denominational schools contributes to the development of the whole person, allowing children and young people to consider, reflect upon and respond to important questions about the meaning and purpose of existence.”

6. The Scottish Joint Committee on RME or RMPS tells us that schools have been asked to move away from the confessional approach but school chaplaincy teams abound with faith representatives and lack non-religious balance.
7. Some primary schools invite the Bible Bus to park in the playground to distribute bibles and some distribute CD-ROMS produced by the JAM Trust which teaches creationism.

8. Government guidelines advise:

   "parents have a statutory right to withdraw children from participation in religious and moral education and religious education in both non-denominational and denominational schools", and

   "Where a child or young person is withdrawn, schools should make suitable arrangements for them to participate in a worthwhile alternative activity."

9. Schools should not be allowed to impose demeaning tasks, or treat opted-out children as if they were being subjected to discipline. Many parents contact non-religious organisations to complain that their school continues to teach one religion as the only true one. Some tell us of the obstructionist approach adopted by schools to their requests for their child to opt out and no suitable activity is offered. We are told that children are left to sit in a corridor reading a book, and, in one case, asked to sharpen all the pencils and tidy the classroom.

10. In a YouGov survey of 1000 parents of school age children (March 2012), only 4% said that schools should maintain the confessional approach and only 20% had been informed by the school of their right to withdraw.

11. It would appear that the problem of the absence of parental awareness of the provision to opt-out is confined mainly but not totally to the primary sector. However, we are also told by parents of pupils in the secondary sector that Intelligent Design is advocated by invited speakers, despite the fact that it is completely contrary to the scientific consensus. The theory of evolution is incontrovertible, supported as it is by the weight of scientific evidence; the theory of I.D. is not. Surely, in the interest of the children, it should be challenged on both scientific and philosophical grounds.

12. School staff who are sympathetic to requests for opt-out explain that they simply do not have an alternative, suitable curricular activity nor do they have the resources to provide a teacher. We have great sympathy with these schools and understand their problem. As a solution, we suggest that all schools, including those in the primary sector, move away from the confessional approach. It may be that some parents do not wish this to happen and if that is the case, then the local authority should provide the staffing and training to put in place, an alternative course of study based on philosophy and morality. Excellent course materials and training in their delivery already exist, provided by the education departments of our universities. When parents are enrolling their child, they can then be offered a choice of curriculum.

13. Children of a homosexual orientation need to be protected against the homophobic attitude prevalent in some schools.

14. In the denominational sector, all schools ignore the aforementioned government guidelines. Alternative guidance issued to their staff in 'This is Our Faith', pub.
March 2011, reads: “Teachers should avoid presenting all denominations or faiths as equally true. There is no place for the explicit study of atheism or humanism”. It also appears that RME in these schools is interpreted to include not only religious issues as such, but human relationships as well, including selective factual matters of sexual health, favouring abstinence, a situation that has led to expressions of concern by the NHS, and to the promulgation under the auspices of the schools’ RME programme of damaging disinformation about the efficacy of condoms against conception and STD's (see Times Educational Supplement Scotland, 21 June 2013)

15. That is in direct opposition to the Scottish Government’s policy on human relationships education and to that cited by government ministers. In Nov 2011, Dr Alasdair Allan MSP, Minister for Learning and Skills said: “RME is not indoctrination; pupils should decide their own stances on faith, morality etc and this is true in denominational as well as in non-denominational schools.” We fully agree with Dr Allan and hope that the new law will ensure that in a progressive inclusive Scotland, all children and young pupils will be given this right.

16. Many parents have contacted us over the last few years to ask for our help. They would be more that willing to give oral evidence to the committee.

Paul Braterman, MA, DPhil, DSc, Honorary Senior Research Fellow, Glasgow University, Professor Emeritus, University of North Texas

Ron McLaren, MBA, BSc Humanist Activist, Chair of Dundee & Tayside Group; Legal Celebrant

Clare Marsh, BSc, Retired teacher of biology and former education officer of the Humanist Society Scotland

3 July 2013
British Association for Adoption and Fostering Scotland

1. The British Association for Adoption and Fostering is the leading UK membership organisation and charity for all those concerned with adoption, fostering and child-care social work, and operates on an inter-disciplinary basis. In Scotland, all local authorities and adoption agencies and almost all fostering agencies are members. BAAF Scotland works closely with member agencies and other voluntary organisations, groups and individuals to:

- promote and develop high standards in adoption, fostering and child placement services;
- promote public and professional understanding of adoption, fostering, and the life-long needs of children separated from their birth families;
- ensure that the developmental and identity needs of looked after children are respected and addressed by social work, health, legal and educational services;
- inform and influence policy makers and legislators, and all those responsible for the welfare of children and young people.

2. BAAF Scotland generally welcomes the Bill. We recognise that many of the details of the wide-ranging proposals will be in subsequent regulations and guidance. The effectiveness of many of the Bill’s intentions will depend on the details in such secondary legalisation and guidance.

3. However, BAAF Scotland has concerns about the considerable extension of duties on public authorities, particularly on local authorities. We are concerned about the resource implications of many of the proposed duties.

4. We would also wish a clear definition of ‘local authority’ for the general duties on them. It is crucial that duties such as those in s.8 are clearly put on the local authority as a whole and are not treated as being only the responsibility of social services departments. The 1995 Act has such a definition – s.93(1). It is also important that such a general definition is distinguished within the Bill from ‘responsible authority’, ‘relevant authority’, ‘managing authority’, ‘directing authority’ and other similar terms which need to specify, as appropriate, various services and agencies, including education and health.

Comments on the provisions of the Bill

Acts referred to:

2007 Act: Adoption and Children (Scotland) Act 2007
Part 1, Rights of Children, ss.1 to 4 and Part 2, Commissioner for Children and Young People in Scotland, ss.5 and 6

5. We are in agreement with the proposed general duties in s.1 on the Scottish Ministers, generally to improve the effects of the UNCRC in Scotland. In practice, the efficacy of these duties will depend on how they are implemented and how they could be challenged. So far as the duties in s.2 are concerned, again the benefits will depend on how they are implemented by the various different authorities. We continue to have concerns about how effective these duties will be and what real difference they will make for children.

6. We are content with the provisions in ss.5 and 6, assuming that the Commissioner is satisfied with them.

Part 3, Children’s Services Planning, ss.7 to 18

7. We agree with the policy intention of strategic planning for children, set out in s.8 of the Bill, and that s.19 of the 1995 Act and s.4 of the 2007 Act will be repealed, to avoid unnecessary duplication of duties. We await the regulations to be made under s.7(3), as the specific details of what constitutes ‘children’s services’ is crucial for these provisions. We welcome the fact that the list will be in new regulations, as opposed to the current list for services referred to in s.19 of the 1995 Act, which list is in the Social Work (Scotland) Act 1968 as amended, but is not up-to-date. There must be consultation on what services are to be included in the new list.

8. We have concerns about the resource implications of the duty in s.13 on local authorities and health boards to publish annual reports. It is crucial that reporting duties do not get in the way of effective delivery of the services.

Part 4, Provision of Named Persons; ss.19 to 30

9. We understand the underlying policy intention of these provisions but we have reservations about successful implementation. While it is very important for vulnerable children easily to be able to access support, the universality of this provision may get in the way of ensuring that those who really need support actually receive it. The provisions risk diluting the aspirations of GIRFEC.

10. We are also concerned about how the universality of named persons will sit with individual professionals who have responsibilities for looked after children.

Part 5, Child’s Plan, ss.31 to 41

11. These provisions are about plans for individual children. While we welcome the policy intention, we have serious concerns about how these duties will fit into the existing systems for plans for children, whether statutory or informal – see SPiCe Briefing, pg 5.

12. We are particularly concerned about how these duties will fit into the existing ones placed on local authorities for all looked after children, at home or away from home, in terms of s.17 of the 1995 Act and regs.3-5 (and especially reg.5)
and Schedules 1 and 2 of the Looked After Children (Scotland) Regulations 2009, SSI 2009/210. Over the years, much unnecessary work and bureaucracy has developed when there has been no attempt to co-ordinate difference pieces of primary and secondary legislation. While the details of such co-ordination may be left to regulations, it would be helpful to insert a provision in the Bill which states that a s.31 plan is not required when the child is looked after or about to be looked after and a plan has been made or is in the process of being made under reg.5 of the 2009 Regulations.

Part 6, Early Learning and Childcare; ss.42 to 49

13. Early learning and childcare services are not part of our core areas of detailed expertise. However, we are in agreement with the provisions, particularly as they affect looked after children at home or away from home. We would, however, like to see those provisions extended beyond looked after children to children ‘in need’ under s.22 of the 1995 Act, to include them as children who are prioritised. In this way, a number of children who are not looked after, but are vulnerable because of their circumstances, could be included. This would extend the application to e.g. children placed with kinship carers and to children with disabilities.

14. The increased duties on education authorities must come with increased funding and resources. There also need to be very clear provisions about inter-authority arrangements and duties. It is crucial that these are clearly provided for in primary or secondary legislation, for the avoidance of doubt and to prevent litigation about which authority has which duty and to whom. Guidance will not be sufficient.

Part 7, Corporate Parenting, ss.50 to 59

15. We recognise and agree with the importance of ‘corporate parenting’ for all looked after children. However, we have serious concerns about the resource implications of these provisions, particularly for local authorities themselves. As well as the duties on all corporate parents in s.52, there are new reporting and information duties, which of themselves will require additional work, particularly for local authorities.

16. Section 52 is supported by the description of ‘wellbeing’ in s.74 of the Bill, which in turn reflects the GIRFEC principles. While the impact of the s.52 duties on all but one of the ‘corporate parents’ listed in Schedule 3 may seem to be in general terms, the effect on local authorities will be much more considerable. The terms of s.52, taken with s.17 of the 1995 Act and local authorities’ responsibilities to individual children, introduce another set of considerations which local authorities will have to take into account when planning for looked after children. They already have a duty for all looked after children, to ‘safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern)’, s.17(1)(a) of the 1995 Act. We are not clear how s.52 will sit with this. In many ways, it simply adds detail to what local authorities should already be doing for all looked after children. This sort of provision would be better, for local
authorities, as an amendment of the Looked After Children (Scotland) Regulations 2009, or in statutory guidance.

17. A further issue arises in relation to the exercise of corporate parent duties and of parental responsibilities and rights as between local authorities, the other bodies listed in Schedule 3, children’s parents and other people who have parental responsibilities and/or rights. The parental responsibilities and rights of some looked after children are held by their birth parents; the parental responsibilities and rights of looked after children subject to permanence orders are held by local authorities, parents and/or others (each order is different); and for some looked after children, no-one, including local authorities, has parental responsibilities and rights or is available to exercise them, if parents are dead or have disappeared.

18. It is unclear how the duties in s.52 will impact for each individual child on these already complex arrangements.

19. We also think that the list of corporate parents in Schedule 3 is too wide.

Part 8, Aftercare, s.60

20. We welcome the extension of duties towards young people who have left the care system. However, there are significant resource implications for the provision of these services. There are difficulties for many young people in accessing the existing Aftercare system, and an extension of duties must be accompanied by sufficient resources and clear direction to ensure that all eligible young people are able to access and obtain the support they need.

Part 9, Counselling Services, s.61 to 63

21. This section imposes a very wide-ranging duty on local authorities. Those eligible will be set out in regulations and we are concerned about another possibly onerous duty being placed on local authorities. It is not clear where such duties will fit with existing support duties such as those under s.22 of the 1995 Act (children ‘in need’) and adoption support duties under the 2007 Act.

Part 10, Support for Kinship Care, ss.64 to 67

22. We welcome increased support for kinship carers. We are pleased that there is no new court order in the Bill, as we consider that orders under s.11 of the 1995 Act, or for some kinship carers, permanence orders under the 2007 Act, provide a good existing range of options. We look forward to seeing the details of the secondary legislation which will underpin these sections.

23. It is appropriate that parents are excluded from receiving kinship care assistance, as they are eligible for other support when caring for their children. The definition of parent for Part 10 should be any genetic parent – see s.15 of the 1995 Act, as amended.
Part 11, Adoption Register, s.68;

24. This section of the Bill proposes to amend the 2007 Act by inserting six new sections, ss.13A to 13F. These proposed sections are all concerned with the Scottish Adoption Register, SAR.

25. BAAF Scotland is currently responsible for administering SAR on behalf of the Scottish Ministers. We understand that the regulations to be introduced under the proposed s.13A(2) will, among other matters, require agencies to refer children to the SAR in certain circumstances. We do not consider that it is necessary to require mandatory referral of children to the SAR, as the current system operates satisfactorily without compulsion.

26. However, we are extremely concerned about the proposed s.13C(2)(a). This states that an adoption agency cannot disclose information (effectively ‘refer’ children) to the Scottish Ministers (i.e. SAR) without the permission of children’s parents or anyone else with parental responsibilities and rights. The effect of this provision would be that many fewer children would be able to be referred. If parents’ consent is required for referral and parents are not in favour of plans for adoption, they will usually and understandably not be willing to consent to such a disclosure/referral. In other situations, the whereabouts of parents may be unknown, and therefore no consent will be obtainable.

27. While obtaining parental consent for referral is good practice, it will not normally be forthcoming when adoption plans are not agreed to. It is our view that such consent is not legally necessary, although it is good practice, in terms of the 1998 Act. Schedule 2 of the 1998 Act lists the conditions for processing data, one of which must be met in most cases. Consent of the subject is only one of these conditions, para 1. The condition in para 5 is that the processing is necessary for administering justice, or for exercising statutory, governmental, or other public functions. When local authorities are looking after children, they are required to plan for when the children will no longer be looked after, under s.17 of the 1995 Act. They are also adoption agencies and have statutory duties for planning under the 2007 Act. Therefore, the consent of the parents (Condition 1) is not essential, as Condition 5 may be used instead.

28. If our view of the data protection provisions is incorrect, there is, in any case, no need for specific consent provisions in the Bill. The 1998 Act will apply anyway. There are no equivalent provisions about consent in the Adoption and Children Act 2002 or the Children and Families Bill currently under consideration at Westminster, both dealing with Adoption Registers for other parts of the UK.

29. In addition, the proposed s.13C(2)(a) requires consent from parents or any other person with parental responsibilities and rights, and this is a wider group of people than those whose consent to adoption must be given or dispensed with under s.31 of the 2007 Act.

30. Overall, we consider that this provision is not only unnecessary but also counter-productive to the policy intention of encouraging the referral of children to the SAR.
Other matters

31. As we have pointed out in some of our answers, there are serious resources issues for local authorities and other public bodies arising from many of the provisions. Implementation must be supported by sufficient resources.

32. We would wish the Scottish Government to take the opportunity of new legislation to amend ss.95 and 96 of the 2007 Act. These provisions cover the interface between the hearing system and the courts, when children are the subject of compulsory supervision requirements and also of applications for permanence orders. They are causing considerable difficulties for children, families and public authorities. We would be happy to provide further details and proposals.

33. We would also wish the Scottish Government to take the opportunity of new legislation to address the difficulties in the system for curators and reporting officers who must be appointed in all permanence and adoption court cases. Despite recommendations in a number of reports, notably the Adoption Policy Review Group’s Phase II Report in June 2005 and the Scottish Civil Courts Review Report (the Gill Review) in September 2009, there have been no real improvements in the overall system for appointment, management and monitoring of curators, etc, in over 20 years. This contrasts with the establishment of a National Safeguarders Panel under the Children’s Hearings (Scotland) Act 2011 – safeguarders have a similar role in the hearing system. Again, we would be happy to provide further details and proposals.

Barbara J Hudson
Director, BAAF Scotland
29 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

British Association for Counselling and Psychotherapy

1. The British Association for Counselling and Psychotherapy (BACP) would like to submit the following response to the Scottish Parliament’s Education and Culture Committee’s call for evidence on the general principles of the Children and Young People (Scotland) Bill.

2. Our submission will focus on Part 9: Counselling services and what BACP sees as an important and obvious omission from the Bill around counselling services for children and young people.

The British Association for Counselling and Psychotherapy

3. BACP is the leading and largest body for counselling and psychotherapy in Scotland with over 1,700 practitioner members and over 38,000 UK-wide. Our members work across the public, private and voluntary sectors and of our 38,000 members, almost half say that they have an interest in working with children and young people.

4. BACP also has a specialist Counselling Children and Young People Division. It is the biggest, and the fastest growing Division, with currently over 4,000 members across the UK.

5. BACP has a strong public commitment to high practice standards and public protection. All BACP members are bound by the Ethical Framework for Good Practice for Counselling and Psychotherapy and within this, the Professional Conduct Procedure. These set out the basis of good practice for BACP therapists and their clients.

Executive Summary

6. BACP welcomes the commitment to counselling within the Bill; however, it is unclear what constitutes the counselling suggested and further details are needed to ensure that the recommended interventions are evidence-based and delivered by suitable practitioners.

7. A range of counselling interventions should be offered and families should be provided with enough information to make an informed choice on what is suitable for them. Any other support offered to a family should not be contingent on their participating in a recommended therapeutic intervention.

8. Given the importance of counselling as an early intervention, BACP believes the Bill as currently drafted has a major omission in relation to counselling for children and young people and that this important area needs to be included within the Bill.
9. BACP recommends that consideration is given to policy in Wales, where the Government has recently placed a statutory duty on local authorities to provide counselling services for all secondary school pupils.

Part 9: Counselling Services

10. BACP welcomes the recognition by the Scottish Government that counselling can be an effective early intervention for troubled families and can support families and kinship carers in maintaining wellbeing and best outcomes for children.

11. The mechanism for putting this provision in place, however, is unclear. The Bill uses the terms ‘family therapy’, ‘family mediation’ and ‘family conferencing’ interchangeably, suggesting these are similar activities, and all fall under the umbrella of ‘counselling’. BACP would welcome a clearer understanding of what interventions are being recommended, the criteria and evidence on which these have been selected, how they were identified and who will be determined most appropriate to deliver them.

12. The Bill states that local authorities, through secondary legislation, will determine the best therapeutic intervention for a family. BACP is concerned about the qualifications of whoever will be making these clinical decisions and about the involvement of families in being informed and having a say about the form of therapy in which they will be engaging. In line with the principles of ‘Autonomy’ and ‘Keeping trust’ in the BACP Ethical Framework, BACP would welcome reassurance that families are given appropriate information on types of therapeutic intervention available, consulted on their needs and wishes and have a choice about a counselling intervention rather than having it decided for them by the local authority.

13. Also with reference to the principles of ‘Autonomy’ and ‘Keeping trust’ in the BACP Ethical Framework, BACP would like to ensure that families are given a choice about accessing therapies, and that any other support offered to a family is not contingent on their participating in a recommended therapeutic intervention.

14. BACP recognises that confidentiality is a vital component of a therapeutic relationship and would want to be reassured that any mechanisms for information sharing with other services would take into account this aspect of therapeutic work and be negotiated in line with guidance in the BACP Ethical Framework.

15. BACP has a commitment to monitoring practice and researching outcomes. The Bill appears to have expectations as to outcomes for counselling i.e. preventing family breakdown and/or arriving at a need for a kinship carer. BACP would want to be assured that appropriate outcomes based on evidence-based practice are identified and that mechanisms are agreed for assessing outcomes.

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1 Ethical principles, BACP Ethical Framework
2 Guidance on good practice in counselling and psychotherapy, Section 12, BACP Ethical Framework
3 Guidance on good practice in counselling and psychotherapy, Sections 20-24, BACP Ethical Framework
16. The Bill stresses the importance of respecting a child’s rights under the UN Convention on the Rights of the Child (UNCRC). The UNCRC states that ‘a child who is capable of forming his or her own views [has] the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child’\(^4\). In accordance with the UNCRC and the principles of ‘Autonomy’ and ‘Keeping trust’ (mentioned above) BACP would like to ensure that the views of children are taken into account when a counselling intervention is specified.

**Omission of Counselling for Children and Young People**

17. In 2004, the level of identified mental health problems in Scottish children aged 5–16 years was estimated at just over eight per cent of the population (over 55,000 children)\(^5\). Many more go unidentified and do not seek, or have access to, help. In addition, nearly half (45 per cent) of all children looked after by Scottish councils, for example those living in care homes, have mental health problems\(^6\).

18. Therefore, whilst welcoming the Bill’s commitment through Part 9 to counselling services for troubled families and kinship carers, BACP believe that the Bill has an important and obvious omission in relation to counselling for children and young people.

19. The Children (Scotland) Act 1995\(^7\) states that local authorities have a duty to provide for children in need, and children at risk. As this Bill recognised the importance of counselling as an effective intervention for families at risk, then it should follow that counselling should also be a resource for children and young people at risk and in need. In addition to the counselling already outlined in the Bill, BACP believes that the Bill should also include provision for counselling for children and young people.

20. Counselling can be an effective early intervention strategy for young people who have a range of problems. Evidence, from the University of Strathclyde\(^8\), shows that counselling for young people is associated with improvements around family issues, bereavement, eating disorders, bullying and relationships as well as other emotional, behavioural and social difficulties, including anger management.

21. The guidance set out in the 2005 Scottish Government report “The Mental Health of Children and Young People: A Framework for Promotion, Prevention, and Care”\(^9\) called for the provision of confidential, accessible and non-stigmatising counselling support for all. Since this commitment in 2005, there has been little movement towards this target and there is still no Scottish national strategy for its

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\(^4\) UN Convention on the Rights of the Child (UNCRC). Article 12
\(^5\) The mental health of children and adolescents in Great Britain, Office of National Statistics, 2004
\(^6\) Ibid.
implementation. BACP believes this Bill provides the Government with the opportunity to deliver on this commitment to deliver counselling for children and young people.

22. More recently, Scotland’s Curriculum for Excellence\textsuperscript{10} and Getting it right for every child\textsuperscript{11} (GIRFEC) both support the principle of children and young people having access to support they need and when they need it. We believe these statements supporting counselling for children and young people back up the need for it to be incorporated into this legislation.

23. Delivering counselling for young people through local authorities can be done. Following the success of the Welsh Government’s national school-based counselling strategy\textsuperscript{12} it was recommended that funding should be granted permanently to embed counselling in the Welsh secondary school sector. The Welsh Government agreed and the School Standards and Organisation (Wales) Act placed a statutory obligation on Local Authorities in Wales to provide school-based counselling services for all its secondary school pupils. BACP would recommend that this model for providing counselling for children and young people should investigated in more detail.

24. To ensure universal provision, children and young people who prefer not to access services in school, and those who are not in school, should have a choice of alternative provision within community settings. Services need to ensure that they are responsive to the needs of the populations that they serve.

Further information

25. Should the Committee be seeking further written or oral evidence, BACP would be delighted to provide additional information about the provisions surrounding counselling within the Children and Young People (Scotland) Bill.

Martin Bell
Parliamentary and Public Affairs Advisor
British Association for Counselling and Psychotherapy

\textsuperscript{10} Education Scotland - http://www.educationscotland.gov.uk/thecurriculum/index.asp
\textsuperscript{11} Getting it right for every child - http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright
The British Medical Association (BMA) is a registered trade union and professional association representing doctors from all branches of medicine. The BMA has a total membership of around 140,000 representing around 70% of all practising doctors in the UK. In Scotland, the BMA represents around 16,000 members.

The BMA supports the sharing of information to promote, support and safeguard the well-being of children and young people. As drafted, however, sections 26 and 27 of the Bill are too broad (see also section 38). The BMA would welcome the inclusion, on the face of the Bill, of the requirement that relevant information can only be shared with consent, or where there is an overriding public interest or in order to protect the patient. Patient confidentiality should be maintained wherever possible and access to patient information without the consent or knowledge of a patient should be used only as a last resort.

Confidentiality of personal health information is the cornerstone of the patient/doctor relationship. Patients need to be reassured that their health information, which they share in confidence with a doctor, will be treated confidentially otherwise they may feel unable to trust and seek help from healthcare professionals.

BMA Scotland
26 June 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Natalie Campbell

1. I am horrified by threats to family autonomy and privacy from this bill. Parents know and love their children much more than a government worker and are uniquely qualified to make good decisions regarding their children's care, upbringing, and education. From reading history, I always thought the Scots were a freedom loving people. Now I'm beginning to wonder. By this proposed action you're telling parents that they're not competent to raise their children. Don't be surprised if they become less responsible and expect more and more help from the government. Please don't pass this bill.

Natalie Campbell
USA
25 July 2013
Capability Scotland

1. Capability Scotland campaigns with, and provides education, employment and care services, for disabled people across Scotland.

Summary

2. Capability Scotland strongly supports the proposed Children and Young People (Scotland) Bill which it believes has the potential to strengthen the rights of disabled children in Scotland. There is, however, a need for the Bill to make specific reference to the needs and requirements of disabled children in relation to early learning, childcare and the codification of the GIRFEC system.

3. Capability Scotland believes there is a need for consideration of how increased entitlement to childcare and early learning will be made meaningful to disabled children who often struggle to access any childcare or early learning opportunities that meet their specific requirements. Capability Scotland also believes that the extension of free childcare to 2 year olds should also be made available to disabled children, many of whom face similar barriers to learning and social inclusion as Looked After children.

4. Capability Scotland believes there is a need for both the Children’s Services Plan and individual Child’s Plan to make specific reference to the need to plan to ensure successful transitions from child to adult services where this is relevant. This should include a duty placed on the authority responsible for the Child’s Plan to consult with adult services (such as adult social care, housing and health) in advance of the young person turning 18.

Our Response

Part 1: Rights of Children

1. Capability Scotland supports the duty placed on Scottish Ministers by Section 1 of the Bill. We are concerned, however, that this duty falls far short of the obligations contained in the UN Convention on the Rights of the Child (UNCRC) itself, which obliges the Scottish Government to protect, respect and fulfil the rights of children in Scotland. We support Together (the campaign for children’s rights) in their calls for incorporation of the UNCRC into domestic Scottish law.

2. We also believe there is a need for more consideration to be given to the Scottish Government’s reporting requirements and the need for independent scrutiny. We would also therefore ask that the Scottish Human Rights Commission or Scottish Commissioner for Children and Young People be given a statutory duty to provide a shadow report on the Scottish Government’s progress in relation to the UNCRC.
Part 3: Children’s Service Planning

3. Capability Scotland is concerned that there is insufficient reference made within the Bill to the establishment of Joint Boards created through the Public Bodies (Joint Working) (Scotland) Bill. Given the likelihood that Children’s Service Planning will come under the responsibility of such bodies we are concerned about the lack of consideration it has been given. We would therefore seek clarification as to the role Joint Boards will have in developing Children’s Service Plans.

4. The Bill also states that the purpose of taking a co-ordinated approach to service planning is to promote the wellbeing of the child and to integrate services from the user’s perspective. While this is welcome, we believe Children’s Services Planning should also have a role to play in ensuring that children and young people can move smoothly from children’s service to adult services when they reach the age of 18. Capability Scotland’s experience is that young disabled adults often struggle to access the care and support they require after leaving school and moving into adult settings such as college, employment and/or accessing social care services. Capability Scotland therefore believes that one of the stated purposes of CSP should be to encourage joint working between relevant services to facilitate successful transitions to adult services.

Part 4: Named Person

5. There needs to be increased clarity in the Bill as to how the Named Person and Lead Professional roles will relate to one another. Currently, some children with complex needs are assigned a lead professional to co-ordinate and monitor multi-agency activity, while the Named Person coordinates access to more universal services such as health and education. No reference is made in the Bill to the role of Lead Professional and we believe there is a need for clarification about how the two roles will interact. In particular there is a need for clarification as to whether the Named Person will still have responsibility for the implementation of the Child’s Plan where a Lead Professional has been assigned.

6. Furthermore, section 60 of the Bill increases the age at which care leavers can receive support from the local authority from 18 to 25. Capability Scotland believe that there is need for consideration of whether the role of the Named Person might be extended in relation to disabled children to ensure there is always a clear point of contact during the potentially difficult transition from children’s to adult services. A Named Person could provide young people with crucial support during this period.

Part 5: Child’s Plan

7. There has been a lack of consideration as to how the Child’s Plan will relate to current systems in place to achieve similar outcomes such as the Coordinated Support Plan developed for children accessing two or more services. Currently, the Policy Memorandum only points to a ‘consideration’ of the CSP, not its full integration into the Child’s Plan. Without such integration, we are concerned that disabled children could potentially have a Child’s Plan and a CSP, resulting in
unnecessary confusion. Anecdotal evidence suggests that in areas where Child’s Plans are already being developed, the CSP and CP are developed separately and ‘stapled together before meetings’.

8. It is also essential that children and their families are involved at the earliest possible stage in developing the Child’s Plan. The Bill should also make reference to the need for communication support and/or advocacy to be made available to ensure that all children are in a position to make an active contribution to the development of their plan. In particular, we would urge the Scottish Government to consider provision of the kind demonstrated in sections 5 and 15 of the Social Work (Self Directed Support) (Scotland) Act 2012 which give individuals the right to communication support and/or support understanding the decision making process where necessary.

9. Capability Scotland also believes that the Child’s Plan should incorporate a commitment to consider the transitional arrangements for children approaching the age of 18. We would therefore suggest that the Bill place a duty on the authority responsible for the Child’s Plan to consult with adult services (such as adult social care, housing and health) in advance of the young person turning 18.

Part 6: Early Learning and Childcare

10. The increased entitlement to 600 hours of free childcare for three and four year olds in Scotland is extremely welcome. The Bill, however, does not currently recognise the barriers faced by disabled children and their families in accessing suitable childcare at a cost equal to that of other families. In many cases, disabled children are not able to access any suitable childcare because of the lack of specialist provision in their local area. Research conducted by Capability Scotland has found that 70% of working parents with a disabled child relied on family members to care for the child, and half of them said this was because of a lack of suitable or affordable childcare1. Furthermore research conducted by Children in Scotland found that only 10% of local authorities could say whether they provide adequate childcare services to meet the needs of disabled children in their area2. Given these statistics there is a clear need for the legislation to specify that the childcare and early learning should be both suitable and accessible to the child and their family.

11. Capability Scotland also believe that the provision of flexible childcare for looked-after two year olds should also be extended to all two year old disabled children. This is necessary to ensure that disabled children receive the additional support for early learning and opportunities for social interaction that they may otherwise struggle to access.

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1. "Nobody Ever Wants to Play with Me: Childhood Poverty and Disability"; Capability Scotland (2010)
2. The Scottish Childcare Lottery; Children in Scotland; February 2012
   http://www.childreninscotland.org.uk/docs/Scottish_Childcare_Lottery.pdf
General Comments

12. Capability Scotland welcomes the fact that under the Bill, the wellbeing of children will be measured using SHANARRI indicators. The use of broad indicators of wellbeing is especially welcome in relation to disabled children whose wellbeing has traditionally been understood in narrower terms. Historically, a medical model of disability has often been employed resulting in the wellbeing of disabled children being understood in terms of their physical health rather than their wider wellbeing. The Bill represents an important legislative shift towards understanding and acting upon their wider needs, particularly in relation to social, economic and cultural rights.

13. Our only concern in relation to the employment of SHANARRI indicators is that they do little to bridge the gap between children’s services and adult services. The people who use Capability Scotland’s services consistently struggle to access the support and services they need when they turn 18 and are no longer considered children by public bodies. In many cases the transition is abrupt and leads to young adults being denied the help and support they need to realise their rights to education, participation and independent living. Given the increasing emphasis on personalised, outcomes-based approaches to adult services we would question whether there is any need for there to be a different framework of indicators for adults and children. An overarching, rights-based framework might allow for smoother, better planned transitions into adulthood.

About Us

14. Capability Scotland campaigns with, and provides education, employment and care services for, disabled people across Scotland. The organisation aims to be a major ally in supporting disabled people to achieve full equality and to have choice and control of their lives by 2020. More information about Capability Scotland can be found at www.capability-scotland.org.uk.

Hanna McCulloch, Senior Policy Advisor
Capability Scotland
26 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  
CARE for Scotland

Introduction

1. CARE is a well-established mainstream Christian charity which provides resources and helps to bring Christian insight and experience to matters of public policy and practical caring initiatives. For many years CARE has been active in the field of education. We have produced resources for schools, parents and teachers. We have a particular interest in those areas of the curriculum and education which interact with religious belief, the development of personal values and parental rights. CARE is also involved in advancing a Christian understanding of marriage and the family, including the important rights and responsibilities of parents with regard to the welfare and wellbeing of their children, and seeking to encourage agencies of the state to recognise the important role of parents in the raising of children. Within this context we have engaged at the international, European and domestic levels in debates over the drafting of human rights (including child rights) documents and laws.

General Comments

1. Children’s rights should not be viewed in isolation from parental rights and the family context. Our view is that the rights of children are best protected by being brought up by their natural parents within the context of the wider family and in a loving and secure home. CARE’s view of the central role of parents and importance of the wider family for children’s well-being is echoed in the UN Convention on the Rights of the Child (UNCRC). The preamble to the UNCRC states that the State Parties are:

“Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can assume its responsibilities with the community.

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

2. Article 3:2 states:

State Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents …”

3. Article 5 states:

State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, members of the extended family or community as provided for by local custom … to provide, in a manner consistent with the evolving
capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

4. Article 29 of the Convention requires education provided by State Parties to encourage:

“the development of respect for the child's parents, his or her own cultural identity, language and values …”

5. These, and other, parts of the UNCRC indicate the central role of parents in the raising of children and the duty of State Parties to respect the rights of, and support, parents in this role. However, those groups which advocate for child rights often fail to present the UNCRC in a holistic manner, but rather articulate a view which highlights specific rights (e.g. Article 12 – the right for the child to express his/her views and for these views to be taken into consideration) without drawing attention to the wider context of parental and family rights. This can lead to a distorted interpretation of the UNCRC and its implementation in a manner which undermines family structures and views the child as a wholly autonomous individual. Such an interpretation is contrary to the overall content of the UNCRC.

Duty on Scottish Ministers in Relation to the Rights of Children

6. Scottish Ministers should take a holistic approach to the implementation of the UNCRC, including placing an emphasis upon the rights of parents and the wider family context. This approach should be reflected in the duties placed on Scottish Ministers. Ministers should recognise that the rights and wellbeing of children and young people do not stand in isolation. Children and young people should not be seen as being totally autonomous from their parents, other adult relatives or carers. Rather the rights and wellbeing of children and young people should be viewed within the context of marriage, parental rights and responsibilities, the wider family and the social and cultural context. It is imperative that this perspective is reflected in the legislation and in subsequent guidance which is issued by the Scottish Government. This holistic approach should be adopted in education programmes and materials regarding the UNCRC which are used in schools in order to fulfill the Article 42 requirement.

7. CARE notes the requirement in the Bill that Ministers are required to keep under consideration whether there are steps which they could take to further effect the UNCRC requirements. We raise one caveat with regard to this requirement which relates to the third optional protocol of the UNCRC. This protocol has not been adopted by the UK and CARE would have concerns about the Scottish Government endorsing it. The third optional protocol allows children to submit complaints regarding the violation of their rights to the UN Committee on the Rights of the Child. We have concerns about the operation of the UN Committee on the Rights of the Child, its democratic accountability, its receptiveness to being overly influenced by organised child rights pressure groups, its supra-national nature and its authority to determine the correct interpretation of the UNCRC. We consider that the appropriate mechanism for redress is at the national level and that State Parties are the appropriate bodies in international law to interpret the UNCRC.
Duties of Public Authorities in Relation to the UNCRC

8. We would reiterate our comments in paragraphs 2-6 with regard to our concerns regarding the unbalanced manner in which the UNCRC is interpreted on occasions. It is important that Scottish public bodies adopt a holistic approach to the UNCRC which respects the rights or parents, wider family religious, ethnic and cultural communities. There should be an explicit requirement in the reporting of public bodies to consider child rights within this wider context.

The Role of the Commissioner for Children and Young People

9. As with other public bodies, the Commissioner should be required to take a holistic approach to the UNCRC which includes respect for the rights of parents. In addition, the Commissioner must have regard to the European Convention of Human Rights, including the parental rights contained within that convention as exemplified in Protocol 1, Article 2 of that Convention which states that parents have a right to have their children educated in accordance with their religious and philosophical beliefs.

10. CARE was of the view when the Commissioner was established in 2003 that the correct balance had been struck with regard to his/her powers. We remain of this view and are not convinced that he/she should be able to investigate individual cases. Rather we suggest that his powers of investigation should be limited to issues of a general nature.

Provision of Named Persons

11. We are concerned by the proposal to introduce a ‘named person’ for every child in Scotland. We are concerned that the rights and the important role of parents may be eroded by state officials and civil liberties infringed. Our concern is that the named person provision reflects an ideological view which denies the primacy of parental authority in relation to child rearing. Rather it reflects an ideology which emphasises society as a corporate parent and views children essentially as the property of the state. There is a danger that the civil liberties of parents and families could be infringed by over-intervention on the part of public officials. For example, health board or local authority officials might use the Public Sector Equality Duty as a reason to undermine the values or religious beliefs of parents with regard to issues of human sexuality. This may include the provision of sexual health education programmes at a pre-school or primary level against the wishes of parents. Pressure may be brought to access contraceptive services or termination of pregnancy with little regard to the religious beliefs or ethical objections of parents. Full information or spiritual guidance may not be available, leading to regret and emotional trauma later in life on the part of the young person concerned.

Childcare Provision

12. We welcome the additional funding for childcare and the increased flexibility it allows for working parents. We are concerned, however, that parents who wish to stay at home to look after their children should not feel under pressure to go out to work and place their children in childcare from an early age. In addition, parental involvement in a
child’s pre-school education should be supported and the values promoted in the nursery should not undermine the values of the family or their cultural and religious identity. In order to do so a diversity of pre-school provision should be facilitated in order to increase parental choice. One means of addressing both these issues would be to allow the funding to follow the child, rather than perpetuating the current arrangements which give the local authority control over the allocation of funding between the council, private and voluntary sectors.

Wellbeing

13. Whilst CARE understands the motivation of the Scottish Government for wishing to adopt a wider definition of the child or young person’s wellbeing than has traditionally been incorporated in the term ‘welfare’, we have some concerns that this move may represent an approach which sees the child or young person as a wholly autonomous individual. Autonomy is never absolute (at any stage in life) and is a developing characteristic which should accompany a growing sense of moral responsibility. In the Christian tradition, children are to be valued as individuals made in the image of God, but are also to be instructed by their parents in right living as they grow up. This understanding is compatible with a positive view of child rights, but does place limitations on the extent to which the rights of children and young people should be viewed as paramount within the wider context of family or societal life. For example, the role of moderate physical chastisement may be defended in order to raise children with an appropriate sense of respect for authority and the rule of law.

14. We are concerned that the approach being adopted in the Bill may undermine efforts to view children as part of the wider community of family and society, instead prioritising individual autonomy across a spectrum of aspects of life. For example, some health officials may argue that children and young people should have access to comprehensive sexual health education, even if this runs contrary to the value system of the family, religious community or school. The family’s preference might be for education in these matters for the child or young person which reflects their religious or cultural identity. However, the approach to ‘wellbeing’ being contained in the Bill could be used by health board and local authority officials to prioritise the perceived physical health benefits for the child from comprehensive sexual health education over the religious or cultural values of the family and indeed over the child or young person’s own spiritual development and emotional health.

CARE for Scotland
26 July 2013
Introduction

1. The Care Inspectorate is the independent scrutiny and improvement body established under the Public Services Reform (Scotland) Act 2010, that brings together the scrutiny work previously undertaken by the Care Commission, HMIE child protection team and the Social Work Inspection Agency. Our role is to regulate and inspect care and support services (including criminal justice services) and carry out scrutiny of social work services. At the request of Scottish Ministers we conduct joint inspections of children’s services or any other services in conjunction with other scrutiny bodies. We provide independent assurance and protection for people who use services, their families and carers and the wider public. In addition, we play a significant role in supporting improvements in the quality of services for people in Scotland.

2. In addition to our ongoing inspection and regulation of registered care services, the Care Inspectorate has developed a new model for scrutiny and improvement of services for children, young people and families provided in local authority areas. The new approach focuses on the experiences of, and outcomes for, children and young people and is based on the premise that positive outcomes are achieved when agencies work effectively together with a clear focus on the interests of children and young people at the heart of their activity. Inspections are undertaken by the Care Inspectorate working in partnership with colleagues from Education Scotland, Healthcare Improvement Scotland (HIS) and Her Majesty’s Inspectorate of Constabulary for Scotland (HMICS) and hold community planning partners collectively accountable for the outcomes achieved for children and young people.

3. We published ‘How well are we improving the lives of children and young people?’, a guide for community planning partners with a draft set of quality indicators to assist in their self-evaluation of the quality of services for children and young people. This guide also aims to assist services to assess how well they are implementing the Getting it Right for Every Child (GIRFEC) approach. The Care Inspectorate has begun to publish reports on pilot joint inspections using these quality indicators. The model for joint inspections of services for children and young people has been developed on the successful model for joint inspections of services to protect children, with all 32 local authorities inspected over a three year period between 2009 and 2012. We recently published ‘Child Protection Services: Findings of Joint Inspections 2009-12’, an overview report of findings from these inspections. The Care Inspectorate is also piloting new methodology for the inspection of childminding services using the GIRFEC wellbeing indicators to focus more clearly on outcomes for children.

4. In responding to this call for evidence we have examined the Bill’s stated aims in turn, drawing on findings from a range of inspection activities.
Ensure that children's rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland's Commissioner for Children and Young People.

5. We welcome the intention to ensure that children’s rights influence the design and delivery of policies and services. As a public authority we strive to ensure that the rights of people in Scotland are promoted and protected. The proposed duties in this part of the Bill will help provide for increased transparency and better public reporting in this regard. The emphasis on securing improved implementation of the United Nations Convention on the Rights of the Child (UNCRC) over time is particularly welcome.

6. The Care Inspectorate welcomes the opportunity to report jointly with other scrutiny and regulatory bodies on progress in fulfilling our duties under the legislation. We note that Education Scotland is omitted from the list of bodies set out in Schedule 1 and suggest that it is included as a body which provides independent scrutiny and supports improvement of education services for children and young people across Scotland.

7. In principle we welcome measures to strengthen the role of the Scottish Commissioner for Children and Young People (SCYPP) by extending its remit to include the conducting of investigations on behalf of individuals. Our view is that this will raise the profile of children’s and young people’s entitlements to be heard and for their rights, interests and views to be taken into account when decisions are made which affect them. We would however seek to ensure that this does not cause duplication or confusion around the role of the Commissioner, ourselves, Education Scotland, HIS and the Scottish Public Services Ombudsman (SPSO), all of whom already have some responsibilities in this area. We would also seek clear responsibilities and guidance within these measures for the SCYPP to report situations where children and young people are at immediate risk to the relevant authorities which hold a statutory responsibility for investigating child protection concerns and keeping children safe.

8. The new model for joint inspections of services for children, described above, will report routinely on the extent to which community planning partners involve children, young people, families and other stakeholders in policy, planning and service development. These inspections will consider the extent to which services communicate well with children, young people and families and how evident their views are within children’s services plans, corporate parenting strategy, policy making and planning processes.

Improve the way services support children and families by promoting cooperation between services, with the child at the centre.

9. We welcome the requirement for each local authority and relevant health board to jointly prepare a children’s services plan and the duty on those bodies to ensure that other service providers can participate and contribute to this plan. The joint inspections of services for children and young people will report routinely on the
extent to which integrated approaches to children’s services planning is improving the wellbeing of children and young people across a community planning partnership area. Experience from the pilot inspections of services for children suggests there is a direct correlation between how effectively local partners cooperate across all relevant services and how effectively they plan to meet the needs of children and young people. For example involving the third sector and independent providers of services in integrated children’s services planning helps to harness their contribution, knowledge and expertise towards meeting local need.

10. We suggest that there should be more emphasis on the responsibility of other community planning partners not only to make meaningful contributions and participate in the development of children’s plans but to carry out desired actions towards achieving its aims. This will encourage services to pool resources towards integrated service delivery. We have found that the most successful plans for children's services are underpinned by joint leadership and a shared commitment across all relevant partners to improving the lives of children, young people and families and closing outcome gaps for the most vulnerable children and young people. Police Scotland and the Scottish Children’s Reporter Administration are important bodies omitted from the obligation to prepare a children's services plan.

11. We know from two three year programmes of joint inspections of services to protect children, and from our considerable experience in regulating and inspecting services for children and young people, that the third sector often plays a key role in delivering essential services to improve the wellbeing of children and young people across Scotland. In some areas, the third sector is at the forefront of intervention to meet the wellbeing needs of the most vulnerable children and families. However, the extent to which the third sector is enabled to contribute to planning for children at strategic level is variable across the country. We suggest the Bill would be strengthened by the inclusion of specific reference to third sector organisations in Part 3.

12. We welcome the clarity provided around the definition and role of the ‘named person’ and consider this to be significant in strengthening responsibilities to ensure that a child or young person’s wellbeing is optimised throughout their childhood. We are particularly pleased to see the intention that all school-aged children should be provided with a named person irrespective of where they live or whether they are attending school. We consider this to be a crucial factor in meeting the child’s entitlements to support and protection when they are not on a school roll, such as those who are home educated.

13. We suggest there would be merit in considering the appointment of a named person for young people between the ages of 16 and 18 years who are not in full time education, who are not legally entitled to the support of the corporate parent as proposed and do not have a lead professional but whose circumstances make them particularly vulnerable. This would help to ensure the necessary support and guidance for vulnerable young people at such a key stage in their transition
into adulthood. This might include young people whose names have recently been removed from the child protection register and those young people who have recently ceased to be looked after at home. Inspections show that practice in making aftercare support available to young people looked after at home and young people looked after in kinship care is widely variable across the country. A young person who has no access to formal aftercare support would benefit significantly from having a designated named person for a period of time.

14. We also greatly welcome the reference to a definition of wellbeing using the SHANARRI indicators. Our inspection evidence, from both the joint inspections of services to protect children and our new joint inspections of services for children and young people, underlines the importance of a common understanding of wellbeing across services to the effective identification of needs and joint working to meet them.

15. We are pleased to see the intention to ensure a single planning process through the Child’s Plan for those children and young people that require it. An overview of the findings of the last programme of joint inspections of services to protect children tells us that improvement in the assessment of risks and needs is still required across many parts of the country. In our scrutiny of services for children and young people, we will continue to focus on the quality of assessments, the rigour and comprehensiveness of individual plans and the effectiveness of planning processes in improving the day to day circumstances and the longer-term outcomes for children and young people.

Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare.

16. We welcome proposed investment in early years provision and the principle of increasing flexibility of early learning and childcare. The more flexible approach to the allocation of a child’s 600 hours entitlement will support the varying needs of working families including those with irregular working patterns. This approach will require the support of local authorities to consider the needs of individual families. The extended entitlement for children should be strengthened through the work established by the Early Years Collaborative.

17. It will be challenging for local authorities at a time of financial constraints to develop new services or strengthen existing arrangements with partner providers in relation to the provision of early learning. From our inspections, we know that local authorities in smaller or more remote areas find ensuring a wide range of options especially challenging. It will be important that a range of options are considered for each child and family so that their particular needs can be met appropriately. Traditional models of nursery provision will require to be supplemented by other types of provision to ensure a range of services with sufficient breadth to support the wellbeing of all young children. Our joint inspections will explore how local community planning partners are working together to ensure they understand the range of needs of families in their particular communities and the extent to which they are involving children and families in designing services.
18. We welcome the extended eligibility for looked after two year olds. We know from
our inspections of community childminding services that a significant number of
looked after two year olds already receive care packages funded by local
authorities, such as funded social work places within childminding settings or
parent support groups. Local authorities should be encouraged to include these
arrangements when considering the most appropriate provision for vulnerable
children in their communities.

19. It is also important that local authorities make arrangements to ensure
continuation of services, where needed, when a child ceases to be looked after. It
should be noted that being 'looked after' is not the only indicator of vulnerability; it
is important that vulnerable children and families do not lose out by reason of
living in areas where services have been successful at implementing the ‘no-
order principle’ and have become skilled at engaging families without recourse to
statutory measures. In these areas there will be larger numbers of young people
who have been supported successfully to remain in the care of their families
through highly effective multi-agency plans. As such these young people will not
be legally entitled to the support of the corporate parent as proposed.

20. It is important that the extension of provision does not increase the regulatory
burden placed upon providers. The Care Inspectorate’s regulatory activity already
takes account of children’s services within a local authority area through the joint
inspections of children services and inspections of individual services.

Ensure better permanence planning for looked after children by improving
support for kinship carers, families and care leavers, extending corporate
parenting across the public sector, and putting Scotland’s National Adoption
Register on a statutory footing.

21. The Care Inspectorate is pleased to note the emphasis on collaboration among
corporate parents in support of a joint commitment to meeting corporate
parenting responsibilities for children who are looked after, and to young people
under the age of 26 who were looked after upon reaching school leaving age.

22. We welcome the identification of certain bodies to act as corporate parents and
we take our duties to support and safeguard children and young people seriously.
We welcome the duty to be alert to matters which could adversely affect the
wellbeing of children and young people as we conduct our inspection and
regulatory functions and to take action to improve our working practices.
However, the duties conferred on all listed bodies to act as corporate parents
may be argued to inappropriately extend the remit of the Care Inspectorate
towards direct provision of services for children and young people. We would
suggest that these duties are redrafted to better reflect the role and function of
the Care Inspectorate. For example, we firmly agree with the duty as a corporate
parent to be alert to matters which might adversely affect the wellbeing of
children and young people and in the proper exercise of our functions promote
the interests of children and young people. However, it would not be consistent
with our functions as an independent regulator of services to exercise the duty to
assess the needs of children and young people or to provide services or support to meet these needs.

23. The extension of the age up to which formerly looked after young persons may request access to aftercare assistance from 21 to 26 is welcome. However, a shift of emphasis from the young person ‘requesting’ access to the local authority ‘ensuring’ access would be preferable and efforts should be made to ensure awareness among care leavers of their rights in this regard. We know from the many young people we meet during the course of our work that awareness of children’s rights is highly variable and more work is needed to promote understanding among young people and staff. We would particularly like to see greater encouragement to corporate parents to ensure the principles of permanency (that is, forward planning to ensure a secure home base and continuity of care) are implemented for older young people who may otherwise face significant and distressing upheaval at age 16 when they are required to leave foster placements and residential care.

24. The Care Inspectorate recognises the potential of the Adoption Register to expedite adoption processes. We consider it will be particularly useful as a complement to existing tools where there are complex matching needs. We would however welcome clarification about whether the Care Inspectorate will be expected to play a role in supporting use of the register and a clear indication that maintenance of the Adoption register will not constitute the provision of a care service as defined in Paragraph 8 of Schedule 12 to the Public Services Reform (Scotland) Act 2010.

25. Inspectors working over a number of years in the joint inspection programme for services to protect children and, more recently, in the pilot inspections of services for children and young people have found many examples of improved outcomes for children who are unable to grow up in the care of their birth parents by consistent nurturing care provided by friends and relatives. However, we also found that support made available to kinship carers to enable them to provide this nurturing care is highly variable across the country. The Care Inspectorate therefore greatly welcomes the intention to strengthen mechanisms for provision of support to kinship carers through the establishment of a Kinship Care Order. We would welcome clarification about the expectations of the Care Inspectorate as a regulator where children are living with relatives under such an order.

Strengthen existing legislation that affects children and young people by making procedural and technical changes in the areas of children’s hearings support arrangements, secure accommodation placements, and school closures.

26. We welcome provision for a child or relevant person to be able to appeal to the Sheriff against a local authority decision to detain the child in secure accommodation. We regard this as consistent with aspirations to better safeguard and promote the human rights of a child or young person.
Other comments

27. We note that a number of provisions related to foster care, originally proposed in the Scottish Government’s consultation on the legislation, have been omitted from the Bill. We appreciate that these proposals are likely to be taken forward through alternative mechanisms, such as the national review of foster care, but clarification on this would be helpful.

Care Inspectorate
24 July 2013
Extension of Aftercare Support for Care Leavers up to the age of 26

2. The proposed amendment to section 29 of the Children (Scotland) Act 1995 extends a care leavers’ right to request assistance from the age of 21 up to the age of 26. The Bill proposes that following an application by a care leaver, the local authority is required to carry out an assessment, and:

- must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs, and
- may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare.

3. While we welcome the extension of the duty to support a care leaver who is deemed to have eligible needs, it should be recognised that these provisions do not guarantee improved aftercare support for these vulnerable young people. Care leavers will still have to (and be able to) actively request assistance and be assessed as eligible. Local authorities will continue to define what are ‘eligible needs’ and provide what they consider ‘necessary for the purposes of meeting those needs’. There is, therefore, considerable scope in how aftercare support will be provided, potentially perpetuating the status quo of inconsistent practice nationally (For further details on these points, please see the CELCIS response to the consultation on the Bill.)

4. We strongly recommend that the legislation is strengthened to reflect a duty on local authorities (and relevant corporate parenting partners, such as NHS Health Boards) to provide support to care leavers up to the age of 26, without caveats. If assessments are necessary, it is critical that clear and consistent eligibility criteria are applied across Scotland and that these are made public. There must also be a requirement on local authorities to provide accessible information to young people leaving care, and care leavers aged 19 -25, informing them of their right to be assessed, providing realistic timescales for the process and offering a transparent procedure for challenging decisions. Access to advocacy services up to the age of 25 should be provided to ensure all care leavers are supported through the process. Provision of oral evidence to the Committee on these issues would be helpful.

5. The Financial Memorandum’s stated projection was that 65% of care leavers will be successful in their applications. However, without any detail of the eligibility criteria, it is difficult to predict and thus calculate how many care leavers will be eligible for support. In the year between July 2011-2012, statistics show that over one third (34%) of young people deemed eligible for aftercare support (aged 19-21) did not receive any service. For those that did, provision was patchy and fragmented (as the results of a

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CELCIS/STAF survey showed). Provision for 19-21 year olds is already limited and inequitable. A major strategic vision for the development of Throughcare and Aftercare is needed if services are to expand their remit to support young people up to the age of 26.

6. On the issue of data, the Committee is advised that Scotland does not have robust data on the levels of Aftercare support currently provided. We would recommend that the provisions in the Bill be accompanied by national reporting mechanisms to monitor the outcomes of requests and the levels of support provided.

7. In relation to transitions, we would recommend that the needs of disabled young people are given greater consideration. Navigating the transition from Children into Adult services, and the complex financial arrangements which often accompany this, can be a challenging, if not often distressing, experience for young people and their families.

8. Finally, we strongly recommend that a duty is imposed on the reporting, monitoring and recording of all care leaver's deaths (up to the age of 26) to the Minister and Care Inspectorate, as currently required for looked after children. As a ‘good corporate parent’ it is unacceptable that we hold no information on ‘our’ care leavers who die prematurely.

Duties of corporate parents

9. We strongly agree with the Bill’s assertion that public bodies have a collective responsibility for the welfare of looked after children and young people. As set out in ‘These are our Bairns: A guide for Community Planning Partnerships - being a good corporate parent’ (Scottish Government, 2008), many public bodies have a corporate parenting role and it should be noted that many areas and organisations have embraced the concept without the need for legislation. The question posed by the Bill is whether it is advantageous overall to specify explicitly who should be deemed a ‘corporate parent’ (as schedule 3 does) and what their responsibilities consist of (or are limited to).

10. In respect to specifying who will be deemed a corporate parent, we strongly welcome the Bill’s inclusion of health boards as corporate parents, in recognition of their critical responsibility for the wellbeing of looked after children at strategic, operational and practice levels. However, we do have some concerns about the appropriateness of including public bodies such as the Scottish Children’s Reporters Association and Children’s Hearings Scotland, who do not provide services directly to looked after children or care leavers.

11. In terms of the responsibilities of corporate parents set out in Bill, these seem appropriate and proportional. The principle behind corporate parenting is that organisations have a positive bias in favour of looked after children and care leavers. The responsibilities listed should go some way to realising that aspiration. We would, however, urge the Government to consider strengthening the reporting duties of corporate parents: if the Minister is to report to parliament on performance and outcomes every three years it seems reasonable for all corporate parents to do so too.

12. One area of this section of the Bill we would strengthen is around corporate parenting responsibilities for care leavers (up to age of 26). All relevant public bodies should be aware of the concept, responsibilities and practical implications of being a corporate parent for care leavers and should be required to set out a statement of intent in terms of how they will discharge these duties. As with looked after children, principle and practice should reflect a default favourable bias towards care leavers, in terms of any discretionary power they may have over provisions and support. Such an approach should include undertaking Equality Impact Assessments (current practice for other ‘equalities groups’) for any policy or procedural change which may impact on care leavers support and provision in order to ensure existing and future policy is ‘care-
proofed’ in favour of care leavers. This should also address any cross-border or inter-authority arrangements where care leavers can often find themselves disadvantaged when remaining in or moving between local authorities areas where this is not their home area (For further reference, please see the Access All Areas report, published National Care Advisory Service).

13. While generally supportive of this section of the Bill, we urge the Committee to consider some of challenges presented by embedding this collective responsibility for looked after children in a legislative framework. Firstly, many looked after children will still have birth parents who have parental rights and responsibilities: what will the interaction be between birth parents and corporate parents? Secondly, like parents, corporate parents may have different views on the ‘best possible care and protection’: does one corporate parent have a greater say than another? Thirdly, we know that there can be considerable disagreement between public bodies about who should provide a service and finance a service (for example, decisions between health and social care): this can be a cause of legal action. Questions remain about how these differences will be resolved and how the views of the child are heard throughout this process.

**Extending assistance for kinship carers**

14. We welcome the recognition of the role of kinship carers and their right to assistance. The re-designation of the section 11 order of the Children (Scotland) Act 1995 as a ‘kinship care order’ may be useful in providing legal security for a child without them becoming formally ‘looked after’. However, it is clear that kinship carers have faced barriers in attempting to obtain section 11 orders (for example, time involved, cost and acrimony in using the court system) and these must be addressed in secondary legislation. The Committee is also encouraged to consider how ‘contact’ for children with birth families will be handled under these new provisions, as this can present many challenges for kinship carers. The provision of information, support and assistance in this process by local authorities and other organisations is welcomed, but a key concern will be the cost of pursuing an order and access to legal aid. It should be recognised that many families may choose not to involve courts and we endorse the work of Family Group Conferences in supporting families to resolve conflicts.

15. It is vital to understand the interplay between legal status, financial assistance and the benefits system. We are in a time of flux with the UK welfare reforms. Any legal order has to be understood in the context of these changes to ensure that kinship caring families are not penalised. Particular issues relate to child-related benefits and tax credit; income support and jobseekers allowance; housing benefit and council tax benefit; disability living allowance and carers allowance. Depending on whether a child is formerly ‘looked after’ or not has a consequence on different benefits. Therefore, given the introduction of Universal Credit in 2013, we need to ensure kinship carers do not face further hardships due to a potential disconnect between policies. It should also be recognised that the use of specific benefits can lead to ‘passported benefits’ such as school clothing allowances, school meals, etc. and the implications of this need to be understood.

16. Finally, the current provisions in the Bill relate to assistance provided by a local authority. We would support an amendment to the Bill that saw this obligation to provide assistance to kinship cares extended to all relevant service providers (especially the NHS Health Boards).

**Counselling Provision**

17. Although we are positive about the policy intention, this section of the Bill requires much greater clarity. First, the term ‘counselling’ is unhelpful. What is described in the policy
and financial memorandum are family mediation and intervention services. As such, this should be stated clearly. Secondly, the Bill’s accompanying documents state that these services are to be made available to ‘children who are at risk of coming into care’ (pg72, Financial Memorandum). However the proposed legislation does not limit the provision to this group (unless Scottish Ministers decree this by Order). Indeed we would be supportive of a broader interpretation of eligibility, to include a wider group of children and families who may experience adversity. For instance, services such as Family Group Conferencing could be particularly valuable for care leavers who return home to birth family or wider family following care experiences.

18. Finally, as with other sections of the Bill, the duties to provide additional services should apply to all relevant organisations: not just local authorities. Many of the issues faced by families in crisis (such as drug and alcohol dependency) will demand interventions or services provided by other agencies, particularly health.

Children’s Services Planning, Provision of Named Persons and Child’s Plan

19. We welcome these provisions and strongly support any efforts to further imbed GIRFEC principles across Scotland, especially in relation to streamlining the assessment and care planning process through the use of the Child’s Plan.

20. While some confusion has arisen during the consultation process in relation to the delineation between Lead Professional and Named Person, it is important to acknowledge that clear guidance in relation to the role and function of the former already exists and there are examples of where this is working well.

21. We would encourage some debate and clarification about the new information sharing duty placed on public bodies and its implications for maintaining young people’s right to confidentiality.

22. We would suggest that the specific needs of disabled children are not adequately addressed and further consideration is required.

23. In relation to the implementation of GIRFEC, a challenge remains in supporting the culture shift required to fully realise consistent implementation and practice across Scotland – legislation alone will not achieve this.

Early childcare provision for looked after two year olds

24. We welcome the Bill’s extension of free early learning and childcare to looked after two year olds (and children subject to a kinship care order). However, to be meaningful (and effective as an early intervention measure) it is critical that provision adequately reflects the breadth of the population’s needs. It should, therefore, include family support and services that help foster carers to develop positive attachments with children.

25. The same arguments for additional priority for looked after two year olds may also be valid for other groups, such as children ‘in need’ (Section 22, Children (Scotland) Act 1995) and children on child protection registers. We believe that any additional support and resources for looked after two year olds should also be provided for children who might be diverted from the being formally ‘looked after’, given their needs are likely to be very similar. It should be noted that this provision – if restricted to just looked after children – could actually incentivise families (and professionals working with them) to seek compulsory supervision. Hence careful consideration should be given to how similar support is provided for children with the same needs who are not formally ‘looked
after': particularly as there are relatively few 'looked after' two year olds in Scotland (the projected population for mid-2014 being 1,653.2).

Claire Burns, Head of Evidence and Policy
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Centre for Excellence for Looked after Children in Scotland
23 July 2013

Data provided by SG. Projection based on mid-year figures for 2008-09 and 2009-10
Centre for Research on Families and Relationships

1. The Centre for Research on Families and Relationships is a consortium research centre, based at the University of Edinburgh. CRFR produces, stimulates and disseminates high quality social research and commentary on families and relationships. CRFR generates and builds on partnerships across and within the statutory, voluntary, private and academic sectors. This response is from CRFR at the University of Edinburgh.

2. CRFR welcomes the aspirations set out for the Bill. In particular, CRFR commends the continued commitment of the Scottish Government to children’s rights: “We want a Scotland where the rights of children and young people are not just recognised, but rooted deep in our society and our public services. A nation that strives to make these rights real in our everyday lives”\(^1\).

3. However, the Bill currently does not operationalise this commitment and is little improved from the consultation document on key aspects:
   - Weak promotion of children’s rights
   - Inconsistency with provisions on children’s rights and children’s wellbeing

4. Further, the new provisions on information sharing are unduly wide, leaving very little discretion for confidentiality.

**Weak promotion of children’s rights: “To make these rights real”**

5. The Scottish Government (as part of the UK Government) has the responsibility to observe and implement the UN Convention on the Rights of the Child (UNCRC), amongst human rights treaties, but the UNCRC is not currently actionable in any domestic court. The proposed Bill, if underlined by processes and commitments, could ensure that children’s rights are given more breadth and depth in policy-making and thus practice.

6. **However, the Bill does not propose to incorporate the UNCRC into domestic law. This should be the ultimate goal of the Scottish Government, to fulfil its commitment ‘to make these rights real’. This goal could be clearly stated, with a timeline and supporting process for due consideration.** This would include commissioning research that would consider the legal and policy implications of incorporating the UNCRC, specific to the Scottish context.

7. The proposed Bill is weaker than the prior consultation document, in terms of furthering children’s rights. While the consultation recommended a duty requiring Scottish Ministers to take ‘appropriate steps’\(^2\), the proposed Bill only requires

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Scottish Ministers to ‘keep under consideration’ (s.1(1)) whether there are any steps to take and 'if they consider it appropriate to do so' (s.1(2)) to take any of the steps identified. The process supporting any such duty is not yet described: any such process should be transparent, open to scrutiny and meaningfully impact on policy-making and other ministerial functions. It is not clear what avenues there would be to challenge Ministers’ exercise of the duty. **The Bill should have a stronger duty placed on Scottish Ministers, with a debate on its legal interpretation, and supporting processes identified.**

8. The proposed duty on Scottish Ministers should be extended to public authorities. The current proposals will not be effective, in at least two ways:

- Public authorities could fulfill their obligation under s. 2(1) by publishing a report that states they have taken no steps towards implementing children’s rights. Thus the reporting duty could enhance transparency, accountability and scrutiny – but not progressive implementation of children’s rights, ‘to make these rights real’.

- Part 2 of the Bill proposes that the Scotland’s Commissioner for Children & Young People has extended powers to investigate infringements of individual children’s rights. As stated by Together, “For this additional power to be effective, it is essential that there is a duty on public bodies in domestic law to comply with the UNCRC in the first place”\(^3\).

**Inconsistency with provisions on children’s wellbeing**

9. The Bill proposes duties, in relation to wellbeing, for children’s services planning (s.9) and an individual child’s plan (s.31). This sets up a potential conflict and a lack of coherence between parts of the Bill, unhelpfully suggesting that the children’s rights and children’s wellbeing agendas are separate. This is underlined by a proposal for two separate reporting duties in s.2(1) and s.9 (albeit recognising that they could be coordinated).

10. The Scottish Government decided not to go forward with the separate Rights of Children and Young People Bill, with the following reasoning:

   *Therefore, the Scottish Government feels that it would be sensible to secure and reinforce delivery of the rights of children and young people as part of a single integrated Children and Young People Bill that will also include measures to improve children’s services, rather than in separate legislation*\(^4\).

11. The proposed Children and Young People (Scotland) Bill indeed does provide an opportunity to embed children’s rights across children’s services, so that children’s rights can be realised in their daily experiences. **To achieve this:**

   - children’s rights should be set out as the overarching principles for the Bill

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• the definition of ‘wellbeing’ should be set within the children’s rights framework
• the proposed duties on public bodies to work together should be focused on improving children and young people’s rights

12. Various claims have been made in the academic literature connecting children’s wellbeing and children’s rights: from the UNCRC being the ‘normative framework’ to understand children’s wellbeing, to the monitoring, promotion of, and protection of children’s wellbeing being central to realising children’s rights. But in these connections, there is a clear logic that one or the other is the dominant one.

13. Children’s wellbeing fits well with Scotland’s outcome based approach, as children’s wellbeing globally has a history of statistical development not yet achieved for children’s rights. Children’s wellbeing improves on ideas of ‘children in need’, as the former promotes a positive view of children and families, recognising their capacities and seeking to maximise wellbeing. But the idea of children’s wellbeing risks falling into a utilitarian approach focusing on ‘the greatest happiness for the greatest number’ rather than a rights-based approach that recognises both means and ends.

14. Rights, as laid out in the UNCRC, emphasise both outcomes for children and state accountability. Lundy writes about the claims of rights, which make them particularly suitable for legislation: “Suggesting that a child’s wellbeing is affected adversely is powerful but ostensibly not as powerful in practice as suggesting that their human rights have been breached.” When there are shop signs that state ‘no more than 2 children allowed a time’, when socio-economic inequalities particularly impact on children, and children’s views are still not given ‘due

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8 S.93(4)(a), Children (Scotland) Act 1995
regard\textsuperscript{12}, the minimum thresholds of children’s rights are evidently very much needed. Process rights are important, as are the outcomes\textsuperscript{13}.

**Information sharing (S. 26 and 27)**

15. The threshold for information sharing is low, as described in the policy memorandum, “... to share a concern they have about the child’s well being with the Named Person” (para 77). The proposal is for a duty on a service provider or relevant authority, so if this were not done, the duty would be breached.

16. The value of information sharing needs to be balanced with confidentiality. CRFR participated in the Roundtable Event organised by the Centre for Learning on Child Protection and ChildLine on *Children’s Confidentiality in an Age of Information Sharing*\textsuperscript{14}. Key points of this are relevant:

- Confidentiality is of fundamental importance to children and young people when accessing support from services or professionals\textsuperscript{15}
- ‘Confidentiality’ and ‘information sharing’ are not well understood in practice
- Professional guidance and practice differs with regards to children’s right to confidentiality; this presents specific challenges with multiagency working and may lead to unnecessary breaches of confidentiality
- There is an inherent tension in respecting children’s right to confidentiality in a process-driven child protection system

**Other issues**

17. As commented on CRFR’s response to the Scottish Government’s consultation:

- The ‘children in need’ category of the Children (Scotland) Act 1995 will remain (see s.73). Research undertaken in 2007\textsuperscript{16} underlines its problematic implementation in Scotland, with the exception of highlighting specific attention to disabled children and children affected by disability.


\textsuperscript{13} For further elaboration, see Tisdall, E.K.M. (2013) The potential for children’s rights in Scotland: learning from the UNICEF UK report on legal implementation of the UNCRC in 12 countries, Scottish Human Rights Journal, 60.


• ‘Proofing’ the Bill, to ensure children affected by disability are duly supported by services.

• Early learning and childcare needs to meet the needs of the children involved, as well as the needs of their parents. The Bill should include a similar duty to that of the Childcare Act 2006, for England, that requires local authorities to have regard to information about young children’s views in the design, development and delivery of early childhood services. The duty has promoted productive involvement of young children, as evidenced by the NCB’s Young Children’s Voices Network. Thus, children should be consulted, along with parents, to develop early learning and childcare provision.

Professor Kay Tisdall
Co-Director, CRFR
27 July 2013

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17 s.3. For the mandatory local authority assessment of the sufficiency of childcare provision, The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2008 requires local authorities to consult children, in the local authority area, as the local authority considers appropriate. This caveat as ‘appropriate’, however, is unduly open – practicability may be a better expectation, or ‘reasonable steps’ as required within equalities legislation.

18 http://www.ncb.org.uk/ycvn
Scope of evidence

1. The scope of this particular written evidence from CPAG in Scotland is limited to the proposals within the Bill for ‘Support for Kinship Care’ and in particular the importance of adequate support and how any proposed financial support might interact with support available to families from the UK benefit system. Our concern is to ensure the proposals contribute to maintenance of family income, and are consistent with the objectives set out in the Scottish Child Poverty Strategy.

Kinship care assistance

2. CPAG in Scotland welcomes the indication that kinship care assistance may include financial assistance, in addition to other forms of support such as counselling or advice. Available research points to the fact that kinship carers are likely to be experiencing financial difficulty, either as a direct result of becoming a kinship carer, or because they are already at risk of suffering disadvantage due to age, ill-health or other factors. Analysis of the 2001 census data revealed that a disproportionate number of Scottish kinship carers (of both looked after and non-looked after children) and the children they cared for lived in disadvantaged areas, 45% of children in kinship care living in the poorest 20% of areas, with 27% of kinship carers being on benefits or unemployed. Furthermore, the indications from research are that financial security within kinship care arrangements can improve the stability of the arrangement and the eventual outcomes for children within such arrangements.

The level of kinship care assistance

3. The Bill currently states that, “Kinship care assistance is assistance of such description as the Scottish Ministers may by order specify” (section 64(2)). The Policy Memorandum indicates that a person with a kinship care order “will be entitled to assistance if the relevant eligibility test is met” and that the “type of assistance will be prescribed by the Scottish Ministers in secondary legislation” (paragraph 118). However, the Policy Memorandum also indicates that for certain types of support (e.g. financial assistance) local authorities may be able to take account of the means of the carer.

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4. It remains unclear whether the Scottish Ministers intend, by means of secondary legislation, to oblige local authorities to provide financial assistance, or indeed to set a minimum level at which such assistance is to be paid. In the absence of this detailed information it is difficult to assess the likely impact of this development. If local authorities are enabled rather than obliged to provide financial assistance to kinship carers, there will be a strong likelihood of a ‘postcode lottery’ of support developing.

5. The Scottish Ministers have powers under section 110(3) of the Adoption and Children (Scotland) Act 2007 to prescribe the level of kinship care allowances (to ‘approved kinship carers’) but have not taken up these powers. The level of allowances to approved kinship carers across the 32 local authorities remains hugely variable. This is perhaps indicative of the outcome of any new allowance system to those with kinship care orders should the level of payment, or at least a minimum level, not be prescribed by Scottish Ministers.

**Interaction of kinship care assistance (financial) with the UK benefits system**

6. For approved kinship carers, there are currently significant difficulties in the interaction between the system of allowances paid by local authorities and the UK benefit/tax credit system (see paragraph 6 below). The kinship care order set out in the Bill should avoid most, if not all, of these difficulties. The reason for this is that most of the complexity arises from the ‘looked after’ status of the child in approved kinship care situations. The combination of ‘looked after’ status and payment of an allowance is at the heart of the complex interaction with the UK benefit/tax credit system. Since children living with kinship carers under the proposed order will not be ‘looked after’ these complexities should not arise. The remaining issue will be the treatment of any financial assistance within the means-tested benefit/tax credit system: that is, whether any such allowance will be disregarded as income. If not disregarded, then such financial assistance, provided specifically by the local authority to support vulnerable children, might simply be clawed back. It is therefore crucial that the Scottish Ministers reach agreement at the earliest opportunity with UK Ministers regarding the disregard of any allowance.

7. It should be noted that local authorities already have powers to make payment to kinship carers of non-looked after children (e.g., under section 50 of the Children Act 1975). There is provision across the range of means-tested benefits and tax credits to disregard these types of payment, and also payments made under section 22 of the Children (Scotland) Act 1995.

**Interaction with existing kinship care allowances**

8. According to the Policy Memorandum the proposals in the Bill would not alter the existing system of allowances paid to approved kinship carers (i.e., kinship carers of looked after children), although this system is the subject of a separate review. There is a provision at section 66(2) of the Bill that:

   “An order under section 64(1) may specify assistance by reference to assistance which a person was entitled to from, or being provided with by, a local authority immediately before becoming entitled to assistance under that section.”
9. We presume that this is intended to remove any financial disincentive to apply for the new order where a kinship carer is receiving a kinship care allowance as an approved kinship carer. This suggests that financial assistance under the new system is likely to be less than the assistance currently available to approved kinship carers. It is difficult to make any meaningful assessment of this interaction without knowing what the level of financial assistance under the new system is likely to be. Furthermore, from our own contact with local authorities and advice agencies we are aware of a wide range of approaches to payment of kinship care allowances under the present system, with some authorities making payments which are on a par with fostering allowances and others making extremely low payments.

10. In general terms, it may be possible to learn some lessons from research in the English/Welsh context where many kinship carers have a Residence Order under section 8 of the Children Act 1989, or a Special Guardianship Order under section 14A of the 1989 Act. In this situation the child is not looked after by the local authority. Both these orders have associated allowances, residence order allowance and special guardianship allowance. Recent research indicates that these allowances are variable across local authorities and generally paid at a significantly lower level than allowances paid to kinship carers of looked after children. Some kinship carers feel that they are encouraged by local authorities to pursue one of these ‘non-looked after’ options because it will ultimately save the local authority money.

Current kinship care allowances and the UK benefit/tax credit system

11. Although the current system of kinship care allowances is not part of the Bill, it is useful to set out some of the difficulties which have arisen in relation to the system’s interaction with the UK benefit/tax credit system. This highlights how important it is to ensure adequate planning in the development of any new system, particularly as it relates to financial support and particularly at a time of enormous upheaval in the UK benefits system.

12. The main source of financial support to families with children is, at present, child benefit and child tax credit. Within both the child benefit and child tax credit systems there are provisions intended to prevent the benefit/tax credit being paid where a child is ‘looked after and accommodated’ by the local authority. These regulations are aimed primarily at children in foster care or living in residential accommodation. However, their somewhat tortuous nature has resulted in some Scottish kinship carers of looked after children being unable to receive state benefits in respect of the child for whom they care.

13. Crucial to this issue is not simply the fact that the child is residing with a kinship carer, but the combination of the child’s looked after status and the legal provision utilised by the local authority to make payment to the kinship carer, and

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what the purpose of the payment is. In short, payments made under regulation 33 of the Looked After Children (Scotland) Regulations 2009 are likely to result in no award of either child benefit or child tax credit. Payments made under section 50 of the Children Act 1975 which are, by definition, in respect of the child’s maintenance, generally result in child benefit being payable, but not child tax credit. Payments made under section 22 of the Children (Scotland) Act 1995, providing they are not in respect of the child’s accommodation or maintenance, should not prevent child benefit or child tax credit being paid. From our contact with local authorities and advice agencies, it is clear that local authorities vary both in the level of kinship care allowance paid and the legal power utilised.

14. Together, child benefit and child tax credit can amount to around £83 per week per child, increasing by up to £81 if the child has a severe disability. Child benefit accounts for only £20.30, and sometimes less, of the total and therefore child tax credit is the most significant child-focused financial support to low income households. As a result of the above complex interaction, coupled with the existing variability both in the level of allowance paid and the legal power used, many kinship carers have to consider whether or not they are better off accepting the kinship care allowance from the local authority. It is undoubtedly the case that some are not and therefore are not able to benefit from any additional financial support from the local authority.

Child Poverty Action Group Scotland
26 July 2013
Children 1st

1. At CHILDREN 1ST, we listen, we support and we take action to secure a brighter future for Scotland’s vulnerable children. Our work is built on over 125 years experience as the RSSPCC. By working together with, and listening to children, young people, their families and communities, and by influencing public policy and opinion; we help to change the lives of vulnerable children and young people for the better. We work to safeguard children and young people, to support them within their families and to help them to recover from abuse, neglect and violence.

2. CHILDREN 1ST has 52 local services and four national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred. The children, young people and families we support are key partners in all aspects of our work.

3. We welcome this Bill and believe it is a real opportunity to effect positive change for Scotland’s children and young people. We do, however, believe it could and should go much further.

Part 1 – Children’s rights

4. CHILDREN 1ST strongly believes that in order to achieve its policy objective to ‘make rights real’, the UNCRC must be fully incorporated into Scots Law. We fully support Together’s call to strengthen the rights provisions included in the Bill and for full incorporation of the UNCRC into Scots law.

5. We called for full incorporation in our response to the initial consultation on this Bill, and understand that 40% all responses from children’s organisations also did so, despite there being no question about full incorporation in the consultation paper1.

6. If the Scottish Government were to take this opportunity to fully incorporate the UNCRC into Scot’s Law, this would lead to:

   - The development of an overarching children’s rights framework that influences all areas of policy and practice – this would avoid the inconsistent implementation of the UNCRC we currently see in Scotland across local and national government and a range of public bodies. International experience shows that in countries where there has been incorporation of the UNCRC, politicians, public officials and non-governmental organisations who wanted to advance children’s rights had more leverage that helped them ensure the integration of the principles in domestic law and policy. The value of full incorporation is the message that it conveys about the status of children and

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the knock-on effects for implementation of children’s rights principles into domestic law and policy.

- A culture of respect for children and their rights - we know that legislation is an important factor in achieving step change in attitudes and behaviour, and full incorporation would send a clear and important message to everyone in Scotland about how we should value and respect children. This will have a very real impact on the everyday experiences of Scotland’s children and young people.

- Effective realisation of the policy objectives in the Children and Young People Bill - the policy memorandum states that ‘it is the aspiration of the Scottish Government for Scotland to be the best place to grow up in’\(^2\). This is an admirable and appropriate ambition but we believe that without full incorporation of the UNCRC this will not be possible.

- Fulfilment of the strategic objectives of the Council of Europe’s programme “Building a Europe for and with children”\(^3\), something which the Bill in its current form does not do.

7. We believe that a Child’s Rights Impact Assessment (CRIA) should be a statutory requirement to ensure that children’s rights are integral in all policy-making at local and national level. CRIAs provide a valuable tool for looking at legislation and identifying and measuring its effect on children and young people and permit impacts to be predicted, monitored and, if necessary, avoided or mitigated. CRIAs should be used across national and local government in order for policy-making to be meaningful. It is disappointing that the Scottish Government has not carried out a CRIA on this flagship Bill for children and young people.

**Part 4 – Named person**

8. CHILDREN 1\(^ST\) supports the idea of the named person, as we believe it could offer a way to avoid children ‘slipping through the net’ when they are at their most vulnerable, and a useful point of contact for families so they can access advice and services without having to deal with excessive delay or red tape.

9. We do, however, have concerns about how this would work in practice, and would encourage the committee to consider the following questions:

Who are the best people to be named persons, and how will the task be practicable in reality?

10. Teachers, headteachers and health visitors all experience high caseloads and significant other responsibilities. In order for the role to work, there will need to be significant extra resources allocated.

11. In addition, consideration must be given to what will happen in the school holidays if a school-based professional such as a headteacher is going to take


on the role. If a named person is not available for protracted lengths of time such as the summer holidays or Christmas, when many families experience the most difficulty, this makes the role of the named person nonsensical as it would negate the purpose of creating a safety net for every child.

12. For some of Scotland’s most vulnerable children it will make little sense for a headteacher to be their named person. These children may have difficulties at school and often be in conflict with the headteacher. Some children and young people may not have a consistent school or may be in and out of secure units or residential care. Life for these children may be chaotic and there may be little consistency in terms of education. In order to be truly child centred, there must be flexibility in terms of who the named person is for each child. It may not always be suitable for this to be a member of school staff for the reasons outlined above. We know the Bill itself allows this flexibility but are keen to ensure this is understood at practice level.

13. We understand that the manager of a secure unit would be the named person for some children. This could be problematic, as many children and young people who go to secure units do not stay for one prolonged period, but move in and out throughout their lives, staying sometimes for just weeks at a time. This would result in transfers of named persons and there is a worry that some children may fall through the gaps. Frequent changes of named person would not allow the child, young person or family to build a trusting relationship with this adult. In many ways these most vulnerable children are the ones for whom the concept of the named person should be the most useful. As it stands, these children are largely ignored in the Bill.

14. Evidence presented by the Children’s Parliament highlighted concerns about the named person. Children said: “Everyone is so individual it would be difficult to look after everyone.”, “they’ll be very busy because there’s a lot of people to look after.” Children were concerned about who the named person would be, because “there is no point in picking someone you barely see.” They felt that it should be the same person throughout, and asked if it was possible to change the named person. Concerns were also highlighted about the lack of choice children would have in identifying who would be the named person, because of the private, challenging and potentially upsetting aspects of a child’s life the named person would be involved in.

How will ‘ordinary people’ understand the role?

15. If the named person is really to be the person to whom people pass on any wellbeing concerns, as is our understanding from consultation events we have been involved in, then this needs to be very clear to those who engage with children. This includes members of the community and volunteers such as sports coaches. Guidance will need to make it very clear – in a way which is accessible to everybody - what is expected of volunteers and community members in terms

http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd.pdf s20(1), s21(1)
of liaison with the named person and, where appropriate, direct referrals to social services regarding child protection concerns.

16. We believe it is everybody’s responsibility to protect children, and several of our services work with members of the community and local organisations to encourage and enable them to deal with low level concerns about children and child protection issues in an appropriate manner. We have already been made aware of confusion among professionals and the public about which person a child protection concern should be raised with. We would be very concerned if ordinary people become confused about who to contact and when about an issue concerning a child, or felt that the role of the named person required them simply to pass on any low level concerns rather than dealing with the issue as it came up. We are very aware that in the current economic climate caseloads are unlikely to become smaller, so if individuals pass their low level concerns to the named person, the named person is unlikely to be able to act on these concerns until they become several and serious. We must ensure that ordinary members of the public understand their responsibilities and feel capable of intervening where appropriate.

17. It would be helpful when looking at the development of secondary legislation and guidance around the named person to look to where it is already working e.g. Highland for examples of good practice.

Part 4 - Information sharing

18. We understand the intention behind the information sharing provisions in the Bill, and that in order to make GIRFEC work professionals need to be sharing appropriate information. There has been no consultation on this aspect of the Bill, as it wasn’t included in the original consultation paper, which, given the radical change to existing information sharing provisions, is very concerning.

19. We have some serious concerns about the new information sharing duty for public bodies and service providers, which are outlined below:

- **Impact on confidential services** - many children and young people use confidential services, to explore their worries and work through their ideas about an issue before they decide to disclose formally about abuse or other problems in their lives. Without these services, many children may never disclose, or this may be delayed, during which time the child is still suffering the abuse. In addition, we know children often retract disclosures if they were not really ready to share in the first place, which puts them in further danger. If the proposed changes are made to the existing information sharing provisions, this could have major consequences for services which currently enable children to speak confidentially.

- **Child rights** - children have a right to privacy and the same right to confidentiality as adults. We have concerns that the provisions currently outlined in the Bill do not take these rights into account, and could lead to systems driven by compulsion to share information at all times, with very little
thought or understanding of the need and reasons for maintaining or breaching confidentiality.

- **Training needs** - serious case reviews very often point out that relevant information was not shared appropriately, contributing to the harming or death of a child. This is a very serious problem and, in our view, not one that can be solved legislatively. This is an issue for training and staff development – current law does allow the relevant and proportionate sharing of information; the issue is not with the law, but with some professionals’ understanding of it, and willingness or otherwise to act on it.

- **Family involvement** - we are very concerned that there is no duty in the Bill to involve the child, young person or family concerned in decisions to share information. There is thus no balance between children’s rights and the need to share information. We feel very strongly that the involvement of children, young people and families in information-sharing decisions should be sought wherever possible.

- **White noise** – the current proposals would undoubtedly lead to higher levels of information sharing. Because this information would be about wellbeing concerns rather than children at risk of serious harm, there would naturally be more of it, and it would be about a wider range of children. People may want to pass information on to the named person in order to protect themselves, which we know from experience does not protect children. This could lead to ‘white noise’, whereby information shared about children at risk of harm may be lost in a maelstrom of unnecessary information. Once children realise how much is to be shared about them they may be even more reluctant to talk about ‘lower level’ concerns, further denying them the supports they need.

**Part 5 – Child’s plan**

20. **CHILDREN 1ST** supports the intention to move to a single planning approach but would suggest that by itself, it will be insufficient to improve outcomes for children. The plan is only one part of the process which is required to help deliver improved outcomes for children. We would also like to see enshrined in statute a duty on public bodies to act on recommendations in a child’s plan. Moreover, there should be a right of legal redress, creating a corporate responsibility on public bodies, for children and young people if or when public bodies do not meet their statutory requirements in terms of creating a single plan.

21. In order to achieve a real cultural change in which children really are placed at the centre, we would ask that consideration be given to embedding in legislation initial training requirements for key professionals who work with children so that they are trained in attachment theory, child development, the impact of trauma, sexual abuse and in the GIRFEC approach. A key way to begin this cultural shift is through early adoption and immersion of the ‘Common Core of Skills,
Knowledge & Understanding and Values for the Children’s Workforce in Scotland\textsuperscript{5} which was published by the Scottish Government recently.

22. CHILDREN 1\textsuperscript{ST} feels that if we are truly trying to take a child centred approach, we should be seeking and taking into account the views of children, young people and their families when putting plans together. We would like to see a duty on local authorities to involve children, young people and families in preparing the child’s plan. There should also be a corresponding duty to support families to enable them to be involved in the planning process. This could include Family Group Decision Making and other activities.

Part 6 – Early learning and child care

23. We very much welcome the inclusion of a statutory right to pre-school provision for children. We particularly welcome the inclusion of a commitment ensuring two year olds on a Kinship Care Order will be entitled to 600 hours of free early learning and childcare. We do, however, feel that there are some important factors to take into consideration.

24. We know, from the work we do with children in their early years, and their families, that the most vulnerable families often need more specific supports, including work addressing parenting skills, family relationships, attachment and child development, and substance misuse. This support needs to be flexible, delivered in the home if needs be, and available on a one to one basis. It needs to be asset based and allow the parents to learn and develop from it. For many vulnerable families, these are the kind of services which children need to continue accessing if they are to be “school ready” and just as importantly, have a better start in life.

25. This kind of more specialist and intensive early years support for vulnerable families is essential. CHILDREN 1\textsuperscript{ST} welcomes universal, increased access to early learning and childcare but this should not come at the cost of more specific services desperately needed by Scotland’s most vulnerable families.

26. Any proposals around childcare should take into account the need for a truly flexible, family focussed approach. This may well involve early learning and childcare outwith the home (for example in a state-run nursery), but for the most vulnerable families it will often also need to include support for families within their own homes.

27. In addition, parents and carers who call ParentLine Scotland tell us that the need to improve availability of age-appropriate and affordable childcare for older children is also a major issue; childcare is important throughout childhood and is not limited to early years. This also requires policy attention.

\textsuperscript{5} http://www.scotland.gov.uk/Publications/2012/06/5565
Part 7 – Corporate parents

28. CHILDREN 1ST welcomes this attempt to improve the standard of corporate parenting across Scotland. We do, however, feel that if the aim of corporate parenting is to ensure that looked after children have the same life chances as those who are not looked after, then the Bill does not achieve this, as it mentions nothing about safety, security, happiness, love or relationships. In short, the corporate parenting responsibilities listed in the Bill do not include many of the expectations we would hope a child should have of his or her parents. Missing from the Bill is any acknowledgement of the need to:

- help children and young people to have key reliable people in their life and develop healthy relationships
- not do things that cause children and young people harm (for example lots of unplanned moves or big changes while they are in care)
- work with children and young people to seek their views on how they are looked after, and caring about and acting on what they think
- work with birth families to ensure children and young people are given every realistic opportunity and necessary support to return home
- be aspirational and have high expectations
- promote and support the physical, emotional, social and cognitive development of a child from infancy to adulthood

29. Clearly some of these things would be for secondary legislation but we feel it is important to be clear about the definition of corporate parenting at this stage.

30. We also believe that the list of bodies considered corporate parents is too wide. Some of those on the list, such as SCRA, do not have any day-to-day responsibility for the care of looked after children, or opportunity to carry out the list of corporate parenting responsibilities included in the Bill, so their inclusion on the list makes the concept of good corporate parenting meaningless.

Part 8 – Looked After Children leaving care

31. CHILDREN 1ST welcomes the provision to extend the age to which care leaves can receive support from their local authority. However, we believe that the bill can and should go further. We would like to see the assessment process in Part 8 being removed altogether; the responsibility should not be on the young person to present as being in need, but for the local authority to provide for the vulnerable young people in its care.

32. Outcomes for looked after children are very poor in Scotland, and if this Bill is to achieve its aim of being aspirational for Scotland’s children and young people, this must include those in or leaving care. This Bill could represent an opportunity for Scotland to become a global leader in care, but current provisions do not go far enough. We support Who Cares? Scotland’s proposal which calls for the Bill
to allow for children and young people who have been looked after to be able to remain in care, or to return to care, up to 26 years of age. This means that the relationships which they held whilst in care up to 16 or 18 years of age could continue, instead of them being severed abruptly in the way they are just now.

33. We therefore recommend that the inclusion of the following principle for the Bill and detailed guidance to outline what this means should be included: ‘all children and young people are supported to develop long-term, sustainable and nurturing relationships with their families and/or professionals’. We believe that this is the only way to properly tackle and redress the ridiculously poor outcomes which care leavers across Scotland experience.

Part 9 – Counselling services

34. CHILDREN 1ST welcomes the inclusion of the provision for support services for eligible families, however would like to see this section re-named as Early Intervention services. We believe that the word “counselling”, to describe the relevant services, is confusing and inappropriate. These types of services are not counselling services, but services that support families to ensure beneficial outcomes for the child, such as Family Group Decision Making. We recommend that this section would be better placed to sit in between the Named Person and the Child’s Plan section of the Bill.

Part 10 – Kinship Care

35. CHILDREN 1ST welcomes the intention of Part 10 to put kinship care on a statutory footing and legislate for the supports and services which local authorities must make available to kinship care families. We are glad that Ministers listened to the concern highlighted by the consultation process and are proposing to incorporate the kinship care order within existing s.11 legislation.

36. We know from working with and supporting kinship carers through the National Kinship Care Service that there is a need for a broad range of assistance from the local authority. Our engagement activity tells us that kinship carers need:

- Respite from caring; advice, information and support around caring for children; access to free school meals/clothing grants to ease financial pressure; access to leisure facilities; advocacy to navigate through housing, legal, health and educational systems; and advice and support around dealing with contact arrangements between the children and their parents.

- For the older grandparents in particular, knowing what will happen to the child/children should they become ill or pass away is a particular issue. Family Group Decision Making is the obvious support that could be put in place for such families to plan for the future.

37. For the children, kinship carers tell us they need:

- Counselling/therapeutic services and supports; help to understand and manage relationships with their parents; peer support from other children
living in kinship care; access to mental health services; and help to understand the impacts and effects of drug and alcohol misuse.

38. One of the key issues raised by kinship carers on an ongoing basis is the need for increased and consistent access to financial support. CHILDREN 1ST is aware, through the role we played in the Financial Review of kinship care, that the Scottish Government hopes to be able to announce recommendations from this review by the end of the year. We would urge Ministers to ensure that those recommendations are considered as part of the wider Bill process and not in isolation. Kinship carers need financial support.

39. CHILDREN 1ST understands that the detail surrounding the types of support, eligibility for support and the way in which support will be provided will be contained within secondary legislation. We would urge Ministers to have due regard to the outcome of the consultation being undertaken with kinship carers and ensure that the secondary legislation places a duty on local authorities to provide universal services and supports to all kinship carer families in need across Scotland, including those who have existing s.11 residence orders.

40. We would like to draw the committee’s attention to s.65(2)(b) of the Bill. CHILDREN 1ST consider the current definition contained within this section wide and question why it differs from the working definition of kinship carer contained within Regulation 10 of the Looked After Children Regulations 2009. We urge Ministers to ensure that there is consistency across the various forms of legislation relating to kinship care.

Other concerns:

Section 30 “interpretation of Part 4”

41. CHILDREN 1ST is concerned that the bill uses the Education (Scotland) Act 1980 definition of “parent”. This definition excludes some fathers and other carers such as kinship carers. We propose that the term “parent” should be replaced with “relevant person” in accordance with the Children’s Hearings (Scotland) Act 2011. It must be noted that if “parent” is changed to “relevant person”, then subsequently the kinship care provision should be reviewed, as this section disqualifies parents and guardians from applying for a kinship care order.

Children 1st
2 August 2013
Report on the Survey for Kinship carers on Scottish Government proposals for the Children and Young People Bill

CHILDREN 1ST was commissioned in 2011 by the Scottish Government to develop and implement a national service for kinship carers and their families. The service aims to help kinship carers find their voice, providing emotional and practical support through a free and confidential helpline (ParentLine Scotland) and training, outreach and capacity building.

Part of our role is to engage with kinship carers on policy issues, and also children and young people who live in kinship care arrangements. To help inform the Scottish Government’s development of proposals for a new children and young people bill, CHILDREN 1ST surveyed kinship carers on key proposals. This report highlights and explains the findings.

Methodology

The survey was conducted as a confidential questionnaire with an online and paper survey option. The survey was promoted via email to a wide range of kinship care contacts, including kinship carers and support groups. Paper copies of the survey were also sent to all kinship carers on our database (385), to kinship care support groups and a copy was given to every kinship carer who attended the Big Day Out in October.

Responses received were inputted into an online survey software tool to collate the findings and aid production of this report. Some questions were multiple-choice, some allowed multiple responses and some allowed space for participants to write longer more detailed responses. The questionnaire was designed in such a way as to gauge definite views on certain issues, whilst also allowing space for kinship carers to express more specific viewpoints and personal experiences. Allowing both types of responses is vital for fair and complete evaluation. The survey is attached at Appendix A.

While the questions were short, nearly all required significant explanation of the proposal for the bill. For this reason, and to ensure we had interpreted Scottish Government intentions appropriately, prior approval of the survey was sought from officials. However, doing this has the additional benefit of raising awareness of the proposed measures in the new bill among a key audience.

The percentage answers have either been rounded up or down for easier reading (therefore some may not total exactly 100%). As of 2nd November we had received 117 responses: 81 were fully completed and 36 were partially completed.

For more information about the national kinship care service or this report, please contact:
Kinship care policy and outreach worker
CHILDREN 1ST
83 Whitehouse Loan
Edinburgh
EH9 1AT
policy@children1st.org.uk 0131 446 3979
Section 1 - Children's rights

The survey explained that children have rights as set out in the United Nations Convention on the Rights of the Child (UNCRC) and that the Scottish Government is responsible for making sure that children’s rights in relation to devolved matters, are respected. We explained that the Scottish Government wants to do more to promote children’s rights and ensure that public sector agencies monitor and report on what they are doing to promote these rights.

We posed a set of attitudinal statements and asked respondents to indicate which one they agreed with:

The Scottish Government should be doing more to promote children’s rights – 48% of respondents agreed with this

It’s not enough to promote children’s rights – all laws and polices which affect children should comply with their rights – 52% agreed with this

This is not something the Scottish Government should be doing – 3% agreed with this

Don’t know – 3% agreed with this

While a significant number of respondents agreed with the Scottish Government’s proposed way forward on children’s rights within the bill, it is worth noting that a majority supported a stronger approach being taken.

Section 2 - Early learning and childcare

This section explained that the Scottish Government wants to give every three and four year old child and every looked after two year old 600 hours of early learning/childcare per year. An overwhelming majority – 85% - of kinship carers think this is a good idea, with only 7% considering it a bad idea. Some of the reasons for this included -

“Good only if the funding is not coming from an existing budget”

“Children should be supported more in the home”

“I can see benefits for children aged 3+ but at the age of two, early attachments are fragile and 600 hours is very significant in an infant’s life. This would support vulnerable Mother’s however, I do not believe it would support the child themselves.”

We then asked the kinship carers to reflect on children they care for or know and asked if they thought more time in nursery or childcare would be good, bad or make no difference. Nearly two thirds (64%) thought it would be good for their children with 36% saying it would make no difference, as kinship care children need other support and activities.
The survey also asked if participants thought that all two year olds in kinship care should receive an early learning or childcare place. The majority of 83% said yes, leaving 17% saying no, indicating strong support for extension of this measure beyond looked after two year olds.

We asked kinship carers about the types of service that parents and carers should be able to access from within the 600 hours, allowing them to choose up to three options. The three preferred options were pre-school nursery place, playgroups/parent and toddler groups and family support sessions, with therapy sessions for children close behind in 4th place.

Other options that were slightly less popular were: Activities to help parenting skills (23%); College or university childcare (14%); Workplace crèche (20%) and Library activities (4%).

These findings indicate strong support for traditional options for early learning, but also suggest a need for flexibility around children’s needs and also an appetite for more work and education-oriented childcare.

Section 3 - Services for Children and GIRFEC

We explained the Scottish Government’s concept of a child’s wellbeing as SHANARRI – safe, healthy, active, nurtured, achieving, respected, responsible and included.

Most participants (70%) had not heard of this definition of wellbeing, however 94% thought it was a good way to describe a child’s wellbeing. Given that kinship carers are highly likely to have had involvement with social work services and indeed, multi-agency involvement in their lives, we found the lack of recognition for SHANARRI surprising. It perhaps indicates that there is a need to raise awareness of it among key audiences and stakeholders.
What is reassuring is the very high level of support for this definition of well-being, though we also asked participants for other ways to define/describe a child’s wellbeing. Over a third of respondents thought other things should be included and most of the additional suggestions can be summarised as being loved, happiness and being heard/listened to.

“A sense of being loved and wanted”

“Belonging to a nurturing family”

“Happy and heard”

“happy and loved and settled”

The survey then explained the Scottish Government's plan to make sure that every child has a Named Person and what this means. 90% of respondents thought every child in Scotland should have a named person, and after being asked to reflect on their own situation, 78% thought that having a named person would have helped them and their family, with only 13% saying a named person would not have helped them and 11% not knowing.

We then asked who the participants thought should be the named person for children at each age and stage in their lives.

<table>
<thead>
<tr>
<th>Babies under 1 year old</th>
<th>GP</th>
<th>Health visitor</th>
<th>Social Worker</th>
<th>Parent/Carer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>15%</td>
<td>60%</td>
<td>14%</td>
<td>36%</td>
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<table>
<thead>
<tr>
<th>1-3 years olds</th>
<th>GP</th>
<th>Health visitor</th>
<th>Social Worker</th>
<th>Parent/Carer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13%</td>
<td>60%</td>
<td>18%</td>
<td>35%</td>
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</table>

<table>
<thead>
<tr>
<th>3-5 year olds</th>
<th>GP</th>
<th>Health visitor</th>
<th>Social Worker</th>
<th>Child carer</th>
<th>Nursery teacher</th>
<th>Public Health Nurse</th>
<th>Family support worker</th>
<th>Parent/Carer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13%</td>
<td>30%</td>
<td>11%</td>
<td>8%</td>
<td>40%</td>
<td>8%</td>
<td>19%</td>
<td>31%</td>
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</table>

<table>
<thead>
<tr>
<th>Children at primary school</th>
<th>GP</th>
<th>Head teacher</th>
<th>Social Worker</th>
<th>Class Teacher</th>
<th>Learning Support Teacher</th>
<th>Child Carer</th>
<th>Family Support Worker</th>
<th>Parent/Carer</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>8%</td>
<td>28%</td>
<td>8%</td>
<td>45%</td>
<td>11%</td>
<td>5%</td>
<td>19%</td>
<td>37%</td>
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</table>

<table>
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<tr>
<th>Children in senior school</th>
<th>Head Teacher</th>
<th>Subject Teacher</th>
<th>Guidance Teacher</th>
<th>Youth Worker</th>
<th>Social Worker</th>
<th>Family support worker</th>
<th>Personal support teacher</th>
<th>Parent/Carer</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>11%</td>
<td>8%</td>
<td>56%</td>
<td>12%</td>
<td>12%</td>
<td>27%</td>
<td>15%</td>
<td>24%</td>
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</table>
The findings suggest overwhelming support at all ages and stages for universal services’ role in providing named persons, with health predominant in a child’s early years and education predominant at school age. However, consistently, a significant minority of respondents also flagged up the role of parents and carers as “named person” in their children’s lives. Moreover, the wide range of responses suggest that rather than a fixed approach to who should be a child’s named person at any age and stage, there needs to be flexibility so that the individual needs and interests and children can be matched to the most appropriate person to be the family’s main point of contact.

Finally, we asked a question about families’ involvement in service design, planning and delivery, with a near unanimous 98% suggesting involving children, young people and families in such activity in their area was a good idea.

Section 4 – Family decision making

CHILDREN 1ST has been a pioneer of the use of family group conferencing (FGC) in Scotland since 1998. We believe that FGCs are a valuable tool to engage and involve families in decision making, with children’s interests and needs at the heart of the process. They are particularly relevant where children are at risk of moving into care or being accommodated, allowing a supported space for families to come together, with some involvement from professionals, to consider the child’s needs and interests and plan for the child’s future care, whilst also allowing the child to have his/her voice heard and views listened to. Our experience of FGCs tells us that they are a particularly useful tool in planning kinship care arrangements, so CHILDREN 1ST was interested in eliciting kinship carers’ views on them.

While we added these questions into the survey for our own use, we did so with prior knowledge of officials, so consider it worthwhile sharing the findings with the Scottish Government.

When asked if they had had an FGC or similar family meeting before a child was placed in their care, 39% confirmed this and 66% of those who had an FGC indicating that it helped decide who should look after their child.

Of the 61% who had not had an FGC or similar, 62% suggested such a meeting would have been helpful to their family when deciding where their child should live.

Turning again to all respondents, an overwhelming majority of 93% considered that all local authorities should at least have to offer an FGC to families where the child can no longer stay with their parents.

Section 5 - Looked after children

We explained the Bill proposes to make local authorities have a duty to provide help for young people who have been looked after, up until they are 25 years of age. An
overwhelming majority of 96% thought this was a good idea, with only 3% thinking it wouldn't make a difference, and the rest didn’t know.

Section 6 - Kinship Care

This formed the main part of the survey and we outlined and explained the proposed kinship care order, its components and intent before asking participants for their views.

A significant majority of participants considered the kinship care order to be a good idea, with only a tiny minority thinking it a bad idea. Some – 10% - felt it would make no difference, but perhaps the most interesting finding is that over a quarter felt they could not take a view on it without knowing more about it. We note that there is a key role for CHILDREN 1ST here as providers of the national kinship care service and will discuss with the Scottish Government how they want to take forward providing information about the bill proposals specific to kinship carers to address this.

We also asked respondents if a kinship care order was available, would they apply for one; 60% said they would. A third of respondents said they would not and were asked to explain why not.

For some it was because they already had a residence order in place, while others felt that they were not seeking permanence in their family’s arrangement. For others, the age of their child was a factor, in that their child was approaching late teens, while others wanted to wait and see what the order actually does and looks like. Cost and other financial considerations were also cited by some. A full list of all the reasons given is provided at Appendix B.
We then asked whom this kinship care order should be available to, and 86% said it should be available to all kinship care families, with the rest saying that only some families should be able to apply for one. Reasons for the latter included the need to consider individual circumstances:

“Those on low income”

“Where parents are not in contact”

Because we know from our contact with kinship carers that financial issues, particularly around the kinship allowance, remain problematic for many, we wanted to use the survey to identify views on a range of linked issues. Thus, we asked respondents if there should be a national kinship care allowance with the same amount paid per child: 95% said yes.

We also asked about the practice conducted by some local authorities of deducting the value of child benefit from the kinship care allowance: 89% of respondents considered that local authorities should stop this deduction.

A huge majority of respondents (97%) also wanted the Scottish Government to set out in the bill what support kinship carers and children in kinship care should receive from local authorities.

The survey also asked kinship carers what other changes they would like to see made to the law for kinship care families. Many used this as an opportunity to tell us about the most important and pressing issues for their families. Taking these views into account is vitally important and will help identify key issues and points of concern connected with the Children and Young People’s Bill that should be explored further. The key themes emerging are highlighted here but the full range of responses is also provided at Appendix C.

1. Fair financial support for kinship care families

This was overwhelmingly the main issue identified by kinship carers, with a call for adequate and fair financial support for all kinship care families, so that they might adequately support their child or children no matter where they live in Scotland. Some expressed that funding should be “universal”, “automatic” and also in line with what foster carers receive. interestingly, those who linked kinship care support with foster care were not just referring to financial support but support more generally.

“Kinship carers should be paid the same as foster carers, we are doing the same job but we are still going out to work and the children are not being given the time that they need”

“Kinship care allowance should not be means tested; other benefits should not be affected if you accept the allowance”
2. More practical support for children and young people

Many expressed concern that their children needed more support emotionally, such as counselling/ therapy and more help practically through their school years. Some also expressed schools needed a better understanding of issues children and young people in kinship care face.

“I think that all children who are removed from their parents should be given some form of counselling and not just left until they get older and develop behavioural problems- which is when the carers have to then seek help”

“More assistance and support at school, children in kinship care require more nurturing and extra help with learning. My worry is my grandchild will go to secondary school with not enough tools to help him fit in”

Others expressed a wish for more help with after school care, and the need for other activities to be available for their children. Some also highlighted the need to provide appropriate throughcare and aftercare for young people moving on from kinship care to independent living.

3. Child centred focus

Generally, all respondents put children at the centre of their views but some made specific reference to the importance of listening to the child’s views and recognising that the child’s views should be paramount.

“That the child needs are genuinely paramount importance”

4. Social work

Some participants told us that they would like social workers to have a greater understanding of specific needs of children and young people in kinship care. Another comment was that they would like their child to have more time spent with their social worker and they would like more support and help form them. Another viewpoint reiterated the importance of social workers taking the child's view as paramount importance.
Conclusions

When we set out to engage kinship carers on the bill proposals, we were unsure how many would respond, particularly with the short timescales involved. While 117 responses can only be considered a snapshot rather than a fully representative sample, the findings will help to give a strong impression – from a key audience – of general and specific views about what is being proposed for the bill, and indeed, what is not. The fact that most respondents took time to give their views and opinions in the open-ended questions shows that most want to be engaged in the bill process and in the development of solutions to some of the issues which impact on their lives. CHILDREN 1ST will ensure as part of our remit in the national kinship care service that this happens.

On the whole, respondents were very positive about most proposals in the Bill, however there were some reservations about some measures, with many calling for more clarity.

In general, the Scottish Government can be satisfied that the proposed measures meet the aspirations of a key audience of stakeholders: many of the proposals will, after all, impact either generally or specifically on kinship carers’ lives and more especially, on the lives of the children they care for.

It is worth noting that kinship carers would like to see a stronger commitment to children’s rights put into legislation and while hugely supportive of the idea of guaranteed early learning/childcare provision, they also want real flexibility on what the 600 hours can provide for theirs, and other children, as well as the provision being extended to all two year olds in kinship care.

They also highlighted the role for parents/carers as named persons in a child’s life, as well as a more individualised approach to who named persons should be. The low level of awareness of SHANARRI indicates a need to promote the wellbeing indicators and concept with some urgency.

Moreover, there was strong support for families being involved in decision making about services generally and specifically when decisions were being made about the future care arrangements of children.

Generally, kinship carers are warmly supportive of the proposal to create a new kinship care order but it is clear that the need to address the perceived iniquities surrounding financial support have not gone away. There is also a need to clarify what the order will achieve for kinship care families and to raise awareness about the proposal. Perhaps, most importantly, once the order is created and implemented, there will be an immediate need to inform kinship care families of its existence and how they, and the children they care for, might benefit from obtaining one.

We hope the Scottish Government finds this report and its findings and conclusions helpful and constructive to the process of finalising the proposals for the children and young people bill. We are happy to discuss the findings in more detail and also, engage with kinship care families again, during the bill process, if this would be appropriate.
PARENTLINE SURVEY FOR PARENTS AND CARERS ON PROPOSALS FOR A NEW CHILDREN AND YOUNG PEOPLE BILL

1. Demographics
The survey was conducted in September and October 2012 to gain an insight into the views of parents and carers on the Scottish Government’s proposals for a new Bill which aims to create new laws in Scotland to help improve the lives of children and young people. The survey questions were all pre-determined and prepared in consultation with Scottish Government officials.

A total of 82 callers to ParentLine Scotland agreed to take part in the survey, of which 81% were parents, 15% were kinship carers, 9% were grandparents and 2% were step parents. The make up of families of callers participating in the survey is detailed in the tables below:

<table>
<thead>
<tr>
<th>Number of children in the family (percentage of survey participants)</th>
<th>1</th>
<th>2</th>
<th>3 or more</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>43</td>
<td>32</td>
<td>22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Age of children in family (percentage of survey participants)</th>
<th>under 1</th>
<th>1 to 3</th>
<th>3 to 5</th>
<th>6 to 8</th>
<th>9 to 12</th>
<th>12 to 16</th>
<th>16-18</th>
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<tr>
<td></td>
<td>3</td>
<td>12</td>
<td>9</td>
<td>22</td>
<td>65</td>
<td>16</td>
<td></td>
</tr>
</tbody>
</table>

2. Rights
The ParentLine volunteers explained to callers that Scotland’s approach to children’s rights is based on an international agreement called the United Nations Convention on the Rights of the Child (the Convention), which is currently implemented in Scotland through a group of independent experts, rather than being entrenched in the Scottish legal system. When asked whether Scots Law should be changed to require Scottish Ministers to take appropriate steps to further the rights set out in the Convention, 82% of those who completed this question agreed that it should.

In addition 90% believe that the Scottish Government should be required by law to improve awareness and understanding of children’s rights and the Convention across Scotland and that public bodies, such as councils and health boards, should be required by law to publish reports on what they are doing to improve the lives of children and young people.

When asked whether all laws made in Scotland and all services for children should comply with children’s rights, 89% of respondents agreed that it should, whilst 6% disagreed and 5% didn’t know.

After explaining to callers the role of Scotland’s Commissioner for Children and Young People (the Commissioner), they were asked whether they believed that the Commissioner should have the authority to carry out an investigation on
behalf of individual children or young people who have concerns that their rights aren’t being respected. 91% of callers who responded to this question said the Commissioner should be able to do so, whilst 5% said they should not and 4% didn’t know. Furthermore, 87% of respondents thought that children and their families should be able to take agencies such as councils and health boards to court to have their rights respected. 10% thought that this was not a good idea.

3. Services and Planning

It was explained to participants that the Scottish Government is proposing to introduce a ‘Named Person’ for every child who would be a single point of contact for a child or parent or carer if they would like information or advice about a child’s welfare. Other professionals would be expected to contact a child’s Named Person if they had any concerns about that child’s wellbeing.

We asked whether the callers thought that every child in Scotland should be given a Named Person until they are 18 years old: 71% agreed that they should with 55% of them considering that the Named Person should be the parent or carer and 16% that it should be another family member. From the list presented to participants, 14% considered that a social worker or family support worker should fulfil the role, 9% considered that a GP would be the most appropriate Named Person, and 8% believed it should be a class or head teacher.

More than a quarter (27%) of participants did not think a Named Person should be appointed to every child. The reasons given included that it wouldn’t be necessary for every child and that the need for a Named Person should be assessed on an individual needs basis; others believed that it would be too complicated if parents were separated and there was a general concern over who would have the authority to decide who the Named Person would be.

The ParentLine volunteers then described to callers that where children and young people, especially vulnerable children, come into contact with many different professionals, services and agencies, children can often end up with a number of different plans for them, for example, from teachers, health visitors, social workers etc. As a result there are often numerous different pieces of information about a child held in different plans by different people. We asked callers whether they believed that having one single Child’s Plan, rather than lots of different plans, would help to improve the wellbeing of the child. A resounding 94% of the 79 callers who considered this, agreed that it would help improve the wellbeing of the child if they had one single Child’s Plan.

Of those who did not agree, some argued that more detail is better, another suggested that because each agency has a different role it is better if there is a portfolio of opportunity, others believe that the parent should be in control of any such plans and some suggested that if this was implemented it should only be for vulnerable children.
4. Early Learning and Childcare
   Over three quarters (77%) of callers who responded to this section agreed that the number of hours of funded early learning and childcare for all 3 and 4 year olds should be increased from 475 hours to 600 hours a year and that these should be provided in a more flexible way.

   However, reflecting the make-up of families of participants, only 18% of these respondents presently use any form of childcare with the majority using grandparents and private nursery or other private arrangements and a few using pre school nursery (with one caller commenting that they had to top up the pre school nursery with private care).

   45% of 69 respondents reported that based on their current or past experience, they found it difficult to find suitable childcare during the holidays, particularly school summer holidays.

5. Looked after Children
   As CHILDREN 1ST has conducted a separate survey specifically for kinship carers we asked only the non kinship care callers their views on the proposals of the Government to recognise and strengthen the parenting role of kinship carers in law. Of the 51 people who responded to this question, 90% agreed that it was a good idea to introduce a new kinship care order into law. 4% didn’t know and 6% did not think it was a good idea but gave no specific reasons why.

   80% of the 50 callers who completed this section of the survey believe that young people leaving care should be able to request assistance from their council up to the age of 25, rather than to the age of 21 as it currently stands.

6. What else should be in the Bill?
   At the end of the survey, ParentLine calltakers asked participants to consider whether there was anything else that a Bill for Children and Young People should be changing or doing that doesn’t happen already. Some suggested that the bill should focus on ensuring that the emotional needs of children and young people are taken into account and children’s views are properly listened to.

   One caller believed that free school meals should be implemented for all children to help create a culture of staying at school at lunchtime. A few callers suggested that more rights and support is required for grandparents and for fathers and a general clarity on benefits that should be consistently and equally applied across the country.

   For more information about the survey findings or about CHILDREN 1ST, please contact the policy team at policy@children1st.org.uk or on 0131 446 3979.
Children in Scotland

1. Children in Scotland is pleased to provide written evidence to the Committee on the Children & Young People (Scotland) Bill. As the national umbrella organisation incorporating 400 members across the voluntary, public and private sector we have unique perspective on the provisions of this Bill, having since the proposals’ inception worked with a wide range of partner organisations to gauge and articulate views and shape the legislation. This has included hosting a Bill sounding board for the Scottish Government, being commissioned to produce easy-read versions of consultation material in addition to member’s briefings, organising a special seminar under our Scotland’s Children’s Sector Forum banner specifically around the Bill as well as continued liaison with Ministers, officials and cross-party MSPs throughout. Enquire, our national advice service for additional support for learning has also dealt with a number of queries concerning the Bill’s provisions. As such, we would very much welcome the opportunity to also provide oral evidence to the Committee. In addition, our Independent Mediation Service, Resolve: ASL would be also be pleased to expand on the issues raised surrounding redress mechanisms.

2. In scope, this Bill represents one of the largest pieces of legislation for the children’s sector in more than a decade and we believe a crucial opportunity to take steps required to achieve the Scottish Government’s stated intention of making Scotland the best place to grow up.

3. Children in Scotland warmly welcomes the ambitious policy aspirations behind this Bill, albeit originally proposed as two separate bills. However, we believe that the Bill, as currently drafted, falls short of those aspirations set out in the consultations and other Scottish Government documents and statements in the run-up to the Bill’s publication. This is particularly true in respect of the sections pertaining to children’s rights and we are keen that the decision to merge the proposed Rights of Children & Young People Bill with the proposed Children’s Services Bill does not preclude proper scrutiny and debate of these particular aspects during the Bill’s various stages.

4. Additionally, Children in Scotland Chief Executive, Jackie Brock is among a number of signatories to a letter to Committee Members from children’s organisations led by Together (Scottish Alliance for Children’s Rights) expressing concern that the Scottish Government has ruled out a Child Right’s Impact Assessment (CRIA) being undertaken on the Bill prior to its in-depth scrutiny. We believe a CRIA would act as a vital tool providing a structured child rights focused evidence base. This would enable the Scottish Government to take forward its welcome stated policy intention to ‘make rights real’ - the commitment made in its own UNCRC Action Plan, Do the Right Thing - as well as providing a central focus through which MSPs, government bodies, the children’s sector and children and young people themselves can take full account of the rights implications of the Bill. It is of note, in this regard, that such assessments are now used as a
matter of routine on policy and legislation in Wales and in other European jurisdictions. Our views on the actual proposals on children’s rights set out in the parts 1 and 2 of the Bill itself are laid out further below.

5. Many of our members will also be making individual submissions on areas of particular interest and expertise. As such, this written evidence is not intended to be exhaustive but highlights specific areas which Children in Scotland particularly welcomes, has particular concerns about or would like to see enhanced, expanded or otherwise amended in due course following widespread consultation with our members.

6. These comments are written with the caveat that the precise implications of this legislation can only be understood in conjunction with the Guidance. It would therefore be extremely helpful if Committee Members could add to our request that the draft Guidance is published at the earliest possible opportunity.

PART 1 – RIGHTS OF CHILDREN

7. Children in Scotland warmly welcomes the stated policy intentions of this section of the Bill to 'make rights real'. This includes proposals to place a duty on Scottish Ministers to promote public awareness and understanding of the rights of children. However we would echo the comments of Together (The Scottish Alliance for Children’s Rights) that the Bill is a real step back from the Scottish Government’s original commitment in the Rights of Children and Young People Bill consultation to give the United Nations Convention on the Rights of the Child (UNCRC) to which the UK is a signatory, a statutory basis in Scots law by placing a legal duty on Ministers to give ‘due regard’ to the UNCRC in all their decisions. This duty was subsequently watered down in the consultation document for the current amalgamated Bill and, despite responses from a wide range of NGOs, academics and public bodies calling for a stronger duty, the wording in the published Children & Young People Bill now merely requires Ministers to 'keep under consideration' these matters and to act 'if they consider it appropriate to do so'. This is ambiguous at best, difficult to implement and could make little meaningful difference in practice. It also falls short of duties already in place, for example, by the Welsh Assembly Government under the Rights of Children and Young Persons (Wales) Measure 2011.

8. The UN Committee on the Rights of the Child has twice called for the UK Government as a signatory to the Convention to fully incorporate the rights, principles and provisions of the UNCRC into domestic law. We note in this regard the speech of the Deputy First Minister in March this year which cited UNCRC in her case for an independent Scotland and possible incorporation of Article 3 particularly into the written constitution of any new state. However, as a

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1 Scottish Government (2011) Rights of Children & Young People Bill consultation
4 Nicola Sturgeon, Speech to Poverty Alliance Campaign to End Child Poverty event, National Museum of Scotland, 7 March 2013
devolved area, there is no current constitutional impediment preventing the Scottish Government from implementing this with respect to Scotland through this Bill. We would therefore endorse Together’s submission for the Scottish Government to match its commitment to ‘making rights real’ by at least taking the steps it previously proposed and preferably setting a new benchmark for children’s rights in the UK by implementing the UN Committee’s recommendation in full. Not to do so through this Bill, we believe, would represent a huge missed opportunity.

PART 2 – COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

9. Children in Scotland welcomes the Bill’s proposed extension to the Commissioner’s powers to conduct investigations into the case of individual children, assuming this is fully resourced. We would however note that, while the Bill requires a service provider to respond to the Commissioner where requested, there is no similar obligation on Ministers or Parliament should the Commissioner choose to lay any report arising before Parliament, nor any enforcement mechanism beyond the power for the Commissioner to take evidence on oath. The Financial Memorandum assumes this new power will result in between one and four investigations per year and therefore the overall effect of this new power should be kept in context. In particular it should not be viewed as a substitute for child-friendly redress mechanisms across public bodies and services.

PART 3 – CHILDREN’S SERVICES PLANNING

10. We suggest that the Scottish Government should be invited to comment on how this section of the Bill strengthens and improves existing planning provisions in the Children (Scotland) Act 1995. Prima facie, the proposed new provisions and those in the 1995 Act look similar. As a general principle, we believe that the aims of the Bill, including this section, should focus on ‘improving’ outcomes and wellbeing, accompanied by appropriated benchmarking and accountability rather than simply aiming to “promote” wellbeing which seems less ambitious.

11. We are concerned about the potential for adding bureaucratic burdens, which might absorb increasingly scarce resources better directed towards supporting children and families. For example, Part 6 of the Bill introduces a new duty to consult, produce and publish early learning and childcare plans. While we certainly welcome the increased focus on early learning and childcare in the Bill, it would seem less onerous to incorporate this plan within the wider children’s services plan. This would also avoid the risk that childcare is seen as detached from wider children’s services. Part 6 also places a duty to consult “persons as appear to it to be representatives of parents of children...” on how early learning and childcare is to be available. We would hope that this consultation would reach vulnerable families most in need of support and it surely should include the views of children. There may be some overlap with duties under the Children Act 1989 in this regard.

12. Given our comments below on the need to include the provision of out of school care as a duty in the Bill, it follows that these plans should also include delivery of
such services for older children.

13. The Bill is also unclear about how progress and success in delivering these plans will be evaluated and the Scottish Government should be invited to provide clarity on these issues.

14. It is disappointing that the Bill makes no links between planning for children’s services and Community Planning and Single Outcome Agreements. An example of where these links are important is childcare, where accessible, affordable and flexible services are able to support parents and carers to enter or resume work or training, to their economic benefit and to the local and national economies. Our impression is that current children’s services planning is detached and peripheral to community planning and that the Bill provides an opportunity to remedy this. Clarity around how the provisions in this part might fit with existing duties under the Local Government (Scotland) Act 2003 would be welcome.

15. We would also echo the concerns expressed by Together that there appears to be a disjoint between the provisions in Part 1 of the Bill around children’s rights and the provisions in Part 3 around children’s wellbeing and that the UNCRC should be explicitly embedded into children’s services planning.

PART 4 – PROVISION FOR NAMED PERSON

16. Children in Scotland strongly supports the principles behind the Getting it Right for Every Child approach and shares disappointment that its implementation nationwide has not been as full, quick or consistent as hoped, although our members hold a range of views regarding the extent to which change should be effected either through primary legislation or guidance. While supporting the principle of having a designated point of contact across universal services we believe greater clarity around the role, responsibilities, resourcing and how it fits with the role of the Lead Professional and Child’s Plan Co-ordinator would be helpful, particularly in light of some sensationalist coverage in sections of the press which appeared to imply the role of the Named Person is to usurp that of parents. It is clear from pathfinder and other areas of Scotland, where GIRFEC is to some extent in place, that this is not the case and the Named Person provisions are largely a formalisation of much existing practice, however, clear Guidance is required to allay concerns particularly in terms of implications for staff workloads, training duties and access to information. With respect to the duty to share information in particular, there is a pressing need for clarity to ensure an appropriate balance is struck between a child’s privacy and confidentiality and ensuring their wellbeing and safety. A CRIA would be helpful in this regard, particularly as these specific proposals were not covered in the consultations.

17. Children in Scotland is pleased to be an official endorser of the Royal College of Nursing’s Health Visitors for Scotland campaign for the Bill to (1) explicitly commit in associated regulation that the Named Person (following on from maternity services) for under 5s is a health worker, in line with the GIRFEC framework, and (2) to provide a new statutory entitlement to universal services from health visiting teams for all under 5s.
18. This would explicitly recognise the role that health visitors play in the delivery of preventative and positive healthcare to families across Scotland and identifying any problems at an early stage and would go a long way to helping to achieve the Bill’s stated objectives: particularly given the acknowledgement in its policy memorandum that “the scientific evidence is clear that the foundations for a successful society can be built in early childhood. The brains of children develop at an astonishing rate before birth and in the first few months of life” as well as the cited quote by the Chief Medical Officer for Scotland that “in insecurely attached infants are at greater risk of problems in emotional development and children with very poor attachment experiences are at greatest risk of failure to thrive in early years and behaviour problems, lowered self-esteem and schooling difficulties in childhood and early adolescence”. Whilst, undoubtedly, this has resource implications, it is an excellent example of preventative spending as recommended in the Christie Report\(^5\)\(^6\) aside from the moral imperative to ensure no child is left behind or placed at risk.

19. While supporting the SHANARRI (Safe, Healthy, Achieving, Nurtured, Active, Respected and Included) wellbeing framework indicators, CiS takes the view that ‘wellbeing’ should routinely be coupled with ‘rights’ in determining indicators, assessing outcomes and measuring progress in relation to young people. This would also help this section to dovetail better with the policy intentions set out in part 1 of the Bill around reporting of progress in relation to UNCRC. We believe it would be beneficial for central government, local authorities and other relevant bodies to develop joint measuring and reporting frameworks drawing on those already developed by the Equalities and Human Rights Commission, for example, and used to various extents in different parts of the UK. As well as helping to monitor and compare overall outcomes in the population at large, this could also be invaluable in ensuring data is consistent across local authorities and ultimately that children and young people with particular needs are able to be identified and appropriate action and monitoring is provided in line with the ethos of GIRFEC.

**PART 5 – CHILD’S PLAN**

20. Children in Scotland endorses the submissions by the coalition for Scotland’s Disabled Children and the Advisory Group on Additional Support for Learning at both of which, CiS is represented. We appreciate the value of a single child’s plan and benefits of all relevant agencies sharing information and planning resources around the child. We would particularly highlight the need for clarity around enforceability and redress routes, transitionary arrangements and how these provisions dovetail with the existing Additional Support for Learning Act. Again publication of Guidance in this respect would be helpful.

**PART 6 – EARLY LEARNING & CHILDCARE**

21. The proposal in the Bill to extend entitlement to free early learning and childcare to 600 hours per annum is welcome. However, the additional costs quoted in the

\(^5\) (June 2011) Report on the Future Delivery of Public Services by the Commission chaired by Dr Campbell Christie
Financial Memorandum to deliver this extension are substantial (rising to over £108 million in 2016-17) and we would like to see confirmation that these costs will be met in full by the Scottish Government. Given the size of the potential investment required, it is important for all concerned, particularly families and children, that best use is made of these resources.

22. The Bill offers a rather vague definition of early learning and childcare – more detail may be achieved through Orders or Guidance. It would be helpful if the Scottish Government is invited to comment on the involvement of teachers and other qualified professionals in providing high quality early services. The quality of early learning and childcare must not be compromised by use of low paid or poorly qualified staff in order to keep costs down. The development and wellbeing of young children must be the over-riding priority.

23. The Bill does not address a long-standing issue about start dates in early learning and childcare. It is likely that the current arrangement will continue that most children commence their entitlement the term after their third birthday. This means, in practice, that a child can receive much less than their full entitlement depending on their birthdate. The need for this restriction has not been satisfactorily explained and organisations and parents have campaigned for change. The Scottish Government should be asked if it intends to address this anomaly, preferably in this Bill.

24. The Bill allows for the new 600 hours entitlement to be applied to looked after 2 year olds or to those to whom kinship care orders apply. This is certainly a welcome step forward but, in our view, the extension should go further. There is evidence that under 3s, particularly those from vulnerable and deprived families, can benefit significantly from access to high quality early learning and childcare. This helps the child’s development and reduces the risk of them falling behind at later stages of their education. It is also important to avoid any perverse incentive to designate a child as looked after if they otherwise would not be.

25. Ideally, provision of early education and care to all 2 year olds should become a universal entitlement over time. We fully appreciate that cost factors including staffing and service design mean that under the current financial climate, particularly coupled with a council tax freeze, this is a long-term aspiration. For now at least, we would strongly urge the Committee to press the Scottish Government to extend the current 600 hours proposal to those living in poverty. Identification and eligibility of such children could be achieved through use of the Scottish Indices of Multiple Deprivation or other criteria. If the aim is to improve outcomes for the most vulnerable children we would also ask for consideration for the scope to include children with additional support needs and those with disabilities. These groups could potentially be captured using the definition of ‘children in need’ set out in the Children (Scotland) Act 1995.

26. While we appreciate that this is not without cost, we believe that the potential benefits to vulnerable young children outweigh short-term cost factors. It is worth noting that the UK Government is proposing to extend early education to around 40% of 2 year olds (around 260,000 children) from low-income families. We
would be minded to support an Amendment to this provision in the Bill to deliver a better outcome for vulnerable 2 year olds.

27. Section 45 provides for alternative arrangements to the proposed 600 hours entitlement for looked after 2 year olds, subject to assessment of the child’s needs. Recording of assessment and action should be recorded in ‘any’ child’s plan. We suggest that the Scottish Government should be asked about the potential risk that a looked after 2 year old could lose out on the 600 hours and have inferior arrangements put in place, without necessarily having a child’s plan. We believe it would be preferable if the Bill provides for all 2 year olds affected by this section to automatically have a child’s plan.

28. Section 47 and 48 outline a minimum framework for the method of delivery of early learning and childcare. The policy aspirations are to ensure that services are sufficiently flexible to meet the changing needs of parents and carers. We suggest that the Scottish Government should be invited to provide more information on how much needed flexibility will be provided locally and to consider if any associated guidance should be made mandatory. The terminology in section 48 “must have regard to the desirability of ensuring …” does not inspire confidence. Given the economic pressures facing families and the need for services to meet changing work patterns, it would be a wasted opportunity if the additional investment referred to in the Bill resulted in only marginal changes to current models and failed to deliver what parents and carers need by way of flexible and affordable childcare.

29. It is very disappointing that out of school care for school age children does not feature in the Bill. While the Scottish Government’s focus on the early years is strongly supported by Children in Scotland, the needs of primary school-aged children, in particular, must not be forgotten and the same economic arguments in terms of supporting parents and carers to enter or sustain work or training still apply.

30. Much of the out of school care in Scotland is provided by independent and third sector bodies (including many services in schools) and providers have a particularly important role to play in communities which may not be able to sustain larger, less flexible services provided by, for example, local authorities. Smaller services are often barely viable and rely on income generated in term time to subsidise the costs of holiday care.

31. The Committee may be aware of the UK Coalition’s planned changes to support from the tax credit system for parents of school age children. Children in Scotland and the Family and Childcare Trust published on 25 July 2013 a report on childcare costs in Scotland. This shows that the costs of out of school care have risen. Given that the provision of out of school care is not a legal requirement in Scotland, we fear that already limited services may be vulnerable to cuts as budgets tighten.

32. Children in Scotland would be minded to support an Amendment to the Bill,
perhaps with a focus on low income families or those in poverty, but we urge the Committee to consider what we regard as a serious omission from the Bill. It is worth noting in this regard that the Parliament’s Equal Opportunities Committee recommended that out of school care should be available, on a statutory basis, for children up to the age of 15.7

PARTS 7 – 11 (CORPORATE PARENTING, AFTERCARE, COUNSELLING SERVICES, SUPPORT FOR KINSHIP CARE, SCOTLAND’S ADOPTION REGISTER)

33. Children in Scotland endorses the submission by CELCIS (Centre of Excellence for Looked After Children in Scotland) with whom we produced a joint commentary on consultation responses.

OTHER COMMENTS

34. Whilst Children in Scotland is pleased to see that the Scottish Government has now invited views on its proposed changes to the Schools (Consultation) (Scotland) Act 2010, our feeling is that the tight consultation timescale does not afford adequate opportunity to those in the education community, including those directly impacted, to properly respond, particularly given that we are now into the school holiday season.

35. These are very important matters to pupils, parents and communities affected including many of our members with whom we would have welcomed the opportunity to carry out a full consultation. It is therefore a matter of regret that these proposed changes are being treated as an eleventh hour add-on to the Children & Young People Bill by means of proposed amendments at Stage 2.

36. We would urge the Committee to impress on the Scottish Government the need to ensure timeframes and methods of implementation allocated for matters like these, in future, are appropriate to garner careful and considered responses from all the relevant stakeholders and to allow for full scrutiny.

37. Finally, we would also urge the Committee to be particularly mindful of the Public Bodies (Joint Working) Bill, which will be working its way through Parliament at roughly the same time as this Bill. Provisions in the Public Bodies Bill allow for the integration of children’s health and social care services which could have implications for some the arrangements in the Children & Young People Bill. Joint working or dialogue between the Health and Sport Committee on this would be welcomed.

38. I hope this is helpful in the Committee’s deliberations but please do not hesitate to contact us if we can provide any further information or otherwise be of assistance to Committee Members and staff.

Children in Scotland
25 July 2013

7 Scottish Parliament Equal Opportunities Committee 4th Report, 2013 (Session 4): Women and Work
Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents more than 400 members, including most of Scottish local authorities, all major voluntary, statutory and private children’s agencies, professional organisations, as well as many other smaller community groups and children’s services. It is linked with similar agencies in other parts of the UK and Europe.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland’s largest independent education mediation service.
Introduction

1. Children’s Hearings Scotland (CHS) is a Non-Departmental Public Body established under the Children’s Hearings (Scotland) Act 2011, which entered into force on 24 June 2013. CHS assists the National Convener with the delivery of her functions in relation to the recruitment, selection, appointment and re-appointment, training, retention and support of volunteer panel members within the Children’s Hearings System. Further information about CHS and the National Convener can be found on our website www.chscotland.gov.uk.

2. In providing this written evidence we have focused our response on the parts of the Bill which directly impact on the work of CHS and the National Convener.

Part 1

1. CHS welcomes the Scottish Government’s commitment to ensuring that Scotland improves national recognition and compliance with the UNCRC at every level, including public awareness and understanding of the rights of children and young people and raising children and young people’s awareness of their rights.

2. CHS believes it is right to be included in Schedule 1 on the list of relevant public authorities to report in relation to section 2. However, we would welcome additional clarity on how the reporting framework will link in with a children’s rights centred approach to policy making and practice.

Part 3

3. CHS welcomes the strengthening of the legal framework for children’s services planning. However, at this stage we have some reservations about this duty being imposed on the National Convener. There are two reasons for this. First, children’s hearings themselves are not providing a service to children and families and panel members have no direct role in children’s lives, other than the critical role of decision makers within the care and justice tribunal for children and young people and families. Secondly, there is an additional complexity in relation to compliance with the European Convention on Human Rights (ECHR) and the maintenance of the independence of the children’s hearing.

4. We would welcome clarity and additional guidance to ensure that specific duties and expectations of different agencies and public bodies are set out to promote a real understanding of roles and responsibilities within the children’s planning framework.

5. We also think it is disappointing that the involvement of children, young people and families is not addressed within these sections of the Bill.
Part 4

6. CHS welcomes a single point of contact who can offer a coordinated approach for children, young people and their families. However, we would welcome clarity on the interface between the duties in law of the named person and the Children’s Hearings System. For example, would they attend a children’s hearing and if so, in what capacity? Would the named person provide reports to the children’s hearing or how else would their information feed into the hearing’s decision-making?

7. In these respects we would welcome guidance to ensure correct and meaningful interaction between the named person and the Children’s Hearings System.

Part 5

8. CHS welcomes the direction provided in relation to the child’s plan and the principles underlying this part of the Bill.

9. We are encouraged by the shift from focusing on welfare to wellbeing. It is consistent with the duty placed on the National Convener by s181 of the Children’s Hearings (Scotland) Act 2011, to prepare a report for Scottish Ministers and members of the children’s panel about the implementation of compulsory supervision orders. In preparing this report the National Convener may require each local authority to provide information “about the ways in which the overall wellbeing of children who are subject to the orders has been affected by them” (s181(4)(a)(iii)).

10. We hope that the general Scottish Ministers’ Guidance outlined in s39 of the Bill will reflect the principles set out in Part 13.

Part 7

11. CHS welcomes the intention to strengthen the duties and responsibilities in relation to corporate parenting within these sections.

12. However, the National Convener and CHS have a specific role in the Children’s Hearings System to provide support for panel members in relation to their recruitment, selection, training and retention. CHS is not a direct provider of services for children and young people, and as such we do not regard ourselves as corporate parents as defined in ‘These are our Bairns: A guide for community planning partnerships on being a good corporate parent’ (Scottish Government) (2008).

13. We do not anticipate that we will routinely collect and hold data on individual children and young people and our view is that much of Sections 52, 53, 54, 55 and 56 are both in conflict with the role and functions of panel members as lay members of an independent tribunal, and with the functions and duties of the National Convener and CHS as set out in Schedules 1 and 2 of the Children’s Hearings (Scotland) Act 2011.

14. Within the terms of the ECHR the children’s hearing must be perceived as an independent and impartial tribunal and we are concerned that categorising the National Convener and CHS as corporate parents may adversely affect this
perception. In relation to this point we have particular reference to s58 which states that a corporate parent must comply with a direction issued by Scottish Ministers.

15. Section 54 sets out responsibilities in relation to collaborative working between corporate parents, and this section could not be applicable to CHS without significant tension, and possible challenge in relation to the independence of children’s hearings. Further there is a risk that corporate parents will be in direct conflict where a children’s hearing disagrees with the recommendation of the implementation authority or has instructed the National Convener to challenge non-implementation of a compulsory supervision order in relation to that child under sections 144 to 148 of the Children’s Hearings (Scotland) Act 2011.

16. Under section 52, the duties of the corporate parent including sections 52 (b) and (e) do not relate to the National Convener, CHS and the children’s hearings functions. Panel members are trained lay tribunal members and are not service assessors, social workers, counsellors or service providers.

17. we acknowledge that the Bill does provide for agencies and bodies to be exempt from certain duties where this conflicts with other statutory functions or duties, CHS cannot really see how listing CHS and the National Convener as corporate parents is to the benefit of children and young people, given the statutory functions of CHS and the National Convener.

18. For these reasons, we suggest that it would be very difficult for CHS to prepare a report under section 53 which would be meaningful or add value to the overall picture in relation to corporate parenting.

19. The National Convener and CHS are fully committed to promoting the best interests of looked after children and young people. We suggest that some amendments could be made to these sections so that the key agencies which make up the Children's Hearings System are not listed in Schedule 3 but instead are defined separately as agencies with responsibilities to communicate with and support corporate parents as appropriate

Part 12

Sections 69 and 70

20. The National Convener welcomes these sections as set out.

21. Considerable energy and resources were invested by Scottish Government, the National Convener and CHS, local authorities and the panel community over the course of a two year process from the initial meetings and consultation with stakeholders on Area Support Team (AST) boundaries and structures to the signing of 32 partnership agreements between CHS and each local authority in Scotland. 22 ASTs were established and took up some of their functions on 31 March 2013 and their full functions on 24 June 2013.

22. Securing adequate clerking, administrative and practical support for the ASTs through the partnership agreements took far longer than anyone could have anticipated at the start of the process. This was largely as a consequence of
paragraph 12(3) of Schedule 1 of the Children’s Hearings (Scotland) Act 2011 which requires the National Convener to obtain the consent of each constituent authority before establishing an AST.

23. We recognise the crucial role played by local authorities in supporting panel members and within the Children’s Hearings System, as well as their wider role in working with children and families and in child protection. This support is highly valued by panel members, the National Convener and CHS.

Part 13

24. CHS welcomes the shift in focus from welfare to wellbeing and the inclusion of the SHANARRI indicators in primary legislation. However CHS believes that more needs to be done to develop the indicators. It is possible to meet all the indicators and yet not be happy. We recognise the difficulties of such a subjective approach but we feel it should be included in an outcomes-based approach to measuring children’s and young people’s achievements and attainments.

25. We welcome the introduction of a definition of wellbeing and a national framework of high level outcomes and indicators. SHANARRI will provide a common framework for measuring the impact of services which take a holistic approach to all areas of a child or young person’s life. It is important to include the views and experiences of children and young people in this reporting framework and we look forward to the consultation in relation to Guidance to accompany the Act.

26. As stated under Part 5 above, the National Convener has a duty to report to Scottish Ministers and children’s panel members on the implementation of compulsory supervision orders under s181 of the Children’s Hearings (Scotland) Act 2011. CHS is currently working to establish a mechanism for the collection of information about compulsory supervision orders from local authorities, the Scottish Government and the Scottish Children’s Reporters Administration (SCRA) to fulfil the National Convener’s duty under s181 of the 2011 Act. CHS would welcome a national set of outcomes and indicators for reporting on wellbeing which would provide a common basis for reporting on the impact of compulsory supervision orders.

27. With regard to reporting, however, CHS would like to know more about how the practicalities of linking data across sectors will be addressed.

Children’s Hearings Scotland
26 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill
Children’s Parliament

About Children’s Parliament

1. Children’s Parliament is Scotland's Centre for Excellence for children's participation and engagement. We demonstrate good practice by engaging children in their early years and in middle childhood (up to 14) in projects, consultations and community programmes. We inform and influence public policy and professional practice and build the capacity and skills of adults and public bodies, including Government, through reporting, publication/dissemination, modelling and training.

Children and Young People Bill consultation: our approach

2. We involved 107 children aged between 9 and 12 years old across 6 locations. The children took part in 2 full day workshops. In line with a commitment to engage with children in creative ways the workshops built on the notion of Scotland as the best place to grow up. We took the theme of Scotland as a garden and imagined children growing in the garden. Children engaged in drawing and building items for their gardens, they used drama and discussion and consulted with peers.


Rights

“Enforce children’s rights instead of just letting it be optional to people”.

“What’s the point if they don’t have to abide by them?”

“If it’s not the law then people might not give me my rights”.

4. The Bill places much focus on children’s wellbeing. But wellbeing alone is not enough; we have asked children in this most recent and in previous Scottish Government consultations what they want to see in place and they have told us they want their human rights to be enshrined in law. Incorporation of the United Nations Convention on the Rights of the Child into Scots law will provide a robust framework for the realisation of children’s rights; commitments to ‘consistency’ in policy or legislation regarding the UNCRC or using the UNCRC to ‘underpin’ legislation regarding children’s services, or the new proposal to keep children’s rights ‘under consideration’ is simply not enough to deliver on commitments to improve outcomes or make Scotland the best place to grow up.

1. Wellbeing

“Every feeling has a place in your body”.

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5. Children intuitively consider their wellbeing in a rounded way. In this sense the concern for the GIRFEC SHANARRI indicators to take a holistic view of the child’s life is an approach children understand. Our consultation engaged with children who have experiences of a range of services, discussion with them about wellbeing made it clear that any wellbeing framework (including SHANARRI) must see all children as children first rather than to see or treat them solely as a child defined by a particular issue, problem or service approach. Our consultation evidences that children have an interest in, and the capacity to consider, what wellbeing means to them and that any discussion of their wellbeing must include them. The consultation allowed children to discuss and reflect on the relationship between rights and wellbeing. Children focused predominantly on the right to: a loving and caring family, affection and attention, friends, freedom and play, learn, a home and community free from alcohol, violence and a clean environment. These then emerge as the children’s top line indicators of a child’s wellbeing. To make rights real our commitment to wellbeing and rights can only be enshrined in law through incorporation of the UNCRC.

Raising awareness of rights: children and adults

“Adults can't help children get their rights if the adults don't know what the rights are”.

“If adults treat children badly they should be removed until they learn how to treat children properly”.

“If adults treat children badly they should go on a course to learn about children’s rights”.

6. Our discussion with children across consultations confirms that there is a low level of awareness of children’s human rights and the UNCRC amongst Scotland’s children. Children also report that adults have a poor understanding of children’s human rights. Where there is some awareness amongst children this is often about how children in other countries lack the basics of life; when Scottish children talk about rights more often than not they simply attempt to repeat what they remember from an article of the UNCRC and recite a ‘responsibility’ that they must also bear if they are to be accorded their rights. If we are to progress at all with understanding what a duty on public bodies might look like, and what benefits it might bring to the realisation of children’s rights in Scotland, the contributions from children also evidence the urgent need to raise awareness of rights and their meaning in children’s lives every day and in every context here in Scotland. Children also clearly identified the need for adults (parents, carers and professionals) to have a better understanding of children’s human rights. Where rights were infringed by adults, children want an appropriate response; this might be further learning for the adult but certainly infringements and inappropriate adult behaviour (by parent or professional) need to be challenged.

Realising rights

7. Children identified a number of headline issues which public bodies and services must recognise and address to meaningfully improve outcomes for children and
make rights real. If not in legislation Guidance must recognise childrens concerns regarding:

8. **Shouting and violence toward children:** “Sometimes my mum throws my dad out the house 'cos he hits me and my wee brother”; “My mum needs help with being angry and smacking me on the bum or the face. Everyone shouts at me”; “Children need parents who listen to them, that doesn't threaten you or bring a knife out”.

9. **Poverty:** “My mum gives us our tea but sometimes she doesn't have enough money for tea”; “My mum would always buy me or my brother's clothes first; she always has to get mine before hers. She's a single mum because my dad left”; “Families need money so that they can feed their families and have somewhere to live”.

10. **Family breakdown and a loss of contact with fathers:** “I want to see my dad more but my mum won't let me. I don’t know why”; “When I'm at my pal's house me and my pal pretend we're going up the park but we sneak away to my dad's work so's I can see him. Nobody knows”

**Making rights real: accessing help and support**

11. In the course of this consultation and other work Children’s Parliament has become aware of the high threshold in many areas before children (and families) receive meaningful support. We have been required to share concerns about children’s wellbeing and safety with host settings and have been told that there is an awareness of what we have shared, but that concerns have not reached a threshold whereby further action can/could/would be taken. It seems to us, in the context of our consultation and now with the passage of the Bill through Parliament (along with development of Guidance), that we need to reflect on concerns that commitments to early intervention and prevention are often just that, verbal or theoretical commitments, and have not resulted in genuine action and the provision of consistent, high quality and coordinated services, advice and information, delivered in time and when needed.

**Named Person**

“It would have to be someone you know and they would have to know each child”.

“They would put you first”.

“Everyone is so individual it would be difficult to look after everyone.”

12. This was a complex idea for the children (aged 9 – 12) to consider but going along with our Scotland as a garden theme the children discussed the role of Gardeners (all the adults in their lives) and the job of Head Gardener (the Named Person). Children identified that all adults – family members and professional people – have and share equally a duty to make sure all children are healthy, happy and safe. The overarching requirement of a Named Person (their Head Gardener) would be that this person’s key role is to keep children safe and
ensure good communication between people who are interested in the child. For children who had experience of a range of services beyond universal services there was a need for the Named Person to be someone they and their family know well and who can “help people calm down”. As to who can fulfil the role of Named Person children had a broader view of this than has been suggested; so that in addition to the possibility that the Named Person might be midwife/public health nurse/head teacher they could also be a Police officer, a Lawyer, a Key worker/Professional Carer, a Coach/Tutor or a classroom teacher. In short children were interested in finding the right person for the job rather than identifying someone simply because they were to be found in what Government/Services see as the right location (midwife/public health nurse/head teacher).

13. Children identified a number of requirements and challenges the Named Person will face. In summary the Named Person needs to build a trusting relationship with the child and “fight for your rights”. The role will be challenging because they don’t have time and adults do not pay enough attention to the child’s needs (rather than their own). Children were concerned that if they did not get on with their Named Person would they have a say and be able to change this person?

The Child’s Plan

“Everyone was just getting in a muddle and we needed the plan to help each other”.

“It would help me to have one plan. Me and my grannie never sit down. We should always sit down at the kitchen table and stick to our plan. But we never do, it’s annoying. Adults don’t listen or say they can’t be bothered. Maybe they could actually sit down with me. Maybe my grannie could speak to school”.

14. The idea of a Child’s Plan was supported by children. The Plan was seen as an important tool for shared approaches as long as everyone was on board and well informed about its purpose and their responsibility to follow it. Plans were also seen as a way to engage parents and carers in understanding and meeting children’s needs. Children also identified the need to make the Plan a formal agreement, like a law, so that adults had to follow it. There was also a need to remind adults about the Plan. Reflecting our Scotland as garden theme there was also the view that Plans cannot be static, but need to continue to change and to involve children as they develop: “We would need to make the plan grow. All the different adults would need to add their own bit and the child would give their ideas too”.

15. Children also reported experiences of a poor commitment of adults to listening and involving them. If legislation and Guidance are to have impact they must impact on adult behaviour and organisational approaches and systems.

“My social worker hasn’t listened to me about visiting my dad in jail on the weekend. The adults at the Hearings weren’t listening to me properly”.
“I don’t think there is anything I can do, they’re only interested in themselves. Mum and Dad don’t listen to me when I have contact with them. They don’t listen because they want to do what they want and don’t listen to me”.

Corporate Parenting and kinship care

“Children should have a place to live that is warm and safe and secure like a sanctuary”.

16. In the spirit of the consultation (that corporate parenting should focus on what being a parent means) we are able to provide the views of children in relation to what a parent’s role and responsibilities are. In order to be a parent, the ‘corporate parent’ needs to focus on the individual child and consider they are a parent. Children identified a need for love, to be “really cared for”, to have a parent who “enjoys their children” and helps them learn, who they can trust, will be there for them, stays interested in them, who miss them. For children who are looked after at home children identified a need for professional support which helps families when they are unhappy; children recognised that sometimes a family needs “a helping hand to be responsible”. As with all family settings children want their kinship care placements to be places where they can flourish and be healthy, happy and safe. In particular one child commented on what the consultation paper described as the principle of ‘family first’ with the comment: “Children should be able to stay with a family carer before they have to go to foster care”.

Better foster care

“What I think about foster care: Give children a better life than they have had, make them forget what has happened and give them new opportunities, make sure they have contact with their family. Make sure they have a nice clean environment. Give them healthy meals. Make them happy”.

“I really want to stay with my foster carer, she’s really nice. I can’t tell my social worker ‘cos I’m frightened they’ll tell my mum. She gives me a bit paper and asks what I want so I just say ‘I don’t know’”.

17. The consultation questions were narrow; children’s views on improving foster care were broad. In summary they identified the need for improved understanding of why a child is removed from home, the need to have a say in foster care placements, to keep siblings together and maintain contact with their friends. Making rights real for children in foster care is complex; listening to children and involving them in decisions are essential. Children need to know they are at the centre of decisions. Children identified the need for improved training and support for foster carers: “Foster carers should have to take a test to make sure they are loving, caring and can be as good as the best parents”.

Public bodies and duties to report

18. Children require a full range of public bodies to work together, both in the interests of the individual child and on behalf of children collectively. A concern is where the participation of children themselves is expected to fit in this picture of
joint design and planning of services. While some individual practitioners and strategic/planning bodies are already doing work to engage children this is not yet commonplace. Again legislation and Guidance on this matter must unpack what meeting any duty on joint design, planning and delivery should look like when it comes to meaningful and ethical engagement with children themselves and what support Government is envisaging will be in place to develop the capacity/skills of individual practitioners and public bodies to do so. The public services which children have identified as important in their lives, and so those on whom a duty to report must be applied include: Schools and Education services including Inspectorate, Health services (including hospitals, GPs, community health services like Midwives and psychological and therapeutic services), Social Work and Children and Families services, the Police, services for children with disabilities, Play and Leisure services, Voluntary sector agencies, Children’s Hearings and Legal services and the Scottish Government itself. A key message from our consultation is that the Government has a responsibility to “send the message about children’s rights”. A key theme for the children taking part in the consultation is about adults working together to keep them healthy, happy and safe. This requires direct communication with children and between adults so that children’s wellbeing is framed in the context of children’s human rights.

Children’s Parliament
4 July 2013
Introduction

1. This response has been submitted by the Church and Society Council of the Church of Scotland. As we stated in our response to the Scottish Government’s consultation “A Scotland for Children” in 2012, we support the intention to improve the lives of children and young people in Scotland, and the aspiration to make Scotland the best place to grow up. This sentiment is expressed in our 2009 report to the Church of Scotland General Assembly “Growing Up in Scotland Today”. However, we have some concerns about the Bill as it is currently drafted. We would also wish to underline those areas within the proposed changes that we particularly welcome. In particular, we would like to see greater emphasis on a child’s right to spiritual development.

Children’s Rights

2. We agree with the importance of the UN Convention on the Rights of the Child and support the Scottish Government’s intention to place children’s rights at the heart of policy-making. We are supportive of the important work done by the Scottish Commissioner for Children and Young People and many of the charities working with children in seeking to respect children’s human rights. Whilst Scottish Ministers are already implicitly subject to a requirement to promote and raise awareness and understanding of the rights of children and young people though the UNCRC, we are happy with the strengthening of this requirement through this Bill. However, placing this duty on a statutory footing will only help to solidify the place of children’s rights at the heart of decision-making if there is a robust mechanism for keeping Scottish Ministers accountable in this regard. We therefore support the requirement for a reporting cycle of five years.

Christian response to Children’s Rights

3. The Christian basis for children's rights lies in the recognition that all human beings are created in the image of God. There is an equality in all humanity which does not depend on age, understanding, maturity or mental or physical capacity. Children and young people are not isolated individuals removed from a context of family, community and relationships; there is an obligation on wider society to nurture and care for them. The Churches’ historic presence in Scottish community life, and in developing Scotland’s education system means that we are particularly aware that the State is by no means the only initiator or provider of services focused on the holistic development and wellbeing of children and their families.

1 http://www.actsparl.org/media/138611/or-cos-consultation%20on%20the%20children%20and%20young%20people%20bill-sept%202012.pdf

A right to be free from poverty

4. This focus on children and their rights is one way of expressing our broad concern for the wellbeing of children in all respects. Central to that concern is the scandal of child poverty. Not only is child poverty a scandal in and of itself, but it is bound up with so many of the other social factors that can blight children’s lives – the health inequalities that mean dramatic differences in life expectancy at birth between children born in neighbouring communities, the higher vulnerability to crime of children in deprived areas and so on. The Church of Scotland is associated with the End Child Poverty coalition in Scotland, and at a local level, many churches across Scotland are involved not only in running projects which directly tackle poverty but also in campaigning for a more just and equal society.

A right to spiritual development

5. Most, if not all, of the international documents which define the rights of children recognise in some form a right to spiritual development. We believe that children have rights because they bear the image of God and so it is essential that the spiritual dimension of growing up is not ignored. For children who grow up in families with a belief or faith tradition, the spiritual dimension of life will be embedded into their life together. Those who do not have that kind of family background may only have the opportunity to discover the spiritual dimension of life either through engagement in church-based activities or through schools. Churches and other religious groups play a formative role in the development of many children growing up in Scotland, whether through attendance at services, involvement in faith-based activities, such as uniformed organisations, or the role played by chaplains in schools across the country. We affirm and support the role of other faith based groups providing spiritual development to young people. There is a long tradition in non-denominational schools of chaplains or chaplaincy teams offering support for pupils, staff and parents without reference to whether or not they are people of faith. This is an important support network which is provided and is available to many of Scotland’s children.

6. This right should also be borne in mind when considering paragraph 7 (Wellbeing Indicators) of our response.

Children’s Services: Named Person

7. As stated in our response to the 2012 Scottish Government consultation, we raised our concern with the Named Person approach. We recognise that the majority of respondents to the consultation were in favour of a Named Person. We, however, remain concerned about the potential that this approach has to contribute to a general diminishing of parental responsibilities. We fully recognise that for some children there is a need for additional assistance and intervention, but with those children in mind, we are concerned that the resource and training implications of designating a Named Person for every child may be counterproductive to offering heightened attention and intervention to those children who require it most.
Wellbeing Indicators

Spirituality

8. As we previously highlighted in our response to the Scottish Government’s consultation in 2012, the SHANARRI Wellbeing Indicators, listed in Part 13 section 74 (2) of the Bill, do not include spirituality. We find this to be a serious omission and would like to see this addressed as the Bill progresses through the parliamentary process. The importance of spiritual development as an integral part of being human has been acknowledged by successive Scottish administrations and has now been incorporated into the education system through the inclusion of Religious Observance in schools. The definition of Religious Observance (offered by the Religious Observance Review Group Report and ratified by Scottish Ministers) is: “community acts which aim to promote the spiritual development of all members of the school’s community and express and celebrate the shared values of the school community”\(^3\). We believe that spiritual development is crucial, not only for the individual child, but for the development of the community ties that make a good, just and equal society. We are therefore very strongly of the opinion that the commitment to including spirituality within the indicators of wellbeing is an aspect which we would value the Committee’s consideration.

Church and Society Council of the Church of Scotland
26 July 2013

\(^3\) [http://www.educationscotland.gov.uk/resources/c/genericresource_tcm4650443.asp](http://www.educationscotland.gov.uk/resources/c/genericresource_tcm4650443.asp)
1. Circle, formerly known as Family Service Unit, predominantly delivers assertive outreach, whole family, home based support. Circle works with families where there may be a number of issues to consider such as imprisonment, substance misuse, domestic abuse, poor educational prospects, poor parenting, homelessness, need for early years support and alternative care arrangements via a solution focussed, strength based approach.

2. Circle agrees with all the principles of the Bill. In our work with whole families the rights for children to be properly protected have not always been adequately considered. For example when parents are imprisoned the children who live in the community are not necessarily identified. This leaves children at risk. This is merely one reason why Circle welcomes the new duties placed on Scottish Ministers, the Public Sector and the increased powers for Scotland’s Commissioner for Children to close these gaps.

3. Circle has worked with kinship carers for a considerable period of time. We became aware this was a seriously disadvantaged and challenged group of people who benefitted from support. Circle sought funding to create a team to specifically support this group therefore Circle welcomes the fact that the Bill focusses attention on this group. Should the Committee wish to hear evidence from kinship carers Circle would be able to support our service users to provide evidence of what is helpful, especially given the impact of the recent Welfare Reforms.

4. Circle’s experience of Early Years work with families leads us to be concerned that while (LAC) 2 year olds will be entitled to nursery care our view is that whole family support may be a more helpful way to enable parents be the best they can be. It is our view this would be more beneficial for the children.

5. Circle supports every child having a named person but fear for the children who may fall through the many gaps we are aware they can fall through. Circle has found that many of the complex families we work with have, for their own reasons, avoided mainstream services.

Circle
25 July 2013
Citizens Advice Scotland

Introduction

1. Citizens Advice Scotland (CAS) is the umbrella organisation for Scotland’s network of 81 Citizens Advice Bureau (CAB) offices. These bureaux deliver frontline advice services throughout over 250 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

2. In 2012/13, bureaux across Scotland helped clients to deal with 513,000 new issues. A total of 792 kinship care enquiries were brought to bureaux and the Kinship Care Service helpline over this time.

3. In September 2012, CAS submitted a written response to the consultation on the proposal for a Children and Young People Bill. We welcome the opportunity to provide written evidence to the Education and Culture Committee on the general principles of the Children and Young People (Scotland) Bill. Our comments are confined to Part 10 of the Bill, Support for Kinship Care.

The CAS Kinship Care Service

4. The CAS Kinship Care Advice and Information Service was formally launched in September 2008. The project ran under an initial agreement with the Scottish Government until September 2011, and has subsequently been granted a number of funding extensions. The Service is currently funded until March 2014.

5. The service provides:

   - advice for kinship carers through their local Citizens Advice Bureaux and a free, confidential helpline service
   - assistance for kinship carers to maximise their incomes through detailed benefits support work. For many kinship carers, an increase in disposable income can represent a financial lifeline – and improved family finances can help lead to better outcomes for children and young people
   - advice and training to local authorities on a range of issues, including the impact of allowances on kinship carers
   - information to advisers and policy makers through briefings and reference materials, designed to increase the accuracy and consistency of support received by kinship carers
   - opportunities for national and local stakeholders to come together to share information and effective practice
   - the most efficient support for kinship carers through effective partnership working at both national and local levels.
6. Direct advice to clients is delivered by Citizens Advice Bureaux and, via a helpline number, by Citizens Advice Direct (CAD). Support for bureaux and for CAD is provided by:

- two part-time national co-ordinators based at CAS in Edinburgh
- four regional officers, providing second-tier support for bureaux and working closely with local authorities.

7. The two biggest overall areas of enquiry for CAB kinship care clients are i) ‘Benefits’ and ii) ‘Relationships’. Although some may have their issues resolved during a single visit to a CAB or call to the helpline, typically the sorts of problems faced by kinship carers are complex and require a number of separate contacts.

Children and Young People (Scotland) Bill, Part 10: Support for Kinship Care

8. CAS welcomes the creation of a new duty for local authorities to provide assistance to kinship care children who are not formally ‘looked after’. This Kinship Care Order (CKO) would require local authorities to provide assistance to ‘qualifying’ kinship carers of ‘eligible’ children. We support the policy aims of a) providing children who are not formally ‘looked after’ with a long-term, stable care environment and b) addressing some of the idiosyncrasies and complexities that exist in the current system. However, we have ongoing concerns about the ability of the proposals as they stand to meet these objectives.

The Kinship Care Order and support for kinship carers

9. Full details of the ‘support package’ available via a KCO will be defined in secondary legislation. Consequently, it is impossible at this stage to comment fully on its impact and ability to achieve the above objectives. However, the Policy Memorandum and Financial Memorandum both include some detail about what the package of support might include and how it might be implemented.

10. It appears that local authorities will not be obliged under the new legislation to include a regular, ongoing allowance (akin to the existing kinship care allowance paid to kinship carers of ‘looked after’ children) in the new package of financial support available via a KCO. Omitting ongoing financial assistance from the KCO ‘support package’ is problematic for a number of reasons.

11. Firstly, it is of significant concern given that it is well documented that kinship carers live with high levels of disadvantage and deprivation. CAS’s 2010 report on kinship care clients, Relative Value, found that more than half of the kinship carers in the study were not in employment, with many having given up their employment because of their kinship caring responsibilities. Kinship carers were also significantly more likely to be unable to work due to disability or ill health than the general population in Scotland. In addition, kinship carers are more likely to be living in social rented accommodation and, as a consequence, in areas of deprivation. These findings are supported by a number of

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1 Relative Value: The Experiences of Kinship Carers Using the Scottish CAB Service, CAS, October 2010
external studies e.g. Farmer and Moyers (2008)\(^2\) found that kinship carers were significantly more disadvantaged than both unrelated foster carers and the general population.

12. Secondly, omitting ongoing financial assistance from the KCO ‘support package’ extends the existing distinction between the financial support that is available for kinship carers of ‘looked after’ and not ‘looked after’ children. It gives credence to the hypothesis that ‘looked after’ and not ‘looked after’ children in kinship care fall neatly into two distinct groups, with the former having more serious care needs that require greater financial support. CAS remains unconvinced of the legitimacy of this position, and would welcome the Scottish Government’s conducting further research in this area. This would help develop a better understanding of the similarities and differences between these two groups of children, and thus ensure that policies relating to their care needs and requirements for financial support are truly evidence based.

13. Indeed, CAS case evidence shows it to be a false dichotomy. For our kinship care clients, the legal distinction between ‘looked after’ and not ‘looked after’ children does not accurately reflect the messy and overlapping nature of the groups in real life. Our 2010 research examined the circumstances that had led to the kinship care arrangement coming about, and found that non ‘looked after’ children were more likely than ‘looked after’ children to be in kinship care due to addiction problems (34% compared with 30%), prison sentences (17% compared with 8%) and neglect/abandonment (19% compared with 18%). This shows that the circumstances leading to a not ‘looked after’ arrangement are often as difficult and testing as those leading to ‘looked after’ status, and that the children affected are likely to require significant levels of care and support.

14. Thirdly, omitting ongoing financial assistance as part of the KCO package also means that the new legislation does not address the perverse incentive that currently exists, with some kinship carers seeking to ‘hold on’ to the ‘looked after’ status of the child in order to ensure the long-term financial sustainability of the placement. Allied to this is the issue of kinship carers feeling pressured by the local authority to apply for a Residence Order, without full consideration or discussion of the impact it will have on both the carer and the child for whom they are caring. Case evidence demonstrates a perception amongst some kinship carers that this pressure is being exerted because it will bring about a financial saving for the local authority. These problems are likely to continue with the introduction of the new KCO, as the legislation extends the current framework in which carers of ‘looked after’ children are guaranteed ongoing financial support but carers of not ‘looked after’ children are not.

15. Fourthly, omitting ongoing financial assistance from the KCO package fails to tackle the existing situation in which local authorities are enabled – but not obliged – to pay kinship care allowance to carers of not ‘looked after’ children. Currently, 17 local authorities choose to make discretionary payments of kinship care allowance to carers of not ‘looked after’ children. There is huge variation in the level of allowances made - as of April 2013, rates vary from £50 to just under £150 per week (averaged per local

\(^2\) Kinship Care: Fostering Effective and Family Friendly Placements, Farmer, E and Moyers, S (2008), London: Jessica Kingsley
authority across all age groups of children). Without a duty to include ongoing financial support as part of the KCO, it is likely that the current inequitable situation will continue, with kinship carers in very similar circumstances receiving hugely varying levels of financial support depending on where in the country they live.

16. The financial support available to kinship carers granted a KCO (who also pass the eligibility test and means test – see paragraph 18 below) will be limited to certain one-off payments. The detail will be contained in secondary legislation, so it is impossible to comment fully, but the Financial Memorandum includes some of the support that might be provided e.g. an essential start up grant, transitional payments for those children moving from looked after to not looked after status, assistance with certain transport costs and assistance with meeting the costs of petitioning for the Residence Order. CAS has concerns about how these might work in practice. For instance, it is not clear exactly how the transitional payments will operate and how they will interact with kinship care allowance payments. CAS also looks forward to receiving more detail about the levels of financial support that kinship carers will receive from the local authority in pursuing an order, and access to legal aid. Client evidence indicates that the cost of pursuing an order can sometimes be prohibitive for kinship carers for whom this might otherwise represent the most suitable way forward.

17. Client evidence shows that the non-financial support that kinship carers currently receive from local authorities is subject to massive variations. Some describe no further contact at all from social workers after the child has been dropped off at the height of a crisis, whilst others benefit from appropriate and ongoing support which can make a very real and positive difference to both the carer and the child for whom they are caring. CAS therefore welcomes the intention to standardise non-financial support and make it available to a wider group of kinship carers than at present. In the absence of more detailed information about what this might look like, however, it is difficult to comment in more detail.

18. The Policy Memorandum indicates that both eligibility testing and means testing are likely to apply to for many elements of the package, and CAS has concerns about the impact of both of these practices. The eligibility test will be conducted by the Local Authority after the carer has been granted a KCO, and used to determine what support will be made available to them. In other words, being awarded a KCO only guarantees the carer’s right to request support from their local authority, it does not guarantee the amount or type of support they will receive. Similarly, local authorities will be allowed to take account of the means of the carer when determining what support they make available. If the legislation does not specify exactly how this is to be applied, but allows for local variation across Scotland’s 32 local authorities, then it is very likely that kinship carers in the same circumstances but living in different parts of Scotland will receive different packages of non-financial support.

19. Taken together, eligibility testing and means testing will make it impossible for a kinship carer to know in advance what support they will be entitled to if they are granted a KCO. This lack of knowledge and certainty make it very hard for carers to determine whether or not the situation will be viable and sustainable. This contrasts clearly with the situation for foster carers, who have time to plan and prepare, and know exactly how much financial and non-financial support they can expect to receive.
Local authority practice and resourcing the changes

20. Many of the issues that kinship care clients bring to bureaux relate not to kinship care policy, but to the way that the policy is being practiced by the local authority. Evidence shows us that the current kinship care policy arrangements cause problems for clients in terms of local authorities:

- giving incorrect advice
- failing to inform kinship carers of their options
- applying pressure to pursue one route over another
- communicating poorly with the kinship carer
- communicating poorly internally e.g. between social work, education and housing departments
- communicating poorly with other local authorities
- delaying payments
- not sticking to statutory guidelines about time limits for completing assessments

21. CAS is concerned that the current proposals do not tackle these issues, and they will continue to have a significant deleterious impact on the day to day lives of kinship carers and the children for whom they care. This is of particular concern given that the burden of resourcing the reforms falls to local authorities. Many local authorities are already struggling to meet the financial and staffing demands of the existing kinship care legislation. It is unclear where they will find the resources – particularly the real up-front costs associated with the transition process – to make these proposals work. We are also concerned that there are currently no safeguards in place to protect kinship carers should resources prove inadequate.

Lindsay Isaacs, Kinship Care Service National Co-ordinator
Citizens Advice Scotland
9 August 2013
PART 1: RIGHTS OF CHILDREN

1. We are concerned about overlapping/duplicatory requirements to report. It would be helpful if reporting mechanisms were integrated so that this is not another stand-alone add on reporting cycle. There would also be a need to revisit and be explicit about the respective roles of central and local government – currently embodied in the SOA relationship. Reporting should be outcomes based.

PART 2: COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

2. We would like to see clearer intent that the relevant rights from the United Nations Convention “hardwired” into legislation, in the same way that Article 29 was successfully placed at the heart in the Standards for Scotland’s Schools Act enshrining the child’s right to education in law. This makes the commitment of parliament tangible giving the rights a practical reality and allows children to rely on them directly.

3. The proposal to strengthen and give some teeth to the promotion and protection of Children’s Rights is welcome. However, this appears something of an add-on and it is not clear how it will work as part of an integrated system in relation to other mechanisms and processes. Given the relatively small number of cases that can be managed, what other processes would be required as a criterion for accepting a case? There will be process and resource implications at local authority level to make this work. We would welcome a focus on the provision of advocacy for children prior to issues being elevated to that level. There is a need to provide for the support of individual children (particularly under 12s) to understand and claim their rights – it is not correct to assume that this already happens. Potentially more rights-focused complaints will be coming forward from individual children/families as a consequence of the promotion of both UNCRC and the Named Person roles and responsibilities. Plans at national and local level need to take account of such an increase.

PART 3: CHILDREN’S SERVICES PLANNING

4. The extension of Children’s Services Plans to the wider set of services relevant to the wellbeing of children is consistent with Girfec. However, to be useful and realistic there does need to be some focus – it would be neither possible or helpful to include reference to everything done in our area, and there is also a danger that attempting to include everything by increasing levels of abstraction will lead to unproductive blandness. Would be helpful and efficient to bring together the new public duties in relation to UNCRC (as in Part 1) and expectations in relation to the structure and content of these plans and the current SOA guidance so that planning requirements are integrated rather than layered. It is important that this is addressed to all agencies that have an impact.
on children and young people including those that impact on their opportunities and prospects as young adults.

5. Reporting duties proposed by the Bill should be accompanied by duties on public bodies, including the Scottish Government, to implement the United Nations Convention on the Rights of the Child. Some requirement to publish funding allocated to children’s services and services for young adults would be helpful in terms of evidencing spend on a preventative agenda in line with the Christie Commission recommendations. The proposal that the Govt has power to set up joint boards is interesting – but achievable? Given the diversity of structures currently this seems to be missing some important steps in the process: ring-fencing spend and asking LAs, Health Boards and other relevant agencies such as Colleges to publicly report spend and outcomes against national targets for children, young people and young adults would potentially achieve more impact?

PART 4: PROVISION OF NAMED PERSONS

6. Information sharing: we welcome the intention, manifest in Section 26 to facilitate appropriate information sharing and overcome the real obstacles to inter-service communication. The provisions to support information sharing must be appropriate, proportionate and timely and protect the child’s right to privacy. It should also protect parents’ rights to privacy, as far as this is consistent with the best interests of the child.

7. We note that there is no reference to seeking consent or otherwise involving the family, and would be concerned that this has the potential to bypass essential communication with the family. While there are situations in which consent should not be sought, there are also many situations in which it should, and others in which informing the family that information is being shared is essential. In situations of domestic abuse, risks can be increased by sharing information without taking account of the dynamics of the abuse – awareness in this area requires training.

8. It is very concerning that the Bill does not resolve the inconsistency in the definition of a parent in education legislation and the Children (Scotland) Act 1995. This has significant implications given the proposals for information sharing between agencies and the prominent role of education practitioners as named persons. It is particularly significant given the parental rights of access as set out in the Pupils Educational Records (Scotland) Regulations 2003. People who would not be recognised as parents in the Children (Scotland) Act will potentially have access to the files held by the Named Person in school.

9. We would welcome a less unconditional approach in the legislation as well as guidance that both clearly removes barriers that reflect agency defensiveness and promotes good practice in relation to the nature of the judgments required when choosing to share information.

10. There is scope for confusion in the overlap between the wide ranging role of the Named Person and the functions of non statutory Lead Professional role (in
GIRFEC practice model terms). How this might work well may have to be restated in guidance.

PART 5: CHILD’S PLAN

11. The most important requirement that should be ensured in the legislation is that there should be a single child’s plan. We note that recent guidance in relation to Individualised Educational Programmes make reference to GIRFEC only in passing on the final page – there is a need to underline the requirement to align all services planning for children including schools. The Child’s Plan under this legislation must include and subsume the legal requirements for Co-ordinated Support Plans if the ‘One Child - One Plan’ objective is to be achieved. ‘One Child One Plan’ will require amendment to other legislation if children and families are not to be perpetually engaged in different planning, review and appeal mechanisms. We would like a clear reference to the Child’s Plan (and associated paperwork) being written using the wellbeing indicators. We agree with the comments that this is the phrase that should be used rather than SHANARRI.

12. A single plan in which each agency is responsible for its contributions needs to be supported by accessible, direct and proportionate means of redress. All agencies should be equally accountable under processes of dispute resolution rather than the uneven position (with a focus on Education Services within local authorities) that currently prevails.

13. We think the term “targeted intervention” in legislation is likely to lead to a pseudo-precision and formulaic language in plans. Plans are often not about what is done to children and families and we would like to see language that emphasises partnership with families. Such terminology may be more appropriate in guidance. It would be helpful to make reference to outcome based Child’s Planning – and associated actions and evaluation of these - this would be stronger and more helpful than references to targeted interventions.

14. The attempt to write the legislation without reference to the lead professional has produced awkward text about the managing authority.

15. In paragraph 33.6, we should add the views of Kinship Carers.

16. While acknowledging the value of the holistic concept of well-being and the place of the wellbeing indicators in its definition and in the practice model, the scope of service provider duties in relation to “well-being need” seems much broader than previous duties in relation to children in need. While affirming that children should be afforded appropriately co-operative help at an early stage, there are three concerns here.

- realism/danger of false expectations
- inappropriate levels of information sharing without consent.
- the risk that crystallising expectations about “lower tariff” forms of helpful action in law may generate more time spent on writing and less on doing.
PART 6: EARLY LEARNING AND CHILDCARE

17. We welcome these developments, recognising that there is a need to make adequate financial provision. However, it is not clear that sufficient detailed attention has been given to the full implications of rolling together child care and education. The quality of experience of a young child who’s entitlement is concentrated in a few long days of care and education combined each week will be quite different to that of a child who receives shorter periods of early education throughout the week. Periods spent asleep during long days of childcare cannot equate with a stimulating experience in early education. There is a real danger that this will compound inequality.

18. There needs to be a clear basis to prevent the child’s right under Article 29 becoming obscured in the integration of education with care and both Ministers and public bodies need to be accountable for this. There needs to be clear guidance how the provisions of the ASL Act would be applied in these circumstances to delineate when school education is being provided and when it is not in order to prevent confusion and disputes over responsibilities and duties. The guidance also needs to address the potential inequity if a child’s educational entitlement is subverted by parental needs for child care.

PART 7: CORPORATE PARENTING

19. We welcome that this concept is given a statutory place and that collaborative duties between agencies are reinforced. Again it would be helpful if the reports required could be integrated with the intentions, structure and content of Children’s Services Plans and Single Outcome Agreements, reports required in relation to UNCRC implementation, inspection reports. Strategic and operational managers need to be able to readily cross correlate their programmes and evidence and there is a huge danger of creating layers of report bedding in which the sharpest findings are suffocated.

20. Reporting on Corporate Parenting through the SOA (and its monitoring processes) would place accountability for success with Community Planning Partnership reporting to the Scottish Government.

21. We note there is no direct linkage to earlier sections relating to Getting it Right – we need a consistent emphasis on one child, one plan.

PART 8: AFTERCARE

22. The intentions are positive but the structural changes needed locally to fulfil the extension of duties will be significant. The costs for provision of services to this extended age group are likely to be significant.

PART 9: COUNSELLING SERVICES

23. The intentions are positive and Edinburgh has in the recent past invested heavily already in early years and early intervention with parents, with a coherent strategy and raft of resources.
24. However the term “counselling” has specific connotations and implications in terms of costs; and may not always be the appropriate resource/intervention. For this reason it is questionable whether the term counselling is appropriately used here. A spectrum of guidance, advice, support and intervention may be appropriate depending on expressed and assessed needs. Counselling is one avenue. As well as being too narrow, the term counselling might actually be detrimental, it can carry stigma, and it doesn't reflect the kind of response that is required to achieve the systemic changes often needed in order to sustain families and sustain children in families?

PART 10: SUPPORT FOR KINSHIP CARE

25. While we recognise the intention in this part of the Bill to enhance supports for children in kinship care leading to a positive impact on families and children with comparable needs to Looked After Kinship Placements, we are concerned about the significantly increased costs.

26. There is a subtle combination of duty (to provide assistance) and discretion (to provided different forms and levels of assistance) in here which would require transparent local criteria and practice.

PART 13: GENERAL

27. We welcome the inclusion of the Assessment of Wellbeing – it is positive that this is now embedded.

28. The relationship and fit between “well-being”, “in need” and “welfare” must be thought through in guidance to avoid layering and confusion. We believe it is possible for these terms to be rendered congruent.

City of Edinburgh Council
Children and Families Department
26 July 2013
1. Kinship Care Allowance was introduced to give some financial support to family members (other than biological parents).

2. From Clackmannanshire Council figures there were 17 formal carers when the scheme was first introduced in 2007, there are now 38.

3. There are approximately 53 kinship carers known to the Clacks Kinship Carers Group, some of whom are informal kinship carers and some who have a formal arrangement that includes the social work and educational psychologist services in Clackmannanshire.

4. We are asking for adequately resourced central funding from the Scottish Government to be made available for kinship carers – equal to foster carers – across Scotland – not the post code lottery we are currently experiencing across council boundaries.

5. The need to extend the age of the ‘child’ to at least 25 years. This vulnerable group of ‘looked after children’ require additional support as they move from secondary school onto college and university and into work. Reference: See response from Stirling/Clackmannanshire Councils to the September 2012 Consultation on the SG Proposal for a Children and Young People Bill question 23.

6. There is a crucial need for more joined up working between social work and health services, and a recognition to ensure that ‘through and after care’ is crucial for young people, with adequately resourced respite care for both child/children and their kinship carers and encourage better multi-agency working with the ‘looked after child’ at the centre.

7. I hope this gives you some indication of the growing number of young lives affected by the loss of direct parenthood, and in their interest, the need for equity and esteem for kinship carers with foster carers.

Clacks Kinship Carers
15 September 2013
Introduction

1. Cl@n childlaw is a unique legal advocacy service delivering free legal advice and representation to children and young people, who would otherwise have found it very difficult or impossible to access the legal help that they require. We help those up to the age of 18, or 21 if they have been looked after children. We deliver specialist training in child law and contribute to policy development in relation to the realisation of rights for children and young people across Scotland through our evidence based Policy Development Unit. In our evidence, we have concentrated on specific parts of the Bill on which we feel that we have a particular contribution to make. However, there are certain matters which we wish to comment on which are of general application throughout the Bill:

- We are extremely disappointed that no child rights impact assessment (CRIA) has been undertaken in respect of the Bill. A CRIA would identify and measure the effect of the legislation on children and young people, and would be a valuable resource to the Education and Culture Committee in their consideration of the Bill.

- The Bill does not provide sufficiently for participation and engagement of children and young people in many parts, in relation to, for example, planning and delivery of services and the role of the corporate parent. There is insufficient focus on duties to promote the rights of children and young people throughout the Bill.

- There is a lack of coherence across legislation. In many respects, for example, it is difficult to see how the provisions of the Bill mesh with those of the Children’s Hearings (Scotland) Act 2011.

Part 1 – Rights of Children

2. We welcome proposed legislation which strengthens the position and heightens awareness of the UNCRC in Scotland. Reference is made to our responses to the Consultation on the Rights of Children and Young People Bill¹ and the Consultation on the Children and Young People Bill.² We wish to see further realisation of children’s rights in Scotland, and welcome the Scottish Government’s statement,

¹ cl@n childlaw response to Consultation on Rights of CYP Bill: http://www.scotland.gov.uk/Resource/0038/00386685.pdf
² cl@n childlaw response to Consultation on CYP Bill: http://www.scotland.gov.uk/Resource/0040/00406431.pdf
that “the heart of our approach is the aim of making real the rights of children and young people.” We note the policy objectives of the current Bill include “ensuring [children’s rights] are respected across the public sector” (para 2) and that “The Scottish Ministers view the Bill as an important opportunity to make rights more ‘real’ for children and young people in Scotland. This means empowering children themselves to exercise their rights.” (para 45)

3. To date, the UNCRC has not been incorporated into UK or Scots law. Such a treaty ratified by the United Kingdom is, however, binding on the United Kingdom as a party to the treaty. Article 4 of the UNCRC is in the following terms: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention.” In a letter dated 29th August 2012, the Minister of Community Safety and Legal Affairs stated: “In Scotland, we are committed to enshrining the principles of the Convention into domestic law and policy wherever possible. However, we also believe that incorporation is best achieved on a case by case basis, and are not of the view that wholesale incorporation of the UNCRC into domestic law represents the best way to progress our approach to children’s rights at this time.” Such an approach has, however, led to inconsistent implementation of the UNCRC, with correspondingly inconsistent outcomes for children and young people.

4. Against that background, we are disappointed that the proposed duties on Scottish Ministers in section 1(1), to “keep under consideration” how to secure better effect of the UNCRC, and to take appropriate steps to do so, are little more than a reflection of the existing international obligations of the state (see Article 2 UNCRC).

5. It may be thought that judicial review of Scottish Ministers’ decisions will be slightly more likely, or easier, in light of the proposed section 1(1) duties. However, our view is that it may already be possible to challenge decisions and actings of the Scottish Ministers which are not in accordance with the provisions of the UNCRC, by means of judicial review, on the basis that the UNCRC gives rise to legitimate expectations. No other means for legal redress for children and young people facing violations of their rights are proposed in the Bill. The proposals in Part 2 do not amount to legal redress. There are significant disadvantages in relying on judicial review as the only

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remedy. In any event, children experience difficulties generally in obtaining legal aid.

6. There is no proposal in the Bill for any systematic consideration of securing better effect of the UNCRC, leaving consideration and the taking of any steps at the Ministers’ discretion. It is not proposed that there are any duties on public authorities, other than reporting duties in section 2. Those reporting duties would allow public authorities to report that they had taken no steps towards furthering the UNCRC, without any sanction. We would welcome the use of child rights impact assessments across decision making processes.

7. In conclusion, whilst we welcome any proposal which has the effect of strengthening the position of the UNCRC in Scotland, we do not think that the duties in Part 1 go far enough. We would strongly support any proposal whereby the provisions of the UNCRC were incorporated into Scots Law and were thereby directly actionable in Scottish courts. Clan childlaw would like to see duties imposed on Scottish Ministers and on all public bodies which concentrate on both process and outcomes which will make children’s rights real in Scotland. The imposition of such duties would be clear legislative realisation of the policy objectives for the Bill, which is unlikely to be achieved by means of the current proposals.

8. We welcome the duty set out at section 1(2) of the Bill, which makes the existing duties under Article 42 of the UNCRC explicit in legislation. We would like to see some indication of how it is proposed to measure the performance of this duty. The performance of the duty could also be strengthened by a commitment to the placing of children’s rights at the heart of the school curriculum, possibly by the national adoption of the Rights Respecting Schools initiative.

9. We are of the view that the Children and Young People Bill represents a clear opportunity for the actual realisation of children’s rights in Scotland, rather than merely a restatement of international obligations which already exist. We would like to see a more ambitious programme of actual realisation of children’s rights in the proposed legislation. We would strongly support any proposal whereby the provisions of the UNCRC were implemented in Scots Law and were thereby directly actionable in Scottish courts. However, we acknowledge that some measures of realisation could be achieved through various legislative provisions, although our clear preference in the longer term is for full incorporation of the UNCRC.

10. Against that background, we would, at the minimum, like to see the core principles of the UNCRC (Non-discrimination, Protection, Development & Participation) on the face of the Bill, along with the following specific measures:

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8 Clan childlaw FOI analysis: [http://clanchildlaw.org/2013/05/legal-aid-for-children/](http://clanchildlaw.org/2013/05/legal-aid-for-children/)
9 [http://www.unicef.org.uk/rrsa](http://www.unicef.org.uk/rrsa)
• The best interests of the child to be the paramount consideration in all actions undertaken by Scottish Ministers and public bodies concerning children, unless it is necessary to make a decision inconsistent with the paramountcy of the child’s welfare, in which case the best interests of the child should be a primary consideration rather than the paramount consideration.

• The child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the child’s age and maturity.

• All children have the right to advocacy services to assist them in the expression of those views. We would also welcome the registration of Child Advocacy Services who are required to adhere to Minimum Standards and a Code of Practice.

• Independent complaints procedures are established to enable children whose rights have been violated to seek redress. Legal Aid is made available to children to enable them to pursue remedies in court. The restrictions on financial eligibility of children, introduced by regulations on 31st January 2011, are removed.

• A child who is not living with a parent, or who is not living with a sibling, has the right to maintain personal relations and direct contact with the parent or with the sibling on a regular basis. Where a child is looked after, the local authority has a duty to promote, on a regular basis, personal relations and direct contact between the child and the parent, or between the child and the sibling. Appropriate provision is made for the child to apply to the court or children’s hearing for an order for, or condition of contact.

• The Antisocial Behaviour etc. (Scotland) Act 2004 is amended to abolish Antisocial Behaviour Orders for 12 to 15 year olds. These orders are rarely used.

• Section 51 of the Criminal Justice (Scotland) Act 2003 is repealed. Parental physical punishment is an assault. The concept of “justifiable assault” is removed from legislation. Children are given the same protection from assault as adults.

• The age of criminal responsibility is raised from 8 to 12.

Part 2 – Commissioner for Children and Young People in Scotland

11. We broadly welcome the proposed extension of the Commissioner’s powers. We note that the Government considers that it is “highly likely that any investigation process will be more accessible and child friendly than a judicial process”\(^\text{10}\). That may be so. However, no effective redress will be provided by means of extended powers of investigation. We would rather see the estimated extra expenditure of

\(^\text{10}\) Para 54, Policy Memorandum
£162,000 p.a.\textsuperscript{11} directed towards providing equitable access to legal redress, by making legal aid more readily available for children and young people, thereby securing better actual realisation of their rights.

\textbf{Part 4 – Provision of Named Persons}

12. The focus of the Bill appears to be more on information sharing among professionals than on the service the named person should provide to the child of young person. We would welcome a strengthening of the duties on the named person in relation to the rights of the child.

13. We have very grave concerns about the proposals on information sharing contained in the draft Bill. In the original Consultation, it was envisaged that “information sharing would occur within existing legal frameworks.”\textsuperscript{12} There has been no consultation on the proposals now contained at sections 26 and 27. Effective pre-legislative scrutiny has not taken place.\textsuperscript{13} The Privacy Impact Assessment took place before the current proposals were made.

14. A child has a right to confidentiality. That right is central to decisions to share information. Information given in confidence should not generally be shared, subject to certain limited exceptions: (1) if the child gives consent; or (2) if there is no consent, only if that lack of consent can be overridden in the public interest; or (3) if there is a legal obligation to breach confidentiality. The public interest will include where there are child protection concerns, that is, a risk of significant harm. Should the current proposals be implemented, we have the following concerns:

- Children and young people will be reluctant to access and engage with confidential services if they feel that information is likely to be shared without their consent.
- Professionals will be likely to share more information than is necessary and proportionate, in breach of children’s privacy rights under Article 8 ECHR and Article 16 UNCRC.
- Decisions about wellbeing of children and likelihood of harm or significant harm to children will be flawed, and lacking in transparency. Important information will be lost amongst the “white noise” of large quantities of information being shared. Children and their families will not be consulted fully on what information should be shared and with whom. Vulnerable children will be placed at risk.

\textsuperscript{11} Para 34, Table 7, Financial Memorandum
\textsuperscript{12} Para 120, SG Consultation CYP Bill: \url{http://www.scotland.gov.uk/Resource/0039/00396537.pdf}
\textsuperscript{13} Para 2.3, Guidance on Public Bills: \url{http://www.scottish.parliament.uk/S3_Bills/GuidanceonPublicBills.pdf}
• No mention is made of consideration of the child’s views or of the child being asked for consent to share.

• The proposed duties include no threshold at which information must be shared with and through the named person. Information will be shared based on a subjective consideration by the information holder that sharing is relevant in order to promote, support or safeguard the wellbeing of the young person. The current proposal might be interpreted to legislate for the sharing of any information about any child or young people.

• There is nothing in current legislation that prevents proportionate and relevant information being shared about children and young people where it is in their best interests to protect them. Problems with information sharing can be successfully addressed though training and clear practical guidance for professionals. Evaluation of GIRFEC pathfinder suggests that processes around information sharing and the named person led to improvements in consistency and quality of information shared, with no concerns arising around existing legal frameworks.

Part 8 – Aftercare

15. We are disappointed that the proposed amendments to section 29 of the Children (Scotland) Act 1995 do not impose stronger duties on local authorities to support previously looked after children up to the age of 26. For those under 19, they still have to be looked after at or after reaching school leaving age. The onus is still on the young person over 19 to apply to the local authority. That depends on the young person being aware of their right to apply. Much appears to be left to the discretion of the local authority, after assessment. “Eligible needs” are not yet defined. We would like to see a much stronger commitment to the support of this most vulnerable group of young people.

cl@n childlaw
15 July 2013
"In the areas in which GIRFEC is well implemented, there have been significant improvements in information sharing, and professionals are now confident about what needs to be shared with whom and how that is to be done."

Claire Mayo, Royal College of Nursing

Key messages:

- In considering the Stage 1 report, we urge the Education and Culture Committee to reflect on the range of written and oral evidence given on the information sharing provisions included in the Bill. This evidence highlighted that:

  Procedures followed by Scottish Government to assess the impact of clauses 26 and 27 are flawed. Clauses 26 and 27 are unnecessary and are likely to operate against their policy intentions.
  The balance between a need to share information with the child’s right to privacy is not struck.

- The Information Commissioner has stated that the Bill as currently drafted 'does not comply with [data protection] principles' and has recommended redrafting of [clause] 26 and the removal of [clause] 27.

- Good information sharing is already taking place, enabling the Named Person role to function as envisaged and improving outcomes for children and young people. The role of the Named Person has been stated to be a key element in the success of the Highland Pathfinder Project. This is taking place within existing legislation.

- There is no need for additional legislation.

The Education and Culture Committee should recommend the removal of clauses 26 and 27 from the Bill.

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1 Col 2798  Education and Culture Committee, Official Report, 17 September 2013
2 Information Commissioner's Office (3 October 2013) Additional evidence submitted to the Education Ctte
3 Para 88. Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
What makes a good law?

- It addresses a need and has a worthwhile purpose
- It is clear, sufficiently precise, coherent, so that it is readily understood
- It is enforceable and effective
- It minimises negative outcomes and unintended consequences
- Its provisions must be compatible with provisions of Article 8 ECHR

Necessity for legislation?

- There is nothing in current law that prevents proportionate and relevant information being shared about children and young people where it is in their best interests to protect them.4
- Problems with information sharing can be successfully addressed though training and clear practical guidance for professionals.
- Evaluation of GIRFEC pathfinder indicates that good information sharing enabling the Named Person to function as envisaged led to improvements in consistency and quality of information shared, with no concerns arising about existing legal frameworks.

How is Article 8 applied in relation to personal data sharing provisions?

European Court of Human Rights case about disclosure of medical records:

“In determining whether the … … measures were "necessary in a democratic society", the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued…

In this connection, the Court will take into account that the protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general…

The interests in protecting the confidentiality of such information will therefore weigh heavily in the balance in determining whether the interference was proportionate to the legitimate aim pursued. Such interference cannot be compatible with Article 8 of the Convention unless it is justified by an overriding requirement in the public interest.”5

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4 ICO statement 28 March 2013: “Where a practitioner believes, in their professional opinion, that there is risk to
5 Z v Finland [1997] 25 EHRR 371
a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Act in such circumstances. *www.scotland.gov.uk/Resource/0041/00418080.pdf*

\[5 Z v Finland [1997] 25 EHRR 371\]
Concerns raised in evidence to the Education Committee relating to clauses 26 and 27:

PROCEDURE followed by Scottish Government:

- No Consultation on Information sharing proposals
- No Child Rights Impact Assessment carried out
- No up-to-date Privacy Impact Assessment

PRINCIPLES:

The right balance between the need to share information with the child’s right to privacy under Article 16 UNCRC and Article 8 ECHR is not struck. It is doubtful that the provisions of clauses 26 and 27 are compatible with Article 8 of ECHR. What is proposed is a statutory duty (i.e., an obligation to share information, which omits certain provisions fundamental to striking the right balance:

- Consent of anyone, including child
- The views of the child
- The best interests of the child
- Proportionality
- Respect for the child’s right to confidentiality

The consequences of failing to strike the right balance include:

a. Information will be shared based on a subjective consideration by the information holder that sharing might be relevant in order to promote, support or safeguard the wellbeing of the young person, as defined using SHANARRI indicators, which is likely to result in unnecessary and disproportionate sharing of information.
"The concern that our members have is that, if a woolly approach is taken and not enough guidance is given, they will, by default and in order to cover people’s backs, end up sharing information that is not necessarily needed."

John Stevenson, UNISON

7 See Joint Briefing by SCCYP, cl@n childlaw, NSPCC & CELCIS http://clanchildlaw.org/2013/08/information-sharing-briefing/
8 Col 2689 Education and Culture Committee, Official Report, 3 September 2013
b. **Children and young people will be reluctant to access and engage with confidential services** if they feel that information is likely to be shared without their consent and without protection of their right to confidentiality.⁹

> "The worst section in the bill is section 27. If you manage to strike it out and leave everything else, you will have achieved quite a lot."  
> Professor Kenneth Norrie, University of Strathclyde¹⁰

**PRACTICALITIES:**

- **“White Noise”:** Important information about vulnerable children will be lost due to the large quantities of information being shared. This will lead to vulnerable children being placed at risk. Already this can be a problem, where information is shared but not acted upon.

- **Training of Professionals:** The Scottish Government is not intending to put in place a national training programme to support the Named Person provisions. There is a need for consistent and adequate training to ensure proportionate information sharing, taking account of children’s rights.

- **Lack of capacity:** of public bodies if information is over-shared, especially at a time of ongoing funding cuts within bodies carrying out the Named Person role.

**CONCLUSIONS**

- The provisions in clauses 26 and 27 do not meet the criteria for good law.

- There is an imbalance between children’s rights and the requirement to share information.

- The performance improvements from the Highland Pathfinder show that the policy intentions of clauses 26 and 27 can be - and already have been - met within existing information sharing legislation.¹²

- There is no need for additional legislation. Clauses 26 and 27 of the Bill are not necessary.

- To meet the policy intentions of the Bill, there need to be clear guidance and training. This will give confidence to practitioners and will support them in making sound professional judgments about appropriate and proportionate information sharing.


¹⁰

¹²
http://www.togetherscotland.org.uk/pdfs/Finding%20the%20Balance%20Children%27s%20right%20to%20con
fidentiality%202011%20Final

BMA Scotland (26 June 2013) evidence submitted to the Education Cttee

Col 2691  Education and Culture Committee, Official Report, 3 September 2013

Education and Culture Committee  
Children and Young People (Scotland) Bill  

CLIC Sargent

Introduction

1. CLIC Sargent is the UK’s leading cancer charity for children and young people, and their families. We provide clinical, practical and emotional support to help them cope with cancer and get the most out of life.

2. The Children and Young People’s Bill proposes a number of significant opportunities to improve the provision and support available for children and young people, including those with cancer. In particular, we welcome the Scottish Government’s ambition to put children and young people at the heart of planning and delivery of services and to promote better coordination between them.

3. CLIC Sargent believes that the Bill offers some positive opportunities for children and young people with cancer, in particular the parts that will put elements of Getting it Right for Every Child (GIRFEC) into statute; for example, the named person for every child, the Child’s Plan and the new joint services plan between local authorities and health (parts 3-5 and 13). This response will highlight CLIC Sargent’s views on these parts of the Bill.

Summary of key points

4. Uncoordinated services for children and young people with cancer can result in a lack of support when needed. It is critical that all practice affecting children and young people with cancer is joined up. CLIC Sargent therefore welcomes the proposed duties on local authorities and health boards to work together to produce, deliver and fund coordinated service planning.

5. Effective communication is a key issue for children and young people with cancer and their families. Parents have told us that where communication works well, they felt their child received the educational and emotional support they needed; where communication was poor, parents often said they felt let down by the system.

6. We welcome the duty for all children and young people to have a ‘Named Person’ to help them manage information and aid communication between different agencies; however, we seek further clarity about their exact roles and responsibilities and where accountability will lie.

7. CLIC Sargent believes all children and young people with cancer should receive the support that they need to succeed. It is important that the needs of children and young people are assessed early and that a formal plan is put in place to help them access multi-agency support. We believe that the Child’s Plan and the broad definition of wellbeing is a positive step in helping to secure this appropriate support.
Background

8. Approximately 1,600 children aged up to 15 years and 2,000 young people aged 16 to 24 are diagnosed with cancer each year in the UK.1 This includes almost 200 15-24 year olds and 120 0-14 year olds in Scotland. CLIC Sargent’s current campaign is largely focussed on the impact of cancer on children and young people’s education. Fundamental to CLIC Sargent’s work is the belief that children and young people with cancer should be enabled to achieve their potential and that quality support in education is a crucial element to achieving this.

9. With nine in 10 children telling us that their cancer diagnosis and treatment made a difference to their school life,2 we know that children and young people with cancer can face a number of barriers and challenges in keeping up with school work, feeling included in school life and fulfilling their potential.

10. Unfortunately a cancer diagnosis means that these children and young people often experience significant disruption to their family life and learning, with treatment sometimes lasting as long as two to three years. Even if a pupil has been successfully treated for cancer and has gone into remission, there are several reasons why there may still be genuine and long lasting late effects.

11. Children with cancer can face a number of barriers and challenges in keeping up with school work, maintaining friendships and feeling included in school life. Some children who return to school will need significant or permanent additional support and may not be able to return to previous attainment levels. CLIC Sargent wants to see a Scottish system of additional support that enables children diagnosed with cancer to receive the support they need quickly, and for as long as they need it, so that cancer does not unnecessarily impact on their education or their social and personal development. Unfortunately our research has shown that this support is not always put in place at present – one in three CLIC Sargent nurses told us they do not think that there is sufficient educational support for primary school aged children with cancer when returning to school.3

12. Communication was a key issue identified in our 2012 research – communication between hospitals and primary school, as well as between teachers and parents. Where communication worked well, parents said they felt their child received the educational and emotional support they needed; where communication was poor, parents often said they felt let down by the system. In many cases we found that schools and local authorities apply policies and practices in different ways, which can make navigating the system a real challenge.

13. We see the Children and Young People’s Bill, in particular parts 3-5 and 13, as an opportunity to improve the support available to children and young people in

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2 CLIC Sargent (2012) No child with cancer left out
3 ibid
education by improving communication between agencies, and developing a more joined up approach to planning and delivering services.

14. The following parts of this paper highlight CLIC Sargent’s thoughts on specific areas of the Bill and the potential impact and benefits for children and young people with cancer.

Children’s services planning (Part 3)

15. All the agencies involved in supporting children and young people with cancer – including their school, hospital school and local education authority – are expected to collaborate effectively to ensure that the child experiences a joined-up service. However, CLIC Sargent research undertaken in 2012\(^4\) found that communication between hospital and home education providers and a child or young person’s home school could be much improved.

16. Our _No child with cancer left out_ report shows that improving communication between education professionals, and the family can considerably lessen the impact of cancer on a child or young person’s education. Good communication, for example, can enable a child with cancer to keep in touch with classmates when they are absent from school, allow for a smoother transition when they return to school and help parents feel empowered and informed.

17. We warmly welcome the Bill’s aim to ensure that public bodies work together to plan and deliver services to increase children and young people’s wellbeing. In particular, the proposed duties on local authorities and health boards to work together to produce, deliver and fund three year services plans. We agree that this must be focussed on improving outcomes for children and young people and welcome the recognition that a child or young person’s well-being depends on the whole spectrum of their needs being identified early. Children and young people’s cancer is rare, which makes this especially important as some agencies and professionals may not have supported the needs of young cancer patients before. This holistic approach can help ensure that they receive high quality provision and effective advice and guidance.

18. We believe the duty to cooperate and the proposal for the new joint plans to cover every children’s service, which has a significant effect on the wellbeing of children and young people, are also progressive ways forward. This will need the involvement of all the agencies involved in a child or young person’s cancer journey.

Named person service (Part 4)

19. CLIC Sargent welcomes having a Named Person for every child and young person from birth to 18 to increase accountability and ease of information sharing. Managing information and aiding communication between different agencies can be bewildering and can add to the stress and strains of a cancer diagnosis.

\(^4\) _ibid_
20. Having a Named Person could increase the level of communication between the hospital/home education provider, the parents or the young person themselves, and their school. CLIC Sargent knows that good quality communication can help build parents’ confidence when their child is absent from school and when they are preparing for their child’s return.

21. In some schools communication can be very good one parent told us: “My daughter’s school was amazing. We had a great support network throughout the school. We felt very confident when she returned I knew everyone was watching out for her.” However, this isn’t everyone’s experience. Another parent said: “It’s been a complete battle from the start with the school. I feel very bitter at the lack of understanding and support we’ve received. We had to suggest solutions every step of the way. Even when we asked about whether the local authority could supply a home teacher they denied any knowledge of such a service.”

22. 5.4 Many of the young people we spoke to told in 2013 CLIC Sargent (2013) us that their school didn’t communicate with the hospital school they went to and that there were often delays in sending appropriate work. This lack of communication meant that some young people struggled to complete test papers or work sent to them from their school because they had missed out on the relevant learning.

23. In some circumstances, missing out on learning might mean that some children and young people have to retake an academic year. Young people approaching a pivotal time in their education are very aware of the impact that cancer has had on their ability to achieve at school, and reaching their potential becomes very important to them. Our 2013 research found that some young people have been deeply affected by the impact that cancer has had on their ability to achieve the grades they were aiming for. One young person told us “I could have been so much better if I didn’t have cancer, but now I will never know.”

24. Worryingly, more than one in three parents have told us that their child had experienced bullying or teasing from their peers because of their cancer diagnosis and treatment. One parent told us “schools should educate school pupils about childhood cancer to reduce the stigma associated with it.” We hope that having a Named Person for every child and young person will mean that schools will take more responsibility for increasing awareness and understanding of childhood cancer.

25. We believe that having a Named Person to help children and young people with cancer and their families’ access services, provide information and support and to discuss and address concerns with other agencies will help young people and their families to better understand and access the support they need.

26. It is important that children and young people and their families always know about the role of the Named Person, and how to contact them. We do, however, seek greater clarity about the role and responsibility of the Named Person and how any additional demand on professionals will be resourced.

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5 CLIC Sargent (2013) No teenager with cancer left out
Child's Plan (Part 5)

27. It is important that the needs of children and young people are assessed early and that a formal plan is put in place to help them access the multi-agency support they need. Even if a child or young person has been successfully treated for cancer and has gone into remission, they may experience significant and long-lasting late effects. Studies show that survivors of childhood cancer may perform less well in education compared to their peers, although lower attainment is mostly found among survivors of particular cancers, for example, brain tumours and leukaemia.6

28. Young people who took part in our No teenager with cancer left out study suggested that a formal assessment of needs on a pupil’s return to school would help. Otherwise, if they appear ‘normal’ the school assumes they are fine and expects them to pick up where they left off. The question of how effectively children and young people’s needs are assessed and planned for on their return to school when they have had cancer is critical to the success of reintegration.

29. The assessment of children’s needs when they return to school – and whether they require a formal plan – was also a major issue for many of the parents and children we have spoken to. In our 2012 survey parents said they thought their child required a more rigorous assessment of their needs when they returned to school. “They need a proper assessment of their needs, rather than a ‘one size fits all’ approach,” one parent told us.

30. We therefore welcome the intention for the Bill to put a duty on local authorities to produce a coordinated, needs driven ‘Child’s Plan’ for every child and young person who needs one and that there will be a single planning process to help those children and young people who need additional support where the arrangement of a range of services is required. We would, however, like further clarification on which children will be entitled to a plan and how their needs will be assessed. We also seek further information on how the Child’s Plan will interact with the Coordinated Support Plan.

Wellbeing (Part 13 and S.73)

31. We welcome Scotland’s inclusive approach to create a holistic statutory definition of well-being to ensure that all children and young people who require it receive the support they need.

CLIC Sargent
26 July 2013

1. Key points

- Recognition of the scope of children’s services provided by the voluntary sector

- The children’s services planning proposals are welcome but should place a stronger duty on statutory partners to work collaboratively with voluntary sector providers and others

- The Bill and/or guidance needs to clarify the link between children’s services planning, and strategic and locality planning by ‘integration authorities’ proposed in the Public Bodies (Joint Working) (Scotland) Bill, and with community planning partnerships

- The Bill should provide for independent scrutiny of children’s services planning by the Care Inspectorate/Health Improvement Scotland and other relevant bodies

- Information-sharing in connection with the Named Person service must recognise the differences between statutory and voluntary sector providers

- The child’s plan sections must recognise the key role of voluntary sector providers, enabling participation where appropriate in the planning, management and review process

2. CCPS is pleased to have the opportunity to provide a written submission to the Committee in connection with its Stage 1 consideration of the Children and Young People (Scotland) Bill. We welcome the Government’s policy objectives of enhancing children’s rights and improving services, among others, and the Bill forms a significant part of the matrix of different initiatives underway to achieve these aims.

3. Many of our members will be making individual submissions to the committee with respect to their specific areas of interest, their mission and their charitable objectives. This submission, in line with the aims and objectives of CCPS, focuses on issues of importance to voluntary organisations in their capacity as providers of children’s services. In that regard, we begin by returning briefly to evidence we submitted to the Committee in June 2012 during its review of the scope of children’s services in the voluntary sector. We think this is useful background information for the Scottish Parliament to have when considering both the general principles of the Bill, as well as the practical impact.

The scope of children’s services in the voluntary sector

4. The voluntary sector makes a significant contribution to children’s services in Scotland. More than a third of all care and support services registered with the Care Inspectorate are provided by voluntary organisations; approximately 27% of all registered children’s services (excluding childminding: 11% including childminding) are provided by the voluntary sector.

5. Over 20% of the social services workforce in Scotland in respect of registered children’s services is employed by voluntary organisations (rising to 23% excluding childminding).

6. These figures show that the voluntary sector makes a particularly significant contribution, proportionally, in respect of day care, and of residential child care, fostering and adoption (in other words, care and support for looked after children). In addition, the voluntary sector is a leading provider of care and support to disabled children and their families in their own homes.

Comments on the Bill as it affects service providers

Part 3 - Children’s Services Planning

7. The proposals in the Bill for service planning build on the provisions in the Children (Scotland) Act 1995 but appear to fall short of the level of collaborative strategic planning that is being developed in the context of the integration of adult health and social care. In the Public Bodies (Joint Working) (Scotland) Bill, integration partnerships must establish consultation groups (that include the voluntary sector, carers and users, in addition to the statutory partners) to jointly work on strategic planning. This is a significant step up from the ‘duty to consult’ requirements in the Children’s Bill, not least because it involves a range of stakeholders (including voluntary sector providers) from the beginning of the planning process, and includes both a set of principles and a structure for the process.

The development of joint strategic commissioning in the context of adult health and social care integration is seen as having real potential for improving the involvement of voluntary sector providers in the planning and design of services, as well as reorienting investment and activity to improve outcomes for service users. We would like the Committee to consider how the children’s services planning provisions can be strengthened to reflect a similar approach.

Interestingly, while there is only a basic ‘duty to consult’ with voluntary sector service providers, there appears to be a ‘duty’ placed on voluntary and independent sector providers, social landlords and others (in s.10(6)) to ‘meet any reasonable requests to participate or to contribute to the preparation of the plan’. We clearly welcome wide participation in the planning process (as noted above), but we query the extent to which this legislation can place ‘duties’ on non-statutory bodies. Thus we would like to see clarification of the meaning of this provision in relation to both the policy aim and the legal impact. As set out above, we consider the approach taken in the context of the Joint Working Bill,
(where duties are placed on statutory bodies to undertake a process of joint planning that includes voluntary sector providers and others) to be a good model.

Related to the Joint Working Bill, we think clarification is required about the relationship between the children’s services planning process and the different planning processes envisaged for integration authorities, particularly where those authorities decide to include children’s services within their partnerships, as well as in relation to community planning partnerships. This may be a matter for clarification in guidance but as it currently reads, there could be duplication of planning processes; and as noted above, there is also a significant difference in the process of involvement of voluntary sector providers and others, as between the different processes.

8. In the context of involvement in strategic planning, it is notable that the financial memorandum anticipates no extra costs as a result of these planning proposals based on the assumption that local authorities already have a duty to produce integrated children’s services plans. Unfortunately, there is no consideration given to the costs that might come with wider participation in the planning process by voluntary sector providers and others. We think that there will be potential costs to voluntary sector providers, not just from engagement with the planning process but also in connection with the duties to provide information, advice and assistance (e.g. ss.14, 26, and elsewhere in the Bill) and that this should be reflected in the financial memorandum.

9. With respect to monitoring and scrutiny, we note that the local authority and each relevant health board will have a duty (s.13) to report annually, setting out how their aims have been achieved and what the outcomes are (referring to outcomes that will be prescribed by Scottish Ministers, and linked to the idea of wellbeing and the SHANARRI indicators). We suggest that the Committee consider the advantages of including a role for the Care Inspectorate (CI) and Health Improvement Scotland (HIS), and other relevant scrutiny bodies, specifically in relation to the children’s services planning process. This would mirror similar developments in relation to the commissioning of integrated services for adults. The integration of adult health and social care proposals contained in the Joint Working Bill also include a duty on local partnerships to report annually on their strategic plans. But in addition, the policy memorandum makes it clear that the CI and HIS will be required to scrutinise the joint commissioning process (although this is not reflected in the bill itself; something that CCPS will be seeking to address during the parliamentary process). In light of recent CI/HIS joint children’s services inspection reports, which identified much room for improvement in respect of strategic planning, there is clearly a need for this kind of scrutiny/improvement support in the context of children’s services planning and in our view, this ought to be set out in legislation rather than remaining a matter of policy.

10. S.14 introduces a general duty to comply with reasonable requests for information, advice or assistance from the local authority or health board in exercising their functions under this part. This duty applies to ‘other service providers’ and also to organisations representing users, voluntary and
independent sector providers, social landlords and others (as defined in s.10(1 and 2)). There is an exemption provision which allows a person to refuse if they consider it would be incompatible with any of their ‘duties’; or ‘unduly prejudice the exercise of any function.’ As noted above, we are unsure about the extent to which legislation can placed duties of this nature on independent voluntary organisations; we are also concerned that the wording appears open to wide interpretation and we believe it would benefit from tighter drafting and clear guidance so that voluntary sector providers can clearly understand the circumstances in which requests for information can be refused.

Part 4 – Named Person

11. The named person provisions will have an impact on voluntary sector providers most directly as a result of the s. 26 duty on service providers (including voluntary sector providers) to share information. This section highlights the tension between the child’s right to confidentiality and the practical necessity of sharing information between different services, including between the voluntary sector and statutory sector. As currently drafted, it appears to give power to local authorities and health boards to access a very wide spectrum of information, some of which may be commercially sensitive for providers or which might raise issues of confidentiality in relation to children or adults who are receiving services from voluntary sector providers.

12. In particular, clauses (3) and (4) appear to relate to any information which may possibly affect the wellbeing of a child, rather than to the named person. These are very broad information sharing responsibilities and could be interpreted to cover almost everything held by a voluntary sector provider.

13. We believe that this section needs to strike a careful balance between access and confidentiality, and to recognise the important differences between voluntary and statutory sector service providers. As such, we would ask the Committee to clarify its scope and to recommend the necessary drafting changes to achieve greater clarity.

Part 5 - Content of Child’s Plan

14. This part sets out the circumstances in which a responsible authority is required to produce a child’s plan, what it should contain, and how it should be developed. The plan must state the wellbeing need identified by the relevant authority which has triggered the need for a plan and contain a statement of the ‘targeted intervention’ required to be provided to the child (s.32). Targeted interventions do not appear to include non-statutory services – they are defined as a service provided by a relevant authority – which in turn is defined as the health board, local authority or directing authority (e.g. grant-aided schools).

15. In respect of the management and review of a child’s plan (s.37), there is a requirement for the managing authority to consult with other statutory providers and the child and parents. There is no mention of consultation with voluntary sector providers who may be providing the ‘targeted intervention’.
16. We suggest that it would be sensible, given the extent of voluntary sector service provision for children and young people, for the child’s plan to include services provided by the voluntary sector, where appropriate. And equally, for there to be consultation with voluntary sector providers, in the context of the management and review of the plan, where they are involved in providing a ‘targeted intervention’ set out in the child’s plan. We would ask the Committee to explore whether this could best be achieved by amending the definition of ‘targeted intervention’ in the Bill or through regulation or guidance.

17. In a similar vein, we would like to make one final point about the corporate parent sections of the Bill. Corporate parent is defined to include statutory bodies only. However, many voluntary sector providers take on a lead role in supporting children and young people in circumstances that could be considered to be the equivalent of the corporate parent role. We would welcome clarification of the position of voluntary sector providers in such circumstances.

About CCPS

18. CCPS is the coalition of care and support providers in Scotland. Its membership comprises more than 70 of the most substantial care and support organisations in the voluntary sector, including the leading sector providers of services for children, young people and their families. Collectively, CCPS children’s services members:

- support more than 150,000 children, young people and families in Scotland
- employ 5,800 staff
- manage a combined total income in Scotland of over £160 million, of which more than 80% relates to publicly-funded service provision.

19. Services provided cover the range of services to children, young people and families including early years provision; family and parenting support; residential child care and other support for looked after children; support for children and young people who have experienced abuse and neglect; support for disabled children and young people and their families; young people with mental health problems; and services for young offenders.

Submitted by CCPS for and on behalf of its children’s services members:
Aberlour Child Care Trust Action for Children; Barnardo’s Scotland; Camphill Scotland; Capability Scotland; Children 1st; Cornerstone; Crossreach; Includem; Kibble; NSPCC Scotland; Penumbra; Quarriers; Sense Scotland; The Mungo Foundation; Who Cares? Scotland; VSA.
25 July 2013
Introduction

1. The College of Occupational Therapists (COT) welcomes the Children and Young People (Scotland) Bill. We do wish to highlight some areas within the aims of the Bill and raise awareness of the role occupational therapists play particularly in relation to the following 2 aims.

2. Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland’s Commissioner for Children and Young People;

3. Improve the way services support children and families by promoting cooperation between services, with the child at the centre.

4. At present in Scotland children and young peoples’ occupational therapy (OT) services are particularly disjointed making the lines of commissioning very difficult.

5. OTs who work with children may work in local authorities, NHS acute and community services, some specialist schools, the third sector, mental health services, criminal justice services and independent practice.

6. The College is aware that there continue to be a number of adult social care services that also provide occupational therapy assessments and arrange for support and provision of services for children, young people and their families especially in relation to equipment and adaptations.

7. Occupational therapists working in services develop specific expertise and skills. They have access to professional and management supervision that is child-focussed and ensures high quality services are available. Occupational therapists develop effective links with other children’s services in health, education, and social care, including early years, short-term breaks, and schools, in order to provide high quality support to children, young people and their families. This is more difficult if occupational therapists assessing children are provided from adult social care services.

8. Occupational therapists are the only profession where activity (task, performance and/or process focused) is the main method of intervention. Occupational therapists work holistically and are outcome focused. They have multi-dimensional training that addresses the physical, psychosocial, sensory processing, developmental levels and needs of children and young people. Occupational therapists have specific skills in activity analysis, problem-solving,
orthotics, group dynamics, sensory integration, visual perception, and the impact of disability and mental illness upon occupational functioning.

9. Occupational therapists provide a range of interventions for different conditions to help improve children’s:

- Functional ability which may be cognitive, physical or emotional (or a combination).
- Co-ordination
- Physical, sensory, intellectual and or psychosocial difficulties. Interventions are focused on occupational performance areas of age-appropriate personal activities of daily living (washing, dressing, feeding, toileting, personal grooming, and mobility, seating), school access and engagement (e.g. handwriting, attention, copying from the blackboard, participation in PE); and developmental play,
- Social relationships and community living skills (e.g. road awareness, shopping, meal preparation, use of public transport).
- Environment through the provision of equipment and /or adaptations. Assessments take into account: gross motor, fine motor, visual, perceptual, cognitive, psychosocial skills, and the environment. The needs of the carer are also considered with respect to moving & handling, transportation, and safe management of the child in all their environments, including their carer’s emotional well being.
- The role of Child and Adolescent Mental Health Teams (CAMHS) within early identification is to help train the early year’s workforce and to ensure quick access to assessment and treatment / intervention when children are referred. COT believes that it is essential that occupational therapists are employed in this service.

10. COT believes that in order to deliver effectively on the Bill, it is vital that the early years workforce have the skills to detect delayed development and difficulty in a range of skills, including the ability to manage everyday tasks to an age/developmentally appropriate level. Difficulties in self-feeding, dressing, play and toileting can indicate underlying difficulties which need to be addressed. The ability to manage every day activities, such as starting to use writing implements and to manage self care, is important for school readiness. Occupational therapists have a key role in working within early years teams to help promote early year’s practitioners knowledge and understanding of how children develop these skills. (Support and aspirations a new approach to special educational needs and disability-COT 2011)

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1 College of Occupational Therapists (2007 information produced by the COT specialist section for children young people and families for the workforce review team (unpublished). Support and aspiration a new approach to special educational needs and disability
11. Occupational therapists use a social rather than a medical model and work as part of multi-disciplinary teams and with parents and carers. Many service users tell us that it is occupational therapy which has made the difference to their recovery as it focuses on their everyday lives and how their strengths and difficulties affect their performance at home, in education, leisure, work/play. Also, it is the service user's own goals and interests which direct therapy, ensuring that the pace and outcomes are what the service user wants.

12. Many occupational therapy departments have long waiting lists due to overwhelming demand for their services. Schools wait too long for the advice they need to meet Special Education Needs (SEN). This capacity gap needs to be address to aid early intervention. COT affirm the need for the contribution of occupational therapists in settings and schools to be recognised through appropriate commissioning by education departments and schools, to ensure that children with SEN and disabilities who are not participating in all aspects of everyday life have access to the right support at the right time. COT also calls for the funding of health occupational therapists in child development teams and CAMHS to match demand for their services. The potential role of occupational therapists in training early years staff, undergraduate teachers, SENCOs, and other educational and early years staff should also be recognised and incorporated in training programmes.

13. As OTs working with children and young people are such a small group COT is concerned that their essential services will be overlooked both during the Children’s Services planning and the Child’s plan. There is good evidence within the CMO report 2011 that addressing the needs of children early on reduces health inequalities and ensures better outcomes for children and the adults they become. I would ask that the committee recognise the contribution that occupational therapy can make in achieving this aim.

14. The College of Occupational Therapists is the professional body for occupational therapists and represents over 29,000 occupational therapists, support workers and students from across the United Kingdom. There are approximately 3,500 occupational therapists working in Scotland. Occupational therapists work in local authority social services, the NHS, housing, schools, prisons, voluntary and independent sectors, and vocational and employment rehabilitation services.

15. Occupational therapists are regulated by the Health and Care Professions Council, and work with people of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties.

College of Occupational Therapists
25 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
Introduction

1. COSLA welcomes the opportunity to provide written evidence to the Education and Culture committee on the Children and Young People Bill. We have been pleased by the inclusive way that Scottish Government has worked with COSLA in the development of the Bill and we hope to continue this positive approach in evidence to Parliament.

2. We acknowledge that this response is longer than we would typically submit on a Bill. However, the legislation is arguably the most significant change to children’s services since devolution so we believe all sections need to be considered carefully. The Bill is positive and ambitious, and it is worth emphasising that COSLA supports the policy intentions behind much of the Bill. As a result the majority of our work on the development of the Bill has focused on practical challenges of implementation and the resources required by local authorities.

3. The Children and Young People Bill is a complex piece of legislation with significant financial implications for local authorities. The accuracy of the Scottish Government’s analysis and therefore the funding that would be made available depends on a large number of assumptions that will not be fully tested until the Bill is implemented. Councils have concerns over the future financial impact of the policies and that for this reason the financial implications to local authorities require in-depth scrutiny during the parliamentary passage of the Bill. COSLA has gained a confirmation from the Scottish Government that it is the intention to fully fund the requirements of the Bill, but with the implementation stretching beyond both the current spending review period and the end of this current parliament in 2016 then future budgetary decisions would be dependent on the result of several spending reviews. The commitment made by this administration to fully fund the Bill must be honoured in future years by whatever Government is in power and kept under on-going review. We also believe that it will be necessary for both COSLA and Scottish Government to jointly scrutinise and monitor the spend on this legislation, to ensure that local government is and continues to be sufficiently resourced to carry out the new duties that will be enacted.

Summary of Bill

4. COSLA supports the policy intentions of the Bill’s proposals on:
   - Children’s rights;
   - Children’s services planning and Getting it Right for Every Child
   - Early learning and childcare, and
   - Looked after children.
5. However, we have a number of important points to make on the implementation of Bill proposals, and the financial implications of the legislation. COSLA will be responding to the Finance Committee call for evidence in relation to the Financial Memorandum for the Bill, but we also provide summarises of comments on the financial issues in this submission of evidence. We also have a small number of concerns with specific proposals in the Bill - chiefly relating to new powers being sought by Ministers and proposed changes to the Children’s Hearings Scotland Act. These and other issues are discussed in more detail in the sections below.

Part 1 - Rights of Children

6. Children’s rights are well embedded within the practice of local government. We believe that no public sector organisation is likely to object to the proposal for realisation of children’s rights as stated in the proposals. Issues around transparency of decision making and policy implementation and scrutiny are of equal importance to local government, as other public sector organisations. COSLA has maintained since the Bill proposals were consulted upon in 2012 that we remain of the view that the duty of due regard need not extend beyond ministers when councils are already addressing children’s rights. Local authorities have already made much progress especially in the school setting, in terms of the promotion of children’s rights.

7. A number of organisations such as the Children’s Parliament are working with children on this issue. In explaining rights issues to children, it often provides clarification for adults working and caring for children and young people that the focus of the rights in the UNCRC are not about giving children the right to say no, but rather the ability to feel safe, secure and healthy with their help, guidance and support. We believe that this understanding helps and empowers children and young people.

8. COSLA remains of the view that organisations and structures such as the courts and Children’s Hearings need to acquire a clear understanding of the UNCRC in terms of their dealings and undertakings to children and young people. In that context, we are prepared to accept the proposals as set out in part 1 of the Bill.

Part 2 - Commissioner for Children and Young People

9. COSLA would be concerned if the use of the proposed additional powers as set out in Part 2 of the Bill became a “naming & shaming” exercise. Equally we would be concerned if the additional powers were to be used in a way that would duplicate both the existing complaints procedures & external inspection by Education Scotland and the Care Inspectorate. While we acknowledge that the Explanatory Notes for the Bill make reference to the Commissioner not duplicating roles of other organisations, this still leaves an opening for the Commissioner to investigate something that would be better handled by another agency.

10. It is our view that any powers should be used only as a last resort after all other avenues are exhausted.
11. Equally, we are clear that there needs to be clear guidance available to councils on what the UNCRC means for them in the delivery of children’s services, in light of Part 1 of the Bill, as well as Guidance on how and in what circumstances the Office of the Commissioner will have the scope to implement the additional powers.

**Part 3 - Children’s Services Planning**

12. For many years, COSLA has argued for better integration of public services locally. Whist we therefore accept the intention behind the Bill to improve integration and planning for Children’s services, COSLA believes that to be effective in practice any Bill proposals must not exist in a vacuum and should add value to other existing arrangements.

13. In particular, we want to be sure that Children’s services planning contributes to and is driven by the wider Community Planning arrangements that all partners are engaged in locally. This should be the forum through which partners should come together to develop partnership approaches to improving outcomes. For example there is an existing duty for local authorities to produce integrated children’s services plans, linked to Community Planning. Although we would argue that more needs to be done to put CPPs at the centre of reform our view is that this Bill should be an opportunity to drive that work forward in the context of children’s services, and avoid any chance of competing agendas or duplication arising.

14. It is therefore important that Committee considers how the Bill sits within this existing landscape; the activity going on to strengthen community planning, and alongside the developing Community Empowerment Bill which will set out in statute the new framework for Community Planning.

15. There are also clear links to the current proposals on the integration of adult health and social care services and it is possible that some local partnerships may wish to consider the inclusion of children’s services in those arrangements. Ultimately, it will be for individual local authorities and their health board counterparts to make that determination. We would also add that other organisations/people with an interest in children’s services within the voluntary or private sector that are not always directly connected to CPPs will also have a key to play in these tasks and should be equally covered by the proposals.

16. There is one aspect to the proposals in children’s services planning with which COSLA does not support. Part 3 paragraph 17 proposes Ministerial powers to establish joint boards, should there be concern that insufficient progress is being made in terms of integration. This was a late addition to the Bill, and one which had not been previously discussed with COSLA. Whilst we can understand the desire on the part of any Government to ensure the successful implementation of its policies, the discretionary powers taken within this section of the Bill are extensive and allow for the transfer of staff, property and functions to the new boards.
17. The powers appear also to be linked to section 16 of the Bill which concerns powers to issue direction to public bodies, including local authorities. Section 16 is a concern in itself as it allows Ministers with the broad scope to issue directions to local authorities and health boards on the exercising of their functions. We firmly believe that decisions on the operation of services, including how best to tackle outcomes, are best taken at the local level in close collaborations with partners. Taken together one interpretation of sections 16 and 17 is that local authorities and health boards could be restructured if directions of Ministers were not followed to the liking of the Government of the day.

18. This is a concern for anyone who champions local democracy, but given our good relationship with Government it is strange that Ministers feels the need to seek such strong powers. Local government has demonstrated a strong commitment to both the Bill and children’s services improvement generally and we have a strong track record of arguing for better, outcomes focused integrated services. This is consistent with our representation to the Christie Commission and our recent work to agree a vision for local government. We are also uncomfortable with notion that Parliament is being asked to grant powers to Ministers to restructure the public sector in a way that normally would require the full scrutiny afforded to primary legislation. It is possible to argue that these powers not only undermine local democracy, but national democracy too.

19. COSLA is completely opposed to the powers described in paragraph 17 and have made this point already to Government. Our principled position as agreed by our Convention is that there is no need for such powers, and that they should be removed from the Bill.

Part 4 - Provision of Named Persons

20. Scottish local government has been delivering the Getting It Right for Every Child approach for some years and recognises the value of GIRFEC in the improvement of children’s services. The proposal that the Named Person role should sit with local government, with the inference, though not expressly set out, that the role should sit with with schools in terms of their contact with children and young people from 5 to 18 years is welcome. It is clear that outside the family or care structure, children and young people have the most contact with school teaching and support staff. The Financial Memorandum provides for resources to be made available to provide GIRFEC training for senior teaching and support staff in schools and provide resources for backfill, while training is undergone. COSLA has worked with Scottish Government in testing these figures based on the current situation. As noted in the introduction this is a necessary area that will need to be monitored and scrutinised in future years to ensure funding is available for the provision to be sustainable.

Part 5 - Child’s Plan

21. The value of a Child’s Plan is already recognised since the GIRFEC approach was launched. COSLA has worked with Scottish government to promote the approach across local authorities. It is reasonable therefore that COSLA continues to support in principle, the proposals regarding a Single Child’s Plan.
The idea of a child’s plan is one that we completely support, but there is a need to consider how the plan relates to other plans. The best example is the coordinated support plan which is set out in ASL legislation. We understand that Government is looking at how coordinated support plans sit with respect to the child’s plan – with the option that a CSP could form part of the child’s plan where this is appropriate being perhaps the best solution. In an ideal world we would not require two pieces of legislation – this Bill and ASL legislation – to describe different aspect of children’s services planning, but it is the practical reality on the ground that is most important. It is therefore important that legislation and guidance makes clear how both the child’s plan and coordinate support plans will operate in practice.

22. In principle COSLA would accept that children, young people and families should be involved in the development of a Child’s Plan, where possible. However, in practical terms, while local authorities will seek to improve life chances for children and young people, managing expectations against practicality and the needs of other vulnerable members of the community will continue to be addressed by councils.

Part 6 - Early Learning and Childcare

23. COSLA supports the expansion of early learning and childcare as proposed in the Bill. The proposals in the Bill came about as a result of considerable joint discussion between COSLA, ADES and Scottish Government. This is also the most costly section of the Bill, and from the start COSLA recognised the very significant implications of the proposals on local authority resources.

24. The figures within the financial memorandum were developed through the work of COSLA with local authorities. They are the best figures we have for the implementation of this section of the Bill, and it is worth noting that local authorities have indicated that they are broadly happy that they are an accurate assessment of implementation costs in line with the agreed approach to delivering this aspect of the Bill, that is, to deliver the 600 hours in as practical a way as possible and without the additional requirement of more flexibility for parents. However, as we have already outlined the implementation of the Bill will stretch beyond the end of this spending review, which means it needs to be recognised that it is future budgets that will determine how effectively this policy can be implemented. Parliament needs to be aware that any shortfall in future funding will be felt by local government and ultimately parents and children.

25. Following discussions with Scottish Government we agreed that the Bill would require local authorities to deliver the increased hours in as practical way as possible by August 2014 with no immediate requirement for more flexibility for parents. This recognised practical challenges facing local authorities, and the short lead time to implement the additional hours in time for the start of the academic year 2014/15. In subsequent years additional flexibility will be introduced gradually, in consultation with parents, and within the overall resources made available by Scottish Government. Delivering increased flexibility is more complex and costs more money as a result, so it is important to
understand that local authorities will only be able to implement what they are funded to deliver. Local authorities have the flexibility to tailor future delivery of 600 hours of early learning and childcare to meet local needs, incorporating the views of parents.

26. On the basis that these issues have been agreed with Scottish Government, we support the proposals outlined in the Bill.

Part 7 - Corporate Parenting

27. COSLA has long been an advocate of corporate parenting and has been an enthusiastic supporter of publications such as ‘These are our Bairns’. This section of the Bill is important as for the first time it will set out a legal definition of what it means to be a corporate parent, and extend this to other public bodies – the corporate family, to extend the analogy.

28. We agree that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies and those acting on their behalf to provide the best possible care and protection for looked after children. In addition, it would be helpful if other public bodies or community planning partners have their roles clarified to achieve better outcomes through joint working. This will require the updating of guidance on corporate parenting.

29. We have to be clear though that the corporate parent cannot act in the same way as a birth parent. As such, any definition requires to define the parameters of the responsibility lucidly and to manage expectations in terms of the financial and human resources it would involve. However, local authorities and other public bodies can and do use their influence and weight in innovative ways to support both children in care, and those who have recently left it.

30. It is also important to note that any formalised definition of corporate parenting will have practical resource challenges in terms of on-going training/briefing sessions to ensure organisational wide commitment for councils and other community planning partners. At the same time though it should be acknowledged that there are some real examples of good practice around the country in relation to corporate parenting from councils that should be promoted.

31. One concern that we have on part 7 of the Bill again relates to powers of Scottish Ministers to issue direction to public bodies – including democratically elected local authorities. As with part 3 of the Bill we are not certain why Ministers feel they need to seek the ability to direct public bodies as set out in section 58. Local government has shown a strong commitment to the concept of corporate parenting in recent years and developed a good partnership with Government. Local and Scottish Government have a shared goal for improving lives of looked after children, so it seems disproportionate for Ministers to require the ability to issue directions. On a practical note we would also argue that the powers presuppose that Ministers somehow know better than local agencies about how to meet the needs of children in their care. We do not doubt Government’s commitment on this subject, but the experience of elected members and local professionals across all agencies and services must be respected.
Part 8 - Aftercare

32. COSLA is supportive of the policy intent of the extension of aftercare provision to young people that have previously been looked after. We understand that Government are looking for authorities to provide a level of support broadly consistent with what is provided currently on a discretionary basis for 19-21 year olds. However, paragraph 60, sub-section 8 states that Ministers will determine such types of support, the detail of eligibility will not be determined until secondary legislation. It is therefore important to emphasise that the full implications of this policy on local authorities will not be known until the secondary legislation is passed.

33. Currently, there is no equivalent legislation or statutory guidance for such type of support for 19-21 year olds. The decision on eligibility is made by the local authority, as they have the skills and expertise to assess the individual case. Potentially paragraph 60, sub-section 8 could restrict the provision local authorities can offer and could lead to a difference in the provision that is currently provided and the provision that could be provided after the legislation is implemented. It also restricts the flexibility a local authority has to amend the elements of support available to eligible kinship carers to reflect changing circumstances or the future identification of further support needs.

34. The assumptions that Government make on the number of young people leaving care and percentage of young people expected to be successful in applying for support seem reasonable and are based on national statistics and the experience of local authorities.

35. Our concern on this issue is one that we have no way of knowing what the impact of welfare reform will be on this group of young people, so there is every possibility that the numbers seeking assistance may not fall as much as expected. Early indications of the impact of welfare reform show significant increases of presentations in many authorities for this service.

36. Further, COSLA has less certainty over the accuracy of the costings of this aspect of the Bill due to the difficulties for local authorities in estimating the financial impact. In particular, we are not convinced that the Scottish Government have accurately estimated the average annual cost of support (£3142 per young person). This figure includes an estimate that the average cost for travel would be £400 per year; that emergency payments up to £200 per year could be payable and that payments to outside agencies (such as for third sector support) would be around £1500. It also includes an estimate of staffing costs required to support the young person. From discussions with local authorities we believe that these costs underestimate the actual cost of supporting a young person who has left care. In particular we are aware that some local authorities have indicated a concern that travel costs are not realistic and do not factor in cost of travel particularly in rural areas.

37. Finally, if the subsection detailed above remains in the Bill the actual cost will not be clear until secondary regulations have been passed potentially leading to a gap in funding which could undermine the intention of this section of the Bill.
Part 9 - Counselling Services

38. We believe the intention of this section of the Bill is to ensure that families in the early stages of distress are provided with support. The move towards early intervention is welcomed by COSLA however the provisions set out within Part 4 19 (5) already provide for this to happen under the functions of the “named person”. This section of the legislation may therefore duplicate the earlier section.

39. Further, if the section remains the term “counselling” used is unhelpful and should be replaced with support. Counselling is a specific form of formal support that will not be appropriate for all families. All forms of support (e.g. family group decision making, drug and alcohol support groups etc) should be considered after an assessment of need is carried out. Also, as there is no definition of ‘eligible child’ within the Bill it is difficult for local authorities to be able to assess the impact of this. As things currently stand local authorities are to provide undefined counselling services to parents or those with parental rights and responsibilities of an undefined group of children.

40. Further, it should be noted that as consequence of this provision children and families may also be brought into the care system at a far earlier stage than is currently the case.

Part 10 - Support for Kinship Care

41. The policy intention of kinship care orders is to help families become more able to deal with the issues which they face, without the need for formal care. The number of children looked after in formal kinship care arrangements has grown significantly in recent years and is projected to increase further. A mechanism that provides families with a better alternative to formal care is therefore welcome. It has also been well discussed over the last few years that the growth in kinship care and the corresponding increasing in kinship care allowances have put pressure on local government finance. By transferring parental rights to carers, the orders should allow families to better access other financial benefits from the DWP. The Government believes that this should go some way to reduce the financial pressure on local authorities, but it also, just as importantly, minimises the distinction between kinship care and the lives of other families.

42. In the end how successful orders prove to be at reducing payment of kinship care allowances will depend on how attractive the orders are to families. At this point of time it is difficult to project accurately how many families will take out a kinship care order. Uptake will depend on a number of factors such as impact of welfare reform, the support provided by authorities and the detail of how orders will operate - including eligibility and length of support – which will be set in secondary legislation. The interplay of these variables makes it difficult to know for certain whether the financial assumptions made by Government are accurate. Again, we would reiterate that local authorities will only be able to implement what they are funded to deliver.

43. The accuracy of the financial assumptions is the biggest issue that we have discussed with Scottish Government. When COSLA discussed with local
authorities the financial implications of this aspect of the Bill no national picture emerged, and it is clear that local authorities have found it difficult to evaluate the future impact of the policies. With accuracy depending on the financial assumptions made, without actually implementing the legislation and testing the assumptions for real, there will always be a degree of risk for local authorities. For example, the Scottish Government predicts a 6.5% continual annual increase until 2019-20 of those applying for a kinship care order. Over the past 3 years Falkirk Council have seen around a 30% increase whilst Inverclyde has seen a 37% increase since 2011. Both Councils, in different ways, have proactively supported families to move to kinship care orders. Whilst not all local authorities have experienced such significant increases this clearly demonstrates the potential increases local authorities are likely to face if the order is popular with kinship carers (which is the intention). Further, we are aware that the recent experience of some authorities of the introduction of Adoption Orders shows that the financial costs to councils were underestimated. Additionally, the assumptions relating to estimating the take-up and level of costs per Order made by Scottish Government that underpin the figures for this complex area are numerous, increasing considerably the potential for the actual costs to differ from the estimated costs.

44. The figures which have been developed by Scottish Government are a genuine attempt to assess the cost/benefits of kinship care orders. It is our hope that kinship care orders are a success and provide an alternative to formal care for some families. However, with considerable uncertainty over how many families will take up an order, the financial risk facing local government is potentially significant. The exact size of this risk depends on how accurately Scottish Government has modelled the take up of kinship care orders. We therefore believe it is necessary that both COSLA and Scottish Government jointly scrutinise and monitor the spend on this legislation to ensure that local government is, and continues to be, sufficiently resourced to carry out the new duties that will be enacted.

Part 11 - Adoption Register

45. Local authorities always put children first and will have good reasons for currently not using the register. We are aware, for example, that some local authorities already recruit enough people who are willing to adopt to meet the needs of children in their area. Councils in this position may therefore not feel an urgent requirement to join the register. Presently, consortia arrangements work very well between local authorities in various parts of the country.

COSLA accepts that the development of the national register is a positive one and we are aware that its usage is rising. It provides local authorities with another option when trying to place vulnerable children with adoptive families across Scotland. However, the proposal to move to a national adoption register through compulsion for local authorities should only be considered where there is complete confidence that it is in the interests of children to do this.
Part 12 - Other Reforms - Children’s Hearings

46. As mentioned in the summary to this submission, the sections of the Bill which relate to amendments to Children’s Hearings (Scotland) Act 2011 give us concern. During the passage of the 2011 Act through Parliament COSLA raised some real concerns about centralisation of services and the establishment of a new national body – Children’s Hearings Scotland (CHS) – to run what had been local services. In particular we were worried that the newly established office of National Convener would only have to consult local authorities when drawing up area support teams. There was no requirement to reach a mutual agreement. For COSLA it seemed inappropriate that an unelected official should have this power, and that it was actually more appropriate for the Convener to have to reach agreement with local authorities concerned. In the end Parliament agreed with our position.

47. The proposed amendment in section 69 reverses the decision taken by Parliament and reinstates the original intention of Government. This is not something that COSLA can support. Whilst we have been told by both CHS and Government officials that the Convener would listen closely to views of local authorities concerned, there is still an issue of principle about the head of national body potentially acting against a decision of a democratically elected authority.

48. We are also very concerned about the proposal in section 70 to allow the National Convener to effectively compel a local authority to deliver specific support services to area support teams. At the moment CHS has to reach agreement with councils on support services. We expect that the dialogue between CHS and individual authorities is not always easy given the financial constraints faced by the whole public sector. Nonetheless, we would argue that this dialogue is necessary and allows for mutual agreement to be reached. This has to be preferable to the potential forcible allocation of staff, property and services against the will of the local authority, and potentially to the detriment of other services.

49. We would ask that Parliament considers carefully whether it is appropriate for the National Conveners of CHS to have these powers. It is COSLA strongly held view that the 2011 Act should not be amended as proposed in the Bill.

Part 12 - Other Reforms – School Consultations

50. COSLA currently does not have any comment to make on this section. However, we have a long standing interest in this area and will be responding to the Government’s consultation on possible changes to the Schools (Consultation) (Scotland) Act 2010. We would be happy to provide the Committee with additional evidence on any changes to the Bill that might be proposed at stage 2.

Conclusion

51. We acknowledge this is a long and complex response, but this matches the length and complexity of the Bill. COSLA has been working on the Bill for many months and would be happy to use our experience to help the Committee’s
scrutiny of the legislation. We would therefore be happy to attend oral evidence sessions and to work with the Committee and individual members on all aspect of the Bill.

COSLA
1 August 2013
Education and Culture Committee
Children and Young People (Scotland) Bill
Supplementary submission from COSLA

1. I wanted to write to you after listening to the debate at the Committee on stage 1 of the Children and Young People Bill. I felt it important not only to reinforce the points that COSLA has already on the Bill but to also reflect on the points that others have made. For this reason I am happy for you to accept this as supplementary evidence on the Bill and to make this public. I have copied this letter to all the party spokespersons for Education.

2. I want to take this opportunity to restate our support for the policy intent of the Bill. The Bill is large and complex and I have no doubt can be improved with constructive amendments, but as we approach the end of stage 1, I would not want the Committee to lose sight of what it is intending to achieve. This is particularly true on those parts of the Bill concerning data sharing and the named person that have caused a degree of controversy. I will return to this point later in this letter.

3. The first thing I wanted to say is that we welcome the scrutiny at all committees, including your own, as we want to see the best possible legislation emerge from the Parliamentary process.

4. As everyone recognises, the Bill is very complex and the financial assumptions which underpin it are equally complex. So while we welcome the Government’s guarantee of full funding there is still a risk for local government if the financial assumptions are proven to be inaccurate. I hope that this is not the case but it is worth saying that the risk to local authorities is further heightened by two other major factors - the length of time over which the Bill will be implemented, which means there can be little certainty over how much cash will be available to this or any other Government and the damaging impact of welfare reform which is already affecting families in Scotland.

5. This is why we have pushed throughout stage 1 for the highest level of scrutiny and for monitoring of the financial implications of the Bill once implemented. On this point I welcome the willingness of the Minister, stated on 8 October, to monitor the costs of implementation, but this has to be a real process which is honoured by any future administration. However, I am sure you will agree it is far more preferable to get the Bill right from the outset. For this reason the remainder of the letter reflects on some issues that have arisen during the Stage 1 discussions at your committee and highlights our thoughts on those issues.

Children’s Rights

6. We recognise that a number of strong views have been expressed on this section of the Bill. Local authorities treat rights of children extremely seriously and we view the UNCRC as a hugely beneficial framework within which to operate. However, it is vitally important that we do not allow the natural zeal to enhance
rights of children to overtake good law making. COSLA supports the Bill as drafted, but it is important that if the Committee is minded to recommend significant changes, the proper level of scrutiny and consultation is applied to them. A fast moving stage 2 where there is pressure on MSPs to scrutinise all submitted amendments on what is a large Bill would not in our opinion be the best way of considering the arguments, for and against, the incorporation of the Convention within Scots Law. We have to remember that children’s rights were proposed to form a Bill on their own and not be part of a multifaceted Bill on children’s services. As I have said, local authorities are already well advanced in their handling of children’s rights and we want to ensure that the legislative framework continues to be helpful and does not lead to unintended consequences, which could be the result of rushing through significant amendments to this section.

**Named Person**
7. I have to say that the debate on the role of the Named Person has caused me some concern. COSLA has been supporting the implementation of the Getting it Right approach for many years. As far as we are concerned there is absolutely no intention for the Named Person role to replace, detract or dilute the role of parents as primary care givers. From our point of view the arguments suggesting that the role of named person conflicts with European Convention of Human Rights seem inflated, ill-informed and in danger of obscuring the central purpose of the Named Person. Getting it Right for Every Child is about joining services up for the good of all children – but at its core it is about identifying vulnerability at the earliest possible stage. The Named Person is therefore about providing a safety net for children, to help keep them secure by providing a recognised point of contact where concerns can be reported. We have no doubt that this section of the Bill can be improved, but we make no apology for being whole hearted supporters of the principle of the Named Person and the Getting it Right approach.

8. On a more practical note, we feel it is also worth making the point that the costs of ensuring that on-going training and support for teaching and other local authority staff to undertake the role of the Named Person and to support their understanding of appropriate information sharing may not be simply addressed by one-off funding suggested by Government.

**Early Learning**
9. We covered this section in some depth during our oral evidence section. However we have noted calls by some stakeholders for a standard rate for payments to partner providers to deliver the proposed 600 hours. We made the point in our evidence that the decision on rates paid for this service must fall within local decision making by councils, as they have the best understanding of the resources available to deliver all services. There are good reasons for this position. Beyond the local variation in cost of living and availability of partner providers which all impact on the market rate, we have already made the point that even with the very welcome funding guarantee from Government councils cannot be absolutely certain over how much cash they will actually receive in future years. With the other factors such as inflation and impact of policies such as benefit reform, we equally cannot be certain what level of financial support to
partner providers is affordable in future years. It is for this reason that we believe that only councils can work out at the local level, with their partners, the best way of financially supporting early learning and childcare in their area.

**Kinship Care**

10. The penultimate point that I want to make is on kinship care. We believe that moving children and young people out of formal care can only be regarded as a good move, if the circumstance of a move into informal care is handled correctly. For this reason we are on record as supporting the policy intention of this section of the Bill. The financial memorandum sets out a number of assumptions around the predicted number of carers who may move to the kinship carer order and associated savings to local authorities. Our experience of working on the financial memorandum with Government is that the assumptions that underpin kinship care orders are the most complex of any section of the Bill. There is a substantial risk to councils that these numbers and associated savings are not realised for the following reasons:

- For those formal kinship carers that currently receive financial support, many may be (or perceive they will be) financially worse off, as part changes to the benefits system. In this circumstance few families are likely to choose to apply for an order;
- Some carers who carry out the role of a kinship carer on an informal basis and do not currently receive support from the local authority may perceive orders as an opportunity to gain further support. This could lead to a growth in the support demand for local authorities if existing formal carers do not take out orders for the reason set out in the first bullet point, and
- If a Kinship Carer does successfully gain an order but is subsequently unable to financially support the child with the assistance of the benefits system they may be forced to fall back on emergency financial assistance from councils.

11. Further, if an Order is granted and those Kinship Carers that require financial support move to the benefit system, any additional transitional financial payments made by the Council may well have a ‘knock on’ impact on the level of benefit received. This will lead to a situation where Councils are paying, in essence, part of the benefit payment. It is important that this situation is clarified before orders are passed into law.

**Children’s Hearings**

12. The last point I want to raise is on children’s hearings. This is a small but important section about which we have previously raised concerns. We believe that the 2011 Act as drafted represents a better way for framing the relationship between local authorities and Children’s Hearing Scotland than the one proposed by the Government’s amendments. This was previously recognised by Parliament when the Act was passed. We are under no allusions that discussions over administrative support and the makeup of area support teams are sometimes challenging, but we would argue that the requirement for CHS and authorities to reach a mutual agreement should not be disregarded in favour of an amendment that grants the National Convener sweeping powers over local authorities. Of particular worry is the section 70 of the Bill which allows the National Convener to order an authority to provide any administrative support
(defined extremely widely as staff, property or other services) that is considered appropriate. This seems unnecessarily broad power for an unelected official to have, and is completely disproportionate to the challenge of delivering the hearing system in tight financial times.

13. COSLA accepts that Stages 2 and 3 of the Bill will bring the possibility of a number of amendments. It is with this in mind that we bring these issues to your attention as you begin to consider your stage 1 report.

Councillor Douglas Chapman
COSLA Spokesperson, Education, children and Young People
15 October 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
Education and Culture Committee
Children and Young People (Scotland) Bill

Crossroads Youth and Community Association

Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland’s Commissioner for Children and Young People;

1. It is extremely difficult in some circumstances for this to happen when the services / issues are more political by nature and a clear plan needs to be set out relating to how these more sensitive issues will be tackled in relation to children’s rights.

2. An example of this is our organisation’s consultation and pilot programme with NHS Greater Glasgow and Clyde relating to their Free Condoms initiative, in essence sexual health education. This was a needs led programme after listening to what young people require to be protected and informed about relating to the subject of health.

3. We were immediately aware that this would potentially cause issues with some parents as we know that it is a hugely contentious issue in the catholic secondary schools. As we are a voluntary service we engaged in a consultation with parents regarding the programme and outlined some of the United Nations Convention on the Rights of a Child articles to parents; children and young people have the right to ‘good quality health care’ but it also states that the government will not interfere with family matters, religion etc... ensuring parents knew as much information as possible before they made a choice for their child.

4. This is only one example but how would sensitive issues that cross over children’s / family rights such as this be handled when policies and services are being designed?

Improve the way services support children and families by promoting cooperation between services, with the child at the centre;

5. The principles of the Getting it Right for Every Child approach is clear and makes absolute sense that young people should be placed at the centre of what we do and agencies must work together to deliver a co-ordinated approach. In times when core funding is being cut and increased workload is being placed on staff, organisations are struggling to deal with these pressures. Some organisations, particularly smaller local voluntary sector organisations are finding it extremely difficult to co-ordinate their work with other agencies as mostly likely both organisations are struggling to continue to deliver the services they are funded directly to deliver.

6. In theory the approach works, practically organisations delivering work at the coal face are struggling to understand how this could be done with their limited and enormously stretched resources already.
7. Policy into practice at a local level engaging small voluntary sector organisations needs to be considered.

Crossroads Youth and Community Association
9 May 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
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1. Thank you for your email letter dated 07 October; please accept my sincere apologies for the delay in responding to you on.

2. Without knowing the precise details and purpose of the financial support that will be provided to kinship carers under the new Bill, we cannot guarantee that it will have no effect on benefit entitlement. It is already the case that, for income-related benefits, we disregard kinship care payments made under regulations 33 and 51 of the Looked After Children (Scotland) Regulations 2009. If the intention is that the new payments broadly replace or replicate the purpose of these existing payments, it is very likely that we would recommend to our Ministers that they too would be disregarded. However, if the new payments are significantly more generous or for a different purpose, we would need to consider whether a disregard could still be justified. Any disregard would require an amendment to our legislation.

3. Our policy aim is to ensure that there is not double provision by the state, while ensuring that the additional costs involved in having a kinship care situation are recognised in the benefit system. Assuming we can justify a disregard under these principles, we are happy to work with the Scottish Government to agree the necessary changes to the legislation.

4. With regards to Universal Credit a child or young person who is looked after by a local authority is not treated as being the responsibility of the claimant. This follows the same approach as currently taken in the rules for Child Tax Credit.

5. The structure of the Universal Credit Regulations 2013 (S.I. 2013/376) is much simpler than the approach taken in existing secondary legislation. Unearned income within the descriptions listed in Regulation 66 (What is included in unearned income) will reduce payment of Universal Credit pound for pound. Other types of unearned income are completely disregarded by virtue of falling outside the scope of this Regulation, for example a fostering allowance.

6. I hope that this helps to clarify our position.

Yours sincerely

Pete Searle
Director, Strategy – Working Age Benefits
6 November 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  

Bill and Sharon Dierberger  

We are appalled to learn of the proposed Scottish law that would restrict freedom in Scotland by taking away responsibility from parents and families to raise their children and instead, deeming that the government's job. This kind of law is abhorrent in a free society and is the antithesis of what government's role is. Your government should be protecting and promoting parental rights and freedoms, not encroaching on them. What you are attempting to accomplish by this law oversteps the bounds of a civilized, democratic society and resembles the first steps of what happens in a state-run, tyrannical government. Surely you have not forgotten the beginnings of Nazism in your fellow European country?

Please return to sanity and get your hands off the family. Do your job, not the job of parents.

Bill and Sharon Dierberger  
Minnesota, USA  
24 July 2013
1. Down’s Syndrome Scotland welcome the opportunity to respond to this call for evidence from the Education and Culture Committee of the Scottish Parliament. As a charity, we work to improve the quality of life for everyone in Scotland with Down’s syndrome and their families. Therefore we have a particular interest in the proposed changes outlined in the Children and Young People (Scotland) Bill which has the potential to improve the lives of children with Down’s syndrome by ensuring that their rights are being taken seriously.

2. Ideally Scotland should be a place where the needs of children and young people with Down’s syndrome would be systematically encompassed in any new legislation and its ensuing practice. But the reality is that their interests still need to be supported and promoted by organisations like Down’s Syndrome Scotland so that their voices can be heard by politicians across the country and practitioners reminded that children and young people with Down’s syndrome are included in the legislation.

3. Firstly, Down’s Syndrome Scotland welcome the Bill’s Policy Memorandum to put children and young people at the heart of planning and delivery of services and to ensure their rights are respected. We also support the duty on the Scottish Ministers and public authorities to promote awareness of the rights of children. Nevertheless we are of the view that the United Nations Convention on the Rights of the Child (UNCRC) should be fully incorporated into Scots law to guarantee the protection of children’s rights throughout the country.

4. To ensure Scotland is the best place for children to grow up in, their rights should be respected and protected across the entire public sector. Whilst we recognise the duties imposed by the Bill on certain public bodies (as presented in Schedule 1 of the Bill) to promote awareness of the rights of children, we are of the view that the Bill should lay stronger emphasis on the requirement for all service providers/public authorities to effectively demonstrate that they have considered the UNCRC and responded to it by adapting support and services accordingly. Then, we fully support the Bill’s provision to increase the powers of Scotland’s Commissioner for Children and Young People (SCCYP) and we note the financial implications for these proposals as presented in the Financial Memorandum. However, a clear remit of this role is still needed which clearly outlines the work and new powers of the SCCYP in relation to other legal institutions (like the courts) in Scotland. Furthermore, we would seek clarification on the way the Scottish Government intends to present and promote the SCCYP’s new role to children and young people, specifically to children and young people with Down’s syndrome, and the associated costs. We would also suggest that this issue could be partially addressed by working in partnership with organisations whose constituencies include children and young people with learning disabilities.
5. As far as the Child’s Plan is concerned, we welcome the single planning approach proposed for children with additional support needs but the Bill does not outline how to actually make it work in practice. This is a concern given that at present the quality of services available to children with Down’s syndrome and their families considerably varies across Scotland. On one hand, as noted in the Analysis of Responses to the Children and Young People Bill Consultation¹, one should be aware that the provision of more services may result in services of poorer quality and it is crucial to ensure that this does not happen. On the other, we are currently dealing with significant issues with regard to the great disparity in the range of services provided by local authorities. As an example, a single mother of five children, two of whom have Down’s syndrome, is receiving 4 hours of support weekly in one local authority, while another mother with one child with Down’s syndrome is being offered 15 hours of support per week in another local authority. Furthermore, members of our Family Support Team have seen some examples of excellent practice within Education, but they are also raising serious concerns about the implementation of Coordinated Support Plans (CSPs) and Individual Educational Plans (IEPs) and the amount of support offered to children with Down’s syndrome in mainstream schools. In one local authority, parents have been told that there are not enough support workers to help a child with Down’s syndrome going into a big class (a class of 25 which is permissible in P1). Further, even if there is support available, they will not know that until the child begins school in August. This is a very difficult and upsetting situation for parents. In another area, there is no support at all in some cases, while in a fifth local authority composite classes of P1/P2/P3 make the situation of children with Down’s syndrome extremely difficult.

6. In relation to secondary school education, while we do not have information from across the country, we are aware that transition between primary and secondary remains difficult for schools to implement because of other pressures. In fact, one of our Family Support Officers was informed by the principal teacher of support in one local authority that secondary teachers are too busy to make the child a priority because they are under stress with implementing the Curriculum for Excellence! Clearly this is a worrying and stressful time for children and their parents when they should be receiving the support they need wherever they live in Scotland.

7. It is also important to note that cooperation and coordinated services are critical during transition periods for children with Down’s syndrome (e.g when a child is starting or leaving school). As already outlined by Susan Deacon in her report Joining the Dots² (http://www.scotland.gov.uk/Resource/Doc/343337/0114216.pdf, from page 9), there is strong evidence available showing that investing in early years and early intervention is essential for a child’s development. Two years after the publication of this report, serious problems still persist with regard to early years support and we believe that legislation is now urgently needed to ensure that transitions are planned properly. In fact, transparency and accountability are key in

strengthening the provision of early years support and childcare, even more so for children with Down’s syndrome. Monitoring the implementation of the proposed change will thus be crucial. Whilst we recognise the duties imposed by the Bill on local authorities and health boards to publish reports on progress on children’s services plans every year and the possibility for Scottish Ministers to act if local authorities and/or public bodies fail to carry out these duties, we feel that more provisions should be included in the Bill about the monitoring of new policies and services. We strongly believe that the views of children, parents and carers with lived-experience must be collected and assessed in order to comprehensively evaluate the work of local authorities and public bodies, and the services children and their carers are entitled to receive.

8. Then, the concept of the ‘named-person’ outlined in the Bill remains unclear and more guidance is needed on this issue. In particular, we believe that more consideration should be given as to what this role will precisely entail in relation to the Child’s Plan and whether appropriate resources will be made available for it. As a charity supporting the interests of individuals with Down’s syndrome, we are particularly concerned about the fact that a named-person could be a head teacher within a school. Being a named-person as well as a teacher would not only increase teachers’ workload but we would also question the resources available to them as a named-person for what may be large numbers of pupils. For example, we are not convinced that teachers would have time to deal with the care coordination programme appropriately. In our opinion, problems are also likely to arise during school holidays, especially over the summer, when teachers and pupils are away from school over an extensive period of time. With regard to this point, it is also worth mentioning that education is not always a positive experience for children with Down’s syndrome and we would question what alternatives would then be offered to families in need of support if their child is not going to school. Lastly, if this concept is implemented, we would suggest that a ‘named-person’ should be appointed until the age of 25 years for individuals with Down’s syndrome. Local authorities should then be made accountable for providing such a service systematically for young people with Down’s syndrome; this would ensure that individuals do not have to go through what might be a lengthy process (potentially leading to a temporary suspension of the service provided) of requesting the service to be continued after they turn 18.

9. Finally, we warmly welcome the proposed changes to offer more support to kinship carers.

Down’s Syndrome Scotland
26 July 2013
The Educational Institute of Scotland

Introduction

1. The Educational Institute of Scotland (EIS) welcomes the opportunity to present written evidence on the general principles of the Children and Young People (Scotland) Bill which was introduced to the Scottish Parliament on 17 April 2013. The EIS represents over 80% of Scotland’s teachers, lecturers and associated professionals throughout all sectors of Scottish Education. The EIS is the largest education trade union in Scotland.

Part 3 – Children’s Services Planning

2. Teachers understand the importance of children being safe, healthy, achieving, nurtured, active, respected, responsible and included. A child’s emotional and social wellbeing are key contributory factors to the child’s intellectual development and deficiencies can lead to underachievement.

3. The EIS believes that a duty should be placed on public bodies to work together to design, plan and deliver their policies and services jointly to ensure that they are focussed on improving children’s wellbeing. However, any duties placed on public bodies must not be constrained by the availability of limited resources. If as a society we are to improve children’s wellbeing, then as a society we must ensure that the necessary resources are available when required. These must include necessary levels of staffing to deliver education, opportunities for professional development for staff, time for collaboration and specialist provision.


5. The current financial constraints on local education services and increased workload demands on personnel are in our view barriers to effective partnership activities. This often constrains effective joint design, planning and delivery of policies and services.

Part 4 – Provision of Named Persons

6. The EIS supports the principle of a Named Person – a child or young person should have a known and consistent point of contact who can help her/him or her/his family access services, provide information and support, and discuss and address concerns with other agencies. The degree of support that the ‘Named

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1 Education at a Glance June 2013 Chart C2.3 Page 282
Person’ is expected to provide remains unclear as does the scope of any Child’s Plan that the Person might be required to develop.

7. The 'Named Person' must have guaranteed time and resources to carry out this highly responsible task. The availability or otherwise of time and resources should not prejudice the decision regarding who the most appropriate 'named person' is and should not lead to a default position whereby the school is expected to provide a 'named person' regardless of capacity or resources.

8. It must be recognised that the costs associated with the provision of adequate resources to schools including increased staffing and additional management time for teachers undertaking the role of 'named person' will be on-going and not 'one-off'.

9. While the EIS understands that there is an acceptance that training will be required for staff delivering the Named Person role, not only will there be costs associated with replacing staff for training days, but should teaching staff be allocated the role of Named Person there only may continue to be challenges in the future in obtaining supply staff to cover absences.

10. Costs associated with training of staff delivering the 'named person' role must be met, including the provision of supply staff to cover absence.

11. The EIS asks that further consideration be given regarding who should undertake the role of 'named person' in the pre-school sector.

Child's Plan

12. Developments to date involving children, young people and their families in the development of planning have been characterised by paperwork, audit trails, protection from future challenge and bureaucracy rather than on direct work with these participants. Children, young people and their families could be effectively involved in future in the development of the Child’s Plan if the necessary levels of staffing, specialist provision and time for collaboration were also provided.

13. One current difficulty in many schools is that teachers are spending time, in conjunction with members of Senior Management Teams, drafting plans for children and young people when they should be working with them directly in the classrooms. Duplication of paperwork in the form of a planning and reporting on the outcomes of the plans could be better spent working directly with children and young people.

Early Learning and Childcare

14. The understanding of the child as an active learner is reflected in the principles of Curriculum for Excellence which is based on broad and inclusive definitions of learning and an understanding of children’s development and learning which is common to all learners from 3-18. It is, therefore, all the more important that there are fully qualified and registered teachers planning and delivering
educational opportunities to suit the particular needs of all of Scotland’s youngest learners, no matter where they live.

15. Section 44 of the Bill specifies that the mandatory amount of early learning and childcare is 600 hours in each year. If the number of hours of funded early learning and childcare is to be increased from 475 hours to 600 hours per annum, parents have a right to know how many of these hours are to be provided by qualified GTCS registered teachers. In addition, quantification is required regarding the ratio between ‘early learning’ and ‘childcare’. The current deployment of peripatetic nursery teachers has resulted in many children attending nursery classes in Scotland no longer having direct access to a qualified teacher. It is for this and other reasons that the EIS calls for the introduction of national, legally enforceable standards on access by pre-five children to a qualified GTCS registered teacher.

16. Increasing the number of hours of funded early learning and childcare will not in itself result in an increase in the quality of educational provision. Quality education represents a substantial part of the solution to the problems of Scotland’s society. Education is an investment with a substantial return. Only by proper funding can education in Scotland deliver for our young people. The EIS believes that only by guaranteeing the employment of nursery teachers can quality education be guaranteed.

17. Nursery schools and nursery classes, with qualified GTCS teachers, mean quality educational provision for our youngest learners before they move on to primary schools. This is evidenced by research undertaken by OECD, Education Scotland, the Scottish Government and the EIS which conclude that early years provision with qualified teachers gives young children the best start in their education. The benefits of nursery schools and nursery classes with qualified teachers are becoming ever more apparent.

18. Section 48 of the Bill deals with the issue of flexibility. It is unclear how ‘flexibility’ will be defined and what it may mean for early learning outwith term-time. At present it is the experience of the EIS that “flexibility” has been used by local authorities as a mechanism to avoid their responsibilities to the pre-five cohort under Curriculum for Excellence 3-18. Overall, there has been a dilution of early years education delivered by teachers in Scotland over the last 10 years and the distinctions between ‘education’, ‘early learning’ and ‘childcare’ have become blurred. Much more clarity is now required surrounding the issues of ‘early learning’ and ‘childcare’.

19. Research carried out by the EIS in 2010 highlighted that the removal in 2002 of the statutory requirement to have teachers present in nursery education ‘gave local authorities greater flexibility in deploying teachers in pre-school centres’
(HMIE, 2007, cited in Adams, 20082). The consequences of this are outlined below:

“The resultant replacement of the teachers by nursery nurses ... had some unwelcome side effects: Many establishments were left with no employees qualified to degree level; early years expertise was lost; and a number of nursery classes found themselves being nominally led by the primary head teacher, or depute, who knew little of nursery pedagogy. In these situations, the quality of nursery education became solely dependent on the practice of nursery nurses.” (p198)

20. With regard to early learning and childcare, the EIS draws attention to one of the most important pieces of research which was carried out by the Effective Provision of Pre-School Education (EPPE) Project (2004). The EIS highlights that this study also concluded:

- Trained teachers were most effective in their interactions with children, using the most ‘sustained shared thinking’ interactions.

- Staff qualified at degree level, almost all of whom were teachers, were more likely to encourage the development of language and mathematics and to encourage children to take part in activities which provided cognitive challenge.

- Having qualified trained teachers working with children in pre-school settings (for a substantial proportion of time, and most importantly as the pedagogical leader) had the greatest impact on quality, and was linked specifically with better outcomes in pre-reading and social development.

- Where there were trained teachers there was a stronger educational emphasis, with the teachers playing a lead role in curriculum planning and offering positive pedagogical role modelling to less well-qualified staff.

21. In recent years, many local authorities have reduced the number of qualified nursery teachers employed by them. Nursery schools and nursery classes with appropriately qualified teachers means quality educational provision for our youngest learners before they move on to primary schools. The provision of nursery education and a sound educational experience is a right for all Scotland’s children. The EIS would welcome the increase in pre-school hours where these hours are delivered by qualified teachers.

22. There will be consequent demands on school accommodation. It is unclear how councils will be able to meet these. There will be a need for additional staffing as well.

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Concluding Evidence

23. Figures obtained from the 2012 annual census of pupils and teachers in publicly funded schools in Scotland conducted in September 2012 reported that 75.4% of children had access to a GTCS registered teacher during the census week. [http://www.scotland.gov.uk/Resource/0041/00410232.pdf](http://www.scotland.gov.uk/Resource/0041/00410232.pdf)

24. This means that 1 child in 4 in Scotland did not have access to a GTCS registered teacher during the census week. The Scottish Government policy of pre-five children having access to a teacher is now a matter of discretion for each of Scotland’s 32 local authorities. The EIS is clear that one of the key ways to address the inequality of poverty is by providing a sound educational experience for 3 and 4 year olds through nursery education provided by fully qualified nursery teachers. Scottish education law should be amended to require local authorities to provide nursery education for 3-5 year olds with qualified teachers in the same way as they are required to provide primary and secondary education.

Educational Institute of Scotland
Executive Summary

The focus of the Faculty of Advocates’ evidence is on the legal effects of the proposed Bill and its coherence with other aspects of the law. The Faculty appreciates the commitment of the Parliament to the welfare of children and young people but has reservations about the efficacy of the proposed legislation to advance the interests of children and young people. The Bill proposes an assumption by the state of functions that have historically in Scotland been the responsibility of parents. The proposed measures place an overlay on an existing structure and measures that are already in place, without specifying how they are designed to function in relation to existing measures.

Part 1 - Rights of Children: This part of the Bill lacks coherence and seems to promote an over-complicated, uncertain and fragmented approach to ensuring that the United Nations Convention on the Rights of the Child is intrinsic to Scottish public life going forward. The Convention has been signed and ratified by the UK Government and so the United Kingdom is already bound in international law to comply with it. The obligation for the Scottish Ministers to lay a report before the Scottish Parliament every three years setting out how the Scottish Ministers have complied with their obligations is otiose given the existing reporting obligation under the Convention.

Part 2 - Commissioner for Children and Young People in Scotland: The Faculty has no overarching concerns about this part of the Bill. It seems to make sensible and coherent proposals for the protection of Scottish children. It is not clear why responsibility for the monitoring of the implementation of the provisions of the Convention has not also been given to the Commissioner rather than relying on the fragmented approach set out in Part 1 of the Bill.

Part 3 - Children’s Services Planning: If it is intended that the children’s services plan include education services provided by a local authority, the Faculty considers such intention should be clearly and expressly stated. The onerous obligations imposed on local authorities and other service providers in preparing plans every three years can only be met if there are sufficient resources both to provide the services to children and to provide the reporting on such provision. The Faculty is concerned that the terms of clause 17 are both wide and far reaching and appear to misunderstand the nature of the functions conferred on a local authority, a health board or any other service provider by Part 3 of the Bill. The Faculty considers that clause 17 purports to allow the Scottish Ministers to transfer the delivery of services to such a joint board, where the primary responsibility for delivery of services is not conferred by the Bill, but by other legislation. Clause 17 has the potential for confusion and legal challenge.

Part 4 – Named Persons: This part of the Bill dilutes the legal role of parents, whether or not there is any difficulty in the way that parents are fulfilling their
statutory responsibilities. It undermines family autonomy. It provides a potential platform for interference with private and family life in a way that could violate article 8 of the European Convention on Human Rights. The Faculty accepts that there may be cases where a ‘named person’ will be of assistance but the provision is not focused on the children for whom the measure would be helpful and it does not cohere with other similar measures for such children. No attempt is made in the Bill to integrate the role of a named person with similar roles when other services are provided.

Information sharing: It is not necessary to violate the right to privacy and abrogate the data protection rights of all children and families in Scotland. The open transfer of data in the manner contemplated in the Bill represents a serious intrusion on individual rights. The data protection principles set out in the Data Protection Act 1998 were developed to secure an appropriate balance between the need to process information and the need to protect the rights of the subject or source of the information. It is not clear how that balance is achieved in these proposals, which may in any event relate to matters reserved to Westminster.

Part 5 - Child’s Plan: The Faculty suggests that such a child’s plan should only be made where no other statutory plan is in place for the child. The Faculty considers the definition of “wellbeing need” to be so wide as to apply to every child in Scotland. Part 5 provides no mechanism for assessment of whether a child has a wellbeing need. Where there is no period for assessment, no provision for request for assessment and no provision for ongoing assessment of every child in Scotland, the time limiting provisions of clause 33 (2) are meaningless. The Faculty respectfully questions whether, if Part 5 is to be made law, it is necessary to exclude children who have a parent who is a member of the regular forces. Co-operation already exists between local authorities, the Reporter to the Children’s Hearing and the armed forces in cases where a prospective member of the armed forces is subject to a compulsory supervision order.

Part 6 - Early Learning and Childcare: The Faculty queries the necessity for this Part of the Bill. Section 1(1A) of the Education (Scotland) Act 1980 already allows the Scottish Ministers to prescribe the children for whom pre-school education must be made available. Section 1(1B) allows the amount to be prescribed. Using the Bill to achieve these objects fragments the provision over different legislation. The facility to offer alternative arrangements for pre-school children is also already met by section 27 of the Children (Scotland) Act 1995.

Part 7 – Corporate Parenting: Children do not need “corporate parents”. These provisions are equating parents with corporate entities. If this part of the Bill were to become law it might be thought to be an intrusion on families’ lives and on natural parenting. It is difficult on the basis of the content of the Bill to appreciate how the statutory framework proposed is going to provide a basis for the stated policy goals to be achieved. The duties of corporate parents are broadly defined. Many are vague in their terms. The policy behind the Bill appears to be diluted by the selective approach taken to identifying which public bodies are to be burdened with the corporate parenting duties. The Bill as drafted does not make clear the extent to which corporate parenting duties are enforceable by legal action. Actions for judicial review may conceivably be brought on the basis a corporate parent has failed to fulfil
their duties. It is easy to conceive of a legal battleground emerging in relation to how the statutory duties are to be interpreted in the context of the qualification that the duties are to be exercised by the corporate parents “in so far as consistent with the proper exercise of its other functions”.

**Part 8 – Aftercare:** The extension of section 29 of the Children (Scotland) Act 1995 to confer a discretion to provide after-care to young persons who were formerly looked after by a local authority is extended to the age of 26. This gives formerly looked after children an advantage over children brought up by their own parents in extending the provision of assistance, potentially including financial assistance, beyond the age at which aliment provided by parents ceases (that being age 25). Unless the confusion as to which local authority is responsible (i.e. the one where the young person is present or the one which last looked after the young person) is resolved there is a risk that the new measures will be less effective than the Scottish Parliament intends.

**Part 9 – Counselling Services:** No definition has yet been provided of who is to be considered an “eligible child”, so it is difficult to consider in any meaningful way the impact this proposed part of the legislation will have.

**Part 10 – Support for Kinship Care:** In clause 65 (3), a “guardian” is excluded from being considered a “qualifying person” for the purposes of clause 65(1). The person who is a guardian, is exactly the kind of person who may benefit from access to the support being considered in this part. There is some confusion in the definition of “kinship care order”. The right in section 2(1)(a) of the Children (Scotland) Act 1995 is not “free standing”, being one of a number of rights that exist in order to enable a person to fulfil parental responsibilities.

**Part 11 - Adoption Register:** The Faculty notes the increase in children placed for adoption in 2010/11 but opines that increase was more likely the result of the introduction of the Adoption and Children (Scotland) Act 2007 in 2009 and not as a direct result of the establishment of the voluntary national register. In the context of contested adoption proceedings it is unlikely that a parent will consent to their child’s details being included in the proposed statutory register as required by clause 13C(2)(a). The Faculty is concerned that delays will be caused in identifying adoption placements for such children.

**Part 12 – Other Reforms:** The definition of “relevant person” in clause 71 for the purposes of an appeal under section 44A of the Criminal Procedure (Scotland) Act includes persons who are “deemed” to be “relevant persons” in the children’s hearing where the child is subject to a compulsory supervision order. However it does not include the full range of persons who fall within the statutory definition of “relevant person” in section 200 of the Children’s Hearings (Scotland) Act 2011.

**Part 13 – General:** The Faculty questions whether enshrining the policy of Getting it Right for Every Child in terms of clause 74 is necessary or appropriate. The use of “wellbeing” to signify these objectives, risks detracting from the standard and well-understood test relating to welfare or best interests of children. There is a well-developed case law on welfare and best interests which is found in areas such as
family law, child law and immigration law. Introducing a new, but related, concept may cause confusion.

FACULTY OF ADVOCATES RESPONSE

General

1. The Faculty of Advocates is the independent bar in Scotland. It exists, not for its own benefit, nor the benefit of its members, but to serve the public interest by securing to the people of Scotland the benefits of an independent referral bar. The Faculty has unrivalled general experience in litigation in the civil courts of Scotland and also includes members with particular experience and expertise in the law relating to children and young people. It is on the basis of that experience and expertise that the Faculty of Advocates offers written evidence to the Scottish Parliament in relation to the proposed Children and Young People (Scotland) Bill. The Faculty does not comment on matters of policy, as these are for the Parliament. The focus of the Faculty’s evidence is on the legal effects of the proposed Bill and its coherence with other aspects of the law.

2. The Faculty of Advocates appreciates the commitment of the Parliament to the welfare of children and young people. The Faculty does however have reservations about the efficacy of the proposed legislation to advance the interests of children and young people. It is, of course, for the Parliament to determine policy, but policy does not require to be stated in legislation. The function of legislation is to provide a legal framework within which policy is given effect. The law requires to be certain and to be enforceable. Aspects of the present Bill are statements of policy and as such are neither certain, nor enforceable for the benefit of children.

3. While the intentions of the Bill are clearly benign, it does have some potentially insidious aspects. It proposes an assumption by the state of functions that have historically in Scotland been the responsibility of parents. State intervention in the private and family lives of its citizens should be confined to cases where this is “necessary in a democratic society” (to use the words of article 8 of the European Convention on Human Rights). This means that interference in the individual case should be justified by a pressing social need and should be proportionate to the need in that case. By making indiscriminate provision for possible interference in the lives of all children, rather than providing for focused intervention when the need arises, the Bill risks enshrining a structure that has the potential to be used to undermine families.

4. This brings us to a third aspect of the Bill that causes concern. The proposed measures place an overlay on existing structure and measures that are already in place, without specifying how they are designed to function in relation to existing measures. This is particularly so in relation to parental responsibility for children, but also applies to existing provision for local authority and children’s hearing interventions under the Children (Scotland) Act 1995 and the Children’s Hearings (Scotland) Act 2011, and the interventions in relation to additional support needs in the Education (Additional Support for Learning) (Scotland) Act 2004 (as
amended in 2009). There is a risk of confusion and inefficiency, which will be to the detriment of children and families.

**Part 1 - Rights of Children**

5. The Faculty does not consider that Part 1 of the Bill further develops the rights of children and young people in Scotland to a significant extent. Reference is made to the Faculty’s response of 29 November 2011 to the Consultation Paper in relation to the then proposed Rights of Children and Young People Bill. As noted in that response, the United Nations Convention on the Rights of the Child (“UNCRC”) has been signed and ratified by the UK Government and so the United Kingdom is already bound in international law to comply with it. In relation to devolved matters, it is the responsibility of the Scottish Government to comply with the United Kingdom’s obligations in international law and where Convention rights are at issue, they may be justiciable in the Scottish Courts. The Scottish Government has already published reports on the implementation of the UNCRC in Scotland and the 2007 Report concluded that “it is the policy of the Scottish Executive to reflect the provisions of the Convention wherever possible in the development of policy and legislation”. Assuming that the Scottish Government continues in good faith to adhere to and implement that commitment, this part of the Bill should therefore be unnecessary to ensure that all decisions of the Scottish Government and its day-to-day business have regard to the Convention. Although clause 1 may provide scope for judicial review of the Scottish Ministers in some circumstances, the Faculty questions the added value which this part of the Bill would make to the rights of children and young people having regard to the following factors:

- As services for children and young people are delivered at a local level by local authorities and other public bodies, the possibility of judicial review of a Scottish Government decision is of limited value in terms of actual service delivery;

- The Scottish Government’s policy is already to reflect the provisions of the Convention in the development of policy and legislation; and

- The Scottish Government have reported and intend to continue to report on the implementation of the Convention in Scotland.

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1 The Faculty notes in passing that at present, the ability or otherwise of the Scottish Ministers to take any steps to promote the “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict” in Scotland is likely be constrained by the fact that defence is a reserved matter in terms of Schedule 5 of the Scotland Act 1998. In any event, the main thrust of the Optional Protocol is to prevent compulsory recruitment of persons under 18 into the armed forces as well as their direct involvement in hostilities. Regulation 4 of the Armed Forces (Enlistment) Regulations 2009/2057 provides that a person cannot be enlisted under the age of 16 and regulation 5 provides that a person cannot be enlisted under the age of 18 without the consent of a person with parental responsibilities. Furthermore, a person cannot be enlisted unless they ‘offer’ to do so which militates against compulsory recruitment. In practice, members of the armed forces do not see active service until they are 18 years of age.

2 See ZH (Tanzania) [2011] 2 WLR 148

6. Clause 1(3) imposes an obligation on the Scottish Ministers to lay a report before the Scottish Parliament every three years setting out in essence, how they have complied with their obligations under sub-clauses 1(1) and 1(2). There is of course already a requirement in section 10 of the Commissioner for Children and Young People (Scotland) Act 2003 to lay an annual report before the Scottish Parliament. That report must include a review of the steps taken to fulfil each of the functions of the Children’s Commissioner for Scotland (the “Commissioner”) (section 10(2)). The general function of the Commissioner to promote and safeguard the rights of children and young people (subsection 4(1)) is subject to particular requirements in subsection 4(2) to:

- promote awareness and understanding of the rights of children and young people;
- keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice
- promote best practice by service providers; and
- promote, commission, undertake and publish research on matters relating to the rights of children and young people.


8. There would seem therefore to be a high degree of overlap between the report proposed in terms of clause 1(3) of the Bill and the report which the Commissioner is charged with laying before the Parliament.

9. Indeed, the way in which the Scottish Ministers comply with their obligations in terms of clause 1 including the very production of the triennial report proposed by the Bill, would it seems to us, also be subject to the scrutiny of the Commissioner.

10. As well as overlap there seems to be a certain circularity in these provisions and it is not immediately clear to us what mischief they seek to remedy given the role of the Children’s Commissioner.

11. Further, in terms of Article 44 of the Convention, the United Kingdom has undertaken to submit a report to the UN Committee on the Rights of the Child every 5 years. That report is to inform the UN Committee on measures adopted by the United Kingdom to give effect to Convention rights and progress made on the enjoyment of those rights. That being so, to avoid duplication of effort, if there is to be any such report submitted by the Scottish Ministers, it would make sense for that report to be timed so as to feed in to the report of the United Kingdom Government to the UN Committee.

12. Clause 2 of the Bill obliges each of the authorities listed in Schedule 1 (per clause 3) to publish (separately or jointly) a report of “what steps it has taken in that
period to secure better or further effect within its areas of responsibility of the UNCRC requirements."

13. In the first place, the basis for inclusion on the list in Schedule 1 as presently drafted is unclear. Secondly, the Faculty cannot understand why a Schedule 1 authority is required to publish a report on what steps it has taken to secure better or further effect of UNCRC requirements, yet there is no corresponding duty imposed to take such steps. This too seems to us to lack coherence.

14. The list of authorities in Schedule 1 may be modified by the Scottish Ministers (subclause 3(2)) to include what is described as a ‘publicly owned company’. A publicly owned company is defined as any company which is either wholly owned by the Scottish Ministers or is itself a person “listed or a person within a description listed in schedule 1” (subclause 3(5)). The categorisation of a publicly owned company as suitable for inclusion in schedule 1 by reference to the fact that it is already so included lacks coherence.

15. In addition, given the role of the Commissioner set out in subsection 4(2)(c) of the Commissioner for Children and Young People (Scotland) Act 2003 (supra) and having regard to the definition of ‘service providers’ therein, this provision again seems to us to create an area of overlap with and repetition of the role of the Commissioner. Instead of assuring the gradual absorption of the principles of the Convention into Scottish public policy, the Faculty is of the view that the effect of the Bill as drafted can only lead to a confusion of responsibilities which will delay or prevent its assimilation or at the very least, lead to an inconsistency of approach by different schedule 1 authorities.

16. As presently drafted, this part of the Bill is unnecessary, lacks coherence and seems instead to promote an over-complicated, uncertain and fragmented approach to ensuring that the Convention is intrinsic to Scottish public life going forward.

**Part 2 - Commissioner for Children and Young People in Scotland**

17. Part 2 of the Bill amends the Commissioner for Children and Young People (Scotland) Act 2003 to extend the investigative powers of the Commissioner. In terms of the Bill the Commissioner is empowered to carry out investigations into the decisions made or actions taken by service providers which affect not just children and young people in general (a “general investigation”) but also a particular child or young person (an “individual investigation”).

18. In addition, the Commissioner will now be empowered to require a response from service providers to recommendations he may make in a report to Parliament. That power is subject to a requirement on the Commissioner to publish any service provider statements made in response although that requirement is discretionary in respect of individual investigations.

19. The Faculty understands the reasons for the broadening of the Commissioner’s remit in this regard and have no overarching concerns about Part 2 of the Bill which seems to us to make sensible and coherent proposals for the protection of
Scottish children. It is not clear why then, responsibility for the monitoring of the implementation of the provisions of the Convention has not also been given to the Commissioner rather than relying on the fragmented approach set out in Part 1 of the Bill.

**Part 3 - Children’s Services Planning**

20. The Faculty understands the aim to ensure integrated planning for all children and that such integrated planning results in children receiving a better service from all those involved in the provision of services.

21. It is understood that the provisions of Part 3 are intended to replace the existing duty on local authorities to prepare and publish a plan for children’s services contained in section 19 of the Children (Scotland) Act 1995 and the supporting duties in sections 20 and 21 of that Act. The services for children covered by the present duty are limited (in terms of section 19 (2)) to services provided under Part II of the 1995 Act and in terms of the enactments mentioned in section 5 (1B) of the Social Work (Scotland) Act 1968.

22. Clause 7 defines “children’s service” much more broadly and expressly includes services provided wholly or mainly to, or for the benefit of children with a need for additional support in learning (at sub-clause (1) (b) where (b) first occurs in that sub-clause). Services for children with such a need are provided by local authorities and health boards in a variety of ways. The primary duty for such services rests on an education authority (in terms of the Education (Additional Support for Learning) (Scotland) Act 2004 amended in 2009). Services may be required from a local authority in exercise of functions in terms of the 1995 Act. Services may be required from a health board in terms of, for example, speech and language therapy and occupational therapy. The clause 7 definition of “children’s service” would also include all services provided by a local authority in its education function in terms of duties imposed by the said 2004 Act and by the Education (Scotland) Act 1980. If it is intended that the children’s services plan include education services provided by a local authority, the Faculty considers such intention should be clearly and expressly included.

23. Part 3 imposes a duty to prepare such a plan every three years with consultation with each of the other service providers on the content of the plan with a requirement for agreement on the content of the plan from each other service provider. In addition, an annual duty to report on provision, achievement of aims and outcomes for children is imposed. This will impose onerous obligations on the other service providers. For example, consultation will be required from each of the 32 local authorities with the Scottish Court Service on the preparation of 32 plans. Each of those 32 local authorities will require to consult with and obtain reports from the Scottish Court Service on the provision of service, whether the aims in clause 9 have been achieved by the Scottish Court Service and the outcomes for children who have used Scottish Court Service provision on an annual basis. Such onerous obligations can only be met with the provision of sufficient resources to both provide the services to children and provide the reporting on such provision.
Clause 9 provides for planning for children’s services to include the achievement of prescribed aims including the aim to provide services in a way which is most integrated from the point of view of recipients. The reviewing and reporting obligations imposed by Part 3 include reporting of the level of achievement of the aims prescribed in clause 9. This will require significant annual consultation with service users as to their perceptions of the integration of services. The Faculty considers this to be a policy aim and not one which is suitable for inclusion in legislation.

The Faculty is concerned that the terms of clause 17 are both wide and far reaching and appear to misunderstand the nature of the functions conferred on a local authority, a health board or any other service provider by Part 3 of the Bill. Part 3 imposes duties in relation to planning, publishing and reporting. Part 3 does not impose duties to provide particular services. For example Part 3 does not impose a duty on a local authority in respect of the education of children. It does not confer the education function on a local authority. That function is conferred by the Education (Scotland) Act 1980.

Clause 16 provides for the making of directions by the Scottish Ministers about the exercise of functions conferred by Part 3. That would mean that the Scottish Ministers had the power to make directions about the planning, publishing and reporting functions conferred by Part 3.

Clause 17 applies where the Scottish Ministers consider that a local authority and each relevant health board are not exercising a function conferred on them by Part 3 of the Bill. Accordingly, clause 17 applies where the Scottish Ministers consider that a local authority is not exercising the planning, publishing and reporting functions imposed by Part 3. Clause 17 then goes on to give powers to the Scottish Ministers to make directions and then includes provision (at sub-clause 6) that the Scottish Ministers may constitute a joint board of a local authority and a health board to exercise those functions. However, sub-clause (7) provides that the Scottish Ministers may order the transfer of property, staff and the provision of services to such a joint board. The Faculty considers that clause 17 purports to allow the Scottish Ministers to transfer the delivery of services to such a joint board. As noted above the primary responsibility for delivery of services is not conferred by Part 3, but by other legislation. Clause 17 has the potential for confusion and legal challenge, which is likely to result in the expenditure of considerable public resources, thus diverting attention and funds from the primary object, namely the provision of services to children.

Part 4 – Named Persons

The persons principally responsible for carrying out the functions mentioned in clause 19(5) of the Bill are a child’s parents. They are charged with safeguarding and promoting a child’s health development and welfare and with offering direction and guidance (Children (Scotland) Act 1995, section 1(1)). It is primarily the responsibility of a parent to seek assistance if required by their child. This part of the Bill dilutes the legal role of parents, whether or not there is any difficulty in the way that parents are fulfilling their statutory responsibilities. It undermines...
family autonomy. It provides a potential platform for interference with private and family life in a way that could violate article 8 of the European Convention on Human Rights.

29. The Faculty accepts that there may be cases where a ‘named person’ will be of assistance. The difficulty with this Bill is that the provision is not focused on the children for whom the measure would be helpful and it does not cohere with other similar measures for such children.

30. As the Bill is drafted it results in duplication and risks causing confusion in the provision of services. For example there is already a person named in a co-ordinated support plan under the Education (Additional Support for Learning) (Scotland) Act 2004, to co-ordinate services for the child, including social work, health, or other services. When social work services are provided to children and families there will be a key worker. This will apply whether a child is subject to compulsory measures under the children’s hearing, or in receipt of services following an assessment under the Children (Scotland) Act 1995. No attempt is made in the Bill to integrate the role of a named person with similar roles when other services are provided.

Information sharing

31. The issue of whether these provisions are article 8 compliant is exacerbated by clauses 26 and 27. It is understood that in the past failures to share information have resulted in failures to protect children, but this has arisen from failure to understand that there are circumstances in which data sharing is necessary, appropriate and lawful. The Information Commissioner has issued helpful guidance on 28 March 2013, indicating that where a professional believes that there is a risk to a child or young person that may lead to harm, proportionate sharing of information is unlikely to constitute a breach of the Data Protection Act 1998. It is not therefore necessary to violate the right to privacy and abrogate the data protection rights of all children and families in Scotland. The open transfer of data in the manner contemplated in the Bill represents a serious intrusion on individual rights.

32. The data protection principles set out in the Data Protection Act 1998 were developed to secure an appropriate balance between the need to process information and the need to protect the rights of the subject or source of the information. It is not clear how that balance is achieved in these proposals. For example:

- If a child or parent visits a health professional with a confidential medical query, will that be shared via the named person with all those involved with the child? Is this the end of confidential provision of birth control for a young person, or the end of confidential help for a parent seeking treatment for a mild mental illness?

- If a spurious allegation is made against a parent, how will the parent know and what will be the facility for putting the record straight? Such situations arise in connection with contact disputes between separated parents and
information sharing adds the potential for a further layer of complexity to an already fraught situation.

- If a child misbehaves at school will that information be passed on to all professionals involved with the child, to his/her embarrassment and potential future detriment?
- Who will decide whether information about parents’ political or religious affiliations should be shared?

33. There is a need to ensure that if there is to be data sharing there are protections for the data subject. This applies to sharing between service providers. Also, the prohibition on passing on information in clause 27(3) does not sufficiently assert the necessity to prevent data being released to persons or organisations who are not bound by the data protection principles of the 1998 Act.

34. The Faculty notes that data protection is a reserved matter under the Scotland Act 1998. To the extent that the proposed measures interfere with protection for individuals in this area they are open to question on the basis that they fall outwith the legislative competence of the Scottish Parliament.

**Part 5 - Child’s Plan**

35. The Faculty notes that the purpose of the Bill is to ensure the integrated provision of services for children. Part 5 makes no reference to the integration of the “child’s plan” with existing plans and statutory orders which provide for both targeted intervention and are designed to meet a child’s needs including but not limited to compulsory supervision orders, Co-ordinated Support Plans, and plans arising from assessments in terms of section 23 of the Children (Scotland) Act 1995. The effect of the failure to anticipate that children with “wellbeing needs” may be the subject of existing plans will give rise to confusion over delivery of services to the child.

36. The Faculty suggests that such a child’s plan should only be made where no other statutory plan is in place for the child.

37. The Faculty considers the definition of “wellbeing need” to be so wide as to apply to every child in Scotland. Please see the Faculty’s comments in relation to clause 74.

38. Part 5 provides no mechanism for assessment of whether a child has a wellbeing need. Clause 33 (2) provides for the preparation of a child’s plan as soon as reasonably practicable but does not specify the event after which the plan is to be prepared as soon as reasonably practicable. Where there is no period for assessment, no provision for request for assessment and no provision for ongoing assessment of every child in Scotland, the time limiting provisions of clause 33 (2) are meaningless.

39. The Faculty respectfully questions whether, if Part 5 is to be made law, it is necessary to exclude children who have a parent who is a member of the regular forces. This appears to be to avoid serving soldiers etc. being subject to child’s
plans. Co-operation already exists between local authorities, the Reporter to the Children’s Hearing and the armed forces in cases where a prospective member of the armed forces is subject to a compulsory supervision order. It should be possible for future policy and legislation to build on that existing co-operation.

Part 6 - Early Learning and Childcare

40. The Faculty respectfully queries the necessity for this Part of the Bill. Section 1(1A) of the Education (Scotland) Act 1980 already allows the Scottish Ministers to prescribe the children for whom pre-school education must be made available. Section 1(1B) allows the amount to be prescribed. Using the Bill to achieve these objects fragments the provision over different legislation. It has the appearance of making a political, rather than a practical, point.

41. Equally the facility to offer alternative arrangements for pre-school children is already met by section 27 of the Children (Scotland) Act 1995 which relates to provision of day care for children in need.

42. This part of the Bill, in common with other parts, suffers from imposing an overlay on existing legislation, without co-ordinating the provision. It results in greater complexity and less clarity about services for children.

43. The provisions in relation to children who are eligible for the various types of provision are also complex and confusing. In contrast to the provision itself, eligibility is to be established by reference to other legislation (the 1980 Act) and other parts of the Bill (Part 10 relating to kinship care). If this is designed to give greater rights to parents and children then the criteria for eligibility should be transparent, otherwise members of the public will not be able to test whether their children are receiving what is due.

Part 7 – Corporate Parenting

44. Children do not need “corporate parents”. These provisions are equating parents with corporate entities. This may be thought to be an intrusion on families’ lives and on natural parenting.

45. It is difficult on the basis of the content of the bill to appreciate how the statutory framework proposed is going to provide a basis for the stated policy goals to be achieved.

46. The duties of corporate parents are broadly defined. The specific duties corporate parents are to have are listed in clause 52 of the bill. Many are vague in their terms. An example being the duty in terms of clause 52(c) “to promote the interests of these children and young people.” It is on any view very difficult to discern in practical terms what is meant by this.

47. It is not clear how the public bodies listed have been chosen. For example, it is not clear why The Scottish Fire and Rescue Service should have any more or less of a duty towards a looked after child or young person than they have to any child or young person, or to any person.
48. There are certain bodies listed in respect of which it is at least dubious that there is a need to give a statutory reminder that they have duties to vulnerable children. Examples include The Commissioner for Children and Young People in Scotland and Children’s Hearing Scotland.

49. The policy behind the bill appears to be diluted by the selective approach taken to identifying which public bodies are to be burdened with the corporate parenting duties. There are many public bodies that deal with children and young people that are not included. Examples of such bodies not listed in schedule 3 include The Crown Office and Procurator Fiscal Service, The Scottish Prison Service, The Royal Botanical Gardens, The National Museums of Scotland and The Scottish Ambulance Service Board.

50. It would appear that there is only very limited mechanism to monitor compliance by corporate parents with their sometimes nebulous duties. The bill is silent on how compliance is to be effected beyond the requirement to report.

51. The key phrase in clause 52 is that a corporate parent is to exercise its corporate parenting duties “in so far as it is consistent with the proper exercise of its other functions”. The clause identifies the tension which will be inherent at times in relation to certain public bodies. For example, it is at least conceivable that The Scottish Legal Aid Board would be limited in its promotion of the interests of those children and young people (in terms of clause 52) by the constraint of their ever-diminishing budget.

52. There is also no provision for corporate parents to have regard to the effect that measures which they might take in relation to their various duties may negatively impact upon other public bodies. These include both those public bodies which have been identified as corporate parents and those which have not. For example, it is conceivable that The Scottish Court Service, The Scottish Police Authority and The Scottish Prison Service have overlapping responsibilities for looked after children and young people which could be brought into conflict.

53. The Bill as drafted does not make clear the extent to which corporate parenting duties are enforceable by legal action. Is it intended to extend legal liability in the context of private actions or actions for judicial review? Actions for judicial review may conceivably be brought on the basis that in some particular respect in relation to an individual a corporate parent has failed to fulfil their widely framed corporate parenting duties. It is easy to conceive of a legal battleground emerging in relation to how the statutory duties are to be interpreted in the context of the qualification that the duties are to be exercised by the corporate parents “in so far as consistent with the proper exercise of its other functions”.

Part 8 – Aftercare

54. The Faculty notes that section 29 of the Children (Scotland) Act 1995 is extended to confer a discretion to provide after-care to young persons who were formerly looked after by a local authority to the age of 26. The duty and power to act following an assessment is also extended. This gives formerly looked after children an advantage over children brought up by their own parents in so far as
it extends the provision of assistance, including potentially financial assistance beyond the age at which aliment provided by parents ceases (that being age 25).

55. The new powers and duties in the Bill do however beg the question as to which local authority has the duty and power to act. The Children (Scotland) Act 1995, section 29(2) allows an authority to provide advice, guidance and assistance to persons present in their area. Section 29(5) provides for an assessment by the authority for the area where the young person is present. The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (SSI 2003/608) make further provision for the exercise of these powers and duties, but assume that they are imposed on or given to the local authority that last looked after the young person. Unless the confusion as to which local authority is responsible (ie the one where the young person is present or the one which last looked after the young person) is resolved there is a risk that the new measures will be less effective than the Scottish Parliament intends.

Part 9 – Counselling Services

56. The terms of clause 61 make it an imperative for a local authority to “secure that counselling services” are made available for parents, or individuals with parental rights and responsibilities, in respect of an “eligible child”. No definition has yet been provided of who is to be considered an “eligible child”, so it is difficult to consider in any meaningful way the impact this proposed part of the legislation will have.

57. It may be a laudable aim to ensure that proper counselling services are available for parents and those with the responsibility of caring for and bringing up children. There is a concern however that where only certain types of counselling service are prescribed by order of the Scottish Ministers, the local authority in response to the imperative imposed, focusses solely on the provision of those services to the prejudice of others. That risk is particularly high when funding for local authorities is very limited, and funding for existing services is difficult.

58. The clause as presently drafted highlights the difficulty noted in the introduction where this is presently a statement of policy with indeterminate eligibility and effect.

Part 10 – Support for Kinship Care

59. The overall aim of clause 64 to 66 is to ensure that those people who are not parents, or indeed the local authority, who take on the role of looking after children, many of whom often have difficult pasts and backgrounds, receive ongoing support in that role. The same criticism applies to this part as applied to clauses 61 – 63; this is presently a statement of policy with indeterminate eligibility and effect.

60. Particular concern arises in relation to clause 65 (3), whereby a “guardian” is excluded from being considered a “qualifying person” for the purposes of clause 65(1). It seems that the person who is a guardian, is exactly the kind of person who may benefit from access to the support being considered in this part. The
Faculty’s interpretation of the term “guardian” would include those people who have been asked by either close family or close friends to step into the role of parent in the event something happens to the parent. These would be appointees under section 7 of the Children (Scotland) Act 1995. They will, as a result of having accepted the appointment as guardian, assume parental rights and responsibilities for a child, who may be an eligible child. Their appointment would not necessitate making a formal application for a section 11 order of either type set out in clause 65(1) but they are likely to be one of the class of people identified as “qualifying persons” in clause 65(2)(a) and (b).

61. There is also some confusion in the definition of “kinship care order”. The right in section 2(1)(a) of the Children (Scotland) Act 1995 is not “free standing”. It is one of a number of rights that exist in order to enable a person to fulfil parental responsibilities. A residence order confers all parental responsibilities and parental rights, other than contact (section 11(12)). If however an applicant wishes to be treated fully as a substitute parent, then one order that may be conferred (and on one view the appropriate order) is an order appointing that person as guardian under section 11(2)(h). If an application is made for a guardianship order then the carer and child will be excluded from the benefits of this part of the Act. An applicant may not realise that this is the case until it is too late, or may be deterred from applying for guardianship. If guardianship is in the interests of the child, it would be unfortunate were a choice to have to be made between an application for guardianship and eligibility for support for kinship care.

62. There are sound reasons to consider excluding from clause 65(3) the words “or guardian”.

Part 11 - Adoption Register

63. The Faculty notes the aim of the Bill in increasing the number of children placed for adoption by the enshrining in statute of a national adoption register. The Faculty notes the increase in children placed for adoption in 2010/11 but opines that increase was more likely the result of the introduction of the Adoption and Children (Scotland) Act 2007 in 2009 and not as a direct result of the establishment of the voluntary national register.

64. The Faculty notes the prohibition on the inclusion of children without the consent of their parent or any person with parental responsibilities or parental rights in relation to the child. A person who is not a parent but who holds parental responsibilities and parental rights is not required to consent to the adoption of a child. Their views may be relevant to the making of an adoption order but their consent is not required (see sections 31 and 83 of the Adoption and Children (Scotland) Act 2007). Parental responsibilities and parental rights cover a wide range of types of involvement in the life of a child, and may be confined to some minimal contact in terms of a court order. The Faculty does not agree that the consent of a person with parental responsibilities or parental rights but who is not a parent of the child should be required before the child could be included on the register.
65. Further, the Faculty understands that adoption agencies include the details of children who they consider ought to be placed for adoption on the existing register but without identifying information. Such a practice allows for the early identification of adoption placements for children who may be the subject of contested proceedings either for an adoption order or for a permanence order with authority to adopt. In the context of such contested proceedings it is unlikely that a parent will consent to their child’s details being included in the proposed statutory register as required by clause 13C (2) (a). The Faculty is concerned that delays will be caused in identifying adoption placements for such children. The Faculty agrees that the process of placing a child for adoption requires to be conducted as quickly as possible while ensuring legal rights and obligations are protected. The placing of unnecessary barriers to the inclusion of children on the register is not conducive to minimising delay.

Part 12 – Other Reforms

Clause 71

66. The Faculty notes that the definition of “relevant person” for the purposes of an appeal under section 44A of the Criminal Procedure (Scotland) Act includes persons who are “deemed” to be “relevant persons” in the children’s hearing where the child is subject to a compulsory supervision order, but does not include the full range of persons who fall within the statutory definition of “relevant person” in section 200. This may be of material importance given the recent extension to the definition contained in article 3 of the Children’s Hearings (Scotland) Act 2011 (Review of Contact Directions and Definition of Relevant Person) Order 2013/193, which includes all parents, other than those deprived of parental responsibilities and rights by court order. Also the new section 44A(6)(b) applies only when a compulsory supervision order has been made. Should it extend to cases where there is an interim compulsory supervision order, or even simply a referral to the hearing?

Part 13 - General

Clause 74

67. The Faculty appreciates the policy underpinning clause 74, but respectfully questions whether enshrining the policy of Getting it Right for Every Child is necessary or appropriate. There is little that can be said to be certain or enforceable about the list of objectives in clause 74(2). The important function of legislation is to put in place mechanisms through which the interests of children can be served, rather than to state objectives that are vague and uncertain.

68. Further the use of “wellbeing” to signify these objectives, risks detracting from the standard and well-understood test relating to welfare or best interests of children. There is a well-developed case law on welfare and best interests which is found in areas such as family law, child law and immigration law. Introducing a new, but related concept may cause confusion.

Faculty of Advocates, 2 August 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  

Faculty of Sport & Exercise Medicine

1. Having looked at the Bill as presented, it was noted that there was nothing pertaining to the promotion of physical activity in children and young people in Scotland. As the Faculty of Sport and Exercise Medicine we believe that as a Nation we should be promoting exercise in our children and young people from birth through an early age at Nursery level and following this up with continuing promotion of exercise at Primary and Secondary Schools up to the age of 18 and thereafter hoping that this leads onto an active adult life with the well publicised benefits to long-term health and well-being.

2. The evidence for the Faculty making this appeal comes from two major documents of which I am sure some of the Ministers will be aware. These documents are:

- Start Active Stay Active: A report on physical activity for health from the Four Home Countries Chief Medical Officers [2011].

3. I have attached these documents for your information.

4. The Scottish Government is obviously very keen to promote sport in our country as can be seen by the high profile events including The Commonwealth Games in Glasgow and the Ryder Cup in 2014 at Gleneagles and the unfortunate failed bid for the Youth Olympics in 2018 as well as numerous other top level events.

5. As a Faculty we feel that it is also imperative for the Scottish Parliament to introduce legislation to increase the level of physical activity from birth but also in our nurseries, primary and secondary schools.

6. The reasons behind the Faculty promoting physical activity are well documented in the reports above but in summary these include:

- In the early years, immediate and long-term benefits for physical and psychological well-being
- In children and young people, there are numerous health benefits including reduced body fat and promotion of healthy weight, enhanced bone and cardio-metabolic health and psychological well-being
- These benefits can also lead to improved physical and psychological benefits in later life and could lead to reduced morbidity and mortality from numerous well documented illnesses such as diabetes and coronary heart disease to name but two.
7. The types and amounts of physical activities are also well documented in the reports and could be relatively easily introduced and promoted at very little additional expense especially given the potential savings for the NHS burden in future years.

8. I hope that you will examine the documents as suggested and take on board the Faculty of Sport and Exercise Medicines advice to include legislation in the Children and Young Peoples Bill with regards to the promotion of Physical Activity.

Dr David Pugh FFSEM
Faculty of Sport & Exercise Medicine
23 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Falkirk Children’s Commission

Introduction

1. Falkirk Children’s Commission continues to support the Scottish Government’s ambitions, as set out in the Children and Young People Bill, to achieve better outcomes for children and young people.

2. We welcome the Call for Evidence as this provides a further opportunity to provide views on the issues which still give us some concern.

3. It remains challenging to provide comprehensive feedback in the continuing absence of the secondary legislation and guidance as many of the practical implications of the Bill will only be clarified within the secondary legislation.

Children’s Rights (Part 1 & 2)

4. Falkirk Children’s Commission agrees that the proposals may provide improved scrutiny and transparency in relation to children’s rights as well as raising awareness and providing a higher profile. We continue to believe the duties should be extended to all public bodies.

5. Whilst the extension to the Powers of the Children’s Commissioner is welcomed, concern still remains regarding the interface between these powers and the already existing powers of redress (ASL Act; Children’s Hearing; “Who Cares?” Scotland; Care Inspectorate; Local Authority complaints procedures; Local Children’s Rights Services; Ombudsman). It is therefore critical that the guidance clarifies that this is only one of several options for redress, and clear criteria will be required to avoid duplication.

6. We noted that experience from elsewhere suggests that the Children’s Commissioner would only undertake 1 to 4 individual investigations per year. We continue to believe that such investigations should only be undertaken where an individual’s situation will have a national resonance.

7. The proposed increased resources for the office of the Children’s Commissioner seems excessive given the projected minimum level of impact and particularly in light of on-going concerns regarding potential under-funding of other parts of the Bill.

Getting it Right for Every Child

8. We continue to welcome the principle of a single point of contact for children and young people in universal services in the role of the “named person”. However concerns remain about the level of challenges this poses in relation to:

- the scale of the remit.
• the required competencies and level of decision making and the potential resulting consequences for resourcing/capacity issues. There will also be training requirements in relation to the knowledge and skills required by the workforce.

• the lack of national IT support or coherent guidance.

• the inclusion of the role of the named person in legislation but not the role of the lead professional means that the guidance will be crucial in clarifying the interface between the two roles and ensuring there is no duplication.

9. We noted that the “named person” will have a duty to undertake this role with children who are “home schooled” therefore there requires to be a mechanism to allow this to happen. The rights of the child must be a priority, and it is noted that the named person has no right of access to see the child and assess wellbeing.

10. Many children are accommodated outwith the Council area. Where this is the case and the named person is in a different geographical area from the local authority or NHS Board where the child normally resides, it will be more challenging and complex for the named person to co-ordinate roles and responsibilities from a distance. It is hoped that the guidance will clarify and simplify who has responsibility for undertaking the role of the named person, and how responsibility will transfer from named person to named person as well as the interface, communication and co-ordination with the home authority, lead professional and team around the child.

11. The legislation is giving responsibility to the named person to gather and share information and assess when a request for assistance is required. However, all of the above also seems to be included in the role of the lead professional definition and the GIRFEC website (where there is a team around the child). We are concerned, therefore, about the potential for conflict and confusion.

12. The recent ICO Statement regarding information sharing is seen as very helpful but the guidance needs to clarify mechanisms for information sharing both in relation to communication, recording and storage. We welcome the duty placed on GPs to provide information to aid discussion about a child’s well-being. The Privacy Impact Assessment Report is helpful in relation to the above.

13. It is unfortunate that existing statutory requirements to produce Children’s Plans both under the Additional Support for Learning legislation and the Children (Scotland) Act 1995 have not been repealed and replaced with a requirement for a single Child’s Plan in all circumstances and situations. This will mean that considerable integration will be required between all 3 legislative frameworks.

14. We noted that the “welfare” duty in the 1995 Children (Scotland) Act has also not been repealed and replaced by the “wellbeing” concept. This may lead to a lack of clarity and confusion with Children’s Hearings and Court processes for more vulnerable children.
Early Learning and Childcare

15. The additional priority given to “looked after” two year olds and two year olds in kinship care placements continues to be welcomed but we continue to believe that the 600 hours of early learning and childcare should be available to vulnerable children “in need”. Concerns still exist, however, that many children who are assessed as being “in need”, including children on the Child Protection Register, are neither “looked after” nor living in kinship care. This provision for ‘vulnerable’ children would either be a protective factor or assist in providing evidence of risk. The Bill gives no information regarding expected staffing skill mix.

16. We continue to believe that the flexibility in these arrangements should be aligned to the Parenting Strategy to enhance parenting capacity and support.

17. We accept that Local Authorities could decide to widen the criteria to all vulnerable children but this would lead to resourcing and capacity issues which will not have been included in the financial memorandum.

Looked After Children

18. Whilst we welcome the greater clarity that Local Authorities will be required to assess the needs of care leavers 16+, and will have a duty to provide support in relation to assessed need, nevertheless concerns remain that the Local Authority will become income maintenance providers without the necessary resources being transferred. The costs outlined in the financial memorandum do not equate to what Falkirk Council currently pays out for 16 to 18 year olds who meet the criteria; our current costs are higher. It will be crucial that “eligible needs” are clearly defined in the guidance and Local Authorities adequately financially resourced to meet these duties.

19. Whilst we agree that formal therapeutic counselling services can be beneficial, the need for this requires to be identified through assessment. It is also important to acknowledge that a range of existing professionals working with families (for example, educational psychologists, Social Workers, Health Visitors, Carers Trust) already provide counselling support.

20. The accompanying documents to the Act appear to use the words “counselling”; “intensive family therapy”; “family mediation” and “family group conferencing” as if they are all the same thing and interchangeable. We are concerned about the confusion and potential cost implications of the above.

21. We continue to welcome the policy intention to provide kinship carers with more support, and agree that the use of Section II (I) of the 1995 Act provides an avenue to take this forward without the implementation of new legislation. Although the Bill disqualifies parents and guardians from the above support, it does not define “parent” and therefore it is unclear whether this applies to “a person with parental rights and responsibilities” or only biological parents.
22. It will be crucial for the guidance to clarify the nature of expected support for kinship carers and for this to be linked to assessed need. We continue to note the cost implications.

23. We welcome the removal from the Bill of the proposals in relation to better foster care. The additional time for these proposals to be considered nationally is considered a positive way forward.

General Comments

24. We understand that Ministers are now seeking a legal power that would allow them, without further primary legislation to establish “Joint Boards” if they are dissatisfied with the joint working arrangements between Local Authorities and NHS Boards around integrated children’s services planning. We are concerned that this has the potential to place Councils and NHS Boards at risk now and in future, as this would create a situation where significant restructuring of services could take place without any further consultation or legislation.

25. We would support the COSLA position on this issue.

26. It is unfortunate that an opportunity may have been lost within the Children’s Hearing Act to review the Time Intervals performance indicators. SCRA should now be requesting integrated assessments or the Child’s Plan rather than IER’s; IAR’s and SBR’s. However the production of integrated reports takes longer. Is there an opportunity within the Children’s Bill to address both the time intervals indicators to extend them, as well as the naming of reports.

27. Concerns remain regarding the financial implications of the Bill.

28. There are several issues in connection with this:
   - “Eligibility” issues are not yet defined.
   - Future demand in several areas, for example birth rates, remains unclear.
   - Future assessed need cannot be quantified.
   - There has been an increase in the population of children within the Falkirk Council area since 2011.
   - Scale of efficiency savings to be made in 2014-2017.
   - Rising unemployment.
   - Impact of Welfare Reform.

29. There is an on-going inequality in that funding for NHS will be maintained in relation to the role of the named person but funding for Local Authorities is not. This should be rectified.
30. We acknowledge that there are funding implications for all agencies involved in implementing the Children’s Bill. We would endorse COSLA’s position on the need for full funding of all components of the Bill.

Conclusion

31. There are many aspects of the legislation which still require to be defined in the secondary legislation and guidance. We would underline the critical nature of developing and continuing to consult on the guidance in terms of implementing the provisions of the Act.

Falkirk Children’s Commission
26 July 2013
Introduction

1. Families Outside is a national independent charity that works on behalf of families affected by imprisonment in Scotland. We do this through provision of a national freephone helpline for families and for the professionals who work with them, as well as through development of policy and practice, training, and face-to-face support. Children and young people are central to our work, as the impact of a parent’s imprisonment equates with bereavement and increases a child’s risk of poverty, failure in school, victimisation, mental health issues, and subsequent offending, among other risks.

2. Families Outside broadly welcomes the Children and Young People Bill, but it raises some concerns for us, and we are grateful for the opportunity to comment. We are happy to elaborate on any of these should the Committee require additional information.

Part I: The rights of children

3. Families Outside endorses the view of Together Scotland that the current Bill is “a real step back from the original commitment made by the Scottish Government to the UN Convention on the rights of the Child (UNCRC) in the Rights of Children & Young People Bill.” As an example, we are concerned that public authorities, such as the police and Scottish courts in the event of a parent’s arrest and sentencing, currently have no obligation under domestic law to take into account the impact of their decisions on the best interest of children (as per Article 3.1 of the UNCRC).

4. The current Bill imposes no duty to comply with or act upon the terms of the UNCRC; the requirement for public authorities to report upon their compliance would be satisfied merely by reporting that they have taken no action, which does nothing to promote the rights of children and young people. Consequently we endorse the request of Together Scotland for a child rights impact assessment to be undertaken on the Bill.

5. Finally, the duty to raise awareness of the UNCRC is very welcome. However, public authorities may be fully aware of the terms of the UNCRC and still not comply with these, which again does little to promote the rights and welfare of children and young people in Scotland.

Part III: Children’s Services Planning

6. We welcome the wide inclusion of “other service providers” under the terms of the Bill and query what services would not fall under the “related service” category.
Families Outside promotes the view that adult-focused services have a significant impact on the wellbeing of children and young people. For example, we would welcome the inclusion of the Scottish Prison Service, Criminal Justice Social Work teams, additions services, and adult mental health services as “related services”.

**Part IV: Provision of named persons**

7. We are concerned about the provisions in relation to Information Sharing under paragraph 26 of Part IV and agree with the call from Parenting Across Scotland for further consultation on this. The Bill seems to lack the nuance required in relation to information sharing where this may conflict with a child’s or family’s right to privacy. In our work, the sharing of information relating to a family member’s imprisonment is a case in point: is it appropriate, for example, for courts or prisons to inform a school that a family member has gone to prison? We encourage families to share this information but also believe that it is their right to choose and to share the information with whom they wish. Families in this situation have lost enough power for such decisions to be taken out of their hands as well. Paragraph 27 may mitigate this in relation to the current provisions under the Data Protection Act, but this is not clear and would benefit from further discussion.

**Part V: Child’s Plan**

8. Families Outside welcomes the reference to and definition of child wellbeing in accordance with SHANARRI outcomes (defined under Part XIII). Reference to child protection in current practice does not go far enough, so we are pleased to see this as part of the Children & You.

**Part X: Kinship Care**

9. We welcome additional support for kinship carers in the Bill. However, we are concerned about the continued discretion of local authorities in this regard. We appreciate the need for discretion to some degree, but we find wide variation amongst the families we support to the extent that two families on the same street in similar circumstances receive entirely different levels of financial support. This is deeply confusing to people eligible for kinship care, and we have had to work closely with families for months at a time to help them claim the support they need. This too would benefit from further scrutiny, clearer guidance, and more consistent application.

**Other considerations**

10. Families Outside would welcome inclusion of the Scottish Prison Service as one of the “Relevant Authorities” listed in Schedule 2 of the Bill.
Conclusion

11. As an organisation with a very specific remit in relation to children and families affected by imprisonment, we recognise that our evidence is similarly specific. In saying this, the broader principles of the embedding of children’s rights, scrutiny of the implications of information sharing, a focus on the wellbeing of children, and extension of support for kinship carers all relate directly to the families we support. Along with Together Scotland, we urge the Education Committee to promote a child rights impact assessment to be conducted on the Bill.

12. In conclusion, Families Outside broadly welcomes the Children and Young People Bill, but we feel that it misses the opportunity to identify and promote the rights already agreed as signatories of the UN Convention on the Rights of the Child. Incorporation of the UNCRC would establish Scotland as a leader in children’s rights, ahead of other countries in the UK, Europe, and internationally, making Scotland truly the best place in the world to grow up.

13. We appreciate the opportunity to comment and are happy to engage in further discussion where this would be helpful.

Families Outside
26 July 2013
Education and Culture Committee

Children and Young People (Scotland) Bill

David Farina

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
1. I would be grateful if children's design and delivery of services in respect to school toilet facilities could be considered as part of the Children and Young People (Scotland) Bill.

2. Learners' toilets project an image of a school – good or bad – and have an effect on learner morale, behaviour and health. The state of the school toilets can often be of great concern to learners and their parents/carers. Local authorities have statutory responsibility for all aspects of school provision, building and maintenance. The authority has a duty of care in respect of pupils in its charge during school hours.

3. Current education and health policy in Scotland highlights the important role that schools play in promoting and supporting young people’s health and wellbeing. Research has shown that pupils learn more effectively if they are happy in their work, believe in themselves, like their teachers and feel supported at school. School is an important context for young people’s health due to the amount of time they spend within the school setting. Experiences at school are known to have a strong influence on young people’s social and emotional health and development.

4. For children and young people to stay healthy, they need to drink water regularly throughout the day. They also need to empty their bladder and bowels regularly when they need to. During term time, children spend at least half their waking hours at school (longer for those at out of hours clubs), so how much they drink and how often they go to the toilet are important. More fluids are needed in warm weather or when exercising. In addition the inability to recognise thirst may be present amongst some younger children. Pupils are more receptive to learning when they are not distracted by an uncomfortable bladder or bowel. Being able to use good quality toilets when they need to is linked to good drinking habits.

5. Unpleasant school toilets can result in
   - Children not sitting properly on the toilet or rushing. This can mean that the bladder is not fully emptied (leaving residual urine).
   - Not wanting to empty the bowels.
   - Not drinking enough in order to avoid the toilets.
   - Transmission of infections caused by not washing or drying hands properly.

6. Research has found that when we are dehydrated, we have more difficulty keeping our attention focused. Most children show no obvious visible signs of dehydration. Lethargy, irritability and lack of concentration may be considered normal during most afternoons in class. However these signs may be due, at least in part, to the effects of dehydration. Dehydration can impair short-term...
memory function, the recall of long-term memory and the working memory - the ability to actively hold information in the mind needed to do complex tasks such as reasoning, comprehension, and learning.

7. The early signs of symptoms of dehydration include:
   - Thirst
   - Headaches
   - Stomach aches
   - Irritability
   - Lethargy and tiredness
   - Poorer concentration
   - Diminished sports performance

8. Going to the toilet when pupils need to promotes good bladder and bowel practices. It is quite common for children to be unable to use the toilets when there are lots of other pupils around. This is one of the reasons why pupils need to be allowed to go to the toilet during lessons - the only time that offers privacy.

9. Voluntary dehydration (not drinking appropriately in the presence of an adequate fluid supply) is a common in school-aged children and adversely affects their physical and intellectual performance. Being dehydrated on a regular basis can lead to the following bladder and bowel problems:
   - Constipation
   - Soiling
   - Increased risk of urinary tract infections
   - Overactive bladder (also known as irritable bladder)
   - Daytime wetting
   - Bedwetting

10. We are usually able to recognise bladder fullness and exercise control until we are able to visit the toilet, provided there is not undue delay. However, for some children and young people, any delay is impossible, particularly those children with an overactive bladder or an urgent need to go. These children need to urinate very suddenly, even if they have just been. If children do not drink adequately during the day, their urine becomes concentrated. This can irritate the bladder and may contribute to daytime wetting. Not drinking enough during the day can also reduce bladder capacity. Daytime wetting can often be the cause of great shame, stress and anxiety - the impact of which should not be underestimated by parents/carers and teachers.
11. Some children (particularly girls) have a problem with their bladders that result in it not emptying properly. Normally every time we go to the toilet to pass urine our bladders empty completely. Some children do not empty their bladders completely leaving behind some residual urine. Children with residual urine are at risk of developing urinary tract infections. Not drinking enough can also increase the risk of a UTI, as this allows bacteria to develop in the urine. The infection can sometimes then travel up to the kidneys where it becomes much more serious.

12. Bed wetting / nocturnal enuresis affects two or three children in a class of 30 ten year olds in the UK. The bladder adjusts its size according to how much we drink. The more a child drinks regularly throughout the day, the more the bladder capacity will improve, enabling it to hold onto more urine overnight. If children drink most of their daily fluid when they get home, their bladders may not be able to cope and this increases the risk of bed wetting. Bed wetting carries a significant burden for both the affected child and their family. It is well established that enuresis has a significant impact on self-esteem. However, there is also a social impact; these children are less likely to participate in social activities including school camps, sleepovers and family holidays for fear of wetting the bed. They may also worry that their bedroom smells of urine and therefore may be reluctant to invite friends over. This social isolation can have a negative impact on development. Bed wetting also creates an additional work load for parents in the form of washing and drying bed linen and this is associated with significant financial costs.

13. Among the most common causes of constipation in children are not going to the toilet when they need to and dehydration. If children don’t empty their bowels when they feel the need to, urge to go will disappear. If this is done frequently constipation results. As the body gets used to carrying more stools, the bowel gets less efficient at signalling it needs to empty. This leads to repeat bouts of constipation, abdominal pain, soiling and even overflow diarrhoea. Soiling may be the first symptom of constipation. When dehydrated, the body conserves the water it has by taking extra water than normal from the large bowel. This results in dry and hard stools, which are difficult to pass. Constipation may also cause urinary urgency by constipated bowel pressing on the bladder.

14. Mental health problems can occur at any. Problems with school toilets can lead to embarrassment and anxiety and even to phobias. Bodily development during puberty can exacerbate these. One severe condition that can develop as a result of problems with school toilets is Psychogenic Urinary Retention (difficulty to urinate in the presence, real or perceived, of others). A common factor in those who have Psychogenic Urinary Retention is that they may have developed it during their time at school habitually avoiding using school toilets, holding on until they got home. This behaviour may have been prompted by a single unpleasant or upsetting incident in school toilets or to events such as the state of the toilets, not being allowed to go when they needed to, or anti-social behaviour in toilets. School toilet avoidance may be sufficient to impact on attendance and may be mislabelled as school avoidance.
15. Good hand hygiene can play a significant role in helping to cut disease. After toileting some children will not wash their hands at all, some will wash their hands with water, many do not wash their hands with soap. Hand washing with soap is among the most effective and inexpensive ways to prevent diarrhoeal diseases and pneumonia. Hand washing with soap also helps to prevent the spread of viral infections, such as norovirus, rotavirus and influenza. Worldwide this simple activity could save more lives than any vaccine or medical intervention, preventing the spread of infection and keeping children in school.

16. The forming of good habits from early childhood, when culture and personal habit forming takes place, are important as there is evidence that these learned behaviours track throughout life.

17. I do not think it is unreasonable to suggest that all children should have access to clean, well-stocked and pleasant toilet facilities in schools. This would be in keeping with one of the four contexts for learning – that the ethos and life of a school should have a focus on the mental, emotional, social and physical wellbeing of staff and pupils. School toilets can be incorporated into all the Healthy School criteria of:

- Personal, social and health education
- Healthy eating
- Physical activity
- Emotional health and well-being (including bullying).

Laura Fisher
30 May 2013
About this Written Evidence Paper:

1. This response has been prepared by ENABLE Scotland, Quarriers, and the National Autistic Society under the banner of For Scotland’s Disabled Children, bringing together the collective views and experiences of thousands of disabled children, young people, and their families, across Scotland.

2. Our response has also been shared and discussed with the Alliance, Children in Scotland, Inclusion Scotland, NDCS Scotland, and Together.

3. We welcome the opportunity to respond to this Stage 1 Call for Written Evidence. This legislation provides us with a once in a generation opportunity to improve outcomes for all children, including Scotland’s disabled children. This response focuses on the elements of the Bill which have the potential to deliver the biggest impact for disabled children and their families.

Part 1 – Rights of Children

4. We broadly welcome the intention of this section, but feel strongly that the proposed new duties on Scottish Ministers to ‘take appropriate steps to further, promote, and raise awareness and understanding of the rights of children and young people as set out in the UNCRC’ does not go far enough. Indeed, it is considerably diluted from the original policy intention of the proposed Children’s Rights Bill.

5. We encourage the Education Committee to consider the full incorporation of the UNCRC into Scots law. We are fully supportive of the Written Evidence submitted by Together on this issue.

6. We encourage the Education Committee to consider the need for a child’s rights impact assessment to be undertaken on the Bill. This impact assessment should include reference to the UN Convention on the Rights of People with Disabilities to ensure that the rights of children with disabilities are systematically considered across all the provisions of the Bill.

Part 2 – Commissioner for Children and Young People in Scotland

7. Again, we refer Committee members to the submission of Together on this issue. Specifically, whilst the proposed non-legal means of redress via the Commissioner is welcome, we believe that full incorporation of the UNCRC on the face of the Bill will provide children and young people with the opportunity to seek redress through the courts.

8. We would further ask Committee members to seek clarity on the definition of “service provider” within this section of the Bill, and indeed throughout the Bill. The SPICE briefing on this section makes clear that this builds on the existing
powers of the Commissioner to investigate the extent to which a service provider has regard to the rights, interests and views of children, and that ‘this includes all in the voluntary, private, and public sector who provide a service to children’ (page 6).

9. Clarity on the expectation of voluntary sector service providers is required. Many of these providers are delivering specialist targeted support services for groups of disabled children and their families, and may or may not be commissioned directly by the public sector. We encourage Committee members to raise this with the Scottish Government with a view to securing Guidance for Voluntary Sector Organisations on the application of elements of this Bill. This is also an issue in part 3 of the Bill, where ‘service provider’ is more clearly defined as a public sector, or commissioned by public sector, but where the wider policy intention seems to be inclusive of any organisation working with children and young people.

10. Finally, in addition to the proposed new power for the Commissioner to investigate individual cases, we would encourage Committee members to consider whether there might be an appetite for the Commissioner to take direction from Scottish Ministers and investigate one particular element of the children’s rights agenda per year, for example, how well the rights of particular groups of children, e.g. disabled children, or children with additional support for learning needs, are being met, supported by a duty on public bodies to act on its recommendations.

Part 3 – Children’s Services Planning

11. We broadly welcome the intention of this section of the Bill, and our concerns relate specifically to ensuring that this translates into effective services which meet the needs of disabled children and young people, their families and of young people at the crucial transitions stage.

12. We would like to highlight to Committee members that the specific needs of disabled children and young people are not adequately addressed in this Section. Without a clear duty within the Bill which ensures that the specific needs of this vulnerable group of children and families are reflected in joint local planning and commissioning processes, there is a real danger that opportunities to develop innovative support for this group will be missed.

13. We therefore strongly suggest that Committee members consider further how local Children’s Services Plans could have specific regard to the rights and needs of disabled children and their families.

14. We are further concerned about ensuring that the needs of young people at the transitions stage are reflected in children’s services planning, and we believe that further consideration of this is required by the Committee.

15. For disabled young people, there is a further significant pressure point at the Transitions planning stage, where young people are moving from one set of eligibility criteria under the Additional Support for Learning framework to a
completely different framework under social care. Many young people with less complex care needs may no longer qualify for a formal care plan, and so are likely to require access to softer community based support services. The strategic commissioning of services to provide support to young people in this group as they move into adulthood and independent living, and to provide support for those with significant needs but who still do not meet the threshold for social care, is therefore something which needs to be reflected not only in the Children’s Services Planning process proposed by this Bill, but also across the suite of new Guidance over the next 12-18 months to accompany the Self Directed Support (Scotland) Act 2013 and the Public Bodies (Joint Working) Bill, and indeed the planned revision of the Additional Support for Learning Supporting Children’s Learning Code of Practice.

16. In this regard, it would be most helpful if the Bill placed a duty on local authorities to develop and implement Children and Young People’s Services Plans, as opposed to Children’s Services Plans.

Part 4 – Provision of Named Persons

17. The Bill makes clear the expectation of a public authority to provide a named person service; however we are unclear about the expectation of the role of the named person, particularly in relation to the Child’s Plan (Section 5). For example, is the intention that the named person will assess a child’s eligibility for a child’s plan?

18. We would appreciate clarity on whether it is expected, appropriate or likely that one person could undertake both the role of a child’s Named Person and Lead Professional.

19. For disabled children with complex needs, regardless of age, there may be value in attributing the named person role to a professional outwith education, e.g. a specialist health worker, or a social care officer. We encourage the Committee to consider the possibility of exceptions dependent on the needs of the child or young person.

20. We note the Bill’s intention that every person under the age of 18 will have a named person, and that for children under school age, the duty to provide this service is on the health board, whilst for school age children and young people, the duty is with the local authority.

21. We are concerned that the Bill appears to make no provision for a named person services for young people who leave school at the age of 16. This includes a group of vulnerable young people, including disabled young people, who are at a high risk of not being in education, employment or training, or disengaging with their placements if they are.

22. We believe that the Bill should make specific reference to this group, and should ensure that all young people participating in post 16 learning, training or work should have access to the Named Person Service, perhaps through the local authority social care workforce.
Part 5 – Child’s Plan

23. FSDC members are also represented on the Scottish Government’s Advisory Group on Additional Support for Learning, and we refer Committee members to the AGASL evidence paper which considers the Child’s Plan in some detail, with a particular focus on how this Plan will integrate with the other legislative frameworks which provide statutory plans for children and young people.

24. The Bill requires a Child’s Plan to be developed for an individual child if they have a ‘wellbeing need’ that requires a targeted intervention (SPICe Briefing June 2013). More clarity is required on the process of assessment required by the Bill in terms of eligibility criteria and who assesses the child’s ‘wellbeing need’.

25. For example, is the expectation that the Named Person is responsible for assessing a child’s ‘wellbeing need’ or for making an onward referral to another professional to undertake a formal assessment? And will the process be underpinned by the principles of early intervention and take a holistic look at the wellbeing needs of the family around the child to prevent or minimise any risk to the child’s wellbeing developing?

26. In relation to families of disabled children, specific new skills and knowledge about their child’s disability and how to support them, coupled with the additional stress of caring responsibilities, strain on relationships, and perhaps having to give up work to become a full time carer, all have a significant impact on the wellbeing of the family as a whole, with the child at the centre.

27. We feel strongly that the needs of families are not particularly well reflected throughout the Bill; yet in other policy documents such as the Parenting Strategy and the Early Years Framework, Government makes clear its intentions for supporting parents as the key influencers of their child’s development and wellbeing.

28. We would like more clarity on the routes of redress around a Child’s Plan if a child, young person or parent is unhappy with its implementation or content.

29. Whilst we welcome the duty to seek and take account of the views of the child or young person, and parent or carer, in the development of the Child’s Plan, we are concerned that the Bill says that an authority should ‘take into account a child’s age and maturity’ when having regard to the views of the child, including a disabled child. We feel that the Bill should instead simply place a duty on local authorities to support a child or young person to make their views known.

Part 6 - Early Learning and Childcare

30. Local Authorities are already under a duty to provide ‘day care’ for children in need from 0-5 under s.27 of the 1995 Act; the 2013 Bill proposes a specific number of hours of ‘early learning and care’ to be provided for LAAC only. (SPICe Briefing June 2013)

31. We believe that the extension of free early learning and childcare for looked after 2 year olds should be extended further to all 2 year olds with a disability.
32. This would promote the rights of young disabled children to start formal education with the skills they need to benefit from it, and create more important respite opportunities for families of disabled children.

33. It also has the potential to deliver effective earlier interventions by increasing early opportunities for the assessment of emerging additional support for learning and/or wellbeing needs of a vulnerable group of children.

34. We recognise that there will be equally strong arguments to extend this provision for other groups of vulnerable 2 year olds, and so would urge the Committee to make a recommendation to extend the provision of additional early learning and childcare to all children in need.

35. We have contributed to the AGASL response which makes clear the importance of a skilled workforce across the public, independent and voluntary sectors to make the most of this opportunity.

**Part 8 – Aftercare**

36. We believe that the new right for young people leaving care to request assistance from a local authority up to the age of 25 should be extended to all young disabled people.

37. This would support the transitions process, and would be of particular benefit to those young disabled people who have less complex support needs, and for whom the adult social care assessment frameworks may mean that they fall short of being assessed for a formal care plan as they move into adulthood and independent living.

38. In addition, we know that employment rates for this group are considerably lower than national average, and that, in light of UK Government’s focus on reducing the welfare budget, the welfare reform agenda is likely to have a considerable impact on younger disabled people being transitioned into the new Personal Independence Payment from Disability Living Allowance, with some possibly losing out as a result of the loss of the lower rate care component from the system.

39. Even where a young disabled person has secured a positive destination, all too often, we see that their employment placement or college place falls apart without any right of recourse to a statutory form of support or advice.

40. We would welcome the Committee giving serious consideration to this issue and making recommendations to Government about the needs of disabled young people up to age 25 on the face of the Bill.

**Part 9 – Counselling Services**

41. We note with some surprise that this is the only element of the Bill which gives a specific focus on identifying and meeting the support needs of families. With that in mind, we are concerned that the intention is that it should be restricted to those
families where a child is at risk of being looked after, or are in a kinship care arrangement.

42. We believe that the duty to provide counselling support should be available for other families, including families of disabled children, for whom we know that the divorce rate is higher than the national average, at key points such as diagnosis and transition.

43. We are concerned that counselling is the only identified option, and would prefer the Bill to reflect wider forms of family support services, including peer support models and targeted parenting groups, such as those which have been funded via the Early Intervention Fund throughout Scotland.

44. Such input could and should be reflected in the Child’s Plan to support the child’s achievement of the SHANARRI wellbeing indicators.

45. The logical extension of this approach would be to ensure that there is an expectation that family support services are included within the requirements of local Children’s Services Plans (Part 5) as a service which has to be provided at local level to best meet the needs of the local community.

46. This leads FSDC members to consider whether there is a need for the Bill to focus on Children, Young People and Families, and we leave that as an issue for the Committee to consider further.

Jan Savage
Head of Campaigns and Policy, ENABLE Scotland

Paul Mullan
Parliamentary & Press Officer, Quarriers

Robert MacBean
Policy & Parliamentary Officer, National Autistic Society Scotland

26 July 2013
Education and Culture Committee

Children and Young People (Scotland) Bill

Carolyn Forte

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
The Fostering Network Scotland

1. The Fostering Network is the UK’s leading charity for all those involved in fostering committed to raising the standards of care for children and young people who are in foster care and for those leaving foster care. The Fostering Network is a membership organisation and the membership in Scotland includes 3,900 fostering households, all local authorities and all Registered Fostering Providers.

2. During the consultation on the Children and Young People Bill, the Fostering Network consulted widely with foster carers from throughout Scotland and submitted a response. Additionally, we conducted a survey of children and young people with experience of foster care. Their responses were submitted in two responses. One submission summarised the views of children in foster care and the second summarised the views of foster carers’ own children. This second key group of children and young people have a significant impact on the success of a foster care placement and to their parents’ ongoing commitment and ability to continue fostering. The comments within each of these responses remain our view.

3. The Fostering Network believes the Children and Young People Bill is a fantastic opportunity to change foster care in Scotland for the better. We share the Scottish Government’s aspiration for Scotland to be the best place in the world for children to grow up. For the majority of Scotland’s children unable to live with their own family, foster carers will be their permanent carers and their ‘family’ as they grow into adulthood, and beyond. We firmly believe that the exclusion of the key areas relating to foster care in the Bill (which were consulted on but not included in the Bill as currently introduced) is failing Scotland’s most vulnerable children and young people and is a missed opportunity.

4. The Fostering Network understands that these areas are not included in the Bill because of the Scottish Government’s current Review of Foster Care. We recognise that their recommendations will be in subsequent regulations and guidance, however the Fostering Network has serious concerns that the issue of a minimum foster care allowance, placement limits and a national register of foster carers will not be underpinned by legislation and will perpetuate the current “two-tier” system which disadvantages Scotland’s children who are placed in foster care.

Comments on the provisions in the Bill:

5. Rights of Children (Part 1): The Fostering Network supports the proposed general duties on the Scottish Ministers to improve the effects of the UNCRC in Scotland. The Fostering Network sees the paramount right of a child who is looked after to be brought up in a loving family. Either their own if safe to do so, with family or friends or with a foster carer. There are now over 5,000 children in
Scotland in foster care. This number has been steadily increasing annually and for these children a foster carer is the person who can best provide secure and loving care. For the child, it is their key right. By extension, it is their key right to be with foster carers who are subject to a national regulatory framework and code of practice. The omission of such a safeguard within the Bill is for Scotland’s most vulnerable children a significant omission.

6. **Commissioner for Children and Young People:** There is little to indicate the areas these individual investigations may cover. The Fostering Network is concerned that it is proposed the Commissioner will be supported by three staff and associated support staff to deal with between **one and four investigations** each year at a reported cost of **£162,000 per annum**, (SPIe Briefing, 2013). The Fostering Network believes that increased investment in mediation services and advocacy would be more effective and achieve more positive results for more children and young people than investigations.

7. **Provision of Named persons:** We recognise the wider advantages to a named person but are aware of the need for more detailed consideration and resourcing, particularly in respect of looked after children and young people.

- If the named person is, for example, a head teacher, he or she will potentially have more than a hundred children to support. This will significantly reduce the enhanced provision of support and services required to successfully prevent the escalation of problems, particularly during periods of crisis.

- The closure of schools for significant periods throughout the year, (festive, spring and summer break) often overlaps such periods of crisis. Children in foster care often experience significant gaps in the continuity of an education placement when they are in transition between foster placements and schools.

- The Fostering Network would like clarity on the role of the named person for a looked after child and what measures are in place to best support the child, for example, where there is conflict around the behaviour and school attendance of a looked after child. These children need and deserve an ongoing commitment even when their school base is uncertain.

- The Fostering Network recognise that for looked after children and their carers, a named person is less likely to be appropriate in that they have a designated social worker and should have the services of a designated looked after teacher within their school.

8. **Child’s Plan:** The Fostering Network’s Fosterline Scotland service receives a significant number of calls from foster carers who are caring for children 24 hours a day, within the foster carer’s home, yet are being denied crucial information about the child and their family. The rights of privacy for children and families should not impede foster carers from receiving essential information to most effectively provide appropriate, loving and healing care.
9. **Early Learning and Child Care:** As identified in our submission, provision has to be tailored to the needs of the child and what kinds of support will best help the carer to in turn help the child develop secure attachments. Other services may be far more appropriate than day care. The Bill speaks of day care as a basis for a route to employment for parents. We have serious concerns that this is not a prerequisite as we feel strongly that for children with foster carers and many children with disabilities, carers seeking employment will not be in the best interests of the child.

10. **Corporate Parenting:** The Scottish Government’s “Easy Read Version: A Scotland for Children” states: “If a child is looked after, the council that is responsible for their care is called their ‘corporate parent.’” In contrast, Schedule 3 in the Bill includes a number of organisations and departments with a very tangential link to many looked after children. We feel this is confusing and requires further clarity.

11. **Aftercare:** The Fostering Network firmly supports extending the age to 25 whereby care leavers can request an assessment of need. While we welcome the Bill’s aspirations in this area we recognise that the assessments will be meaningless if the services to meet assessed needs cannot be made available.

- For a significant number of young people, their need will be to remain with, or have the opportunity to return to, their foster carers.

- Furthermore we feel that an assessment of need should go beyond being a ‘request’ but that young people should be ‘granted’ an assessment of need, should they request one and regulations and resources will need to be in place to allow for this.

- The Fostering Network is concerned that provision in the Bill could exclude a young person who has returned home from foster care just before school leaving age.

- The significance of a trusted adult well known to care leavers should be central to decisions about where a young person will settle and to where they can return.

- When a young person is being supported as part of their throughcare or aftercare plan, it is important that the services are coordinated and joined up. Young people should not find themselves shuttled between children and adults services and particularly between CAMHS and adult mental health services.

- The Fostering Network’s “Don’t Move Me” campaign has called for amendments to the Children and Families Bill in England, currently going through Parliament, to ensure existing legislation allows young people to stay with their foster carers (if both parties were in agreement) until the age of 21. This has received wide cross-party support. For Scotland to be the best place in the world for children to grow up we want to see young people
having the opportunity to stay with their foster carers until the age of 21 firmly embedded in legislation.

12. **Counselling Services:** The Fostering Network believes that access to counselling services should be given to the families of looked after children.

- This will ensure that families are more aware of and understanding of the reasons behind and the impact of their child being in care. Issues of grief and loss can be addressed and also give parents and young people opportunities to plan for rehabilitation where safe.

- To achieve better permanency outcomes for looked after children where there is a plan for adoption, counselling may support birth parents to relinquish the child appropriately. This in turn will reduce delays and avoid lengthy court proceedings.

13. **Adoption Register:** For those children in foster care who are deemed to need permanence the majority will remain with their foster carers. Legislation needs to be in place to enable foster carers to seek permanence orders; giving the child and them greater stability of placement.

- For those children who require permanence but will not remain with their foster carers, the Fostering Network believes a separate database of foster carers would ensure that children can be better matched to carers who can provide them with the loving, nurturing permanent placement they require.

- This would be distinct to a national register of foster carers which would safeguard the wellbeing of children and young people in foster care, allow for portability of foster carers, have a code of practice for foster carers and would enhance the status of foster care in Scotland by placing them firmly within the child care workforce.

14. **Relevant persons:** The Fostering Network would like to see every foster carer who is caring for a child who is the subject of a compulsory supervision order always being automatically deemed as a relevant person.

15. **Omissions from the Bill:** The Fostering Network remains very disappointed about the decision not to include key foster care issues within the Children and Young People (Scotland) Bill, namely: placement limits, fees and allowances, a national register of foster carers and foster carer training and development.

- While recognising that the National Review of Foster Care is addressing many of these issues we believe placement limits, parity of allowances and a national register will need firmly embedded within legislation to ensure that they are implemented, thus putting an end to the postcode lottery and two-tier system currently experienced by children in foster care.

- The Fostering Network is not confident that the recommendations of the National Review will achieve the hoped for transformation of foster care for Scotland’s children and young people. We feel it to be a missed opportunity
if foster care, and particularly these aspects of foster care, are omitted from legislation.

16. For the Scottish Government’s aspiration of “Scotland being the best place in the world for children to grow up” to be realised, we need to see the 5,023 children and young people currently living in foster care having their rights and needs recognised and addressed to ensure they will grow up to aspire, achieve, and become responsible citizens.

The Fostering Network Scotland
26 July 2013
General Medical Council

1. Thank you for the opportunity to respond to the Education & Culture Committee’s call for evidence on the Children and Young People (Scotland) Bill. Please accept my apologies for missing the official deadline for responses.

2. The General Medical Council (GMC) is the independent regulator of doctors in the UK. Our statutory purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. We do that by controlling entry to the medical register and setting the standards for medical schools and postgraduate education and training.

3. We are responsible for advising doctors on good practice to help them provide better care for patients. Our core publication, *Good medical practice* sets out the principles and values on which good practice is founded and all doctors are required to be familiar with and follow the guidance in GMP and our explanatory guidance on a range of issues including seeking consent and maintaining confidentiality. If a doctor seriously or persistently breaches the guidance we act to protect patients, if necessary by removing the doctor from the register and restricting or removing their right to practise medicine.

4. Most of the provisions of the Bill are outside our remit. However, in this response we have highlighted the scope of our guidance to doctors on seeking consent and confidentiality as we believe that the proposal, at paragraph 76 of the Policy Memorandum, that every child in Scotland should have a Named Person with whom doctors would be required to share information, raises questions about whether doctors will be able to follow our guidance if they would be required to share information not just where there is a risk of significant harm - but also on ‘less critical concerns’ so that a full picture can be formed and harm prevented.

5. We believe this proposal (in particular clauses 26-27 on sharing and disclosing information) could be incompatible with our guidance to doctors on their obligations and have outlined the ways in which we believe this might be the case in the hope that the Committee will take these points into consideration in its analysis of submissions.

6. In summary, the issues we would like the Committee to consider are:

   - Our guidance to doctors on seeking informed consent for disclosing confidential information
   - Our guidance to doctors on disclosing confidential information in the public interest and how it fits with the provisions of the Bill
The definition of ‘less critical concerns’ and what information the Bill’s provisions allow to be shared with a ‘Named Person’

Storage of and access to confidential patient information

Seeking consent for disclosing confidential information

7. Our guidance, *Confidentiality* advises doctors to treat patient information as confidential as confidentiality is central to the trust between doctors and patients. We say that doctors should seek informed consent from patients to disclose their information to other individuals or agencies. We tell doctors that they must be satisfied that the patient has sufficient information about the scope, purpose and likely consequence of the disclosure when seeking consent (paragraph 34).

8. In our explanatory guidance, *Protecting Children & Young People: the responsibilities of all doctors*, we advise doctors on how to apply this advice in child protection contexts. We say that when doctors have concerns about child abuse or neglect, they should ask the child or young person for their consent to share information with an appropriate agency, if the child has the capacity to give consent, and if not should seek consent from a person with parental responsibility. We expect doctors to explain what information they will share, who it will be shared with, how the information will be used and where patients can go for advice and support (paragraph 35). This guidance would therefore apply when doctors consider whether to share information with a Named Person.

Sharing information without consent

9. If a doctor cannot get consent to disclose confidential patient information, we say that he or she can disclose that information only if it is in the public interest to do so (see paragraph 8 of *Confidentiality*). To make a judgement about the public interest, we advise doctors that they must weigh the probable harms of disclosing confidential information against the harms likely to arise as a result of keeping information confidential.

10. In *Protecting children and young people*, we have provided more detailed guidance on how to apply this advice on disclosing information in the public interest in child protection scenarios. We make clear that doctors must share information if they are concerned that a child or young person is at risk of abuse or neglect and that they do not need to be certain that there is a risk of significant harm.

32 You must tell an appropriate agency, such as your local authority children’s services, the NSPCC or the police, promptly if you are concerned that a child or young person is at risk of, or is suffering, abuse or neglect unless it is not in their best interests to do so (see paragraphs 39 and 40). You do not need to be certain that the child or young person is at risk of significant harm to take this step. If a child or young person is at risk of, or is suffering, abuse or neglect, the possible consequences of not sharing relevant information will, in the
overwhelming majority of cases, outweigh any harm that sharing your concerns with an appropriate agency might cause.

33. When telling an appropriate agency about your concerns, you should provide information about both of the following:

a. the identities of the child or young person, their parents and any other person who may pose a risk to them

b. the reasons for your concerns, including information about the child’s or young person’s health, and any relevant information about their parents or carers.

11. Whilst we encourage doctors to share information where that is necessary to protect children from abuse and neglect, doctors must consider each case on its merits and use their professional judgement, taking into account our guidance, the law and any other guidance or information that is relevant. We advise doctors only to disclose confidential information without consent or other legal authority, when it is in the public interest to do so and they must be satisfied in each instance that the public interest test has been met and that the specific circumstances justify the disclosure.

12. We also tell doctors that if they decide to disclose confidential information in the public interest, they must explain to the people whose information it is why they have done so, and should explain what information they will share, who it will be shared with, how the information will be used and where they can go for advice and support, unless doing this would put a child, young person or anyone else at risk (paragraph 38).

**Definition of ‘less critical concerns’**

13. In our guidance we acknowledge that risks to children or young people’s safety and welfare sometimes become apparent only when a number of people share what seem to be minor concerns. Our advice at paragraph 43 of *Protecting Children & Young People, the responsibilities of all doctors* on minor concerns that might be part of a wider picture says:

If a child’s or young person’s condition or behaviour leads you to consider abuse or neglect as one possible explanation but you do not think that they are at risk of significant harm, you should discuss your concerns with your named or designated professional or lead clinician or, if they are not available, an experienced colleague. If possible, you should do this without revealing the identity of the child or young person.

14. Our advice is that minor concerns should be raised initially with a colleague, if possible without revealing the identity of the child or young person. Following this, if discussions do not provide a clear view about the possibility of abuse or neglect, we advise doctors to share limited relevant information with agencies in contact with the child or young person, in order to make a judgement about whether there is a risk that would justify further disclosures. We say doctors
should seek consent to do this, unless it would be in the public interest to share the information without consent (paragraph 44).

15. Given the complexity of these issues around sharing confidential patient information we would like to know more about the Government’s ideas for how ‘less critical information’ would be defined and relatedly, what the thresholds for professionals sharing this information would be. It is not fully clear from the proposals what would constitute a ‘less critical concern’ or that there would be a common understanding across different professional agencies working with children. Similarly, it is important that there is a common understanding across different professional agencies of what information about a child should be shared.

Information storage and access
16. In addition to these considerations around information sharing, the Committee may want to consider issues relating to the storage of and access to confidential patient information

17. The proposals do not make clear how confidential patient information would be collected or stored by the Named Person, or who would have rights to access it subsequently. Nor is it clear how a doctor, or other professional working with the child, would access information about the identity of the relevant child or young person’s Named Person.

It may also be worth noting that, were the scheme to require the use of a single database, it may face similar difficulties to those raised during the development of the database ContactPoint, which stored information about children in England, and which encountered challenge on issues relating to information security and access rights.

Conclusion
18. As presented, the provisions of the Bill seem to present a conflict with the advice we give doctors in our guidance on good practice in sharing information, which requires that doctors have concerns about child abuse or neglect, or otherwise judge that a disclosure would meet the public interest test, before disclosing confidential patient information without consent. The Named Person scheme appears to sanction disclosures of information without consent, which our guidance would advise remain confidential.

19. Our concern therefore would be that the proposals lead to inappropriate disclosures of confidential patient information and may undermine the public’s trust in a confidential medical service.

20. I hope that this is useful in explaining our guidance and we would be happy to provide further information and advice if that would be helpful.

Dan Wynn
General Medical Council
30 August 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

George Heriot’s School

Introduction

1. As pupils who have worked to achieve the Rights Respecting School award and raise awareness of the United Nations Convention for the Rights of the Child in our school over the past two years, we are disappointed that the UNCRC is not being incorporated in Scots law. George Heriot’s School is a traditional school with traditional values and we have worked to adapt these values to conform with the UNCRC which we feel will benefit pupils in the school.

UNCRC in a Rights Respecting School

2. We feel that both the UNCRC and the Rights Respecting School award have greatly benefited our school community. Although our school already respected pupil’s rights, it was necessary to promote awareness of the UNCRC as making it easier to incorporate it into school life and curriculum.

3. If pupils understand what their rights mean they can easily know how to use them, which means pupils are more confident to stand up for themselves as they comprehend what the rights mean for them.

4. Due to the promotion of the UNCRC there are new mechanisms in place in to ensure it is much easier for pupils to raise their voices and concerns which are more likely to be heard and taken seriously.

5. Thanks to the awareness of the UNCRC, adults and teachers in the school environment can more easily engage with pupils because there is a collective understanding of the framework of children’s rights and the issues that they deal with. This means adults are less apprehensive towards pupils who want to assert their rights.

6. Pupils now feel that their rights won’t be violated as they have a precise comprehension of the rights which affect them, showing that the UNCRC ensured safety and security to pupils.

7. It has enhanced already respectful relationships within the Heriot’s community as pupils are more willing to talk with teachers or other pupils if they have problems which they believe affect or violate their rights.

8. Thanks to the Rights Respecting School Award we are implementing a more mutual respectful language, which reflects the values of the UNCRC, into our school community and official documentation, for example the school’s Code of Conduct is being adapted to change the language. This achieves a more positive atmosphere with understanding and respect among all members within the school.
UNCRC in Wider Society

9. We feel that school is a microcosm of wider society and the impact within our school environment has been largely positive and successful. Therefore we feel that full implementation of the UNCRC in Scots law would also be beneficial for children and young people in Scotland.

10. The Rights of the Child need to be made more explicit for young people to ensure that their rights and them are valued and upheld in society.

11. The Scottish Government currently has obligations to protect and endorse young people’s rights, so it would be consistent to introduce the UNCRC into Scots law. As the Scottish Government still makes laws that are relevant to young people, it would make sense to incorporate the UNCRC, under which they already have international obligations.

12. Article 41 of the UNCRC states ‘Nothing in the present convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in: a) the law of a State Party...’ and after reading through the relevant parts of the Children and Young People (Scotland) Bill we feel that the UNCRC is a more thorough documentation in relation to enforcing and upholding the rights of children and young people.

13. The articles in the UNCRC should be at the forefront of legislation, as the rights included are basic necessities and human rights for children and young people. This means they are easy to relate into any outstanding and upcoming laws that the Scottish Government creates.

Conclusion

14. We achieved the Rights Respecting School Award by raising awareness of the UNCRC and incorporating it into our practice and culture at school. We now believe that it should be incorporated into Scots Law. This would guarantee, particularly for the most vulnerable members of our society, that their rights are met by all organisations. It has certainly helped build, frame and maintain positive relationships not only between young people but also between young people and staff.

George Heriot’s School

The submission was made by the following pupils:
Rory Doherty
Eilidh Gilmour
Lizzie Wells
Ben Christian
Chrissy Fullerton
Euan Lannon

26 July 2013
1. Getting it Right for Every Midlothian Child (GIRFEMC) is a partnership within the Community Planning Partnership in Midlothian. The GIRFEMC Board includes representation from elected members, the Council, NHS, Police Scotland, Midlothian Youth Platform, voluntary sector, SCRA and the Child Protection Committee. While this submission includes some feedback from NHS Lothian, NHS Lothian and Police Scotland have submitted separate responses to the Scottish Government in line with their broader areas of responsibility.

2. The GIRFEMC Board welcomes the Scottish Government’s move to enhance the rights of the child and shift towards prevention and early intervention, through increasing early learning and childcare provision and the Named Person, as set out in the Children and Young People (Scotland) Bill.

3. We welcome the focus on furthering children’s rights, however, the Bill currently places a duty on the wider public sector to report on what they are doing to take forward realisation of the rights set out in the UNCRC (United Nations Convention on the Rights of the Child). The duty does not actually require public bodies to further these rights – placing a duty on public sector to create a plan to further these rights rather than just to report on what they may (or may not) be doing would strengthen the likelihood of this area being progressed. Plans and reports should be updated and published on a publicly available website annually.

4. The legislation also provides an opportunity to broaden the type of information gathered by the Scottish Government related to the outcomes of early intervention and prevention for children and young people. Presently the statistics gathered are numbers and throughput rather than outcomes. While it is not easy to measure outcomes from early intervention and prevention work other than following individuals or trends over time, measures could be devised and introduced, provided they are not overly onerous to produce.

5. We do, however, have some areas where we would appreciate clarification:
   - Whether there will be any central funding to Councils, NHS etc. to cover the costs of implementing the legislation, including increasing the early learning and childcare provision and the named person, and if there will be, what the figures will be and the when it will be distributed
   - How the role of named person will be fulfilled during the holidays, particularly the summer holidays, when the child is of school age and the named person is school-based
   - Whether there will be a central approach to making the secure and robust organisational and technical arrangements for the transfer of information from the NHS to the Council when the child starts school
6. The documentation prepared by the Scottish Government contains a number of estimates of time and resources required to implement the Bill and of the savings that will result from the more preventative approach, however we will only find out how accurate these estimates are in due course. There is a potential risk to the Council and its partners if these estimates prove to be incorrect.

7. The resources required will include a need for more skilled and qualified staff to be recruited, for example more Health Visitors, teachers to back-fill teaching posts, childcare professionals etc. Experienced and qualified staff cannot be found overnight and creating them will take time and resources beyond the simple cost of paying people for the relevant period of time.

8. The Financial Memorandum makes the point more than once that it was difficult to estimate the numbers and cost of the extension of the support duty on Local Authorities for care leavers up to the age of 25. With Midlothian being a small local authority with a relatively high number of care leavers this has the potential to be a significant drawn on resources, both staff and financial.

9. Clarifying and improving the financial support available to Kinship Carers with the intended consequence of reducing the numbers in care is welcomed however this will increase legal costs to, and the number of kinship carer payments by, local authorities. While in the longer term there should be savings through reduced numbers in care there are also short and medium term implications from increasing the numbers of kinship carers, particularly if significant numbers of existing carers come forward to formalise their caring role.

10. Increasing the number of successful adoptions and thereby reducing the number of children and young people in care is an aim that is supported by the GIRFEMC Board. That said, putting Scotland’s Adoption Register on a statutory footing must be done in a way that allows effective and efficient use so that children and young people can be adopted without increased administrative burdens or delaying the adoption process, while also finding the most suitable adoptive parents. It must also be a transparent process and understandable to all parties involved in the process, particularly the children and young people and the prospective adoptive parents.

11. Overall there will be big challenges for organisations working with children and young people to put money and resources towards prevention and early intervention while also supporting those children and young people who have already passed this stage, particularly in this time of budget reductions. The transitional phase while priorities and service delivery are reconfigured must be funded to ensure that prevention and early intervention is delivered effectively so that the long term rewards are achieved, but not at the expense of the current generation of children and young people already receiving services.

Partnership Board
Getting It Right for Every Midlothian Child
26 July 2013
Response to written submission from Paul Braterman, Ron McLaren and Clare Marsh—

The Scottish Education Department have repeatedly stated that RME is to be provided to/for "all pupils"/"every child."

The 1980 'conscience clause' refers to Religious Instruction, which no longer exists in non-denominational schools.

RME/RMPS (in non-denominational schools) is 'not' Religious Instruction, any more than Modern Studies is Political Instruction. I do not instruct my pupils religiously any more than my Modern Studies colleagues instruct their pupils politically and can see no reason why the children of Jehovah's Witnesses, Islamists, atheists, or any other group, should have a 'right' to opt out of my subject.

Following 'opt out' logic, we should allow (and encourage) children of ID proponents and creationists to opt out of Biology classes on evolution; children of Islamists to opt out of PSE lessons on minority sexualities; children of political fundamentalists to opt out of Modern Studies, and so on.

If any subject is being badly taught in some schools then we should be targeting the teachers concerned, the head teachers and the local authorities. No subject can legally be used to indoctrinate/propagandize pupils in non-denominational schools. Choosing instead to let a few parents 'opt out' serves only to make life easier for corrupt, biased teachers. Should parents, whose children encounter a biased, proselytising History/Modern Studies teacher, presenting his/her own political views as the correct ones, seek to just 'opt out' whilst allowing other people's children to continue to be indoctrinated without them?

On what moral or religious grounds could a parent prevent their children from learning about the beliefs and values of Jews, Hindus, Buddhists, Christians, Muslims, Sikhs, atheists and agnostics?

Keith Gilmour

RME/RMPS teacher, Boclair Academy, East Dunbartonshire

13 September 2013
Education and Culture Committee

Children and Young People (Scotland) Bill

Sheila Gilmore

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
We very much welcome this opportunity to submit written evidence on the above Bill. We would wish to reiterate our continued support for the objectives and principles of the Bill, but would wish to make a number of comments on the potential implications of its implementation.

In general terms we continue to have real concern about the funding of the Bill. Our officers were involved in work on costing the implications of the Bill. In relation to the proposal to increase available early years provision to 600 hours, we agreed that the costings from the Scottish Government were broadly accurate and have received confirmation that this section will be fully funded, although no actual figures per local authority have been provided.

Also in general terms much of the detail of the act is being left to secondary legislation so it is difficult to comment in detail on what impact the act is going to have.

A further general point is that we have some concerns regarding governance and a potential shift from local to central government governance and accountability. In particular Section 17 which relates to children’s services planning. The powers proposed in this section for Scottish Ministers to direct local authorities is a significant shift from the previous Children (Scotland) Act 1995, and is potentially much more far reaching, where Scottish Ministers could ultimately direct local authorities to provide and plan children’s services in a particular way. We would welcome further discussion on this point in relation to governance.

Glasgow is one of only two local authorities which currently provides 570 hours per year of free early years education and childcare. However, there remain challenges which will impact on staffing, accommodation and partnership contracts to enable 600 hours to be delivered.

Glasgow is already taking positive steps to embed the rights of children and young people in line with UNCRC, including our ambition to be a Child Friendly City through UNICEF UK Child Rights Partner Programme.

The concerns around funding centre on the proposals for named persons, kinship care orders and increasing duties for looked after children from 21 to 25. In relation to kinship care the Scottish Government estimate a cost of £2.6m across Scotland for implementation costs with no recurring cost. In considering the potential cost to GCC, we estimated a cost for assessment and start up if all of our carers were to apply for the new order of £0.442m, with some of this recurring dependent on the nature of ongoing support. In addition the cost of supporting carers to apply for the new order is unknown, but if we based this on costs to support Adoption orders, there would be a considerable cost to the Council. It would appear the assumption is that once carers have applied for the order and receive a start up grant then they would no longer be in receipt of payment from
the Local Authority. It is difficult therefore to estimate how many kinship carers would apply for the new order. Moreover, without a definition of support the assumption that this may not include financial support could be challenged by carers.

8. In relation to the funding of the proposal to increase the age of support to care leavers from 21 to 25, the Scottish Government have estimated a national funding requirement of £3.87 in 2015/16, £4.03 in 2016/17, £4.03 in 2017/18 and £1.77m in both 2018/19 and 2019/20. We estimated the costs of providing this additional support in Glasgow to be £0.353m in 2015/16 rising to an additional annual cost of £1.4m. We based our costing on the average financial payment for young people and costs associated with additional staffing to provide an aftercare service to young people.

9. Named person – it is anticipated that further guidance on the role and function of the named person will be provided. Early indications are that NHS will take responsibility for all pre school children with Education holding lead responsibility for all children of school age. The GIRFEC strategy group in Glasgow is currently developing procedures for the universal implementation of the named person’s role in three pilot learning communities, St Rochs, Eastbank and Drumchapel. We will need reassurance that further guidance will be available. Some concern has also been raised that there may be potential confusion with the title of named person currently used in mental health services.

10. In respect of S37 regarding the child’s plan and the management of same. We remain strongly of the opinion that secondary legislation needs to ensure that the Child’s Plan replaces the current requirements for planning under Additional Support Act (2004). Unless the Bill provides this clarity we will continue to have a separate planning process and document for children and young people who have additional needs as defined under the Act. At subsection 5 there is provision to allow Scottish Ministers to make further orders regarding the management of the plan. It would be helpful to have further provisions in relation to for instance the transfer of the plan between authorities.

11. With regards to the provision of counselling services in part 9 of the act, there is no definition of 'eligible child'. This is the starting point of the obligation to provide services so the definition of this should not be left to secondary legislation. As things currently stand we are to provide undefined counselling services to parents or those with PRR (parental rights and responsibilities) of an undefined group of children. Accordingly it is difficult to know the potential impact of this section.

12. Part 10 of the Bill relates to kinship care. Section 64 makes it an absolute obligation that kinship care assistance is made available by the local authority but again there is no definition of the term “kinship care assistance”. In the Adoption and Children (Scotland) Act 2007, there was some attempt to define certain terms for instance ‘adoption support service’ and the same should reasonably apply here.

13. S65 sets out what a kinship care order is. It is encouraging that the Scottish Government made changes to the original proposals following consultation in
relation to the creation of a new kinship care order. This section deems that any residence order granted in favour of a qualifying person or any order under s11(1) of the 95 Act giving the right to dictate residence to a qualifying person, is deemed to be a 'kinship care order'. Qualifying person is defined in s65(2) but further clarity is required on the definition of ‘related’. It is proposed that the interpretation is one similar to the definition of ‘relative’ in s119 of the 2007 act.

14. There needs to be some requirement for assessment by the local authority and a discretion on the local authority as to who should be able to gain assistance from them. This is also being left to secondary legislation. S66(3) and (4) allows the Scottish Ministers to make further provision about a number of matters including how or when kinship care assistance is to be provided, when a child is eligible etc. It is arguable that these issues are too important to leave to secondary legislation. It is interesting to note that in our liaison with kinship carer groups they are also looking for further clarity of these issues.

15. In conclusion, Glasgow City Council welcomes the objectives and principles of the new Bill, much of which will reinforce the ongoing multi agency work based on improving outcomes for children and families that is already underway in Glasgow. However, we remain concerned about a number of aspects of the Bill and in particular issues around governance and funding. We would very much welcome the opportunity to provide oral evidence to the Committee.

Glasgow City Council
1 July 2013
Education and Culture Committee

Children and Young People (Scotland) Bill

Rita Gleason

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Children’s Rights

1. Govan Law Centre supports the extension of children’s rights within the Bill to include the right to engage fully with the system which potentially affects their lives. This should include the right to exercise any dispute resolution mechanisms afforded by the Act. These rights should supplement, and not supplant, parental rights in this context.

2. Currently, children with legal capacity have the right to appeal against an exclusion in the Sheriff Court, and to bring a (legally complex) disability discrimination claim to the Additional Support Needs Tribunal but are banned from bringing a case to the same Tribunal about the additional support they require at school.

3. Govan Law Centre believes that the right of appeal belongs to the child, and has historically been held by parents as proxy for their children. We believe that, as the individual who is the subject of the actions to be taken under the legislation, the child should be able to enforce their rights by challenging decisions with which they disagree directly.

4. The Scottish Government’s commitment to the United Nations Convention on the Rights of the Child is laudable. However, we note the Scottish Government has not yet taken any steps to comply with the recommendation of the UN Committee on the Rights of the Child to “[e]nsure that children who are able to express their views have the right to appeal … to special educational need tribunals.”

5. Scottish Ministers have previously indicated that they looked favourably on proposals to grant children rights of appeal under the Education (Additional Support for Learning) (Scotland) Act 2004 and this Bill would seem to be an ideal legislative vehicle for that amendment, and to extend the principle to include remedies available in relation to the child’s plan.

Remedies

6. Govan Law Centre agrees with the position put forward by the Advisory Group on Additional Support for Learning in recommending a single plan in which each agency is responsible for its contributions. Critically, we agree that this must be supported by accessible, direct and proportionate means of redress. All relevant agencies should be equally accountable under processes of dispute resolution.

7. An effective, independent dispute resolution mechanism must be available in the event of disagreement over the contents or delivery of the child’s plan. This could

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1 (CRC/C/GBR/CO/4 20 October 2008)
2 Letter from Angela Constance MSP dated 3 August 2011 (Ref: 2011/1008973)
include an extension of the availability of mediation, independent adjudication and the Additional Support Needs Tribunal (for specified categories of dispute).

Privacy

8. The Bill, as drafted, proposes a significant erosion of the right to privacy for children and families with few (if any) safeguards built in. This represents a fundamental redefinition of the way in which information about children is to be treated by agencies and runs the risk of falling outwith the legislative competence of the Scottish Parliament.

9. Govan Law Centre is deeply concerned about the provisions within the Bill concerning the exercise of judgement on whether confidential information about a child ought to be shared and whether that decision is capable of being judicially reviewed. We are concerned with the provision in section 26(6) permitting disclosure when it is expedient as this section is not qualified in any way. Section 27(1) affords a complete exemption from any legal restriction on disclosure, but sub-sections (2) and (3) are special provisions (inconsistent with the broad exemption in paragraph 1) specifying when information may be disclosed in breach of a duty of confidence.

10. There are real concerns about whether these provisions are potentially so wide as to give rise to breaches of Article 8 of the ECHR, which would take the provisions outwith the Scottish Parliament’s legislative competence and could, in some instances, render the UK in breach of the Convention. (See para. 17, below).

11. Further, insofar as Section 27 could be seen as an attempt to exercise the rights conferred by Article 5 of the Data Protection Directive in that it "determines more precisely the conditions under which the processing of personal data is lawful", or in some other way could be said to be an implied amendment of the Data Protection Act, then the clause is outwith the legislative competence of the Scottish Parliament as data protection is a reserved matter.

12. The Privacy Impact Assessment which accompanied the Bill does not demonstrate an appreciation of the purpose and requirements of data protection legislation (nor, indeed, other aspects of human rights legislation. The legislation is proposing a very significant change from the present situation where data may be shared if there is significant concern for the safety of a child to one where data must be shared if there is any concern regarding the child’s wellbeing. This concept is defined in very broad terms which will inevitably leave the matter to subjective interpretation. In any event, should a mild concern regarding any aspect of ‘wellbeing’ justify acting in breach of an obligation of confidence?

13. The Privacy Impact Assessment does not elaborate on the public interest tests for disclosing confidential information, but merely asserts that the public interest will permit disclosure in the listed cases. The assessment also asserts that there

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3 95/46/EC (cf. Joined Cases C468/10 & C469/10 ASNEF and FECEMD v Administración del Estad ECJ 24 Nov 2011)
is a legitimate expectation that information will be shared between professionals. That assertion is unsupported by argument or evidence and should be challenged: do children and parents in Scotland have an expectation that confidential medical information will be shared with the school, the social work dept. and others as a matter of course? Govan Law Centre’s experience suggests that, in fact, parents expect confidential information to be kept confidential and shared only with their consent – or in circumstances where there is an imminent and serious risk to the child.

14. The Data Protection Act 1998 requires that data processing be both lawful and fair and sets out a number of criteria to determine whether processing complies with these requirements. It is entirely possible that processing might be legitimised under the Bill, but still be classed as unfair. The requirements of fair and lawful processing have to be satisfied in the context of individual acts of processing. The discretion and powers proposed in the Bill are too wide to satisfy this requirement in all cases, and thus do not provide a panacea to practitioners who share confidential data. The Privacy Impact Assessment’s section on fairness refers entirely to confidentiality. It makes no reference to fairness as a duty to the data subject and the proportionality issues that arise thereby.\textsuperscript{4} “Fairness” is essentially about individuals not being misled when information is obtained. The issue of fair processing is of pivotal importance, but this fact is not recognised in the assessment.

15. The assessment refers to the first data protection principle. However, most of the other principles are also of direct relevance and need to be considered especially in view of the proposal that all information relating to a child’s ‘wellbeing’ should be passed to the Named Person. What provisions are to be made regarding further disclosure (the 2\textsuperscript{nd} data protection principle); the period of time for which the data is to be held (the 5\textsuperscript{th} principle) or the technical and procedural security precautions that must be taken (the 8\textsuperscript{th} principle)? There is no reference to the requirement that data must be processed taking account of the rights of the data subject, including provision for subject access by or on behalf of the data subject. This is likely to be of considerable significance in respect of requests being made by parents for access to data on behalf of a child, particularly in light of the exceptionally broad definition given to the term “parent” in education legislation.

16. Sections 1.3 and 1.4 of the Privacy Impact Assessment do state the areas of risk, but there seems to be a suggestion that the impact problem is primarily one of security, which is a fundamental misunderstanding of privacy and data protection.

17. Section 2 of the assessment is superficial in its references to privacy risk – it is not at all clear that there is an understanding of privacy, its nature and significance. This is compounded by the reference in section 2.8 to "the eight data sharing principles of the Data Protection Act 1998." This description amounts to a serious and fundamental misunderstanding of data protection. The

Principles apply to all aspects of data processing and are not there primarily to facilitate data sharing.

18. The risks specified in section 3 and the risk register are overwhelmingly about security matters except for the first item which concerns diminution of trust threatening effective social work. Nowhere is there any consideration of the notion that privacy is about private ‘space’ to allow the development of the personality of the individual. The European Court of Human Rights has determined that “…the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings.” Data protection is not the same as privacy; nevertheless, the Privacy Impact Assessment is flawed and incomplete without having a proper understanding of the right to private life, nor can compliance with the fairness principle be properly addressed without understanding the nature of and the need for privacy. There are, of course, circumstances where a child’s right to privacy needs to be overridden in an effort to protect them from harm but the starting position must still be that the child has a right to a private life. As presently drafted, this Bill falls far short of that position by permitting and encouraging routine data sharing on all children.

19. Govan Law Centre’s comments on privacy draw heavily on advice received by us from Professor Ian Lloyd of the Faculty of Law at University of Southhampton, to whom we are very grateful for his time and expertise.

Govan Law Centre
19 July 2013

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5 Von Hannover v. Germany (no. 2) (Applications nos. 40660/08 and 60641/08)
Education and Culture Committee
Children and Young People (Scotland) Bill

Grandparents Apart UK

1. On the whole we agree with the contents of the Bill and believe it will improve outcomes for children if implemented properly and followed in the spirit intended. We are particularly pleased to see some specific criteria set down for what should be considered ‘child’s best interest’ as we have been highlighting for a long time that ‘child’s best interest’ is an opinion and this could vary from person to person, or area to area with unpredictable outcomes for children and families.

2. We are also extremely pleased that a lot of what is contained in the Bill follows the principle of The Charter for Grandchildren which we helped create in 2006.

Our remaining concerns are as follows -

Concerns over Social Services involvement

3. While we appreciate Social Workers have a difficult job and a high case load, we deal with some of the fall out from their decisions.

4. We were initially pleased that some processes in the original Bill were to be removed from Social Work control as we have had so many cases where there has been false reporting and family members simply shut out for no good reason other than questioning a decision or opinion. However we are extremely concerned that this doesn’t seem to have been carried through, in particular with kinship care and simplifying claiming allowances. Too many families are afraid to ask for financial support via Social Services and fear their intervention when if they worked properly in reality, they should be reassured by their involvement. Families as a whole should be confident that they will be assisted not broken apart. We have long been calling for meetings to be recorded, or minuted and signed to safeguard all parties. Training needs to be updated and attitudes changed to accommodate the requirements of this Bill, something else we have been calling for, for a long time.

5. Families must be happy to seek help earlier when they are having problems to prevent molehills becoming mountains and Social Services don’t provide that reassurance in their present form. Even children are afraid to seek help in case they are ‘taken away’ so whether a named person exists or not, the child must feel reassured of the outcome to feel confident in talking to someone about their concerns and fears. We feel it is extremely important that there is some other organisation which families can go to for help or advice earlier, without fear of losing control e.g. Children 1st. Families shouldn’t have to depend on charity helplines for advice and support. Early intervention could prevent many families being ‘in the system’ at all. Some simplified way through ‘the system’ is a must for kinship carers so that the child does not suffer hardship.
Child’s Plan

6. It is imperative to ensure transparency and honesty with justification of decisions available to all parties. There must be some way set out for professionals involved to be able to raise concerns with the performance or decision making of others involved in the children’s plan without fearing for their own position. We don’t want another NHS whistleblower situation. No one should suffer for raising concerns when a child’s future is at stake.

7. Equally there must be some way set out for family members to be able to raise their concerns and ensure they are listened to before any decision is made regarding any child. There must be clear provision for non-resident parents to be included in any decision making so that they are not excluded by default, unless of course any safety issues exist.

8. Love, stability and being included are hugely important to any child and this must be the priority, not ticking off a case and moving on to the next. The plan must be in the child’s best interest, not the parent or whatever is easiest for the planners.

9. Some independent checks on how the child is progressing following changes in their lives would be a safeguard to judge if the right decision has been made. i.e. settled in nursery/school, sleeping well, making friends etc. Perhaps something could be set up within the Children’s Commissioner’s office to do this.

Parenting Assistance - prevention

10. Some form of parental education should be provided where this would help families, as too often parents are not aware they are parenting badly. Basic consideration for others, communication skills, compromise etc. basic nutrition and cooking skills and money management. Education about how important school is and ensuring basic reading and writing skills are taught to parents where necessary. Few parents want to mistreat their children, they often just need help and support and to know it is alright to ask for help.

Kinship care

11. We believe, and research has shown that children want to stay with family members where at all possible. Therefore it would benefit children to have safeguards in place that grandparents or other family members, including non-resident parents are considered fully as carers before any arrangements are made to place the child with outside foster carers. The child must be listened to and family members assisted in any way possible to accommodate the child’s requests. Many children are removed from families due to alcohol or drug misuse and living with this will have been traumatic enough for the child without further loss of loved ones unnecessarily.

12. As stated earlier, some simplified way through ‘the system’ is a must for kinship carers so that the child does not suffer further hardship in a crisis situation.
13. There are many good prospective adoptive parents but only children who cannot be kept within their own families should be placed for adoption and better contact maintained with biological families where appropriate. It is also a fact that many adopted children seek out their natural families in later life, some to clarify feelings of rejection. It is important that children are aware of their biological family medical history and potential problems in later life due to hereditary illness. Continuity of contact or access is crucial in some families.

14. Speed of adoption is only good if the correct decision has been made.

Outcomes

15. Services provided and decision making must be on a national scale. The ‘postcode lottery’ of outcomes is not in any child’s best interest, especially when a Scottish Adoption Register is proposed with access for all local authorities. A National register should be backed by National services. There must be fair and adequate finance to provide local and national solutions to what is a national problem. Investment and proper training now will result in more secure and confident adults in the future, reducing teenage and adult offending and criminal behaviour which is often the result of a child feeling unloved and excluded for whatever reason.

16. Care levers must be better supported and protected with better information provided about where to seek help should they require it, especially if they become homeless, and better systems in place to provide that help quickly. A good foster carer would be willing to provide support and help, not necessarily financial, to youngsters leaving their care as they would do with a biological family member.

Overview

17. More effective rights for every child and young person are only as good as the adults speaking up for them. We must make sure the people speaking up for them are truthful, have common sense and put the child’s interests before their own.

18. Targets while a good idea in principle, are too often simply numbers manipulated to convince governments that goals have been reached. The only targets going forward should be happy and secure children who match the SHANARRI Wellbeing indicators and families that are happy to seek help before it’s too late.

Grandparents Apart UK
22 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

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   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

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Education and Culture Committee

Children and Young People (Scotland) Bill

Karen Haberstock

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

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2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
1. My name is Brian Haile, and together with my wife Isla, we are the owner/directors of two bespoke rural children’s nurseries in Symington and Biggar in South Lanarkshire. We can accommodate 87 children from ages 6 weeks to 11 years from 7.30am to 6pm, 50 weeks per annum providing an essential care service for working parents. Clients typically drop their children in before work and we provide care or wrap around care with the local primary schools (pick up and drop off service), parents or family collecting their children after work/late in the day, up to 5 days per week. We are also fully accredited by South Lanarkshire Council to provide Early Years (aged 3-5) funded places for 475 hours per annum, and provide that service in conjunction with local primary schools for up to 32 children in that age group.

2. Our daily rates are around £41 per day for younger children reducing to £35 per day for older ones. This falls far below that charged south of the border or in Scottish cities but is the maximum we believe parents can manage in our area. My wife is a “hands on” manager, I am everything from Janitor to Finance/Strategic Operations manager and this is typical for private providers in Scotland. Its our fourth year in business, we have 28 full and part time employees (an employment lifeline in our rural area), having turned over around £380k last financial year at 70% occupancy. Year 1 we lost £55k, year 2 lost £35k, year 3 lost £22k and now year 4 finally, an encouraging profit of £5k.

3. We have doubled turnover year on year to date and are only still in business due to loans from friends and family, the banks being less than willing to lend based on our financials (despite constant assurances from government that they are being encouraged to). With further financial investment of the order of £50-60k we could invest in renewables that will double our profitability in coming years, and half our heating and lighting bills (aswell as helping to save the planet and involving children in that); but noone will lend us the money to do it, despite the potential returns and guarantees that we can meet loan repayments. Our business rates increased by 60% 18 months ago, being our second largest outgoing, it almost ended the business.

4. The previous summary is typical of a large number of essential private providers struggling to survive in the current climate, that are key to National Government meeting their childcare objectives in the coming few years, especially 600 hours, and meeting the aims and objectives of the Children and Young People Bill.

5. I am also the South Lanarkshire secretary for the National Day Nursery Association and have also applied for the National Government funded post with the NDNA for Policy Manager Scotland, to further communicate our day to day challenges. As such, the following combines input from private providers in South Lanarkshire, all of our clients and of course my wife and I, key childcare providers, in rural South Lanarkshire. As such we feel this brings together the
common feelings of a significant portion of Scotland to be served by the Bill. A voice that clearly requires some keen attention.

**Issues and Concerns**

**Birthday Discrimination**

6. In the Committee’s call for evidence the five aims of the Children and Young People’s Bill are outlined. Point 3 “Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare”

7. Every child in Scotland should be entitled to the same amount of “free” care regardless of age. Unfortunately this is not and will not be the case with the Bill in its current form. Simply due to the time of the year a child is born the “free” care on offer varies from 950 hours to 1108 hours under 475 hours per annum regime, which equates to £3100 to £3617; and under the proposed 600 hours regime, 1200 to 1400 hours which equates to £3916 to £4569 difference in offering/value per child (please refer to Reform Scotland NDNA presentation May 13).

8. Nursery provision in Scotland, beginning at age 3, with the new Curriculum for Excellence, is a key part of a child’s education, and at a critical key stage of learning. Nurseries play a vital role in education and social development as highlighted in numerous studies and reports, and it seems grossly unfair that children are not all equally entitled to the same basic amount of “free” nursery care simply due to the day or month in which they were born, before starting Primary school.

9. The move to 600 hours in 2014 is very welcome, but it will further increase the age discrimination differential and therefore should be corrected in amendments to the Bill.

10. This should also be taken in to consideration when dealing with “Looked after and disadvantaged two year olds” as part of the Bill, in other words there should not be any age discrimination for this sector of children either, guaranteeing a least a year of care for every child falling into this criteria.

**Parental Choice and what’s best for the child.**

“Local authorities will, therefore, be obliged to provide flexible patterns of early learning and childcare within a minimum framework which will meet local need as identified by consultation and published plans or local strategies.

11. Everyone agrees and the Bill outlines in its forward “make Scotland be the best place for children”. So why are we allowing local authorities to define constrained options for 600 hours. Parents want to choose what’s best for their child. In our experience that is a combination of state and private nursery care. Private providers should be working hand in hand with state nurseries. State nurseries being filled to capacity and working economically for tax payers, with private providers providing wrap around care or full care as required by parents, in a
combination that helps children familiarise themselves with their peers and surroundings.

12. Questionnaires issued in South Lanarkshire didn’t even include any options for shared care and seriously limited parental choice, they weren’t issued to state and private providers at the same time, state being involved far too late in the process, and as a result parents provided an inconsistent/poor response which cannot really be analysed sensibly. SLC still intend to make use of it to define their 600 hour regime, a serious mistake in our humble opinion.

13. The solution is simple. A 600 hour voucher that can be utilised by either state or private, parental selection of hours at each prior to start of term with some flexibility, care provided by private and state working together, sharing everything from resources to, perhaps, even premises. Each being funded appropriately, again spending tax payers money effectively. Far less admin for SLC, better for everyone all round. Those nurseries being able to accept the “vouchers” should have accreditation to provide the service simply because HMIE and Care Inspectorate results are above a certain standard, not because the local authority has them on an approved list, as is currently the case. In fact is could be argued that there is a significant degree of overlap between HMIE and Care Inspectorate services and inspections, and, there could be cost savings made in that area too. In this way parents get the fullest choice and flexibility matching their working needs at the most effective cost to the tax payer.

600 hours and financial burdens that may break the backs of small private providers

14. The rates of funding provided by local authorities have not increased for over 6 years. As a result all private providers are being forced to subsidise Early Years funded places to the tune of around 6.5%, in South Lanarkshire. We receive £8.15 per session when our private charge is £8.68 per session. As the local authority can modify the advised rate specified by National Government, this could be better or worse dependent on region. Yet again, another serious issue, future funding should be ring fenced and fixed at an acceptable rate across Scotland. That rate should be the average of private provider rates across the nation taken from the results of a detailed national survey. In all cases this means that sector of care is running at a loss or break even.

15. Additionally some local authorities fail to pay Early Year funds until up to 7 months after the child has started, and are forced to further subsidise the service due to finance charges etc. This has forced a number of private providers to charge “up front” for the “free at point of delivery service” only reimbursing parents at term end, year end or best case when they themselves receive payment. This means a large number of children are being prevented from attending private providers as they can’t afford to pay. This in turn means that with the children being forced to attend state care, parents struggle to go to work as they need to drop and collect children at unreasonable times, defined by the state nursery. The end result is, none delivery of National Government’s core objective, “free” at point of delivery care. The amendments to the Bill should stop this. All private providers should offer care “free at point of delivery”, local
authorities should pay funds before the start of the term or pay interest and provide loans to cover the cost of service.

16. Most parents currently top up funded place care equal to or exceeding 600 hours. If, therefore, 600 hours is introduced without a long overdue rate increase it will force private providers to lose money. In our case, this will likely turn our small operating profit making business, back to a loss making concern, and eventually liquidation. We in fact do not intend to increase to 600 hours if this happens and will stick at 475 hours (as I understand will many others). Incredibly contractual terms signed by all SLC providers will allow for this for up to 12 months after the introduction of 600 hours (a major over-site on the part of SLC).

17. Please take these points into careful consideration at your hearing. We are more than keen to represent the interests of our “common voice” in South Lanarkshire as a witness, as and when necessary, to clarify fully any questions or concerns on the above burning key issues, essential to making a success of 600 hours and the Bill in Scotland.

Brian Haile and Isla Haile
Education and Culture Committee
Children and Young People (Scotland) Bill

Health and Social Care Alliance Scotland (the ALLIANCE)

About the ALLIANCE

1. The ALLIANCE’s vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

2. The ALLIANCE has three core aims; we seek to:
   - Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
   - Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
   - Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.

Introduction

3. The ALLIANCE offers its broad support for the Policy intentions included within the Children and Young People’s Bill. We believe that the proposals are a positive step to making Scotland a more inclusive environment for children who are disabled and have long term conditions.

UNCRC Principles

4. The ALLIANCE’s report Seen and Not Heard opens with the statement:

   “It is a basic right of disabled children and young people, and those with long term conditions, to be included and to enjoy equality of opportunity with their peers. Supporting people to develop self management skills at an early age will improve their quality of life, opportunities and help reduce future complications”

5. The ALLIANCE believes the Scottish Government has retracted upon its original intention to underpin legislation with the principles of the UN Convention on the Rights of the Child (UNCRC). The ALLIANCE believes this Bill has retracted upon the Scottish Government’s original intention to underpin the legislative process with the principles of the UN Convention on the Rights of the Child. This represents a weakening of the Scottish Government’s commitment to embed the UNCRC across the legislative agenda. We are concerned that the ambition set forth in the Bill’s consultation stage will not be

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1 Seen and Not Heard, the ALLIANCE, 2009 - http://www.alliance-scotland.org.uk/download/library/lib_4e3ab55d6ecf6/
achieved. This is a regressive step in the progress towards the integration of the UNCRC into Scotland's legislative framework.

6. The ALLIANCE believes that the reporting of the Minister’s progress on consideration of the UNCRC should be an independent process, which is scrutinised by the Scottish Parliament and stakeholders. The ALLIANCE has serious doubts that an open, transparent account of the Government’s actions to implement the UNCRC will be fully realised. The potential for the Scottish Government to report on those aspects of their progress which exemplify their successes may not meet the desired objective of an independent report.

Investigations by the Commissioner

7. The ALLIANCE believes that the dualistic approach to investigating individual and collective infringements is a positive method to adopt. However, The ALLIANCE is cautious that such an approach may favour cases that are considered to hold public interest above those which involve less obvious infringements on the rights of more vulnerable children. It is unclear how the Commissioner will identify the abuse of children’s rights. Likewise, the process for children seeking support in instances where their rights have been infringed is not obvious within the Bill. *Seen and Not Heard* found that there is limited opportunity for children and young people’s views to be expressed and taken into account. By appreciating the views and opinions of children, the most effective policy can be shaped to meet their needs. This would thereby reflect the Scottish Government’s principle of active and equal partnership in policy development.

“For policy and practice to succeed in this area, children and young people’s voices must be heard at individual, local and national level” (*Seen and Not Heard*)

8. At the same time, the freedom afforded to the Commissioner to select which cases to investigate based upon their judgement of its ‘significance’ could be open to interpretation. The ALLIANCE would prefer a system whereby the Commissioner is requested to investigate instances where there is a concern that a child’s rights have been infringed under the responsibility of a relevant statutory body. This would ensure proper accountability of public authorities in relation to the treatment of children within their remit, and secure a role for the Commissioner as an independent arbiter of children’s rights in Scotland.

Children’s Services Planning

9. The ALLIANCE welcomes the introduction of section 7, Children’s Service Planning, with particular encouragement from the inclusion of a specific reference to identifying and planning for the needs of disabled children. The ALLIANCE strongly supports the emphasis on safeguarding children. It is essential that the planning of children’s services takes adequate consideration of the increased

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vulnerability of disabled children when establishing a framework to promote the wellbeing of children in their area.

10. The ALLIANCE is particularly supportive of the emphasis on partnership working between local authorities and health boards. We are conscious that there is little acknowledgement within the Bill of the establishment of Integration Joint Boards which have been created through the Public Bodies (Joint Working) (Scotland) Bill. It would seem that in an integrated framework, such as the one being proposed, Children’s Service Planning would come under the responsibility of such a board. We would therefore seek clarification regarding the role of Integration Joint Boards within the creation of the Children’s Service Plans.

11. It is our belief that the coordination of health and social care should empower children and young people to determine the support they need and that of their families. Therefore, within the context of the Social Care (Self-Directed Support) (Scotland) Act and the Public Bodies (Joint Working) (Scotland) Bill, the ALLIANCE would encourage the Scottish Government to:

“Continue to develop approaches such as personalised budgets to enable children, young people and families to design holistic packages of support that best meet their needs. Children, young people and families should be reflected in the Self Directed Support Strategy currently being developed” (Seen and Not Heard Recommendation)³

12. While it is encouraging that the process includes consultation with services that are likely to provide for children and young people, we believe that there should be a wider perspective that considers the responsibility of all agencies, including, for example, transport, leisure facilities and business, to have a stake in ensuring the safety of children within their area.

13. Furthermore we believe that children and young people should be involved in the consultation process and central to the design and delivery of Children’s Service Plans. We feel that given the Scottish Government’s history and commitment to involve children in the strategic development of policy, children and young people should be encouraged to be active contributors to the Children’s Service Plans.

Named person

14. The intention behind the introduction of a named person for every child is welcomed. However there are a number of concerns regarding the current proposals to introduce a named person:

- There is insufficient detail as to the relationship between the named person, the child and their family. The ALLIANCE seeks clarification of the phrase “help in the exercise in any of the named person functions” in order

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³ Seen and Not Heard, the ALLIANCE, 2009 - http://www.alliance-scotland.org.uk/download/library/lib_4e3ab55d6ecf6/
to ascertain the intended role of the named person in respect to other relevant authorities.

- The ‘Duty to help named person’ section of the Bill is too weak to give the named person authority to access the necessary support from other agencies. The ability of service providers and relevant authorities to refuse requests will maintain the fractious nature of services that currently exists. **We believe that the named person must hold significant authority to ensure that the interests of the child are paramount.**

- There is inadequate reference to the Child’s Plan within the Bill or policy memorandum’s section on the named person. The Child’s Plan is the responsibility of the health board (pre-school) and local authority. As it is suggested that the named person is also defined to these age categories, **the ALLIANCE believes the Bill should be clearer in the describing the named person’s role in the development and monitoring of the Child’s Plan.**

- Section 60 increases the age at which care leavers can receive support from the local authority to 26. **The ALLIANCE believes that the named person should have the same responsibility.** For children with additional support needs, who often stay in formal/informal education beyond usual attendance and for whom transition is especially difficult, a named person could provide young people with crucial support during this period. This function could be continued by an identified social worker when the young person leaves school.

- **There needs to be a greater emphasis on children and young people who have additional needs, as this group is often marginalised.** The specific needs of children with additional support needs may require a greater level of support from the named person than that of other children and therefore we do not see the Head Teacher as being able to fulfil this role. Given that disabled children might be infrequent users of the education system, they might need access to a named person whose remit is wider than in-school support.

15. **Seen and Not Heard Recommendation:** “Ensure all disabled young people and those with long term conditions have access to a key worker (as defined by the CCNUK Key Worker Standards)”

**The Children’s Plan**

16. The proposal to introduce a Child’s Plan is welcomed but unclear. Under the Additional Support for Learning Act 2009, children who are considered to have ‘significant’ needs are eligible to receive a support plan through a duty on education, and in certain circumstances; health and social care, to ‘plan and make joint provision for children and young people with complex or multiple needs’.

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4 4 Seen and Not Heard, the ALLIANCE, 2009 - [http://www.alliance-scotland.org.uk/download/library/lib_4e3ab55d6ecf6/](http://www.alliance-scotland.org.uk/download/library/lib_4e3ab55d6ecf6/)
additional support needs\textsuperscript{5}. We are concerned that there is an unclear distinction between the different assessment purposes proposed in the Bill to offer a Plan to children who are considered to have a wellbeing need that is ‘adversely affected by any matter’. The Policy Memorandum, section 82, is vague on the relationship between the Children’s Plan and the Coordinated Support Plan for example. The ALLIANCE believes the potential for multiple assessments and plans to be conducted with disabled children is confusing for families and could exacerbate the complexity of support they already experience.

Childcare

17. The ALLIANCE supports the Bill’s intention to offer 600 hours of childcare to all children aged three to four years, and 2 years for those looked after. The latter condition should be expanded to children who are disabled and with long term conditions, for whom early intervention could be crucial and beneficial to both their physical and educational development. Improving access to better quality, affordable and appropriate childcare provision needs to be addressed as it is difficult to find and maintain suitable and affordable childcare for disabled children. As a relatively high proportion of looked after children and young people are disabled, there is a need for greater provision of accessible early learning and childcare for this group.

18. The ALLIANCE urges the Bill to make a concerted effort to improve the childcare provision for all children. To meet the task of increasing the accessibility of childcare for disabled children, the Bill should include:

- A minimum requirement of additional childcare for children who have a disability or long term condition
- Introduce legislation that limits the amount that childcare providers can charge for the additional expenditure of looking after children who are disabled or have long term conditions.
- Introduce a quality measure that assesses childcare providers on their suitability to meet the needs of children who are disabled or have long term conditions.

Looked after children

19. The ALLIANCE is encouraged by the intentions laid out within section eight of the Bill to increase the age at which local authorities have a responsibility to support the needs of young people leaving care. However, the ALLIANCE is unconvinced that the Government’s well intended plans to provide assistance to care leavers up to the age of 26 will be replicated at the local level if there is no requirement on local authorities to do so.

20. The Bill suggests that a young person would have to request support if they required it. This raises concerns for young people who have difficulty

\textsuperscript{5} Scottish Government, Additional Support for Learning, http://www.scotland.gov.uk/Topics/Education/Schools/welfare/ASL
comprehending their own support needs, or who have undiagnosed support needs. Whilst we recognise that there does need to be a certain amount of individual autonomy afforded to young people, the ALLIANCE would like to see safeguards put in place to ensure that such young people have access to support if they require it. A named person, for example a social worker, could continue this role up until the young person has reached 26 years of age.

21. A clear definition of the local authority’s responsibility to “provide advice, guidance and assistance” is needed within the Bill. Ideally the ALLIANCE would like to see a similar protection in place for disabled young people beyond school age. At present there is a lack of knowledge and information regarding the destination of disabled young people leaving formal education. Many young disabled people do not participate in training or employment beyond leaving school. For this reason the ALLIANCE’s report *Seen and Not Heard* made the recommendation to:

“Introduce a system of monitoring the outcomes of transition compared to the young person’s original aspirations. For example in relation to housing, education, employment, support services and quality of life” (Seen and Not Heard Recommendation)\(^6\)

Our Members

The ALLIANCE is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE has around 300 members including large, national support providers as well as small, local volunteer-led groups. Many NHS Boards and Community Health and Care Partnerships are associate members.

The ALLIANCE’s vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

Senior Policy and Outcomes Officer, Health and Social Care Alliance Scotland
(the ALLIANCE)
26 July 2013

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\(^6\) Seen and Not Heard, the ALLIANCE, 2009 - [http://www.alliance-scotland.org.uk/download/library/lib_4e3ab55d6ecf6/](http://www.alliance-scotland.org.uk/download/library/lib_4e3ab55d6ecf6/)
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
Background

1. This submission focusses on the provisions in the Children & Young People Bill, in relation to implementation of *Getting it right for every child*.

2. Highland was a national pathfinder for the implementation of *Getting it right for every child* (GIRFEC) from 2006. There was a period of around 2 years of developmental activity to confirm the key components and practice tools, and a further 18 months programme of implementation.

3. The programme of implementation required a change management plan across all local agencies, as new processes were introduced, and old processes phased out. This was supported by a communications strategy and extensive staff training programme. Implementation was completed in early 2010.

4. There was an evaluation of the process and initial outcomes of implementation by the University of Edinburgh, and evaluation has continued through internal systems.

5. The evidence is that implementation of GIRFEC will reduce bureaucracy, achieve earlier and more effective interventions, and improve outcomes for children and families, such that:

   - Children are more likely to get the help they need when they need it.
   - Practitioners spend more time with children and families.
   - Assessment defines responses - that are more likely to be appropriate, proportionate and timely.
   - There are explicit thresholds for compulsory measures.
   - There is greater support to enhance the capacity of families and communities to meet the needs of children.
   - Those working with children and young people use a more consistent and equitable approach, and are clear about their responsibility to do the right thing for each child and how they contribute to the collective responsibility to do the right thing for each child.

6. This means that needs and risks for children are likely to be responded to more quickly and are less likely to escalate. This is evidenced by reducing numbers of looked after children over the last year and a half, as GIRFEC implementation has begun to impact – first on the number of children supervised at home, and now also on the number who are accommodated away from home.
7. Evidence from The Scottish Children’s Reporters Administration confirms that the Children’s Hearing System is less likely to determine that compulsory measures are necessary to achieve positive outcomes, as plans and collaborative action with families are in place at an early stage.

8. The number of children who are referred to the Reporter continues to reduce, and the number of reported offences by young people is falling very significantly. Thus, fewer children are coming into ‘the system’.

9. Child protection registrations fell at the time of implementation, as practitioners and agencies became more confident that children would receive necessary support, without them having to escalate concerns up the system. Similarly, the number of children re-registered within the previous 12 months has steadily declined.

10. Three years after implementation, GIRFEC is mainstreamed into the practice of services for children across the authority – for children and families, and for staff in education, health, police, social work, the 3rd sector and other partner agencies. It is now simply regarded as the Highland Practice Model.

11. Implementation of the Practice Model has more recently contributed to a further significant development: the integration of children’s services through the lead agency model in April 2012. This involves children’s health and social care, and specialist additional support for learning, and will include schools and devolved additional support for learning from 2015.
The Children & Young People's Bill

12. The Bill aims to improve the way that services work to support children, young people and families, by putting key elements of GIRFEC into statute:
   - The Named Person role
   - A single planning process to support those children who require it
   - A definition of wellbeing
   - Co-ordination of the planning, design and delivery of services for children and young people with a focus on improving wellbeing outcomes.

13. The following comments are made in relation to these key elements.

Named Person role

14. The Named Person role was not included in the original set of GIRFEC components produced by Government. Instead, it developed within the pathfinder, from practice on the ground, and from good and improving relationships between practitioners and with families.

15. The role reflects the best practice that has always existed in Scotland. It reflects the Midwife or Health Visitor, who knows the families on her caseload, including who would benefit from a little extra support. It reflects the Headteacher, who takes an interest in the overall wellbeing and development of the pupils in her school.

16. Critically, the Named Person is a point of contact for families, where they can seek advice or support about issues relating to their child’s wellbeing. She will usually be someone that the family already knows, and who they feel able to approach.

17. If the family wish, the Named Person can request help from other agencies, without bureaucracy or excessive delay, and without the child and family having to try and make contact with a host of other professionals and agencies.

18. Also, if other professionals have concerns about a child’s wellbeing, rather than rushing to Social Work or Police, or a host of other agencies, the concern can be passed to the Named Person, who can take account of that information in the context of what she already knows about the child. Hence there is a clear process in place to ensure that information about the child is passed to the right person.

19. Prior to implementation of GIRFEC, such concerns - be they from health, police or the public – were often referred ineffectively and inappropriately to a range of agencies. Or, alternatively, they only reached the professionals who knew the child and family best, via the Children’s Reporter, who would then request information from a range of agencies, sometimes taking a number of weeks.

20. Hence, the Children’s Hearing system was becoming deluged and swamped by inappropriate referrals and unnecessary processes, preventing and delaying the
system from responding to those children who may actually have been in need of compulsory measures.

21. The development of the Named Person role was widely welcomed in Highland and has been fully implemented since 2010. Families prefer having contact with someone they already know, and who knows the child. They don’t have to deal with bureaucratic systems if they want a little extra support.

22. Midwives, Health Visitors and Schools are informed about issues and events in children’s lives, and are able to take account of this and respond quickly, offering advice or assistance where necessary. Children and families are not taken into any new system – they are supported by their Health Visitor and their School.

23. But where any concerns may indicate that a child could be at risk of harm, there can also be swift contact with Police or Social Work, who know they are getting credible and significant information from someone who has a good understanding of a child and family’s circumstances.

24. The consequence of this, has been earlier support and more effective intervention for more children. Getting that support to a child early, usually means it is more likely to lead to a successful outcome.

25. The Highland Council has though questioned the proposal to extend the Named Person role beyond school leaving age, and to the age of 18 years. Not only has this been difficult to achieve in practice, there are doubts about the desirability and necessity of this measure.

26. Given the significance of the Named Person role within the Practice Model, it is important to address some of the concerns that appear to have arisen during the period of consultation on the Bill:

27. **Concern:** The Named Person role will usurp the rights and responsibilities of parents.

28. **Practice:** The Named Person role provides a clear point of contact for parents, to support them in the task of parenting, which has been welcomed in Highland. We do not get complaints about the Named Person role being deployed; we get complaints when parents believe it has not been deployed.

29. **Concern:** The Named Person role involves additional work and will require more resources.

30. **Practice:** The Named Person role reflects existing best practice by Health Visitors and Headteachers. It helps ensure more effective and efficient use of time, through more effective and efficient processes. It brings clarity and structure to very necessary activities, enabling more specific and less arbitrary communications, the reduced requirement for the involvement of multiple parties in communications and meetings, and more direct and enabling relationships with children and families. In simple terms, Health Visitors and Headteachers do
not need to call meetings to make things happen – they simply act as Named Person.

31. The Named Person role is welcomed by Teachers and Health Visitors, because it better enables them to fulfil their full responsibilities – it supports them to do their job.

32. There is a separate case to be made about how many Health Visitors and Teachers are required to fulfil the full range of responsibilities of these tasks. Certainly, a strong case can be made for additional investment in Health Visiting to fulfil the guidance set out in Health for All 4 and to achieve the aspirations of the Early Years Collaborative – which is why Highland Council is investing an additional £2m in these services.

33. **Concern**: The Named Person role cannot work because schools are closed for periods of the year.

34. **Practice**: It is true that the contribution of the Named Person is reduced when schools are on holiday, albeit some measures are possible to mitigate this. This can mean that there may be increased risk for the 12 weeks when schools are on holiday, and this may lead to more interventionist measures being taken as a consequence.

35. It is critical though that the Named Person is based in universal services, and that she is someone who is likely to know and be trusted by the child and family.

36. It would be perverse to consider that the Named Person role should not be available for school age children for the 40 weeks that schools are open, because it is not available for the weeks that schools are closed.

37. **Concern**: There are likely to be reducing resources in schools and other children’s services, which means that the Named Person role will not be viable.

38. **Practice**: We would all welcome increased resources. Our task in managing services however, is to use the resources that we have as effectively and efficiently as possible. The Named Person role is a simple, cost effective means of supporting children, ensuring good communications, also reducing bureaucracy and duplication to achieve more helpful responses to children’s needs.

**A single planning process**

39. The introduction of a single planning process and single plan to support those children who require it, has achieved a transformational impact on assessment and action processes, to better support children.
40. The single planning process involves:

- a shared assessment model across professional disciplines, based on the ‘my world triangle’, addressing: the child’s development; the support available in the family; and the support in the wider community.
- an emphasis on empowering communities and families to support children.
- a shared framework for understanding and describing children’s needs, based around the SHANARRI wellbeing indicators (see section below).
- clarity that any response to children’s needs, should involve a proportionate assessment and plan.
- a single planning tool – no matter how complex a child’s needs, that builds from stage to stage, and does not start again with every new intervention.
- reduced bureaucracy, with less need for meetings and duplicate planning processes.
- clarity that the Child’s Plan should determine access to services.

41. The Child’s Plan ensures that all professionals, the child and family, work together to achieve the best possible outcomes. The shared plan ensures collective responsibility and joint ownership of the actions. No longer are there separate service plans or reports – and no longer does the child with increasing needs also have an increasing number of unrelated plans and planning processes.

42. Practitioners report that parents and children are now key partners to the plan, which has been critical to ensuring it is successful and that outcomes are met. Parents and children’s views are central to the plan – it is always expected that their views will be included.

43. The ‘my world triangle’ has been particularly important in involving parents in the assessment process and making it more accessible for them. The online version of the ‘my world triangle’ has been useful in helping to engage the child in the assessment process and eliciting their views and opinions.

44. The shared assessment helps to provide continuity for families – everybody uses the same tools. The plan encourages openness and transparency. There is less repetition of the child’s story – practitioners and families report this is a particularly positive aspect.

45. The use of the Child’s Plan as the tool to request a service from another service or agency, has resulted in less paperwork and bureaucracy in getting children the services they need at an earlier stage.

46. Accordingly, Social Workers report reduced and more manageable caseloads. Also, while the cases that Social Workers hold remain complex, the actions to address issues in the plan are also more timely, with children spending less time within ‘the system’.

47. Reporters note that there is now shared accountability, and decisions to refer to Children’s Hearings are being made more timeously by having the Child’s Plan as the referral mechanism.
48. The Child’s Plan in Highland includes the educational objectives from a Coordinated Support Plan and/or the targets within an Individualised Educational Programme, where these are in place for a child – albeit there is also a case for rationalising Additional Support Needs legislation, to provide reassurance to both practitioners and parents.

A definition of wellbeing

49. The focus on wellbeing is a welcome progression, from the deficit-orientated understanding of ‘welfare’.

50. It is critical that we have a common, shared language for understanding and describing children’s needs, and the SHANARRI wellbeing Indicators provide this. Critically, the indicators can be used to structure the information recorded about a child, and to monitor progress.

51. Scotland has developed a wellbeing model that works for children and families, and also works for the broad range of professional disciplines. It is already embedded in practice across the country.

Co-ordination of the planning, design and delivery of services for children and young people with a focus on improving wellbeing outcomes

52. It is important to reinforce the existing responsibility to produce an Integrated Children’s Services Plan, to ensure effective and collaborative planning, design and delivery of services for children and young people, with a focus on improving wellbeing outcomes.

53. The use of SHANARRI in planning and reporting on outcomes across the full child population, should enable the aggregation and understanding of need from the individual to the community planning level.

54. There must be a means of ensuring accountability for activity towards the achievement of agreed outcomes for children and young people, within the Children’s Services Plan and Community Planning Partnership. It should be a duty on community planning partners and the Partnership to collect, analyse and report individual and aggregate data, to identify the extent to which children and young people’s lives and life chances have been improved as a consequence of local actions.

55. However, Highland Council and NHS Highland have gone a stage beyond ‘joint’ planning, by establishing a single agency for the delivery of community health and social care, with a view to establishing a fully integrated service that also includes schools.
Lead Professional

56. The Children & Young People’s Bill includes provision for key elements of GIRFEC implementation – but it does omit one other key element: the Lead Professional.

57. The Lead Professional co-ordinated the Child’s Plan where more than one agency is involved. If the Plan is not complex, and the intervention is likely to be brief, the Named Person becomes the Lead Professional. In more complex and extensive interventions, the Lead Professional will be a Social Worker or other specialist practitioner.

58. The Lead Professional role therefore complements the Named Person. The effective use of the Lead professional role, is important in ensuring that Named Persons in universal services are not used inappropriately.

59. It is understood that it is more difficult to legislate for the Lead Professional role. But if we can legislate for complex child’s plans, we can (and should) also legislate for the practitioner who has responsibility for compiling them.

Bill Alexander
Director of Health and Social Care
Highland Council
13 September 2013
1. Thank you for your letter of 7 October 2013 concerning the review of the Children and Young People (Scotland) Bill.

2. Having looked at the various further explanations regarding the proposals for a Kinship care order, I have the following comments in relation to tax credits and Child Benefit. I don’t know if any consideration has been given to the income tax implications of your proposals so have copied to my tax colleagues and asked that they reply to you directly. The connection here is that tax credits follow the income tax rules to determine the level of income to be taken into account.

3. If I have understood the briefing and the additional information correctly, the proposals will move support from ‘formal’ to ‘informal’ Kinship Care and, as a consequence, Kinship Carers will no longer be entitled to the support that is required by the ‘Looked After Children’ Regulations. In addition, Local Authorities would not have the same level of responsibility because the children would no longer be ‘looked after’.

4. Currently, in relation to tax credits, Kinship Carers who receive support under the ‘Looked After Children’ regulations cannot claim Child Tax Credit (CTC). Under the ‘informal’ Kinship Care proposals, and subject to receiving details of what payments will actually be made, it appears that the children will no longer be considered to be ‘looked after’ by the Local Authority and, as a consequence, the Kinship Carer would be able to claim CTC. We would need to see your draft regulations to understand precisely what will be paid out before a final view could be given.

5. Similarly, in relation to Child Benefit, it is not yet clear from the information provided what package of support will ultimately be available. We would need to look at this again once the secondary legislation has been drafted but our initial view is that Child Benefit would continue to be available to the Kinship Carer in respect of the children being informally looked after. There is one exception to this generalisation and that is in relation to the transition from ‘formal’ to ‘informal’ Kinship Care where a top-up payment of £70 per week could be paid for up to 3 years where equivalent support is not available through the UK benefits system. We’re not certain what that means in practice and would need to understand more about these payments before a final view could be given.

6. I hope this is helpful but please come back if you require anything further.

Yours sincerely
Trevor Sanders
Benefits and Credits
Customer, Strategy and Policy
1 November 2013
Dear Mr Maxwell

Children & Young People (Scotland) Bill
Kinship Care Proposals: Income Tax Implications

My colleague, Trevor Sanders, wrote to you on 1 November 2013, in response to your letter of 7 October. As mentioned in Mr Sanders’ letter, he has asked me to provide you with information on the income tax implications of the kinship care proposals. We appreciate that you have not requested this advice but hope you will find it helpful nonetheless.

I will start with a summary of the tax rules relevant to kinship carers, in particular, “qualifying care relief”. I will then comment on the consequences of these rules in the context of the kinship care proposals.

Qualifying Care Relief (QCR)

How does it apply to kinship carers?

For income tax purposes, QCR is available to individuals who provide foster care and/or “shared lives care”. The term “shared lives care” encompasses a number of statutorily defined schemes in which vulnerable children and adults are cared for in a carer’s own home as part of their family. One such scheme is kinship care, providing that the following conditions are fulfilled:

The child:
- is under 18 years of age, and
- is a ‘looked after child’ [in Scotland, to whom section 17(6) of the Children (Scotland) Act 1995 applies].
The carer:
- receives payment from a local authority (or health service body) for providing the care,
- is related to the child, but is not a parent or step-parent, or has a pre-existing relationship with the child,
- is regarded by the local authority as a suitable person to care for the child, and
- is not a person in respect of whom a court has made a residence order or special guardianship order in relation to the child.

If these conditions are met, then QCR is available to the kinship carer.

What does this mean?

Foster carers and shared lives carers, who receive payment for providing care, are generally regarded as carrying on a business. This means that their profits are, in principle, taxable. If there is no business, then the income may still be taxable as “miscellaneous income”, which is calculated broadly along the same lines as trading profit.

Normal business tax rules require profits to be calculated by deducting allowable expenses from income. However, as carers take in people to live with them in their own home as part of their family, it can be particularly onerous for them to distinguish allowable expenses from private household expenditure. In order to alleviate this administrative burden, the tax system provides an alternative method of calculating profits through QCR.

QCR allows payments up to a qualifying amount to be received tax free. The qualifying amount for the year is calculated by reference to the number of people looked after and the number of weeks in which care is provided for each of those individuals. Most carers have no taxable profits as a result. If payments received do exceed this amount, then the taxable profit is simply the excess over the qualifying amount.

I would emphasise that QCR is intended to simplify the tax affairs of carers, not to provide a tax incentive. In the absence of the relief, most carers would pay little or no tax on their caring income if they were to correctly claim allowable expenses against receipts as the resulting profits would not exceed the carer’s personal allowance.

Kinship care proposals

Will this be qualifying kinship care for the purposes of QCR?

My understanding is that the kinship care proposals are intended for children who are not formally ‘looked after’ (under s17(6) Children (S) Act 1995). As such, the provision of care under this type of arrangement will not be an eligible scheme for the purposes of QCR.

Does this mean that tax will be payable on financial assistance received?

The fact that the care arrangement will not fall within the definition of kinship care for QCR purposes does not necessarily mean that tax will be payable by the carer. The circumstances of each care arrangement would need to be taken into account in order to ascertain what the tax position would be.

If informal kinship care of a child is formalised through a residence order, then payments received are generally exempted from income tax altogether, so long as the recipient is not a parent or step-parent of the child.

Alternatively, the arrangement may still be eligible for QCR on a different basis. For example, if certain conditions are met, the arrangement may fall within the category of “staying put care”, which is aimed at helping previously looked after children into adulthood.
For more informal arrangements, rent-a-room relief may apply. This is available to anybody providing accommodation in their own home and allows payments of up to £4,250 a year to be received tax free.

I hope that this information is useful. We will be happy to provide further assistance if required.

Yours sincerely

Jitendra Patel CTA
Policy & Technical Adviser
Education and Culture Committee  
Children and Young People (Scotland) Bill  

Homeless Action Scotland  

1. Homeless Action Scotland welcomes the opportunity to respond to the Bill. Our particular interests lie in the prevention of homelessness in young people, and as such our response focuses on the areas of the Bill that look to improve support for care leavers and extending corporate parenting across the public sector.

2. Homeless Action Scotland welcomes the extending of availability of support and assistance for formerly looked after young people up to and including 25, however has significant concerns that this proposed right to “request” help is a somewhat weak one:
   - awareness of existing rights to help and assistance are already underused;
   - several of our members have expressed a concern that current duties to assist are not being met in their areas
   - a further extension of a right to “request” assistance, rather than a duty to provide assistance could see young people in need receiving rationed help and assistance, rather than help and assistance that meets their needs;
   - unless supported by a statutory duty upon public bodies to promote and deliver wellbeing and rights outcomes the duty is unworkable

Homeless Action Scotland recommends that the “right to request” is changed to a “duty to provide” advice and assistance when a young person up to and including 25 is assessed as in need.

3. Homeless Action Scotland also welcomes the extending of corporate parenting across the public sector; however we recognise that this is something that will require considerable effort in order to reach a consensus as to which public bodies must and should be included as corporate parents that works across all local authority areas. This is particularly important when young people in care move from one local authority area to another in order that they receive equal and fair treatment across all Scotland. Members have expressed concern that the role of different public sector agencies have as corporate parents is unclear, even within a Getting It Right for Every Child framework.

Homeless Action Scotland recommends that rigorous statutory guidance is created to clarify the role and responsibilities of public sector bodies in ensuring all looked after young people are treated equally across Scotland.

4. In addition, in following the principles of GIRFEC, it seems anomalous that advice and assistance is only given as a duty to those young people who have been in care up to and including their 16th birthday. This excludes a large number of young people who have spent significant periods of their life in a residential care environment and who, on returning to the family home before their 16th birthday
(a return that is frequently, unfortunately short-lived and fraught) find themselves with fewer rights to help and assistance than other young people who have spent a shorter duration in care, but who happened to have been looked after for the preceding three months up to and including their 16\textsuperscript{th} birthday.

**Homeless Action Scotland recommends extending the duty to provide advice and assistance to all young people who have spent a significant period of the life from the age of 12 being looked after by the local authority.**

5. Over all, we are disappointed that the Bill makes no mention of a “right to return” to residential care environments as part of the process of preparing to live independently after having left care. As the age at which young people leave home rises, it seems incongruous that the age that young people leave care is stuck at a rather premature 16/17 - and that for any young people who wish to stay beyond 19, it is virtually impossible. Few parents would choose to evict their child because they had reached an arbitrary age: why should a corporate parent?

**Homeless Action Scotland**

25 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
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Education and Culture Committee  
Children and Young People (Scotland) Bill  

Human Rights Consortium Scotland  

1. I am pleased to submit a brief response to the above consultation. In addition I can endorse the submissions of our members, CHILDREN 1ST and Together, to this consultation. I would also commend the submission of the Scottish Information Commissioner as this Bill raises freedom of information issues.

2. At the outset, we welcome the purpose of the Bill “The Scottish Ministers view the Bill as an important opportunity to make rights more —realll for children and young people in Scotland. This means empowering children themselves to exercise their rights. It also means highlighting the important role that professionals and communities must play in making this happen. “

3. However HRCS is disappointed that the provisions in the Bill do not go far enough to respect, protect and fulfil human rights and the UN Convention on the Rights of the Child (UNCRC). The HRCS welcomes and supports the call for the Bill to incorporate the UNCRC and firmly believes this should be a general principle of the Bill.

4. Under S29 of the Scotland Act 1998, MSPs are required to only pass legislation that is competent and one of the criteria is compliance with the European Convention on Human Rights (ECHR). As we fear the impact of this legislation will create an unequal enjoyment of rights across Scotland, we urge the Committee to address this problem at Stage 1 which is twofold:
   - Rightly extending the powers of Scotland’s Commissioner for Children and Young People but without consequent amendments to strengthen the powers of the Scottish Human Rights Commission eg it is still specifically prohibited from assisting anyone even thinking of pursuing a case under S6 of the Scottish Commission for Human Rights Act 2006.
   - Human rights are interdependent and form no hierarchy. We believe that in Scotland a general culture of respect for rights is a pre-condition for the effective implementation of UNCRC. So all people in Scotland, whether they are parents, carers or adults need to know about their human rights as well as understand their obligations to respect the rights of children. A duty on Scottish Government Ministers to promote public awareness and understanding about their human rights, is missing from the Bill.

5. We now elaborate our concerns at Stage 1 of the Bill.

1 Policy memorandum on Children and Young People (Scotland) Bill para 45
Part 1 – Children’s Rights

Section 1

6. Concerned that Part 1, S1(2) places a duty on Scottish Government Ministers to inform the public about children’s rights but that obligation does not extend to informing adults of their human rights:

7. “The Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.”

8. Whilst this section is to be welcomed, we are concerned that there will be a perception that children have more rights than adults. The HRCS is concerned that unless adults understand they have human rights too, and what that means, then adults, parents and carers of children, as well as staff across public services and those delivering services of a public nature will be unable to effectively respect and promote children’s rights. UNCRC gives children rights as individuals but also within their family and there has to be an equal enjoyment of rights, across all ages in the family, in order for UNCRC to be respected.

9. Also note that S1(3)(b) requires Ministers to report on progress of such activity every three years. Whilst this is to be welcomed, we are concerned that without Scottish Ministers leading a public information campaign on adult human rights, then the impact which will be reported on every three years will be less impressive that could otherwise be achieved.

10. We acknowledge that this section of the Bill does give effect to the Concluding Observation of the UN Committee on the Rights of the Child:

“Dissemination, training and awareness-raising

11.20. The Committee welcomes the State party’s recent efforts to train professionals on the principles and provisions of international human rights instruments, including the Convention, as well as its support to the UNICEF “Rights respecting schools” project and the collaboration with NGOs in the development and implementation of awareness-raising activities. Nonetheless, the Committee is concerned that there is no systematic awareness-raising about the Convention and that the level of knowledge about it among children, parents or professional working with children is low...

Section 4

12. We are concerned that there is no mention on the face of Bill of the Concluding Observations of the UNCRC. Given that ratification of UNCRC by the UK

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2 Concluding Observations on the UK of the UN Committee on Rights of the Child, published 20th October 2008, para 20
Government leads to Periodic Reviews and Concluding Observations on our country, including specific recommendations for Scotland, we regard this as a crucial document which needs to be disseminated throughout Scotland and its contents implemented.

13. We note that in the last Concluding Observations (2008) there are specific recommendations that will be enacted by this Bill as the Government is required to...

14. “...further strengthen its efforts, to ensure that all of the provisions of the Convention are widely known and understood by adults and children alike, inter alia by including the Convention in the statutory national curriculum, and that it ensure that its principles and values are integrated into the structures and practice of all schools. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of child-care institutions.3

15. However such a recommendation is not confined to UNCRC. For example the UN Committee on Economic, Social and Cultural Rights has concluded it is:

16. “... concerned about the low level of awareness of economic, social and cultural rights not only among the public at large but also particularly among judges, public officials, police and law enforcement officials, medical practitioners, and other health care-related professionals, despite the State party’s assurances to the contrary.”

The Committee recommends that the State party take effective measures to increase awareness of economic, social and cultural rights among the public at large as well as among judges, public officials, police and law enforcement officials, medical practitioners, and other health care-related professionals, including by lending adequate support to civil society and national human rights institutions in their efforts in relation to awareness raising. It also recommends that the State party take steps to improve awareness of the Covenant rights as justiciable human rights and not merely rights as part of the "Welfare State".4

17. We urge the Committee to point out the need for amendments to the Bill which will place a duty on Scottish Government Ministers to deliver and evaluate the impact of, a systematic awareness-raising on all the Conventions ratified by the UK Government as well as ECHR, across the population in Scotland. The HRCS believes we need to embed human rights in our culture and across our public services and services of a public nature.

3 Ibid, para 21
4 Concluding Observations on the UK of the UN Committee on Economic Social and Cultural Rights (2009) para 15
Part 2

18.Whilst we welcome strengthening the investigative powers of the Children’s Commissioner (SCCYP), we are concerned that there will be an imbalance in Scotland. Currently the Scottish Human Rights Commission is specifically prohibited from providing advice, guidance or grants to anyone considering taking a legal case or who may have a claim (S6 of the Scottish Commission for Human Rights Act 2006)\(^5\)

19. We are concerned about the potential imbalance in the enjoyment of human rights in Scotland which goes against the purpose and detail of Article 14 of the European Convention on Human Rights (ECHR) which prohibits any discrimination in the enjoyment of rights contained in the ECHR:

20. “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

21. It is relevant to also note that Article 13 of the (ECHR) accords everyone the right to an effective remedy:

22. “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Part 3

23. In section 7 (2), we suggest the addition of the Office of the Scottish Information Commissioner under ‘other service provider’. We believe the addition is merited given the subject matter of this Bill and that the right of children to access information is specifically addressed in S69 of the Freedom of Information (Scotland) Act 2002 (FoISA)\(^6\). We request that the Committee satisfies itself that this Bill complies with FoISA eg in respect of S6(3)(2).

24. We wish the Committee well in its deliberations and, given the nature of your work, commend to you the publication ‘Human Rights for Parliamentarians’ http://www.ohchr.org/Documents/Publications/training13en.pdf

Human Rights Consortium Scotland
14 August 2013

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\(^5\) http://www.legislation.gov.uk/asp/2006/16/section/6
\(^6\) http://www.legislation.gov.uk/asp/2002/13/section/69
Introduction

1. Includem welcomes the Children and Young People’s Bill and the aim of putting children and young people at the heart of planning and delivery of services ensuring their rights are respected. However, we have some concerns about how effective the provisions of the Bill will be in achieving its objectives particularly for the most vulnerable young people and believe that a greater shift towards early intervention is required, and a recognition that this is not only applicable for the early years.

2. For most of Scotland’s children, family remain the most important source of support and yet are barely mentioned throughout the Bill. In order to put ‘children and young people at the heart of planning and delivery of services’ we strongly believe that the vital role of families should be more fully recognised. In the parts of the Bill which deal with vulnerable families, while we welcome the strengthening of the role of kinship carers and corporate parents, it is an significant omission to neither acknowledge nor support the role of parents and families, more generally. We also feel that a Children’s Rights Impact Assessment should be undertaken for this Bill.

Part 1: Rights of children

3. Includem fully supports the full incorporation of the UNCRC into Scottish domestic law and endorses Together’s evidence to Committee.

Part 3: Children’s services planning

4. Includem believes that children’s service planning should be reflected in community planning and Single Outcome Agreements.

Part 4: Provision of named person

5. In terms of the most vulnerable and excluded children and young people in society Includem is concerned that this provision as it stands will not be useful, and may even just add unnecessary additional people into young people’s lives. In particular this is based on our experience of young people who are not engaged with education and find themselves moving between different education placements or not attending any education at all. We also believe that young people should have a say in who their named person is.

Part 5: Child’s Plan

6. Generally, Includem is in agreement with the provisions set out in the Bill relating to the provision and setting up of a child’s plan, and welcome the move towards making service provision more integrated and less onerous for families. However, we feel strongly that children’s and their parents’ views must be taken into
consideration in the preparation of a child’s plan. While we recognise that there may be times where on grounds of safety some parents may need to be excluded from planning around the child, as a matter of general principle, the inclusion of parents in planning for their children should be adhered to.

**Part 7: Corporate parenting**

7. IncludeM welcomes the Bill’s definition of corporate parenting responsibilities and the policy intention to move away from ‘corporate’ thinking to acting more like a ‘parent’ would; looked after children need family support even more than other children do. However, we would urge a note of caution here and request that the Committee scrutinise these proposals with particular attention. The parents of many looked after children still retain some parenting responsibilities, and even where they do not, many looked after children return to their parents when they leave care. The relationship between corporate parents and parents is not explicit in the Bill and there are potential tensions and required collaborations which need to be teased out and addressed in robust guidance.

8. When a child becomes looked after all those with parenting responsibilities need to be recognised and involved appropriately. It is important this includes parents and any relatives acting informally on temporary or respite basis as kinship carers, as well as all the corporate parents laid out in the bill.

9. There should be a requirement for collaboration between those with parenting responsibilities (including parents) when a child has to move placements, including leaving care, to assist with the smooth transition. Placement moves are a particularly difficult time for looked after children. Just as when a child has to move from living with one parent to another the need for collaboration is paramount. Furthermore the link between kinships carers (formal or informal) and parents is a distinct and particularly important relationship to recognise. These are the people that will remain in the young person’s life as they grow up.

10. Therefore we feel strongly that this provision must explicitly take account of parents and other individuals with parental rights or responsibilities.

**Part 8: Aftercare**

11. We are fully in support of the proposals that local authorities should extend their parenting responsibilities up to the age of 26; it is important that this should be a duty to provide rather than simply to request as this most vulnerable group of young people should be guaranteed the help they need.

12. We add our voice to Barnardo’s, Aberlour and others in calling for a broader definition of care leaver to include those who have been looked after, but were no longer looked after at the age they leave school and for an automatic serious case review (by amending the Looked After Children Regulations (Scotland) 2009) in the event of the death of a care leaver up till the age of 36.

13. We are also supportive of Who Cares Scotland? proposed addition to allow young people to return to being accommodated and obtain support up to the age of 26 years old.
Part 9: Counselling Services

14. A definition of counselling services is required in terms of what these interventions could consist of and who would be eligible. Counselling services must be in line with, and complement, the Child’s plan and take into account corporate parenting plans. Includem believe these services should be available where the level of support needs calls for it regardless of what placement type i.e. kinship care, foster care or at home.

15. Placement breakdowns are incredibly destructive for young people. This bill provides a golden opportunity to put in place preventative measures to help parents and carers provide these vital supportive relationships, improve the stability of placements and the quality of childhoods.

Part 10: Support for kinship care

16. Includem endorses Children 1st evidence on this provision. We are supportive of the Bill’s provisions around kinship care, but would like to see these provisions strengthened so that all local authorities will be obliged to offer a minimum level of support to kinship carers throughout Scotland.

Includem
26 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  
Information Commissioner's Office

About the ICO

1. The ICO’s mission is to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

2. The ICO is the UK’s independent public authority set up to uphold information rights. We do this by promoting good practice, ruling on complaints, providing information to individuals and organisations and taking appropriate action when the law is broken.

3. The ICO enforces and oversees the Data Protection Act 1998 and the Privacy and Electronic Communication Regulations 2003, as well as the UK Freedom of Information Act 2000 and the UK Environmental Information Regulations 2003, both of which apply to reserved matters in Scotland.

Introduction

4. The Information Commissioner’s Office (“the ICO”) welcomes the opportunity to respond to the consultation by the Education & Culture Committee of the Scottish Parliament’s Stage 1 consideration of the Children & Young People (Scotland) Bill (“the Bill”). Along with other key stakeholders, the ICO was invited to participate in various working groups established by the Scottish Government during the drafting of the Bill. Its involvement with this piece of legislation has, therefore, been long-standing and it is encouraging to see the influence of this work within the Bill’s provisions.

5. Given the ICO’s role as regulator of the Data Protection Act 1998 (“the Act”), this response will be limited to those aspects of the proposals which relate to the processing of personal information. Most attention is therefore paid to Parts 4, 5 and 11 of the Bill but reference is made to other Parts as required.

Response

Part 1- Rights of Children

6. Article 13 of the UN Convention on the Rights of the Child (UNCRC) gives children the right to freedom of expression, including the right of freedom to seek, receive and impart information. As an independent public authority set up to uphold information rights throughout the UK, in 2012 the ICO contracted a team led by the University of Edinburgh to undertake a research study into how best to embed information rights within in the primary and secondary education systems of the United Kingdom and we have recently been piloting a set of teaching materials for use in schools.

7. The ICO therefore welcomes the duty on Scottish Ministers to promote public awareness and understanding of the rights of children proposed within section
1(2) of the Bill and we particularly welcome that this duty includes promotion of those rights amongst children.

Part 2 – Commissioner for Children & Young People

8. Part 2 of the Bill amends the power of investigation given to the Commissioner by enabling the Commissioner to undertake “individual investigations”, ie, the Commissioner can investigate to what extent a service provider had regard to the rights, interests and views of a child or young person whilst taking a form of action which directly affected that child or young person. In doing so, the Commissioner must be satisfied that the investigation does not duplicate work that is the function of another body.

9. As the sole statutory regulator of data protection in the UK, whilst also having regulatory responsibilities for freedom of information in relation to public authorities based in Scotland but covering reserved matters, the ICO welcomes this clarification. Nevertheless, by only requiring that the Commissioner be satisfied “on reasonable grounds” that there is no duplication (arguably a relatively low test), there remains the possibility of some overlap occurring between investigations undertaken by regulators and ombudsmen and those undertaken by the Commissioner. It may be more appropriate for the Bill to impose a duty on all devolved complaints handling bodies to have regard to the rights, interests and views of a child or young person whilst undertaking any investigation under their powers related to a complaint raised by or on behalf of a child or young person (thereby clearly embedding children’s rights within the operating frameworks of those bodies).

10. The ICO notes and welcomes the requirement under section 6(3)(4) that the Commissioner, as far as is reasonable and practicable, must not identify any child or young person within any statement made in response to a requirement to respond to a recommendation arising out of an investigation. This complements the existing requirement under section 13 of the Commissioner for Children and Young People (Scotland) Act 2003. In doing so, the Commissioner should have due regard to the Anonymisation Code of Practice issued by the Information Commissioner in November 2012.

11. Neither the Bill nor the Commissioner for Children and Young People (Scotland) Act 2003 make reference to a retention period for documents relating to the investigations. Principle 5 of the Data Protection Act requires that personal data should be held for no longer than is necessary and to ensure compliance with the Act, it is recommended that a statutory retention period be introduced.

Part 4 – Provision of Named Persons

12. The ICO notes that providers of services to children as per Part 3 of the Bill must identify a named person to promote, support or safeguard the well-being of a child or young person through actions listed in section 19 (5). The ICO sees advantages arising from the creation of such a single point of contact and advice, particularly through an implicit role in ensuring consistency and accuracy of the information surrounding the child or young person. It welcomes the provisions of
section 24 which assists with compliance with Principle 1 of the Act by addressing issues related to fairness of processing though the section might be strengthened by specifically stating that service providers should name those other services with which they may share the personal data of children and young people.

13. Section 26 of the Bill also assists with compliance with Principle 1 of the Act by providing a lawful basis for the sharing of information by service providers and relevant authorities. However, both section 26(2)(a) and section 26(4)(a) fail to meet the strict requirement of Principle 3 of the Act which requires that “personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed”. Those two sections should be amended to read:

14. Information falls within this subsection if the information holder considers that – (a) it is relevant etc.

15. The ICO is aware of the concerns of agencies in the sector that the Bill as currently drafted may have an adverse impact on the rights of the child and deter their accessing confidential services. It is important that guidance issued to named persons is clear and unambiguous in relation to their data sharing duties and the need to comply with the data protection principles. To comply with the requirement of Principle 3 that the personal data being processed is not excessive, it is important to note that the provisions of the Bill should not be interpreted as meaning that all information pertaining to a child should be shared between named persons and agencies. Instead, it should be seen as providing a gateway for the sharing of appropriate and proportionate information where aspects of a child’s well-being may be considered to be signalling a need for intervention in the longer term.

16. The ICO also notes the provisions of section 27 which gives legal protection to those who provide information under Part 4 of the Bill. Whilst such protection exists wherever lawful sharing takes place in compliance with the data protection principles and the section therefore is strictly unnecessary, its inclusion will provide some reassurance to those professionals engaged in data sharing.

Part 5 – Child’s Plan

17. The ICO notes the proposal within section 38 of the Bill that responsible authorities have to prepare a child’s plan in a relation to any child with an identified wellbeing need that is not being addressed by general services provided by that authority. This again provides a legal basis for the sharing of personal information but, notwithstanding subsection (3), the disclosure of such information by a responsible authority must fully comply with the data protection principles. Section 38(2) provides some reassurance that Principle 3 will be adhered to but it may be appropriate to amend sub-section (1) to require that any such disclosure must be of relevant information.

18. The ICO welcomes the provisions of section 39 of the Bill and would advocate that guidance pertaining to information governance is issued by the Scottish
Ministers. It recognises that provisions relating to the keeping, disclosure and destruction of plans may be made under section 37(5)(e) but separate guidance complementing any such order is advisable. The ICO is currently working with the Scottish Government in the development of draft regulations and guidance on the handling of personal information in relation to the plan.

Part 7 – Corporate Parenting

19. Section 54 of the Bill promotes collaborative working among corporate parents and subsection (2)(a) indicates such collaboration may include the sharing of information. It is not clear as to what extent (or if at all) personal information relating to the children and young people for whom the corporate parent is responsible would be shared. For the avoidance of doubt, it would be helpful to clarify whether it is envisaged that personal data would be shared and, if so, to include similar provisions relating to the handling of personal information as are included within parts 4 and 5 (and having regard to the comments made previously).

Part 11 – Adoption Register

20. The proposal to create Scotland’s Adoption Register is noted. The ICO’s main interest will lie in the nature of information to be contained within it as prescribed by Regulation. Nevertheless, the ICO welcomes that the Register will not be open to public inspection or search.

21. The ICO notes the purposes for which disclosure of information from the Register may be made and, in particular, that information may be disclosed for statistical or research purposes. The ICO suggests that consideration be given to requiring that disclosure for these purposes is made in either a fully anonymised or a pseudonymised way, thus reducing the risks to the privacy of those persons included on the Register.

Further information

Privacy Impact Assessment

22. The ICO advocates the use of Privacy Impact Assessments (PIA) at an early stage of policy development. A PIA is a process which helps assess privacy risks to individuals in the collection, use and disclosure of information and helps identify privacy risks, foresee problems and bring forward solutions. Whilst there is currently no statutory requirement to undertake a PIA, the Scottish Government has endorsed the process within its Identity Management and Privacy Principles published in 2010. For example, Principle 2.1(a) requires that a PIA or proportionate equivalent is conducted and published prior to the implementation of a project which involves the collection of personal information whilst Principle 2.9 states that wherever proposed legislation has a privacy dimension, a summary of the impacts identified in the PIA should be submitted for consideration by the lead committee in the Scottish Parliament.

23. A PIA was undertaken by the Scottish Government prior to the publication of the Bill. It is recommended that the Committee reviews the PIA and ensures that it
fully addresses each element of the Bill which may impact upon the privacy of children and their families.

**Anonymisation Code of Practice**

24. In 2012, the Information Commissioner published a Code of Practice on Anonymisation in accordance with his duties to promote the following of good practice in data handling under section 51 of the Data Protection Act. It is recommended that any sharing or other disclosure of personal information for purposes which do not directly affect a given individual should be anonymised using techniques outlined within this Code.

**Data Sharing Code of Practice**

25. Section 52A of the Data Protection Act 1998 requires the Information Commissioner to publish a Code of Practice (“the Code”) containing practical guidance in relation to the sharing of personal data in accordance with the requirements of the Act. The Code must be approved by the Secretary of State and laid before the UK Parliament.

26. Whilst section 52E of the Act provides that failure to act in accordance with any provision of the data sharing code does not of itself render an organisation liable to any legal proceedings in any court or tribunal, it is admissible in evidence. Consequently, if any provision of the Code appears

27. to be relevant to any question arising in legal proceedings or in connection with the exercise of functions of a court, tribunal or of the Information Commissioner, said provision must be taken into account in determining that question.

28. Given the above, it would be appropriate that any regulations issued by the Scottish Ministers in relation to the information sharing provisions of the Bill made reference to the Code of Practice and required that those sharing the information abide by the provisions of the Code.

**ICO summary of key recommendations**

**Part 1**

29. The ICO recommends that the Bill is amended to introduce a statutory retention period for information pertaining to investigations undertaken by the Commissioner for Children and Young People.

**Part 4**

30. The ICO recommends that in order to ensure compliance with Principle 3 of the Data Protection Act, both section 26(2)(a) and section 26(4)(a) should be amended to read “Information falls within this subsection if the information holder considers that – (a) it is relevant etc.”

**Part 5**
31. The ICO recommends that in order to ensure compliance with Principle 3 of the Data Protection Act, section 38(1)(a) is amended to read "A relevant authority must comply with any reasonable request made of it to provide a person exercising functions under this Part with relevant information, advice or assistance for that purpose."

Part 7

32. The ICO recommends that if it is envisaged that corporate parents may share personal data under the provisions of section 54(2)(a), the sub-section should be amended to require only relevant personal information to be shared.

Part 11

33. The ICO recommends that any disclosure for statistical or research purposes made under the proposed section 13D(2)(b)(iv) of the Adoption and Children (Scotland) Act 2007 should be required to be anonymised or pseudonymised prior to disclosure.

Privacy Impact

34. It is recommended that the Committee reviews the PIA undertaken by the Scottish Government and ensures that it fully addresses each element of the Bill which may impact upon the privacy of children and their families.

Dr Ken Macdonald
Assistant Commissioner (Scotland & Northern Ireland)
Information Commissioner's Office
1. Given the information sharing provisions of the Children and Young People’s Bill (“the Bill”), and as regulator of the Data Protection Act 1998 (“the DPA”), the (UK) Information Commissioner’s Office has been following the oral evidence sessions at Stage 1 of the Bill with interest. We were disappointed not to have been invited to give oral evidence to Committee as we would have been able to clarify many of the points raised by Members, witnesses and within written contributions. Instead, and to assist the Committee in the compilation of its Stage 1 report, I would like to take this opportunity to respond in writing to some of these matters.

Legislative Competency

2. A number of contributors have questioned the competency of information sharing aspects of the Bill on the grounds that (a) the proposals may infringe Article 8 rights and (b) data protection is a reserved matter. Compliance with human rights legislation should be considered within the Privacy Impact Assessment which is currently being updated by the Scottish Government but it would be appropriate to give it more detailed consideration with a Children’s Rights Impact Assessment as advocated by many parties including SCCYP and the SHRC.

3. With regard to data protection, the Scotland Act 1998 reserves “The subject-matter of (a) the Data Protection Act 1998, and (b) Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data)” to Westminster. Whilst in our written evidence we have indicated where the Bill does not comply with the principles of the DPA and must be amended accordingly, the Bill does not in itself modify the DPA. In this regard, it is important to note that paragraph 133 of Schedule 2, Part 1 of The Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999, amended the DPA to specifically include processing necessary for functions conferred on any person by an Act of the Scottish Parliament as a condition for processing under Schedules 2 and 3 of the DPA. In other words, sharing information as required under the provisions of the Bill and in accordance with the data protection principles, is allowed under the DPA.

Section 27

4. Section 27 of the Bill states that “The provision of information under this Part is not to be taken to breach any prohibition or restriction on the disclosure of information” and in our written evidence to the Committee, we indicated that we felt this section was strictly unnecessary as legal protection would be given whenever lawful sharing was taking place under the provisions of the Bill in compliance with the data protection principles. At the same time, we recognised
that it may provide some reassurance to those professionals engaged in information sharing.

5. In the light of Professor Norrie’s comments regarding the wider implications of this section given in his oral evidence to the Committee on 3 September, we have given this section further consideration and we support his view. As written, the section would override all statutory bars on the disclosure of information, many of which have been enacted in order to give children protection and it may also have implications for the independence of the judiciary where court orders prohibit disclosure. We would therefore urge that the content of this section is reconsidered.

Access to Information by Parents

6. In the oral evidence session held on 10 September, you raised a question regarding parents’ right of access to information held by the named person. One of the most important rights accorded under the DPA is an individual’s right to request copies of information held about them. In addition, section 66 of the DPA states that, in Scotland, persons under the age of 16 shall be taken to have the capacity to exercise DPA rights if they have a general understanding of what it means to exercise that right and that a person aged 12 or over should be presumed to have that capacity. Taken together, this means that there are a number of scenarios to consider in response to your question.

1) **The parent requests copies of information held about themselves by the named person**

   Under this scenario, the parent should normally be supplied with the information. However, because that information may also reveal something about the child, consideration has to be given to the impact on the child if disclosure took place and any duties of confidentiality owed to the child.

2) **The parent requests copies of information about their child aged under 12**

   Under this scenario, it is necessary first to determine if the child has the capacity to understand its rights under the DPA. Where the child has that capacity, then scenario 3 applies. Where the child does not have capacity, the parent should normally be supplied with the information whilst taking into account any duties of confidence to the child or other consequences of disclosing the information.

3) **The parent requests copies of information held by the named person about their child aged 12 or over**

   Under this scenario, consent to disclose should be sought from the child. If the child does not have the capacity to understand its rights under the DPA, then scenario 2 applies.

7. The ICO has recently published a **Subject Access Code of Practice** which provides more detail about responding to Subject Access Requests and includes
further guidance on the disclosure of third-party personal information. In addition, you should be aware that parents have separate rights of access to their child’s educational records under The Pupils’ Educational Records (Scotland) Regulations 2003 but these Regulations are outwith the jurisdiction of the ICO.

Information Sharing

8. In our written evidence, we stated that it is important to note that the provisions of the Bill should not be interpreted as meaning that all information should be shared between the named person and agencies. We also note that several witnesses are concerned that such an interpretation may be held by some parties. We would therefore reiterate the need to have strong data-sharing protocols adopted by the relevant agencies and it may be appropriate to include a section within Part 4 of the Bill requiring such protocols to be prepared. These protocols should be supported by Regulation and/or guidance as appropriate.

9. Finally, some evidence has been submitted expressing concern over our guidance to practitioners which stated if professionals believe that there is a risk to children which may lead to harm then that information should be shared proportionately. In giving that advice, which has been welcomed in oral evidence by practitioners such as Martin Crewe (17 Sept) and Bill Alexander (24 Sept), we stressed the need to have procedures in place that clarify circumstances which may necessitate processing without consent. In relation to the Bill, we must reiterate the need to ensure that all information sharing takes place in accordance with the data protection principles (as we stated in our written evidence and others have implied, the Bill as currently drafted does not comply with these principles, particularly in relation to the relevancy of information being shared). Whilst guidance may assist practitioners in determining what is relevant, it is still necessary to amend the Bill to ensure its compliance with the DPA.

10. I trust that the above is of assistance to you but please do not hesitate to contact me if you require further clarification of those or any other issues raised during the passage of the Bill.

Ken Macdonald
Assistant Commissioner (Scotland & Northern Ireland)
Information Commissioner’s Office

3 October 2013
I qualified as a solicitor in 1960 and after 14 years in private practice I was appointed as a sheriff and served as such until 2007. In 2007-2008 I was Temporary Sheriff Principal of South Strathclyde Dumfries and Galloway. I was a member of the Child Care Law Review Group (reported 1990). I presided over the Inquiry into Child Care Policies in Fife (reported 1992). I was a founder member of the Judicial Studies Committee (now the Judicial Institute of Scotland). I have addressed many conferences and panel members' training sessions. My publications include: *An Introduction to Civil Procedure in the Sheriff Court* (1982), *Children's Hearings and the Sheriff Court* (1987 and 2000), *The Scottish Children's Hearings System in Action* (2007), and the section on Children's Hearings in Butterworths’ *Scottish Family Law Service*. I gave evidence to the Parliamentary committee considering the Children (Scotland) Act 1995. I had several meetings with Scottish Government officials on the drafting of the Children's Hearings (Scotland) Act 2011. I am writing up-dates taking account of the new legislation.

I am a member of the group considering Legal Representation of Vulnerable Children, including Separated Children and a signatory of their submission. The undernoted are my suggestions for resolution of the issue identified in paragraph 1 of our recommendations – 'Establishing an independent system for age assessment.' We have discussed these suggestions and are in agreement that they should be regarded as part of our submission.

1. The legislation

Section 124 of the Children's Hearings (Scotland) Act 2011 provides

'124 Requirement to establish child's age

a) This section applies where a children's hearing is held by virtue of this Act.

b) The chairing member of the children's hearing must ask the person in respect of whom the hearing has been arranged to declare the person’s age.

c) The person may make another declaration as to the person's age at any time.

d) The chairing member need not comply with the requirement in subsection (2) if the chairing member considers that the person would not be capable of understanding the question.

e) Any children’s hearing may make a determination of age of a person who is the subject of the hearing.

f) A person is taken for the purposes of this Act to be of the age–
i. worked out on the basis of the person’s most recent declaration, 
or
ii. if a determination of age by a children’s hearing is in effect, worked out in accordance with that determination.

g) Nothing done by a children’s hearing in relation to a person is invalidated if it is subsequently proved that the age of the person is not that worked out under subsection (6).'

2. This section echoes, with some refinements, s 47 of the 1995 Act. So far as I know there is no case-law on this section, but there are decisions bearing upon the ascertainment of age by Lord Stewart in L v Angus Council 2012 SLT 304, issued on 25th November 2011, ISA v Angus Council [2012] CSOH 134, 2012 GWD 29-605 and ALA v Angus Council [2012] CSOH 135, 2012 GWD 29-606, both issued on 24th August 2012. These were decisions in relation to Petitions for Judicial Review of the local authority’s determination as to the age of children in the context of the local authority’s obligations to a ‘child’ under s 25 of the Children (Scotland) Act 1995.

3. In the foregoing cases Lord Stewart was invited to hold that the Supreme Court case of R(A) v Croydon London Borough Council [2009] UKSC 8, [2009] 1 WLR 2558, which authorise a fact-finding judicial review, was binding in Scotland and he decided that it was not. In the event Lord Stewart dealt with the cases as action for declarator.

4. In the case of ISA Lord Stewart observed at §[31]: ‘Thinking specifically about Scottish child-care legislation, namely the Children (Scotland) Act 1995, and coming back to the in rem question, I have difficulty in being persuaded that the legislature, which by section 47 conferred an express power on children’s hearings to make age determinations, should be thought to have conferred a power to make age determinations merely by implication for section 47 purposes “good against the whole world”.

5. Section 47(2) of the 1995 Act provides: ‘The age declared to, or determined by, a children’s hearing to be the age of a person shall, for the purposes of this Part of this Act, be deemed to be the true age of that person’. The words ‘for the purposes of this Part of the Act’ support Lord Stewart’s opinion that the determination of the children’s hearing is not a decision in rem: apart from anything else, the inquiries a children’s hearing can make are limited and (very important) the lack of entitlement of the Reporter to appeal would mean that often enough the matter could not be made the subject of a potentially binding decision of a sheriff, sheriff principal, or the Court of Session. In most cases the limitation of the effect of the children’s hearing’s decisions to Part II of the 1995 Act and, nowadays, to the provisions of the 2011 Act, will not matter, but in the case of where the position of migrant ‘children’ is in issue it could be argued that, where
6. I would therefore suggest:

(a) Where a question as to age ascertainment arises it should be for the Reporter to consider if a ‘wider issues’ question is involved. It should also be the entitlement of parties and the members of the children's hearing to move the Reporter to consider this.

(b) Where the Reporter decides that no ‘wider issues’ question arises, then the children's hearing should decide the age issue in the normal way.

(c) Where the Reporter decides, either ex proprio motu, or on the motion of a party or hearing member, that such ‘wider issues’ arise, the Reporter should grant a ‘wider issues certificate’.

(d) Where a ‘wider issues certificate’ is granted the Reporter should be required to refer the child’s case to the sheriff for a proof hearing.

(e) The fixing of this hearing should be intimated to the Lord Advocate, who would have the right to be represented at it in the public interest.

(f) At the proof hearing the sheriff should be entitled to hear evidence adduced by parties and to call for whatever specialised evidence she or he might consider appropriate.

(g) The decision of the sheriff should be appealable (without leave) by any party.

(h) Owing to the importance of the ‘wider issues’ an appeal to the Sheriff Principal against the sheriff’s determination would be inappropriate since what is required is a decision, binding throughout Scotland and accordingly any appeal from the sheriff should be to the Court of Session.

(i) In the event of protracted procedure there should be provision for a remit to the children's hearing to regulate the position of the child ad interim.

(j) Having regard to the importance of the ‘wider issues’ and having regard to the observations of Lord Stewart on the applicability in Scotland of R(A) v Croydon London Borough Council, consideration should be given to providing for an appeal to the Supreme Court.

(k) Any decision of a court under this procedure should be accorded the status of a decision in rem.

(l) Consideration should be given for the expeditious consideration of the granting of Legal Aid for the child.

(m) The introduction of procedures along these lines would require primary legislation. This could be achieved by using the powers to modify primary legislation conferred on Scottish Ministers by section 195 of the Children's
Hearings (Scotland) Act 2011, but in the interests of full debate and transparency it would be preferable to use full primary legislation such as the pending Children and Young People (Scotland) Bill.

(n) The foregoing proposals refer to children who have come to the notice of the Principal Reporter. We also had to consider those children who had not come to the attention of the Reporter.

(o) Section 66(1)(a) of the Children's Hearings (Scotland) Act 2011 (as amended by Children's Hearings (Scotland) Act 2011 (Modification of Primary Legislation) Order 2013 (SSI 2013/211), in paragraph (7) of schedule 1, under the heading ‘Children's Hearings (Scotland) Act 2011’) maintains the essentially re-active role of the Reporter.

(p) In our principal submission we propose a pro-active rôle for a specified person or office-holder such as the Children's Commissioner in relation to identifying vulnerable persons who may be ‘children’. The circumstances of many persons thus identified will, if they were ‘children’ within the meaning of the Children's Hearings (Scotland) Act 2011, be such that a ground for referral could be stated, but some will not. Different considerations will apply to each category.

(q) In relation to those persons apparently eligible for a ground or grounds for referral, I would suggest that the specified person referred to in '(p)' should be empowered to give the relevant information to the Reporter. As the law stands any ‘person’ (and that would include the Children's Commissioner), is entitled, under s 64 of the 2011 Act, to give information to the Reporter, but I would suggest that it would be more fitting and effective if a specific entitlement were accorded to the specified person/Children's Commissioner to pass information to the Reporter. This could be effected by a provision within sections 60 to 65 of the Act and the addition of 'information from (the “specified person”)’ to the list within s 66(1)(a) of the Act.

(r) As to persons not apparently eligible for any ground for referral, the ‘specified person’, such as the Children's Commissioner, should, where the age of the person in relation to her or his status as a ‘child’ was in question, be empowered independently to make a 'wider issues' type application to the sheriff along the lines suggested above.

7. I would be very happy to explain and expand on these suggestions in writing or in person should the Committee so request.

Sheriff Brian Kearney
22 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

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c. The proposals will result in many families actively avoiding contact with services.

d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
Introduction

1. The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes. The Family Law sub-committee ("the committee") has examined the Children and Young People (Scotland) Bill and has the following comments to make.

General Comments

2. While the policy aims are undoubtedly laudable, the committee does not think that this legislation is the best way to achieve them. In order to be effective, legislation must be clear, proportionate and enforceable. It must also be future-proofed as far as possible, which is difficult when trying to reflect a multi-faceted policy agenda.

3. As the policy memorandum sets out, the Scottish Government is already pursuing a range of policy initiatives and alternative approaches as part of its agenda to improve the lives of children and young people. These have the benefit of being tailored to the needs and level of understanding of the groups to which they apply. Tying various strands together in legislation runs the risk of producing a bill that is unclear in its overall intent and its intended audience.

Part 1: Rights of children

4. Turning specifically to the provisions in the bill, we support the aim of raising the profile of the UNCRC however the committee is still of the view that the duty placed on Ministers in respect of the UNCRC is a diluted version of the existing obligations that they have currently, namely:

- to respect and ensure rights under the Convention by virtue of the United Kingdom having ratified it; and

- to promote and raise awareness of children’s rights in terms of article 42 of the UN Convention.

5. That is not to say that the government should not provide guidance to Scottish Ministers to help them identify ways in which to meet these obligations but primary legislation is not the appropriate place for this.

6. We are also of the view that if Scottish Ministers are to be placed under a duty to report on their UNCRC-related activities, the duty should correspond with the existing reporting duty under the UNCRC (i.e. to report every 5 years instead of 3) to allow coordination of effort and to assist the Children’s Commissioner.
Part 2: Commissioner for Children and Young People in Scotland

7. We have no comments to make on this part, other than to say that we support the extension of the Commissioner’s role.

Part 3: Children’s Services Planning

8. The correlation between “wellbeing” in the bill and “welfare” as contained in existing child and family legislation is unclear. “Welfare” is a necessarily flexible term that if defined (as it is in some other jurisdictions) will still usually incorporate a catch-all (such as ‘and all other relevant circumstances’) in recognition of the fact that factors affecting a child’s welfare are going to be different in each case.

9. Again, for the sake of the overall consistency of reporting obligations, we would suggest that Children’s Services Plans are prepared every 5 years.

10. There is a “the” missing at the beginning of section 10(5) (page 8 line 28).

Part 4: Provision of Named Persons

11. The committee has a number of concerns about the proposal to introduce a named person for every child in Scotland.

12. There is a lack of specification in section 19 in relation to who can be identified as a named person, which includes a very wide discretionary power for Scottish Ministers.

13. Despite how widely this section is framed, the policy memorandum explains that the named person will usually be a practitioner from a health board or an education authority, and someone whose job will mean they are already working with the child. Leaving aside the fact that this is not clear from the legislation, the committee has the following concerns:

- it will add an additional layer of responsibility to people who already have full-time jobs in sectors that are notoriously under-resourced.

- It could present a considerable dilemma where a named person might feel obliged to point out a failure on the part of his/her employing local authority in relation to a child.

- It runs the risk of diverting services away from where they are needed most, as the role of named person is going to be more onerous in some parts of the country than in others, resulting in potential gaps in provision.

- In relation to the information-sharing provisions, the policy memorandum explains that these provisions potentially engage Article 8. Leaving aside the EU implications, we would point out that data protection is reserved to the UK parliament and that legislation affecting data protection rights is outwith the competence of the Scottish Parliament.

- In practice, although the government considers that the provisions are compliant with the ECHR as they have a legitimate aim, children and young
people are entitled to confidentiality and may seek the services of a service provider on the basis that their right to confidentiality will be respected. We are concerned that widening the scope of information-sharing could affect the level of trust between older children and young people and their named person, undermining the function of the role.

14. The committee is also concerned that article 8 could be engaged in respect of the parent’s right to respect for private and family life, as there is scope for interference between the role of the named person and the exercise of a parent’s rights and responsibilities.

15. The committee would also point out that there is the potential for gaps in named person provision in respect of home-schooled children, looked-after children who are placed in accommodation in other parts of the UK and children who are in secure accommodation.

16. Overall, while the committee does not think that the purpose of the named person provisions is to grant control to the state over the development of children in a manner that is intrusive; taking the bill out of context, we think it could be interpreted as disproportionate state interference.

Part 5: Child’s Plan

17. The Policy Memorandum references the Highland Pathfinder and reports some success in its use of the single planning approach, as well as the use of the GIRFEC approach in both the Highland Council and Fife and Forth Valley. The proposals represent a considerable commitment both in terms of time and resources, and given the differences between local authority areas, the committee would ask whether it might be better to continue to trial this good work across Scotland before committing it to legislation, based on the limited evaluation of a few areas.

18. If not, the committee would suggest that a review is built into the legislation to monitor the progress of the proposals once they are implemented.

Part 6: Early learning and childcare

19. The committee questions whether this part of the bill is necessary. The power to prescribe the children for whom pre-school education is required and the amount of such education is already in s 1(1A) and (1B) of the Education (Scotland) Act 1980, and the power to offer alternative arrangements for pre-school children is already to be found in s 27 of the Children (Scotland) Act 1995.

20. Otherwise, in relation to the proposal to increase the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds; and for 2 year olds who are, or have been at any time since turning 2, looked after or subject to a kinship care order, this has clear resourcing issues, which we assume will be considered further in the financial memorandum.

21. In general, we would reiterate a concern expressed in response to the preceding consultation that disproportionate focus on early intervention might lead to
insufficient assistance being provided to the many Scottish children who, through no fault of their own, have already received inadequate support and help from the system.

**Part 7: Corporate Parenting**

22. The committee is concerned that by identifying the fulfilment of duties by public authorities with the role of personal parenting risks overstating the level of responsibility that public authorities have in respect of children and young people, while diluting the parental responsibilities of those who have them.

23. Moreover the proposed duties of the corporate parents as set out in section 52 lack specification and consequently would be difficult to enforce, although public authorities may find themselves faced with challenges over perceived failures nonetheless.

**Part 8: Aftercare**

24. The committee has previously pointed out that in relation to aftercare there is conflicting legislation over which local authority is responsible for its provision.

25. Section 29 of the Children (Scotland) Act 1995 places the obligation on the local authority where the young person is present while the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (SSI 2003/608) places the obligation on the authority that last looked after the young person. This confusion needs to be resolved if the proposed extension of aftercare is to be effective.

**Part 9: Counselling Services**

26. A lot of the detail in this Part is left to secondary legislation but the framework as set out in the bill places a considerable responsibility on Scottish Ministers in terms of defining appropriate counselling services and identifying those who are eligible to receive them. This would seem to be quite an onerous task and the resulting service potentially very resource-intensive. Furthermore, the policy memorandum provides that this service is intended for families in the “early stages of distress”. This intention is not reflected at all in the legislation. The committee is therefore of the view that some more detail on the face of the bill would help to clarify the purpose of this Part.

**Part 10: Support for Kinship Care**

27. Section 65(3) provides that a qualifying person is not a parent or guardian for the purposes of subsection (1). The exclusion of guardians from kinship care assistance bars persons who would merit support on the basis that they have taken on a parenting role for a child whose parents have died, or have taken on guardianship by virtue of a court order, to act in place of parents who are incapable of acting or unsuitable to do so. If this is the intention, the committee would ask for clarification that alternative support is (or will be made) available for guardians on whom parental rights and responsibilities have been conferred.
Part 12: Other Reforms

28. In relation to section 73, the committee would reiterate its comments about the correlation between ‘welfare’ and ‘wellbeing’ (see comments under Part 3 above). Given that the 1995 Act provides that the welfare of the child should be the paramount concern, further clarification of the relationship between these two concepts would be useful.

Part 13: General

29. In the committee’s view, the SHANARRI indicators as set out in section 74(2) (namely Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included) which together define “wellbeing” – while clearly desirable attributes for Scotland’s children and young people to have – do not offer a tool with which to make a clear assessment and in the committee’s view are not appropriate for enshrinement in primary legislation.

The Law Society of Scotland
26 July 2013
Education and Culture Committee

Children and Young People (Scotland) Bill

Carmen Lewis

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

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   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
Introduction

1. LGBT Youth Scotland is the largest youth and community-based organisation for lesbian, gay, bisexual and transgender young people in Scotland. Our mission is to ‘empower lesbian, gay, bisexual and transgender young people and the wider LGBT community so that they are embraced as full members of the Scottish family at home, school and in every community’.

2. The evidence within this document comes from the organisation’s experience working with LGBT young people for over 21 years and from direct consultation with LGBT young people.

General comments

3. We welcome and support the intention of the Children and Young People (Scotland) Bill and the potential it has for improving outcomes for children and young people, particularly for LGBT young people whose rights are often not afforded to them in basic service provision. In order to achieve the goals of the Bill, there are several areas that we would like to see strengthened and clarified.

The UNCRC and Children’s Rights Impact Assessment

4. As discussed in previous consultation responses, incorporating the UNCRC into Scots law would enable the Bill to provide a clear framework to protecting and promote rights. The ministerial duty to promote awareness and understanding of rights to young people does not go far enough to provide the legal framework for a rights and wellbeing based approach to including young people in services. A Children’s Rights Impact Assessment should also be undertaken and may highlight areas of potential conflict between the interpretation of the Bill and the rights within the UNCRC, some of which are highlighted below. Further detail is outlined in Together’s member briefing\(^1\), which we endorse.

Valuing the opinions and wishes of children and young people

5. Three articles within the UNCRC are particularly relevant to the areas of concern within the introduced version of the Bill: Article 12—states that children and young people have the right to have a say in decisions that affect them and to have their opinions taken into account; Article 13—children and young people have the right to get and share information insofar as it is not harmful to them or others; and, Article 16—children and young people have the right to privacy.

6. Without full incorporation of the UNCRC, and as written within the Bill, we are concerned that the voices and opinions of young people will continue to be

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\(^1\) Harris, Juliet (July 2013). *Incorporation of the UNCRC and the Children and Young People’s (Scotland) Bill*. Together.
excluded from important decisions. There are several instances in which privileging adult voices and opinions over children and young people may result in poorer outcomes and increased propensity for risk. We believe that young people’s welfare and rights should be paramount and that their views should be taken into consideration in any decision that affects them.

4.1 Creating a child’s or young person’s plan

7. Section 33 (subsections 6 and 7) states that an authority must have regard to the views of the child as far as is ‘reasonably practicable’ and to consider the child or young person’s age and maturity. The Explanatory Notes seem to place ‘taking account of the child’s age and maturity’ as conditions for having regard to the views of the child (pp14). This leaves the Bill open to the interpretation that it is appropriate to dismiss the opinions and wishes of the child or young person based on the perceived ‘maturity’ of the child or young person. We therefore suggest that the Bill be changed to ‘an authority is to ascertain and have regard to the views of’ children and young people, by removing ‘reasonably practicably’.

8. Further, children and young people should be consulted in ways that are appropriate to their age and maturity levels and these should not be used as ways to exclude the individual’s input. It is important to obtain the views of the child or young person in age appropriate ways in all instances before creating a plan that will affect them; the very intention of the Bill is to improve the way services support children, young people and families and without a child or young person’s input they are neither Respected, Responsible, nor Included. These principles should be applied throughout the Bill, particularly in regards to discussions and decisions made by the named person.

4.2 Privileging the opinions of parents and carers

9. This is another area of concern for creating a child’s plan and for interactions with the named person. It should be made clear that the opinions of parents and carers must not automatically override the opinions and wishes of children and young people. Working with LGBT young people, we know that in instances where parents and carers are unsupportive of a young person’s sexual orientation or gender identity, young people experience increased difficulty in accessing information and support services.

10. For instance, a lesbian, gay, bisexual or transgender young person may miss out on sexual health information if adults remove them from classes that are inclusive of same-sex relationships or a transgender young person may not receive the support needed to attend a gender specialist service. Not being able to access crucial support services or information can result in poor mental health for the young person.

Privacy and consent

11. We have great concern over the wording in the Bill around information sharing. As stated in Section 26, both service providers or relevant authorities and named persons ‘must provide’ information to one another if ‘it might be relevant’ to the
functions of the named person or service provider/relevant authority. This mandate undermines children and young people’s right to privacy (Article 16). LGBT young people regularly have their confidentiality and privacy breached by professionals and services working with them and Section 26 will not only fail to address this but could also exacerbate the situation.

12. In our experience working with services, particularly education, we have encountered a widespread misunderstanding that being LGB or T is a cause for concern to be reported to other professionals or the child or young person’s family. This ranges from a belief that parents and other services have the ‘right’ or ‘need’ to know about a young person’s sexual orientation or gender identity to a belief that parents and carers must be informed if a child or young person is experiencing bullying and the circumstances surrounding this. Both practices invalidate the needs and opinions of young people, cause emotional distress, and place them at risk of harm.

13. **Example A:** A young person experiencing homophobic bullying sought support from a guidance teacher. The guidance teacher told the young person that she would have to tell his parents not only about the bullying, but the form of bullying. We advised the Education Authority against this and provided 1:1 support to the young person. The young person was not yet ready to come out to his family but was worried about being outing by the school. In the end, he came out to his family against his wishes so that he could maintain some control over his own personal information.

14. Although sexual orientation may be a motivating factor in bullying incidents and should influence a school’s response, it should not be shared with parents and carers unless the young person wishes. In addition to emotional and psychological stress from being forced to share personal information in a circumstance beyond their control, being ‘outed’ by professionals can also place young people at risk of homophobic, biphobic or transphobic abuse, discrimination or exclusion in the home.

15. **Example B:** A young person with supportive family came out to his school as transgender and wished to transition. When the young person was due to undertake his work placement, the school felt that it was appropriate and necessary to inform the business of his transgender identity. They cited both health and safety concerns and the desire to maintain good relations with the work placement should it become apparent that the school had known and not informed the work placement of the young person’s transgender background. The young person’s gender identity was irrelevant and did not affect his ability to undertake the placement. In both school actions, disclosing the young person’s transgender identity without his consent was contrary to the Equality Act 2010.

16. Confidentiality is important for all young people and, where no child protection concerns exist, builds trust between young people and the professionals with whom they are working as it satisfies not only their right to privacy (UNCRC Article 16) but also their right to have a say in matters that affect them (Article 12). Coming out to parents and professionals is an on-going process in the lives
of LGBT young people and can cause anxiety for those who are unsure of the impending response. If a young person has come out to a service provider it is because they provide the information in relation to their service need or are confident that the service will maintain confidentiality. Both instances are crucial reminders that sexual orientation and gender identity should not be considered issues that ‘might be relevant’ for sharing between professionals unless they are central to the service provision and prior consent is secured from a young person.

17. It is also worth stressing that the named person must not share information on a young person’s sexual orientation or gender identity with their parent or carer without consent, regardless of the wishes of the parents and carers involved.

**Named Person.**

18. There should be provision for allowing young people to have a say in who their named person is with clear routes to change their named person if they do not feel comfortable with them. These procedures must make it an accessible process that protects the young person from unnecessary stress.

6.1 **Named Person provision for school leavers**

19. The Bill places a duty on local authorities to provide a named person to all young people up to the age of 18. The provision should clarify how young people no longer in education, or who have disengaged with education, will receive adequate support if the named person function is primarily conducted through education.

20. Many LGBT young people play truant or stop attending school in order to avoid discrimination. Recent research with LGBT young people on education found that:

21. 10% of all LGBT young people had left education as a result of homophobia, biphobia or transphobia in the educational establishment.

22. 14.3% of young people left as a result of direct homophobic and biphobic bullying; 42.3% for those who had experienced transphobic bullying.²

**Role of the voluntary sector**

23. We recognise that the current exclusion of charities as written in the Bill is a result of legal protection by restricting named persons and children’s services plans to public services, yet believe that there should be clear mention of involving voluntary sector organisations in the planning discussion. The voluntary sector also provides services that ‘represent the interest of persons who use or are likely to use any children’s service or related service in the area of the local authority’: the criteria listed in Section 10, subsection 2 as organisations which should be provided the opportunity to contribute to the preparation of the plan. Many young people only engage with voluntary organisations, particularly youth

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work charities. This is particularly true of LGBT young people who have experienced negative responses from public services and mainstream youth groups in the past\(^3\). If charities are not named in subsection 2, then they will be excluded from contributing their expertise of specific groups of young people. This is particularly a concern when all LGBT-specific organisations working for the rights of LGBT people are within the voluntary sector.

LGBT Youth Scotland
26 July 2013

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1. I am a civil liberties campaigner and I live in the Isle of Man – a self governing Crown Dependency with a population of circa 85,000 including 17,000 children. I campaign on a range of issues relating to personal privacy and the use of data by public authorities. I am answering this call for written evidence because the 'Getting it Right for Every Child' – GIRFEC policy contained in the Children and Young People (Scotland) Bill is very similar to the 'Every Child Matters' (ECM) policy introduced in the Isle of Man several years ago. That policy had adverse consequences for both the local community and children's & families social services.

2. The adverse consequences for the proposed 'Named Person' with wider statutory powers to share sensitive and personal information are not, I believe, fully appreciated. I will first discuss the adverse consequences of the ECM policy in the Isle of Man on both the local community and children's & families social services. I will then propose that the GIRFEC policy will have the same effect in Scotland.

3. The Isle of Man Government Children Bill 2010 consultation ¹ proposed contentious legislation to introduce a new, much broader, statutory remit to override parental consent to compulsorily intervene in a child’s life. The statutory child protection threshold of 'a child is suffering, or likely to suffer, significant harm' was to be broadened out to include 5 new statutory outcomes: 'Being healthy, Staying Safe, Enjoying and Achieving, Making a positive contribution and Economic well-being' based on New Labour's ECM policy. Also proposed was a universal database flagging all children not meeting the 5 outcomes together with statutory information sharing information between public authorities. This would allow compulsory intervention for a threshold as low as a concern that a child apparently might not be 'enjoying' life.

4. After extensively researching the ECM policy I gave 4 public presentations ² in the Isle of Man to stimulate interest in the public consultation and also gave a private presentation to the Minister for Education & Children. There were 76 responses to the consultation and, as a result of public opposition, the Government withdrew the Children Bill ³. The public were concerned with two main issues arising with the ECM policy. Firstly, Government had not justified a case for universal surveillance of children. I.e. evidence was not produced to convince the public that there were systemic problems with local children and families requiring a broad interventionist

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¹ Children Bill 2010, Isle of Man Government, February 2012
² 'Should They Tell You How to Raise Your Child', Positive Action Group, Isle of Man, March 2010
³ Children's bill axed after public opposition, BBC News, 28 April 2011
policy. Secondly, the public were concerned about harmful intrusion into family life that might result from the policy.

5. Despite withdrawing the Children Bill, the Government proceeded with the ECM policy. Analysis of Government documentation and Tynwald records shows how the policy caused over referral to children's social services, staff turnover and increased expenditure.

6. First indications that ECM was causing problems were in July 2011 when the Government had to ask the Tynwald for £498,000 additional funding for a further 10 children’s social workers. The Minister stated that due to new policies ‘workloads for new cases and for support to the Courts have risen by approximately 500% in the last year’. Fierce debate ensued in Tynwald and a back bench politician complained of the ‘damage inflicted on the lives of a number of children and families during the time the (children’s social) service has been dysfunctional’. He raised concern about the ‘massive increase in referrals’ to children's social services.

7. Tynwald was told that referrals to children social services had increased as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>A log of a concern re a child or children from an agency or member of the public</td>
<td>20%</td>
</tr>
<tr>
<td>A contact resulting in a referral to Social Services</td>
<td>497%</td>
</tr>
<tr>
<td>A referral warranting a more detailed investigation</td>
<td>1560%</td>
</tr>
<tr>
<td>An Initial Assessment warranting a more detailed investigation</td>
<td>560%</td>
</tr>
</tbody>
</table>

8. And referrals were elevated to enquiries for 2010/11 as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referrals to children's social care</td>
<td>959</td>
</tr>
<tr>
<td>Child abuse enquiries</td>
<td>263</td>
</tr>
<tr>
<td>Child identified as being in need</td>
<td>210</td>
</tr>
<tr>
<td>Entries on the child protection register</td>
<td>60</td>
</tr>
<tr>
<td>False referrals (959-(210+60))</td>
<td>689</td>
</tr>
</tbody>
</table>

9. The statistics are startling because there are just under 1000 children born per year in the Isle of Man. So, with circa 959 referrals to children's social services per year, it is likely that most children will be the subject of a referral before they are 18 – with at least 70% of the referrals being utterly unnecessary. In plain terms, nearly three

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4 Service integration reaches the Isle of Man, Children & Young People 'Now', 19 December 2007
   http://www.cypnow.co.uk/cyp/news/1041153/service-integration-reaches-isle-man

5 Simon Griffin, director of social policy in the island's Department of Home Affairs, said: “We've lifted all the principles of the Every Child Matters agenda and are now drawing up a children's plan and forming working groups to work out how best to integrate our services.”

6 Tynwald Hansard, 11th July 2011, line 6085

7 Department for Social Care, Isle of Man Government, Information in support of the case for additional resources for Children & Families Services, 29 June 2011

8 Tynwald Hansard, Written answer 37, 'Children and Families Social '16 October 2012
quarters of all children will be the subject of intrusive enquiries by social services at some stage in their childhood. This hugely intrusive policy is a direct consequence of over broad referral criteria.

10. A further adverse consequence of ECM is the high turnover of social workers. Such a high rate of referral caused the system to become overloaded. Recent statistics 9 show that, in addition to recruiting ten extra social workers to handle extra case loads, children's social services then spent £2,027,538 employing a further 51 locum social workers after ECM was introduced. 28 of these locums failed to complete their employment. Such a high turnover of staff does indicate a problem within the system. Quite simply, the over referral to children's social services has stretched the service to the point that it cannot now be managed effectively.

11. The overload of children's social services is one side of the problem. But the effect of such intrusive intervention on families and children also has to be considered. Evidence presented to the Westminster Education Committee 10 cited a range of adverse consequences and public health issues resulting from over involvement with children's social services. These include including fear of accessing medical care, distrust of health visitors, concealment of post natal illness, more marital separations and breakdowns and lack of help for those in need. The point being that parents, entirely understandably, fear needless involvement with children's social services and, consequently, avoid contact with public authorities.

12. The central point of my argument is this. GIRFEC and ECM are very similar in ethos. Both are founded on statutory outcomes for children with wider powers for public authorities to share sensitive and personal information without parental consent. In the case of GIRFEC it is not '5 outcomes' but '8 outcomes': 'Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible & Included.' But the proposed GIRFEC statutory outcomes are even broader than the ECM outcomes and are designed to create the lowest possible threshold for intervention.

13. GIRFEC makes further deep inroads into the sanctity of family life. For example, the National Risk Framework 11 says a child is at risk if he/she is under 5 years, has more than 3 siblings, is adopted or a step-child, has a 'difficult temperament', parents are contesting contact, does not speak English, has a parent aged under 21, or a parent whose partner is not a biological parent, is a child that lacks trust towards 'workers' or shows culturally inappropriate behaviours. These risk indicators are over broad. I would question how, for example, a statutory definition of 'difficult temperament' might be legally constructed.

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9 Tynwald Hansard, Written answer 27, 18 June 2013

10 The Child Protection System in England, Written evidence submitted by the Association for Improvements in the Maternity Services (AIMS), November 2011
http://www.publications.parliament.uk/pa/cm201012/cmeduc/writev/1514/cp29.htm

11 National Risk Framework to Support the Assessment of Children and Young People, Scottish Government,
http://www.scotland.gov.uk/Publications/2012/11/7143/9
14. Just as the Isle of Man lacked a remit for the ECM policy I ask what is the pressing need for the GIRFEC programme. Great play is made of the United Nations Convention on the Rights of the Child\textsuperscript{12}. But the UNCRC is about the child’s right to have universal services available. But only in the sense that the State is obliged to create those services so they are available. There is no obligation to enforce those services under the Convention. And universal services cannot be enforced because that would breach Article 8 of the Convention which enshrines the right to respect for private and family life.

15. Furthermore, the proposal that Scottish parents require a more intrusive intervention policy than the rest of the UK is flawed. The Office for National Statistics ‘\textit{Measuring National Well-being Programme}’\textsuperscript{13}, found that nearly ‘nine in ten children said that they were relatively happy with their lives overall and only 4% reported being relatively unhappy. Children were most positive about their friends (96% relatively happy) and family (95% relatively happy) and least positive about their appearance (75% relatively happy)’.

16. If 96% of children in the UK are relatively happy then what is the justification for GIRFEC? Where is the pressing need, or convincing evidence, showing that Scottish parenting is so poor that Scotland requires such intrusive measures? Do Scottish parents love their children less than English, Welsh or Irish parents?

17. National child protection statistics are also worth comparing. They average 38 children per 10,000 on the child protection register in England\textsuperscript{14}, 35 per 10,000 in the Isle of Man but only 27 per 10,000 in Scotland\textsuperscript{15}. Thus, on the core issue of children at risk, Scottish children are already better provided for by their families.

18. In accordance with ECM dogma the core advice\textsuperscript{16} to public authorities in the Isle of Man is ‘\textit{The rule must always be ‘If in doubt – refer’ to Social Services.}’ Thus the onus is on staff in public authorities to reduce their individual liability by elevating any concern to further enquiry. Similar dogma underlines the concept of the GIRFEC Named Person. Clause 24 (4) (a) of the Children and Young People (Scotland) Bill provides for information to be shared with the Named Person about the ‘well-being’ of a child. ‘Well-being’ is a universal concept aligned with the ‘8 outcomes’ of the GIRFEC policy. Thus the onus will be on public authorities to over refer children to the Named Person.

19. Broadly, the settled position in Britain is that the threshold for compulsory intervention, and breach of family privacy, is when a child is at risk of, or suffering

\textsuperscript{12} UNCRC – the foundation for Getting it Right for Every Child’, Scottish Government, March 2013
\textsuperscript{13} Most children are happy, particularly with their family and friends . Part of Measuring National Well-being, Children’s well-being Release, Office of National Statistics, 26 April 2013
\textsuperscript{15} Children’s Social Work Statistics Scotland, 2011-12 , National Statistics Publication for Scotland , 19 March 2013
from, significant harm. Policing that necessary threshold, on its own, is fraught with difficulty. But if that threshold is broadened out to 'well-being' then achieving justice will be practically impossible. An assessment of 'well-being' could be no more than a subjective view of individual parenting style. How, for example, is it proposed to police a family subject to investigation because someone thinks their child has a 'difficult temperament'? How can parents trust a system that authorises discrete reports when someone thinks a child is being 'clingy'? And what happens to families who decide that the help arranged by the Named Person is completely inappropriate for their child? What are their rights under the proposed legislation?

20. There is also the question as to whether compulsory assessments of a child's 'well-being' are legal under the Human Rights and Data Protection Acts. The recent Haringey case law Judgement found that Article 8 was breached when a public authority commenced investigations into a family before the 'significant harm' threshold had been reached. This means that compulsory 'well-being' assessments are also a breach of Article 8.

21. The Data Protection Directive is a reserved matter for Westminster under the Scotland Act 1998. It therefore follows that the UK Parliament would need to fundamentally change Data Protection law in order for Scotland to proceed with the information sharing provisions in the Children and Young People (Scotland) Bill. The Bill therefore engages interests outside Scotland – hence this submission from the Isle of Man.

22. The cost of the GIRFEC policy will also be an issue. When Isle of Man children's social care broadened their investigations from the 'significant harm' threshold to the ECM '5 outcomes' the requirement for social workers to handle the volume of referrals rose dramatically at an additional cost, over 2 years, of over £2 million. 70% of this cost is spent on false referrals.

23. Therefore, before commissioning in law the GIRFEC policy and the statutory provision for every child to have a Named Person, the Isle of Man experience should be considered. It should be possible to estimate the extra cost to the public purse of the demands on public authorities in Scotland of all the needless referrals and inquiries that will result from the policy. More difficult to estimate, but no less important, are the public health costs of families who will avoid services for fear of intrusive interventions.

24. But what is not financially quantifiable, and is even more important, is the social and emotional cost to Scottish families of being under the microscope of a universal surveillance policy. The over broad referral criteria in the Bill, with consequent

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17 Education & Culture Committee, Scottish Parliament, 25th June 2013, Column 2659
widespread breach of family privacy, will in itself, cause distress and upset to the very children the legislation proposes to help.

Tristram C. Llewellyn Jones
17 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

a. The “named person” should be an opt in/opt out service, not mandatory.

b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

c. The proposals will result in many families actively avoiding contact with services.

d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
My name is Janet McDermott and I’m writing in regards to the GIRFEC bill and also the sharing of private data without consent. I have already been affected by interfering authorities i.e.: Health visits, for no reasons at all and for a while they persisted to come out to my home without appointments, they kept to interfere and think they know best when I haven’t asked for their advice or gave them cause to think I’m not capable of looking after my children on my own. I also disagree with a named person for every child in Scotland and the sharing of private data without consent. I think this is a violation to private rights and also family rights. I also think the named person should be an opt out service for families that don’t require the help from these services. I also believe that if a child is in care then they are the ones that need to be taking care of by extra help i.e.: named person. My children already have a named person and that is me they do not require another.

Janet McDermott
25 July 2013
I am writing to oppose the Orwellian idea, now being proposed by the Scottish Parliament, to assign a government social worker to each child. The family, not the government, is the foundation of society and culture. Government, while having legitimate functions, is not equipped to replace the family. The authority of parents to raise their own children must be preserved for society to remain intact, except in cases of abuse and neglect. The abuse and neglect of a small number of parents does not justify the government destroying the family or even monitoring every family. Indeed, abuse and neglect of children at the hands of government is as common as abuse and neglect by family members. Please do not destroy your society and threaten ours with this reckless and overbearing legislation.

Mary Mack
USA
24 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Muir Maxwell Trust

Introduction

1. The Muir Maxwell Trust (MMT) welcomes the opportunity to contribute to the Committee’s scrutiny of this Bill.

2. The MMT is the UK’s leading paediatric epilepsy charity, focusing on the care and treatment of those with complex forms of epilepsy.

3. Established in 2003, we aim to make a difference by providing profoundly learning disabled children and their families with practical support while raising awareness and understanding of their conditions.

What the Bill means for profoundly learning disabled children

4. We are encouraged by the general framework of this Bill and the structure it proposes to put in place across all areas of children’s services.

5. MMT works on behalf of children who are profoundly learning disabled by one or more neurological disorders and these children typically need constant 24/7 supervision and care, much of it on a one-to-one basis. The task of safeguarding their wellbeing, therefore, doesn’t fall neatly to just one branch or level of Government. Their care instead demands joined-up working between Scotland’s local and national health, social care and education services.

6. It is therefore encouraging to see the Scottish Government commit to restructuring children’s services in such a way as to put the needs of children and young people at the heart of service delivery and planning.

7. From our standpoint, we have consistently argued that there needs to be a better service delivery pathway for these profoundly learning disabled children. For example, local authorities must undertake a Section 23 assessment, as mandated by the Children (Scotland) Act 1995, to establish the needs of children with disabilities. In many cases, however, these assessments are simply not being undertaken adequately, if at all. Getting this process right is therefore extremely important for local authorities, families and children and is an area in which this Bill can have a significant impact.

8. We have long argued that:

- A clear point of entry needs to be created so when special needs are identified, someone is accountable for informing parents about the Section 23 assessment and carrying it out.

- Section 23 arrangements need to be rigorously enforced with consequences for local authorities failing to follow the correct procedures.
• Clear timescales for assessment and subsequent delivery of care to ensure no child has to wait unnecessarily for help.

• New assessments should be conducted on a regular basis so that the evolving needs of these children continue to be met as they grow.

• Performance by local authorities on delivery of outcomes should be monitored on an on-going basis.

9. These points in the context of the Bill’s provisions are explored in more detail below.

Children’s service planning

10. Plans for local authorities and health boards to develop joint children’s services plans will be a notable improvement over the existing children’s services plans currently required of local authorities. These new plans will aid greatly in the strategic planning of services and will help to tighten up the existing system.

11. Importantly, the requirement to develop plans every three years and report on progress every year is a vast improvement over the current duty to review plans ‘from time to time’ and will hopefully help to avoid the breakdowns in service provision that can sometimes occur between different public bodies.

Child’s plans

12. What is likely to be of greater relevance and importance to families with children with profound learning disabilities are to be the new child’s plans detailed in Part 5 of the legislation. The children that the Trust works with are the very children that require targeted intervention from an array of public services required for a child’s plan.

13. In the context of Section 23 assessments, we are pleased to see that these plans would mandate the type of information that would help guard against some of the pitfalls of the current system. This includes detailing the child’s wellbeing need; the targeted intervention which requires to be provided; the relevant authority which is to provide the targeted intervention; the manner in which the targeted intervention is to be provided; and the outcome in relation to the child’s wellbeing need which the targeted intervention is intended to achieve.

14. Unfortunately, there is almost no detail as to the specific content and final form these child’s plans will take in the Bill, with much of the final guidance to be determined in the future.

15. This has important implications in terms of how effective child’s plans will be in actual practice. For example, though the Bill also mandates the managing authority of the plan to review the effectiveness of individual children’s plans, there is no guidance as to the timescales for assessment or how frequently it will need to be reviewed.
16. Further detail around timescales is something that is needed if we are to fully
gauge the likely effectiveness of these measures. In fact, it is hard to
underestimate just how important defined timeframes are in terms of the
provision of care for profoundly learning disabled children. It is crucial that
provisions are included mandating a maximum timescale in which to conduct the
assessment in addition to a strict timeframe within which to actually deliver the
necessary care package. Without such timelines, children and families risk
waiting an agonisingly long time for a proper care package.

17. We would consider it to be a major oversight if there wasn’t a stipulation in child’s
plans to allow for the creation of such timetables. Unfortunately, as we lack the
necessary detail around the child’s plans we simply don’t know whether the Bill
would meet these requirements.

Enforcement

18. There is a subsequent issue around the enforcement of these provisions. There
is no guidance as to the sanctions for any public body or individual if they are
found to be in breach of any statutory duties. A risk exists, therefore, that we
merely replicate the situation faced by those children and families who feel let
down by the current system.

19. Related to this, there is also a huge gap in the legislation in that there is no clear
right of appeal given to parents who are unhappy with the care provision that the
Section 23 assessment has awarded them.

20. This is hugely disempowering for parents and means that for some, the system
simply will not function in their best interests. However, if there were timeframes
applied to Section 23 assessments, as we describe above, any failure to
undertake a proper assessment or provide care within a given period of time
would then be in breach of statutory obligations. This would act as an efficient
enforcement mechanism and open a right to appeal for families.

21. Having such recourse when a Section 23 assessment fails families is simply vital.
Parents must be confident that they will receive the proper help they need as well
as have the ability to ask formally to review and amend their care package to
make it more effective and responsive to their individual needs.

22. If there is no allowance made for a clearly defined appeal process, local
authorities risk continuing to fail some of the most vulnerable children in Scotland
and their families.

The ‘named person’ provision

23. The Bill’s requirements for a ‘named person’ are very promising from the
standpoint of profoundly learning disabled children and their families. Having a
named person would help families through the assessment and service provision
process and would avoid the situation of families being cast adrift when dealing
with the care system.
24. However, the fact that the Bill does not legislate for a lead professional is unfortunate. This is despite the idea of a lead professional taking over where there are complex needs or where different agencies need to work together being an integral component of the Scottish Government’s Getting it Right for Every Child (GIRFEC) approach.

25. According to the Scottish Government’s own definition, the lead professional is the individual best placed to provide coordinated and specialised support for children with complex needs. The named person, as defined in this legislation, may simply not have the knowledge or breadth of experience needed to effectively handle the needs of children with profound learning disabilities.

26. Because the children we work with have extremely complex needs that demand different public services to work in partnership with one another, it is going to be these children and families that threaten to lose out.

**Will this Bill lead to other care improvements?**

27. With respect to the profoundly learning disabled children we work with, our other main concerns centre around better and more focused delivery of care and fostering a more responsive system of residential care.

28. We feel specifically that the profoundly learning disabled should be identified and removed from the current system as too much time tends to be spent on inappropriate contact and assessment designed for children with greater abilities.

29. Dedicated funding is also required to meet the needs of the profoundly learning disabled as we have concerns that local authorities are not prioritising their spend on this extremely vulnerable group.

30. There also needs to be greater recognition that profoundly learning disabled children cannot always live at home. Though existing residential provision is of good quality, there is not enough of it and too much of it is far away from families. It is crucial that this situation is addressed going forward, especially for the extremely vulnerable young adults with profound learning disabilities for whom there is no suitable residential care in Scotland.

31. While we wait to see how this Bill sits within the post-Public Bodies (Joint Working) (Scotland) Bill world of integrated health and social care systems, with the new rights and responsibilities accorded to public services, families and children in the Children and Young People legislation, we believe the Scottish Government will have more than enough impetus to begin moving on these other aspects of the care system that are in desperate need of improvement.

**Conclusion**

32. On the whole, this is a Bill to be welcomed. As ever, though, the devil is in the final detail of the proposals, which is not something we are likely to find out until well after the passage of this legislation.
33. I would welcome the opportunity to expand upon this submission in one of the Committee's upcoming oral evidence sessions.

Muir Maxwell Trust
26 July 2013
About us

1. National Day Nurseries Association (NDNA) is the charity and membership association promoting quality care and early learning for children in nurseries across the UK.

2. NDNA supports its members to develop their quality of care and to run a healthy sustainable business by providing members with information, training and support. NDNA works closely with its members to represent the sector to government, local authorities and the media. NDNA Scotland has a thriving membership base representing over a third of private day nurseries, with active provider networks in local authority areas across the country and an office in Edinburgh.

3. Our member nurseries are independent, private and third sector organisations who deliver early learning and childcare in partnership with local authorities. Some 60,000 children, approximately half of all children taking up nursery places, do so in the independent, private or third sector. For under-threes this rises to 60% of children, with nearly 40,000 under-threes in care and early learning in private nurseries alone.

Our response

[The questions included below are taken from the Scottish Government’s Consultation on the Children and Young People Bill, which was issued on 4 July 2012.]

Better service planning and delivery

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

4. Yes.

5. Public bodies also need to work effectively with private and voluntary sector partners, who are central to delivering for children at the frontline. Whilst it would not be appropriate or feasible for a legal duty to be placed on private or voluntary sector partners, an understanding of the need for effective engagement of these partners should underpin the work of public bodies, particularly local authorities. Strong partnership working between private and voluntary partners and local authorities is essential in early years with some 60,000 children, approximately half of all children taking up nursery places, doing so in the private or voluntary sector. For under-threes this rises to 60% of children, with nearly 40,000 under-threes in care and early learning in private nurseries alone. To achieve the ambitions of the Bill, it is vital that all
services work together and are included in design, planning and delivery. Approaches that use the expertise of all partners, including the private and voluntary sector, should be taken to maximise support for families and the return on use of public funds in a time of austerity.

6. Given the direction of the Bill around integrated early learning and childcare, consideration should also be given as to how regulatory bodies work together. Nurseries providing for 0-5s are inspected by both Care Inspectorate and Education Scotland, which can be seen as working against an understanding of integrated provision.

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

7. It is vital that service providers in the private and voluntary sector are included in the remit of the Community Planning framework. These providers are key to delivery at the frontline for children and need to be engaged in planning so local areas can work in partnership to map and develop services according to need.

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

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

8. Yes.

9. We wholeheartedly welcome the recognition by the Scottish Government of the impact of high quality early learning and childcare and the commitment to extend this to a minimum of 600 hours per child per year.

10. Feedback to us from nursery members is that access to funded early learning and childcare varies locally, with children and families benefitting from different amounts of provision according to the policy of their local authority. We believe that as hours are extended, legislation should set out a clear right to 600 hours for every three and four year old with a duty on local authorities to ensure that these hours are available and accessible to families through a mix of provision, with true parental choice. This should be widely publicised to parents so that they are aware of their child’s right to these hours and can hold their local authority to account.

11. Feedback from our most recent survey of nurseries in Scotland published in our NDNA Insight Report August 2012 ‘The Nursery Sector in Scotland’ suggested that a majority of nurseries are underfunded for free early learning and childcare places. Ninety-two percent of respondents reported making losses on the places, with an average loss of over £500 per child per year. This is a financially unsustainable position for nurseries and must be addressed if they are to be able to offer 600 hours. Funding levels also work against the objectives of a high quality professional workforce, as nurseries are unable to provide salaries commensurate with a profession.
12. Local authorities must direct sufficient funding to nurseries so that they are funded at a viable level that enables them to deliver the high-quality provision that makes a difference to children. The Scottish Government should assess the level of funding needed centrally and explore mechanisms to protect that investment at local level so that the significant financial commitment that will be made by government achieves the impact intended by the Bill. One option might be to reintroduce an advisory floor minimum level of funding and review this annually – in some local authorities funding to private nurseries has remained static since the advisory floor was removed several years ago. There is also a need for greater transparency on how local authorities direct funding and what funding is retained by the local authority and measures should be taken to make this information available to their local communities. NDNA would be happy to be involved in further discussions on solutions to funding issues.

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

13. Yes.

14. NDNA believes that parental choice in early years is vital in ensuring families can access the flexible mix of services that meets the needs of their child and helps them balance family life with work or training commitments. As identified in the consultation document, many private and voluntary nurseries already provide seamlessly integrated early learning and childcare for extended hours.

15. We believe the drive for flexibility could be supported by moving to a model where funding for early learning and childcare is child led, rather than allocated to settings at local authorities’ discretion according to location, sector or other local criteria. Legislation should enshrine this principle so that a parent can choose to access their child’s early learning and childcare at any provider of their choice, subject to that provision being properly registered and meeting the nationally-required standards. This measure would enhance choice for parents, and make them more likely to be able to opt for patterns of childcare that would enable them to sustain their place in work or training by finding the right balance between work and family life. It would also promote continuity for children, so that, if their parents choose they can be in a single setting all day that meets their care and learning needs in an integrated approach, rather than have a ‘patchwork’ of provision that combines wraparound care with a separate setting for education. Protection for parental choice would also provide support for families in rural areas where the widest choice of provision should be facilitated to reduce long, expensive journeys commuting to pre-school settings, as well as the workplace.

16. Feedback from our survey showed that 20% of nurseries surveyed are not involved in the delivery of pre-school places. This snapshot suggests that as many as one fifth of parents may have to move their child to a different setting at age three in order to take up their free pre-school place.
17. The case studies below illustrate some of the experiences of nurseries and parents at local level. Feedback to NDNA from voluntary sector settings indicates that they and their parents and children are also are affected by exclusion from partnership.

18. **Nursery A**

19. Nursery A is in the South West and has been established for many years. It has always been successful in receiving partnership funding from its local council. It is a large nursery within school grounds.

20. Currently the private nursery has 80 three to five year olds and, like other settings in this local authority area, is given an allocated number of funded places each year. This particular nursery guarantees funding to four and five year olds and then the remainder of the funding is allocated to the three year olds according to their start date at the nursery. If all allocated funding is covered by the older age group, then this results in none of the three year olds having funding for that year. This naturally causes upset among some parents, and means that there is inequity of funding with not all three year olds receiving their full pre-school entitlement.

21. **Nursery B**

22. Nursery B is a private nursery in the South East established in 2005. It has capacity for 59 children, 29 of these in pre-school. For three years, 20 of the pre-school places had partnership funding. After three successful years, with a teacher in place in the nursery, when it was time to re-tender, with no changes since the previous year, and a sound inspection report, the tender application was not successful. As a result the nursery lost partnership funding which they believe was due to the expansion of the local state nursery by 60 places. This expansion also had repercussions for the local voluntary pre-school group who used the school premises and had to move out to make way for the expanding state nursery.

23. Out of the three private nurseries in the area, one did get partnership funding and the other three settings in the area that parents can access for funding are all council run nurseries, which only offer places for 2.5 hours per day.

24. Nursery B was given notice of the decision to remove it from partnership just three days before the end of term. The impact on parents and children has been significant. Parents had to leave their chosen nursery and apply for a funded place at another setting and then add on wraparound care. Nursery B now drops off and picks up children who access their funded places at council nurseries. The children experience a patchwork of provision rather than fully integrated care and education.

25. **Nursery C**

26. Nursery C is in a rural area in Central Scotland. It was established in 2007 with a £12,000 grant from the local council to the private nursery provider in
recognition of a lack of provision in the area. The setting has a Care Inspectorate grading of 5 and provides 54 places.

27. After one year’s operation, Nursery C applied for partnership, having understood when it set up in 2007 that the lack of provision in the area meant there would be a strong case for pre-school funded places to meet the needs of parents. The nursery went through over a year of discussions and correspondence with the council, repeatedly presenting substantial evidence of need, backed up by parents themselves, however, partnership was refused on the grounds that sufficient places were available and funds were limited. The two nearest partner providers in this rural area are 7 and 15 miles away. Rural families have been significantly disadvantaged by this decision, some missing out on their funded place as they are unable to travel to other partner settings and still meet their work commitments, others having taken their children to partner settings and now facing very long days with the three and four year olds experiencing three different early years settings within one day.

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

28. No. Prescribing a national range of options needs careful consideration. Local communities’ needs and patterns of provision will vary, and any required offer must be deliverable at local level.

29. Alongside this, flexibility to support parents and employers must not override the importance of delivering early learning and childcare in a way that promotes the best outcomes for the child.

30. Going down the route of nationally-prescribed patterns of days and hours that all early learning and childcare providers must offer risks working against local flexibility to respond to communities’ needs. Rather than prescribing a fixed pattern, government could set out some very broad parameters of what is allowable and require local authorities to promote through partnership working with private, voluntary and public sector providers, a pattern that meets the needs of parents in their area.

31. The restriction of funded hours to term time only does not fit with the needs of many families who would prefer the consistency that year round provision brings for their child and their need to balance work/family responsibilities. Term-time only funding can also be difficult to manage financially and operationally for nurseries that are open year round. We would therefore support the intention behind the proposal to extend provision over 40 or 48 weeks. This could be covered in legislation by explicitly requiring local authorities to allow provision to be extended up to year round where parents require this. A similar approach could be taken to compressing hours over fewer days which will also support parents to attend work or training – however this must be balanced with the needs of children.
32. We would not support the model of five days per fortnight – we believe this is overly prescriptive and would make it difficult to ensure consistency of staffing for children to promote quality childcare and early learning.

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

33. As discussed above, we believe that provision of early learning and childcare should be child-led and not depend upon local policy. Parents will need to access provision out of their home local authority area, for example if they commute to a city and their child attends nursery close to their workplace. To achieve a consistent national offer for every child, there must be a route to funding with either the home local authority obliged to fund children taking up places out of their home area, or the local authority where the provision is based required to fund all children taking up places in its area. Funding mechanisms could either include cross border arrangements, or take account of cross-border uptake.

34. Member nurseries on the border with England have advised us that they may have children from across the border in their nurseries and consideration needs to be given to policy in these instances.

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

35. Yes.

36. The stable environment, development support and social inclusion of access to early learning and childcare will bring significant benefit to these vulnerable children.

37. Looked after children will benefit most from free early learning and childcare if their needs are met in an holistic and integrated way. Early years practitioners must have the skills and resources to meet the needs of looked after children. They must also be included by other agencies in planning for and delivering strategies to support the child’s needs. As discussed above, provision must be properly funded to enable it to be of high quality. This is even more critical for vulnerable children in greater need where for example, a higher staff to child ratio or investment in training and resources may be needed.

The named person

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

38. Yes. We welcome the streamlining of the process for children with additional support needs and believe it should improve the service to families.

39. It is important to understand that many nurseries will spend significant time with a child and to recognise that relationship. There needs to be a close
partnership between the child’s nursery and the named person and information fully shared.

The Child’s Plan

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

40. Nurseries already have ‘care plans’ relating to the child’s care and development in the centre and any additional support needs. Where a child has additional support needs identified, these should be immediately communicated to the nursery and the named person must include the nursery in the planning, promotion and delivery of support.

Assessing Impact

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

41. NDNA and its members welcome plans to extend funded early learning and childcare and the recognition by government of the positive impact it has on children’s outcomes. The Business and Regulatory Impact Assessment notes that private sector nurseries may be impacted by the Bill’s proposals. The opportunity to provide for additional hours may be seen as a benefit for nurseries, however, if funded hours are delivered at a loss, and replace what would have formerly been paid for hours, then the extension will become a threat and make businesses less sustainable, potentially reducing availability of flexible places.

42. In our recent survey, respondents delivering free hours were losing on average £584 per child per year. If hours are extended to 600 per year, this loss would become £738. With nurseries operating on low margins, and the sector already feeling the impact of recession, then increased losses could risk overall business sustainability and potentially lead to nursery closures.

43. There is capacity in the private and voluntary sector, with a vacancy rate of around 25% according to our survey, and so there is opportunity for local authorities to work with partner providers rapidly and cost effectively to scale up provision that is flexible and meets parents’ needs. The duty on local authorities should focus on securing places, rather than using government funds to duplicate existing provision in the private and voluntary sector.

44. The Bill’s ambitions for an integrated approach to working with children will require effective involvement of private and voluntary sector partners by public agencies, for example in the child’s plan. To promote the best outcomes for children, the workforce in nurseries will need to have the right skills and knowledge and nurseries will need to be able to resource the support needed for individual children. One of the greatest challenges highlighted by nurseries in our survey was the cost of staff wages, with feedback on the difficulty of
appropriately rewarding staff at all levels. Nurseries also fed back that they are seeing reductions in local authority support, with 50% seeing reductions in support for training and 40% seeing reductions in support for quality. Local authorities must have clear duties to provide accessible and meaningful support to all settings in their area. To ensure we have the right workforce to deliver this vision for children, greater investment is needed, otherwise we will see upward pressure on fees for parents.

National Day Nurseries Association
13 August 2013
Introduction

1. The National Deaf Children’s Society (NDCS) is the national charity dedicated to creating a world without barriers for deaf children and young people. NDCS Scotland estimates there are 3500 deaf children and young people in Scotland, 90% of whom have hearing parents or carers.

2. We use the term deaf to refer to all levels of childhood deafness including hearing loss in one ear, temporary hearing loss such as glue ear and also to refer to all types of communication methods, including British Sign Language.

Context

3. NDCS Scotland welcomes the introduction of the Children and Young People’s (Scotland) Bill. This legislation presents us with the opportunity to create significant positive impact for this generation of children and young people and beyond. NDCS Scotland is keen to support the process of maximising these opportunities, particularly in relation to deaf and other disabled children and young people. We welcome the opportunity to submit evidence to the Education and Culture Committee.

4. We welcome the general principles of the proposed Bill, its overall aims and the opportunity to make all services equally accountable for delivering services to meet the needs of deaf children and young people through a single plan.

5. However we are disappointed that the rights and needs of disabled children and young people have not been consistently considered throughout the Bill. We note the focus on enhanced provisions for Looked After and Accommodated children and young people and we urge the Committee to consider the needs of other vulnerable children, such as disabled children. NDCS Scotland believes disabled children and young people are currently set to miss out on benefitting from many of the opportunities within this legislation.

Sections 1 - 4: The rights of children and young people

6. NDCS Scotland welcomes the Bill’s intention to legislate for children’s rights in Scotland and to “ensure that children’s rights properly influence the design and delivery of policies and services”\(^1\). However we feel strongly that the current provisions do not go far enough to meet the Scottish Government’s aspiration of “making rights real” for children and young people.

7. NDCS Scotland firmly believes that this Bill presents the opportunity for the Scottish Government to prove its genuine commitment to children’s rights by fully incorporating the United Nations Convention on the Rights of the Child (UNCRC)

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\(^1\) Pg. 1, S 3. Children and Young People (Scotland) Bill, Policy Memorandum
into Scots Law. We feel the proposed duty on Scottish Ministers to “keep under consideration whether there are any steps which might secure better effect of the rights set out in the UNCRC; and to take any steps they believe to be appropriate in consequence of that consideration” is weak and does not go far enough to ensure the “effective realisation of children’s rights where possible.”² NDCS Scotland fully endorses calls from Together and the Scottish Commissioner for Children and Young People (SCCYP) on this matter.

8. NDCS Scotland also urges consideration of how children’s rights will be realised for all children, including disabled children. NDCS Scotland believes this should be included within the Ministers’ responsibility to review their approach to implementing the UNCRC, ensuring this approach is advancing the rights of disabled children. NDCS Scotland strongly believes this could be achieved by taking advantage of the opportunity to explicitly reference elements of the United Nations Charter for the Rights of Persons with Disabilities within the Bill.

9. NDCS Scotland welcomes the duty on Ministers to “promote public awareness and understanding” of the rights of children. Our consultation with children and young people revealed that 70% of deaf children surveyed said that they ‘don’t know anything’ or only know ‘a little bit’ about the UNCRC. Similarly, 83% of parents of deaf children surveyed said that they ‘don’t know anything’ or only know ‘a little bit’ about the UNCRC.³ While legislation is essential, it is clear we must go beyond this by ensuring that children, young people and their families are empowered to understand and advance their rights. This is particularly the case for disabled children and their families who may require additional support to do so.

10. NDCS Scotland firmly believes a Children’s Rights Impact Assessment (CRIA) should be carried out on the Bill. NDCS Scotland is disappointed to see the Scottish Government has deemed this to be an unnecessary step in making children’s rights real, despite the likelihood of this work revealing possible positive and negative consequences of the legislation. We fully endorse calls from Together and SCCYP on this matter.

11. NDCS Scotland welcomes the proposed extension of SCCYP powers to investigate cases or complaints brought by or on behalf of individual children and young people. However we believe it is essential that SCCYP is adequately resourced to undertake this significant new role and we welcome further information regards how the Scottish Government envisions this will work in practice including examples of cases that the will be investigated as a result of the new proposed power.

Sections 7 – 41: Getting it Right for Every Child

Children’s services planning

² Pg. 12, S 44. Children and Young People (Scotland) Bill, Policy Memorandum
³ NDCS Scotland, September 2012, A Consultation Response on Proposal for Children and Young People’s Bill
12. NDCS Scotland welcomes the duties on public bodies to prepare, review, implement and report on children’s services plans. NDCS Scotland agrees it is essential that public bodies work together to plan and deliver their services in partnership, ensuring the wellbeing of children and young people is advanced. It is clear that full incorporation of the UNCRC into Scots Law will facilitate the process of children’s rights underpinning this planning.

13. We urge the Scottish Government to consider how the Bill will ensure that Children’s services planning will meet the needs of disabled children. The Bill should seek to ensure that during these planning processes the needs of disabled children are considered when services are working at the local level to design, plan and delivery services jointly.

14. NDCS Scotland recommends that provisions are made to create scope for children’s services planning to occur across local authorities boundaries where appropriate. To encourage equitable support for low incidence needs such as childhood deafness smaller local authorities may be encouraged to plan across boundaries in order to meet projected need while following a child centred approach.

Provision of Named Person

15. The introduction of a single point of contact, a Named Person is welcomed by our membership generally, but only if there is common understanding about the role of that Named Person and it is universally adopted in every local authority.

16. The roll out of the Named Person process will require significant resourcing, particularly with regards to the health visitor service and NDCS Scotland is concerned that the proposals’ aspirations in this regard are not currently matched with adequate resourcing.

17. It is clear that flexibility is required with regards to the introduction of Named Persons. This must address the need to include specialist expertise within planning processes for disabled children. In some circumstances for example, the Head of a Sensory Support Service may be a more appropriate Named Person for a deaf child than a Head Teacher. In some instances where a child’s needs are more complex, having a Named Person out with education may also be more appropriate. NDCS Scotland firmly endorses For Scotland’s Disabled Children’s (FSDC) response on this matter.

18. Crucial to Named Persons successfully completing their role is the assumption that they will be in a position to coordinate information from across different services and act in the best interests of a child or young person. Information-sharing across services is therefore crucial. There is a need to address the technical and cultural barriers which often inhibit information-sharing between statutory and non-statutory services and can impact negatively on service delivery.
19. The Bill's information sharing duty\(^4\) however, threatens the balance of promoting children’s rights and wellbeing and infringing on a child’s right to privacy. NDCS Scotland urges the Committee to consider the possible unintended consequences of this duty, and the need for it to be accompanied by extensive training in child protection and confidentiality among professionals in statutory services, to ensure a clear understanding of appropriate and relevant information to share.

20. NDCS Scotland believes the Bill does not fully address the issue of parents’ empowerment and the importance of the home environment for advancing children and young people’s rights and wellbeing. Alongside proposals for the roll out of the Named Person and Child’s Plan must be a strong emphasis on how parents’ will be informed about these processes and be enabled to become fully engaged partners within them. For example, what routes of redress will exist for parents and young people who are dissatisfied with their allocated Named Person or with progress on their Child’s Plan, how will parents be empowered to challenge these issues and what will be the routes of redress through which to do so? NDCS Scotland fully supports FSDC’s recommendation that these issues be clarified and we suggest this is on the face of the Bill.

21. NDCS Scotland feels the position of the family within this Bill is in conflict with other key policies including the Parenting Strategy and the Early Years Framework. NDCS Scotland endorses FSDC views on this matter and we believe further work is needed to bring the Bill in line with Scotland’s wider policy framework.

22. NDCS Scotland recommends that the Bill strengthens provisions around post 16 transitions, which are particularly challenging for young disabled people. Hearing impaired school leavers are less than half as likely than their hearing peers to be qualified to enter Higher Education\(^5\) and are therefore at greater risk of being Not in Education Employment or Training. This Bill presents an opportunity to improve outcomes for this group by extending access to the Named Person service to those who leave school at the age of 16. NDCS Scotland endorses FSDC’s recommendations on this matter and also recognises that families and parents should also be considered in these provisions.

Child’s Plan

23. NDCS Scotland welcomes a single Child’s Plan where this will facilitate the coordination of services working together to improve a child or young person’s wellbeing through targeted interventions. Currently NDCS Scotland is concerned that many deaf children and young people are not involved in statutory planning processes and we recommend that all children in need, including deaf children and young people, are legally entitled to a Child’s Plan.

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\(^4\) Pg. 15. S 26. Children and Young People (Scotland) Bill, Policy Memorandum

\(^5\) Scottish Government, 2010 & 2011, School leaver attainment and SQA attainment
24. NDCS Scotland also recommends the Bill be strengthened with regard to how it will ensure that the views of children, young people and their parents are fully involved in the process of developing, implementing and reviewing a Child’s Plan. In having regard to the views of the child, and their parents or carers, it is essential that their language and communication needs are fully considered. Similarly, it is crucial that deaf children and their families have full access to accessible information to ensure they are fully engaged in planning processes.

25. NDCS Scotland believes the proposed Bill creates a number of opportunities to fill the gaps in national guidance on specialist issues. As recommended in the Doran Review, further guidance is needed in Scotland on how best to implement GIRFEC for children with additional support needs, including deaf children and young people.

26. Similarly, specialist guidance on implementation of Child’s Plan for children with sensory impairments should be included in accompanying guidance to the Children and Young People’s Bill, reflecting existing requirements in the Teaching (Scotland) 2005 regulations which required a specialist workforce for this group of children. This guidance should consider proposals in Scottish Government’s Sensory Impairment Strategy and ensure the policies reflected are complementary.

Sections 42 – 49: Early Learning and Childcare

27. NDCS Scotland welcomes the Scottish Government’s commitment to “improving and increasing high quality, flexible and integrated early learning and childcare which is accessible and affordable for all.”

28. NDCS Scotland welcomes the Bill’s proposals to increase the number of funded early learning and childcare from 475 hours to a minimum of 600 for 3 and 4 year olds. We further welcome the extension of 600 hours of provision to looked after 2 year olds, and acknowledge that looked after children make up a particularly vulnerable group of children in society.

29. However we are seriously concerned that in highlighting one group of vulnerable children, the Bill fails to address the similar needs of other vulnerable groups, such as disabled children. NDCS Scotland urges the Committee to scrutinise these proposals and extend the extension of free early learning and childcare for 2-year olds to all children with a disability. We fully endorse FSDC’s proposals in this regard.

30. As mentioned, NDCS Scotland feels further consider must be given to the importance of the home environment and family support within the Bill. For many children the provision of early learning and childcare occurs within the home and it is essential that the Scottish Government’s aspirations in this area are met with appropriate provision and resourcing within the Bill. In particular NDCS Scotland

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6 Pg. 21. S 90. Children and Young People (Scotland) Bill, Policy Memorandum

7 Pg. 22. S 94. Children and Young People (Scotland) Bill, Policy Memorandum
recommends further investment of professional time within the home, in particular that of health visitors.

31. It is essential that this is coupled with provision for diverse options for families to obtain support and accessible information which allows them to develop the skills and knowledge required to advance their children’s rights and wellbeing. This is particularly important for deaf children and young people’s families which face a number of additional challenges. 90% of deaf children are born to hearing parents meaning there are often serious challenges to nurturing speech and language and achieving positive outcomes for deaf children within the early years.

32. This can have serious impact on how deaf young people develop, with mental health being an area of concern. Government statistics reveal that 40% of deaf children and young people suffer from mental ill health, significantly above the average for all young people.8 NDCS Scotland is keen to see the Bill make more provision for family support in acknowledgment of these important issues.

Sections 50 – 68: Getting it Right for Looked After and Accommodated Children

33. NDCS Scotland welcomes the Scottish Government’s commitment to ensure Scotland has a care system capable of providing effective and rapid support for children and young people. NDCS Scotland notes the enhanced provision for this group around the extension of the age to which care leavers can receive support from their local authority from 21 up to and including 25.

34. While NDCS Scotland welcomes the intention of this proposal, we urge the Committee to consider the absence of any focus on other vulnerable groups. As such we endorse FSDC’s recommendation that the new right for young people leaving care to request assistance from a local authority up to the age of 25 should be extended to all disabled young people. NDCS Scotland would welcome the opportunity to provide further information to the Committee about any of the matters raised in this response and/or present oral evidence in September 2013.

Heather Gray
Director Scotland, National Deaf Children’s Society
26 July 2013

8 Department of Health and National Institute of Mental Health,
Education and Culture Committee
Children and Young People (Scotland) Bill
NHS Ayrshire and Arran

Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland’s Commissioner for Children and Young People

1. NHS Boards will require, in strategy, policy and performance to make explicit children’s rights and steps taken to comply with this section of the legislation. This will require a culture shift across health services and whilst it is welcomed, it poses certain challenges. Guidance on implementation and monitoring performance would be welcome and this would also help to support a consistent approach across the country. It is suggested there will be particular challenges for those who work in services where the adult is the primary receiver of care and their understanding as to compliance with children’s rights in practice is crucial to the implementation of the legislation. In addition, health practitioners may face conflict in balancing the rights of adults receiving care with those of the adult’s children.

Improve the way services support children and families by promoting cooperation between services, with the child at the centre

2. We welcome the focus being on a child’s “Well Being”, however, we are concerned that many health professionals, in particular those caring for adults, will not have the required knowledge to recognise where a presenting situation may be a risk to a child’s “Well Being”. However, we are confident they can recognise a safeguarding or child protection situation as we have extensive training to support this area of activity.

3. The focus on “Well Being” is likely to present challenges in staff having the confidence and willingness to share information even where risk to “Well Being” has been identified.

4. We would suggest that consideration is given to some type of national initiative to raise aware of the issue of “Well Being” and also to develop a national training package for staff. The role of Public Health we would suggest is critical to this process raising awareness of the multiple factors that need to be considered and the methodology we need to share to fully evaluate the contribution Health and its partners can make.

5. The Bill proposes NHS Boards will be responsible for ensuring every child from birth to school age has a Named Person. This leaves the legislation open to interpretation in allocating such a role. It is requested that the final legislation or guidance explicitly states this should be the role of the health visitor, who is the best placed professional to fulfil the responsibilities of the role and produce the best outcomes for children in the age group.

6. We ask that clear and explicit national guidance is provided on the role and responsibilities for the named person to ensure consistency across Scotland. We
would invite the National GIRFEC Team to provide this along with training and
education materials.

7. The Children and Young People (Scotland) Bill sets out a requirement of
professionals to share information with the child’s named person when there is a
concern for a child’s safety or a presenting situation which may be a risk to their
“Well Being”.

8. The Bill proposes Health Boards will provide the role of named person for those
children from birth to school entry and the local authority to do so for children
from school entry until they have attained the age of 18 years. As previously
suggested we support this division and would like Health Visitors to assume the
role of the named person for children from birth to school age.

9. For children of school age it is commonly considered likely that education will
assume the role.

10. Custom and practice across NHS Boards is that when a child attends a health
service and this generates actual or potential concern about their wellbeing, this
is communicated to the health visitor for pre-school children and the school nurse
for school age. In addition, even those attendances that may not be of concern
are also shared, such as attendances at Accident and Emergency Departments
or sexual health services. This practice enables the collation of chronologies
which are important in highlighting concern arising from an accumulation of
health issues.

11. Whilst for preschool children the proposed legislation will not change this
practice, for school aged children this will require health services to share health
information out with the NHS i.e. with the local authority/education.

12. We would like consideration and clarity to be given with regards to the potential
conflict between the proposed legislation and that pertaining to medical
confidentiality. We feel guidance on sharing information with regards to risk to
“Well Being” and information sharing to support the continuity of health care is
required.

13. Without clarification on the above, the well being of children and young people
will potentially be at greater risk than is currently the case.

Information sharing between services in respect of Children and Young People or
Parent’s Rights vs. the Rights of Children and Young People:

14. In situations where child protection is an issue, this has been recognised, and the
response from adult services is cooperative. In circumstances where the child
could or will be at risk of harm due, for example, to the parent or carer’s alcohol
or substance misuse, mental health, Fetal Alcohol Spectrum Disorders (FASD),
the impact of the treatment programme, or out with health service issues such as
criminal behaviour or the consequences of that behaviour, need to be
considered. There is some distance to go before there are effective
communication systems in place. National guidance would be welcome and
would assist the process.
Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare;

15. We would argue that this legislation should be supportive of parents and families, the nature of the support offered may not have the impact sought as to achieve this we need to work more directly with parents to enable them to become better parents. The proposal seems to supplement poor parenting.

Ensure better permanence planning for looked after children by improving support for kinship carers, families and care leavers, extending corporate parenting across the public sector, and putting Scotland’s National Adoption Register on a statutory footing;

16. NHS Boards will require clarity on the role of the corporate parent and the implications of this. Consideration will need to be given to the role of adult health services in particular in relation to those 16-25 years and action taken to ensure they understand the legislation and the interface with vulnerable adult legislation.

Strengthen existing legislation that affects children and young people by making procedural and technical changes in the areas of children’s hearings support arrangements, secure accommodation placements, and school closures;

17. Nil response

Relevant issues:

18. The solution to improved decision making and outcomes for children where there are wellbeing concerns (including those who are looked after), is via embedding the Getting It Right For Every Child (GIRFEC) approach in all services associated with children, young people and families. This includes adult services. GIRFEC provides a consistent way for all practitioners to work with all children and young people and also promotes as a core component, the views of children, young people and families in assessment, planning and intervention. GIRFEC provides a co-ordinated and unified approach to identifying concerns, assessing needs, and agreeing actions and outcomes for children. Therefore in embedding the Getting It Right For Every Child (GIRFEC) approach we expect to see improved responsiveness, communication, information sharing, assessment, analysis, planning, decision making and therefore the achievement of timeous, stable and permanent solutions for children and young people who have care needs.

19. To embed the approach in a consistent and sustainable way will require changes in culture, systems and practice across all agencies including adult services that support parents and carers who have contact with children. Where resources are significantly constrained the transition to a new state is challenging within a timescale that is acceptable for our children and young people. Using the mechanisms in place through guidance, policy and scrutiny we can ensure that the implementation of this approach is being prioritised and strengthened by including key elements of the GIRFEC approach in the Children and Young People (Scotland) Bill. Here there is an opportunity not only to put key elements of GIRFEC in primary legislation, but also to develop secondary legislation and
guidance to ensure that the approach is sustainably delivered across all aspects of services impacting on children, young people and families in Scotland.

**Looked After and Accommodated Children**

20. Scotland needs to move to a position that ensures all children have a full health needs assessment in place and we would suggest that this needs to come from and be owned by the originating health board. Ideally Health Boards would like to keep our children and young people within the board area but where that is not possible there is an obvious disconnect between the Corporate Parenting agenda / GIRFEC and everything else Scotland is trying to achieve in this area. If the originating health board worked with the receiving health board to commission the appropriate services then it would retain ownership and is more likely to facilitate a child coming home. Discussions should take place from the basis of what would be the most effective service and then design the support structures: both financial and operational.

21. Paediatricians who deliver Comprehensive Medical assessments can feel by the time they see children for assessment of neglect that there has been months or years of delays in moving to permanence. This is caused by difficulties in gathering relevant health information and summarising the evidence of impact of neglect, caused by the cumulative significant harm.

22. Decision making regarding removal of children is often left until significant harm is clearly evident and the delay can be lengthy. Social work records for example can show ample evidence of failure by parents to exercise their responsibilities. Health visitor notes show lack of engagement in preventive health, e.g. immunizations and dental health, and hospital and GP notes may show failure to attend for chronic health problems. The NHS could make far more effective use of the available information to predict and perhaps prevent issues from escalating. Effective sharing of information can demonstrate or highlight the significance of the problem.

23. There are also major problems in ensuring that the health service is able to maintain an effective input as it may not be told where children are residing: placements often change with little notice and out of region placements are particularly challenging. Children arriving in an area having been placed in a residential unit from another authority are often unknown to the “host” area. Health records should be in place early enough in the process to inform the care plan and these records should go with the child rather than following some weeks or months later. These children often have complex needs that remain unmet until the process catches up. A more robust procedure for notifying Health and arranging assessments would help. This could be backed up by a more uniform approach to what is expected during such assessments.

24. Health services should develop IT systems that are able to easily share information across primary and secondary care. Enabling any part of the health service to assess the level of neglect by accessing data from across the system, for example immunisation and child health surveillance data, dental records, and A/E attendances to check for level of engagement in preventive programmes. There are pockets of good practice across Scotland, such as AyrSHARE,
Ayrshire and Arran’s system, where for example A/E staff can access systems to check the status and concerns about children attending; they can also send information electronically to the Named Person. This level of IT provision is essential to collating information and can help to identify cumulative neglect early. Examples of good practice such as AyrShare could be adopted by other Health Boards rather than investing in similar systems independently of each other.

25. The question about at what stage of the assessment and decision-making process health is involved also requires clarification. The local authority from where the child originated has a duty to notify the NHS Board where the child is going to live; this includes out of area placements. The guidance implies that the NHS Board the child is living in is then responsible for the child’s health care, which means for any child from another NHS Board/Local Authority in Scotland who moves into a Health Board area, that Health Board has responsibility for that child’s health care and vice versa. Current provision of LAAC health services is often not compliant with both of these; Health Boards are not notified by other LAs of their LAAC children in their area and therefore are unable to routinely provide LAAC health care to them.

26. Discharge / Through Care: In general health services and partner agencies tend to assume an individual reaches adulthood by looking at their calendar age. By comparison, parents assume that their own children are supported to look after themselves by a strong family network, until they are at least in their early twenties. Yet for this group of vulnerable children who are potentially least able to maintain their own household, the support to make the transition from childhood into adulthood brings many additional challenges. Better supports need to be put in place and minimum expectations for all agencies involved should be clearly established. Ensuring consideration is given to neglect in the context of additional needs for children with disability or chronic disease, particularly when the parent has their own difficulties or a disability and is being expected to cope with more than the average level of care is critical. The hesitation to consider the parent unable to meet the needs of the child, while nevertheless caring deeply for that child in the emotional sense, is often a barrier to decision making or a situation where the solutions that aim to address parental choice and to provide the practical help needed for the child’s care result in delay to permanence decisions, so staff need to be better equipped to make such decisions?

Early intervention and predictive factors:

27. The following outlines examples of issues that are in the main entirely preventable, but are lifelong conditions, that may be disproportionately represented within this group. If these conditions are not known or have not been diagnosed then it is likely that the current methods of intervention are not going to be effective. “Because we now understand the importance of the 0-2 period in creating solid psychological and neurological foundations to optimise lifelong social, emotional and physical health, education and economic achievement, we believe policy emphasis needs to shift to reflect this” Ensuring the health of prospective parents and parents is critical to ensuring that a child reaches its full potential. It is a combination of lack of support to prevent or reduce these problems that increases any individual’s chance of being received into care.
Parental attachment and the provision of a nurturing environment are critical: the impact of a parent’s poor physical and or mental health has a clear impact on a child’s behaviour, yet we often fail to take a holistic approach to the family’s health often treating the child or young person in the absence of this information. The need to improve the exchange of information, for the benefit of the child or young person and their parents, between adult services - be this criminal justice, health, social work the third sector or other services there are a range of factors which we know are critical to ensuring a child is able to reach his full potential. These include: Good health in the parents and prospective parents, parental attachment and the provision of a nurturing environment, the health of the wider family (holistic approach), Improving the exchange of information for the benefit of the child or young person and their parents, between adult services - be this criminal justice, health, social work the third sector or other services, needs to be captured within the legislation.

Jim Carle  
Child Health Commissioner, NHS Ayrshire & Arran  
26 July 2013
1. Thank you for the opportunity to respond to the Consultation.

2. As you will be aware the issue of child safety remains a concern in relation to childhood morbidity and mortality.

   - Every year in Scotland, it is estimated that one child in five attends A&E departments following an unintentional injury—approximately 200,000 visits annually.

   - The child death rate from unintentional injuries in Scotland is 30% higher than in England and Wales

   - Every year in Scotland, children’s accidents cost the NHS an estimated £40 million and society generally around £400 million.

**Child Safety Strategy: Preventing Unintentional Injuries To Children and Young People in Scotland. 2007**

3. The challenge for Public Health is to ensure that injuries are neither life-threatening nor disabling. It would therefore be helpful to strengthen and expand the reference to children’s safety within the Bill in line with the current evidence base and more explicitly develop roles and responsibilities for those working with children in relation to safety of children at home, on the road and at play in line with The UNCRC, Article 3 (3) states that those responsible for children’s care “shall conform with the standards established by competent authorities, particularly in areas of safety, health and competent supervision”. 2

4. Please find attached a copy of NHS Greater Glasgow and Clyde’s Preventing Unintentional Injuries To Children strategy document and a copy of a chapter from: The Right to a Safe Environment by Professor David Stone and Colin Moodie which further expand the issues associated with child safety ¹.

5. We will be happy to provide further information should it be necessary or required.

   Linda De Caestecker
   Director of Public Health, NHS Greater Glasgow and Clyde
   26 July 2013

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¹ The chapter of the book referred to in the submission has not been published by the Parliament in accordance with copyright law.
Education and Culture Committee
Children and Young People (Scotland) Bill
NHS Lothian

Introduction

1. NHS Lothian welcomes the opportunity to give evidence to the Education and Culture Committee on the provision and possible impact of The Children and Young People (Scotland) Bill. We also welcome the Scottish Government’s move to enhance the rights of children and young people and the shift towards prevention and early intervention, through increasing early learning and childcare provision and the Named Person, as set out in the Bill.

2. The Key Challenges for NHS Lothian are:
   - Future Governance Arrangements - How progress will be monitored and reported by NHS Boards.
   - Capacity & Demand within current Health Visiting and Maternity Services to implement the named person role.
   - Development of a robust case supervision model for Health Visiting which does not currently exist in Health Visiting other than for Child Protection.
   - Joint I.T. infrastructure and information sharing: Good communication is key to enabling this shift in working practices and culture amongst staff and society as a whole.
   - Resources for, and development of a skilled and competent NHS early years workforce with the capacity to ensure delivery of the Bill’s ambition.

The Rights of Children and Young People, paragraphs 41 to 43 Policy Memorandum (PM)

3. We welcome the positive steps to make children’s rights real, but feel that a Children’s Rights Impact Assessment (CRIA) should be carried out on the Bill as soon as possible. CRIA’s are an essential tool, as they allow planning and monitoring around the predicted impacts and if necessary enable these to be avoided or mitigated. We are in the process of incorporating CRIA’s into policy development throughout NHS Lothian, as we believe that this will help to embed children’s rights into children’s services planning across Lothian.

Duty on Scottish Ministers, paragraphs 44 to 46 PM

4. The Duty on Scottish Ministers to take into consideration the United Nations Convention on the Rights of the Child (UNCRC) does not seem robust enough. We would encourage steps towards incorporation of the General Principles of the UNCRC, on the grounds that this will provide consistency and accountability across local and national government and all public services.
A Reporting Duty on Scottish Ministers and the Wider Public Sector, paragraphs 47, 48, 51 to 53 PM

5. To ensure this is an outcomes driven process, we feel that Scottish Ministers and Public Services should have to report on the outcomes achieved from setting out the steps they have taken to further the rights set out in the Convention. It would be less onerous on Public Services if we could produce one report on these aspects of the Bill. This would enable us to embed children’s rights into children’s services planning throughout Scotland. These reports should include a requirement to provide awareness training on the UNCRC across all public sector staff.

New powers for Scotland’s Commissioner for Children and Young People, paragraphs 49, 50 and 54 PM

6. With regard to the extension of the Children’s Commissioners Powers, when we consulted with some young people in Lothian they expressed a wish to have someone with local knowledge that they could report violations to who could then liaise with SCCYP. We therefore propose independent advocacy is in place for children and families, as the only legislation we currently have for advocacy is for people with a mental disorder under the Mental Health (Care and Treatment) (Scotland) Act 2003. We are also currently working on a children and young people friendly complaints process and would be happy to share this work with others.

A Focus on Wellbeing, paragraphs 58 to 60 PM

7. We need to ensure that the language used around the Wellbeing Indicators (SHANARRI) fits with both children and young people’s and parent/carers understanding of it. There have been some concerns raised in relation to the “Included” indicator. The current phrasing suggests that services should help individuals overcome social, educational, physical and economic inequalities, where in fact society should be protecting children and young people from these inequalities. This has been picked up by parents who have children with complex disabilities and or exceptional healthcare needs and usually needs explained further to parents.

8. Given that for Scotland to be “the best place in the world for children to grow up” it is important to think about wellbeing as more than just meeting basic needs. We know that access to high quality education and rewarding employment, creativity and the arts, play and sport have a huge impact on health and wellbeing, both for individuals and society. Access to safe places to meet and socialise is also limited for many young people, and the consequences are also clear, in substance use, alcohol use and sexual health statistics as evidenced in local, national and international school-based surveys.
Implications for NHS Boards

Getting it Right for Every Child - The Named Person, paragraphs 55 to 57 and 66 to 72 PM

1. For the first time we have legislation to provide a named person for every child. There is a necessity for robust guidance for the implementation of this coordination role. Whilst we welcome this, it does have a number of implications for Health Boards.

2. The Scottish Government has estimated the additional resource implications of introducing the named person to routine Midwifery & Health Visiting Services and that this equates to over £16 million for Scotland. An estimated number of additional hours as a result of introducing the named person have also been estimated per child, per year.

3. Using this methodology, NHS Lothian estimate, based on live births (9,794) and numbers of 0-5 year old children (48,980) in the 2011 census, that an additional 20 Midwives and 49 Health Visitors would be required. This equates to a total cost of £2,853,060. This appears to be more than what would be NHS Lothian’s share of the overall costs to NHS Scotland, as outlined in the Financial Memorandum.

4. While it is recognised that these costs would not come into effect until 2016, there are two main challenges facing the NHS, namely:
   - Funding this additional capacity recognised within the Bill and
   - Recruitment at this scale in Lothian (never mind Scotland) will be near impossible on the short term due to the number of midwives and health visitors able to recruit to.

5. The Child Health Commissioner and Chief Nurses are currently exploring more creative ways of ensuring how the requirements of the Bill are met, e.g. through skill mix and delegating some of the admin functions to other staff, freeing up health visitors and midwives to undertake the necessary face-to-face assessment, co-ordination, early intervention and care planning work.

The Child’s Plan, paragraphs 78 and 87 PM

6. Examination of the past 20 serious case reviews in Scotland have highlighted that a number of individuals involved with families had concern, but that these concerns were not always shared or analysed and therefore care and intervention was not planned effectively or coordinated resulting in a negative outcome for the child.

7. In NHS Lothian we have adopted the National Practice Model into the Child Health Record into TRAK. Each child has a plan from birth often referred to as the “Child Health Plan”. It essentially details the assessed needs of the child and is the basis for analysis and assignation of the health plan indicator that will be core or additional as described within the policy Refreshed Health for All

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Children (Hall 4) 2011. This plan is outcome focussed and will detail core and additional early intervention across a range of domains. This approach ensures that children and young people are involved in the planning of their care and identifying outcomes and should be rolled out nationally. It is essential that we are able to not only record, but evaluate these outcomes.

8. We understand that it will be difficult to legislate for the Lead Professional as this person may not be working within a universal service. However, it would be useful to have some guidance on the relationship between the named person and lead professional, in order to highlight the differences in the roles and how they interlink with each other. Public Education Campaigns, Public consultation/service user involvement, focus groups involving service users and full User involvement through universal service user stories / user perspective need to be used in order to fully publicise the need for child/young person and family involvement in the development of the Child’s Plan.

Information Sharing, paragraphs 70 to 73 Explanatory Notes (EN)

9. We are pleased to note the emphasis on safe and effective sharing of child related information within the Bill. We are also pleased that the challenges of achieving this are acknowledged. There is a need for further development of national infrastructure to support the timely, safe, effective and appropriate sharing of this information across the care continuum. There is also a need for analysis of the capability of the infrastructure to support the delivery of the legislation. Currently the transition of care between the named person at school entry, does not have effective electronic information flows to allow this to happen, without paper transfer and/or duplication of information into ‘different’ IT systems. The work current being undertaken by the newly formed Information Sharing Board will be central to this.

10. The emerging work from the National GIRFEC team on nationally agreed guidance on information sharing in the context of the Children and Young People’s Bill, Data Protection Act and Human Rights Act is also welcomed. Our interagency services are repeatedly recognising a need for clarity on age relevant information sharing (e.g. the intrinsic relationship of the family unit within the early years moving to the young adult with right to confidentiality, and sharing of 3rd party information). The Lothian and Borders GIRFEC Implementation Board are developing Frequently Asked Questions and local guidance which will support this work.

Disclosure of Information, paragraphs 74 to 75 EN

11. We are pleased that the findings from the Highland Pathfinder Evaluation around information sharing and consent between agencies have been used to inform this work.

12. There is a need to clarify the interface between this Bill and other key legislation, such as the Additional Support for Learning (Scotland) Act 2004, Self Directed Support (SDS) (Scotland) Act 2013 and The Children’s Hearings (Scotland) Act
2011. Other groups of vulnerable children e.g. young carers and children with complex healthcare needs should be included.

13. We feel there is a role for Scottish Government to ensure that the named person in Independent schools are required to share appropriate information, with all agencies, but particularly with health. The young people we consulted with expressed a wish to be able to access the named person even if they had left school.

**Early Learning and Childcare, paragraphs 90 to 102 PM**

14. We welcome the proposal to increase flexibility in early learning and childcare services. However, we need to ensure that flexibility for provision of childcare does not affect the quality of childcare and early learning needs. This needs to be accompanied by a robust workforce development plan. There also needs to be a link with adult services to support and improve parenting. There lacks clarity as to whether consideration has been given to the option of parents and carers using the forthcoming Self Directed Support legislation in relation to child care hours/entitlement in order to organise the input that best suits the particular needs of their family circumstances?

**Getting it Right for Looked After Children**

**Corporate Parenting, paragraphs 104 to 107 PM**

15. The provisions proposed should strengthen collective responsibility and the reporting requirements will assist in demonstrating progress. We would recommend that a Single National Responsible Commissioning Guidance for Health, Social Work and Education is required to ensure synergy across these services in relation to cross boundary placements. A more child centred approach would be if the money followed the child. This should help to eradicate the issues caused by separate budgets.

**Kinship Care Order, paragraph 123 PM**

16. We welcome the duty on local authorities to support families at early stages of distress where children are at risk of becoming looked after. We would like clarity on how these proposals will be resourced.

**Right for Care Leavers to Request Assistance, paragraphs 108 to 115 PM**

17. We welcome this part to the Bill as it strengthens the right for care leavers to request assistance by requiring local authorities to respond by carrying out an assessment of need. However, the concerns around significant resource implications do not appear to be addressed.

**National Adoption Register, paragraphs 131 to 136 PM**

18. As with a number of responses from other agencies NHS Lothian expressed some ambiguity regarding the proposal to put Scotland’s Adoption Register on a statutory footing. We hope the outcome of this proposal is to speed up the
adoption process and that this would be kept under review. We need to ensure that the register adds value and efficiency and does not delay the effective processes that are currently used in some council’s.

Transition, paragraphs 109 and 122 PM

19. Although the Bill specifically mentions the transition to independence for care leavers, we also need to be planning transitions for other groups including children with additional needs such as young carers or those with multiple healthcare needs. Transitions need to be planned at the earliest possible time and children and young people need to be fully involved.

Counselling Services, paragraphs, 103, 123 to 125 PM

20. We welcome the focus on early intervention and prevention but would like the emphasis to be redirected away from just counselling to evidence based counselling interventions and/or support. This will enable other evidence based psychological interventions, not just individual and group based Cognitive Behaviour Therapy and for primary school children evidence based parenting interventions such as incredible years and Triple P to be included. It is important to remember that the NHS will provide these services through Child and Adult Mental Health Services. Therefore we need a local monitoring approach that allows both the Local Authority and NHS to provide shared governance structures and to report collectively on progress in this area. We would welcome the opportunity to be involved in creating the guidance as we have expertise locally that could be drawn on.

Better Service Planning and Delivery and Reporting on Outcomes

21. Community planning Partnerships need to develop strong governance arrangements with clear joint and collective accountability for delivery of integrated children’s services. The principles of the UNCRC need to be visible in local Single Outcome Agreements and there needs to be robust reporting mechanisms to ensure delivery of the key strategic priorities within these.

22. A Scottish Government Report cites that “Children and young people frequently felt that they did not have enough opportunities to express their views and influence decisions affecting their lives”. CRIA’s will enable us to demonstrate positive outcomes for children and young people. Barriers to communication and information sharing will need to be overcome to ensure that communities, parents/carers and children and young people can be involved.

23. There should be development work undertaken nationally to ensure that reporting on outcomes are child friendly e.g. using social media will help further the participation of children and young people’s involvement in service planning.

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24. The Bill does not specifically seek to address the learning needs of those children and parents where the child has complex or exceptional healthcare needs. We also need to take into account the needs of children and parents with learning and physical disabilities to ensure equity for all children.

Sally Egan
Associate Director / Child Health Commissioner, NHS Lothian
25 July 2013
1. This commentary is split into two sections: General Comments, and Comments on Particular Sections.

GENERAL COMMENTS

Definition of “Child”

2. The UN Convention on the Rights of the Child (UNCRC) defines “child” for its purposes as follows: “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. 18 is rather later than, traditionally, the law of Scotland has regarded childhood coming to an end. For the purposes of UNCRC, it is unclear what is understood by “majority” – though we do of course have the Age of Majority (Scotland) Act 1969 which sets the “age of majority” at 18, that has little practical effect. Since 1995 it has been clear that (virtually all) parental responsibilities and (all) parental rights cease when the child attains the age of 16, and from that age we have traditionally referred to “young persons” (as in, for example, the Children and Young Persons (Scotland) Act 1937). 16 (roughly) is the school leaving age, and the age of marriage/civil partnership (a definitional feature of adulthood – you can’t, for example, adopt a person who has been married or civilly empartnered). Notice also that while England, Wales and Northern Ireland each have a “Children’s Commissioner”, in Scotland we have a “Scotland’s Commissioner for Children and Young People”). Children in Scotland have a veto over adoption from age 12 and can make wills from that age (unlike children in England in both respects). Our effective age of adulthood is probably 16 and not 18.

3. The point is that defining a person as a “child” increases the protections that the law offers them, but decreases their own personal freedoms. Section 75 of the Bill defines “child” as a person who has not attained the age of 18 years. I should have been more comfortable if the limit of childhood were set at 16, with the Bill imposing whatever duty it imposes on authorities and agencies on “children and young people” (as the title rather suggests). I accept, however, that “young people” in the Bill might be people between 18 and 26, over whom lesser duties are appropriate.

4. In a sense contrary to what I have argued above (that childhood should not be extended beyond 16 because of its infantilising effect), – and entirely understanding that this is a reserved matter – I am made very uncomfortable to read (for example in sections 21 and 31) that the duties owed to “children” are not to be applied to “children” in the armed forces. Children should not be serving in the armed forces. Article 38 of the UNCRC, of course, prohibits anyone under 15 from serving in the armed forces, so there is no breach of UNCRC for the UK to continue to enlist at an earlier age than most other western countries, but it does illustrate that the very concept of “child” is an artificial construct which we as a
society are happy to change when it suits us (when they become soldiers, or when they marry).

Why the Decision not to Incorporate UNCRC into Scots Domestic Law is Good Thing

5. I **strongly** support the policy decision of the Scottish Government not to seek to incorporate UNCRC into Scots domestic law, for the following reasons:

(i) The UN Convention was not drafted as enforceable law – unlike the European Convention on Human Rights which has a whole judicial process behind it to tell us what it means, how to resolve its ambiguities and how to balance its conflicting principles. There are enormous dangers in taking a document designed for one purpose and using it for a purpose as powerful as legal regulation. The ECHR only works because the guidance given by the Court can be applied throughout the member states. Yet without any such court, we are left without any guidance as to what some of the more aspirational statements in the UNCRC actually mean. Take Article 4, for example: “With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.” There are at least two problems with that. First, what are “economic, social and cultural rights”? Secondly, do we really want judges to be determining “the maximum extent of [states’] available resources”?

(ii) Many of the rights in UNCRC are simply not within domestic law’s competence. Take Article 10, for example, which provides that a child in a different state from their parent shall have the right to leave any country and enter any other. That is fine as an international aspiration, but the domestic law of the UK (far less of Scotland) cannot – is not competent to – require that a child be allowed to enter any other country in the world – again, the Article was not drafted as an enforceable domestic right, and it would not be sensible to attempt to convert it into one.

(iii) Many of the rights in UNCRC are simply not justiciable (ie it is not appropriate for judges to make the decision as opposed to policymakers). Take Article 24, for example, which imposes a duty on states to take appropriate measures to reduce infant mortality, and to develop primary health care. All good and well, and important aspirations, but who would you allow to sue the state if the state fails to reduce infant mortality? And once reduced, but not to zero, is there a breach when no further efforts are taken? This may sound all very pedantic, but it is in the nature of law to be pedantic – at least hard law contained in domestic legislation. Soft law, such as UNCRC does not need to be pedantic because it is not designed to raise justiciable issues, but to give guidance to states as to the social policies they should be adopting. The Children and Young People (Scotland) Bill contains
statements of policy and is designed to create a cultural mindset far more than it is designed to provide hard legal rules that judges can rule upon: it reflects the approach of UNCRC more than incorporation would.

(iv) In any case, while UNCRC as policy aspirations may be unchallengeable, not all of its implications are necessarily good. A “child” under the UN Convention is a person under the age of 18, and “incorporating” childhood until 18 in our domestic law will have a number of unexpected and probably unwanted consequences, including raising the age of marriage, because of course we don’t like child-marriages, and increasing the age of lawful sexual activity, because we don’t want children having sex – and the Parliament recently decided with the Sexual Offences (Scotland) Act 2009 that when they do they should both be criminalised, with all the problems of Disclosure that go with that. Another thing that we would do well to remember is that incorporating UNCRC will actually downgrade the place of welfare. Our law says that, in children cases before courts and children’s hearings, the welfare of the child is to be the paramount consideration. This is reflected in Article 21 of UNCRC in adoption proceedings, but in any other matter Article 3 states that welfare is merely a primary consideration. Incorporation would therefore actually weaken at least some aspects of the protections we currently give children.

Rights of Children

6. Part 1 of the Bill (sections 1 – 4) is headed “Rights of Children” and it defines that phrase to “include the rights and obligations set out in” UNCRC and its protocols. Scottish legislation has traditionally (if unfortunately) been very reticent about setting out the “rights” that children have, though since devolution the concept has been given rather more teeth. So while the Education (Scotland) Acts 1980 and 1981 impose duties to educate children, it is only since the Standards in Scotland’s Schools etc Act 2000 that children have had a statutory “right” to be educated. There are no “rights” for children (as opposed to parents) in the Children (Scotland) Act 1995, though there are rather more in the Children’s Hearings (Scotland) Act 2011. The fact that the definition in section 4 of the present Bill “includes” UNCRC rights implies that other “rights” are covered but it gives no indication of what these rights are. It might be more accurate to change the definition in section 4 to read “‘rights’ ... means” instead of “‘rights’ ... includes”.

7. The word “right” is in itself ambiguous, as is clear from an examination of the rights contained in UNCRC. Some are aspirational but have no legally enforceable content (such as in art 24, the right to the highest attainable standard of health); some reflect general human rights as contained in the ECHR (such as in arts 14 – 16: freedom of thought, of association and from arbitrary arrest); some are directed to particular circumstances (such as arts 22 and 23: refugees
and disabled children); some provide general principles that have long since been given effect to in our law (such as art 12: right of the child to express views).

8. Part 1, in fact, notwithstanding its heading does not confer rights on children: rather, it imposes duties on public bodies. Now, few duties imposed on public bodies will give any individual a right in the sense of an action to sue the body that fails in its duties. There have been a series of cases in the Supreme Court (involving English law) in which the nature of the public duty is explored and the very limited circumstances in which an individual acquires a statutory “right” are identified. Part 1 does not confer rights of that nature.

9. The language of “rights” may reflect that in the UNCRC, but in legal terms it may well be regarded as being misrepresentative. Part 1 of the Bill would be more accurate – and less open to the charge that it promises more than it delivers – if it were headed something like: “Duties in Relation to the UN Convention on the Rights of the Child”.

General Principles

10. In 1995, both public law and private law matters relating to children were embodied in a single Act, the Children (Scotland) Act 1995. This allowed the legislation to set out general principles (which are often called “the three overarching principles”). Section 11(7) for private law matters and section 16 for public law matters require the child to be given the opportunity to express views; require welfare to be the paramount consideration; and require that minimum (or proportionate) state intervention be preferred over disproportionate intervention in family life. Child law is now much more disjointed than it was in 1995, with Part 1 of the 1995 Act surviving intact, much of Part 2 now being contained in the Children’s Hearings (Scotland) Act 2011, and adoption and permanence contained in the Adoption and Children (Scotland) Act 2007. Each of these Acts contains (if sometimes hidden) a restatement of the three overarching principles. This does not appear in the Children and Young People Bill. Most noticeable is the absence of any general requirement to consult with children about the services that are to be provided them. Absent too is a clear declaration that in determining how to fulfil their duties children’s welfare should be public authorities’ paramount consideration – or even the lesser obligation in UNCRC, that children’s welfare be a primary consideration. The nearest we get is an obligation in section 74 to assess whether the child’s wellbeing is being safeguarded. It is no answer to say that the Bill requires planning to be informed by UNCRC, since that does not make welfare paramount (and neither, as explained above, does UNCRC). A statutory statement of principle would be far stronger and should be considered. The three overarching principles might appear usefully, for example, in section 19 which sets out the “named person functions”: in carrying out these functions children should be consulted, their welfare should be paramount, and any intervention (however early) should be the minimum that is necessary. See further my comments on section 31 below.
COMMENTS ON PARTICULAR SECTIONS

11. **Section 1(1)(b).** Section 1(1)(a) imposes an obligation on Scottish Ministers to keep under consideration what they might do to further secure UNCRC in Scotland. Good. Section 1(1)(b) imposes an obligation on them to take steps, but only if they “consider it appropriate to do so”. That qualification to their duty is so great and unlimited in its scope that it renders the duty effectively a discretion. The subsection gives and then immediately takes away.

12. **Section 12(3):** I am very unclear that is in mind here. When will implementing a child’s services plan adversely affect the wellbeing of a child? And does the section allow the whole plan to fall when one child may be adversely affected when all other children would benefit? I suggest tightening the wording to ensure that the plan is not implemented in respect only of the child adversely affected.

13. **Section 26:** “might be relevant” seems a tad loose and, combined with the defence in section 27, this might give rise to ECHR issues of proportionality. Article 8 of the ECHR (right to private life) is not absolute and state action that interferes with the right is legitimate if “proportionate”, that is to say (a) is done in pursuit of a legitimate aim and (b) goes no further than is necessary to achieve that legitimate aim. The aim of sharing information is clearly legitimate – to allow early identification of potential problems in order to put support mechanisms in place to minimise the risk of greater interference in the child’s family life. So long as the sharing of information is limited to service providers and other responsible persons this is probably proportionate, but only if the information needs to be passed. The risk is that article 8 is breached if the law allows more information than is necessary to allow the service provider to make the judgment is to be shared. Section 26 imposes an obligation to share information whenever that information “might” be relevant. This sounds like an absolute obligation to share virtually everything known about the child with all service providers – for anything “might” be relevant, just as it might not be. It may be, however, that the problem is resolved by section 26(2)(b) which restricts the obligation to when a service provider thinks the information “ought to be” provided. Service providers will need proper training on how to keep that judgment within the bounds of proportionality. I suggest amending section 26(2)(a) to read “it is likely to be relevant” (instead of “it might be”). (The same applies to section 23(3) and section 26(4)).

14. **Section 27:** this provides a blanket defence to the prohibition on disclosing information, and given the wideness of the obligation to share information in section 26 might be seen as going too far. For example, there are prohibitions in section 182 of the Children’s Hearings (Scotland) Act 2011 on any person publishing information that can identify a child (or his or her school) if the information concerns any children’s hearing or associated court process; there are similar prohibitions in relation to the court process for exclusion orders being created in the Bill under Schedule 4 para (3). While sharing information amongst service providers might not usually amount to “publishing” the information, the strength of the defence created significantly weakens the prohibition recently enacted in the 2011 Act (and extended to exclusion orders in the present Bill).
15. **Section 31(5):** in deciding whether a child needs a child’s plan, the views of the child need to be taken into account. This seems to me to be in the wrong place. The determination of whether a children’s plan is necessary is a professional judgment over which the views of the child can have little real effect. The contents of the plan and its implications are where a child’s views need to be heard (as indeed is required in section 33(6) and section 37(2)).

16. **Section 51:** Corporate parenting is to apply to young people up until the age of 26. So too is section 29 of the 1995 Act extended to 26. This is good (and especially so in relation to the aftercare provisions in section 29 of the 1995 Act). The draft bill that was earlier consulted upon set the age at 25 (to reflect, I think, the alimentary obligations of parents, which can last until 25). I am unclear why (but support) the added year, though to keep the law consistent the alimentary age might also be raised from 25 to 26 – bearing in mind the increased number of young people who stay with their parents as compared with 1985 (when the alimentary age was laid down).

17. **Section 52:** These duties read like general duties applicable to looked after children as a class. It would be better, in my view, if it were made clear that the duties are owed to each individual looked after child. Instead of saying “the wellbeing of children and young people” in para (a) it should read “the wellbeing of each child and young person”. Similarly in (for example) para (c) it should read “to promote the interests of each child and young person to whom this Part applies”, etc.

18. **Section 73:** this adds to the existing provisions in that part of the Children (Scotland) Act 1995 that deals with local authority duties towards children in their areas. It introduces a new concept into the law: “wellbeing”. This is to be compared with the existing concept that has appeared very commonly in our legislation since the Guardianship of Infants Act 1925: the “welfare” of the child. At first glance, the concept of “wellbeing” is little different from “welfare” as it presently appears, for example, in sections 11(7) and 16(1) of the Children (Scotland) Act 1995, sections 14(3) and 84(4) of the Adoption and Children (Scotland) Act 2007, and section 25 of the Children’s Hearings (Scotland) Act 2011. If the intent is that the meaning of “wellbeing” is to be the same as the meaning of “welfare”, then it would normally be better that the same word is to be used, because courts assume that Parliament means the same thing when it uses the same words and means different things when it uses different words. Section 25 of the 2011 Act talks of the paramountcy of the need to safeguard and promote the child’s welfare; section 74 of the Bill talks of the child’s “wellbeing” being promoted or safeguarded. So there are clear similarities in intent. Nevertheless, it seems to me that the two concepts are different and that it is therefore appropriate to use the two different words. The “welfare” test applies in the various pieces of legislation mentioned above when the state is interfering in family life: it is compulsorily stepping in and imposing an order over the child which is (usually) opposed by the parent. This is a big step and needs to be proportionate. In the case of permanent removal of the child such as by adoption then “welfare” takes on the tone of an imperative (said the Supreme Court in *S v N*, a Scottish decision last year). But the Bill, and especially the “wellbeing”
provisions, is not about compulsory intervention but about seeking to avoid the need for compulsory intervention. It is about ensuring that the child’s wellbeing is protected and enhanced to such an extent – by processes that do not interfere with family life and which do not require a legal order over the child – that the child’s welfare is not so compromised that compulsory intervention becomes required. We may talk about “early intervention”, but it is not early compulsion. So in my view it is helpful for the legislation to choose a different word from “welfare” to describe the processes that the Bill is establishing. The state needs to enhance all children’s wellbeing by statutory means that will nearly always be co-operative with parents; and the state needs to step in to protect children’s welfare when co-operation is not enough and compulsion is required. The distinction in terminology is, in my view, helpful.

19. **Section 65(1):** “Kinship care orders” are defined to be one of two orders, either (a) an order giving “qualifying persons” (as defined in s.65(2)) the right to have the child living with them or to determine the child’s residence or (b) “a residence order” the effect of which is that the child is to live with a qualifying person. The distinction between (a) and (b) is not immediately obvious (because (a) will usually be contained within (b)), but seems to be that (a) concerns a right held by the qualifying person while (b) refers to the fact of residence regulated by a residence order that does not confer a “right”. In any case “residence order” is not defined. Under the 1995 Act a residence order is defined as an order made under s.11(2)(c), so that reference could usefully be added into the Bill’s section 65(1)(b), to reflect the reference to s.11(1) in section 65(1)(a).

20. **Section 65(3):** Neither “parent” nor “guardian” is defined in the Bill (other than ss.30 and 63 which do not apply to part 10). Neither of these words is without ambiguity and they should both follow the definitions contained in the Children (Scotland) Act 1995 (as section 30 defines “parent” for the purposes of Part 4 and section 63 does for Part 9).

21. **Section 65(4):** I am disconcerted that a draftsman today would include a reference to marriage without also including a reference to civil partnership. (Almost certainly an oversight, but a disturbing one in this day and age).

22. **Section 68:** To put Scotland’s Adoption Register on a statutory basis is a very good idea, but there is some dreadful language used. In the new section 13A(2)(a)(i) there is a reference to children who “ought” to be adopted. This is an entirely inappropriate way of putting it: no child in Scotland “ought” to be adopted. Rather, a child might be described as being “suitable for adoption”, or (following s.13D(2)(a)(iii)) as a “child who is appropriate for adoption”. Far less is it for any government to make the judgment – as s.13C(1)(a) requires – that any child or class of child “ought” to be placed for adoption. And the language of “type” of child in s.13C(2)(a) is not appropriate either.

23. **Section 71:** This adds a right of appeal against a local authority’s decision to detain a child in secure accommodation under s. 44 of the Criminal Procedure (Scotland) Act 1995. This is a useful reflection of the new right of appeal against implementation of a children’s hearing’s authorisation of secure accommodation
in the Children’s Hearings (Scotland) Act 2011. There is however a problem with title to appeal. The right of appeal in the 2011 Act vests in the child and “any relevant person” and a HUGE issue in the 2011 Act is how “relevant person” is defined: the 2011 Act definition is very different from its predecessor in the Children (Scotland) Act 1995 and includes a new “deeming” procedure. Section 71 of the Bill gives title to appeal to the child and “a relevant person”, and the new s.44A(6) gives a definition of “relevant person”. I consider it highly unfortunate and needlessly complicated to give here a different definition of the person who can appeal against a decision to detain a child in secure accommodation from the definition used throughout the 2011 Act: it is made especially complicated by the use of the same phrase “relevant person” to identify who has title. Secondary legislation under the 2011 Act has already amended the 2011 definition of “relevant person” and Scottish Ministers have the power to do so again. To avoid unnecessary complexities title to appeal a secure accommodation decision ought to be the same irrespective of the Act under which the decision is made. Unless the definition of “relevant person” in section 44A(6) is amended, then a parent, who is now within the definition in s. 200 of the 2011 Act, and will not therefore be “deemed” to be a relevant person, may be excluded from s.44A for no rational reason – a parent without parental responsibilities (the unmarried father of a child born before the coming into force of the Family Law (Scotland) Act 2006) will be able to appeal his child’s detention under the 2011 Act but will not have title to appeal his detention under this new s.44A. So I suggest the new section 46A(6) defining who has title to appeal, as it appears in s.71 of the Bill, should be explicitly tied to the definition of the same phrase in the 2011 Act and read as follows:

“In this section ‘relevant person’ in relation to a child means:

(a) a relevant person as defined in section 200 of the Children’s

Hearings (Scotland) Act 2011; and

(b) any person who is deemed to be a relevant person in relation to the

child by virtue of section 81(3), 160(4)(b) or 164(6) of the Children’s

Hearings (Scotland) Act 2011 or Rule 55 of the Children’s Hearings

(Scotland) Act 2011 (Rules of Procedure at Children’s Hearings)

Rules 2013”.

24. Even if this is not accepted, the reference to the 2013 Rules should be added to the new s.44A.

Professor Kenneth McK. Norrie
Professor of Law at the University of Strathclyde
3 August 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

North Ayrshire Council

Part 1 – Children’s Rights

1. It will be important to recognise that the key drivers for children’s rights are cultural and attitudinal. Although legislation will support this, there is a broader agenda of promoting children’s rights and providing genuine opportunities for having their individual and collective voices heard in all decisions which affect them.

2. While welcoming the focus on children’s rights we require greater clarity on what is meant by ‘give better or further effect to children’s rights’. This duty appears to be a duty to report on steps taken rather than a verification that policies are compliant with UNCRC or that they are having an impact on the lives of children. A three year timeframe to ensure that authorities are implementing UNCRC in full would give a sharper focus.

3. There is already a range of scrutiny and audit activities in place ie Children’s Services Inspections, Audit Scotland CPP Audits, which could be used to provide a picture of how authorities are progressing. We do not believe that an additional reporting mechanism is required.

Part 2 – Investigation by the Commissioner

4. While we welcome the ability of the Commissioner to undertake general or individual investigations and note that this would only be if it did not duplicate work that is the function of another person, this is in the context of an already crowded and confusing landscape. The ASN Act (Scotland) 2004 Revised 2009, offers parents and young people opportunities to challenge providers about their education, care and welfare and includes dispute resolution, mediation as well as the ASN Tribunal. The Children’s Hearing System in Scotland offers children and families the opportunity to have their voice heard within that context and legally binding decisions can be made that will ensure effective provision is implemented. Local authorities also have well established complaints procedures which are available to parents, children and young people. It may have been helpful to consider how a single protection of rights based on GIRFEC could ease some of the complexities inherent in the current system rather than adding to them.

Part 3 – Children’s Services Planning

5. We support the requirement, the aims and the process indicated for the Children’s Services Plan. However, in section 13, we believe that the primary aim should be to focus on the outcomes for children and young people.

6. In relation to guidance in Children’s Services Planning, it would be important to ensure that there are long term evaluations rather than reportable short term proxy measures which may divert attention from the long term aims of the
legislation. We have significant concerns around section 17 and the default powers of the Scottish Ministers. This appears to be focussed on the role of Scottish Ministers to change structures and to direct resources rather than a consultative and mediation role where they feel that Councils and Health Boards are not achieving the outcomes required for children.

7. We believe this has significant implications for local government which were no clear in the consultation process. We understand that this legislation would give Scottish Ministers the power to intervene in local government and health service functions without further primary legislation. We believe this would be fully discussed with the relevant stakeholders and welcome the government’s decision to undertake specific consultation on this aspect of the Bill.

Part 4 – Provision of Named Person

8. We agree with the named person function as defined, however, we believe that this should be for the service to identify an appropriate person with appropriate qualifications and not to be directed by the Scottish Ministers as outlined in 58, subsection 2 and 3. However in the majority of circumstances a named person would be an education professional. The duty for them would be to be aware of risks, assess needs and identify concerns as well as co-ordinate and seek the views of others, plan and record are significant. The core function of education professionals is to teach children and while the profession recognises their responsibilities to provide pastoral support and ensure that within this proposed legislative framework children’s well-being is paramount, issues of capacity to undertake the role and responsibility of the named person remain.

9. In relation to pre-school children, it would seem more appropriate that where children are taking up their entitlement to early education and care provision, which will increase, that this service should provide the named person for children aged three years and over. This makes more sense as over 90% of children take up their full entitlement and are seen on a daily basis by professional staff. Where this is not the case it would be appropriate for the named person to remain the Health Visitor.

10. We are concerned that in terms of allocating a named person, despite the fact that the Bill is quite clear that the named person function cannot be carried out by the parent of the child or young person, that the Bill remains silent on who the named person for children educated at home may be. It would be helpful to have clear direction for this.

11. We particularly welcome the duty to help the named person placed on a wider range of organisations.

Part 5 Child’s Plan

12. We fully support the development of a Child’s Plan where a wellbeing need has been identified. We recognise that paragraph 83, sub section 1, it is important that the Child’s Plan includes a statement of the child’s wellbeing and that the targeted intervention which requires to be provided in relation to the child to
address the wellbeing need. It will be important that the guidance recognises and supports this straightforward and practical approach to the development of a Child’s Plan and they do not become too bureaucratic or onerous. Our concerns remain that the opportunity has not been taken to appropriately simplify planning in relation to the additional support for learning legislation and care planning.

Part 6 – Early Learning and Childcare

13. We welcome the extension of universal early education and care provision. We would wish to see greater flexibility in how this is delivered but believe that the parameters of a minimum of 2.5 hours and a maximum of 8 hours are appropriate. While greater flexibility and choice may be able to be delivered in the large urban areas with large private sector providers this could be challenging in rural areas or areas where partner nurseries are mainly in the voluntary sector. Many local enterprise and voluntary early years providers have ceased trading over the last year which means that local authorities are picking up greater costs for this.

14. Concern has also been expressed by private sector providers regarding the loss of income from top up payments made by parents. This may impact on costs to local authorities.

15. A key issue will be increasing the provision whilst maintaining the quality.

Part 7 – Corporate Parenting

16. We support the clarification of the concept of corporate parenting. It is helpful that this is more directly specified and the authorities to which it applies identified clearly. It is also important that these groups are planning together to ensure that all services are focussed on the wellbeing of these children who are our responsibility. However, it is a concern that yet another plan is required for this and there should be greater emphasis on this being an integrated part of the Children’s Services Plan.

Part 10 – Support for Kinship Care

17. 64 (2) The Bill specifies “kinship care assistance” as a duty upon local authorities to make available for those who are deemed eligible.

18. “Kinship care assistance” is noted as being:-

- Counselling, advice or information
- Financial support – or support in kind

19. Currently North Ayrshire Council do make provision under the areas above for those who are eligible under our kinship care arrangements and indeed have extended our provision as the need has increased.

20. However, the Bill also indicates:-

- The provision of any service provided by the local authority on a subsidised basis
21. This would appear to suggest that any and indeed every service provided by the local authority is to be provided on a subsidised basis. Further clarity is required in relation to this.

22. In terms of who would constitute an “eligible child” currently North Ayrshire Council would deem this as a child whose situation has been highlighted to Social Services and that a kinship placement has been sought as an alternative to either residential or foster care. Therefore Social Services have been involved in the making of the kinship care placement and the carers have been vetted to indicate their suitability for the task in terms of for example, medical and disclosure checks.

23. The current wording within the Bill does not specify what is meant by an “eligible child” and notes that it is a “child who is of such description as the Scottish Ministers may by order specify.” Therefore this area of eligibility is not exactly clear and may be wider than our current policy and procedures.

24. The Bill specifies that as well as a Residence Order there will be a “Kinship Care Order”. There has been a great deal of discussion in relation to the Kinship Care Order as it is not clear as to when the Kinship Care Order should be applied for as opposed to the Residence Order. Both Orders appear to give the qualifying person the right to regulate the child’s residence or to have the child predominately with the qualifying person.

25. The new Kinship Care Order will cover both formal and informal kinship arrangements.

26. Currently only formal kinship care arrangements which are an alternative to residential or foster care, are supported via the local authority. The Bill now indicates that a kinship care order can be applied for by those within informal kinship care arrangements where there has been no or limited intervention by Social Services.

27. This would then increase the numbers of those requesting support including financial support from the local authority in relation to Kinship Care.

28. Additional assistance within the new Kinship Care Order is noted as being:

- A start up grant of £500
- Counselling support – which will be referred to in the next section
- Transitional support for a period of 3 years. Given the situation in terms of poverty and deprivation within North Ayrshire as well as the implications of Welfare Reform, many families will not be able to manage if financial support is only provided over a three year period. Therefore would current kinship carers wish to apply for this new order.
- Assistance with essential transport
• Assistance with kinship care order petition – which could be financial. The costs of supporting carers to apply for the new order, for example, legal costs, could also be substantial. If however carers will only receive a start up grant and thereafter no other payments from the Local Authority then again, it is felt that very few current kinship carers will apply for this new order.

29. However, given that currently we do not provide support to informal kinship carers, we may see an increase in the numbers of informal carers who will apply for the new Order as this will give them access to support mechanisms they currently have not had access to.

30. The Bill also specifies a general "qualifying test, linked to current or projected risk that a child may need to become formally looked after which would apply only once with periodic reviews. It is felt that further information requires to be provided in relation to this “at risk” test.

61 – 67 Counselling Services

31. It is noted that a duty is to be placed on local authorities to assess children who are at risk of coming into care or who are already on a “relevant order” for access to counselling services such as family mediation or family group conferencing support. However there is no details in relation to what such a “relevant order” would be.

32. While it is fully appreciated that early intervention and prevention are crucial and that such input before critical situations arise can prevent children being looked after, there is concern in relation to the lack of clarity in terms of counselling, for example, such as costs for the local authority, staff training, and “eligible child”.

33. 65 (2) In terms of the “qualifying person” the criteria is that of:-

34. Is related to the child

35. Is a friend or acquaintance of a person related to the child

36. There is concern in relation to these definitions as currently in terms of a “qualifying person” the criteria relates to a person who has a significant existing relationship with that child and that is considered in the first instance.

37. However in terms of the proposals under the Bill there does not appear to be any mention of any “existing relationship” but that the child could be cared for by an “acquaintance” who is termed as someone who is “known slightly to the relative, where the relationship does not necessarily have the same depth or intimacy as a friendship, for example, a neighbour.”

38. Such criteria causes a great deal of concern and is not felt to be in the best interests of any child and it is felt that that the Bill requires to re-inset that the “qualifying person” is required to have a significant existing relationship with the child regardless of whether they are related or known to the child or not and that they are required to meet certain criteria, such as satisfactory Disclosure and Medical checks.
66 Kinship care assistance – further provision

39. Within this section – ie 66 (3) and (4) there is a list of areas where Scottish Ministers may make further provision, for example, in relation to when and how kinship care assistance is to be provided, whether a child is an eligible child, when and how the local authority is to review whether a child continues to be an eligible child and any other matters in relation to the provision of kinship assistance.

40. While it is appreciated that this does allow for further provision to be considered and added at a later date if felt to be appropriate, it would appear that there are a number of areas where there could be a number of additions or alterations which could have implications for local authorities, for example in relation to:-

- Children who are eligible
- Reviews of eligibility criteria
- Details of kinship care assistance

41. In relation to the above concern has also been expressed in the amount of aspects of the Bill which remain to be defined in secondary legislation and again these could have implications for local authorities, such as financial, staffing and services, which are therefore unknown and cannot be taken into account in terms of service planning.

North Ayrshire Council
26 July 2013
Introduction

1. We welcome the opportunity to submit written evidence on the Bill and would wish to state our support for the objectives and principles of the Bill. We will draw attention to a number of concerns regarding some of the potential implications of its implementation.

2. Given the current levels of deprivation as evidenced by NLC’s position in the Scottish Index of Multiple Deprivation, significant investment will continue to be required to counter the impact of the prevailing economic downturn, including the implications of Welfare Reform. The needs of communities are growing and significant investment in this priority area would potentially improve long term employability and community regeneration across our most vulnerable communities.

3. Our response is informed by our experience of implementing GIRFEC in the Lanarkshire area. Following the Highland Pathfinder Project, Lanarkshire became the first ‘Getting It Right for Every Child’ (GIRFEC) learning partners in June 2008.

4. The two Councils, along with partner agencies have fully embedded GIRFEC into our culture, processes and practice. We will refer to our learning at various points in our submission.

Rights of Children

5. As a Council, we are already taking positive steps to embed the rights of children and young people in line with UNCRC, and the development and launch in October 2012 of our Getting it Right for Every Child practice guidance supports the cultural and system change required to implement practice change.

Children’s Services Planning

6. We are concerned about the proposed powers in the Bill, particularly around Section 17, which would allow Scottish Ministers to direct Local Authorities where they may be dissatisfied with the joint planning arrangements between a Local Authority and the NHS.

7. This proposal raises concerns regarding a potential shift from local to central government, governance and accountability. We believe that this would be a threat to our vision of being proactive and responsive to resolving local needs and issues for our children and families through our local multi agency partnerships.

8. We have a long established multi agency planning structure for children’s services. Our GIRFEC arrangements have allowed more defined common pathways and local decision making structures which allow children to get help when they need it. This is evidenced in our past external inspections of children’s services in North Lanarkshire.

9. We would welcome further discussion on this aspect of the Bill.
Provision of Named Person

10. We anticipate that further guidance on the role and function of the named person will be provided. Early indications are that the NHS will take responsibility for all pre-school children with Education holding lead responsibility for all children of school age. This is currently the case within North Lanarkshire and as previously outlined, as one of four learning partners we have developed and launched our GIRFEC practice guidance for the implementation of the named person’s role within Health and Education. This role has been fully embraced by all practitioners and managers alike. Within the independent review it was highlighted that cultural change has made the most significant difference to the implementation of the principles. The GIRFEC practice model and core components improved understanding, co-operation and joint working across professional boundaries.

11. To summarise it has been the hearts and minds of the professionals involved within children services in Lanarkshire that has made the difference to implementing the principles of GIRFEC and the well being indicators. It is difficult to see what added value legislation will bring to the changes that have been already been made within North Lanarkshire.

12. The Children (Scotland) Act 1995 outlines the responsibilities of parents and carers and the rights that come from this undertaking, in particular, the responsibility as a parent to look after their child’s health, development and welfare. The United Nations Convention on the Rights of the Child (UNCRC) which influences the principles of the Bill are specific under Article 5 that Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. To strengthen this principle Article 5 encourages parents to deal with rights issues "in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to Governments. Adopting a universal approach for every child within Scotland to have a named person should be carefully considered and requires to recognise Article 5. Within North Lanarkshire, when implementing the named person, consideration of this matter has been taken and the focus continues to be on encouraging and supporting all parents to deal with aspects of their child’s well-being.

Child’s Plan

13. In respect of Section 37 regarding the child’s plan and the plan management, we hold the view that secondary legislation needs to be introduced to ensure that there is harmony between planning in respect of the Child’s Plan and planning requirements for children and young people with additional support needs as required by the Additional Support for Learning legislation. Clarity in this area would be welcomed. Subsection 5 of the Bill makes provision to allow Scottish Ministers to make further orders regarding the management of the plan. It would be helpful to have further provisions in relation to, for instance, the transfer of the plan between authorities.
North Lanarkshire Council’s aspiration is to deliver the highest quality services to our preschool children and their families. In the context of the Early Years Collaborative, we will be required to take a holistic approach to the delivery of services.

The Council has estimated that to deliver the 600 hours and the required level of flexibility could potentially cost up to £4.7 million. Whilst the Scottish Government has provided Scotland-wide indicative funding, clarification is required on individual authority allocations. There is a sense of urgency in relation to this, to allow planning and implementation for the commencement of enhanced services by August 2014.

There continue to be challenges that will impact on staffing, accommodation and partnership contracts to enable 600 hours to be delivered including:

- **Staffing-** additional recruitment and training to maintain and improve standards
- **Accommodation-** in light of the ongoing work on the Early Years collaborative, the Council will be required to invest further in providing facilities and accommodation that will meet the needs of 21st century early learning and childcare. Clarity is required in relation to the availability of capital resources
- **Partnerships-** the nature of delivery of early years services in this authority is characterised by multiagency working. The continued success of this approach will depend upon clarity of resources, including funding, that will be available to the partnership.

The proposal within the Bill, to provide early years placement for all looked after two year olds (including those in kinship care arrangements) will inevitably impact on places required and available. This in turn will impact on availability of provision for other vulnerable groups.

**Aftercare**

In principle, we agree with the requirements to support young care leavers up until the age of 25 but remain concerned about the funding for this. We recognise that the Scottish Government have estimated a national funding requirement of £3.87m in 2015/16, £4.03m in 2016/17, £4.03m in 2017/18 and £1.77m in both 2018/19 and 2019/20. If proposed changes to Section 29 of the Children (Scotland) Act 1995 extends the right for a young person to remain with a supported carer until the age of 25 this will incur an additional cost of £55,723 per placement. Some of these young people will be eligible for Section 29 payments if attending further/higher education courses prior to their 21st birthday.

**Counselling Services**

Part 9 of the Bill, makes provision for counselling services but there is no definition of ‘eligible child’. This should be central to the obligation to provide services so the definition of this should not be left to secondary legislation. As outlined in the Bill, Local Authorities are to provide undefined counselling services to parents or those with parental rights and responsibilities of an undefined group of children. It is difficult to
comment on the potential impact of this on the Council. The Bill also makes reference to specific types of counselling support but this is not all encompassing considering the range of difficulties children and their parents encounter and some of the counselling that may be required are of a more specialist nature and are provided by Health. Given the undefined nature of this responsibility it is difficult to determine its potential impact.

Support for Kinship Care

20. With reference to kinship care, the Scottish Government estimates a cost of £2.6m across Scotland for implementation costs with no recurring costs. In considering the potential cost to North Lanarkshire we currently have 295 kinship carers who have been assessed, the majority of whom receive allowances. It is currently unknown how many informal kinship arrangements are in place within the area. It is therefore difficult to predict the additional demand that the proposed kinship order will create. Currently we pay 50% of the fostering rate to kinship carers, this is approved after an assessment is agreed by the Kinship Care Panel. Within North Lanarkshire it would be reasonable to predict a significant increase in the demand for payments considering that the balance of care for children being cared for by extended family members, many of whom will currently not be known to Social Work Services.

21. Section 65 outlines what a kinship care order is. This section deems that any residence order granted in favour of a qualifying person or any order under Section 11 (1) of the ‘95 Act giving the right to dictate residence to a qualifying person, is deemed to be a 'kinship care order'. Qualifying person is defined in Section 65 (2) but further clarity is required on the definition of ‘related’. It is proposed that the interpretation is one similar to the definition of 'relative' in Section 119 of the 2007 act. There needs to be some requirement for assessment by the Local Authority and discretion on the Local Authority as who should be able to gain assistance from them. This is also being left to secondary legislation.

22. The Bill suggests that once carers have applied for the order and receive a start up grant then they would no longer be in receipt of payment from the Local Authority. To date this has not been our experience as through our Kinship Care Panel- a multi-agency decision making forum- consideration is given to a wide range of supports for kinship carers which include one off payments/start up costs. Many carers seek or go onto require regular payments from the Council. It is difficult to estimate or predict how many kinship carers would apply for the new order. Moreover, without a definition of support within the Bill the assumption being made is that this does not always have to include financial assistance which could be challenged by carers.

23. The cost of supporting carers to apply for the new order is unknown. Based on work that has already taken place within North Lanarkshire comparing this to costs to support Adoption orders, there would be a considerable cost for the Local Authority. On these costings, we have estimated that the cost of seven new orders per year to be approximately £28,000. Again this is a very conservative estimate and may not mirror the true demand that currently is being managed within children’s extended family networks by “informal” kinship carers.

24. Section 64 makes it an absolute obligation that kinship care assistance is made available by the Local Authority but again there is no definition of the term “kinship care assistance”. In the Adoption and Children (Scotland) Act 2007, there was some attempt
to define certain terms for instance ‘adoption support service’ and the same should reasonably apply here.

25. Section 66(3) and (4) allow Scottish Ministers to make further provision about a number of matters including how or when kinship care assistance is to be provided, when a child is eligible etc. It is arguable that these issues are too important to leave to secondary legislation but the financial memorandum suggests that there will be a qualifying test which will be linked to the current or projected risk that a child may need to become formally looked after. More guidance on this will be required. It may cause confusion or become a point of contention for kinship carers if this is determined by their capacity to manage any current or future risk for the child, as not every kinship carer applying for a Section 11 order will therefore be eligible for assistance.

26. We remain extremely concerned about the potential financial, staffing and other resource implications of this part of the Bill on the Authority.

Summary

27. We understand the vision of the Scottish Government to implement the objectives and principles of the new Bill consistently throughout Scotland. The Bill will assist in reinforcing the existing strong partnerships and joint planning arrangements through the children services structures that already exist in the North Lanarkshire area. These are key to the strategic and operational delivery arrangements to improve outcomes for children and families and as such much progress has been already been made in implementing the proposals contained within the Bill concerning the named person, kinship and corporate parenting. We remain concerned about a number of aspects of the Bill and in particular issues around governance, (in particular the stronger focus on centralisation as opposed to local delivery) our ability to meet funding requirements and that much of the detail is being left to secondary legislation.

28. We would welcome the opportunity to provide oral evidence to the Committee.

North Lanarkshire Council
12 August 2013
North Lanarkshire Council Psychological Service

1. North Lanarkshire Psychological Service welcomes the opportunity to contribute to this consultation. We endorse the ASPEP response but wish to add comments from the perspective of a local authority psychological service and to include comments not contained in their response. The ASPEP response highlights the key role and significant contribution that educational psychologists make to many aspects of the delivery of services to children, young people, their families and the other staff supporting them. We share the concern expressed about capacity of educational psychology services to meet these demands and expectations: our establishment has and will be further reduced. Also, we have major concerns because the training of educational psychologists has been compromised and these changes have significant implications for the future of the service and the profession as a whole.

Part 1

2. With ASPEP, we support the commitment to the rights of children and young people. We agree with their concern about the extent of incorporation of UNCRC into this legislation and the lack of detail about issues regarding poor or non-compliance.

Part 2

3. It is difficult to determine what criteria would be used for a referral to the Commissioner and how this involvement fits the activities of other national investigating bodies.

4. We have concern that this new power carries the risk of encouraging and solidifying an adversarial approach. For example this has been the experience of psychologists involved in some ASN Tribunals.

Part 3

5. In North Lanarkshire, integrated planning is in place, with psychologists integral to this process. For example, members of the Service have developed a Resilience Framework and Assessment and Planning tool which will be routinely used across the authority.

6. Well-being is a more aspirational, positive, proactive and useful concept in terms of Getting It Right For Every Child. By comparison, welfare is perceived more negatively and narrowly, focusing on ‘problems’ and on child protection and the benefits system.

7. We suggest that the rights of children and young people should be more explicit in Children’s Services planning.

8. We welcome the requirement to report to Scottish ministers on councils’ promotion of children’s rights.

Part 4 – Named Person

9. In addition to the points raised by ASPEP, we wish to pose the following:

10. Public Health Nurses (PHN) may not always be in the best position to act as named person if there are no significant health needs and child attends a nursery establishment.
The manager of an early years establishment would be a more appropriate named person as the functions of the role are already being undertaken by nursery heads.

11. If children attend primary school at 4½ years old, who is the named person when those children are in school? It is suggested that school management is in a better position to fulfil this role.

12. Who will ensure that all PHNs are fully aware of their duties as a Named Person?

13. In North Lanarkshire, in the current ‘birth to three’ process, the Senior Educational Psychologist has the role of named person when putting together the holistic assessment. Is an implication of the Bill that this 0-3 process should be taken over by the PHN, given the definition of Named Person?

**Part 5 – Child’s Plan**

14. The ASPEP response covers all points.

15. There is a need for considerable integration between the various legislative frameworks and non-statutory plans (as mentioned in SPICe briefing document, page14).

16. The integration of multi-agency planning and intervention is dependent on the development of children’s service within the local authority context and should be directed towards achieving systems which do not necessitate additional layers of planning.

**Part 6 – Early Learning and Childcare**

17. The increased emphasis on the needs of 2 year olds is welcomed but nursery placements should not be regarded as the most appropriate intervention for all children. There is a need to adopt a more flexible approach in meeting the needs of families and children.

18. A change perception of nursery is suggested, with a move toward a proactive learning environment to support and build on parenting skills and involvement.

19. We support the idea of ‘stay and play’ where nurseries offer a session for parents and their child(ren) to attend stay and play in the establishment, as a way of helping parents develop their own skills.

**Part 7 – Corporate Parenting**

20. There should be a differentiation of the roles and responsibilities of the bodies listed in schedule 3, detailing the enhanced corporate parenting duties of e.g. local authorities.

**Part 8 – Aftercare**

21. Clarification is required on how aftercare is requested and by whom. Would more direct responsibility of the Named Person help with this?

22. Aftercare is only available and applies to young people who are ‘looked after’ when they turn 16. Clarity is required on what is meant by ‘looked after’ in this context.

23. What provisions are in place to ensure young people are still eligible for Aftercare, given requirement is based on need rather than age?
Part 9 – Duty to Some

24. How is ‘intensive family therapy’ defined? Will this be left to authorities to interpret? If this is the case, it has to be acknowledged that the range of counselling provision is likely to vary greatly across Scotland.

25. If ‘level of risk’ is the principal tool used to assign intensive family therapy, will practitioners still have the opportunity, without fear of prosecution, to identify when families are/are not ‘counselling ready’ and suggest an alternative to intensive family therapy?

Part 10 – Kinship

26. This Service agrees with the widening of support to kinship carers to improve outcomes and decrease chances of number of looked after placements for young people.

Section 11 – Adoption Register

27. The register could offer a more consistent approach and the access to national information could benefit the permanence of children and young people.

28. However, what would be the statutory duty regarding information required for each child’s entry?

Alison MacDonald, Principal Educational Psychologist
North Lanarkshire Council Psychological Service
26 July 2013
1. The North of Scotland Planning Group (NoSPG) is a collaboration of six NHS Boards – NHS Grampian, NHS Highland, NHS Orkney, NHS Shetland, NHS Tayside and NHS Western Isles. It has a role in supporting collaborative working between Health Boards where this adds value to patient care.

2. The North of Scotland Child Health Clinical Planning Group has been mandated by NoSPG to develop a regional model for planning the delivery of children’s services as locally as possible, where it is safe and sustainable to do so.

3. A recent review of the sustainability of paediatric services in the north of Scotland has recommended that Health Boards co-operate by developing a common template for their Child Health Strategy.

4. In Scotland there are 32 Local Authorities and 14 Territorial Health Boards. Within each Health Board area there may be a number of local authorities and particularly in more remote and rural areas not all children’s services will be available locally.

5. The North of Scotland Planning Group strongly supports the need for Local Authorities and Health Boards to work closely together in all areas of Children’s Services Planning (Part 3 of bill).

6. Within health services for children in the north of Scotland, there is an acknowledgement that for some services, planning and sustaining these services requires cooperation between Health Boards. The same is likely to be true for Local Authorities and we would recommend that where there is interdependence between Local Authorities and between Health Boards for the provision of children’s services, particularly in remote and rural areas, that this should be an obligation on these organisations to collaborate in Children’s Service Planning.

7. We would like to thank you for the opportunity to respond to this bill.

Mr James Cannon, Director of Regional Planning
Dr W Michael Bisset, Clinical Lead, Child Health
North of Scotland Planning Group
25 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

NSPCC Scotland

Introduction

1. NSPCC Scotland welcomes the opportunity to respond to the Committee’s call for evidence to inform Stage One of the Children and Young People (Scotland) Bill. We fully support the commendable aspirations of the Bill, particularly those around early intervention and prevention, and welcome efforts to entrench children’s rights in public service provision in Scotland. However, we believe that there are areas where the Bill could be strengthened in order to meet better the stated ambitions.

About NSPCC Scotland

2. The NSPCC aims to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfill their potential. We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as ChildLine, the ChildLine Schools Service and our adult Helpline. Based on the learning from all of our services we seek to achieve cultural, social and political change – influencing legislation, policy, practice, attitudes and behaviours so that all children in Scotland have the best protection from cruelty.

NSPCC Scotland evidence

Part 1: Rights of Children

3. We welcome the Scottish Government’s stated intention to ensure that children’s rights underpin service design and delivery. However, we have concerns about the extent to which relevant provisions in the Bill will achieve this aim.

4. The proposed duty on Ministers “to keep under consideration” how to secure better effect of the United Nations Convention on the Rights of the Child (UNCRC) [s1(1)(a)] is a regression from the original ‘due regard’ duty proposed by the Scottish Government in the original consultation¹.

5. NSPCC Scotland joins Scotland’s Commissioner for Children and Young People (SCCYP), Together and others in believing that full incorporation of the UNCRC into Scots law would be the most effective mechanism for fulfilling the Scottish Government’s commitment to ‘make rights real’ for all children in Scotland. Full incorporation would embed children’s rights into the planning, implementation and

monitoring of all policies and services, and would provide comprehensive accountability mechanisms including legal redress for children and young people.

6. Although we are committed to achieving full incorporation of the UNCRC, at the very least the proposed duty on Scottish Ministers should be reworded to strengthen the obligation. The Bill should require that Ministers ‘act compatibly’ with the UNCRC, or give ‘due regard’ to the UNCRC, as was initially proposed. Similarly, the duty on public bodies is insufficient (s2). As currently worded, public bodies are required to report on the steps they have taken to secure better effect of the UNCRC, but there is no direct legal duty for them to take such steps. For the purposes of legal clarity, it would be better if a direct duty on public bodies to act compatibly or have due regard featured on the face of the Bill. Again, this is notwithstanding our belief that full incorporation of the UNCRC would be the most effective mechanism.

7. We also support calls from SCCYP, Together and others for a Child Rights Impact Assessment to be undertaken. This would enable a systematic consideration of the impact of the Bill on children’s rights – the very principles it seeks to promote. This would help to highlight where provisions could be strengthened (e.g. the duty on Ministers and public bodies, as above) and where there may be potential negative impact (e.g. information sharing [ss25-27], discussed below).

Part 3: Children’s services planning

8. The Bill and supporting documents make few, if any, connections with other pieces of legislation that will impact on children, young people and their families.

9. While the Bill seeks to create a framework for joint planning of children’s services, this will also be impacted by a number of legislative provisions. In particular, the Public Bodies (Joint Working) (Scotland) Bill, currently being considered by the Health and Sport Committee, seeks to integrate adult health and social care, while allowing local partners discretion about whether to include children’s services in the new processes. Similarly, the recent Social Care (Self Directed Support) (Scotland) Act 2012\(^2\) and the planned Community Empowerment and Renewal Bill\(^3\) will also have implications for the planning and delivery of children’s services. It is unclear whether all of these developments have been considered in the round. There appears to have been little strategic thinking about the position of children’s services and we are concerned that this might lead to confusion and fragmentation.

10. The impact of this broader legislative landscape on children’s lived experiences must be a central consideration of the Children and Young People (Scotland) Bill. It is arguable whether the disparate nature of the various pieces of legislation which

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\(^2\) This Act aims to give services users greater choice and control over the support they receive. See [http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Self-Directed-Support/Bill](http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Self-Directed-Support/Bill)

\(^3\) This Bill will seek to strengthen community participation and development. See [http://www.scotland.gov.uk/Topics/People/engage/cer](http://www.scotland.gov.uk/Topics/People/engage/cer)
affect children’s services suggests a lack of coherent vision for how the whole range of services meet the needs of children and young people in Scotland.

11. To gain a fuller picture of developments and enable a more thorough consideration of proposals, we suggest that the Education and Culture Committee considers holding a joint evidence session with the Health and Sport Committee to consider the interaction of relevant provisions contained in both the Children and Young People and the Public Bodies Bills, and their implications for services for children and families.

Part 4: Provision of Named Persons

12. NSPCC Scotland supports the intention behind the Named Person approach which, if clearly defined and properly resourced, could improve the likelihood of early intervention for children and young people; and thus improve their outcomes.

13. It is suggested that the Named Person should be the responsibility of the health board (Health Visitor) for children aged 0-5. However, the evidence is that the staff who work with infants and parents are stretched to the limit; concerns about excessive health visitor caseloads continue to be highlighted. Such resource constraints may affect the operation of the Named Person function in practice. While the Financial Memorandum which accompanies the Bill outlines a required investment of £16m in health visiting, this does not apply until 2016-17.

14. In addition, we would welcome more detail on the perceived parameters of the Named Person role, including the prescriptive nature of the role as an assigned key point of contact for children seeking support. We would also welcome clarity on how the Named Person function is intended to interact with the role of Lead Professional; the latter being a central feature of the GIRFEC approach which does not feature in the Bill. There is a great deal of uncertainty surrounding the nature of the Named Person function and how it is intended to operate in practice.

Information sharing

15. The Bill also proposes a new information sharing duty for service providers which would introduce a radical new change in the existing information sharing provision (ss25-27).

16. As currently drafted, information must be shared with the Named Person where it might be relevant to the exercise of their functions [s26(2)(a)]. As we understand it, this significantly lowers current accepted information-sharing thresholds. The

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4 Scottish Parliament Finance Committee Scrutiny of Draft Budget 2012-13. Submission from Dr Philip Wilson, Dr Colin Brown, Dr Kerry Milligan and Dr Anne Mullin. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Dr_Phillip_Wilson.pdf
proposed duty to share information is not linked to a ‘risk of harm’ but instead would appear to apply to anything considered relevant to promoting, supporting or safeguarding the wellbeing of the young person, as defined using SHANARRI indicators. On the face of the Bill, there are no proposals to link information-sharing requirements to consideration of the best interests of the child or young person, nor any consideration of their views, nor seeking their consent. The proposals do not offer a balance between children and young people’s rights and the need to share information.

17. Children and young people have a right to privacy and confidentiality under the UNCRC and the European Convention on Human Rights (ECHR). Confidentiality is of fundamental importance to children and young people. For example, in the year 2012/2013, volunteer counsellors at ChildLine conducted approximately 3,500 counselling interactions with children and young people where confidentiality was a key concern.

18. We are very concerned the information-sharing duty as it stands is too broadly drawn. Sharing information that is relevant and proportionate about children who are at risk of harm, is fundamental to keeping children safe. However, we are concerned that the current proposals do not achieve sufficient balance and so risk breaching children and young people’s rights and may deter them from accessing confidential services, potentially leaving them more at risk.

19. Quite apart from a lack of balance between the requirement to share information and the child’s right to privacy and involvement, there is also arguably a risk that the proposed new legislative framework on information sharing may lead to disproportionate sharing and subsequently to Named Persons gathering and/or struggling to assess increasing amounts of information about increasing numbers of children – not just those at risk. This may undermine the effective operation of the Named Person function and could result in information about children at risk of harm being lost in a deluge of inappropriate information.

20. In addition, the Scottish Government has not consulted on these proposals. It is vitally important that we ensure that the voices of children and young people are heard, listened to and respected throughout the Bill process.

21. Given the complexity of this issue, it is vital that the potential conflict between the information-sharing provisions in the Bill, and children and young people’s right to privacy and confidentiality, are given full and thorough consideration by the

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7 Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included.
Committee during Stage One. We would be keen to discuss this issue further with the Committee and would be happy to provide oral evidence if the Committee would find that helpful.

Part 6: Early learning and childcare

22. In addition to the universal extension of pre-school education for 3-5s, the Bill proposes an extension of early learning and childcare to looked-after two year olds. Child care services for looked after children require high-quality therapeutic input to set children on a healthy trajectory for life. However, our research indicates that there is a limited evidence-base on which approaches work effectively with attachment difficulties in looked after children.10

23. There is a relatively small number of looked-after two year olds in Scotland. It is not clear why the threshold of two years has been identified as the entry point for services as two years may be too late for children who have experienced significant trauma in their very earliest months and years. It is vital that an extension does not preclude babies and infants from accessing the therapeutic support they need.

24. In addition, the same arguments for additional priority for looked after two year olds may also be valid for other groups, such as children ‘in need’ [s22, Children (Scotland) Act 1995]. Therefore we would like to see consideration given to extending the duty, for example to all two year olds living in poverty. This would assist in meeting the Bill’s policy objective to “increase the universal provision of early learning and childcare to improve outcomes for children, in particular those from disadvantaged backgrounds; to support parents to work, provide economic security for their families and routes out of unemployment and poverty; and to support parents with the costs of early learning and childcare.”11

25. It is vital that child care services for looked-after children are flexible and responsive to the often considerable adversities experienced by this particularly vulnerable group and reflect this by providing high quality, therapeutic care which addresses the significant degree of distress so often experienced in their early lives.

Part 11: Adoption Register

26. NSPCC Scotland welcomes the Scottish Government’s emphasis on early intervention and the increasing focus on the importance of achieving early permanent care arrangements for maltreated children. However, the main aim of the national register is to improve process efficiency, defined in terms of timescales, whereas, in our view, the main source of delay relates to the detail of decision-making about permanence arrangements. The assumption that systems need to be

more efficient rather than adapted are not uncommon among relevant stakeholders but efforts to improve efficiency alone, defined in these terms, have not yet been shown to lead to better outcomes for children in the care system, or improved services for birth families.

27. To inform and improve decision-making about permanence, we are piloting the New Orleans Intervention Model, in partnership with Glasgow City Council and NHS Greater Glasgow & Clyde, to provide tailored family support on the basis of assessments of attachment relationships, for children who have been maltreated.

28. It is vital that we balance the efficiency of decision making with the therapeutic and support needs of children, parents and carers. Together these measures can integrate more fully the reality of the child’s situation and can potentially lead to healthier outcomes in later life.

29. We hope that recommendations from the final report of the Committee’s inquiry into decision-making for looked after children will inform Members’ consideration of these provisions.

Additional comments

30. NSPCC Scotland believes that any initiative to protect and promote children’s rights must seek to provide children with the same protections as adults under the law against physical abuse. We believe the Children & Young People’s Bill presents a real opportunity for the Scottish Government to reconsider full legal protection for children from physical chastisement in the home, or any other setting. This would fulfil the recommendation made by the UN Committee on the Rights of the Child\(^\text{12}\).

NSPCC Scotland
25 July 2013

Education and Culture Committee
Children and Young People (Scotland) Bill

Monica O’Connor

1. I am writing to protest at Part iv of the above Bill. It sounds like an unwarranted intrusion into family life. I am a foster carer in the Republic of Ireland and know what children can suffer and that sometimes the State has to step in when parents are unable to care for children. But this Bill is not the way to address parental failures.

Monica O’Connor
Eire
25 July 2013
Profound and Multiple Learning Disabilities

1. Persons described as having profound and multiple learning disabilities (PMLD) have one or more of the following disabilities:

2. A profound learning disability plus a physical disability that seriously limits their ability to undertake everyday tasks and usually restricts their mobility. The majority are therefore life-long wheelchair users. Sensory impairments are prevalent with vision and/or hearing affected. Their communication is typically non-verbal, though some will have very limited speech. However, all have the capacity to communicate in a variety of non-verbal ways.

3. Healthcare needs are extensive and complex and may be life threatening. Areas of particular difficulty relate to epilepsy, respiration, eating and drinking (dysphagia) and cerebral palsy. Some will also have challenging behaviour. All, however, have the capacity to benefit from good health care and are able in various ways to communicate their satisfaction or otherwise with their quality of life.

4. The causes of PMLD are many and varied. They include genetic disorders, acquired brain injury or brain damage as a result of infection. Causation may be ante-, peri- or post natal. For many there is no known causation. It is estimated that the prevalence of PMLD in the general population is 0.05 per 1,000. This figure is derived from a survey undertaken in Scotland and would lead to a figure of 2,600 people with PMLD in the country. This is possibly an underestimate and a useful working figure would be 3,000. These numbers will increase with better survival rates, not only in the neonatal period but into childhood and adulthood, due to advances in medical care.

PAMIS – Supporting people with PMLD and their families

5. PAMIS is a charity which supports people with PMLD and their families. We work in many areas of Scotland including Dundee, Fife, Tayside, Grampian, South Lanarkshire, and Greater Glasgow and Clyde. The following are some of main the issues for the children and young people with PMLD, and their families, whom PAMIS supports:

Co-ordinated working

6. There needs to be more joined up working between the health services, social and the voluntary organisations which support people with PMLD and their families – with the needs of the child always at the centre. Information about the needs of the child with PMLD has to be shared appropriately so that everyone providing support is aware of how best to do so. There are still services around which do not seem to consider the importance of staff continuity, and
appropriately trained staff, when supporting someone with PMLD. Additional difficulties can arise when a child has PMLD plus a diagnosis of autism. There have also been issues around restraint, with question marks over the appropriateness of using restraint to ensure the safety of the person with PMLD, or the manner with which it has been done.

**Early intervention**

7. The benefits of early intervention for children with disabilities and particularly those with PMLD are well documented\(^1\)\(^2\)\(^3\). Whilst there are some examples of good practice in place throughout Scotland we still have a long way to go for this to be a reality for all children and young people with PMLD. Examples of good practice of early intervention policies and practice are: TAC Interconnections' Team around the Child initiatives, developed by Peter Limbrick – see [http://www.teamaroundthechild.com/](http://www.teamaroundthechild.com/) and Scotland's Getting it Right For Every Child (GIRFEC) approach. In local authorities where these approaches are in place they are viewed as highly beneficial but they need to be implemented fully throughout Scotland.

8. There are a number of voluntary organisations that can offer support to families caring for a child with complex disabilities in the early years, however, it is very difficult to get information on such organisations to the families, due to the ‘gate keeping’ practices used by many pre-school services, particularly those that are run by or involve paediatric medical professionals. Once the families gain access to such support they have frequently expressed their concerns about the lack of transfer of information of such sources of help and support. We need more open and transparent referral systems and parents should be given the opportunity to make the decision whether or not to access these sources of help.

**Education**

9. The design principles of the Curriculum for Excellence are challenge and enjoyment, breadth, depth, progression, relevance, coherence, personalisation and choice for learners. These design features should underpin the development of all school curriculums but challenges to achieving this for children with PMLD within both special and mainstream schools remain. More training is required for teachers in the use of proactive support, in understanding the function of challenging behaviour in order to reduce the need for physical intervention. Better support for teachers in mainstream schools to enable them to deliver more personalised support for learning. There also needs to be an improved transition process that makes better use of the Co-ordinated Support Plan for individual children. Currently the information provided in the support plans is often not used to help design future support plans for children moving into adult services. Better use of information sharing at this crucial time should be encouraged and a process that allows meaningful use of this information needs to be part of the

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transition process. Ongoing training for teachers in communication and the use of multi-sensory techniques will ensure that the design principles of the Curriculum for Excellence are accessible to all pupils with PMLD.

**Invasive Procedures**

10. Many children and young people with PMLD have care needs which require invasive procedures - such as feeding by gastrostomy tube, suctioning, and the regular administration of oxygen. PAMIS is aware of at least one family whose child was not able to attend school because he/she required oxygen.

11. **Example of Good Practice**: A research study commissioned by the Scottish Government from PAMIS into current practice in the delivery of invasive procedures to people with PMLD led to the establishment of a Government Short Life Working Group to develop a Scottish quality framework for the delivery of invasive procedures. In addition, to the framework, a toolkit will be developed to support statutory and third sector organisations in all service settings.

**Residential respite**

12. There is clearly a shortage of appropriate residential respite services. These are vital to families caring for a child with PMLD who needs 24 hour care. Creative short breaks can be particularly difficult for these families due to a number of barriers eg staffing levels, appropriate accessible accommodation, appropriately trained staff able to support someone with invasive procedures such as gastrostomy feeding, rescue medication for epilepsy, and increased costs to meet these. We are also aware of situations where families with younger children have been discouraged from applying, or initially even turned down, for residential respite because of their child’s young age, when in fact the family – and the child – have gone on to benefit greatly from residential respite.

**Postural Management**

13. When caring for a person who uses a wheelchair, and who has limited physical movement throughout the day and night, good body posture needs to be maintained to avoid body distortions like scoliosis. Much can be done to avoid problems happening in the first place, but also to reduce or resolve problems if they have already started – but only if family carers are aware of what to look for and the best night-time (and day time) positioning for their relative. While physiotherapists are trained in postural management, family carers are not. The importance of families receiving this training cannot be over-emphasised, as postural damage to their relative can cause severe health problems, and even reduce their life expectancy.

**Examples of good practice**

14. *PAMIS* is a partner in the National Postural Care Action Group\(^4\) and have run a number of training courses for trainers and paid carers. Additionally a number of

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PAMIS family carers have undertaken the Postural Care Management Course, Level 1 and a member of staff and 2 physiotherapists have undertaken the full course and are accredited trainers and run courses across Grampian. PAMIS is now rolling out this programme in other areas and it is an excellent example of supporting people to self-manage long term conditions.

15. **Moving and Handling for Family Carers:** A Fife-wide interagency partnership including Fife Carers Centre and PAMIS, together with Moving and Handling trainers and professionals from Fife Council Social Work and NHS Fife, won the top award in the Health & Well-being in the community category of the Fife Partnership Excellence Awards 2012. This project is designed to deliver home-based moving and handling training for family carers. This ongoing work should be developed within other local authorities as a priority. This project group was also involved in updating A Carer’s Guide to Safer Moving and Handling.5

**Transitions**

16. People with profound and multiple learning disabilities go through a number of transitions during their lifetime. Most problematic of these being the transitions from child to adult services and from the family home to supported living.

**Transition from child to adult services**

17. Moving from child to adult services is often described by family carers as ‘the black hole of transition’. During their school years all of the need of people with PMLD, that is education, social and health, are generally met. Regrettably, this is not always the case once they move to adult services. Planning is not started early enough. The Education (Additional Support for Learning) (Scotland) Act 2004 - Code of Practice (Scottish Government 2010) states that such planning should take place no later than 12 months before a child leaves education. Mansell (2010)6 notes that there is a marked reduction in the availability of services, eg speech and language therapy, short-breaks, home nursing etc. once the person leaves full time education. Recommendation 11 of the Scottish Government’s Response to the Doran Review (2012) acknowledges the need to consider the adequacy of existing legislation to ensure the transition from child to adult services for young people with complex support needs is properly coordinated, managed and delivered.

18. There is also a need for independent advice and support for families whose daughter/son with PMLD is going through this transition. The introduction of Self Directed Support (SDS), the impact of the current financial situation resulting in reduced care packages, and the fact that many local authorities are closing traditional day services is causing considerable concern to families. It is important that whatever day opportunities are on offer have a local base where the service users can have their personal and intimate care needs met safely and with

dignity. Such a base enables the person to access activities in their local community while at the same time ensuring they also have available centre based activities such as multi-sensory storytelling, music and relaxation and most importantly, a place to rest.

**Examples of good practice**

19. **PAMIS Future Choices Project:** This project provides independent advice and support to the person with PMLD and their family through the process of transition from child to adult services. A Transition Planner and a Personal Communication Passport have been developed by PAMIS for each young person. These documents are person centred and record all their specific needs and aspirations. The project collates information from education, social work and social care staff who are involved in the transition process to enable new health and social care professionals to get to know the individual. The project provides support to the whole family before, during and after the transition process.

**Transition and future planning – a case study:**

20. During transition planning, it is extremely important to consider the assessment framework being used to determine future funding allocation. It is useful to ensure that any future planning tool includes a physical care pathway. Whatever person centred plan or outcomes focused assessment tool is used in planning future planning for children with PMLD, it is crucial that it includes appropriate consideration for the provision of specialist equipment to support functional movement.

21. **PAMIS** is aware of one young woman with PMLD approaching her final year at community school. She would like to attend college on leaving school and plans are underway to enable her to undertake a one day a week transition placement at the college. To ensure she gains maximum benefit from her transition year at college her future planning documents include a physical healthcare pathway that highlights the specialist equipment that she needs to enable her to maintain good physical health, and the support required to access that equipment.

22. At school this young woman currently requires to be supported by two Support for Learning Assistants for personal care and moving and handling to facilitate transfers to her standing frame, Samson chair or ladderback walking frame. She also has access to adaptive technology such as ‘Big Mack’ switches, switch adapted food mixer and touch screen monitor for PC. This equipment ensures that she has maximum opportunity to achieve both physical and intellectual access to appropriate learning opportunities. Including a physical care pathway in her outcomes-based planning process for transition means that the benefits this young women gains from using the equipment is recorded and the support she requires to access it is also recorded. The inclusion of the physical and intellectual benefits she gains from the use of this equipment is transparent. The recording of the support she requires to benefit from access to this equipment ensures that any future financial impact on adult service provision is also transparent. Including a detailed physical care pathway in transition planning documents that clearly identifies the benefits of the use of specialist equipment
and the support required to access the equipment, will help ensure that someone with PMLD continues to benefit from physical and intellectual access to opportunities for further development entering adult services.

Elizabeth C Platt
PAMIS Co-ordinator - Greater Glasgow and Clyde
26 July 2013
Introduction

1. Parenting across Scotland welcomes the Children and Young People’s Bill and its aspirations to make ‘Scotland to be the best place to grow up in’. The Scottish Government intends to make this ambition real ‘by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.’ However, we have some reservations about how effective the provisions of the Bill will be in achieving its objectives and believe that in order to accomplish transformational change for Scotland’s children and families the Bill needs to scale up its ambition.

2. For most of Scotland’s children, family remain the most important source of support and yet are barely mentioned throughout the Bill. The Government’s policy memorandum states that it will put ‘children and young people at the heart of planning and delivery of services’; in order, to ensure that children have the best start in life, we would suggest that their families should also be very much at the heart of this process. In the parts of the Bill which deal with vulnerable families, the role of family is acknowledged and respected, strengthening the role of kinship carers and corporate parents, (which is a welcome inclusion), while the role of the more general population of families is neither acknowledged nor supported.

Part 1: Rights of children

3. Parenting across Scotland fully supports the full incorporation of the UNCRC into Scottish domestic law and endorses Together’s evidence to Committee. Currently, Scotland has signed up to the UNCRC and is bound by its obligations; incorporating the UNCRC would be a formal recognition of Scotland’s commitment to children’s rights. If Scotland is serious about becoming the best place in the world to grow up, then it needs to be a country with children’s rights at the heart of its legal framework.

4. As a parenting organisation, we are supportive of the UNCRC and its incorporation into Scottish law because we believe that the UNCRC encapsulates what parents want for their children, and because while it is a parent’s responsibility to ensure their child’s wellbeing, under the UNCRC the state has the responsibility to support them in this. The Scottish Government through its parenting strategy has already recognised the crucial role that parents play in bringing up Scotland’s children and the state’s role in supporting them; full incorporation is the logical next step.

Part 4: Provision of named person

5. PAS believes that meaningful implementation of the Named Person part of the Bill can only be achieved with significant investment of resources, especially
towards the provision of a properly resourced universal health visiting service. However, we believe supporting families in the early years of their child’s life through this preventative and early intervention approach will amply repay this investment by improving children’s outcomes. We urge the Committee to scrutinise the resource allocation for this part of the Bill to make sure that its provisions are sufficient to achieve its policy objectives.

Information sharing

6. PAS believes that putting services around the family and ensuring that services are talking to each other and sharing information is desirable, so that families do not have to repeat their stories to a number of agencies, and appropriate services work together for the benefit of the family.

7. We would support the extension of the duty on adult services to share information where it is pertinent to the child’s well being; for example, where a parent is attending a service and concerns about the parent’s substance misuse or mental health impact on the parent’s ability to parent.

8. However, having said that, we are also concerned that information sharing should be appropriate, respectful and proportionate. Currently, there has been no consultation around the specific information sharing proposals of the Bill, though this is undoubtedly a complex area which requires the views and experiences of practitioners to ensure it works as it is intended to do for the benefit of families. Widespread sharing of information may mean that information overload will result in important information being missed, as well as raising issues of data safety. There are also services where the requirement to share information may impair the ability of the service to operate without having any concomitant beneficial outcome for children, for example, services for survivors of abuse.

9. We believe that further specific consultation is required on these proposals, and that guidance should be issued based on the response to consultation which sets out clearly which information needs to be shared in what circumstances.

Part 5: Child’s Plan

10. Generally, we are in agreement with the provisions set out in the Bill relating to the provision and setting up of a child’s plan, and welcome the move towards making service provision more integrated and less onerous for families. However, where the Bill lists who must be involved in the preparation of a child’s plan, the duty to consult parents (section 31) is only ‘so far as reasonably practicable’. While we recognise that there may be times where on grounds of safety some parents may need to be excluded from planning around the child, as a matter of general principle, the inclusion of parents in planning for their children should be adhered to. We are concerned that this phrase may allow the responsible authority a ‘get-out’ in relation to seeking parents’ views and recommend that this phrase be deleted.
11. Given the move towards integration of services and the role of Community Planning Partnerships in taking this forward, we would like to see the Children's Services Plan explicitly referred to and developed through Single Outcome Agreements. This should be enshrined within legislation to ensure that children’s outcomes are considered in what remains local government’s principal strategic planning document.

Part 6: Early Years and Childcare

12. Parenting across Scotland welcomes the Bill’s inclusion of a minimum of 600 publicly subsidised early childhood education and care for three and four year olds. We believe that this has the potential to make a real and lasting difference to children and their parents – evidence shows that early education results in real and lasting difference to children’s long-term outcomes, and that subsidising childcare can enable parents, particularly mothers, to return to work thereby helping to alleviate poverty and contribute to economic growth.

13. While supporting the existing provisions of the Bill, we believe that the Scottish Government needs to go further in order to realise its vision of making a transformational change in childcare provision. We have been working with a number of other organisations around childcare, and would recommend Save the Children’s evidence on this part of the Bill to the Committee.

PAS urges the Parliament to strengthen the Bill by:

a. Setting out a commitment to development of high quality affordable childcare as a long term strategy with an obligation to report to Parliament on a regular basis on progress.

b. Making early education and childcare a right for all children from the age of three.

c. Extend the provision of early education and childcare for two year olds to those living in poverty. It is well evidenced that children from disadvantaged backgrounds are falling behind their peers by the age of three and that the contribution of early education and childcare has a significant impact on redressing that balance. Extending the provision to two year olds living in poverty would assist in meeting the bill’s policy objective of improving outcomes for children ‘in particular, those from the most disadvantaged backgrounds’.

d. Where childcare is provided because of disadvantage, providing parenting support to parents to enhance their parenting ability. Here, we refer the Committee to the Financial Memorandum on potential capital spend, and suggest that where new childcare provision is planned, parents’ space ought to be included as part of this.

e. Ensuring that the Bill’s provision of flexibility for parents is maintained, and does not consist solely of adding an additional 0.5 hours to nursery education
which would not, for the most part, accommodate working parents’ requirement for flexibility.

f. Extending the duty to consult parents beyond the early years to include out of school provision and to include demographic information to ensure that the needs of future parents are met and accounted for.

g. Recognising the importance of out of school care and ensuring its inclusion within the Bill.

Part 7: Corporate parenting

14. PAS welcomes the Bill’s definition of corporate parenting responsibilities and the policy intention to move away from ‘corporate’ thinking to acting more like a ‘parent’ would; looked after children need family support even more than other children do. However, we would urge a note of caution here and request that the Committee scrutinise these proposals with particular attention. The parents of many looked after children still retain some parenting responsibilities, and even where they do not, many looked after children return to their parents when they leave care. The relationship between corporate parents and parents is not explicit in the Bill and there are potential tensions and a need to collaborate which need to be teased out and addressed in robust guidance.

Part 8: Aftercare

15. We are fully in support of the proposals that local authorities should extend their parenting responsibilities up to the age of 26; it is important that this should be a duty to provide rather than simply to request as this most vulnerable group of young people should be guaranteed the help they need. The Bill sets out its policy intention that corporate parents should as far as possible behave as a natural parent would do; with this in mind, extending the aftercare duty up to the age of 26 is entirely compatible with the parents’ experiences of today where parenting support continues well in children’s twenties, and the average age of leaving home is now 26.

16. We would add our voice to Barnardo’s, Aberlour and others in calling for an automatic serious case review (by amending the Looked After Children Regulations (Scotland) 2009) in the event of the death of a care leaver up till the age of 36.

Part 10: Support for kinship care

17. PAS is supportive of the Bill’s provisions around kinship care, but would like to see these provisions strengthened so that all local authorities will be obliged to offer a minimum level of support to kinship carers, so that throughout Scotland, wherever they live, kinship carers are entitled to the same supports rather than the postcode lottery that currently exists. One of PAS partners, CHILDREN1st, has a specialist kinship care service, and we fully endorse their evidence which has been directly gleaned from their experience of working with kinship carers.
Part 11: Scotland’s Adoption Register

18. We are fully supportive of the Bill’s proposals to put the Adoption Register on a statutory footing. An increasing number of local authorities are using the Register with a resultant increase in placements and permanence. For those children who urgently require a loving family to give them a better start in life, and for those families wishing to give children a fresh start, the Adoption Register offers an improved chance to do so.

Parenting Across Scotland
19 August 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Dear Sir

I am writing in my capacity as Chair of the GIRFEC Strategic Group in Perth and Kinross to highlight progress which is being made in respect of implementing the role of Named Person.

In August 2013, I provided a response to the questionnaire, distributed across all council areas by the GIRFEC National Implementation Support Group (chaired by Bernadette Malone, Chief Executive, Perth and Kinross Council) on progress in implementing GIRFEC at that date. This provides a context to work being undertaken on the Named Person and an extract is included below.

I indicated at that time, that GIRFEC has been identified as one of 4 Corporate Priority areas which have been the subject of on-going discussion with all staff within the Community Planning Partnership over the last two years. The ‘underpinning principles’ relate closely to good practice which has been recognised in Perth and Kinross in the “Protecting Children and Young People and Meeting their Needs”, Joint Inspection of Services (2011).

In general terms I was also able to report that:

- Our revised GIRFEC Strategic Group encompasses representation from all partners including the major voluntary sector agencies, and those commissioned through Service Level Agreements. However further awareness and training is on-going to engage the wider voluntary sector;
- Work is on-going at NHS Tayside, at CHP and operational level on all aspects of Children, Young People and Families Services. This has included a restructuring to form a Children Young People and Families focused service;
- Integrated working is well established across partners and at all levels (e.g. Children and Young People’s Strategic Partnership; Early Years Strategy; Youth Justice Partnership; GIRFEC Strategic Group; Child Protection Committee and Subgroups plus a range of operational groups) and actions are on-going to strengthen interagency assessment across all partner agencies; and
- A GIRFEC e-learning programme to support Joint Multi-Agency training is being rolled out with plans to develop a further module on Named Person and Lead Professional roles.
Clerk to Education and Culture Committee
4 October 2013

In respect, particularly to your interest in the role of Named person, I was able to report on the basis of Self - Evaluations which had been undertaken, that:

- Principles are understood by staff across main agencies but further embedding in practice is required. Good understanding in some schools but further training for school staff ongoing on role and duties of Named Person;
- 'Family Health Needs Assessments' have been redesigned to take account of Named Person Role;
- The Lead Professional role as it relates to Looked After, Child Protection and Coordinated Support Plans is understood and implemented. Terminology is increasingly used with families and young people; and
- There is engagement across a Tayside GIRFEC Group to ensure consistency for partner agencies within the 3 Local Authorities in respect of core components. In particular this has included agreed Named Person / Lead Professional Guidance.

Since that response, we have continued to undertake work to embed the role of Named Person and there is a currently a short life working group focussing on this particular aspect of the GIRFEC agenda. This group also helpfully includes representation from the Independent schools sector, of which there a number in Perth and Kinross.

Agreement has been reached in Perth and Kinross as to who will be the nominated Named Person as follows:

<table>
<thead>
<tr>
<th>Pre birth – 10 days</th>
<th>Midwife</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 days – start P1</td>
<td>Health Visitor (HV)</td>
</tr>
<tr>
<td>P1-P7</td>
<td>HT or designate</td>
</tr>
<tr>
<td>S1- end of school</td>
<td>HT or designate</td>
</tr>
<tr>
<td>Children in ‘offsite’ provisions</td>
<td>HT of their school</td>
</tr>
<tr>
<td>Home Educated children</td>
<td>Education Additional Support Officer</td>
</tr>
<tr>
<td>Independent schools</td>
<td>Individual to each school</td>
</tr>
</tbody>
</table>

'Within Education, in session 2011-12 all staff whose role indicates they are likely to act as Named Persons were engaged in one day multi-agency training sessions, exploring the wider GIRFEC agenda and, in particular, the positive impact of the role of Named Person and Lead Professional in meeting the needs of children, young people and their families. Subsequent to that, the GIRFEC principles, values and components, with associated duties and opportunities, have been explored at Senior Management development days across both sectors, with more focused follow up with specific groups.
Clerk to Education and Culture Committee
04 October 2013

Secondary Depute Headteachers (Support) have together considered the implications for their own individual school contexts; their response has been positive and encouraging. We have also promoted the Named Person role with colleagues in the independent sector, with Early Years Partner Providers (some of whom have engaged in GIRFEC approaches and tools both enthusiastically and effectively) and with partners in the voluntary sector.

Within Education, in session 2012-13 all primary Headteachers, and Senior Managers from associated secondary schools, were involved in Named Person training. This training, devised and delivered by our Child Protection Training Coordinator and an Educational Development Officer, was delivered to Local Management Groups of Headteachers, and explored the role and responsibilities associated with Named Person. It was well received.

Across the sectors in Education we have maintained a focus on the fact that the Named Person role will not, for almost all children, involve a significant increase in workload for Senior Managers in their schools. As a result of the Named Person role, schools are increasingly moving towards early intervention, responding to minimise and prevent harm to the wellbeing of a child. Any associated increase in workload however, allows the school more influence in the timing and impact of decision making; many Headteachers welcome that fact. In addition it is expected that the shift in intervention should reduce workloads in the longer term as we become more effective at responding earlier to the needs of children and young people.

Colleagues in Health have made similar progress; all Health Visitors in Perth and Kinross have undertaken Named Person training, and all midwives will also have experienced this training by the end of December 2013.

At the multi-agency short life working group held in September 2013, Named Person colleagues representing Midwives, Health Visitors, Primary, Secondary and Independent Schools met to agree processes within Perth and Kinross for the transfer of Named Person information and concerns. This includes the method of transfer; level of detail shared, action taken; clarification of responsibilities at the point of transfer. It will also consider whether a ‘nil’ return should be made to confirm that there are no on-going concerns.

We have agreed further meetings to establish in detail the processes for transfer of Named Person responsibility from primary to secondary sectors, from either of those to the Independent School sector, and from Health to Education at entry to P1.

We are already seeing schools in both sectors engage very positively with the Wellbeing Wheel. Large Perth and Kinross versions, produced specifically for school use, are used by many schools in evaluating progress and planning next steps for children with Additional Support Needs. The wheel is also proving to be effective as a focus in agreeing how best professionals and parents/carers can work in partnership to meet the needs of a child. A few schools have also begun to use a Perth and Kinross version of My World Triangle to further focus the engagement of professionals.
Specific examples of use made of the Wellbeing Wheel by Named Persons include:

- At a return to school meeting with a young person and their parent to identify what is going well and where support needs to be provided to allow for a positive return;
- At a meeting with a parent and young person to help identify differences between home and school expectations leading to a shared plan;
- At a multi-agency meeting about a child with high level needs where different support is important to sustain time in school and provide appropriate support at home;
- At a Partner Provider Centre as a tool for recording children’s experiences as ‘I can’ statements across the eight indicators and then sharing this with parents in the child’s folder; and
- As a planning tool for staff working with parents at a Partner Provider Centre to discuss and plan learning using the eight wellbeing indicators.

Over the past few months since Named Person training was rolled out, we have also noted an increase in the number of Professionals Meetings called by Named Persons in education suggesting an increasingly pro-active approach to addressing emerging concerns. Informal discussions with Headteachers and Senior Managers in schools and centres indicate that the duties associated with the Named Person role is giving Headteachers, certainly in primary, an increased confidence that it is appropriate to press for the immediate engagement of partner agencies where minor concerns accumulate or where a concern emerges at a high level. I am attaching a summary of training which has been undertaken so far.

Discussion is on-going to ensure that a concern raised by a member of the public is communicated to the Named Person. Currently all Police Child Concern reports and Unborn Baby Referral’s, are subject to a twice weekly multi agency screening process to which the relevant Named Person contributes any additional concerns, and receives in return, feedback in respect of any new concern. ‘Named persons’ are indicating that this is a very positive step enabling them to respond more appropriately to the needs of a child within their universal service.

Implementing the role of Named Person for children who are Home Educated is also under consideration.

I hope that this is helpful in informing Committee members of the progress being made in Perth and Kinross, which so far has been undertaken from within existing resources. We are confident that we are making progress in embedding this key element of the GIRFEC agenda and that the role is beginning to impact on the wellbeing of children and young people, supporting both earlier intervention and a more integrated approach to meeting the needs of our children.

Yours sincerely

Alison Irvine
Head of Service
Children & Families Services

Appendix: Outline of Multi Agency Training

Copy to: Mr John Fyffe, Executive Director, Education and Children’s Services

Page 4 of 5
Multi Agency GIRFEC Training March 2012
Delivered over 3 days to 460 staff

Training comprised of:
Role of the Named Person and Lead Professional
National Practice Model
Good Practice Examples
Information sharing
Chronologies

Training in 2013

Education
Education and Development Officer and Child Protection Training Officer have delivered 7
twilight sessions during 2013 to those who will be taking on the Role of the Named Person
within Education.

The training comprised of:
The GIRFEC values and principals
The changes in culture, systems and practice necessary to fulfil that role
The role of the Named Person,
The child concerns folders and paperwork for the Named Person
Information Sharing and
Chronologies

Health
The Professional and Practice Development Nurse for Children and Young People, and the
Child Protection Nurse Advisor delivered Named Person Training - a 1 day training delivered
3 times in May 2013 to 59 Health Workers, including a full complement of Health Visitors who
will be taking on the role of Named Person, school Nurses and 1 Midwife.

The training consisted of:
Role of Named Person
GIRFEC Child Health Assessment
Child Health Chronology
Impact of trauma on brain Development

Independent Schools
Child Protection Training Officer has delivered a briefing to the Independent schools forum on
the Role of the Named Person and the child concern folders and paperwork.

General and Specific Workforce (National framework for Child Protection Learning and
Development in Scotland 2012)
The Role of the Named Person is also included in the Child Protection Basic Awareness and
the Child Protection Inter-agency course to ensure that the key knowledge required of the
specific workforce on understanding the role of the Named Person is met.
About Place2Be

1. Place2Be is a leading UK provider of school-based emotional and mental health services operating in Scotland, England and Wales. Founded in 1994 (and operational in Scotland since 2001). Place2Be has school-based teams, comprising of over 150 paid clinicians and over 800 trained counsellors who volunteer their time in 200 schools, supporting 75,000 children. It offers a flexible menu of services that extend its reach to a further 369 schools. Place2Be seeks to improve the prospects of children aged 4-14 years, by tackling the complex social, psychological and emotional challenges that result in educational disadvantage.

2. In addition to its therapeutic work with children, Place2Be works with parents to enhance their emotional wellbeing, resourcefulness and resilience, leading to sustainable improvements in their relationships with their children. Place2Be is also a leading provider of specialist training and university-validated professional qualifications to those who work with children, helping to build capacity in families, schools and local communities.

3. Place2Be ensures there is a strong multi-agency approach to its service delivery (developing strong relationships with school nurses, educational psychologists, CAMHS (Children and Adolescent Mental Health Services) professionals, social workers and other specialist staff) in order that a joined-up package of care is in place and onward referrals to specialist agencies, such as CAMHS can be made as and when appropriate.

4. For more information on Place2Be: www.place2be.org.uk

General Comments

5. Place2Be believes there is a need for the bill to require Local Authorities to make arrangements for both child and parent/carer given its central objective of putting children at the heart of planning and delivery. A provision of counselling to both child and parent/carer will further support the Scottish Government’s focus on early intervention and on the focus on the early years of a child’s life.

6. Furthermore we would recommend that this counselling provision needs to include access to school-based counselling (or school or nursery school in the case of parent counselling) to improve take-up and efficacy. Basing the counselling within education settings supports the Government’s strategy in building the role of education services to support and co-ordinate services and interventions to create the most positive outcomes for children and young people.
Part 9 – Counselling Services

Parent Counselling

7. Place2Be agrees with the requirement that the Bill places on Local Authorities to make arrangements for counselling services for parents. We recognise the crucial influence of parents and carers on children’s experiences and achievements and that positive parenting has a major impact on a child’s life chances. Our experience has shown that strong relationships with parents and carers, and parental interest and involvement in our work with their children, are linked to better and more sustained outcomes for children.

8. Place2Be provides counselling of this kind, delivering the following support to parents and carers (including kinship carers)
   - Parent/Carer Partnership model - consultative support for parents and carers whose children are receiving one-to-one counselling within the school environment; and
   - Place for Parents – a school-based Parent/Carer Counselling service

9. The central aims of our work with parents and carers are to:
   - Support positive parenting and help parents/carers in understanding and addressing their child’s needs and behaviours
   - Help parents/carers build on their confidence, resourcefulness and resilience so that they are better able to manage their circumstances and to be more at ease in their parenting roles
   - Provide therapeutic services to address issues which often include drug and/or alcohol-related issues, mental health issues, domestic violence, depression, relationship or marital difficulties, bereavement and low self-esteem

10. Place2Be believes that the effectiveness of counselling for parents is maximised by offering the service within a school or nursery school setting. We have found that providing therapeutic services in these safe environments of children’s centres and schools overcomes the stigma attached to statutory mental health provision and the practical difficulties in accessing statutory support. Our Parent Counsellor provides a ‘front line’ emotional and practical support service that is immediate, effective and discreet and can provide a bridge to more specialised services if required. The confidence that parents have in the service is reflected in the high attendance rates which A Place for Parents achieves (74%).

11. The outcomes of our parent support are measured with a variety of tools. These include a comprehensive range of service monitoring tools, as well as clinical and functional measurements such as the Clinical Outcomes in Routine Evaluation-Outcome Measure (CORE–OM) to monitor the impact of the service we provide
to inform intervention approaches and measure overall outcomes of involvement. After receiving support from Place2Be:

- 99% of parents had improved Total Global distress scores.
- 67% of the parents who had mental health disorders prior to the intervention no longer showed any symptoms post-intervention and had achieved clinical recovery.

Counselling for Children and Young People

12. **Place2Be believes that the Bill should require Local Authorities to ensure that all children have access to school-based counselling services.** The children we see face multiple risks – as well as known risks of social deprivation. Many describe neglect, living in conflict-ridden households or with parents suffering from mental illnesses, addictions or family breakup; or encountering serious difficulties with peers - bullying. We strongly believe that these children must be supported and that intervening early is key to achieving cost-effective and sustainable outcomes

13. Place2Be is unique in being placed within schools, our team of clinicians being based permanently on-site, and is designed to be easily accessible. Unlike other services that are not always able to respond quickly or adequately enough (largely due to the high demand for specialist help), Place2Be is readily available to the whole school and brings a wide range of mental health and emotional resilience services right to the very heart of the local community and to those most in need. Our school based model includes:

- One-to-one counselling sessions - children receive a weekly session with a trained counsellor for a school term or whole school year

- Group work - weekly sessions with groups of children, focusing on specific topics, such as bereavement, bullying or transition to secondary school.

- Place2Talk – children are able to refer themselves to Place2Be’s 15-minute lunchtime sessions. They can come alone, or with their friends.

14. Of the 352 children who attended one-to-one and group counselling in Scotland in 2011-2012

- 59% of children were receiving FSM compared to 20% of children registered for free meals in primary schools in Scotland.

- 41% were from lone parent families compared with 27% of households with dependent children in Scotland.

- 48% of children had Special Educational Needs – much higher than the 5.4% of children with Additional Support Needs in Scotland.
• Many children were facing difficult circumstances in their home lives: 7% were the subject of a child protection plan, compared to 0.28% in Scotland.

15. Of the children who attended one-to-one counselling in 2011-2012.

• 60% of children had improved difficulties after counselling according to teachers and 66% improved according to parents.

• 69% of children with the highest needs (in the SDQ abnormal clinical category) had improved difficulties according to teachers and 71% improved according to parents.

Pace2Be
25 July 2013
Introduction

1. Planning Aid for Scotland (PAS) is a national charity operating on social enterprise principles, working across Scotland to improve the way people engage with the land-use planning system and so create places where people will enjoy living, working and playing.

2. Planning Aid for Scotland believes in a plan-led system which gives clear direction to everyone. PAS is actively involved in raising awareness of the opportunities for all people, including children and young people to engage in a transparent and equitable way with the planning system.

3. Through educational resources, training programmes and mentoring service, and planning advice helpline, PAS is actively involved in raising awareness of the opportunities for all people to be involved in the planning system, and welcomes the opportunity to comment on the Children and Young People (Scotland) Bill.

Comments

4. Planning is a public service which impacts on everyone – now and for future generations. It offers greater opportunity than any other public services for people to be involved at the earliest stage, with effective engagement offering the opportunity for people to be involved in designing and shaping the future of their places.

5. However, the Scottish Government Consultation on the Modernisation of the Planning System with ‘Seldom Heard’ Groups’ (Feb 2009), which PAS was involved in researching, identified that young people as a group are particularly excluded from the planning system.

6. In comments submitted in September 2012 to the Scottish Government consultation on the proposed bill PAS noted that in Norway, a legal framework is provided to involve children in planning and the built environment as part of promoting active citizenship from an early age.

7. PAS occupies a unique position in Scotland as an impartial organisation focused primarily on helping people engage with the planning system; and believes that it is essential that all sectors of society have the opportunity to be involved – this kind of active citizenship requires knowledge and opportunity to ensure effective and meaningful engagement. To become an active citizen opportunities have to be created for participation.

8. With moves towards co-production of public services in Scotland, there is now an excellent opportunity for children and young people to be involved in the planning
system at the earliest opportunity and to align that involvement with community planning.

9. Sparking interest from an early age is likely to lead children to feel more connected, thinking about how and why their neighbourhood is changing, how to adapt to climate change and, most importantly, involving children in decision-making. As children progress towards adulthood, and potentially taking on adult responsibilities at the age of 16, being informed about the planning system will mean that they are more likely to take an interest in what is happening in their communities, diversity within communities, and making those communities better places in which to live. Early engagement with young people will prepare them for active citizenship.

10. The profile of the planning process is relatively low – it is not a topic discussed regularly within the school environment and this is something that requires to change if the next generation is going to act upon its right to be involved, to be heard and to help shape Scotland’s future.

11. PAS’s experience of working with young people – most recently in our Charretteplus pilot project - tells us that given the opportunity, they have a keen interest in built and natural environment matters, and a unique perspective to be tapped into.

12. PAS notes that Part 1 (sections 1a and 1b) of the bill state that Scottish Ministers must:

- keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and

- if they consider it appropriate to do so, take any of the steps identified by that consideration.

13. PAS’s comments above are submitted with this in mind.

**Planning Aid for Scotland’s Work to Engage Children & Young People**

14. PAS has developed a series of innovative resources to inform young people in the 8-25 year age range about the importance of the planning system, and their rights to be involved. All PAS education programmes are aligned to the Curriculum for Excellence and are intended to set in process a journey through which young people will be able to become active citizens, and for this to continue throughout their lives.

15. **IMBY™** (In My Back Yard) is aimed at primary school children aged 8-11. The title turns around a common planning term NIMBY (Not In My Back Yard), suggesting someone with negative attitude towards any change, into a positive message encouraging young people to look around them and understand the
importance of having influence over what they see and understand how and why things change (or sometimes do not change).

16. Utilising the perspective of an cartoon alien character visiting earth for the first time, children are engaged in learning about their local area from a planning perspective. The programme encourages active citizenship by asking the children to think about their surroundings and to focus on topical planning issues, such as waste/recycling, or the historic built environment.

17. **YEP!™ (Youth Engagement in Planning)** aims to support young people aged 16-24 in learning about the planning system, and how to get involved, in the context of their local communities. The programme aims to introduce young people to the role of community councils and other decision making structures. It also equips them with the knowledge, skills and confidence necessary to get more involved in civil engagement in their area, and have their say in how their local community develops.

18. **Young Placemakers** is a programme which will create a network of motivated young community leaders (16-20 years old) who will champion active citizenship and create a stronger voice for young people. Each Young Placemaker will be assigned a planning mentor to support them through the programme. The position will be held for three years and all Young Placemakers will be trained in facilitation, presentation and communication skills which will equip them to deliver peer learning throughout Scotland.

19. The project was launched in May 2013 with the support of Derek Mackay MSP, Minister for Local Government and Planning as well as the following organisations: Royal Town Planning Institute, CoSLA, Scottish Youth Parliament, Young Scot, YouthLink Scotland, Council of Ethnic Minority Voluntary Sector Organisations, Capability Scotland, LGBT Scotland and The Gypsy and Traveller Law Reform Coalition.

**Contacts**

20. Planning Aid for Scotland would be pleased to respond to any queries with regard to these representations and is always willing to consider a joint venture with the promoters of the consultation document to take forward further research or training on any aspect of the subject which relates to the core business of PAS.

**Planning Aid for Scotland**

25 July 2013

**Planning Aid for Scotland**

**Unique**

Planning Aid for Scotland (PAS) is an charity operating on social enterprise principles, working across Scotland to help people shape their communities and
improve the way people engage with the planning system. Planning is a vital public service and everyone in Scotland should be able to participate. PAS aims to provide everyone with the skills and information to engage positively with planning.

Reforms in 2009 to the Scottish planning system aim to make the system more inclusive and efficient. Everyone in Scotland should be able to participate in planning - but not everyone has the understanding and tools to do so. This is where PAS can help.

Impartial

As an independent organisation, impartiality is PAS’s most important guiding principle – one that will not be compromised. PAS delivers all its products with a professional and impartial approach.

Volunteer-based

PAS’s services are delivered by a network of more than 350 volunteers (all of whom are planning or built environment professionals). PAS also works with legal experts, communications specialists, community artists and others, who offer their time and specialist knowledge to enable everyone to gain the skills and confidence to engage with Scotland’s planning system.

Volunteering is at the heart of the way PAS does business. Volunteer time and energy is not a cheap way of delivering products – on the contrary, it represents an investment which then generates added value to our unique products.

For Everyone

PAS provides a wide range of products and services – from a free planning advice service to tailored training products. PAS has developed services for everyone – planning professionals, local authorities, elected members, community councils, young people, and for members of the public who are simply interested in how their town or city is changing.

www.planningaidscotland.org.uk
Education and Culture Committee
Children and Young People (Scotland) Bill

Play Scotland

Introduction

1. Play is crucial for the wellbeing of all our children in Scotland. The Right to Play reflects fully the Right to be a Child here and now. We need to ensure that local physical and social environments are supportive of play, and we must ensure that play is not dismissed as frivolous or marginalised. Play underpins the four principles of the Convention of the Rights of the Child – non-discrimination, survival and development, the best interest of the child and participation. We want child-friendly communities in Scotland supported by play-friendly neighbourhoods where children can

- Meet friends and play
- Walk safely in the streets on their own
- Have green spaces for plants and animals
- Participate in family, community and social life

Background

2. Play Scotland gave evidence to the Petitions Committee in September 2012 in support of a statutory duty being placed on local authorities to provide sufficient quality, accessible and challenging play opportunities for all children and young people. The draft Children and Young People’s Bill fails to explicitly address play. Play Scotland understands that it is the intention to cover play in the guidance relating to Health and Wellbeing in the Bill. This is wholly inadequate because the GIRFEC and SHANARRI principles do not fully recognise the importance of play in children’s development and play is only referenced in SHANARRI (Safe Happy Achieving Nurtured Active Respected Responsible Included) under the Active principle.

Current Position

3. The Scottish Government has launched a Play Strategy Vision for Scotland with an action plan due out at the end of September. There has been no committed engagement from COSLA in this process and there is nothing to ensure local authorities pay any attention to it whatsoever. The implementation of the strategy will rely heavily on local authorities to deliver including carrying out an audit of play provision and play space. Without a statutory duty the strategy will fail. It is clear that play is becoming less of a priority in many local authority areas in times of budget constraints. However the attitudinal change towards play and the strategic planning across departments that is required, combined with the benefits of play, could result in significant efficiencies in budgets.
Outcomes From A Statutory Duty For Play

4. A strategic approach to play across the local authority area with the full involvement of children, local communities, Community Planning Partnerships and the third sector. This will fully realise the Child’s Right to Play including that of disabled children and young people.

5. Empowered communities delivering play opportunities including intergenerational activities and community led improvement schemes and play street initiatives.

6. Improved health, with a range of interventions to establish strong links eg between play space, active travel and health. Proactive service planners can use the evidence of investment in health infrastructure, children’s play and child friendly public space to deliver high level outcomes in urban and rural settings. Simple actions like supporting community play streets and ensuring 20’s Plenty is fully enforced and extended where practicable can deliver play opportunities in and around where children live.

7. Improved wellbeing and sustainable development. Children benefit from being able to play in natural environments: they tend to be more active and research shows contact with natural environments can support positive mental health.

8. Alleviation of some of the effects of Child Poverty. Children in deprived communities can often lack safe spaces to socialise and play. This can have detrimental effects on a child’s cognitive development, communication skills, health, and their attainment. The Growing up in Scotland survey shows the links between poor quality local green spaces and children having high screen time at age six. In addition, low child friendliness of the neighbourhood was identified as a risk factor for unhealthy weight. (The Welsh Assembly Government places a Play Sufficiency duty on their local authorities through their anti-poverty legislation.)

9. The potential of the school estate is fully realised and accessible to communities. A play space audit should include school grounds where many children experience much of their outdoor play.

10. Well designed and maintained play opportunities become an integral part of the planning process. It would be beneficial to have a designated organisation with statutory consultee status to comment on the removal of open spaces and informal recreation places for play.

11. Challenging and exciting play opportunities encourage children to develop essential life skills. The Health and Safety Executive high level statement: Children’s Play and Leisure: Promoting a Balanced Approach, needs to be fully interpreted by local authorities to ensure that risk management includes weighing up risks and benefits so that the benefits of play are experienced to the full. Training in the benefits of play needs to be provided for regulatory officers, inspectors and play providers. Health and safety laws and regulations are sometimes presented as a reason why certain play and leisure activities undertaken by children and young people should be discouraged. Such decisions
are often based on misunderstandings about what the law requires. The HSE has worked with the Play Safety Forum to produce a joint high-level statement that gives clear messages tackling these misunderstandings. However agencies are reluctant to adopt a risk benefit approach to risk management in play. The joint statement makes clear that:

- Play is important for children’s well-being and development
- When planning and providing play opportunities, the goal is not to eliminate risk, but to weigh up the risks and benefits.
- Those providing play opportunities should focus on controlling the real risks, while securing or increasing the benefits – not on the paperwork.
- Accidents and mistakes happen during play – but fear of litigation and prosecution has been blown out of proportion.

**Conclusion**

12. On the basis of the above submission, Play Scotland asks the Government to look again at the treatment of play in the draft Children and Young People (Scotland) Bill. Inter alia Play Scotland asserts that the more explicit inclusion of play and the formal requirement of local authorities to prioritise play will provide multiple benefits across many sectors.

13. Supporting documents available from Play Scotland:

- [Getting it Right for Play – A toolkit to assess and improve local play opportunities](#) - (Play Scotland – 2012)

Play Scotland
26 July 2013
Introduction

1. Youth charity The Prince’s Trust helps disadvantaged young people to get their lives on track. It supports 13 to 30 year-olds who are unemployed and those struggling at school and at risk of exclusion. Many of the 6,000 young people helped by The Trust in Scotland each year are in or leaving care, facing issues such as homelessness or mental health problems, or they have been in trouble with the law.

2. The Trust’s programmes, many of which are delivered in partnership with local authorities and other public sector service providers, give vulnerable young people the practical and financial support needed to stabilise their lives, helping develop self-esteem and skills for work. Three in four young people supported by The Prince’s Trust move into work, education or training.

3. The Prince’s Trust broadly welcomes the general provisions of the bill. The comments and reflections below are limited to an appraisal of how the legislation may affect our role as a delivery partner for programmes that improve outcomes for young people in Scotland.

Partnering Service Provision

4. While The Prince’s Trust Scotland is not contracted by local authorities as a primary children’s service provider, it works closely in partnership with them to deliver programmes as part of a matrix of local children’s services in many local authority areas. Smooth and successful referral pathways are crucial to securing successful outcomes for the young people whom we assist. Because those young people are often from the hardest to reach socio-economic groups and the most disengaged from mainstream education, it is vital that they know how and when they can turn to us for support.

5. Practical information on the availability of Trust programmes is already provided to young people through a diverse variety of means; for example some may be referred through partners like Jobcentre Plus, while others will hear about opportunities like our Fairbridge Programme directly through local authority social work departments who are consistently in touch with those who are most in need of support. It is therefore important that the bill improves opportunities for third sector organisations like The Prince’s Trust to be effective providers of support that improves outcomes for children and young people.

Children’s Services Planning

6. We acknowledge that under the terms of the bill, public bodies will have primary responsibility for children’s services planning. However, we share concerns expressed by other third sector groups that the term ‘service providers’ is used inconsistently across the bill, and suggest that further clarification is needed to ensure that third sector organisations like the Prince’s Trust, which deliver
programmes in partnership with local authorities, understand their roles and responsibilities at all times going forward.

7. As discussed above, our delivery of programmes for young people is carried out in partnership with a variety of public sector organisations. We believe that there is scope within the legislation to clarify the extent to which service providers like the Trust will be formally involved in the drafting of children’s services plans and under which circumstances.

**Named Person**

8. The Prince’s Trust Scotland welcomes, in principle, the provision of a Named Person for every child and young person.

9. The Named Person has the capacity to act as a further point of contact for third sector service providers like The Prince’s Trust seeking referrals among young people. We are particularly pleased that steps will be taken to ensure that 16-18 year-olds not in training or education will be given a Named Person responsible for meeting their needs.

10. However, we have a number of reservations about the Named Person provisions under the draft bill. Firstly, while the Named Person for each child or young person has the capacity to be a key guiding influence in a young person’s life, we are concerned about the caseload that each Named Person will have. The bill should therefore include capacity for Third Sector resources of staff and volunteers to ensure that each Named Person has a caseload that allows them to focus sufficient time and energy on the individual needs of each young person.

11. We are also conscious of the fact that the Named Person service will only work effectively if young people have confidence and faith in the individual assigned to protect their interest. In our view there should be provisions within the legislation to allow young people a say in who their Named Person is, so that crucial interpersonal problems can be overcome if they arise.

12. Moreover, we note that the draft bill is not entirely clear on who the Named Person should be in all cases. While the financial memorandum suggests that in the majority of cases for school-aged children up to the age of 16 this would be a teacher, further clarity is needed. We would recommend that the legislation should state that there is an option for the Named Person to be a representative of a third sector organisation if that is what suits the interests of the child or young person.

13. In practice, not all third sector organisations will have the capacity to deliver Named Person Services. However, we would anticipate certain Trust-delivered programmes like Fairbridge would have the scope to advise on the allocation of Named Persons who would give participating young people confidence in the system. In some instances, there could be capacity for youth workers from a programme like Fairbridge to hold the role of ‘Named Person’ themselves.

14. We would therefore urge the Scottish Government to consider widening the scope of Named Person service delivery to include third sector partners, under appropriate circumstances, if doing so is likely to improve outcomes for the child or young person concerned.
15. In addition, we would recommend that the bill should put in place simple, robust methodology to assist Named Persons to be fully aware of all of the support available to young people locally and nationally from third sector organisations like The Prince’s Trust.

**Named Professional**

16. The inclusion of the capacity to nominate third sector representatives (e.g. a youth worker) as a Named Person may be particularly helpful in light of the decision not to include a ‘Named Professional’ service within the legislation. It is likely that some of the Young People with complex needs supported by The Prince’s Trust would benefit from a statutory guarantee of support from a Named Professional to assist them to access and navigate public service support.

17. We would therefore recommend that if the government does not intend to legislate for a Named Professional service, it should take steps to ensure that third sector providers have additional statutory capacity to support young people, particularly in cases where it becomes clear – in dialogue with the young person affected - that their Named Person is not best placed to continue providing support.

**Provision for 16-18 year-olds**

18. We note that under the terms of the draft bill it appears to be unclear whether 16-18 year olds who have left school will have access to the Named Person service.

19. Because there is a high chance that young people in this age group will not be in education, employment or training (NEET), it would seem sensible to ensure that, under certain circumstance, they have a Named Person to look out for their welfare.

20. In our view, there could be considerable scope among third sector organisations like The Prince’s Trust to assist public authorities in providing a Named Person service for young NEETs in the 16-18 age group. However, further consultation with the third sector would be required on how best to make that happen in the interests of young people.

**Child’s Plan**

21. In some circumstances, third sector organisations providing services to local authorities already have difficulties in ensuring that they are included in service planning from the first stage. We would suggest that the bill should make clear reference to the desirability of the Child’s Plans including third sector-delivered interventions where appropriate.

22. We would also argue that the bill should go further to ensure that each child or young person subject to a Child Plan is fully consulted on it and has the opportunity to effect and shape it for themselves.

23. Moreover, there should be recourse within the legislation to a review process that would allow each Young Person or their family to ask formally to review and amend the Child Plan to make it more effective and responsive to their individual needs.
Education and Culture Committee
Children and Young People (Scotland) Bill
Reform Scotland

1. In the Committee’s call for evidence, the five aims of the Children and Young People (Scotland) Bill are set out. Reform Scotland’s evidence specifically deals with point three, namely:

“Strengthen the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare”

BIRTHDAY DISCRIMINATION

2. In January 2013, we published our report “An Equal Start: Fair Access to Nursery Provision”. In this report, we highlighted that while at present all children are legally entitled to the same amount of primary or secondary school education, a child’s legal entitlement to government-funded nursery provision depended on when a child’s birthday fell. In Table 1 below, we illustrate the current difference in entitlement and an approximation of the difference following the expansion from 475 hours to 600 hours

Table 1: Difference in government-funded nursery entitlement

<table>
<thead>
<tr>
<th>Child’s birthday</th>
<th>Entitlement to government funded nursery provision begins</th>
<th>Total nursery entitlement before beginning school</th>
<th>Approximate entitlement in hours, under 475 hours per year¹</th>
<th>Approximate entitlement in hours, under 600 hours per year²</th>
<th>Approximate financial entitlement for partnership provision under 475 hours³</th>
<th>Approximate financial entitlement for partnership provision under 600 hours⁴</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Mar-31 Aug</td>
<td>August/ Autumn Term</td>
<td>2 years</td>
<td>950 hours</td>
<td>1,200 hours</td>
<td>£3,100</td>
<td>£3,916</td>
</tr>
<tr>
<td>1 Sep-31 Dec</td>
<td>January/ Spring Term</td>
<td>18 months</td>
<td>792 hours</td>
<td>1,000 hours</td>
<td>£2,583</td>
<td>£3,263</td>
</tr>
</tbody>
</table>

¹ We have approximated the hours based on each of the three terms being equal, therefore 158.3 hours per term
² We have approximated the hours based on each of the three terms being equal, therefore 200 hours per term
³ The figures for partnership funding are an estimate and based on Edinburgh Council’s pre-school funding for 3 and 4 year olds of £1,550 per year/£516.65 per term: http://www.edinburgh.gov.uk/downloads/file/8809/pre-school_funding_leaflet
⁴ We have used the figures from Edinburgh Council’s pre-school funding for 3 and 4 year olds of £1,550 per year/£516.65 per term for 475 hours, which works out at £3.26 per hour to estimate figures of £1,958 per year/ £652.67 per term
3. For children already receiving nursery education through partnership providers, it means that their parents do not receive as much money towards the costs of their nursery provision as others. However, children attending local authority nurseries who are born between August and February and will start school when they are four, will receive less nursery education.

4. Indeed, some children can end up only receiving one year’s provision since many local authority nurseries, especially those linked to schools, fill-up with the August intake and there are no places available for subsequent in-takes. As a result, parents may choose to wait until the following August to ensure their child’s place at the chosen nursery rather than take up a place elsewhere. While it can be argued that this is parental choice, it is worth pointing out the practical difficulties of taking up a place elsewhere if the parent has another child attending the school.

5. From the child’s point of view, they are also expected to join a peer group which has been established and together for at least six months before they are entitled to join.

6. Despite this different level of entitlement, all these children will start school together at the same time.

7. Nursery provision, especially with the new Curriculum for Excellence beginning at age 3, plays a key role within the education system. Indeed, nurseries have a vital role to play not just with early years’ education but also with social development of children. This has been highlighted in a number of reports such as ‘Thrive at Five’ and the ‘Scottish Childcare Lottery’. Therefore, it seems grossly unfair that all children are not equally entitled to the same basic amount of government-funded nursery care.

8. The Scottish government’s commitment to extend government-funded provision from 475 hours to 600 hours is welcome. However, unless this anomaly is addressed it will widen the entitlement gap, as illustrated in Table 1, and lead to a difference of up to approximately 400 hours or £1,305.

9. Reform Scotland believes that all children should be given an equal entitlement to government-funded nursery provision, regardless of when their birthday falls.
10. We believe that to correct the current situation, provision for all children should start at a fixed point in the year, just as it does for primary school. We think this should probably be the August two years before they are due to start school.

11. When we published our report, Children in Scotland Chief Executive Jackie Brock commented:

   “We fully support Reform Scotland’s call for fair and equal access to nursery provision for all children in Scotland, and urge the Scottish government to pay heed that ‘two years should mean two years’.”

12. And a Scottish government spokesman said: “We are aware of this particular issue and it is part of our wider considerations around the forthcoming Bill.”

13. Given the Scottish government were aware of this problem, we were disappointed that they did not take the opportunity to correct it in the Children and Young People Bill. However, we hope that this anomaly can be addressed through amendments to the legislation.

LOOKED AFTER AND DISADVANTAGED TWO-YEAR OLDS

14. Reform Scotland is aware that there is a great deal of debate over the issue of expanding government-funded nursery provision for certain two-year olds to help try and close developmental gaps before children start school. While we would agree with such policies, we would warn that by picking an age, rather than a set period of time the problem of birthday discrimination will be extended, as illustrated by the examples below.

15. For example, under the current system, some looked-after two-year olds would only end up receiving 3 months or roughly 200 hours additional provision rather than the 600 hours which appears to be the Scottish government’s aim.

16. Reform Scotland would, therefore, strongly recommend that for looked-after two year olds, who are dealt with in the bill, and if it is extended to disadvantaged two-year olds, the extension should start in the August three before they are due to start school, rather in the term after a child turns two. This is the only way to guarantee an additional year’s provision of 600 hours and to ensure that the policy adequately deals with the problems it seeks to address.

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5 Children in Scotland press release
6 http://www.bbc.co.uk/news/uk-scotland-21171099
Table 2: Examples of birthday discrimination following provisions in the bill for looked after two-year olds (based on 600 hours per year)

<table>
<thead>
<tr>
<th>Child’s birthday</th>
<th>Entitlement to government funded nursery provision begins</th>
<th>Total nursery entitlement before beginning school</th>
<th>Approximate entitlement in hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 March to 31 August</td>
<td>August/ Autumn Term</td>
<td>2 years</td>
<td>1,200 hours</td>
</tr>
<tr>
<td>1 September to 31 December</td>
<td>January/ Spring Term</td>
<td>18 months</td>
<td>1,000 hours</td>
</tr>
<tr>
<td>1 January to 28 February (child starting school aged 4)</td>
<td>April/ Summer Term</td>
<td>15 months</td>
<td>800 hours</td>
</tr>
<tr>
<td>1 January to 28 February (child starting school aged 5)</td>
<td>April/ Summer Term</td>
<td>2 years 3 months</td>
<td>1,400 hours</td>
</tr>
<tr>
<td>Looked-after 2 year old 1 March to 31 August</td>
<td>August/ Autumn Term</td>
<td>3 years</td>
<td>1,800 hours</td>
</tr>
<tr>
<td>Looked-after 2 year old 1 September to 31 December</td>
<td>January/ Spring Term</td>
<td>2 years 6 months</td>
<td>1,600 hours</td>
</tr>
<tr>
<td>Looked-after 2 year old 1 January to 28 February (based on child starting school aged 4)</td>
<td>April/ Summer Term</td>
<td>2 years 3 months</td>
<td>1,400 hours</td>
</tr>
<tr>
<td>Looked-after 2 year old 1 January to 28 February (based on child starting school aged 5)</td>
<td>April/ Summer Term</td>
<td>3 years 3 months</td>
<td>2,000 hours</td>
</tr>
</tbody>
</table>

Table 3: How Reform Scotland’s proposal would guarantee 1,200 hours for all children and a full additional year’s provision for certain two-year olds (based on 600 hours pa)

<table>
<thead>
<tr>
<th>Child’s birthday</th>
<th>Entitlement to government funded nursery provision begins</th>
<th>Total nursery entitlement before beginning school</th>
<th>Total entitlement in hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>All children: 1 March to 28 Feb</td>
<td>August/ Autumn Term 2 years prior to starting school</td>
<td>2 years</td>
<td>1,200 hours</td>
</tr>
<tr>
<td>Children born between 1 Jan and 28 Feb and choose to defer and start school at 5.</td>
<td>August/ Autumn Term 3 years prior to starting school</td>
<td>3 years</td>
<td>1,800 hours</td>
</tr>
</tbody>
</table>

7 We have approximated the hours based on each of the three terms being equal, therefore 200 hours per term
| Looked-after two-year olds (and disadvantaged two-year-olds if amendments added): 1 March to 28 Feb | August/ Autumn Term 3 years prior to starting school | 3 years | 1,800 hours |
| Looked-after two-year olds (and disadvantaged two-year-olds if amendments added): Are born between 1 Jan and 28 Feb and choose to defer and start school at 5. | August/ Autumn Term 4 years prior to starting school | 4 years | 2,400 hours |

17. Under our proposals, parents of children born between 1 January and 28 February would, as currently, be able to access additional provision should they choose to defer their child. This is the case to fit in with the current system of starting school which allows for greater parental choice over this period and parents generally are encouraged not to decide upon whether their child should defer until they are at nursery.

Parents to choose nursery, not local authority

18. Parents can currently only choose to take their child’s entitlement through a private or independent nursery if the local authority designates a nursery as a partnership provider. This can mean that even if a nursery meets standards and passes inspection by both Education Scotland (responsible for inspecting the education side of a nursery) and the Care Inspectorate (responsible for the care side) and meets the needs of parents, parents may still be unable to send the child to the nursery of their choice.

19. Reform Scotland believes that if a nursery provider meets necessary standards and passes inspection by both organisations and parents wish to take up their funded place at that nursery, they should be able to do so. Parents should be able to choose the nursery which suits them best, rather than have their choice restricted by the council.

20. Using a partnership provider is not about a parent choosing the private sector over the state one, but can be a matter of necessity. With most local authorities offering the minimum 2.5 hours a day five days a week at local authority-run nurseries, it is virtually impossible for parents to take up these placements if they work or undertake training, unless they also rely on relatives or other options such as wrap around care, if they are available. While some state nurseries may allow parents to pay for additional care, most don’t. Therefore, for many parents they have no option but to use a partnership provider to take up their child’s entitlement.

Reform Scotland
11 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Education and Culture Committee
Children and Young People (Scotland) Bill

roshni

1. roshni is a national charity working extensively with minority ethnic (ME) communities across Scotland. We ensure the safety and wellbeing of children and young people from ME communities by addressing a number of key issues including child abuse and neglect; children’s rights; forced marriage; and FGM. Through our culturally sensitive and multi-lingual approach we have developed strong community links, offering us a unique insight into the lives of Scotland’s ME children and young people. We view this submission as a vital opportunity for us to highlight the potential effects of this Bill on ME children and young people and their families.

General

2. We fully support the Scottish Government’s vision that Scotland should be the ‘best place in the world for children to grow up.’ We emphasise that this is not only the responsibility of the Government, but of everyone who works with children and young people. We are concerned that the role of the third sector is not sufficiently emphasised in the Bill. The role of the third sector should be clarified and we believe the vital role of the ME voluntary sector should be highlighted.

3. In order to engage effectively with ME communities we believe that public bodies and other third sector agencies must work with specialist ME organisations, such as roshni, to advance the rights of ME children and young people. This is the best means of ensuring that planning, design and delivery of services meet the needs of all communities and the specific needs of ME communities. Our grassroots work and research with Scotland’s ME communities has taught us that there are particular ME attitudes and barriers surrounding children’s rights and wellbeing which must be tackled with sensitivity. Our research into perceptions of child abuse in ME communities showed that only 27% of individuals felt mainstream services are culturally sensitive and that cultural barriers such as honour and shame negatively impact on their ability to discuss difficult subjects such as children’s rights, forced marriage and child abuse. Tackling these problems is not a task which every organisation is suited to. In order to address deep-rooted cultural problems community trust and sensitivity are essential. We believe that through working in partnership with public bodies and other third sector organisations, we can ensure that all our children and young people, regardless of background, are fully enjoying their rights and childhood. This belief has influenced our assessment of the Bill and we would urge the Committee to

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2 Please visit http://www.roshni.org.uk/wp-content/uploads/2013/05/Perceptions%20of%20Child%20Abuse%20in%20Scotland's%20Minority%20Ethnic%20Communities.pdf to access the full report
consider adding a provision to the Bill which promotes this form of collaborative working.

Rights of Children

4. We are disappointed that the Bill does not seek to fully incorporate the UNCRC into domestic law. We fully support the stance of Together Scotland on this issue and would urge the Committee to reconsider the possibility of full incorporation.

5. Within the Bill more concrete obligations need to be established in relation to children’s rights. For example, the Bill only requires Ministers to ‘keep under consideration’ steps to further secure the UNCRC. This duty is weak and lacking in substance. A potential means of strengthening this has already been mentioned – the incorporation of the UNCRC into domestic law. We also believe that the Bill should require public bodies to act in accordance with the UNCRC. These bodies are directly involved in working with children and young people and should therefore have regard to the UNCRC in their work. We believe that by placing a duty on public bodies to work in accordance with the UNCRC this will require them to consider how their work could improve outcomes for ME children and young people and will encourage them to liaise with specialist organisations in order to improve their services. This provision would ensure that ME children’s rights are never side-lined due to budgetary or operational barriers. Children’s rights would become a high priority issue and we believe this would advance the realisation of rights for ME children and young people.

6. We fully recognise that it is important that more is done to raise awareness of rights amongst all children, young people and their families and therefore welcome the requirement for Ministers to promote public awareness and understanding of the rights of children and young people. However, through our own experience we know that there is a general lack of awareness and understanding of children’s rights in ME communities. Through research we conducted with ME children and young people, we learned that they lack an awareness of the UNCRC and require materials to be made available which explain their rights in a language they understand and which they feel is representative of them. In research we undertook with ME parents and families we discovered a reluctance to accept children’s rights as a positive force, as we were told that ‘rights can be abused by children’ and that ‘It is not always positive, sometimes children use it against their parents.’ We were also told in our research into perceptions of abuse that ‘many parents find it very difficult to adjust to the new rules of a new country’ as ‘they only know what they know, what they’ve been taught.’ This can explain why there is a lack of engagement with the concept of children’s rights among ME communities as many parents come from countries where children’s rights are not promoted in the same manner. We feel that this is emblematic of a lack of understanding of UK norms. Barriers such as a lack of understanding; fear of the unknown; generation gaps and different cultural norms concerning children’s rights all play a role. Any

3 This research was commissioned by Scotland’s Commissioner for Children and Young People and can be accessed via the Commissioner’s Office.
4 See supra 2
strategy to raise awareness of children’s rights needs to take account of these cultural barriers and attitudes. This has been supported by the Equality Impact Assessment in relation to the Bill\(^5\) where it was noted that there is a ‘lack of a “rights” culture in some minority ethnic communities.’ We are therefore disappointed that more is not being done by the Bill to ensure promotion amongst this particular group. We believe that the Bill should explicitly state that promotion must ensure the inclusion of all parents, children and young people and should be multi-lingual and culturally sensitive.

7. The Bill should also contain more explicit detail on how awareness-raising will take place. Any strategy ought to involve ME organisations promoting children’s rights in ME communities. This would allow the Government to deploy the expertise of specialist ME organisations to engage with those often termed ‘hard to reach’. In order to successfully engage with ME communities a nuanced approach is required which takes account of cultural barriers and attitudes. This can be provided by ME organisations and the Bill should emphasise the importance role these organisations have in promoting children’s rights in ME communities.

Commissioner for Children and Young People in Scotland

8. We welcome these proposals to extend the powers of investigation for the Commissioner. The Government must ensure that this new role is adequately resourced so that the Commissioner can engage with all children and young people, including those from ME backgrounds. This is significant as our research for the Commissioner showed that only 9% of ME children and young people we engaged with knew who the Commissioner was and what he does.\(^6\) This will allow the Commissioner to better pursue investigations on behalf of ME children and young people. We would also suggest that the Commissioner takes account of ME barriers and attitudes when pursuing any investigations involving ME communities and suggest that he liaises with specialist ME organisations in order to advance children’s rights in these communities.

Children’s Services Planning

9. We welcome this new planning model but have concerns as to the role of the third sector and particularly specialist ME organisations. As stated above, the role of specialist organisations is vital in ensuring positive outcomes for ME children and young people. As our research into perceptions of child abuse showed, ME communities do not feel that mainstream services are culturally sensitive and 48% feel cultural barriers such as honour and shame affect their ability to respond effectively to child abuse.\(^7\) It is evident that considerable work is required to ensure ME communities are fully supported in terms of children’s services. If the needs of ME children and young people are to be truly met then there ought

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\(^5\) [Children and Young People Bill Equality Impact Assessment p.31](http://www.scotland.gov.uk/Resource/0041/00418730.pdf)

\(^6\) Again, if you would like to access this research please contact the office of Scotland’s Commissioner for Children and Young People

\(^7\) See supra 2
to be a duty on public agencies to liaise with specialist third sector organisations to ensure a holistic, culturally sensitive approach to children’s services planning. In terms of strategic planning and policy development, it is crucial that local authorities ensure input from specialist ME organisations.

Named Persons

10. The role of a Named Person is crucial in order to ensure that the child’s needs are at the centre of the process. However, we are concerned by research we have undertaken within ME communities which has indicated a reluctance to discuss problems outwith the family and to engage with statutory organisations, including health visitors and teachers. For example, one respondent in our research with ME parents and families told us that ‘I was left feeling very vulnerable when my daughter first started school due to the lack of cultural and religious understanding with the class teacher.’ This research also demonstrated that, when asked where they would go for support with parenting issues, only 11% of ME parents said they would visit their GP or doctor. In our research into perceptions of child abuse, we found that only 27% of ME individuals felt support services, including teachers, doctors and health visitors, are culturally sensitive. This was then cited as a reason why they tend not to feel comfortable liaising with these professionals and avoid interaction with them. Similarly, 76% of professionals we spoke to wanted to receive more cultural sensitivity training as they currently felt they were lacking an understanding of cultural and religious issues.

8 This concerns us as we fear that the Named Person may find it difficult to breakdown these attitudes and barriers and ME children and young people may therefore receive less support. Professionals may also lack an understanding of cultural and religious issues and how they can negatively impact on wellbeing and therefore may fail to identify children who are at risk.

11. We believe the Bill should be amended to ensure that the Named Person is trained in cultural sensitivity and ME issues which may impact on the welfare of ME children and young people. In addition, the Named Person should be obliged to communicate with the child or young person and their family in a manner which they can fully understand and which they feel comfortable with. ME families may find it difficult to relate to non-ME professionals; may feel uncomfortable discussing certain issues; may lack trust in authorities; and may believe that the professional does not understand their culture, religion or lifestyle. Therefore, the Named Person should be explicitly required to work with specialist ME organisations, when appropriate, to ensure that the child and their family can be supported.

12. In relation to the need for multi-lingual communication, the duty to communicate information about the role of named persons should state that the service provider must provide the child or young person and the parents of the child or young person with information about the arrangements for contacting the named person for the child or young person in a language they can understand. This is particularly important for ME parents who may speak English as a second

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8 See supra 2
language. It may also be beneficial in practice to ensure that the workforce is more diverse and that Named Persons represent the wider community.

13. It is also vital to clarify how the system will operate in relation to children and young people who are disengaged from the formal education system. If a teacher is to be their Named Person, this is clearly impractical. This is particularly important in relation to travelling and Roma communities. The Bill should also clarify how the Named Person system will operate during school holidays. This is highly significant as ME children and young people may be at greater risk of certain forms of harm, such as forced marriage or FGM, during the summer holidays. Greater clarity within the Bill is required.

**Child’s Plan**

14. Again, we welcome the introduction of a Child’s Plan as we believe that this will foster a more child-centric model for children with wellbeing needs. We believe that this one reference point (SHANARRI) will allow for consistent practice. However, in relation to wellbeing we believe that it is important that consideration is given to all aspects of a child’s life, including issues around religion, ethnicity and culture. We would like to see it specifically stated in the Bill that assessment of wellbeing should consider all aspects of the child’s life, including religion, ethnicity and culture.

15. We do not believe that children from different ethnic or religious backgrounds require support which is substantially different to that of other children. However, we do believe that there are certain additional barriers which these communities face and we want to ensure that professionals take these into account when working with these families to ensure high quality care for all our children. For example, in some ME cultures, there is ‘shame’ associated with discussing abuse. There are also negative repercussions for families who report abuse, who are then isolated from the community with the abused child becoming stigmatised and ‘unmarriageable.’ We need to guarantee that service providers are considering these attitudes and barriers when assessing the needs of a child and that they are aware that such cultural factors may affect an ME child’s wellbeing.

**Early Learning and Childcare**

16. We welcome the increase in flexible early learning and childcare. As discussed in the Equality Impact Assessment on this Bill, parents from non-white ethnic backgrounds were least likely to say they were satisfied with their childcare arrangements and 84% of children from ME communities who received childcare received informal childcare only. This was said to be linked to concerns that providers are not sensitive to cultural and religious differences; cost; lack of information in community languages; and a lack of diversity amongst the workforce. We would support this as, in our own research with ME parents and families it was revealed that 90% of parents had never used a parenting service and that 59% felt there would be barriers in using these services, including

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linguistic barriers and a lack of cultural sensitivity. Therefore, we would ask for the Bill to be amended to require that when an education authority consults with representatives of parents and children, these representatives should be appropriately ethnically diverse and the opinions of minorities must be fed into plans for provision. We believe that this would encourage ME parents to access services and would help foster dialogue between these communities and early years education providers.

Counselling Services

17. We are concerned that counselling seems only to be available for families in distress. The Bill needs to be clearer on who is entitled to support and ensure help is provided before a level of ‘distress’ is reached. If early intervention is to be a reality then early family and parenting support is required to avoid crisis. This is why at roshni we are developing a culturally sensitive family support service tailor-made to the needs of ME parents and with the intention of improving outcomes for ME children and young people through avoiding crisis. We would like to highlight the need to make all services fully inclusive. In our research into perceptions of abuse in ME communities, only 27% of individuals felt support services are culturally sensitive.¹⁰ We understand that it is the policy of the Scottish Government to ensure all services are culturally sensitive. However, it may be helpful to state this in legislation as this makes a clear statement to ME communities and may assist in alleviating their concerns. Working with specialist ME organisations would also improve cultural sensitivity.

roshni
26 July 2013

¹⁰ See supra 2
1. The Royal College of Nursing is pleased to respond to the Scottish Parliament’s Education and Culture Committee’s call for written evidence on the general principles of the Children and Young People (Scotland) Bill. The Royal College of Nursing (RCN) is the UK’s largest professional association and union for nurses with around 400,000 members, of which around 39,000 are in Scotland. Nurses and health care support workers make up the majority of those working in health services and their contribution is vital to delivery of the Scottish Government’s policy objectives.

2. The Royal College of Nursing welcomes the Children and Young People (Scotland) Bill and the opportunities it presents to make a positive difference to children’s rights and children’s services in Scotland. The Bill presents the Scottish Government with an opportunity to invest in the lives of children in the early years; supporting all families through a well resourced, statutory, universal health visiting service and targeting additional support in a timely way, which could lead to positive change for a whole generation.

3. In our evidence, we have chosen to focus on two parts of the Bill: part 3, the provision for children’s services planning and part 4, the provision of named persons. Our evidence then goes on to outline the proposal that an additional entitlement to health visiting services should be added to the Bill.

RCN views on provisions within the Bill and their possible impact

Part 3 - Children’s Services Planning

4. A key policy objective of the Children and Young People Bill is to ‘improve the way services support children and families by promoting cooperation between services’. In our responses to consultations on this Bill and the Adult Health and Social Care Integration Bill, the RCN raised concerns that the two separate legislative proposals would set up different approaches to the planning, delivery and governance of integrated services for different age groups. At a time when frontline practitioners will be expected to deliver seamless integrated services for whole families and communities, we questioned the effectiveness of having two different approaches rather than offering one simple, streamlined approach to support staff in their efforts to deliver integrated services. We are still concerned that the proposed planning and governance systems within the two published Bills are not connected and could therefore fail to improve the way services support both children and adults. The complexity in running two parallel systems risks complicating, rather than promoting, cooperation.

5. Along with other organisations, the RCN proposed that the adult integration Bill be renamed, without reference to age groups so that all approaches to delivering integrated care and support could be focused through a single piece of joined-up legislation. The Scottish Government subsequently changed the title of the
original adult Bill to the Public Bodies (Joint Working) (Scotland) Bill, which we believe could give the necessary freedom to expand the scope of integrated services across whole families and communities. However, Part 3 of the Children and Young People’s Bill sets out a separate approach to the planning of children’s services, so we continue to query the need for two separate Bills addressing the planning of services.

**Part 4 – Provision of Named Persons**

6. The RCN welcomes the role of named person in relation to pre-school children as set out in Section 20 of the Bill, which states that the health board is the service provider to take the lead for pre-school children.

7. We believe, however, that the regulations associated with the Bill should clearly and specifically state that the Named Person (following on from maternity services) for under 5s is a **health visitor** (a nurse on the specialist community public health nurse part of the Nursing and Midwifery Council register). Health visitors are trusted by the public\(^1\) and have a unique role in supporting and assessing the development of all children in the early years and ensuring they are referred to specialist colleagues in a timely way.

8. To continue to provide this vital preventative support in the early years, health visiting capacity across Scotland needs to be reviewed. The number of health visitors must reflect the workload associated with the Named Person role, including the coordination of a team approach to early intervention. Workforce planning must take into account local need and be based on robust workforce plans using agreed caseload weighting tools which are put in place at both local and national level. This will ensure the ongoing sustainability of the health visiting workforce across Scotland and, crucially, enable the Scottish Government and health boards to plan the necessary workforce based on community need.

9. The financial memorandum to the Bill makes it clear that there will be additional resource required for the implementation of the Named Person service across Scotland. These additional costs are associated with freeing health visiting staff for training around their new duties as Named Person and the additional time associated with the creation of a Child’s Plan where needed.

**Relevant issues which are not currently included within the Bill**

10. The RCN fully supports the need to fundamentally reform children’s services in line with the report of the Christie Commission, which highlighted the importance of early years and prevention. We recognise that the Scottish Government is pursuing a range of policy initiatives and alternative approaches as part of its agenda to improve the lives of young people. Yet we remain convinced that within Part 3 of the Bill, the fundamental role of health visitors in providing a

\(^1\) Parenting across Scotland (2010) What Scottish parents tell us – summary of Ipsos Mori poll undertaken for Parenting across Scotland
Parenting across Scotland (2008) What Scottish parents tell us - summary of Ipsos Mori poll undertaken for Parenting across Scotland
universal service to children and families in the early years should be enshrined in legislation.

11. Parents tell us that they value the role of health visitors as a point of contact and someone to turn to for advice and support. Two surveys have been undertaken by Ipsos Mori on behalf of Parenting across Scotland which showed that depending on the specific issue they are facing, parents rely on health visitors, for information and advice on parenting issues.2

12. A recent comprehensive review of the research evidence on health visiting concluded that the benefits of health visiting interventions can be “hard to gauge because of the complex situations in which families exist. Nonetheless some apparently small changes (such as more relaxed mothering, improved mother-child interactions or early identification of post-natal depression) have been found to translate into immediate and long-term benefits, either later in an infant’s life, or through improved parental confidence in services, leading to their better use.”3 The research team recommendation for policy was that “Health visitors can make the difference expected . . . if they have appropriate skill sets and services, delivered using specific programmes and interventions, (and) are organised in a way that enable appropriate use of those skills in practice.”4

13. This important study, when put together with a wealth of other evidence, suggests that health visiting interventions, when well planned and co-ordinated, reduce problems in later childhood, promote self-care and resilience, and prevent ill health throughout life. It is for these reasons that the RCN believes that the proposed Children and Young People Bill should include a statutory entitlement to universal services from health visiting teams for all under-fives.

14. This prioritises prevention at a time when health visitors on the ground are experiencing a high degree of pressure to focus on complex child protection cases and there is considerable variation in the contact time that parents have with health visitors within and across areas of Scotland.. An emphasis on early intervention is at the heart of the Children and Young People Bill proposals and we believe that giving children a right to consistent early years support from health visiting within the bill is the only way to ensure that universal preventative care is provided.

15. This is in line with the priorities of the Scottish Draft Budget 2013-14 that is clear about the importance of early intervention, which can only happen as a result of universal screening and assessment: “Evidence shows that a failure to intervene

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2 Parenting across Scotland (2010) What Scottish parents tell us – summary of Ipsos Mori poll undertaken for Parenting across Scotland
Parenting across Scotland (2008) What Scottish parents tell us - summary of Ipsos Mori poll undertaken for Parenting across Scotland
effectively to address the complex needs in the early years of an individual’s life can result in a nine-fold increase in direct public costs over the long term.\(^5\)

16. The RCN has launched a major campaign with Children in Scotland, Parenting across Scotland, Scotland’s Commissioner for Children and Young People, the Community Practitioners and Health Visitors Association (CPHVA), the Royal College of General Practitioners, the Queens Nursing Institute Scotland and the Institute of Health Visiting. All these organisations are campaigning for a new statutory entitlement to universal services from health visiting teams for all under-fives to be added within the Bill.

17. As demonstrated by the partners within our campaign alliance, the nursing profession is not alone in the view that investment in health visiting services and making this a legal right for families is key to the Scottish Government’s approach to primary prevention. For example, John Carnochan, Former Chief Superintendent with Strathclyde Police and Co-Director and one of the founders of the Violence Reduction Unit has written:

18. “The need for primary prevention strategies that focus on the Early Years are now accepted by the Scottish Government, who are working hard to make the shift to prevention possible. . . . Health visitors are a profession that currently work in this crucial area of public service, delivering significant positive outcomes for children and families in every community in Scotland. . . . . . . I have said publicly that to deliver primary prevention Scotland it would be better to invest in extra health visitors even at the expense of other public services, including the police; I still believe this. It is my personal view that their suitability for fulfilling the key role in delivering an Early Years strategy for Scotland is without equal. I fully support and commend the suggested inclusions in the Bill that would facilitate and enable health visitors to play the pivotal professional role in children’s lives.\(^6\)

19. It is our view that a statutory entitlement within the Children and Young People (Scotland) Bill will protect health visiting services for children in the early years and their families and this will pay dividends for future generations. This builds on existing cross party commitment within Scottish Parliament to prioritise preventative services.

Royal College of Nursing (RCN) Scotland
25 July 2013


\(^6\) John Carnochan writing for Health Visitors for Scotland campaign website
http://www.rcn.org.uk/scotlandhealthvisitors
1. In advance of taking evidence from the Minister for Children and Young People and officials at your next Committee meeting, I’m writing to clarify some points regarding health visiting made during the Education and Culture Committee’s considerations of the Children and Young People (Scotland) Bill, and the Finance Committee’s considerations of the Financial Memorandum.

2. Firstly, I would like to build on a figure provided to the Finance Committee during their evidence session on 18 September 2013. Our Policy Advisor said that, based on the assumptions made by the Scottish Government regarding the number of additional health visitor hours required to deliver the Named Person function for aged 0 – 5, we have calculated that around 450 new health visitors would be required. The figure of 450 takes into account the need for annual leave, sickness etc, which equates to 22.5% - the standard figure used by the Scottish Government to calculate workforce numbers.

3. However, this does not mean we think that Scotland only requires an extra 450 health visitors. This figure is based purely on the Scottish Government’s health visitor hours estimate for Named Person duties and does not take into account the fact there is already a shortage of health visitors in many parts of the country, and that many health visitors are already overburdened with existing duties and caseloads. Also, the health visitor workforce is ageing and there are insufficient numbers of health visitors in training to replace those who will be retiring in the next few years.

4. Secondly, there is nothing in the Financial Memorandum that sets out the cost for training nurses to become qualified health visitors, nor is it clear where funding for this would come from. This would be a significant cost which needs to be addressed by the Scottish Government, both in relation to the additional health visitors required to deliver Named Person duties, and in relation to the current more general shortage of health visitors.

5. Finally, I would like to reiterate our call for health visitors to be the Named Person for children aged 0 – 5 (following discharge from maternity services), and that this, together with a commitment to a universal health visiting service, should be made explicit in the Children and Young People (Scotland) Bill. This is the position of all of our health visiting campaign partners: Scotland’s Commissioner for Children & Young People, Children in Scotland, Parenting across Scotland, Queen’s Nursing Institute Scotland, Royal College of General Practitioners, Community Practitioners and Health Visitors Association/Unite, and the Centre for Confidence and Wellbeing.

Theresa Fyffe
Director
2 October 2013
The Royal College of Psychiatrists in Scotland has consulted the Faculty of Child and Adolescent Psychiatry on this Bill, overall the Bill appears very sensible and evidence based. It takes forward the Early years agenda very positively and raises the profile of children’s rights. The Faculty are in full support of the Bill.

Royal College of Psychiatrists in Scotland
19 July 2013
PART 1: RCSLT BILL RESPONSE

1. The advice

1.1 The Royal College of Speech and Language Therapists (RCSLT) support the aspiration to make Scotland the best place grow up and to do this by putting children at the heart of planning and delivery of services.

1.2 RCSLT advises MSPs and Ministers that, if Scotland is to become the best place to grow up, Scotland needs to be the best at optimising all children and young people’s (CYP) speech, language and communication (SLC) development.

1.3 Unlike other parts of the UK Scotland currently has no comprehensive, strategic focus on developing all CYP SLC and local services targeting SLC development are currently being closed down or significantly reduced year on year.

1.4 The Bill offers Scotland a strategic opportunity to make a step change in CYP SLC development - a change which could impact on outcomes for individuals, families, communities and the nation for generations to come – as well as stemming the tide of short term, ill-informed cuts today for higher costs tomorrow.

1.5 RCSLT calls for three fundamental outcomes from the enactment of the Bill:

i) That it places a duty on Ministers, relevant and responsible authorities (or leads to directions or guidance) to optimise the speech, language and communication (SLC) development of every CYP in Scotland.

ii) Where SLC is an area of difficulty, the Act also makes it a duty (or leads to directions or guidance) for these same persons to identify, recognise and adapt their service communications effectively to CYP individual SLC in the delivery of all public services. That is it establishes a duty to apply quality Inclusive Communication standards throughout public services responsible for applying the Act.

iii) That it leads to orders, directions or guidance on training and qualification standards for all those working with children which include developing competences in understanding the wellbeing risks associated with SLC difficulties; optimising the SLC development of all CYP; informing and engaging parents in supporting their child’s SLC development, identifying SLC needs in CYP and parents and responding effectively to the SLC needs of CYP and parents.
2. **The case for action - SLC outcomes and making Scotland the best place to grow up**

2.1 The majority of young people in crisis have SLC difficulties. For example, more than 60% of children referred to psychiatric services, 88% of young unemployed men and 26%-70% of young men in Polmont Young Offenders Institute have SLC difficulties.

2.2 The European Union’s Employment, Social Policy, Health and Consumer Affairs Council noted that communication difficulties put children unnecessarily at risk. It has invited member states to strengthen efforts in raising public awareness of communication disorders in young people (Council of the European Union 2011).

2.3 Communication capacity underpins realisation of Rights. For example Article 12 (respect for the views of the child) states “Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.” To enjoy equal rights children need to be able to express themselves to the best of their ability.

2.4 Communication ability underpins any realisation of well-being through the ‘SHANARRI’ indicators of safe, healthy, achieving, nurtured, active, respected, responsible and included. ‘SHANARRI’ refers directly to factors that require communication capacity, for example, “respected” (R) is defined as “Having the opportunity, along with carers, to be heard and involved in decisions which affect them”. Communication is frequently cited as a feature of the symptomatology of abuse and neglect, with the evidence pointing clearly to the effects on expressive ability. This would inform the “Safe” (S) indicator. In comparison with the general population, people with communication support needs (CSN) are more likely to experience negative communication within education, healthcare, criminal justice system and other public services; have difficulty accessing information required in order to utilise services; be misjudged in terms of cognitive and educational level; be unemployed or employed at an inappropriately low level and live in socially deprived areas. This clearly informs the “Included” (I) indicator.

2.5 Communication capacity underpins “Getting it Right for Every Child” (GIRFEC). For example, the Scottish Government’s guide to GIRFEC (June 2012) outlines what GIRFEC means for CYP and their families, for example saying “They understand what is happening and why”. Further Values and Principles of GIRFEC include “Putting the child at the centre: Children and young people should have their views listened to and they should be involved in decisions that affect them”. GIRFEC The Resilience Matrix refers to the ability to “Talk to other people about the things that frighten or bother me.”

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**Note:** some references below are incomplete as details were unavailable at time of writing. RCSLT can provide fuller references on request

1 Polmont Young Offender's Institution, 2003
2.6 Communication is a key strand of the Early Years Framework. Early Years Outcome Indicator Number 16 measures the percentage of children displaying age-appropriate communication skills. The Development of Optimal SLC in CYP requires the early development of fundamental skills that underpin all lifelong learning.

2.7 Communication capacity underpins good parenting, care and corporate parenting. Parents’ own SLC competence directly affects their ability to interact positively and establish good relationships with their child (the basis of positive attachment and bonding); access and benefit from parenting support and other services; and is a risk factor for social and economic disadvantage and “model” language and communication for their child to learn from.

2.8 Common Core Skills allude to speech, language and communication capacity. The first of two “context” of the essential characteristics of those working with CYP and families is “Relationships with children, young people and families”. Positive relationships are founded on effective communication between parties.

2.9 Around half of CYP from deprived communities have SLC difficulties and they are the most common difficulty experienced by CYP - two in every classroom. At universal level there are large but un-quantified gaps in the CYP workforce, SLC development and support competences and no comprehensive plan to develop these. It is widely recognised that skilled staff are essential to the development of the child’s language and communication. The last review (2003) of services for CYP with SLCN expressed concern about the limited knowledge and confidence of staff to deal with SLC and called for more professional development opportunities.

2.11 Awareness and understanding of communication capacity, including the ability to identify difficulties and their impact, is varied at best but often low. For example, the GIRFEC tool “My world triangle” includes “Being able to communicate” as important but omits comprehension as the essential first aspect.

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iv Early Years Outcomes; This Outcomes Framework lays out the short, medium and long-term outcomes associated with the indicators identified for the Early Years Framework. For further information on The National Outcomes see: http://www.scotland.gov.uk/About/scotPerforms/outcomes

v See “Scotland – the best place to bring up children”, A collection of essays on Parenting; Parenting across Scotland (2012); 40-44; http://www.parentingacrossscotland.org/media/253972/pas-the-best-place.pdf


vii A Scottish Executive review of Speech and Language Therapy, Occupational Therapy and Physiotherapy for children (2003)

viii A Scottish Executive review of Speech and Language Therapy, Occupational Therapy and Physiotherapy for children (2003)


of the communication dyad. Children cannot express themselves meaningfully (or learn) without comprehension.

2.12 Targeted SLC services (i.e. targeted at vulnerable groups) are currently non-existent, geographically patchy, under threat or being terminated. For example, the award winning Speech and Language Therapist (SLT) led “Communication Help and Awareness Team” (CHAT) in Forth Valley has been effective in enhancing the language skills of pre-school children and has been shown to be more advantageous than nursery education alone\(^\text{xi}\). CHAT funding ceases as of 1st August 2013. The unique SLT led ‘Before Words’ project in Moray produces accessible parent information (reading age 9) to support SLC development from pre-birth to sentence building stages. Materials emphasise the relationship between attachment and developing communication in children and help parents to use everyday tasks as opportunities to develop communication. ‘Before Words’ reaches all parents but particularly targets vulnerable families.

2.13 Scotland is witnessing a diminishing pool of professional experts in SLC development – specifically qualified to develop and/or deliver universal, targeted and specialist SLC services. The Allied Health Professions Waiting Times Census (2012) showed that in one week in February 2012, 95% of CYP referred waited 27 – 81 weeks to see a SLT\(^\text{xii}\). 577 whole time equivalent\(^\text{xiii}\) or 60% of SLTs working in Scotland work for CYP. SLT capacity in Scotland has decreased by 2.4% since 2008\(^\text{xiv}\). Funding for SLT services have been cut in the majority (6/9) of health boards and at least 50% (5/10) of local authorities (who responded to an FOI) since 2011\(^\text{xv}\). One service has reported a 100% funding cut over 2 years from their local authority. Current SLT capacity issues create a significant challenge to meeting the universal early intervention and prevention agenda of the Early Years Collaboration.

2.14 Literacy difficulties can mask more fundamental speech, language and communication difficulties but don’t get the same strategic attention. To learn the 3Rs individuals first need to have more basic speech, language and communication skills\(^\text{xvi}\). Reading and writing difficulties are the publicly observable symptoms of more fundamental, underlying SLC difficulties. There is no SLC strategy like the Literacy Action Plan.

2.15 Inclusive Communication best practice is inconsistent across communication needs groups and communities across Scotland. The Scottish Government Equalities Unit has commissioned several SLT led projects producing guidelines and practical toolkits to support implementation of inclusive communication good

\(^{\text{xi}}\) Forth Valley Health Board: Communication Help and Awareness Team CHAT (July 2007 – March 2008)

\(^{\text{xii}}\) Findings from the AHP Waiting Times Census in Scotland: Patients seen for First AHP Treatment from Monday 6 February to Friday 10 February Publication date – 10 July 2012


\(^{\text{xiv}}\) Information Services Division (ISD) AHP Workforce Statistics 2011 at 30 September 2011 : Overall Trend 2008 to 2011

\(^{\text{xv}}\) Data from FOI by Richard Simpson MSP office, November 2011

practice in Scotland\textsuperscript{xvii}. These toolkits and guidelines are not universally applied. Further, there are no regulatory checks on the inclusion of communication disadvantaged groups or “communication inequality” in Scotland – unlike checks on inclusion of physically disadvantaged groups.

2.16 A strategic focus on speech, language and communication capacity makes a difference. The ‘Bercow Review’ (2008)\textsuperscript{xviii} (England) set out 40 recommendations to improve services across five themes and led the UK Government to invest around £55 million over three years in “Better Communication: An Action Plan to Improve Services for Children and Young People with Speech, Language and Communication Needs”\textsuperscript{xix}. Communications Champion Jean Gross reported that, in two years, the “Better Communication Action Plan” led to;

\begin{itemize}
  \item [i)] Increased awareness of the centrality of good communication skills to children’s learning, wellbeing and life chances. Activity has provided practical support to those front-line workers and to parents.  
  \item [ii)] Measurable improvements in the percentage of 5 yr olds achieving age appropriate levels in the ‘Language for Thinking’ early years foundation stage profile  
  \item [iii)] A reduction from 23% to 18% of parents who were concerned about their child’s SLC development reporting that they did not receive any help  
  \item [iv)] Increasing recognition of communication skills as a priority in local strategic planning leading several local areas to develop a community-wide strategy to promote improved communication skills for all children. For example the ‘Stoke Speaks Out’ early years campaign reduced the % of 3-4 year-olds with language delay from 64% in 2004 to 39% in 2010.  
  \item [v)] Some helpful policy developments at government level such as the joint work of the departments of education and health to establish communication and language as a prime area of children’s learning.
\end{itemize}

2.17 Quality SLT Services prevent spending and poor outcomes. Independent economic evaluation showed quality universal, targeted and specialist SLT services can deliver an annual net benefit of at least £58 million to the Scottish economy. Every £1 invested in enhanced SLT generates £6.40, derived from improved communication leading to improved educational achievement and inclusion.

2.18 Recent mass surveys tell us parents and the children’s workforce need help to ensure optimum development of communication capacity. Learning from the

\textsuperscript{xvii} For example: Scottish Government commissioned and / or published Principles of Inclusive Communication; “Talk for Scotland Toolkit”  
\textsuperscript{xviii} John Bercow MP (2008) led an independent review of services for CYP with SLC needs in England on behalf of the then Department for Children, Schools and Families.  
\textsuperscript{xix} Better Communication: An action plan to improve services for children and young people with speech, language and communication needs; Dept. of Health 2008; www.teachernet.gov.uk/publications Search using the ref: DCSF-01062-2008
English SLC strategy “Better Communication Action Plan”\(^{xx}\), (reported by Jean Gross, England’s Communication Champion (2012) showed 82% of 3,000 parents believed that more information on how children develop speech, language and communication would be helpful. The Scottish survey commissioned by NHS Health Scotland, ‘Exploration of the information support needs of parents’, found that these parents as a group identified “speech and language as a priority child development issue”\(^{xxi}\). Gross suggests several good practice success factors including:

i) Approaches which build capacity in the children’s workforce - sustained professional development that changes adults’ interactions with children and helps them provide communication-supportive environments

ii) Approaches for children, young people and adults which build on their strengths rather than focusing on their weaknesses

\**PART 2: RCSLT COMMENTS ON PROVISIONS IN THE BILL**

RCSLT has substantial comment on the following parts and subsections of the bill detailed in attached.

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\(^{xx}\) Better Communication: An action plan to improve services for children and young people with speech, language and communication needs; Dept. of Health 2008; www.teachernet.gov.uk/publications Search using the ref: DCSF-01062-2008

\(^{xxi}\) Exploration of the information support needs of parents, NHS Health Scotland (May 2012)
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55: Reports by Corporate Parents:
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58: Directions to corporate parents

Part 8: Aftercare
60: Provision of aftercare to young people

Part 9: Counselling services
61: Provision of counselling services to parents and others

Part 13: General
74: Assessment of wellbeing

Part 1: Rights of Children

3.1 Subsection 1. Duties of Scottish Ministers in relation to the rights of the child
(1) RCSLT fully supports the establishment of duties for Scottish Ministers and authorities as described.
(1) (a) and (b): If and when the Bill becomes an Act RCSLT would implore Scottish Ministers to make early consideration of whether CYP with SLC enjoy their rights under the UNCRC.
(2): It would be helpful to ensure Ministers have a duty to promote public awareness and understanding among ALL children – this is to include CYP and parents (for example) with SLC.
The Bill could achieve this by establishing a duty to apply quality Inclusive Communication standards throughout public services responsible for applying the Act.

3.2 Subsection 3: Authorities to which section 2 applies:
(1): Given the Scottish Prison Service (SPS) provides services to young people at Polmont Young Offenders Institute it would be helpful to include the SPS in the initial list of Children’s Services to which duties in the Bill apply.

Part 2: Commissioner for Children and Young people in Scotland

3.3 Subsection 5: Investigations by the Commissioner
(2): RCSLT fully supports the extension of the powers of the Commissioner for Children and Young People in Scotland (SCCYP) to carry out individual and general investigations; to make recommendations and require response to these and to publish statements provided in response as described.

RCSLT would wish the Bill to ensure all CYP, regardless of SLC capacity, have equal access to the offices of the SCCYP.

The Bill could achieve this by establishing a duty to apply quality Inclusive Communication standards throughout public services responsible for applying the Act.

RCSLT believe that many CYP may wish the SCCYP to investigate their experience of services. For example CYP with SLC difficulties may wish to raise the issue of communication exclusion from many community facilities, prompting an investigation into how service providers match the SLC level of CYP while having “regards to rights, interests and views of child”.

There is potential therefore for the there to be high demand on the resources of the Commissioner.

RCSLT ask how the powers of the SCCYP will be matched by resource to enact those powers.

Part 3: Children’s Services Planning

3.4 Subsection 7: Introductory
(3): RCSLT would wish SLT to be included among CYP services specified by order by Scottish Ministers.
(6): RCSLT welcome the joint exercise of functions by local authorities and relevant health boards.

3.4 Subsection 10: Children’s services plan process
(1)(a): SLT (and AHPs more generally) are not currently directly represented on NHS Boards. RCSLT are concerned therefore that consultation on these important Children’s Service Plans - which will have significant impact on SLT as the most common AHP delivering services to CYP- with “health boards” will potentially fail to
recognise the value and impact of SLTs specifically and AHPs more generally on
CYP outcomes.

RCSLT hope Scottish Ministers will specify by direction (under 10, (1), (b) (iii) the
need to consult specifically with key health staff groups.

3.5 (8) (and Subsection 13 (1)): The manner of publication of plans should ideally
be consistent across Scotland to better enable service users, the public, providers
and Ministers to share learning and hold authorities and health boards to account.

3.6 Subsection 12: Implementation of Children’s Services plans:
(2) The option to implement plans “as far as is reasonably practicable” could leave
many CYP without services which best safeguard, support and promote well being.

(3) Service providers ideally should be required to provide evidence of why they
consider a plan may reasonably adversely affect the well being of a child.

3.7 Subsection 15: Guidance in relation to children’s services planning and
Subsection 16: Directions in relation to children’s service planning

RCSLT welcomes the Scottish Ministers powers to issue Guidance. And Directions
in relation to Children’s Services plans.

If the Bill declines to place a duty on Ministers, relevant and responsible
authorities, RCSLT would wish early direction or guidance to:
- ensure local authorities and relevant health boards incorporate strategic action to
  optimise SLC development of every CYP in Scotland in to joint children’s service
  plans;
- require these same persons to identify, recognise and adapt their service
  communications effectively to CYP and parents individual SLC needs in the
delivery of all public services. That it is to establish and apply quality Inclusive
Communication standards throughout the public services responsible for
applying the Act and
- to training all those working with children so that they are competent in optimising
  the SLC development of all CYP; identifying SLC needs in CYP and parents and
  responding effectively to the SLC needs of CYP and parents.

Part 4: Provision of Named Persons:

3.8 Subsection 19: Named Person Services

RCSLT welcomes the establishment of the role of a “Named Person”.

(3) RCSLT welcomes the broad flexibility offered by the Bill in respect of who the
named person might be.

RCSLT hope the Minister will take advice from a broad spectrum of CYP workforce
professional bodies (including AHPs) with regards to who among the workforce
already has relevant training, qualification, experience or position to “qualify” as a
named person. Further RCSLT would hope that as the most common AHP working
with CYP from early years in to primary and with extensive undergraduate training in general CYP development that SLTs could fulfil the role of named person with appropriate resources.

(3) (b) RCSLT welcomes Scottish Ministers power to specify training, qualification, experience or position of individuals who might be named persons.

**RCSLT advise that the training and qualification standards for named person services include developing competences in optimising the SLC development of all CYP; identifying SLC needs in CYP and parents and responding effectively to the SLC needs of CYP and parents.**

(5) RCSLT agree the functions described for the named person services are the right functions.

RCSLT highlight however that in order to fulfil these functions effectively named person services will need to be comprehensively informed of all services available and how they impact on well being etc.

RCSLT also highlight that good practice (including many professional codes of practice, standards etc.) dictates that every member of the CYP workforce has an advocacy role implied in the functions of the named person. It would be a loss were this role for all CYP practitioners to be constrained, even by implication, by the Bill.

RCSLT recommends an addition to the Bill to the effect that all CYP practitioners will continue to be expected to fulfil the same or similar functions to the named person as dictated by good practice guidelines, professional codes of practice etc.

### 3.9 Subsection 23: Communication in relation to movement of children and young people and Subsection 25: Duty to help named person

RCSLT recognise and support the intention of establishing named person services to ensure CYP and their parents get access to all the services they can benefit from.

RCSLT are concerned however about the power given to named person services by these two clauses, particularly in light of point 3.8 above and related evidence on awareness of SLT development, impact of SLC difficulties and the role and value of SLT services.

23 (3) (a) (i) for example leaves it up to the named person service to judge if information on a CYP or parent “might be relevant” to “the incoming service provider”.

25 (1) and (2) also empower the named service provider to make critical decisions about whether a child would or would not benefit from an intervention and even what that intervention should be. Further, the other service provider or relevant authority is under a duty to comply with requests for help.

The evidence base on how SLT services can best develop a CYP SLC tells us that SLT services should be delivered at “universal”, “targeted” and “specialist” levels.
Universal and targeted levels involve everyone around a CYP and effectively applying strategies as a team (learned via SLT advice, guidance and training) to boost CYP SLC development and / or to enable them to communicate (and therefore learn etc.) effectively despite a SLC difficulty. Universal and targeted levels of SLT are helpful to 80% of CYP. These levels, however, don’t involve specialist 1:1 or group SLT where the SLT takes the CYP away from their environment and then delivers them back “cured”.

Unfortunately the poorly informed popular understanding (even among experienced teachers etc.) is that SLTs do and should only work at a specialist level; that solving a SLC difficulty is “their job” - not everyone’s job.

This misunderstanding or lack of knowledge of the evidence base on SLC development is a significant source of tension between SLTs and colleagues, SLTs and some parents and even parties who negotiate service level agreements in many parts of Scotland.

In light of above RCSLT ask that the Bill acts to ensure named person services (in the course of making decisions about relevant information to pass on to “incoming service providers” and applying duties to help named persons) demonstrate they have consulted with and reached agreement with the active parties in “the outgoing service providers” and service providers practically providing the intervention.

23: RCSLT highlight that effective transfer between service providers, although very welcome, could prove administratively challenging.

RCSLT would recommend early guidance or an order from Scottish Ministers, laying out a standard process including forms etc. would be very helpful.

3.10 24: Duty to communicate information about the role of named persons

(1) and (2): RCSLT highlight it is important that information reaches all CYP and parents including those with SLC and that it is not made incumbent on CYP and parents to tell services they have SLC (including literacy difficulties) before they get access to information which they might not know exists if they can’t read.

To this end, RCSLT would advise that the Bill requires all service providers to publish all general and individualised information in communication accessible format – as standard and not just “on request”.

The Bill could achieve this by establishing a duty to apply quality Inclusive Communication standards throughout public services responsible for applying the Act.

3.11 26: Information Sharing:
RCSLT supports information sharing between authorities.

3.12 28: Guidance in relation to named person services and 29: Directions in relation to named person services
RCSLT welcome the Scottish Ministers power to issue guidance and directions in relation to named people.

If the Bill declines to place a duty on Ministers and relevant and responsible authorities RCSLT would wish early direction or guidance to
- ensure named person services take action to optimise SLC development of every CYP in Scotland;
- require these same persons to identify, recognise and adapt their service communications effectively to CYP and parents individual SLC needs in the delivery of all public services. That is it establish apply quality Inclusive Communication standards throughout public services responsible for applying the Act and
- ensure named persons receive training so that they have competences in optimising the SLC development of all CYP; identifying SLC needs in CYP and parents and responding effectively to the SLC needs of CYP and parents.

Part 5: Child’s Plan

3.13 31: Child’s plan requirement and 32: Content of Child’s Plan

RCSLT generally support Child’s Plans in principle.

The Child’s Plan appears to have a similar function to Co-ordinated Support Plans (CSPs) issued under the Additional Support for Learning Act.

RCSLT seek clarification of the relationship between Child’s Plans and CSPs in the Bill.

3.14 31 (2), (3), (4), 32 (1): RCSLT are concerned that responsible authorities are not currently consistently identifying well being needs or necessarily well informed to make reliable judgements as to
- whether a targeted intervention is required or
- informed about the nature of intervention required or
- the manner in which it should be provided or
- realistic outcomes which might be expected from an intervention.

To be effective RCSLT would wish the Bill to require responsible authorities to draw on expert knowledge and the evidence base concerning these judgements.

The Bill (or subsequent orders, guidance or directions) could help to ensure this by securing appropriate professional advisory structures in (or shared by) relevant responsible authorities. Given the evidence presented on incidence of SLC needs and impact on well being, RCSLT would hope SLTs (and other relevant AHPs) would be directly represented on these professional advisory structures – by guidance etc.

3.15 31 (5): Ascertaining and having regard to CYP and parents views “as far as reasonably practicable to ascertain” should explicitly not exclude CYP or parents with SLC difficulties where those difficulties can be overcome by use of quality inclusive communication practice.
RCSLT recommend that rather than a subjective and potentially inconsistent and erroneous view of a child’s maturity it would be more helpful here to specify the child’s optimum capacity to understand and express their views (with the aid of augmentative and alternative commutation aids if required). This, like age, can be objectively determined by skilled assessment (by an SLT) where any dispute of maturity might arise.

RCSLT would also wish the Bill to ensure in making decisions about whether a plan was necessary that responsible authorities were also be required to ascertain views of other service providers.

3.17 33: Preparation of child’s plan

(3): RCSLT has concerns regarding the phrase “as soon as is reasonably practicable” as it could mean some CYP could wait a very long time for a Child’s Plan at significant detriment to them.

RCSLT suggest Scottish Ministers should be empowered to set maximum time limits by order, guidance or direction.

(4): RCSLT ask for clarification around how this clause is compatible with section 25: Duty to help the named person. If it does in fact mean requests by a named person need only be complied with – with agreement of the service provider it would be helpful to make this clearer in section 25.

(5): It would be helpful for the Bill to require responsible and relevant authorities to publish data on unresolved agreements between each on an annual basis. This would make public where relationships and understanding between boards and local authorities were an ongoing source of difficulty in relation to provision of targeted interventions such as SLT. Requirement to publish dispute figures may have the effect of encouraging parties to review and build better relationships as described in Scottish Governments “Working in Partnership” guidance.

3.18 36: Delivering a Child’s Plan

(1) Delivery of targeted interventions for the majority of CYP with SLC needs are currently paid for by service level agreements (SLAs) between education authorities and health boards. There is widespread year on year reductions in the value of these SLAs leading in some cases to complete cessation or withdrawal of SLT services to CYP with known need.

RCSLT seek clarification as to the status and continuation of these SLAs in light of the CYP Bill and in particular this section. Bluntly – will funds still transfer to pay for SLT for CYP with SLC needs from local authorities to health boards?
Without clarity the Bill could unintentionally lead to a situation where NHS Boards are required to provide SLT with no funds to provide that service to the severe detriment of CYP with or at risk of developing SLC.

The difficulty of where funds come from could be resolved by placing a duty on Ministers, relevant and responsible authorities (or directions or guidance) to optimise the speech and language and communication (SLC) development of every CYP in Scotland.

RCSLT are concerned by the use of the phrase “so far as reasonably practicable”. This “get out” could disadvantage CYP who benefit from essential services which, for a variety of reasons, have a low data or profile locally and nationally such as SLT. Currently, for example, there are no statistics regularly gathered on SLT (or other AHP) waiting times. Unmet needs in these areas can go unnoticed.

It would be helpful for the Bill to require responsible and relevant authorities to publish data on all unmet targeted interventions and reasons why these were unmet on an annual basis. This could expose where for example boards and local authorities were repeatedly failing to meet the well being needs of CYP.

3.19 37: Child’s Plan Management and review:

(1) Similar to comments in relation to subsection (25) above, RCSLT have concerns regarding managing authorities determining if the manner of targeted intervention - or manner of provision - is still appropriate. RCSLT query a managing authorities capacity to make this judgement.

(2) and (5) RCSLT are pleased managing authorities will be required to consult with those providing services on management plans and reviews and that Scottish Ministers will be empowered to make orders on when and how these are to be carried out. Would wish the Bill to ensure managing authorities must agree any changes to plan - after review - with responsible authorities similar to 33 (4).

See comment above RE: “taking in to account child’s age and maturity”.

3.20 39: Guidance and child’s plan and 40: Directions in relation to child’s plans

RCSLT welcomes the Scottish Ministers capacity to issue Guidance and Directions in relation to Child’s Plans.

If the Bill declines to place a duty on Ministers and relevant and responsible authorities RCSLT would wish early direction or guidance to:

- ensure child’s plans include action to optimise SLC development of the CYP;
- require managing and responsible authorities to identify, recognise and adapt their service communications effectively to CYP and parents individual SLC needs in the delivery of all public services. That is it should establish application of quality Inclusive Communication standards throughout public services and
- ensure those developing, delivering and reviewing child’s plans receive training so that they have competences in understanding the risks to well being associated with SLC needs; optimising the SLC development of all CYOP including determining appropriate targeted interventions; identifying SLC needs in CYP and parents and responding effectively to the SLC needs of CYP and parents.

**Part 6: Early Learning and Childcare**

**3.21 42: Early learning and childcare:**

This is a crucial part of the Bill for children with SLC needs given “early learning and childcare” is specifically defined as “a service, consisting of education and care... with regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.”.

“Interactions” are communication exchanges between the child and those around them.

RCSLT are very pleased that the Bill specifically identifies “interactions” as important in early years.

RCSLT note that in the Explanatory Notes to the Bill “Guidance issued by the Scottish Ministers under section 34 of the Standards in Scotland’s Schools Act 2000 (the 2000 Act) ... will be used to provide more detail as to what those types of interactions and experiences will encapsulate.”

RCSLT would be very keen to contribute the development of that guidance and recommend that the guidance sets out actions for early years providers specifically geared to optimising CYP SLC development.

**3.22 43: Duty to secure provision of early learning and childcare and 44: Mandatory amount of provision:**

While supporting in principle a minimum provision of early years education to all children RCSLT are concerned the Bill, as is, focuses solely on amount of provision without similar focus on quality of that provision.

Exposure to quality communication environments in early years is a key determinant of SLC and other areas of development (as the Chief Medical Officer relates in the Explanatory notes).

We might assume that parents from poorer backgrounds will be unlikely to “top up” 600 hours statutory provision. The quality of the statutory provision their CYP access will therefore be absolutely crucial to closing well being inequalities among CYP and communities generally.

Education authorities may therefore be driven to attend to quantity irrespective of quality particularly if it is only the comparatively weaker guidance (issued under
Section 34 of Scotland’s Schools Act) which describes aspects of quality of early years education and childcare.

RCSLT would recommend the Bill empowers Scottish Ministers to issue orders in respect of quality of early years education and childcare as well as quantity.

3.23 45: Looked after children: alternative arrangements to meet well being needs

Evidence shows that looked after children are at higher risk of delayed or disordered SLC development than their peers.

RCSLT would recommend the Bill empowers Scottish Ministers to issue orders in respect of quality of early years education and childcare – including in circumstances where alternative arrangements were made.

3.23 46: Duty to consult and plan delivery of early learning and childcare:

(1) (a) and (b) SLTs and more generally health boards will be responsible (under provisions for example related to children’s service plans, named person services and child plans) at least in part for quality of early years education and childcare.

It would be helpful, therefore, if education authorities were also required to consult with these parties about “how it should make early learning and childcare available, and after having regard to views expressed, prepare and publish a plan ... etc”

3.24 47: Method of delivery of early learning and childcare and 48: Flexibility in way in which early learning and childcare is made available

Similar to above, while welcoming the above provisions in principle RCSLT would wish the Bill to require education authorities to provide early learning and childcare services in a way which optimises working with partner agencies.

Part 7: Corporate Parenting

3.25 50: Corporate Parents:

The Scottish Prison Service has responsibility for the day to day care of vulnerable young people, a disproportionately high number of whom have been through the care system.

RCSLT ask whether the SPS should be added to schedule 3 as corporate parents.

3.26 52: Corporate Parenting Responsibilities

Evidence shows that looked after children are at higher risk of delayed or disordered SLC development.

RCSLT welcomes the responsibilities of corporate parents laid out in the Bill.
To fulfil these responsibilities (e.g. to be alert to matters which could adversely affect the wellbeing of CYP; to assess the needs of those CYP for support and services it provides; to seek to provide those CYP with opportunities to participate in activities etc.) corporate parents will need to have themselves – or have access to - appropriate knowledge, skills and personnel capacity. See comments RE: subsections 57 and 58 below.

3.27 52 (d) and (e) (i) and (ii): RCSLT highlight that given the SLC needs of CYP who are looked after, early guidance or directions issued by Scottish Ministers (subsection 57 and 58) should ensure corporate parents take particular action to ensure provision of activities designed to promote their well being that are communication accessible.

3.28 53: Planning by corporate parents:

(2) RCSLT supports the requirement for corporate parents to consult with other corporate parents. RCSLT would wish corporate parents to be required to have regard for the views expressed by other corporate parents.

3.29 54: Collaborative working among corporate parents:

(1) RCSLT welcome the requirement for corporate parents to work collaboratively however we are concerned by the phrase “as far as is reasonably practicable”.

As described above this “get out” could disadvantage CYP who could benefit from essential services which, for a variety of reasons, have a low profile locally and nationally such as SLT. There are currently very few SLT services for secondary school or older CYP in Scotland (despite the evidence showing SLC difficulties can follow CYP in to adulthood) and few, if any, dedicated services for looked after CYP despite the known high need in this group.

3.30 55: Reports by Corporate Parents:

(3) It would be helpful if corporate parents working collaboratively at a local level were required to report jointly on joint corporate parent related activity and outcomes. This would encourage joint working, enable full parental overview and support transfer of lessons learned between corporate parents at a local and national level.

3.31 57: Guidance on corporate parenting and 58: Directions to corporate parents

RCSLT welcome the Bills proposals that Scottish Ministers will be empowered to issue guidance and directions in relation the complex and important task of corporate parenting.

RCSLT would hope early guidance or direction ensures corporate parents take particular action to meet the disproportionately high SLC needs among looked after children.
If the Bill declines to place a duty on Ministers and relevant and responsible authorities RCSLT would wish early direction or guidance to

- ensure corporate parents take action to optimise SLC development of CYP in their care;
- require corporate parents to identify, recognise and adapt their service communications effectively to CYP individual SLC needs in the delivery of all public services. That is apply quality Inclusive Communication standards throughout services and
- ensure relevant personnel working on behalf of corporate parents receive training so that they have competences in understanding the well being risks associated with SLC difficulties; optimising the SLC development of all CYP; identifying SLC needs in CYP and responding effectively to the SLC needs of CYP.

Part 8: Aftercare

3.32 60: Provision of aftercare to young people
(2) (c): Given that many young people leaving care have SLC needs, RCSLT would wish the Bill to ensure any advice, guidance and assistance offered to care leavers by local authorities is optimally communication accessible. That is, apply quality Inclusive Communication standards throughout aftercare services.

Part 9: Counselling services

3.33 61: Provision of counselling services to parents and others

RCSLT welcomes provision of counselling services to parents of eligible children and others and the Scottish Ministers right to make orders in respect of that provision.

RCSLT highlights that parents, particularly vulnerable parents, have SLC needs which could impair their ability to benefit from this provision in the Bill.

RCSLT would hope an early order from Scottish Ministers would ensure all parents, regardless of SLC capacity, were enabled to access these counselling services.

Alternatively communication accessibility of counselling services could be assured by establishing a duty to apply quality Inclusive Communication standards throughout public services responsible for applying the Act.

Part 13: General

3.34 74: Assessment of wellbeing

(2): RCSLT welcome the stipulation of the assessment of well being in respect of SHANARRI measures and further welcomes the requirement on Scottish Ministers to issue guidance on how these aspects of well being are to be “used” to assess well being – although use of the word “used” is not particularly clear here.
Given the evidence presented (see appendix) on the link between SLCN and SHANARRI outcomes RCSLT would hope that early Ministerial Guidance alerts persons to these links and provides guidance on how to optimise the SLC development and capacity of all CYP.

**If the Bill declines to place a duty on Ministers and relevant and responsible authorities to optimise SLC development of all CYP RCSLT would wish early direction or guidance to**

- ensure services take action to optimise SLC development of every CYP in Scotland;
- require these same persons to identify, recognise and adapt their service communications effectively to CYP and parents individual SLC needs in the delivery of all public services. That is establish application of quality Inclusive Communication standards throughout public services responsible for applying the Act and
- ensure the CYP workforce receives training so that they have competences in understanding the wellbeing risks associated with SLC difficulties; optimising the SLC development of all CYP; identifying SLC needs in CYP and parents and responding effectively to the SLC needs of CYP and parents.

**Reference / Evidence summary:**

1. In December 2011, the EU's Employment, Social Policy, Health and Consumer Affairs Council noted that communication difficulties put children unnecessarily at risk of poor educational, social and economic progress, and that prevention, early detection, follow up and appropriate intervention could be very effective in avoiding or minimising the consequences of such problems. It has invited member states to strengthen efforts in raising public awareness of communication disorders in young people (Council of the European Union 2011).

2. **No national strategy after “Play, Talk, Read”**

   Although communication capacity is central to most, if not all of the policies related to the Bill (see below), there remains only a diffuse or implicit reference to communication capacities in policy.

   To illustrate - although “Play, Talk, Read” is a very welcome strategy which encourages parents to create a good environment for speech, language and communication development from an early age – there are no strategies to;
   - ensure optimum communication capacity development for children who’s parents themselves have communication capacity difficulties (i.e. vulnerable parents, parents with mental health or learning difficulties, parents in prison, or those of low socioeconomic status with disproportionately high literacy difficulties) or
   - to follow up on CYP or parents who don’t manage to develop normal speech, language and communication (SLC) either in the early years or once CYP reach school.
3. Communication capacity underpins realisation of Rights.

Article 12 (respect for the views of the child)
Every child has the right to say what they think in all matters affecting them, and to have their views taken seriously.

To enjoy equal rights children need to be able to **express themselves** to the best of their ability.

Article 13 (freedom of expression)
Every child must be free to say what they think and to seek and receive information of any kind as long as it is within the law.

To enjoy equal rights children need to be able to **understand** information to the best of their ability.

Therefore to enjoy, as much as possible, their rights under the UN Convention on the Rights of the Child (UNCRC) every CYP needs to have the opportunity to develop the best possible speech, language and communication skills and, where this is an area of difficulty, society needs to recognise and adapt effectively to their individual speech, language and communication needs (SLCN).

4. Communication capacity underpins realisation of well-being (SHANARRI)

The “headline” definition of well being – SHANARRI – refers directly to factors that require communication capacity. Aspects of communication capacity are explicitly recognised for example in descriptors of...

**RESPECTED (R)** = Having the opportunity, along with carers, to be heard and involved in decisions which affect them

**RESPONSIBLE (R)** = Having opportunities and encouragement to play active and responsible roles in their schools and communities and where necessary, having appropriate guidance and supervision and **being involved in decisions** that affect them.

However even although communication capacities are explicitly recognised as being essential to well being, the final “INCLUDED” descriptor fails to list “communication inequality” as a barrier to well being – although “physical” inequalities are recognised.

There is strong evidence of the links between well being factors in SHANARRI and SLC needs.
| S | Safe | • Communication is frequently cited as a feature of the symptomatology of abuse and neglect...the evidence points clearly to the effects on expressive ability\(^{xxi}\).
• In comparison with the general population people with CSN are more likely to be victims of crime or be convicted of crime\(^{xvi}\).
• Language impaired children are at risk of being the target of bullies at school.\(^{xv}\) |
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<td>H</td>
<td>Healthy</td>
<td>• 50-60% of children with a speech, language and communication disorder would fulfil the criteria for a mental health difficulty.(^{xv})</td>
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| A | Achieving | • Speech and language impairment identified at age five has long-lasting effects. In one study more than 72% of children who had SLI at age 5 remained impaired at age 12\(^{xxvi}\).
• A survey of two hundred young people (with behavioural and / or learning difficulties) in an inner city secondary school found that 75% of them had SLCN that hampered relationships, behaviour and Learning\(^{xvii}\).
• Adolescents with language impairments often fall short of the demands necessary to successfully learn in school\(^{xvii}\) causing them to fall behind peers especially as language expectations increase\(^{xxvii}\).
• For 1 in 500 children and young people in the UK with a speech, language or communication impairment, the impairment will be lasting and severe and will follow them into adulthood with the associated social, emotional and economic difficulties this entails\(^{xxix}\).
• In comparison with the general population people with CSN are more likely to experience negative communication within education, healthcare, criminal justice system and other public services and have difficulty accessing information required in order to utilise services\(^{xxx}\).
• There is a well established link between communication disorders and behavioural difficulties\(^{xxxi}\).
• Behavioral difficulties of an aggressive nature have been reported as showing increased prevalence in young children with speech and language impairment\(^{xxxii}\).
• Research in Denmark shows boys with severe expressive and receptive problems were at a higher risk of sex offending.\(^{xxx}\) |
| N | Nurtured | • Parents report that their child’s poor communication causes stress across the family structure and there are indications that concerns grow as the child gets older. (Anecdotal) |
| A | Active | • In comparison with the general population people with CSN are more likely to experience negative communication within education, healthcare, criminal justice system and other public services and have difficulty accessing information required in order to utilise services\(^{xxx}\).
• In comparison with the general population people with CSN are more likely to experience negative communication within education, healthcare, criminal justice system and other public services and have difficulty accessing information required in order to utilise services\(^{xxx}\).
• Research in Denmark shows boys with severe expressive and receptive problems were at a higher risk of sex offending.\(^{xxx}\) |

\(^{iv}\) Baker and Cantwell,1991 and Beitchman 1986
\(^{v}\) Benasich, Curtiss & Tallal 1993
\(^{vii}\) Sanger et al (2002)
\(^{viii}\) Hall, David, “Health for all Children” 1996
Given the explicit recognition of communication capacities as key to well being, and the evidence linking SLC difficulties and poor outcomes - RCSLT argue to achieve the best possible well being for every child or young person every CYP needs to have the opportunity to develop the best possible speech, language and communication skills and, where this is an area of difficulty, society needs to recognise and adapt effectively to their individual speech, language and communication needs.

5. Communication capacity underpins Getting it Right for Every Child (GIRFEC)

Scottish Government’s guide to GIRFEC (June 2012) outlines what GIRFEC means for CYP and their families, for example;
- They understand what is happening and why
- They have been listened to carefully and their wishes have been heard and understood
- They are appropriately involved in discussions and decisions that affect them

Core components of GIRFEC includes;
- A common approach to gaining consent and to sharing information where appropriate

Consent requires people to understand what’s on offer and to express agreement or otherwise.

Values and Principles of GIRFEC include;
- Putting the child at the centre: Children and young people should have their views listened to and they should be involved in decisions that affect them
- Supporting informed choice: Supporting children, young people and families in understanding what help is possible and what their choices may be

“My world triangle “includes under “How I grow and develop”... “Being able to communicate”.

The Resilience Matrix refers to the ability to “Talk to other people about the things that frighten or bother me”

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xiii Mouridsen and Hauschild 2008
People of all ages with communication support needs have higher incidence of “Adversity” and “Vulnerability” characteristics set out in the “Resistance / vulnerability” matrix which informs GIRFEC.

Evidence shows, in comparison with the general population people with SLC needs (or communication support needs) are more likely to:
- be unemployed or employed at an inappropriately low level
- be victims of crime
- be convicted of crime
- have difficulty accessing information required in order to utilise services
- live in socially deprived areas.
- experience negative communication within education, healthcare, criminal justice system and other public services
- be misjudged in terms of cognitive and educational level

RCSLT argue therefore that to deliver on GIRFEC every CYP needs to have the opportunity to develop the best possible speech, language and communication skills and, where this is an area of difficulty, society needs to recognise and adapt effectively to their individual SLC needs.

6. Communication is a key strand of the Early Years Framework

Early Years Outcome Indicator no. 16. measures the percentage of children displaying age-appropriate communication skills.

The short term outcomes under this indicator is
- Awareness of what constitutes age-appropriate communication skills

In the medium terms outcomes are:
- Identifying children who have speech, language and communication needs (SLCN)
- Intervening early to enable them to communicate and engage more effectively with others and in an education environment.

This is a very welcome strategic driver as it promotes focus and action on children’s communication capacity.

This driver however needs a comprehensive strategy behind it to enable parents and services across Scotland to effectively and efficiently deliver the best early years “Outcome 16” results. The profile of the importance of SLC development also needs to be extended beyond early years and beyond policy – to legislation, regulation or national guidance.

7. Communication capacity underpins the good parenting

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xvi Early Years Outcomes; This Outcomes Framework lays out the short, medium and long-term outcomes associated with the indicators identified for the Early Years Framework. For further information on The National Outcomes see: http://www.scotland.gov.uk/About/scotPerforms/outcomes
Parents' own SLC competence directly affects their ability to
- interact positively and establish good relationships with their child (or establish strong attachment),
- access and benefit from parenting support and other services and is a risk factor for social and economic disadvantage and
- “model” language and communication for their child to learn from.

Unfortunately the Early Years Framework gives little or no mention of the communication barriers which might be faced by parents – which in turn impact on their ability to provide appropriate “well being” environments for their children.

To ensure every parent can be the best parent they can be RCSLT argues that every parent and family needs to enjoy equal access to information, advice and support across public services – regardless of their own communication capacities.

Parenting programmes – and all other advice, information and services should demonstrate quality inclusive communication practice.

Strategies to raise parents understanding of SLC development, how they can support it (beyond “Play, Talk Read”) and how to identify problems early etc. should also be put in place.

8. Common Core Skills allude to speech, language and communication capacity

The first of two “context” of the essential characteristics of those working with CYP and families is “Relationships with children, young people and families”. Positive relationships are founded on effective communication between parties.

Within this “context” non-discriminatory practice requires all members of the children’s workforce to
- Understand your impact on children, young people and families and how they might perceive you. Adapt your tone, language and behaviour to suit the circumstances

Respecting the views of the child requires all members of the children’s workforce to
- Include children, young people and families as active participants, listening to them, offering choices

- Explain decisions and ensure children, young people and families fully understand them and their implications, especially if the final decision isn’t what they hoped for

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xvii See “Scotland – the best place to bring up children”, A collection of essays o Parenting; Parenting across Scotland (2012); 40-44; http://www.parentingacrossscotland.org/media/253972/pas-the-best-place.pdf

The second “context” for the essential characteristics of those working with CYP and families is “Relationships between workers” which requires all members of the children’s workforce to;

- Be aware of **who can help when you cannot communicate** effectively with children, young people or families for any reason

Common values of those working with CYP and families in Scotland include;

- **Putting the child at the centre**: children and young people should **have their views listened to and they should be involved in decisions**

- **Supporting informed choice**: supporting children, young people and families in **understanding** what help is possible and what their choices may be

RCSLT argue that to deliver the objectives of “Common Core Skills” every member of the CYP workforce needs quality assured training in

- optimising the speech, language and communication (SLC) development of all CYP.

- identifying SLC needs in children and parents

- responding effectively at least at a basic and up to an advanced level to the SLC needs of CYP and parents

9. **50% of CYP from deprived communities have SLC difficulties and they are the most common difficulty experienced by CYP**

- Communication difficulties are the most common difficulties children have.

- 6% of the total population of children have SLC difficulties equal to 2 children per classroom.

- Over 50% of children from deprived communities enter school with SLC delay or disorder.

10. **Children and young people in crisis today clearly indicate what we have been doing until now is not enough**

- At Polmont Young Offenders Institute 26% of young men have clinically significant communication impairment and 70% have difficulties with literacy and numeracy\(^{xx}\)

- A study of young unemployed men found that over 88% were described as presenting with language impairment, having some degree of difficulty with language\(^{xx}\).

- A study into young people not in education, employment or training (NEET) showed that 100% of the individuals who completed the speech and language therapy assessments presented with some degree of SLCN, of which 50% had severe difficulties i.e. language levels more than 2 years below their chronological age. Over half (54%) of the


\(^{xx}\) SPS statistics reported to Scottish Parliament in answer to PQ 2003
young people assessed had a severe communication disability. Only 21% had previously been referred for speech and language therapy\textsuperscript{\textit{xiii}}

- 38% of children referred to child psychiatric services met one or more criteria for previously identified language impairment while 41% met criterion for unsuspected language impairment. In total 63.6% of children referred had a language impairment\textsuperscript{\textit{xiii}}

11. Awareness and understanding of communication capacity, identifying difficulties, their impact etc. is varied at best but often low.

For example although the national guidelines on GIRFEC (June 2012) “My world triangle” includes “Being able to communicate” as important the further description of “communication” omits to mention comprehension / understanding capacity. Even it only refers to one half of communication, i.e. expressive communication capacity. Children are not able to express themselves meaningfully or with relevance without comprehension.

12. Recent mass surveys tell us parents and the children's workforce need help to ensure optimum development of communication capacity.

Learning from the English strategy “Better Communication Action Plan”\textsuperscript{\textit{xlv}}, reported by Communication Champion Jean Gross earlier in 2012 records both a high need and a high demand for information by parents about how they can support their child’s language.

In 2011, a survey of 3,000 parents commissioned by Gross found that 82% believed that more information on how children develop speech, language and communication would be helpful. The survey also exposed widespread lack of knowledge about children’s speech and language development. For example, only a quarter of parents knew that, on average babies, say their first words between 12 and 18 months.

A similar survey by the National Literacy Trust in 2011 found a fifth of parents-to-be believe it is only beneficial to communicate with their baby from the age of three months and one in 20 believes that communicating with their baby is only necessary when they are six months or older.

Gross concludes that ‘much remains to be done to help parents become as aware of when children should be talking as when they should be walking’. She suggests several good practice success factors including:

- Approaches which build capacity in the children’s workforce - sustained professional development that changes adults’ interactions with children and helps them provide communication-supportive environments
- Approaches for children, young people and adults which build on their strengths rather than focusing on their weaknesses

\textsuperscript{\textit{xxi}} Lanz, R. (2009). Speech and language therapy within the Milton Keynes Youth Offending Team: A four month pilot project
\textsuperscript{\textit{xiii}} Better Communication: An action plan to improve services for children and young people with speech, language and communication needs; Dept. of Health 2008; www.teachernet.gov.uk/publications Search using the ref: DCSF-01062-2008
13. At universal level there are large but un-quantified gaps in CYP workforce SLC development and support competences and no comprehensive plan to develop these.

It is widely recognised that skilled staff are essential to the development of the child’s language and communication\textsuperscript{xlvi}

SLTs services, working in both statutory and independent sectors (e.g. I CAN) deliver training to parents and colleagues to optimise all children’s communication capacity – as well as that of children at risk.

Training to develop these competences across Scotland and the CYP workforce varies widely.

The last review (2003) of services for CYP with SLCN expressed concern about the limited knowledge and confidence of staff to deal with SLC \textsuperscript{xlv} and called for more professional development opportunities\textsuperscript{xlvii}.

Scotland has no standards and collects no clear data on this competency within the CYP workforce – even although competences in this area are crucial to delivery of the Bill.

14. Targeted level SLC services (i.e. targeted at vulnerable groups) are non-existent, geographically patchy, under threat or short term.

SLTs across Scotland lead award winning initiatives targeting communication capacities of vulnerable CYP and parents. For example;

- The “Communication Help and Awareness Team” (CHAT) in Forth Valley has been effective in enhancing the language skills of pre-school children and has been shown to be more advantageous than nursery education alone\textsuperscript{xlviii}.

- The ‘Before Words’3 project in Moray, developed in response to health visitor requests for parent information, has produced accessible, illustrated parent information with captions at a reading age of nine covering ante-natal to word-joining stages. Materials emphasise the relationship between attachment and developing communication in children. The illustrations depict a range of family situations and focus on everyday tasks as opportunities to communicate. The project has two strands – universal distribution throughout Moray and targeted intervention with more vulnerable families. Experience shows that parents like the resources; identify with the illustrations; use them to

\textsuperscript{xxiv} A Scottish Executive review of Speech and Language Therapy, Occupational Therapy and Physiotherapy for children (2003)
\textsuperscript{xxv} A Scottish Executive review of Speech and Language Therapy, Occupational Therapy and Physiotherapy for children (2003)
\textsuperscript{xxvii} Forth Valley Health Board: Communication Help and Awareness Team CHAT (July 2007 – March 2008)
reassure and inform; and work with the advice. Professionals find them easy to access and use; use the resources as a talking point or programme structure; and appreciate them as part of information in training.

Both of these projects though and other SLT led projects focussed on the particular needs of older “at risk” groups (e.g. secondary school and looked after CYP) are generally short term or vulnerable to year by year funding cuts. CHAT funding has been stopped as of August 2013.

An SLT interpretation of the very successful Family Nurse Partnership approach identifies the crucial element of success as good person-centred communication between nurse and mother.

Getting communication right between service providers and parents clearly pays off.

RCSLT suggest that “getting communication right between service providers and parents” more universally (and with a skilled, targeted approach for disadvantaged parents) could achieve at least some of the benefits of the Family Nurse Partnership with a much wider population of parents and children, at a fraction of the cost.

A strategic drive behind SLC development could help establish sustained, best practice SLC targeted level services across Scotland. Making it a duty to apply quality Inclusive Communication standards throughout public services would help services, universally and at a targeted level, to “get the communication right” between service providers and more users more often.

15. Scotland is witnessing a diminishing pool of professional experts in SLC development – specifically qualified to develop and / or deliver universal, targeted and specialist level SLC services

The Allied Health Professions (AHP) Waiting Times Census in Scotland (2012) showed that in one week in February 2012, 95% of CYP referred wait 27 weeks to see a SLT and some up to 81 weeks

SLT capacity in Scotland has decreased by 2.4% since 2008

SLT services funding has been cut in the majority (6/9) of health boards and at least 50% (5/10) of local authorities (who responded to an FOI) since 2011.

These statistics mean Scotland is witnessing a diminishing pool of professional experts in SLC development at the same time as identifying SLC development as crucial to delivery of all the policies listed above.

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Findings from the AHP Waiting Times Census in Scotland: Patients seen for First AHP Treatment from Monday 6 February to Friday 10 February Publication date – 10 July 2012

Information Services Division (ISD) AHP Workforce Statistics 2011 at 30 September 2011 : Overall Trend 2008 to 2011

Data from FOI by Richard Simpson MSP office, November 2011
Reductions in SLC development and communication equality enhancing knowledge, skills, experience and expertise is wholly contrary to delivery of a Scotland for Children.

16. **Literacy difficulties can mask more fundamental speech, language and communication difficulties but don’t get the same strategic attention.**

Reading and writing difficulties are often the publicly observable symptoms of more fundamental, underlying speech, language and communication difficulties. Problems in these underlying key skills are not as easily observable or known about and don’t attract the same strategic attention – unlike the observable difficulties targeted by the Literacy Action Plan.

Competences in oral language are however vital to subsequent transition to literacy.

To learn the 3Rs individuals first need to have more basic speech, language and communication skills

Scotland needs a comprehensive strategy to enable parents – and services – across Scotland to effectively and efficiently deliver the best speech, language and communication outcomes for all CYP to maximise their reading, writing and numeracy potential.

17. **Inclusive Communication best practice is inconsistent across communication needs groups and communities across Scotland.**

Evidence shows in comparison with the general population people with communication support needs are more likely to experience negative communication within education, healthcare, criminal justice system and other public services and have difficulty accessing information required in order to utilise services.

The Scottish Government Equalities Unit has over the years sponsored and / or published several guidelines and practical toolkits to support implementation of inclusive communication good practice in Scotland.

Although these toolkits and guidelines are available they are by no means universally applied. Further there are no regulatory checks on the inclusion of communication disadvantaged groups or “communication inequality” in Scotland – unlike checks on inclusion of physically disadvantaged groups. Without strategic leadership and regulation implementation remains patchy and of widely varying quality.

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xiii For example: Scottish Government commissioned and / or published Principles of Inclusive Communication; “Talk for Scotland Toolkit”
The absence of universally available, quality, communication accessible information, advice and support services will impede delivery of the Bill’s objectives.

The Bill provides more impetus, if any were needed, to introduce statutory guidance on inclusive, communication accessible publicly produced information.

18. A strategic focus on speech, language and communication capacity makes a difference.

Parts of the UK have taken strategic action to optimise the SLC development of CYP, both universal to support all parents and targeted support for vulnerable parents.

The ‘Bercow Review’ (2008) set out 40 recommendations to improve services across five themes:

- **Communication is crucial** - a key life skill at the heart of every social interaction and vital to children’s successful development
- **Early identification and intervention is essential** to maximise each child’s chance of overcoming their communication need and succeeding
- **A continuum of services** designed around the family for children with communication support needs
- **Joint working** is critical to deliver services that provide effective support
- **The current system is characterised by high variability** and a lack of equity

The review led the UK Government to invest around £55 million over three years in “Better Communication: An Action Plan to Improve Services for Children and Young People with Speech, Language and Communication Needs”.


Reports from 30 “Pathfinder” projects are due to be published in October 2012.

Gross reported that, in two years, the “Better Communication Action Plan” led to;

- Increased awareness of the centrality of good communication skills to children’s learning, wellbeing and life chances. Activity has... provided practical support to those front-line workers and to parents.

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xxxii John Bercow MP (2008) led an independent review of services for CYP with SLC needs in England on behalf of the then Department for Children, Schools and Families.

xxxiv Better Communication: An action plan to improve services for children and young people with speech, language and communication needs; Dept. of Health 2008; www.teachernet.gov.uk/publications Search using the ref: DCSF-01062-2008

xxxv Two Years On: final report of the Communication Champion for children; Jean Gross, Communication Champion December 2011http://www.thecommunicationtrust.org.uk/media/9683/nwm_final_jean_gross_two_years_on_report.pdf
• Some measurable improvements in the percentage of five-year-olds achieving age appropriate levels in the ‘Language for Thinking’ early years foundation stage profile
• A reduction from 23% to 18% of parents who were concerned about their child’s SLC development reporting that they did not receive any help
• Increasing recognition of communication skills as a priority in local strategic planning leading several local areas to develop a community-wide strategy to promote improved communication skills for all children. For example the ‘Stoke Speaks Out’ early years campaign which has reduced the percentage of three to four-year-olds with language delay from 64% in 2004 to 39% in 2010.
• Some helpful policy developments at government level such as the joint work of the departments of education and health to establish communication and language as a prime area of children’s learning

19. Quality SLC Services – led by SLTs - save money

There is strong evidence\textsuperscript{lvii} to show the health and social care cost savings, quality of life, and productivity gains generated by SLT exceed their costs.

Quality universal, targeted and specialist SLT services can deliver an annual net benefit of at least £58 million to the Scottish economy. Every £1 invested in enhanced SLT for children with specific language impairment generates £6.40, derived from improved communication leading to improved educational achievement.

RCSLT Scotland Office
26 July 2013

\textsuperscript{lvii} Marsh, K., Bertranou, E., Suominen, H. and Venkatachalam, M. (2010). An economic evaluation of speech and language therapy. Matrix Evidence
RoSPA Scotland welcomes the opportunity to supply further information to the Education and Culture Committee in respect of the Children and Young People (Scotland) Bill especially to highlight its views on relevant issues that should be included.

2. The Scottish Government’s aspiration for Scotland to be the best place to grow up in is one which should receive the support of all Scotland’s residents – from the children themselves, to their parents and carers, practitioners and policy makers. This response specifically relates to the Bill’s aim to ‘ensure that children’s rights properly influence the design and delivery of policies and services.......’.

3. The Bill is about taking forward the ‘Getting it right for every child’ (GIRFEC) principles and this policy claims it has the United Nations Convention on the Right of the Child (UNCRC) at its core. However, although GIRFEC’s “values and principles stress the promotion of children’s well-being by keeping them safe...” the reference in GIRFEC to Article 24 (which states at Section 2 (e): To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents) appears to exclude the last point from the indicators or relate to any relevant policy links. This does not support the mention in the Scottish Government’s response to the UN Committee’s 2008 concluding observations which declare at Point 87: “accident prevention needs to be run alongside health promotion especially in areas of deprivation in efforts to reduce health inequalities.”

4. It is a missed opportunity that the Bill does not have the same emphasis on preventative spend and early intervention as that included in the Christie Commission Report (the future delivery of public services). For example the Report lists, as a key object of reform, “All public services need to reduce demand in the system through prevention and early intervention to tackle the root causes of problems and negative outcomes” and one of the Report’s four key objectives is “prioritising prevention, reducing inequalities and promoting equality”. The Bill provides the ideal opportunity for the inclusion of accident prevention. Indeed, Professor Yvonne Doyle, director of Public Health, NHS South of England) states in her foreword to RoSPA’s Big Book of Accident Prevention that “Accidental injury prevention is low cost and high impact. It is easy to deliver (there is a well-worn pathway of best practice) and it is broadly welcomed by the people it helps. Because it affects the young so much, our new research shows that this is also the principal cause of premature, preventable mortality (measured in Preventable Years of Life Lost or PrYLL) for most of a person’s life. We believe it should be the No. 1 priority for public health”.

Royal Society for the Prevention of Accidents Scotland
5. Investing in prevention will reduce both dependency on and cost to services as a child grows up. This is well documented in current Scottish Government thinking. RoSPA in Scotland can demonstrate examples of relatively low-cost initiatives that, along with saving lives and preventing serious injuries, will save the cost of public services in the long run. For example, a recent campaign to distribute blind cord cleats (to wind loose blind cords around to prevent the strangulation of young children) cost £8,000 to reach 8,000 families - £1 per family. The current liquitabs campaign being piloted in NHS Greater Glasgow and Clyde will see all families with newborns in a one year period being supplied with advice and cupboard catches (to ensure safe storage of cleaning materials) at a cost of less than £1 per child. These amounts compare with the Transport Research Laboratory research that shows the average cost of a non-fatal home accident is £16,900 per victim and the cost of a fatality is estimated at £1.61 million.

6. RoSPA Scotland believes that investing in parents’ ability to prevent their children from suffering accidental injury is paramount. They inevitably have the key role in the wellbeing of their child. The emphasis on providing support to parents to allow them to develop skills to take responsibility for the safety of their children is missing from the Bill.

7. With reference to the role of Scotland’s Commissioner for Children and Young and Young People – The European Child Safety Alliance has indicated the extension of the rights of the Commissioner to include the ability to undertake investigations on behalf of individual children as an indicator of how ‘safe’ Scotland is. RoSPA Scotland would welcome this extension as it will bring Scotland into line with the other countries of the UK and with Article 12 of UNCRC outlining the right of children to be heard.

8. RoSPA Scotland supports the European Child Safety Alliance’s recommendation contained within the latest edition of Scotland’s Child Safety Report Card that “Scotland’s national government can do much to support a culture of good practice by not only integrating evidence-based good practice strategies into national public health programmes but by also ensuring that child safety is addressed in all policies”. The Bill should provide the opportunity to ensure this happens.

9. The Report Card for Child Safety in Scotland goes on to state “In addition, in these time of reduced resources it is key to look for solutions that provide co-benefits to other issues in addition to injury prevention. For example, strengthening road safety infrastructure to increase the safety of child pedestrians and cyclists can encourage increased physical activity, which in turn can help address child obesity. Strategic investments in child and adolescent injury prevention will ensure a co-ordinated and evidence-based approach to protecting Scotland’s most precious resource - their children and adolescents”. RoSPA Scotland agrees and would like to have seen the Bill used as a strategic investment in this way.

10. RoSPA Scotland is indebted to the Scottish Government for the funding it has received to enable its home, road and water safety prevention activities. RoSPA Scotland is positioned at the heart of Scotland’s health safety and accident
prevention community and deploy our limited resources towards raising awareness of the issues and the positive benefits of an injury prevention agenda. Good partnership working does exist in specific areas around the country but a Bill that emphasises the fundamental importance of accident prevention and associated preventative spend is crucial to raising the profile of this issue to ensure it is given sufficient priority at local level.

11. The latest figures available show that unintentional injuries accounted for approximately 1 in 7 emergency hospital admissions for children in Scotland in 2011/2012. This amounted to almost 8,000 children under the age of 15. There were 16 children who died of unintentional injuries in the year 2011. The Bill should reflect the enormity of the consequences of this, particularly referring to the essential role of parents and carers in taking responsibility to reduce these numbers.

RoSPA Scotland
24 July 2013
Education and Culture Committee

Children and Young People (Scotland) Bill

William Ruggles

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
INTRODUCTION

1. Save the Children welcomes the opportunity to submit written evidence to the Education and Culture Committee on the Children and Young People (Scotland) Bill. Our evidence concentrates on the children’s rights duties in part 1, the extension of the powers of the Children’s Commissioner in part 2 and the early learning and childcare duties in part 6 of the Bill. These are the areas of the Bill that most directly relate to Save the Children’s work in Scotland. We are committed to working with the Scottish Government, the Committee and other stakeholders to realise the policy ambitions set out in the Bill. We hope that our evidence will assist the Committee in scrutinising the Bill and would be happy to provide further written and/or oral evidence on any of the issues raised.

2. Save the Children welcomes the overarching aim of the Bill to take forward legislative reforms that support the Scottish Government’s aims of ‘making Scotland the best place in the world to grow up’. We agree that the Bill offers a key opportunity to take strides towards these aims. We strongly support the ambitious policy objectives that underpin the Bill. However we are disappointed that the Bill does not go further in many areas to deliver on these laudable aims. Our evidence puts forward a number of suggestions for how provisions could be strengthened to deliver on the aims of the Bill more effectively. If the legislation is to be successful, it must deliver positive outcomes for children and their families at the core.

CHILDREN’S RIGHTS (PARTS 1-3)

3. Save the Children welcomes Scottish Government’s intention to "make rights real" for children and commend the leadership Scottish Government has demonstrated in seeking to take steps to achieve this through the Bill. The reality is that many children in Scotland remain unable to realise the full extent of their rights. We believe that for Scottish Government to improve children’s wellbeing and outcomes, children’s rights must consistently inform decision-making processes at every level. We agree with Scottish Government that, ‘legislative steps are essential’ if the United Nations Convention on the Rights of the Child (UNCRC) is to continue to influence legislation, policy and practice in Scotland¹.

The implementation of children’s rights in Scotland currently follows a gradual ‘stage by stage’ approach. This has led to inconsistencies in the realisation of children’s rights. This approach has been highlighted as problematic and routinely criticised by the UN Committee on the Rights of the Child, NGOs and other bodies. We believe that to achieve the policy ambitions of the Bill a shift is needed to a more consistent and systematic approach and that legislative steps could deliver this.

¹ Para. 43 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
4. **A comprehensive legislative framework would ensure children's rights influence the planning, implementation and monitoring of legislation, policy and practice that affects children and young people.** Save the Children believes that such duties should serve to embed the provisions and principles of the UNCRC in Scots law, ensure consistent and systematic processes for embedding children’s rights in decision making, increase transparency and accountability and provide an avenue of support for children when their rights are violated (including legal channels where necessary) and promote the culture change necessary for children to enjoy their rights.

5. **To deliver this framework and the policy intentions, the Bill must place clear and robust duties on both government Ministers and public bodies to routinely consider and apply children’s rights in exercising all their functions.** Save the Children welcomes the priority that the measures in parts 1 and 2 of the Bill give to children’s rights and Scottish Government’s intention to ‘ensure children’s rights properly influence the design and delivery of policy and services’ across all parts of government and the public sector. When taken together we believe many of the measures set out in Parts 1 and 2 of the Bill offer a step forward in Scotland’s implementation of the UNCRC. However, we do not believe they go far enough to deliver the framework that needs to be in place to meet the policy objectives. **We are disappointed that the opportunity has not been taken in the Bill – following broad support from civil society – to place stronger duties on Scottish Ministers or public authorities to systematically consider, promote and respect children’s rights, and that the Bill will not create genuinely enforceable rights for children in Scotland.**

6. **Save the Children is clear that the most effective way to meet the child rights objectives of the Bill is to incorporate the UNCRC into Scots law.** There are different ways in which this can be achieved. However, we believe that full and direct incorporation of the UNCRC (whatever form that takes) would establish the comprehensive legislative child rights framework that is needed in Scotland. International evidence suggests that incorporation provides the strongest context for implementation². For further information on the benefits of incorporation we refer the Committee to Together’s submission to the call for evidence.

7. We are concerned that Scottish Government has so far overestimated the ‘emphasis on courts and on legal processes’ that incorporation might present. It was suggested by officials presenting oral evidence to the Committee at Stage 1 that this underpins its decision not to undertake incorporation at this point in time³. However, examples from States that have incorporated the UNCRC into their domestic legal systems suggests that whilst full and direct incorporation enhances accountability to children through providing opportunities for strategic litigation, the main value of the measure is its ability to raise awareness of children’s rights in Government and civil society; ‘the strong message it convey[s]...

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³ Education and Culture Committee Official Report Tuesday 25th June 2013 Session 4 (2648).
about the status of children and children’s rights, and the knock-on effects for implementation of children’s rights principles into domestic law and policy⁴. This indicates that – as well as providing a strong legislative platform - the process of incorporation itself could initiate the ‘shift’ in ‘culture in how children and young people are helped to achieve their potential’⁵ that the Scottish Government intends the Bill to facilitate.

8. Committing to full incorporation would further enable Scottish Government to demonstrate leadership within the UK in progressing children’s rights. The UN Committee on the Rights of the Child has twice recommended to the UK Government it take measures to bring domestic legislation in line with the UNCRC⁶. In the absence of commitment to incorporation we urge the Committee to seek a commitment from Scottish Government to set out its long term vision for the incorporation and implementation of the UNCRC’s principles and provisions in Scottish legislation and policy. In addition, we urge the Committee to consider the following issues to ensure the provisions in the Bill are robust enough to progress the realisation of children’s rights in Scotland and make a practical difference to children’s lives.

Part 1 – children’s rights

9. Save the Children urges the Committee to consider strengthening the ‘consideration’ duty on Ministers. Save the Children has serious questions about whether the proposed duty on Ministers ‘to keep under consideration whether there are any steps that might be taken to secure further effect of the UNCRC, and to take those steps only if they consider it appropriate to do so’, is sufficient to deliver progress and achieve the desired policy aims. The wording of the duty does not suggest a comprehensive approach that would ensure children’s rights are considered systematically across Ministerial decision making. We are concerned that this duty will lead to the continuation of the selective approach to the application of children’s rights in which certain rights, settings and children are prioritised to the exclusion of others. Further, the duty appears to represent a significant step back from Scottish Government’s initial commitment in 2011 to give the UNCRC a statutory basis in Scots law through a legal duty on Ministers to have ‘due regard’ to the UNCRC in all of their decisions⁷. There are alternatives that would provide a stronger duty on Ministers. Save the Children urges the Committee to seek clarity from Ministers on why they believe the ‘consideration’ duty is the most effective duty in achieving their policy objectives.

10. We urge the Committee to scrutinise the detail of the duty with respect to its practical application by Scottish Ministers. We are concerned that the duty does not place Ministers under any obligation to demonstrate how they have fulfilled the duty. Therefore we seek clarity on how it will achieve the increased

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⁵ Para. 4 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
accountability and transparency in reviewing the government’s approach to implementing the UNCRC that is desired. For example, what process will Ministers follow to assess if they 'consider it appropriate' to take steps to further the UNCRC? The UN Committee on the Rights of the Child, which monitors implementation of the UNCRC globally, considers Child Rights Impact Assessments (CRIA) as an essential part of the policy development process. We believe that CRIA would provide Ministers with a helpful mechanism to support a stronger duty. We believe that routine assessment of the child rights implications of decisions Ministers undertake would provide Ministers with a more rigorous process to consider and comply with the UNCRC. **We recommend that the Committee explore a duty on Ministers to undertake a CRIA when undertaking all legal and policy related developments.**

11. **We support an accompanying duty on Ministers to report to the Scottish Parliament steps they have taken to secure further effect to the UNCRC in principle.** However, we are concerned that the reporting duty does not place Ministers under any obligation to set out why they have decided not to take steps that may have been identified to further implement the UNCRC. We recommend that the reporting duty includes this obligation on Ministers.

12. **Save the Children supports the proposed duty on Scottish Ministers to promote public awareness and understanding of the rights of children.** We support this provision as an important means by which Scottish Government can instigate the culture ‘shift’ necessary to progress children’s rights in Scotland. Save the Children’s research has found that there is very limited knowledge of the UNCRC in Scotland, amongst children, parents and the general public. In addition, our research found that despite some training for professionals this does not always translate into practice\(^8\). The value of the UNCRC as a framework to guide policy and practice depends on securing public awareness of its principles and provisions and informed understanding of the ways in which they might be effectively applied or – for children and young people how they might be claimed.

13. **To ensure this duty is effective at achieving this outcome we urge Scottish Government to ensure that it is adequately resourced.** We seek further clarification from Scottish Government on how this duty would be implemented to better understand what the duty aims to achieve. If delivered appropriately it could effectively incorporate Article 42 of the UNCRC and address a 2008 recommendation to Scottish Government from the UN Committee on the Rights of the Child\(^9\). We believe that this duty will only be discharged effectively if supported by a comprehensive and robust, long term, strategy to promote knowledge and understanding of children’s rights. As recommended by the UN Committee on the Rights of the Children this should include appropriate training.

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\(^8\) Save the Children (2011). *Governance Fit for Children.*  
for all professionals working with or for children, Ministers’ and civil servants to ensure that they have the capacity to exercise this function to its full potential.

14. In principle, Save the Children welcomes the duty on public bodies to report on progress they have made to secure better or further effect to the UNCRC. Many of the decision-making processes that affect children on a day to day basis take place at a local level. We are therefore encouraged that they will be expected to evidence efforts to progress children’s rights in discharging their duties. We recognise this as a key part of Scottish Government’s approach to embedding the UNCRC across the wider policy and practice contexts that impact on children’s lives in Scotland. However, we are concerned that the Bill does not require public bodies to take further steps to implement the UNCRC. We are concerned that a duty to report on its own will not drive the progress required at local level. We believe that the duty to report would be strengthened by an additional duty on public bodies (whose functions affect children and families) to advance children’s rights. We recommend that the Committee consider a duty on public bodies to further implement the UNCRC.

15. We recommend that an additional duty be included in Part 1 of the Bill to compel Ministers to produce - and lay before the Scottish Parliament for scrutiny - an implementation scheme for new duties placed on them by the Bill. This would ensure that the duties on Ministers and public bodies are discharged in accordance with Scottish Government’s intentions. The Rights of Children and Young Persons (Wales) Measure compels Welsh Ministers to set out the plans they have put in place to deliver their child rights duties. The development of the plan has to include consultation with key stakeholders including children and young people and the Children’s Commissioner. The plan has to be approved by the Welsh Assembly. We believe that this approach would assist in driving progress and would support Scottish Government to deliver on the objectives in the Bill.

Part 2 – Scotland’s Commissioner for Children and Young People

16. Save the Children supports the proposal for an additional mechanism through which children can raise and resolve concerns where they feel their rights, views and interests have not been properly taken into account. The UN Committee on the Rights of the Child advises state parties to establish mechanisms that enable the investigation of individual cases brought by children and young people or on their behalf. We are clear that the value of the extension of the Children’s Commissioners’ powers is its potential to create a mode of redress for violations of children’s rights that is both ‘child-friendly’ and robust. This provision can offer a safety net for all children and unprecedented levels of accountability for children’s rights in Scotland. We understand this provision as an additional mechanism that will complement and sit alongside

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10 UN Committee on the Rights of the Child (2008), Concluding observations: United Kingdom of Great Britain and Northern Ireland, paragraph 21
11 UN Committee on the Rights of the Child (2002), General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, para 13, 19 (a).
public bodies existing complaints procedures. We believe this duty should be exercised as a 'last resort’ to support children where other systems of redress have failed to secure appropriate recourse to justice. The UN Committee is clear that this mechanism should be provided for children in addition to access to the courts opposed to an alternative. We recommend that this duty be adequately resourced to ensure that it can fulfil its potential.

Part 3 – Children’s Services Planning

17. Save the Children welcomes duties on public bodies to prepare, review, implement and report on children’s services. However, if Scottish Government is to meet its policy aim for children’s rights to ‘properly influence the design and delivery of policies and services’ there needs to be an overarching child rights framework that embeds the UNCRC into the planning, implementation and monitoring of children’s services. At present there is a disconnection between children’s rights provisions in part 1 of the bill and provisions in Part 3 relating to children’s wellbeing. We believe that the inclusion of a rights framework in children’s services planning processes would ensure that rights are comprehensively influencing decision-making that directly affects children. It would also assist in ensuring that children’s services are provided in such a way as to safeguard and support both children’s rights requirements and the wellbeing of children. We believe that there are a number of ways that this could be achieved through the duties in part 3 of the Bill. We recommend that the Bill embeds a child rights framework within children’s service planning.

EARLY LEARNING AND CHILDCARE (PART 6)

18. Save the Children welcomes Scottish Government’s policy aim to increase the amount and flexibility of funded early learning and childcare. We support the aims of this part of the Bill because of the potential for high quality early learning and childcare services to deliver a number of positive outcomes for children and their families. This includes improving developmental, educational and other critical outcomes for children - particularly children living in poverty; supporting parents to access work and provide economic security for their families; supporting parents with the costs of early learning and childcare and supporting broader efforts to tackle poverty. In addition, we support the provisions as a further step towards delivering a comprehensive and sustainable system of high quality childcare in Scotland that is affordable and available to all. We acknowledge that Scottish Government sees the provisions in the Bill as ‘setting the stage’ for more comprehensive change.

19. However, we are disappointed that provisions and ambitions in the Bill relating to early learning and childcare are not more ambitious. Whilst welcome, the provisions in the Bill only go so far. We recognise that there are challenging resource implications, yet we are disappointed that the Bill – given the well documented issues in relation to childcare - does not go further to drive the fundamental transformation in Scotland’s childcare infrastructure that is

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12 Committee on the Rights of the Child (2005), General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, para 24f.
required to support children and families’. We acknowledge Scottish Government’s intention to extend existing universal provision for three and four year olds as a first step and that this has significant resource implications. However, it is of concern that the Bill fails to drive reform in this area for the vast majority of children in Scotland.

20. The extension of early learning and childcare should not detract from the need to provide support to families with very young children and children of school age. Of particular concern, the provisions fall short of supporting the vast majority of children under three. This is despite compelling evidence of the first three years in a child’s life being the most important to their development and of the role early learning and childcare can play in improving children’s outcomes and tackling disadvantage. Further, the Bill fails to address support for out of school care, despite the role that these services can play in supporting families through improving outcomes for children and enabling parents to take-up opportunities to work – the same arguments and benefits used to justify the provisions in the Bill to young children. Parents are particularly concerned about the lack of affordable and flexible provision of out of school care at local level. Reports also suggest shortages in relation to out of school care in local areas.

21. We urge the Scottish Government to set out its long term vision and a timetable for delivering a universal and comprehensive system of early learning and childcare, including out of school care, that improves outcomes for children, meets the needs of families and forms part of Scotland’s infrastructure. A priority for legislative and policy consideration must be how best to support families living on the lowest incomes to access affordable, flexible childcare that benefits children and helps to move families out of poverty. In addition, we urge the Scottish Government to commit to reporting to Parliament on progress on a regular basis.

22. Save the Children believes that consideration should be given to establish a statutory right to childcare for all, with a clear timetable for how and when this right will be realised over the next decade. This was a key recommendation of the Scottish Parliament’s Equal Opportunities Committee’s recent report into women and work. We believe this could be delivered incrementally. In line with Scottish Government’s policy objectives to prioritise children from disadvantaged backgrounds, a first step could be to consider a statutory entitlement to out of school care for children living in poverty. We urge the Committee to consider this issue.

23. Save the Children welcomes the intention to define in statute early learning and childcare services. We support the explanation in the policy memorandum that the term emphasises the ‘holistic and seamless provision of nurture, care

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13 Feinstein, L. Centrepiece (2003) - Very Early, Centre for Economic Performance
and development of social, emotional, physical and cognitive skills, abilities and wellbeing’ and the Scottish Government’s approach to the ‘learning journey’. However, we believe that further clarification is required to ensure the purpose of these services is well understood and quality is maintained. The learning and developmental aspects of this provision are essential to improving outcomes for children. These aspects and the quality of services should not be compromised in extending the hours and flexibility of services. The development and wellbeing of young children must be the primary priority. Whilst guidance may provide some clarity, we believe that this approach could be strengthened through the Bill. **Save the Children recommends that consideration is given to clarifying the aims of such services in the Bill.**

24. **Save the Children welcomes inclusion in the Bill of provision to secure a mandatory amount of early learning and childcare and extending this to 600 hours per annum** for three and four year olds and some ‘vulnerable’ two year olds. As outlined above we support this as a further step forward and as part of longer term strategy. Although incremental this will help families to access quality early learning and care services and help to reduce the cost of childcare for young children. **We urge the Committee to seek clarification that the costs of the increase in hours and flexibility of funded early learning and childcare will be met in full by the Scottish Government.**

25. **We strongly recommend that the Bill extends the entitlement to a mandatory amount of funded early learning and childcare to all two year olds living in poverty.** In the long term we would like to see universal entitlement for all 2 year olds to early learning and childcare. However, we recognise the resource implications and support an incremental approach to achieving this aim. Further, we believe that the evidence is clear and that the benefits of this provision would far outweigh the costs in the long term. **We urge the Committee to recommend that Scottish Government amends the Bill to deliver on this recommendation.**

26. The policy objective is to focus on those from disadvantaged backgrounds in the first instance and there is a strong case to ensure that children growing up in poverty are included in this group. There is compelling evidence that highlights that the provision of high quality early year’s education and care after age two has a significant impact on a child’s learning and development.\(^\text{16}\) Further, the evidence suggests that the benefits of early learning and childcare are particularly profound for children living in poverty. The EPPSE study has consistently shown that early year’s provision can “…alleviate the effects of social disadvantage and can provide children with a better start to school.”

27. **We welcome the intention to set a minimum framework for the method of delivery and increase flexibility of early learning and childcare to meet parents’ needs.** Save the Children welcomes Scottish Government making increased flexibility of nursery provision a key aim of the legislation. There is strong evidence from parents that the way that nursery provision is currently

\(^{16}\) See Save the Children’s briefing on childcare for the Scottish Parliament debate on 8.05.13
provided – generally 2.5 hours per day – is not flexible enough to meet their needs to enable them to balance employment or training with caring for their children\textsuperscript{17}. This lack of flexibility in the current delivery of nursery education presents significant challenges for parents, particularly those living on low incomes. Increased flexibility needs to go hand in hand with increased hours and quality provision.

28. \textbf{However, we question whether the proposed duty on education authorities to ‘have regard’ to increasing the degree of choice in how these services are accessed is sufficient to meet the policy intentions in the Bill.} There will be no compulsion on local authorities to increase the flexibility of the free nursery hours they provide. Whilst we acknowledge the need for local flexibility, there is a risk of continued local inconsistencies and more “postcode lotteries” for childcare. We urge the Committee to seek further clarity on how much flexibility will be built into delivering services through the Bill. The Bill must ensure that existing barriers are removed and services are delivered in a way that meets parents and families’ needs. If the additional investment does not achieve this it will be a missed opportunity to improve the way families are supported. \textit{Save the Children urges the Committee to seek further clarity on how flexibility will be delivered in local services. Further, we believe consideration should be given to the need for guidance to be placed on a statutory footing to deliver the flexibility required.}

29. \textit{Save the Children welcomes the duty to consult with parents about early learning and childcare needs and to have regard to these views to prepare and publish plans to make early learning and childcare available.} We support consultation with parents as a key part of preparing plans in local areas. We would like to see further clarity on what is meant by ‘representative of parents…in the area’ and how consultation with parents will be undertaken. This must be done in a way that enables the views of all parents to take part, particularly the most disadvantaged. We are concerned that the duty in the Bill to have ‘regard to’ parents’ views in developing local plans is not robust enough to ensure that parents views \textit{inform} local planning and delivery. The duty suggests that parents’ views could be overlooked in favour of other considerations, such as budgetary decisions.

30. \textbf{In addition, Save the Children believes that the duties to consult and plan should be extended beyond the early years.} This would assist in providing information on the demand for out of school care services at local level and whether these are meeting the needs of families. We believe that this would assist in developing longer term strategies for delivering childcare at local level. In addition, it could also highlight key issues that need to be addressed at national level. Evidence suggests that a significant number of local authorities in Scotland do not know if they have sufficient childcare. Those that do have knowledge about the supply of childcare in their local area, report shortages in relation to childcare for older children and for parents who work full time.\textsuperscript{18}

\textsuperscript{17} Save the Children’s Childcare Conversations 2012

\textsuperscript{18} Children in Scotland and Daycare Trust (2013). \textit{The 2013 Scottish Childcare Report.}
Extending the duty to include childcare for children of all ages would help address this issue. Consideration should also be given to extending the duty to consult and ‘have regard’ to children’s views in the planning and design of local childcare services. Whilst consultation with families is key, guidance must ensure that the development of local plans is also based on other necessary information, for example trends in demographic data. Save the Children urges the Committee to seek clarification from Scottish Government on what additional information is required to produce robust plans at local level.

Save the Children
26 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  

Diane Schachterle  

1. I am writing as a concerned citizen of another free nation to express my strong opposition to and concern about Part IV of the Children and Young People Bill. By transferring the rights and authority of parents to government monitors, this bill permits an unprecedented invasion of every family and undermines the presumption of innocence by presuming parents will become guilty of breaking the law at some unspecified future date. It paints all families with the same brush, whether deserving or not.  

2. The philosophy and motivation behind this bill appears at odds with the basic philosophy behind all free societies: e.g. a limited government that intervenes only when necessary and as provided for by strict standards, that free people are competent to raise their own families without government interference, that the rights of families and the relationship between parents and children must be respected and protected by the laws of a free society, and that information about private citizens (i.e., children) should be protected and shared only when parents or legal guardians give written consent.  

3. This proposed legislation implies that parents cannot be trusted to raise their children; rather, only government bureaucrats can. However, thousands of years of history declare that parents are the ones who know their children best and who act in the best interest of those children. I understand that certain policies relating to the "named person" provision of this bill have already been implemented, resulting in the harassment of families, interference in family matters without legitimate reasons, and officials misleading parents about their choices. If this bill is passed, such conflicts will only increase, and parents' rights will continue to erode. In fact, you can expect many families to actively avoid contact with services.  

4. Please protect the fundamental right of Scottish parents to direct the care, upbringing, and education of their children by rejecting the Children and Young People Bill. At the very least, please reject all measures contained therein that oppose the rights of parents protected in international law. For example, the "named person" provision should be an opt in / opt out service rather than mandatory; personal data should never be gathered or shared without express consent (a violation of the UK Data Protection Act and Article 8 of the ECHR) based on a child protection, not a "wellbeing," concern; and parents need an available legal redress against any professional who acts wrongly regarding a child.  

5. Thank you for taking the time to consider my concerns. I pray you can see their validity and act accordingly.  

Diane Schachterle  
USA  
25 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  
Schoolhouse Home Education Association

Introduction

1. The Scottish Government has brought forward legislative proposals in its Children and Young People (Scotland) Bill, which include legislative underpinning for its policy of Getting It Right For Every Child (“GIRFEC”). This proposal has given rise to a call for written evidence. This response is made in response to that invitation.

2. I am instructed in this matter by Schoolhouse Home Education Association. I am a solicitor practising in England and a social worker registered in England. I qualified as a social worker 23 years ago, and as a solicitor 13 years ago. I have a niche practice, specialising in the law relating to the practice of social work. I am also a visiting lecturer at a number of universities, teaching and examining in social work law.

3. I am the solicitor who brought the case of AB and CD versus Haringey Council on behalf of the successful Claimants. The Claimants were granted both Data Protection Act remedies and Human Rights Act damages when Social Services intervened on the basis of a referral which did not meet the threshold of “significant harm”. In relation to data protection, the Court held that there was no legal basis for the information sharing. The Human Rights Act damages were awarded in respect of a breach of the right to respect for private and family life – Article 8. I am aware that Schoolhouse HEA have instructed me in the light of my role in that case, and will make appropriate reference to it.

4. I am invited specifically to answer the question whether the legislative proposals – and in particular those in relation to a “named person” for every child – are compatible with European law. The short answer is that they are not, and I set out why below. Since I also practise as a social worker, and as a visiting lecturer, I also comment upon the compatibility of the proposals with professional obligations, and upon their utility.

European Law

5. There are two strands of over-arching law emanating from Europe. This law derives from European Treaty and Convention obligations, and UK legislatures

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1 AB & Anor, R (on the application of) v The London Borough of Haringey [2013] EWHC 416 (Admin) (13 March 2013)
2 Set out in the Order, which can be made available on request. See also news coverage e.g. from BBC http://www.bbc.co.uk/news/uk-england-london-21783900, Guardian http://www.guardian.co.uk/society/2013/mar/14/couple-accused-of-child-abuse-win-damages or Telegraph http://www.telegraph.co.uk/news/uknews/law-and-order/9977557/Haringey-council-tried-to-crush-our-family.html
must act compatibly with it. The first strand is the law of European Union, or EU law. The second strand is human rights law. Both are relevant.

Data Protection – Consent and Necessity

6. The Data Protection Act is an Act that was passed to give effect to the UK’s obligations under EU law. That is an important point because it means that it is simply not open to UK legislatures to change it if they do not like it.

7. Although data protection laws are complex, the underpinning principles are in fact very simple indeed. The Act sets out a complete list of the circumstances in which the processing of data – which includes information sharing – is permitted. Ultimately, information sharing is permitted in two situations:

- with consent; and
- where it is necessary.

8. To be clear, while there are several alternatives to consent, every one of the alternatives has a requirement of necessity. This should be neither surprising nor objectionable: you can share information when you need to, and whether or not you need to, you can share information with permission. But the Data Protection Act simply does not allow – anywhere – for information to be shared without consent when it is not necessary to do so.

9. It follows that any legislative provision which purports to allow information sharing which is neither consensual nor necessary, will fall foul of the Data Protection Act and the EU directive from which the Data Protection Act derives.

10. Of course, the concerns about GIRFEC are that it does precisely that. There is no objection to the involvement of a named person where they are involved with consent. There is no objection to the involvement of a named person where their involvement is necessary. The objection is to the automatic involvement without consent or necessity.

11. It might be argued that information-sharing becomes “necessary” either to comply with the legislation once enacted in Scotland, or more generally to safeguard children. To address this, I think it is helpful to consider the Haringey case. In that case, the local authority received a safeguarding concern and made routine enquiries of other agencies without seeking consent. In its Defence, it sought to argue that it was acting under an enactment, believing that the child protection threshold of “significant harm” was met.

12. This argument was rejected. The Court did not accept that the child was at risk of significant harm. But in any case, and separately, it did not accept that it was

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3 The relevant court is the European Court of Justice
4 This derives not from the EU, but from our membership of the Council of Europe, and our obligations under the European Convention on Human Rights. The relevant court is the European Court of Human Rights.
5 Specifically Directive 95/46/EC
6 Schedule 2 ‘Conditions relevant for purposes of the first principle: processing of any personal data’
necessary to share information without consent. Once again, this conclusion seems both unsurprising and unobjectionable. Since the alternatives to consent require that information sharing is both lawful and necessary, it is hardly surprising that pointing to a piece of legislation which allows for information sharing is not enough. **Information sharing is not necessary because it is lawful; it is lawful when it is necessary.**

13. My attention has been drawn, in this regard, to statements by the Assistant Information Commissioner for Scotland, Ken Macdonald. He is quoted as saying\(^7\),

> “Where consent isn’t appropriate – for example, where an assessment under the SHANARRI principles raises concerns, then the Act provides conditions to allow sharing of this information… While it is important to protect the rights of individuals, it is equally important to ensure that children are protected from risk of harm.”

14. I make four observations in response to that statement, a statement which strikes me as seriously misconceived in respect of the fundamental principles the Commissioner is supposed to protect.

15. **Firstly**, I draw attention to these words of the Information Commissioner himself, commenting on similar issues in relation to the Every Child Matters agenda in England\(^8\):

> “The Every Child Matters agenda extends social care from protection to welfare. Although there are overlaps, this shift means that substantially more information will be collected and shared about substantially more children for different reasons. These different purposes raise different considerations from a data protection perspective. It is important that approaches used in the context of protection are not assumed to be transferable to the welfare context.”

16. The Information Commissioner (as distinct from the Assistant Commissioner in Scotland) here distinguishes, correctly, between information shared for the purposes of protection and that shared for the purposes of welfare. The Assistant Commissioner in Scotland, by suggesting that SHANARRI concerns may be shared without consent, has blurred the important distinction.

17. **Secondly**, Assistant Commissioner in Scotland explicitly says here that “consent isn’t appropriate”. His guidance seems to suggest this is his reason\(^9\):

> “the issue of obtaining consent can be difficult and it should only be sought when the individual has real choice over the matter”

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\(^7\) GIRFEC Bulletin Issue 1: Information sharing
\(^8\) Protecting Children’s Personal Information: ICO Issues Paper, Information Commissioner’s Office
\(^9\) Information Sharing Between Services in Respect of Children and Young People – Information Commissioner’s Office, Scotland
18. This is an extraordinary statement in terms of its implications for professional practice. It purports to exclude attempts to work with families co-operatively in any case where that attempt may fail. It is hardly surprising if such an approach results in deep suspicion and hostility between families and named persons. Professionals generally seek to work with consent in all but the most limited circumstances, and do so because it is more likely to be effective.

19. Once again, the argument is reminiscent of issues that were explored in the Haringey case. The relevant test for seeking consent there was not whether the individual has real choice over the matter but whether seeking consent would result in “increased risk of suffering significant harm”\(^{10}\). To put it another way, even if a child is considered at risk of significant harm, consent should be sought unless the process of doing so would result in additional harm. The approach of the Assistant Commissioner in Scotland to trying to work co-operatively with families could not be more at odds with this threshold test for consent!

20. **Thirdly**, the use of the term “harm” in the Assistant Commissioner’s statement is curious, and reflects a blurring of hitherto clear legal concepts. The threshold for compulsory state intervention has hitherto been “significant harm”, a threshold test higher than “harm”, and clearly distinguishable from “well-being concerns”. But the Assistant Information Commissioner here suggests some link between well-being concerns and harm and that that is enough: “a risk to wellbeing can be a strong indication that a child or young person could be at risk of harm”\(^{11}\). That is, frankly, a very casual approach to statutory thresholds, suggesting that an associative link between two measures may suffice for a legal threshold. It shouldn’t.

21. **Finally**, I observe that the Assistant Commissioner mentions alternatives to consent “The Act provides several conditions/justifications for processing, only the first of which rely on consent”\(^{12}\). No mention is made, as I have pointed out, that every alternative to consent includes the word “necessary”; by creating the impression that consent is a minority approach to information sharing, it seems to me the Assistant Commissioner fails to promote the spirit of the Act.

22. To be very clear: whenever there are significant child protection concerns, there are no legal problems. No-one can reasonably object to protecting children from significant harm. Doing so is lawful and necessary. It is the compulsory intervention to impose contested well-being outcomes that will fall foul of data protection principles and the EU directive.

**Human Rights – the citizen and the State**

23. The human right to respect for private and family life has, in recent years, been one of the most contentious human rights. Before considering its application to

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\(^{10}\) ‘Working Together to Safeguard Children’ 2010 edition at 5.18, 5.35, 5.37 and 5.47

\(^{11}\) Information Sharing Between Services in Respect of Children and Young People – Information Commissioner’s Office, Scotland

\(^{12}\) Ibid
GIRFEC, it is useful to set the scene with some reminders about the wider human rights context – and, to dispel some myths.

24. Human rights are concerned with the relationship between the citizen and the State, rather than the relationship of human beings one to another. In modern form, they can be traced back very directly to the experience of the second World War, giving rise to the belief that it was necessary to give rights to the citizen to protect them from an over-bearing State:

“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind… whereas it is essential if man is not to be compelled to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law…”

25. That being the case, it is important to recognise that the GIRFEC legislative proposal represents a fundamental reconfiguring of the relationship between the citizen and the State – and therefore automatically engages human rights.

26. It was interesting to note these words from the Minister for Children and Young People, Aileen Campbell, in her evidence to the Education and Culture Committee on 25th June:

“Everything that we do and all our policies are underpinned by GIRFEC—getting it right for every child—and making sure that the child is at the centre of decisions. Of course we recognise that parents also have a role…”

27. These words carry two flaws. Firstly, they fail to make explicit the role of the State. The named person, performing statutory functions, is going to be an agent of the State. The named person’s functions are defined with reference to the State’s view of the welfare of the child. Secondly, they reveal a perception that the role of parents is residual and secondary.

28. In both respects, I am reminded of the powerful words of the United Kingdom House of Lords giving judgment in B (a Child), Re [2013] UKSC 33 (12 June 2013):

“In a totalitarian society, uniformity and conformity are valued. Hence the totalitarian state tries to separate the child from her family and mould her to its own design. Families in all their subversive variety are the breeding ground of diversity and individuality. In a free and democratic society we value diversity and individuality. Hence the family is given special protection in all the modern human rights instruments including the European Convention on Human Rights (art 8), the International Covenant on Civil and Political Rights (art 23) and throughout the United Nations Convention on the Rights of the Child. As Justice McReynolds famously said in Pierce v Society of Sisters 268 US 510 (1925), at 535, "The child is not the mere creature of the State".”

13 preamble to the Universal Declaration of Human Rights
29. The critical issue here is, whose view of the welfare and best interests of the child is embodied in GIRFEC? I have drawn down the powerful and emotive language used by the United Kingdom’s highest court, the language of a totalitarian state moulding children to its own design, as a stark reminder that what Scotland is seeking to embody into legislation is something startling: pre-eminence to the State’s view of what childhood should look like.

30. That cannot be said to reflect the approach taken by human rights law to the welfare of a child. On the contrary, human rights law gives pre-eminence to the family in relation to the welfare of children. Each party to the United Nations Convention on the Rights of the Child affirms they are 15 “…convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”

31. In recent years, the United Kingdom has been diverging from much of Europe in this area. It has developed an approach which suggests that where the child’s welfare is in issue, the human rights of the child are in conflict with the human rights of the parent, and the State ought to intervene on behalf of the child against the parent. The European Court emphasises, however, the child’s rights are embedded within the child’s family context; any State intervention should so far as possible be in support of the family role.

32. It is important to appreciate that the principle of necessity, already discussed in relation to human rights, is also embedded in Article 8. Article 8 of course allows for intervention. But, as with data protection, any interference in private and family life has to be “necessary” and not simply desirable.

33. It has been established that necessity in data protection law and in Article 8 have a shared meaning: if interference with family life is not necessary, then interference with data protection rights cannot be necessary either 16.

34. Since the imposition of a “named person” under the GIRFEC proposal has to amount to an interference with private and family life, it can be permitted under human rights law only if it is necessary. This then brings us back to the same position as in relation to data protection: the interference is necessary to protect children from harm, but routine surveillance is not.

35. In the case of Marper and S 17, the European Court had to consider the lawfulness of the police DNA database. The European Court considered that it was unlawful

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15 Preamble to the United Nations Convention on the Rights of the Child
16 In England, see Southampton City Council v Information Commissioner (Data Protection Act 1998) [2013] UKFTT 2012_0171 (GRC) (19 February 2013) “it is common ground that if Art 8 is infringed by the policy, [it] will not be “lawful” for the purposes of the first data protection principle by virtue of the Human Rights Act 1998 and, furthermore, that none of the conditions we have identified as potentially relevant will be satisfied, in that the processing will not be “necessary” for any of purposes set out therein any more than it will be “necessary” for the analogous purposes set out in Art 8(2).”
because its extent was unnecessary. The DNA database was not even a universal database. It seems self-evident that universal surveillance is going to be considered unlawful because it is unnecessary. Indeed, proposals in England for a universal children's database were dropped subsequent to the Marper and S case. It is worth observing that Scotland is singled out in Marper and S for commendation by the European Court for applying a reasonable and proportionate approach that is in contrast to the rest of the United Kingdom.

And turning to research…

36. Putting aside my lawyer’s hat and putting on my social worker’s hat, I find myself asking different questions about GIRFEC. Not, is it lawful, but will it work?

37. The rationale for the surveillance approach to child protection and safeguarding can be stated thus: concerns can emerge from a pattern of low level concerns as well as from high level concerns, so a mechanism is needed to monitor low level concerns; and to avoid concerning families “slipping under the RADAR”, it needs to be universal.

38. I make three observations in response (quite apart from the observations about its lawfulness already made). The first is about the sheer inefficiency of this approach. The second is about the opportunity-cost. The third represents a vision of a better alternative.

39. Universal systems, such as that envisaged by GIRFEC, necessarily generate significant amounts of data which has to be processed. In England, before the children’s database was abandoned, there was a systems process manual that at 202 pages long dwarfed the statutory guidance:


40. Trying to extract significant information from this deluge of largely low-level irrelevant information was not an improvement. Essentially, it was more difficult to filter out the information that mattered.

41. Indeed there is a wealth of research into the failed children’s database in England that it seems to me that Scotland, looking to embed GIRFEC some years later, should be aware of:

“We concentrate on the aspiration of the ICS towards ‘integration’ and ‘systematization’ of services within children’s services, at local and national levels… The evidence suggests substantial problems in accomplishing government policy aspirations in each of these areas. We review the likely reasons for these problems, and recommend a review of the ICS on the grounds that the difficulties are inherent rather than transitory…”

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18 See paragraphs 109-110
42. Moreover, ‘intervention’ was at the expense of actually working with families. Simply put, the resources could have been better spent on services that reached and benefited families as the end-user. If those services were perceived to be both genuinely helpful and not under compulsion, that would maximise confidence in the services. That principle underpins the recent call by leading social work academics for recognition of 20 “the moral legitimacy of support and its difference from intervention and the need to engage with and develop a family support project for the twenty-first century. We call for a debate on the current settlement between the state and family life and for a recognition that a perfect storm has ensued from the unholy alliance of early intervention and child protection.”

43. In my review of the relevant law relating to both data protection and human rights, I critiqued GIRFEC insofar as it proceeds without consent or necessity, but also suggested that it was lawful and unobjectionable to proceed on the basis of consent or necessity. I go further. It is not only lawful and unobjectionable, consent-and-necessity could properly underpin a completely different vision for children’s services in Scotland, one that would not only address lawfulness, but also command respect:

- The consent-element of services to promote the well-being of children in Scotland being provided in the form of services that are perceived as beneficial by service users, so likely to be taken up without any element of compulsion;

- The necessity-element of services to protect children from significant harm being delivered within a specialist child protection framework, with no blurring of child protection and well-being issues.

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Allan Norman
Principal Social Worker & Solicitor, Celtic Knot – Solicitors and Social Workers
Schoolhouse Home Education Association
26 July 2013

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1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

a. The “named person” should be an opt in/opt out service, not mandatory.

b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

c. The proposals will result in many families actively avoiding contact with services.

d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Scotland’s Adoption Register

1. Scotland’s Adoption Register (the Register) was launched on 1 April 2011. Funded by the Scottish Government and operated by the British Association for Fostering and Adoption (BAAF) Scotland, the primary task for the Register is to facilitate the sharing of adoption resources across Scotland to increase the number of children who are adopted and to contribute to a reduction in the time children wait.

2. This is achieved through the provision of three main services:
   
   - We are working with all Scottish local authorities and voluntary adoption agencies to operate the **National Linking Service**. This is a database of children with a plan for adoption and approved adopters. Software is used to generate potential links between the two on the basis of certain matching criteria.
   
   - Alongside the linking service, the Register produces the uniquely Scottish family finding publication, **Scottish Children Waiting**, where children who are referred to the Register linking service can be featured with photographs and written information. Copies of the publication are sent to adoption agencies who are asked to share them with their adoptive families.
   
   - The Register has developed and facilitated a number of **innovative and dynamic family finding events** providing opportunities for adopters to have direct access to information about some of the children we know will wait longest for families. By hosting national events such as Adoption Exchange Days and Film Featuring Evenings, a number of children have been matched to new families.

Comments on the Provisions of the Bill

3. This written evidence is concerned solely with **Part 11**, Adoption Register, s.68. This section of the Bill is proposed as an amendment of the Adoption and Children (Scotland) Act 2007 and would effectively insert six sections (ss.13A to 13F).

4. The Register welcomes the careful attention being afforded to permanence for children by the Scottish Government. We recognise the support of the Government for the work of the Register and its important contribution to adoption in Scotland.

5. The proposed **s.13A(2)** introduces mandatory referral to the Register. It is our understanding that regulations will set out how this will operate. It is our experience that the vast majority of adoption agencies in Scotland are making use of existing Register services. In the year 2012 to 2013, 94% of adoption
agencies in Scotland made use of some or all Register services. We do not therefore believe that compulsion on agencies is necessary.

6. The Register is still a relatively new addition to family finding practice. We do not fully understand the implications of all agencies regularly using the Register. Practice across Scotland is not uniform and some agencies are at the beginning of a process to implement policies and procedures around: making inter-agency placements; charging of inter-agency fees; and agreeing post adoption support. The provision of post adoption support whilst enshrined in the 2007 Act is still a developing feature of adoption practice in Scotland. Enforced use of the Register as opposed to an evolutionary process may create unexpected and unpredicted problems in other areas of the process.

7. We do recognise that there may be some benefits to mandatory referral in relation to the availability of adoptive families as a resource for all children waiting for a new family. We are aware that some local authorities have not been keen to allow their waiting adopters to access opportunities afforded them through Register services preferring to hold on to them 'just in case' they need them for a local child.

8. We have some concerns about s.13A(3) which states that the Register should not be open to public inspection or search. We have no plans to allow the public direct access to the linking service data base. However, we are currently looking to provide an online version of Scottish Children Waiting. This will be a secure section within the Register website which approved prospective adopters will be able to access by logging on. Local Authorities will post photographs, DVD’s and written profiles of some of the children for whom they are family finding. Approved adopters will be able to search the site and follow up on children. This means that there may be certain circumstances under which information held by the Register is searched by, and open to, members of the public but only in restricted circumstances. It will be important to ensure that any legislation is future proof in terms of developing technology and a changing culture whereby adopters are being empowered to be more proactive in searching for the child/ren who will join their family.

9. Our main concern relates to the proposed s.13C(2)(a). We are gravely worried that the effect of this section will be to seriously reduce the numbers of children referred to the Register linking service. This section prevents referral of children to the Register without the explicit permission of the child’s parents or anyone else with parental responsibilities and rights. If parents’ consent is required for referral and parents are not in favour of plans for adoption, they will usually and understandably not be willing to consent to such a disclosure/referral. In other situations, the whereabouts of parents may be unknown, and therefore no consent will be obtainable.

10. The vast majority of children who are referred to the linking service are subject to compulsory supervision orders under the children’s hearing system and in such circumstances local authorities have no parental responsibilities and rights in respect of the children. In a small number of cases parental consent to referral
will have been gained – usually where the child has been relinquished for adoption by the birth parents. In the vast majority however the local authority make the referral as part of their statutory duty to plan for when the children will no longer be looked after, under s.17 of the 1995 Act, also as adoption agencies under their statutory duties for planning under the 2007 Act. Therefore, the consent of the parents is not essential, as Condition 5 in Schedule 2 of the Data Protection Act 1998, which allows for sharing of data for the purpose of exercising statutory functions, may be used instead.

11. We would suggest that there is, in any case, no need for specific consent provisions in the Bill. The 1998 Act will apply anyway. There are no equivalent provisions about consent in the Adoption and Children Act 2002 or the Children and Families Bill currently under consideration at Westminster, both dealing with Adoption Registers for other parts of the UK.

12. In addition, the proposed s.13C(2)(a) requires consent from parents or any other person with parental responsibilities and rights, and such other person as may be prescribed in regulations made under s.13A(2) - this is a wider group of people than those whose consent to adoption must be given or dispensed with under s.31 of the 2007 Act.

13. We are absolutely convinced that the inclusion of the need for parental consent as primary legislation will have a dramatic and negative effect on the numbers of children referred to the Register and would seriously undermine the effectiveness of the services we offer.

14. We are also concerned about the proposed s.13E which introduces the possibility of charging for Register services. We do not think that a charge should be made for the Register.

Scotland’s Adoption Register
26 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill

Scotland’s Commissioner for Children and Young People

1. I welcome the introduction of the Children and Young People (Scotland) Bill and the Scottish Government’s stated commitment to children’s rights, and I am delighted to assist the Committee in its scrutiny of the Bill.

2. In my view, this Bill offers a real chance to make a lasting difference to the lives of children and young people in Scotland and meaningful progress towards full implementation of the United Nations Convention on the Rights of the Child (UNCRC). I believe, however, that the Bill as introduced should be more ambitious in this regard and that the Scottish Government should do more to fully grasp the opportunity to bring about a step change for children’s rights.

General Comments

UNCRC incorporation and the Bill: the need for real action

3. The UK Government ratified the UNCRC in 1991, thereby voluntarily accepting the obligation in international law to give effect to all the rights set out in the Convention. All levels of government and public authorities are therefore already obliged to ensure the full realisation of all UNCRC rights for all children in the jurisdiction. Against this background, the Bill does no more than ‘reflect’ existing obligations.

4. A genuine commitment to children’s rights requires the incorporation of the Convention into domestic law, giving it full and direct legal effect in Scotland, in policy and law-making, in the practice of public services, through the courts, and through culture change. At a minimum, the Government should give a commitment to incorporation with a clear timescale, coupled with meaningful legislative measures to ensure real progress in the meantime. I note that the Scottish Government has informed the Committee it has had to ‘weigh up the benefits against the potential risks’ of incorporation. I would encourage Committee members to request the details of that risk/benefit analysis to inform the Committee’s scrutiny of the Government’s arguments in this respect.

5. I share the Scottish Government’s ambition for Scotland to be the best place in the world for children and young people. It is time to move beyond rhetoric and largely declaratory provisions. We should listen to the demands of children and young people and those working with and for them and take the steps required to honour our international obligations by incorporating the UNCRC into Scots Law. This is the most effective measure to ensure that the rights of children in Scotland are fully respected, protected and fulfilled. I would be happy to provide

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1 Policy Memorandum, para 13.  
the Committee with further evidence on the benefits of incorporation ahead of my oral evidence on 1 October.

Children’s Rights Impact Assessment

6. It is disappointing that the Scottish Government has not carried out a Children’s Rights Impact Assessment (CRIA)\(^5\) on the Bill prior to its introduction in Parliament, despite repeated calls and offers of technical support for this process from the children’s sector. The UN Committee on the Rights of the Child, which monitors implementation of the UNCRC globally, considers CRIA an essential part of policy development, a long-held position recently restated in its interpretative guidance on the UNCRC\(^6\).

7. A CRIA would have highlighted the likely positive and negative impacts including any unintended consequences of the Bill’s provisions from a children’s rights perspective, as opposed to the more limited compliance-focused perspective offered by the Government’s Privacy and Equality Impact Assessments. This would have allowed for improvements to the Bill to be made. A CRIA on the whole Bill remains necessary, and I would urge the Committee to commission one now to inform its scrutiny of the Bill.

Comments on Specific Provisions

Part 1: Rights of Children and Young People

8. Short of incorporation, a strong ministerial duty is key to effective leadership on children’s rights and to ensure that children’s rights are an integral part of legislation, policy and guidance originating from central government. However, the duty on Scottish Ministers in s. 1 (1) of the Bill to ‘keep under consideration whether there are any steps which they could take to give better or further effect to the UNCRC requirements’ would not bring meaningful progress towards ensuring the Convention’s full legal effect in Scotland. The duty appears to be concerned with ‘keeping under review’ the Government’s overall ‘approach to implementing the UNCRC’\(^7\), as nothing in s. 1 (1) indicates that Ministers would be required to consider children’s rights in everything they do which affects children. This is not a practical and effective measure to advance children’s rights, and it contains numerous qualifiers granting Ministers ample discretion. It is difficult to imagine an effective legal challenge to the exercise of the duty, which underlines the weakness of this provision. This is also a step back from the duty first consulted upon in 2011 and indeed from the key provision of the Welsh Measure that the Government has cited in support of a duty on Ministers\(^8\).

9. As most actions and decisions directly affecting children and families are taken at the local level, it is essential that a duty on Ministers is matched by a duty that

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\(^6\) UN Committee on the Rights of the Child (2013), General Comment No. 14: The Right of the Child to have his or her Best Interests taken as a Primary Consideration, CRC/C/GC/14, para 35.

\(^7\) For example, Policy Memorandum, para 44.

\(^8\) Rights of Children and Young Persons (Wales) Measure 2011 (nawm 2), s. 1 (1); cited in Scottish Government (2011), Consultation on Rights of Children and Young People Bill, para 57.
would help develop an effective approach to children’s rights closer to ‘frontline’ service provision. In s. 2 (1), the Bill provides a duty on other listed public authorities to report every three years on the ‘steps…taken [by them] in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements’. I welcome this provision in principle, although it should be accompanied by a duty to take action and clarity is required as what mechanisms for accountability would be put into place in respect of these periodical reports.

10. In order to come closer to meeting the Scottish Government’s stated objective to ‘make rights real’\(^9\), I would urge that:

- Ministers be pressed to make a commitment to incorporating the UNCRC into Scots Law, and specify a timescale in which they will do so;

- the duty on Ministers in s. 1 (1) be significantly strengthened through the parliamentary process;

- the reporting duty on other public authorities (s. 2) be augmented with a duty requiring action to advance children’s rights by a comprehensive range of bodies whose functions affect children and families.

11. I welcome the duty on Ministers to promote awareness and understanding of the rights of children in s. 1 (2), which in effect transposes article 42 of the Convention into Scots Law, and I believe that this could have a significant positive effect. I would suggest that the financial provision in respect of this duty be scrutinised in order to ensure that it enables the comprehensive effort that is required to achieve a sound understanding of children’s rights among children and young people and adults, including all professionals whose work affects children and young people.

**Part 2: Commissioner’s Powers of Investigation**

12. I welcome the Scottish Government’s proposal to amend my office’s power of investigation to extend to individual cases brought by children and young people or on their behalf (s. 5). An individual investigation mechanism through the Commissioner’s office could be a useful addition for children and young people in Scotland. Indeed, the UN Committee on the Rights of the Child advises state parties to set up such mechanisms\(^10\), although in addition to access to the courts rather than as an alternative\(^11\). At present, litigation is expensive, inaccessible and mostly unavailable as the UNCRC rights cannot currently be relied upon directly in the courts. As a result, there is no meaningful mechanism for children and young people to seek redress for violations of their UNCRC rights. The Government aims to provide one such limited mechanism through the Commissioner’s office.

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\(^10\) UN Committee on the Rights of the Child (2002), *General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child*, para 13, 19 (a).

\(^11\) UN Committee on the Rights of the Child (2005), *General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, para 24f.
13. The extension of my investigatory power would necessitate the setting up of a casework function, capable of dealing with a significant number of complaints. Of those complaints a small number may turn into larger scale investigations, but I anticipate that the bulk of my office’s workload under this new function would be dealing with cases that fall short of a full investigation, as specifically provided for in what would be new s. 7 (5). It is important to emphasise, however, that these cases would also provide vital evidence, helping to build up a picture of rights issues arising for children and young people across Scotland. Given the broad range of children’s rights in the UNCRC, and the national remit of my office, it would be misleading to suggest that the work involved in handling these complaints at any level short of an investigation is likely to be ‘marginal’.

14. This new mechanism would be additional to my existing statutory functions and I envisage that it would require significant changes to the way in which my office operates. The operation of a complaints function as described above would have been unjustified hitherto, given the nature, purpose and statutory framing of my existing power of investigation as one that is to be used exceptionally and in a manner not dissimilar to a public inquiry rather than a means of ‘redress’. Numerous respondents to the Government’s consultation who supported this proposal made clear that such a function requires sufficient resources. I share that view and consider that adequate resourcing of this new function is critical to delivering the quality of service that children and young people have a right to expect.

15. I am aware that the current costs in the Financial Memorandum are speculative and I am in discussion with Scottish Government regarding a realistic appraisal of the costs to ensure that the Scottish Parliament are reassured that sufficient resources are available to support this new function.

16. In the meantime, I would also wish to welcome the procedural changes in s. 6, and will continue to work with the Scottish Government and others to ensure that the legislative framework in Part 2 is further improved and strengthened.

Part 4: Getting It Right for Every Child (GIRFEC)

17. I continue to support the principles of GIRFEC and the Bill’s proposal to roll out the Named Person role. However, my view is that full implementation of the Named Person requires significant investment of resources especially in the provision of a universal health visitor service. I welcome the provision in the Financial Memorandum for additional resources for Health Visitors, but they are insufficient and are required now, rather than later. For these reasons, I urge the
Committee to closely scrutinise this aspect of the Bill to ensure that the aspirations for early years developments are matched by the resource allocation.

18. I am concerned about the introduction of the new information sharing duty on public authorities and service providers at s. 26, which has not been consulted upon. My understanding is that the new test requiring information sharing where information ‘might be relevant’ to the exercise of the named person functions (s. 26 (2)(a)) would significantly lower the current thresholds for information sharing and substantially broaden the grounds on which such information sharing would occur. This is a shift from sharing relevant information where there are concerns about the ‘risk of harm’ to sharing information where there are concerns about the ‘well-being of individual children and young people’ – where ‘well-being’ is very broadly defined in terms of children being: Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included (SHANARRI). This would appear to be a radical change to existing information sharing frameworks relating to children and young people.

19. It is crucial that the right balance is struck between the need to share information to protect and promote the child’s wellbeing and the child’s right to privacy (art. 16 UNCRC; art. 8 ECHR), taking account of the UNCRC’s general principles including the best interest principle (art. 3) and children’s right to be heard (art. 12). This has to be made clear in the Bill, with guidance reinforcing this point in practice. Where information is shared, such disclosure of personal information must be proportionate, appropriate and relevant.

20. Children value their privacy and confidential services, as is clear from numerous reports and recognition has to be taken of this fact. I believe this is a clear example of the need for a CRIA to be carried out on all of the Bill’s provisions.

Part 8: Young People Leaving Care

21. The Bill proposes an extension of the powers for local authorities to support young people leaving care up to and including the age of 25 years, which I support although I feel that the provision in s. 60 should be strengthened. However, I am concerned for those young people who leave care at age 16/17 and who subsequently experience difficulties, often becoming homeless and on occasion imprisoned. In my view, the Bill should give young people who leave care aged 16-17 years and who subsequently become homeless a right to be looked after and accommodated by the local authority.

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18 Indeed, A Scotland for Children stated in this context: ‘the intention is that such information sharing would occur within existing legal frameworks’ (para 120).
19 National Guidance for Child Protection in Scotland 2010, para 93
20 Policy Memorandum, para 73
21 Policy Memorandum, para 59
22. I trust these comments are of assistance to the Committee and look forward to engaging further with the Committee during stage 1 and beyond.

Tam Baillie
Scotland’s Commissioner for Children and Young People
22 July 2013
1. In my written evidence on the Bill, I suggested that I provide further evidence to the Committee on the benefits of incorporation of the UNCRC into Scots Law (para 5). I do so in this short paper and look forward to engaging further with the Committee at its meeting on 1 October.

2. By ratification of the UNCRC in 1991, the UK has accepted the obligation in international law to give effect to the Convention's provisions. In dualist legal systems like those of the UK, the principal method of giving direct legal effect to international law is incorporation of treaties into domestic law by passing legislation that creates enforceable rights which mirror those in the treaty, for example the Human Rights Act 1998 (HRA).

3. The principal effects of incorporation of the UNCRC would be likely to be:

   - Ministers and other public authorities would be under a duty to act compatibly with the UNCRC. A failure to consistently do so would render any such action unlawful.
   - Compliance would be achieved by applying Children’s Rights Impact Assessments (CRIA) and similar processes to policy-making and implementation as well as budgeting.
   - Children and those acting on their behalf would be able to seek redress through a range of accessible remedies if they consider that their rights have been breached.
   - The courts’ jurisprudence would be informed by the UNCRC and all other law interpreted in light of its provisions. The courts could declare unlawful legislation that is incompatible with UNCRC rights.

4. Crucially, the international evidence shows that incorporation, and to some extent public and political debate about incorporation, contributes significantly to building a culture where children are seen as rights-holders who are entitled to be treated with dignity and respect, and to play an active role in their lives, gradually assuming increased autonomy as they mature.

5. Incorporation is a complex area and there are different approaches by which it can be achieved. The wording of the statute would have to ensure that its rights guarantees are true to the UNCRC’s provisions and enforceable by the courts. Remedies would have to be accessible to children and might include non-court mechanisms such as advocacy, complaints processes, Commissioner investigations and ultimately, although in practice rarely, litigation.

Examples where incorporation would be likely to make a difference

6. In *Sweet 16? The Age of Leaving Care in Scotland*, my predecessor highlighted a long-standing concern that young people leaving care aged 16-17, often before they are ready, face multiple adverse outcomes including homelessness and
isolation. In contrast, young people who are not in care are now staying at home for longer. Were the UNCRC part of Scots Law, young people and those supporting them would be in a stronger position to ensure that young people have substantial say in decisions about them, and that these are made in their best interests, ensuring their rights in respect of continuing high quality care were fulfilled. Relevant legislation and its implementation would at least reach the minimum standards set by the UNCRC, or would be challengeable.

7. My recent report *It Always Comes Down to Money* highlights cuts to services for disabled children and young people as well as changes to local authorities’ charges for services. Children value play and recreational services, yet these are subject to cuts and the most likely to be charged for. This increases disabled children’s isolation, further excludes them from the social and cultural life of their communities, and decreases their quality of life. The report also revealed a lack of consultation with children and parents by service providers. UNCRC incorporation would enable robust challenges to such decisions and how they are made using articles 31 (right to play, recreation and participation in cultural life), 2 (non-discrimination), 3 (best interests principle) and 12 (right to be heard).

8. The UK Government’s policy of routinely detaining children whose asylum claims ‘failed’, often for lengthy periods, was officially ended in 2010 after years of campaigning. It contravened UNCRC rights, including the best interest principle, and the prohibition of such detention save in exceptional circumstances, as a last resort and for the shortest possible time. A Ministerial duty to have regard to the welfare of children in this context made no difference. Had the UNCRC been part of UK law, children’s rights arguments made by campaigners, including MSPs, would have been much more difficult to resist. While having regard to the need for effective immigration control, the courts would have been likely to find that child detention violated UNCRC protections and was therefore unlawful.

9. Incorporation is not a panacea to immediately address every aspect of adversity facing children and young people. However, it does fundamentally change the terms of the conversation about children’s rights, status and place in society. I believe it would over time lead to major changes in law, policy and practice, which would benefit children and support challenges even to intractable breaches of children’s rights. This would truly enable Scotland to become the best place for children to be children and to grow up, and so bring huge benefit to children, families, and society as a whole.

10. I am aware that the Scottish Government has stated that it does not intend to progress incorporation through this Bill. I would reiterate my previous call on Ministers to at least set out a ‘road map’ towards incorporation, detailing concrete steps it will take to make good the promise made to children by accepting the obligations under the UNCRC in a more consistent manner. In the absence of incorporation, I suggest that the Committee recommend that article 3 (child’s best interests a primary consideration in all matters affecting the child) and article 12 (child’s view on all matters affecting them given due weight in decision-making) be given effect through this Bill in the first instance.

Scotland’s Commissioner for Children and Young People
25 September 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Scottish Association of Social Work

Introduction

1. The Scottish Association of Social Work represents social workers, many offering frontline services throughout Scotland. They work in both rural and urban communities, local government and voluntary sector services and often are the gateway to local government and third sector services. SASW members are daily involved in the direct decision making about children for whom there may be concerns about their well-being. Assessing such situations is a highly complex task and will be different for each child as we seek to identify what is in the child’s best interest. Not only do we have to assess and meet the child’s needs, we have to assess and help manage risk and we have to do this in the context of often competing human rights issues for the child, siblings and their parents. Critical to the work is the trust that can be established between all parties to ensure the best interest of the child.

UNCRC

2. Families trying to provide for their children are being adversely affected by low wages, welfare reform and poor provision of affordable housing. The lack of mention of families and focus on providing support for them in this legislation leans to a bias towards thinking about provision being provided by others rather than meeting the key requirements of the UNCRC to support children being brought up in their own families. Members are very clear that a lead could have been given by the government in this Bill, by incorporating the UNCRC into Scots Law, to support children being brought up in their own families. They further argue that a Child Impact Assessment for this Bill would support this need for more concrete action. SASW is a member of the TOGETHER coalition and supports all the comments, particularly in respect of UNCRC.

3. Monitoring and promoting children’s rights are key to the role of the Children’s Commissioner and SASW welcomes the extension of the Children’s Commissioners powers. However whilst we have brought to the attention of the Government the Hillingdon judgement in respect of children who apply for asylum we would still argue that the needs of these children should be explicitly covered in this legislation.

Improving the way services support children and families by promoting cooperation between services, with the child at the centre

4. It is important that all services working to promote children and young peoples’ well-being. This is a matter of good practice and SASW members have expressed concern about how this can be promoted through legislation. Investment in helping people work together is achieved through cultural change and respect for what everyone, including the child/young person brings to the table.
5. Co-ordinated multi-disciplinary assessments have been around in social work for over 40 years. They are important to getting early intervention and good resources for children only if the resources are there to meet their needs. Good assessment practice has to be supported by flexible and creative solutions for meeting need. The concern from SASW members is how far primary legislation can be used for ensuring good practice, not just in the assessment stage but at the point of implementation. Social Workers would welcome more help with ensuring appropriate availability of resources than further underfunded legislation.

6. The child and family are critical to any plan working. They have to feel empowered, they have to own the plan and they have to feel supported by the professionals. They also need to know that their privacy in family life is respected and only information that needs to be shared with multiple professionals is done. They need to be treated with dignity and respect.

7. In Sec 26: Appropriate information sharing between agencies/ partners is a good working principle to include a duty on adult care providers to share info if affecting a child (mental health, illness) but there needs to be sensitivity to safeguard a child’s privacy.

8. In Sec 33: The Child’s Plan: “In having regard to child’s view maturity must be considered..” This should be strengthened to ensure an overall strong message in that a child’s view must be included.

9. Another concern is the number of people that often get involved in the planning and review processes for people where social work and other services are involved. This has been a very clear message from young people involved in Who Cares? and SASW members can confirm this from their own practice. We are concerned for example by the notion of the universal element of the ‘named person’ in that this may add an unnecessary layer of bureaucracy to more children than it will help. We can identify no research that would support this new role in complex cases and leads to confusion with the role of the Lead Professional. Social Workers are also concerned that this may be seen as undermining the role of parents who in the majority are well able to keep focussed on their children’s well-being.

**Strengthening the role of early years support in children’s and families’ lives by increasing the amount and flexibility of funded early learning and childcare**

10. The concern that has been raised is how will this affect some of our most vulnerable young children at a time of economic austerity? Will it take resources away from supporting some of our more critical supports in favour of a universal provision? SASW would seek reassurance that resources will not be taken away where they are most needed to prevent harm.
Ensuring better permanence planning for looked after children by improving support for kinship carers, families and care leavers, extending corporate parenting across the public sector, and putting Scotland’s National Adoption Register on a statutory footing

11. SASW is pleased to see the proposals for strengthening the support for kinship care. The postcode lottery of whether a young person or child has to be in public care before a kinship care allowance can even be considered has to be ended. The principle of the Children (Scotland) Act 1995 was one of minimal intervention and it is important that when extended families are able to offer that love, care and support to children unable to live with their birth parents, it is done in a positive way, rather than through a series of hurdles that are off-putting to families willing to take on these additional responsibilities. For example a recent issue that has arisen since proposals for this Bill were put forward. The changes to the welfare benefits system include changes to the previous universal child benefit – these should be considered when looking at the availability of financial support.

12. An important part of the Bill that we fully support is the duty of support from local Authorities for young people who are in public care to the age of 26. Evidence from the UK and internationally suggests that when this has been provided young people can make positive growth from childhood to adult life. However there needs to be an avenue for redress if assistance is refused.

13. There is growing concern about the number of young people who have been in public care who die either through suicide, substance misuse or as victims of violence when they are still young. SASW would urge Parliament to include an automatic Serious Case Review when a young person who has left care dies.

14. In respect of the proposed National Adoption Register SASW would support the observations from BAAF that to make a real difference in helping fond appropriate families for children there needs to be much more promotion, public education and financial assistance where children have complex needs.

Strengthen existing legislation that affects children and young people by making procedural and technical changes in the areas of children’s hearings support arrangements, secure accommodation placements, and school closures.

15. There comes from the equality impact assessment of this proposed legislation, in the formal decision making of bodies like the Children’s Hearings, issues about competing rights, whether between parents and children or between siblings, before even considering the potential role of the wider family like grandparents, aunts and uncles.

16. One illustration is the scenario where a mother has mental health issues where an MHO and others are considering detention in a hospital and the children’s social worker is considering a Child Protection Order application to protect the children. The outcomes of each of these processes of decision making can be quite profound on the child and parents. This has been illustrated in the recent
Mental Welfare Commission Report on *Parents who are Detained*. The same issues arise when parents are remanded into or sentenced to custody.

17. The second scenario is that a Court or Hearing is considering the best interest of one child but does not take into account the best interest of siblings – for example their contact with each other or the right to live together as part of the same family.

18. SASW members are concerned about another group of vulnerable young people who are becoming increasingly marginalised and who could have been included in this Bill. The suggest that a “Right of refuge” for young runaways who ask for it would also be a welcome addition- This proposed change strengthens the 95 Act, by changing the power to provide refuge to young runaways that ask for it, into a duty to provide. Very few local authorities currently act on this power and provide refuge under section 38.

19. Finally, Family Group Conferences have an increasing body of research demonstrating success in achieving support for children and young people continuing to live within their families when difficulties arise. It is suggested that before any life changing decisions are made about a child that an FGC is put in place to explore thoroughly whether or not that child’s needs can be met within their family.

**Conclusion**

20. SASW members have discussed this proposed legislation at great length and whilst welcoming some of the recommendations have also voiced concern that there have been some key issues that could have been included and see some missed opportunities. We hope that our observations are helpful to the Committee deliberations and we are available if we can be of further assistance

Scottish Association of Social Work  
26 July 2013
INTRODUCTION

1. The Scottish Child Law Centre (SCLC or the Centre) is an independent charity, based in Edinburgh which provides services to the whole of Scotland. The aim of the Centre is to promote knowledge and use of Scots law and children’s rights for the benefit of children and young people in Scotland. SCLC provides free legal advice and support on all aspects of Scots law relating to children and young people. In addition the Centre provides publications on a range of subjects as well as providing training, conferences and seminars. SCLC also has a consultative and advisory function for local and central government and through this seeks to improve the content and practice of the law as it relates to and affects children. The Centre employs qualified solicitors to carry out its legal work.

RESPONSE

2. The SCLC has had the opportunity to read the response by the Family Law Committee of the Law Society of Scotland and adopts that response. We have only brief additions to that response.

3. While the Centre supports the government’s aim to ensure the best possible services and outcomes for Scotland’s children, we are concerned that much of this Bill attempts to make policy into statute. For legislation to be effective it must be clear, unambiguous and enforceable. We are concerned that significant parts of this Bill do not meet those criteria.

4. Over recent years Scotland has seen a significant amount of new legislation introduced which concerns children and young people. Where there are a number of statutes which must work together it is essential that the language be consistent. Inconsistencies lead to confusion, and can have unforeseen consequences.

Rights of children and young people

5. We support the government’s aim of promoting the UNCRC, but are concerned that the duties proposed in the Bill are actually weaker than existing obligations under the UNCRC. To introduce a weaker duty will have the opposite effect of that intended. We agree with the LSS that the reporting duty should be consistent with that under the existing duty under the UNCRC.

Commissioner of Children and Young People in Scotland

6. We support the proposals for the extension of the powers of Scotland’s Commissioner for Children and Young People to include investigations in individual cases. This is entirely appropriate and very welcome.
Wellbeing and Getting it Right for Every Child (GIRFEC)

7. The SCLC shares the concerns of the LSS with regard to the introduction of the term “wellbeing”. Welfare is the term used throughout child law in Scotland and in the UNCRC. It is well understood in legal terms and has a consistent use and application. To introduce a new and less clearly defined concept which is not consistent is not likely to contribute positively to this important area of law.

8. The SCLC is concerned that the Bill would introduce the assessment tool SHANARRI into law. SHANARRI is a useful practical tool for practitioners, but it is inappropriate to enshrine it in statute. The constituent parts of SHANARRI (safe, healthy, achieving, nurtured, active, respected, responsible, included) are not easily given clear statutory definitions. As we stated above, legislation must be clearly applied and including SHANARRI in legislation is not appropriate. We are also concerned that tools such as SHANARRI tend to be replaced fairly quickly and if enshrined in law, are not easily changed as practice and policy evolve.

Named person

9. We share the serious concerns of the Law Society of Scotland with regard to the named person and adopt their response here.

10. A child who has multi-agency involvement would benefit from a named person, and the SCLC supports the provision of a named person for such children. However, to require that every child in Scotland has a named person risks unwarranted and unjustified intrusion into the private life of that child and family. We are also concerned that there are serious implications under the provisions of the Data Protection Act for children who do not have multi agency involvement or a need for a child’s plan. We share the concerns of the LSS. We recommend that consideration be given to the following:

- there appears to be no provision for the child to object to the choice of named person, or to nominate a preferred person

- the requirement that information be shared with the named person for all children risks a serious article 8 breach. It is likely to place serious constraints on agencies and organisations who work in sensitive areas; for example sexual health. Children are entitled to protection with regard to the sharing of personal and sensitive information under the provisions of the Data Protection Act. Exemption is made where there are child protection concerns. This does not in any way justify the sharing of sensitive information with a named person as a routine measure.

- if the named person is to be a head teacher or other person at a school, school staff are not normally available 12 months of the year and there are questions as to the availability of help during the holidays
Aftercare

11. The SCLC welcomes the extension of the right to request assistance to the age of 25.

Other Reforms

12. We share the concerns of the LSS. The SCLC is concerned that the insertion of “wellbeing” into Scottish Child Law, will introduce a lack of consistency and will risk weakening existing law.

Scottish Child Law Centre
26 July 2013
Scottish Child Protection & Vulnerable Children Lead Nurse Executive Group

Ensure that children’s rights properly influence the design and delivery of policies and services by placing new duties on the Scottish Ministers and the public sector and by increasing the powers of Scotland’s Commissioner for Children and Young People;

1. NHS Boards will require, in strategy, policy and performance to make explicit children’s rights and steps taken to comply with this section of the legislation.

2. This will require a culture shift across health services and whilst it is welcomed, it poses certain challenges. Guidance on implementation and monitoring performance would be welcome and this would also help to support a consistent approach across the country.

3. It is suggested there will be particular challenges for those who work in services where the adult is the primary receiver of care and their understanding as compliance with children’s rights in practice is crucial to the implementation of the legislation. In addition, health practitioners may face conflict in balancing the rights of adults receiving care with those of the adult’s children.

Improve the way services support children and families by promoting cooperation between services, with the child at the centre;

4. We welcome the focus being on a child’s “Well Being”, however, feel many health staff, in particular those caring for adults, will not have the required knowledge to recognise where a presenting situation may be a risk to a child’s “Well Being”. However, we are confident they can recognise a safeguarding or child protection situation.

5. The focus on “Well Being” is likely to present challenges in staff having the confidence and willingness to share information even where risk to “Well Being” has been identified.

6. We would suggest that consideration is given to some type of national initiative to raise aware of the issue of “Well Being”.

7. The Bill proposes NHS Boards will be responsible for ensuring every child from birth to school age has a Named Person. This leaves the legislation open to interpretation in allocating such a role. It is requested that the final legislation explicitly states this should be the role of the midwife from birth to 10 days and thereafter until school age the health visitor. These professionals are best placed professional to fulfil the responsibilities of the role and produce the best outcomes for children in the age group.

8. We ask that clear and explicit national guidance is provided on the role and responsibilities for the named person to ensure consistency across Scotland. We would invite the National Girfec Team to provide this along with training and education materials.
9. The Children and Young People (Scotland) Bill sets out a requirement of professionals to share information with the child’s named person when there is a concern for a child’s safety or a presenting situation which may be a risk to their “Well Being”.

10. The Bill proposes Health Boards will provide the role of named person for those children birth to school entry and the Local authority that for children from school entry until they have attained the age of 18 years.

11. As previously suggested we would like Health Visitors to assume the role of the named person for children from birth to school age.

12. For children of school age it is commonly considered likely that education will assume the role.

13. Custom and practice across NHS Boards is that when a child attends a health service and this generates actual or potential concern about their wellbeing, this is communicated to the health visitor for pre-school children and the school nurse for school age. In addition, even those attendances that may not be of concern are also shared, such as attendances at Accident and Emergency Departments or sexual health services. This practice enables the collation of chronologies which are important in highlighting concern arising from an accumulation of health issues.

14. Whilst for preschool children the proposed legislation will not change this practice, for school aged children this will require health services to share health information outwith the NHS i.e with the local authority/education.

15. We would like consideration and clarity to be given with regards to the potential conflict between the proposed legislation and that pertaining to medical confidentiality. We feel guidance on sharing information with regards to risk to “Well Being” and information sharing to support the continuity of health Care is required.

16. Without clarification on the above, the well being of children and young people will potentially be at greater risk than is currently the case.

**Ensure better permanence planning for looked after children by improving support for kinship carers, families and care leavers, extending corporate parenting across the public sector, and putting Scotland’s National Adoption Register on a statutory footing;**

17. NHS Boards will require clarity on the role of the corporate parent and the implications of this. Consideration will need to be given to the role of adult health services in particular in relation to those 16-25 years and action taken to ensure they understand the legislation and the interface with vulnerable adult legislation.

Scottish Child Protection & Vulnerable Children Lead Nurse Executive Group

26 July 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  
Scottish Childminding Association  

Overview  
1. Scottish Childminding Association (SCMA) welcomes the introduction of the Children and Young People (Scotland) Bill. While we have an interest in other parts of the Bill, we are restricting our evidence to Part 6, Early Learning and Childcare.

2. Our over-riding feeling is that the purpose of Part 6 of the Bill must be to improve outcomes for children. This needs to be balanced with the need to improve outcomes for families and communities. Part 6 concentrates on education authorities and this tends to focus views on currently restricted methods of service delivery of pre-school education. Our hope is that this will begin the expansion of services to children and families in a more holistic way. Care must be taken to evaluate and monitor what happens in practice in order for the spirit of this part of the Bill not to be lost.

3. SCMA hopes that this part of the Bill is part of a longer term vision to extend support for access to universal services to a wider age range of children. This will include our youngest children where support to ensure successful early development is so important and to older children where the importance of access to good quality out of school care services is often overlooked.

42 – Early learning and childcare  
4. We welcome the definition of early learning and childcare and expect that this will be explained further in guidance.

5. We know that many of our childminder members do provide a service which educates young children and helps them to learn as well as caring for their social and emotional needs. They are currently inspected against this by the Care Inspectorate and evidence of their grades show that they outperform may other types of day care service.

6. We hope this Bill will start to help reduce the simplistic divide between education and care that we consider are inseparable. However, given that the Bill aims to extend provision to some 2 year olds, we would expect that the definition is clearer about the need for different types of services for these very young children rather than simply saying a caring and nurturing setting.

43 – Duty to secure provision of early learning and childcare  
7. SCMA would hope that the “eligible pre-school child” definition would be extended to have a broader definition for 2 year olds rather than just those defined as ‘looked after’ or ‘the subject of a kinship care order’.
8. The Bill is asking education authorities to provide a service that combines education and care. If the definition is extended to include a broader definition of vulnerable 2's then consideration must be given to the type of service offered. It must not be the case that these children are provided services in large group care nurseries that were never designed to meet their needs. Their needs are better met in small family settings where they can mix with a variety of children and that support is also given to the family. SCMA has been providing services for vulnerable children and families through its Community Childminding Service and evaluations show that vulnerable young children quickly thrive.

44 – Mandatory amount of early learning and childcare

9. SCMA would hope that the mandatory amount is seen as part of a wider vision and that the extension to 600 hours is just a start and that the longer term vision is for this to be expanded as appropriate. In particular consideration must be given to the needs of out of school care services. These are vital to the wellbeing of school age children and particularly important for children in poverty. We are concerned that as new UK welfare arrangements begin to take effect that families will not be able to cover the cost of these services.

45 – Looked after 2 year olds: alternative arrangements to meet wellbeing needs

10. SCMA trusts that this section should encourage authorities to be more creative in meeting the education and care needs of looked after 2's. This would include providing family support as well as services directly for the child.

11. It will be important in 45 (5) that the children’s service plan gives a clear indication of the intent to provide this range of services as well as the insistence on the assessment of need to be recorded and for the child’s plan to record improvements.

12. We know that disadvantaged children benefit most from being part of a mixed ability group rather than simply being with other disadvantaged children. They learn from the examples set by other children and so local authority planning will need to take this into account. Our evidence from children in a mixed group with a community childminder shows their marked improvements against the SHANARRI wellbeing indicators. The outcomes of research will soon be available from Dr Christine Stephen at Stirling University.

46 – Duty to consult and plan on delivery of early learning and childcare

13. SCMA would like to see the duty to consult and plan extended to a duty to evaluate an education authority’s success in providing a range of services requested. The duty should require that this information should be included as part of the children’s services plans.

14. The duty should also be extended to include consulting with pre-school children in order to ensure that services meet outcomes for children and not just the needs of their parents.
15. It is already the case that services registered by the care inspectorate must consult with children as well as their parents in order to have a clear idea of where improvements can be made. This will be possible for the local authority and will add considerably to the usefulness of their consultation.

**47 – Method of delivery of early learning and childcare.**

16. SCMA agree that clear parameters must be put on the method of delivery. It would certainly not be in the best interests of many children to have too long in large group care.

17. This outline though allows education authorities to have a similar method to the one they currently deliver and simply extend the hours available. We would hope over time that authorities will become more creative in the services available. This will need to be evidenced in the children’s services plans.

48 - Flexibility in way in which early learning and childcare is made available

18. In having to secure availability of early learning and care in section 43(1) and having to ensure flexibility, local authorities should look to include services provided by appropriate childminding services in their area as well as other private and third sector service providers. Guidance can decide on how the quality of partner providers is ensured.

19. SCMA is concerned that education authorities only appear to need to have the views of parents when deciding on flexibility. We would want equal emphasis to be given to the needs of the child.

20. Consideration must also be given to working to ensure that employers adopt more family friendly policies. Flexibility is not just about the availability of childcare but also of simple measures including working hours that fit where possible with school and childcare times.

21. SCMA evidence to the Parliament’s Equal Opportunities Committee stressed the importance of the whole package that will help parents into work. The recommendations of the committee called for a statutory right to childcare for children up to the age of 15 years. We would hope that this Bill is the start of that road.

**Scottish Childminding Association**

26 July 2013
Background

1. The Children's Hearings System is Scotland’s distinct system of child protection and youth justice. Among its fundamental principles are:
   - whether concerns relate to their welfare or behaviour, the needs of children or young people in trouble should be met through a single holistic and integrated system
   - a preventative approach, involving early identification and diagnosis of problems, is essential
   - the welfare of the child remains at the centre of all decision making and the child’s best interests are paramount throughout
   - the child’s engagement and participation is crucial to good decision making

2. SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service, the legal profession and the courts system.

3. SCRA’s vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures. We will seek to achieve this by adhering to the following key values:
   - The voice of the child must be heard
   - Our hopes and dreams for the children of Scotland are what unite us
   - Children and young people’s experiences and opinions guide us
   - We are approachable and open
   - We bring the best of the past with us into the future to meet new challenges

Response

4. SCRA welcomes the opportunity to comment on the Scottish Government’s Children and Young People (Scotland) Bill. We have set out our comments in line with the Bill’s sections but suggest that there are opportunities to consider the legislation in a more holistic way and promote better links between the different parts of the Bill, in particular between Part 1 (Children’s Rights), Part 3 (Children’s Services Planning), Part 4 (Named Person) and Part 7 (Corporate Parenting), in order to more effectively deliver the policy goals.
Children’s rights

5. Children’s rights are at the heart of the Children’s Hearings System and much emphasis is placed on giving effect to Article 12 of the UNCRC by facilitating the child’s effective participation in the Hearings process. SCRA is fully committed to protecting and enshrining children’s rights in everything that we do. Our internal Participation Group has done some excellent work over the last two years to improve the ways in which children and young people can participate, both in their own hearings, and in driving improvements to the system as a whole. The involvement of our Modern Apprentices has had a hugely positive impact on this area of work, allowing the voices of children and young people to directly impact and influence policy and practice. We therefore agree wholeheartedly with the Policy Memorandum, which sets out the Scottish Government’s aspiration to ensure that children’s rights are respected across the public sector.

6. However, we are disappointed that the proposals in this section do not appear to give full effect to that aspiration. In particular, we are unclear as to why the provisions have been diluted to such an extent over the course of the two formal consultations, despite there being apparently clear support at each stage for enshrining a stronger commitment to children’s rights in the legislation, including by placing duties on public bodies.

7. SCRA’s Equality Network, a staff group that is charged with ensuring that the organisation complies with its responsibilities under the equalities legislation, has begun to consider how a children’s rights approach could be incorporated more fully into our own strategic decision making. For example, it does not seem impossible when performing an Equalities Impact Assessment, to include consideration of the effect of any policy on children’s rights in that assessment. While these discussions are at an early stage, we do not believe that a requirement to more actively consider and take action in relation to children’s rights should be seen as a significantly onerous burden on the public sector.

Children’s Services Planning

8. We are supportive of the proposals to place duties on public bodies to work together to design, plan and deliver jointly their policies and services to ensure that they focus on improving children’s and young people’s wellbeing. SCRA sees itself having an important role locally and nationally in supporting the planning and delivery of services. We can also see that the duty might have the potential to help move the Lead Professional role out of social work and into other agencies, such as health, where appropriate. It would be helpful however for this section to link with other parts of the Bill. Please see our response to the Corporate Parenting section for more detail on how this could be achieved.

Provision of Named Person

9. We recognise that the Named Person role is considered to have worked well in Highland, where it has driven a shift in culture and practice, resulting in people being more aware of their (and others’) responsibilities. Our understanding is that the Named Person role works very much in tandem with that of the Lead.
Professional as they have complementary roles (albeit very distinct responsibilities) and as such it will also be necessary to ensure that there is clarity of differentiation between the Named Person and Lead Professional roles, and the responsibilities of other professionals, in particular the Chief Social Work Officer.

10. It is critical for the role of the Named Person to be meaningful in terms of the benefits that it provides for children. It should not, in our view, simply be an administrative exercise that results in a child having a Named Person that they have no meaningful contact or relationship with. We would suggest that there is a need for clear guidance for professionals in terms of what is expected of the Named Person, and also for clear and concise information for children which tells them what they have a right to expect from that individual. We would also suggest that the Highland experience be utilised to establish which aspects of the role have been particularly valued by children and young people so that good practice can be identified and built into the national model. Finally, we note the issues raised by other agencies (e.g. teachers) about the potential impact of this responsibility on their ‘day job’ and are concerned that unless these are properly addressed, the role may not achieve all that is intended.

Child’s Plan

11. Again, we recognise the broadly positive experience in Highland, where increasingly Child’s Plans have come to reflect multi-agency contributions and have been put in place at an earlier stage, which can often provide a better basis for consideration of referral to the Reporter.

12. SCRA (as a national body) is aware of significant differences across the country in the way such plans are put together and populated. There is an opportunity off the back of this legislation to clearly identify best practice in terms of what a single Child’s Plan should contain and to ensure that this is rolled out across Scotland. We do not believe that there is any compelling argument that individual Local Authorities require significantly different content in their Plans and consider that sufficient flexibility could be built into a standard Child’s Plan. We understand that the Highland Child Protection Committee (CPC) has agreed to develop a revised and simplified version of the single Plan and suggest that this could be used as a basis for an agreed national Child’s Plan.

13. Within that context, we would strongly support the provision of a specific section covering consideration of referral to the Reporter and outlining what is intended to be achieved by compulsory measures of supervision if such are considered necessary. We would also be strongly supportive of a section clearly stating the child’s views, both at the stage of assessment of need and agreement of action. A critical consideration must be that the Plan is simple, straightforward and usable, not just for professionals (including children’s panel members), but also for children and families.

14. We also believe, based on our professional experience, that it is essential for the Child’s Plan to be set out in a way that allows it to be used within the legal process, for example by Reporters when seeking to establish grounds for referral.
This may for example require sections where the evidence or views of individual agencies is explicitly marked out. Sufficient information needs to be included to allow effective decision making and a good chronology is one key aspect.

Corporate parenting

15. We are fully supportive of the concept of corporate parenting, and of the need to legislate for a clear definition. In particular, we agree that there is a lack of shared understanding about the definition of corporate parenting and consider that this particularly applies to looked after children themselves. One of the aims of this Bill should, in our view, be to allow children to be clear about who their corporate parents are and what they can expect from them. However, we do not believe that this has been achieved.

16. We note that the concept of corporate parenting originally came about to explain that local authorities had particular responsibilities towards children for whom they were acting (to one degree or another) in loco parentis. It recognised the poor outcomes experienced by looked after children and attempted to remedy this by encouraging local authorities to act towards the children in their care in the way that a parent would. The concept applies to local authorities precisely because they have those legal responsibilities in relation to looked after children.

17. We recognise that there may be a superficial attraction in defining large numbers of public sector organisations as “corporate parents”, with the laudable aim of improving permanence planning and ensuring that the needs of looked after children are prioritised and accorded due weight in all decision-making. However, the majority of the organisations listed in Schedule 3 are not exercising any of the duties or responsibilities of a parent (corporate or otherwise). This then has an impact on the drafting of the duties in section 52, many of which do not apply to various of the organisations listed in Schedule 3, including SCRA. This is likely to lead to confusion and a lack of clarity over what is expected from these “corporate parents”. We are particularly concerned that by expanding the scope of the definition of “corporate parenting”, the Bill risks diluting the core concept to the point that it loses all meaning, risking undermining the good work that has been done by the Scottish Government, CELCIS and Who Cares? Scotland to ensure that local authorities understand their particular responsibilities towards looked after children.

18. There are of course specific issues in relation to corporate parenting and the Children’s Hearings System, which requires a degree of independence and separation of functions from those organisations delivering universal services. The Hearings System has a role in holding local authorities to account in relation to the delivery of statutory supports and interventions for children on supervision and we would not want to risk blurring that clear delineation and independence of function. Placing corporate parenting responsibilities on SCRA or on Children’s Hearings Scotland would risk the Hearings System being seen as a gateway to services, rather than allowing it to maintain its focus on determining whether children are in need of compulsory measures of supervision. It is significant that the Scottish Government guidance - “These are our Bairns” – clearly does not
envisage that the Children’s Hearings System is exercising a corporate parenting role.

19. It is critically important however not to miss the opportunity to ensure that the wider public sector attaches appropriate weight to the needs of looked after children and young people and prioritises them in decision making. SCRA recognises that it has a legitimate role in seeking to improve the life chances of children, both through the decisions made by Reporters in relation to referrals and in terms of organisational policy and strategic decision-making. We believe that other organisations throughout the public sector would share those aspirations. However, we do not believe that this is best expressed in corporate parenting terms. We believe that there are other, more effective, ways of more capturing that contribution and ensuring that all relevant public sector organisations work with corporate parents to deliver better outcomes.

20. We would suggest therefore that a three-tiered approach be adopted. The first tier would be made up of corporate parents, with the statutory definition of corporate parenting being drafted more tightly and restricted to those organisations from whom the Named Person could be drawn. This would ensure that the concept was linked appropriately to GIRFEC, while protecting the core corporate parenting definition and allowing the duties imposed on corporate parents to be clearer and more meaningful, both for those organisations exercising them and for looked after children themselves. The second tier (including SCRA and CHS) would consist of the children’s services planning partners, who would be under a duty to ensure that the children’s services plan demonstrated clearly how the wider children’s services community would support corporate parents in the performance of their duties. The third tier would include the rest of the public sector, and we would suggest that their responsibilities could be best defined by imposing duties within the children’s rights section of the Bill, perhaps framed similarly to the existing equalities duties or around a “best interests” requirement in relation to decision making. We believe that this would ensure that the different sections of the Bill are linked together in a more effective and holistic way and would allow everyone (public sector organisations and children alike) to be clear about roles, responsibilities and expectations.

Aftercare

21. We recognise that the transition points in a child’s life can be particularly challenging. For children who are ceasing to be looked after, loss of support and security can render them particularly vulnerable. It is crucial therefore to ensure that continuing supports are provided and can be easily accessed to see children and young people safely through this stage of their lives.

Support for Kinship Care

22. We are supportive of the policy intent of these provisions, and the desire to bring security of placement to some children who are residing with kinship carers. We would caution however, that residence is often only one of a number of significant issues that may result in a child becoming looked after. It should not therefore be assumed that a successful application for this order will automatically result in the
child not requiring to be subject to a Compulsory Supervision Order. Many children will continue to need compulsory measures of supervision to address other needs in their lives.

Other Reforms – Children’s Hearings

23. We are entirely supportive of the proposals in this section. We recognise that Local Authorities have a crucial role to play within the Children’s Hearings System and that the support they provide is highly valued by panel members and by other partners, including SCRA. It is important to acknowledge that this role goes beyond provision of support to panel members and encompasses involvement with children and families, engagement in community planning processes and a wider role within the child protection system.

24. SCRA has a clear and legitimate interest in the efficient and effective operation of the Children’s Hearings System and we are fully supportive of the proposals, which provide the National Convener with the power to determine the structure of Area Support Teams (ASTs) and place a duty on local authorities to continue to provide support to those ASTs.

25. The purpose of an AST is to provide high quality and consistent levels of support to members of the national children’s panel. It is right, in our view, that it is those who directly represent the panel community, and who will be held accountable to Ministers and to the Parliament over the successful discharge of their statutory responsibilities, who should have ultimate decision making authority. It is hard to see how the Convener and CHS can be held accountable for the discharge of their statutory functions if they do not have the final say over what the AST structure should look like.

26. Similarly, the Convener needs to have the ability to review and redefine the AST structure in order to maximise its ability to deliver the kinds of improvements to the system, to the experience of children and families and ultimately to outcomes, that were envisaged by the Parliament when the legislation was passed. This will enable the Convener and CHS to respond quickly to emerging issues and learning as the new structures bed in.

27. Given the important role that Local Authorities play, it will clearly remain important for the Convener to seek to engage with them and, wherever possible, to get their agreement to her preferred AST structure. However, we consider that ultimately the Convener needs to have the authority to determine that structure herself in the knowledge that local authorities are required to provide the same levels of support as they always have done. We note that Local Authorities will still be represented on the AST and will be guaranteed a voice.

Conclusion

28. While we are supportive of the majority of the Bill’s proposals, we do believe that there is scope for improvement to more effectively deliver the policy intentions by considering the legislation in a more holistic and joined-up way.

Scottish Children’s Reporter Administration, 26 July 2013
Introduction

1. The Scottish Children’s Services Coalition (SCSC) is a policy-focused collaboration bringing together leading third and independent sector children’s services providers. The members deliver residential care, specialist education and direct help and support for children with complex needs, including learning difficulties and learning disabilities. They also provide independent advocacy, advice and representation for children and young people and their parents or carers.

2. Members provide tailored support to children with complex needs from a diverse range of backgrounds and social circumstances. Many have social, emotional and behavioural difficulties, sometimes brought on by being a victim of neglect or abuse, and/or complex developmental disabilities, such as:
   - **Autism Spectrum Disorders (ASD)**: can include behavioural, medical and psychological interventions, counselling and psychotherapy, complementary therapies and dietary support, to name a few.
   - **Aspergers Syndrome (AS)**: Support may include communication-based interventions, behavioural therapy and dietary changes.
   - **Attention deficit hyperactivity disorder (ADHD)**: depending on the severity, the condition can be managed through a combination of medication and psychological, educational and social therapies.
   - **Social, Emotional and Behavioural Difficulties (SEBD)**: requires one to one counselling and support.

3. As highlighted above, children with complex needs often need dedicated, specialist care from the highest quality of providers who are attuned to their requirements and able to better equip these vulnerable individuals for the challenges of life.

Provision of the Children and Young People (Scotland) Bill

4. The Bill’s Policy Memorandum states that:

   “It is the aspiration of the Scottish Government for Scotland to be the best place to grow up in. The objective of the Children and Young People (Scotland) Bill is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.”

5. This is a Bill that SCSC is pleased to see coming forward. However, it has some issues and observations that require to be addressed if it is to realise its full potential.
General Observations

6. We know that prevention is much better than cure and yet the Bill contains not one single mention of prevention, or of families and local services providing support, instead it focuses on the demands of failure.

7. We naturally spend heavily in meeting the costs of failure, but need to try and prioritise preventative spend, which the societal costs of failure far outweigh. However, instead of prioritising measures that would reduce the harm of broken families, for example, the Bill is concerned with picking up the pieces rather than providing vital cost-effective support in the first place.

Specific Comments

Children’s Rights

8. Full incorporation of UNCRC


10. Public bodies should also have duty to raise awareness and understanding of UNCRC

11. Lack of Children’s Rights Impact Assessment

Commissioner for Children and Young People

12. Agree SCCYP should have powers to investigate the violation of rights of individual children but that this must be adequately resourced.

13. Clarification of the definition of “service provider” in this and other parts of the legislation.

Children’s services planning

14. Duty to jointly plan across services should apply to all public bodies including grant aided schools and NHS National Services

15. Bill should seek to remove barriers to data sharing across agencies

16. Allow for children’s services planning across local authorities where appropriate

17. Suggest that the Scottish Government ensure clear timescales in which local authorities must conduct assessments and deliver required support to ensure that no child has to wait an agonising long time for help. As an example, members of the SCSC can cite examples of families waiting in excess of 18 months for autism assessments and longer for other assessments.

Provision of Named Person

18. The Named Person role should be clarified and universally adopted throughout Scotland, with no technical barriers between services and role of empowered parents made clear in the guidance
19. There should be flexibility to allow for specialist input into the Named Person role

Child’s Plan

20. Greater clarity around respective roles of Named Person and Lead Professional in proposed Child’s Plan

21. More detail on the face of the Bill about the nature of Child’s Plan and statutory duties to implement the Plan

22. Possible amendment of ASL Act regards different planning and review processes

23. That a Child’s Plan be a legal entitlement for all children

24. Clarity on how voices of parents and children will be sought and reflected in the plan. Duty on local authority to support ALL children to make their views known

Other comments on achieving consistent and full implementation of GIRFEC—

25. SHANARRI wellbeing indicators should be coupled with rights based indicators and embedded in the Child’s Plan

26. As recommended in the Doran Review, further guidance needed on how best to implement GIRFEC for children with additional support needs

27. Clarification of routes to redress for parents /carers who feel their Child’s plan does not meet the SHANARRI indicators (in line with ASN Tribunals for CSP failures)

Early Learning and Childcare

28. Increased provision should not be restricted to LAAC 2 year olds – this should apply to all children who have a disability or need.

29. Further guidance is needed to address the issue of the inconsistencies in the amount paid to ‘partner providers’ at local level – often voluntary sector providers.

Learning difficulties/learning disabilities

30. The proposal in the Bill (Part 8) to extend access to support for looked after young people up to 26 should also include those young people with learning difficulties or learning disabilities, allowing them the same rights as care leavers. It is unfair to focus solely on care leavers and not expand the rights in the Bill to other vulnerable young people requiring assistance.

Care Leavers

31. SCSC would like to take this opportunity to support the sentiment in the Bill Part 8 (Aftercare), which proposes to introduce a legislative requirement to increase the age which a local authority can provide support (provision of aftercare) for a care leaver from 21 years old up to 26. However, it has highlighted a number of areas of concern and measures to address this.
Areas of concern—

- How the level of support for the care leaver is going to be measured / assessed (Part 8, Paragraph 60, Section 2)

- The responsibility implied seems to lie with the care leaver to seek this support (Part 8, Paragraph 60, Section 2)

- The assessment process which will be applied to determine ‘eligible needs’ of the care leaver (Part 8, Paragraph 60, Section 2, Sub-section C); where ‘eligible needs’ is to be determined by Scottish Ministers in relation to a care leaver’s ‘care, attention or support’ needs (Part 8, Paragraph 60, Section 2 Sub-section E)

- The options available to the local authority to transfer the responsibility to support the care leaver onto another departments / legislative provisions, if it deems appropriate as a result of the assessment process (Part 8, Paragraph 60, Section 2, Sub-section C)

- Ambiguity around the terms ‘advice, guidance and assistance as it considers appropriate having regard to the person’s welfare’ (Part 8, Paragraph 60, Section 2, Sub-section C)

Main risks of this approach—

32. Assessment process will assess need on priority, where priority determinant will likely be based on a normative criteria as set by Scottish Minister’s (similar to the Homelessness etc. (Scotland) Act 2003 assessment’s process)

33. Care leavers only likely to seek this assessment where they are approaching or in crisis; impacting heavily on the potential to intervene early and put solutions into place to prevent care leaver getting anywhere near the crisis point. Likelihood that the service via Part 8 of Bill will predominantly be focussed on redressing the crisis / impending crisis, which is both costly and least effective in facilitating medium to long-term service planning strategies for the care leaver.

34. Early intervention for care leavers, means earliest intervention and for the purpose of Part 8 of the Bill, the risk is that the assessment process and the subsequent support, guidance or advice put into place, will not come at the earliest possible point for the care leaver (in line with point 2 above)

35. The potential for the local authority to effectively ‘discharge’ their duty to provide the ‘support, advice and guidance’ necessary to meet the needs and welfare of the care leaver seems high. For instance, in relation to housing options for the care leaver, what legal safeguards are there in the Bill, to prevent this discharge of duty to the Homelessness legislation and the Housing Department, which in effect would actually provide support to the care leaver via temporary accommodation of some sort, to ensure they are housed?

36. The complexities of creating an assessment process which accurately and routinely (very important), determines both the current point in time need of the care leaver (i.e. today as they present), along with the medium to longer term needs of
the care leaver (i.e. next month, next year and so on). The focus on point in time need creates a huge risk in itself, of again, only ever ‘fire-fighting’ and crisis managing a care leaver’s current situation. This in itself is a costly and resource intensive process.

Proposed insertions / amendments—

37. The assessment process in Part 8 needs to be removed / revised to eradicate the responsibility being on the young person to present as being in need; and instead for the responsible LA to hold this duty. This ensures that they monitor and review their need on an on-going basis up to 26-years of age. The current provisions also need to be removed / revised to ensure the following duties are in place / fulfilled for children and young people who have been looked after for a continuous period of 13 weeks up to and including 16 years of age:

- An application made by a person under section 29, subsection (2) [of the Children Scotland Act 1995], to continue to be accommodated, or to return to being accommodated with their current or former placing local authority should be accepted. This will have an associated cost, but it is well established that care leavers have a higher instance of substance abuse, homelessness, unemployment and involvement with the youth justice system. The cost to society of these impacts far outweighs the cost of allowing a young person the stability afforded through returning to or remaining in care.

- The duty to provide advice, guidance and assistance to this person (to the age of 26 years old) continues as required and as appropriate with regards to the person’s welfare and their needs in relation to their care, attention or support levels.

- This duty is not discharged where the person under section 29, subsection (2) [of the Children Scotland Act 1995] leaves their accommodated status before reaching 26 years of age; leaves and then returns to their accommodated status before reaching 26 years of age once or multiple times; remains in their accommodated status continuously to 26 years of age.

38. Putting the above provisions into place is the only way to ensure that young people in care between 16 and 26 years of age are probably supported, have their individual pathways both tracked and reported on and to put in place the safeguards they need to eliminate and reduce the levels of crisis or impending crisis which they face routinely between the ages of 16 and 26 years of age. The duty to ‘return to care’ would mean that the responsible local authority would ensure they are accommodated appropriately and with the relevant supports and relationships around them – and would remove the need for a care leaver to negotiate with a range of other professionals and undertake various associated assessment processes to be both accommodated and supported. It is envisaged that the Lead Professional appointed for the young person whilst they were formally looked after, would continue their role up to the age of 26 years of age for these young people.
Counselling Services

39. The Bill refers to provision of “counselling services” to parents and children. SCSC would welcome a definition of “counselling”.

40. SCSC also raises concerns over why this is restricted to LAAC and/or Kinship Care. We would suggest that further discussion is needed and consideration given to extending this to any challenging family situation.

Falkland House School
Mindroom
Spark of Genius
Who Cares? Scotland
Young Foundations
(Scottish Children’s Services Coalition)
19 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill
Scottish Council of Independent Schools

1. The schools in membership of SCIS welcome the provisions outlined in the Children and Young People (Scotland) Bill and are pleased to see that more specific responsibilities have been prescribed for independent schools. It was initially felt that more information was needed to understand how some provisions would work in practice. As many of the provisions outlined in the Children and Young People (Scotland) Bill relate largely to duties on the public sector, SCIS is not in a position to comment on these. We have limited our responses to sections where we feel in a position to comment on the impact of the proposals on children and young people in independent schools.

Better service planning and delivery

2. **Section 10(1-2) & Section 14** SCIS welcomes the duty placed on local authorities and health boards to “give each of the other service providers an effective opportunity […] to participate in or contribute to the preparation of the plan and consult such organisations […]” This will help clarify the responsibilities of other agencies in relation to meeting a child’s needs and it will be particularly beneficial to independent additional support needs schools as they fall within a range of different services.

3. The importance of communication in relation to a child’s welfare has been brought to light recently by the catch up campaign for those who did not receive two doses of the MMR (Measles, Mumps and Rubella) vaccine. In the majority of cases, communication between relevant organisations has not proved a problem. However in some it has been difficult to get Local Authorities and Health Boards to work together with independent schools. Guidance to ensure consistent and smooth delivery of services in all cases across Scotland would be beneficial.

The Named Person

4. **Section 21 (2)** SCIS is pleased that clear detail has been provided as to how a Named Person should be allocated for independent school pupils.

5. **Section 21 (5)** SCIS believes the duty whereby directing authorities must “make the arrangements for the provision of a named person service in relation to the child” may be a cause for concern during school holidays. It is unclear whether directing authorities would continue to provide a Named Person, or whether they would appoint someone outwith the school. If they were to do the former, a Head Teacher (the most likely candidate to be a Named Person in an independent school) would not have contact with the child over the school holidays. However, if the directing authority is to appoint outwith the school, then it is not clear what the protocol for this would be, and it would presumably differ from Local Authority methods (if they defer the responsibility to other public sector organisations).
6. **Section 23 (2)** SCIS members are interested to know which provisions will be in place to ensure the duty to “inform any other person which has become […] the service provider” will be upheld. When a child moves between a local authority school and an independent school, the smooth transition is dependent on liaison between schools and the passing on of school records, but this is dependent on local relationships. E.g., when a child leaves an independent school at age 16, how will the transfer to the responsibility of the local authority be managed? As there is no public record of school attendance maintained for a child attending an independent school, will it be the duty of the independent school to alert the Local Authority?

7. There is also a concern that the role of the Lead Professional is not mentioned in the Bill. As mentioned previously in the SCIS consultation response, in most cases the named person in an independent school would not be in the best position to coordinate work with multiple agencies nor to oversee a Child’s Plan, as it would require knowledge, expertise and time beyond their role. Although, as the SPICe document highlights, the Bill itself does not give the named person specific duties in relation to the child’s plan, the financial memorandum implies that they will have such a role in practice: “The functions of a named person will […] involve the holistic assessment based on information received and observed, any preparation towards the creation of a Child’s Plan where needed and management of the plan through on-going involvement with the child and family as required” (para 58, Scottish Parliament 2013b). SCIS would welcome clearer duties for the named person to be outlined in the Bill.

8. Another major concern that SCIS has in relation to the named person is the inclusion of independent schools in the process of training named persons. SCIS raised this point with the Scottish Government at a Working Group meeting, in which members agreed on the need for consistent and high quality training. To ensure that the Scotland is getting it right for every child, SCIS believes that training would need to be provided for the independent sector as well as for Local Authorities. Children at independent schools live within Local Authorities where they are entitled to use services for which their parents pay through income and council tax. If independent schools are to provide separate training for Named Persons then it is not clear how consistent practice would be established. Our member schools fear that without this national and inclusive level of training it may create exactly what the duty has been created to prevent: “inconsistent and patchy implementation of the GIRFEC approach, with different experiences for children and families dependant on where they live” except, in this case, it may be where they are educated.

9. Another point in the policy memorandum giving cause for concern is the duty to ensure that children with a less typical pattern of involvement with health and educational services are provided with a named person. The policy memorandum states that the Bill makes provisions to include “children and young persons who

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2 [http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd-pm.pdf)
attend school outside Scotland”, however, in previous correspondence with the Scottish Government SCIS has been informed, “The Bill cannot place duties on public services and agencies outwith Scotland so for children who attend schools across borders, it will be up to schools to agree how they link and exchange information with the child’s home authority/services”. Clear guidance on whether foreign pupils, who return home in school holidays, would require a named person would be appreciated. This is a very important subject to us, as our schools would need to know when they have a duty to provide a named person for the 1289 international students\(^3\) who attend independent schools.

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

10. **Section 43 (1)** The statement that the duty of an education authority to “secure that the mandatory amount of early learning and childcare is made available for each eligible pre-school child” is of concern to SCIS as it includes partnership pre-school providers such as independent schools. Although this partnership approach has worked previously, the additional mandatory hours and increased flexibility required may affect how many private nurseries are able to cater to these new requirements. Since 2005 the number of centres providing pre-school education in Scotland has been steadily decreasing\(^4\) which will increase the pressure already felt by the existing centres providing these services.

11. **Section 46 (1)** SCIS supports this development but questions how education authorities will “consult such persons as appear to be representative of parents and children under school age in its area” in practice. Will there be guidance to ensure that the group consulted is truly representative? E.g. in Renfrewshire where 49.6% of childcare centres are private\(^5\), more parents may need to be consulted with from this sector than normal (the number of private nurseries across Scotland is a much smaller figure at 30%).\(^6\)

12. **Section 47 (1)** SCIS is apprehensive of the move away from embedding childcare within the school term time system. While there is acceptance that a more flexible service will prove more useful for families, the concern is that there are not enough resources to support this in practice. Current legislation, although allowing pre-school education to be available outwith school term time, does not utilise this in normal practice\(^7\). If this duty were to be implemented, resources might be stretched beyond their capacity, as it is believed that they can already support this type of flexibility. Our member schools have voiced concerns regarding staffing, as many private nurseries are staffed by qualified teachers who could not work throughout the holidays in addition to the school year. If they are to be expected to hire new staff to support the increased flexibility of this provision, what would be the level of training/qualifications required? There is a

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concern that increasing the quantity of mandatory hours would lead to a decrease in the quality of childcare offered.

Summary

13. The introduction of the Bill is a step forward for children and young people in Scotland and SCIS welcomes its provisions. However, SCIS schools ask for more detail to be provided in the aforementioned sections. SCIS looks forward to working with the Scottish Government on further guidance and with the Scottish Parliament on the implementation of this Bill.

Scottish Council of Independent Schools
25 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Scottish Court Service

1. I refer to the call for evidence in relation to the above, to which I respond on behalf of the Scottish Court Service (“the SCS”). In particular, I would wish to comment on the provisions contained in Part 7 of the Bill in relation to Corporate Parenting.

2. The Judiciary and Courts (Scotland) Act 2008 created the SCS as a judicially-led body responsible for the provision of administrative support to the Scottish courts and the judiciary. The inclusion of the SCS as a corporate parent in Schedule 3 of the Children and Young People (Scotland) Bill and the requirement contained in section 58 for corporate parents to comply with the directions of Scottish Ministers appears to be inconsistent with the independence of the SCS as provided by the 2008 Act.

3. It is our understanding that the concept of corporate parenting is not extended to individual judicial office holders who are the persons responsible for making decisions in Scottish courts which affect the lives of looked after children. We think this is the correct approach and have considered the inclusion of the SCS as relating purely to the corporate body of the SCS charged with administrative functions. However, we would suggest that the responsibilities of corporate parents, as set out in section 52 of the bill, are inconsistent with the independence of this administrative function. I would further note that the responsibilities of the SCS in engaging with children and young people are restricted to its functions of providing administrative support for the courts and the judiciary, including providing a suitable environment and accommodation for cases coming to court.

4. Notwithstanding this, the SCS will continue to collaborate with local authorities under Part 3 of the Bill in the provision of a suitable court environment for children and young people who attend.

5. I hope these views are of assistance to you. If you require any further information at this stage, please do not hesitate to contact me.

Scottish Court Service
26 July 2013
1. Thank you for the opportunity to provide written evidence to support the committee in its examination of the Children and Young People (Scotland) Bill. I write to provide comments on the Bill from the Scottish Directors of Public Health. This letter sets out a synopsis of the issues raised at the level of policy analysis.

2. We support the aspirations of the Bill and the desire to ensure that the current gaps in our ability to uphold children’s rights are addressed. The Bill has many strengths but we believe that there are some important omissions and that the current provisions risk some unintended but foreseeable consequences which could be addressed through further deliberation.

Early Years Education

3. We support the extension of early education as there is evidence that access to high quality education can improve outcomes for children. We note however, that European States have a wide variety of approaches to the age at which formal education begins and that this does not seem to be the main factor determining child wellbeing, with all of these States having better outcomes for children than is the case in Scotland.

4. UNICEF reports on Child Health and Wellbeing in Developed Countries (2007) concluded that the main factors affecting the wellbeing of children were poor relationships within the family; risk-taking behaviours; and the position of the child in society. The follow-up work published by UNICEF in 2011 concluded that UK children’s wellbeing was adversely affected by time-poor parenting, and a pervasive negative impact of materialism. These themes were linked, with limited family generosity policy restricting child and family freedom to participate in play and leisure activities, requiring parents to work when they could and parents working ever-harder to substitute with things, including food, when their children needed more of their time to develop. Some voices have raised the concern that given the time-poor parenting identified in the UNICEF reports, that a universal extension of early education may have the unintended consequence of worsening child wellbeing at the level of the population when more targeted, and arguably, earlier and more sophisticated interventions, might do more to improve outcomes. Therefore, whilst we support the increased provision of early education, we believe that the provision must be more closely linked to the delivery of information about parenting support and that it should promote improved access to parenting support at a local level.

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5. In addition to the issues raised by the UNICEF report in relation to child wellbeing, we regard the scale of inequalities across Scottish society in terms of income, opportunity and health as a major threat to child health and wellbeing. Moreover, there is a consensus that these inequalities are present for children even in the antenatal period. The Marmot Review of health inequalities in 2010\(^3\) set out a need to create proportionate universalism, or the need to ensure that universal services were tailored to individuals’ needs, delivering proportionate inputs, in order to both improve health and reduce inequalities in health across the population. We see universal early education as the basis for such a proportionate universal system.

6. Given the need to tackle inequalities, we believe that more vulnerable children and families should receive proportionately more support in terms of early education. From a population perspective, the problem is greatest for the significant proportion of children and families with mild/moderate levels of vulnerability, who currently have limited access to services other than those provided universally. We would support clear responsibilities for early education establishments to assess and provide tailored support packages for this group in order to offset the impact of vulnerabilities such as time-poor parenting and other associated risk factors.

7. Marmot describes the central roles of communities, access to recreation and to culture as critical elements which are required in addition to the provision of universal services in order to tackle health inequalities. A number of schemes designed to widen access to culture have been put in place across Scotland.\(^4\) Therefore, whilst we support an increase in universal provision of early education, we believe that this should be tied to clear regulations which set out the quality of provision, ensuring that this provision takes account of the role of communities, and that it ensures greater access to leisure and cultural facilities for children and their families.

**Rights of Children and Young People**

8. We are supportive of the emphasis placed upon rights by acting to further embed the United Nations Convention on the Rights of the Child (UNCRC) in Scottish life, although we note that a rights-based approach may be challenging for Scots law. Our main concern is that there is little evidence that an approach which is almost exclusively focussed upon public services will deliver significant improvements. Our view is that health and social care providers working with children already have the rights of children and advocacy for them at their core but are hampered by the gaps in the current statutory framework and lack of attention to family generosity policy as a determinant of low infant mortality and higher levels of child and family health and wellbeing.

9. We believe that there are other areas of Scottish life which could be targeted to improve the rights of children and that in particular children’s rights must be

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\(^4\) Raploch (Sistema Scotland) [http://makeabignoise.org.uk/sistema-scotland/](http://makeabignoise.org.uk/sistema-scotland/)
articulated via parents and employers. We would reiterate our concerns about work-life balance and time-poor parenting as being linked to child wellbeing and outcomes. We appreciate that approaches to further embed the rights of children and parents in employment would be difficult for a number of practical and political reasons, but European States with significantly higher levels of child wellbeing are characterised by children’s rights being articulated in the workplace, ensuring a better balance for parenting and an expectation that men and women will share childcare responsibility. We acknowledge that much has been done within child protection arrangements to improve advocacy on behalf of the child, but we wonder if a rights-based approach might be extended into civil law relating to child custody. A further area where the child’s rights could be expanded in line with the UNCRC is that of community planning. We believe that there should be a duty for planning partners to consider the rights of children and young people in relation to a wide range of areas such as education, housing, building, transport, and leisure.

10. In the previous consultation to the Children’s Rights Bill, we reflected on the strength of evidence suggesting that there were specific rights for children which were more amenable to legislation. We would reiterate that specific legislation to ensure freedom from physical assault and violence including corporal punishment would be our main priority despite the political sensitivity with which this is associated. In addition, it would be possible to articulate rights to shelter and rights to nutritionally appropriate food and drink through legislation and standards. Although we accept that this also raises political difficulties, it has been introduced in countries that are our peers and whose child health outcome targets we have adopted. A further specific right could include the right to a minimum household income, guaranteeing the resources required to support healthy living. Tackling child poverty and social deprivation are likely to be the most effective methods of protecting the rights of children and young people and improving their outcomes.

11. Given our view that parents and employers are likely to be most influential in articulating and improving the rights of children, we do not believe that three-yearly reporting from all the organisations listed in the annex on their respective attempts to promote the rights of children and young people is proportionate or necessary. Instead, we suggest that public sector reporting should be done at the level of Community Planning Partnerships, acknowledging that these are likely to be the implementation bodies for most joint working around the early years in the future. We would offer the Scottish Directors of Public Health as advisors to the development and analysis of the core data sets.

**Care System changes**

12. We welcomed the care system changes which were well-argued and seem likely to improve outcomes for this group.
Wellbeing: definition, planning and reporting

13. We were supportive of the definition of children and young person’s wellbeing in legislation, and accept that although SHANARRI (Safe, Healthy, etc) definition has weaknesses, given existing investment in the rollout of GIRFEC (Getting It Right For Every Child), that the definition can be adapted via guidance and believe that this approach will be necessary to reduce the impact of unintended consequences.

14. As a group we are keen to engage and provide expertise around the development of outcome indicators at the level of the population which would add value to the definition of wellbeing, and which would then provide consistent, standardised reporting across Scotland. We feel that embedding valid measures such as the Index of Child Wellbeing would clearly link actions with outcomes. We would argue for the adoption of clear, objective measurable national outcomes and indicators for children and young people, based upon the wellbeing definition, set out in regulations. The expectation that the actions required to deliver the internationally agreed reductions in child death, avoidable illness and improved child and family well being will be delivered must be placed explicitly on accountable bodies. Only this level of rigour will facilitate consistent reporting of child health and wellbeing across Scotland at the level of the population. This approach would also facilitate quality improvement across integrated services for children.

15. A general statement in legislation regarding responsibilities to deliver against intergovernmental agreements (to cover UN, World Health Assembly and EU agreements) would enable delivery against agreed objectives and would permit improvement measures to be monitored. In addition, there are several national frameworks around maternity care and nutrition which might usefully sit underneath this Bill and be referenced through it or via linked guidance.

16. We believe that, as with our previous comments, reporting should be a function which occurs at the level of Community Planning Partnerships, clarifying joint outcomes for children through integrated delivery approaches.

17. We are supportive of the overall aims laid out for the development of children’s services plans which should safeguard, support and promote the health and wellbeing of children and young people in an area in an integrated, efficient and co-ordinated manner.\(^5\) However, we believe that the plan should be explicit in the requirement to reduce health and wellbeing inequalities and in the actions being undertaken to address this.

GIRFEC and the named person

18. We support formalisation of the role of the named person within legislation and acknowledge the proposed division of responsibilities between health and local authorities on the basis of the child moving to full-time education. We believe that

\(^5\) Draft Children and Young People (Scotland) Bill, section 9 (2). The aims of a children’s plan.
this will require significant investment across public services. However, we have reservations about the implementation of this given the latitude being suggested in the legislation.

19. There are difficulties which must be overcome with widening the public health role of midwives which might be better addressed through mandatory guidance, providing a clear solution to issues of boundaries of professional responsibility across Scotland. In a similar vein, we are concerned about the implementation of the named person within a school environment. Our belief is that the named person should have the skills to act on behalf of the child, but must also have a close relationship with the child and parent/carer. We are uncertain that this role can be fulfilled by education staff currently in managerial and promoted posts and believe that this should be a specific role as already occurs in some schools.

20. We believe that provision of the named person for Gypsy or Traveller children requires clarification through a duty on organisations and that this should be clarified in statute, ensuring that public sector organisations regard this as the child’s right. This will place an increasing burden on health and education, but we feel that this is a proportionate solution given the clear evidence around health needs and outcomes for this group. This could be framed as a more general requirement for a named person to act as a trusted third party for those children additional action is required to ensure compliance with equalities legislation. Refugee, asylum seeker and children in immigrant detention centres would be another group.

Future-proofing

21. We believe that whilst there are elements of the proposed Bill which should be retained in perpetuity or modified via guidance, that some parts of the Bill are ‘of the moment’, addressing current issues between organisations. We would therefore support the development of clauses to modify elements through guidance, or the creation of ‘sunset clauses’ to future-proof the Bill and assure ongoing compliance with all aspects of the of the United Nations Conventions on the Rights of the Child and its successor conventions.

Professor Alison McCallum
Chair, Scottish Directors of Public Health
23 July 2013
Dear Terry,

Thank you for the letter from the Education and Culture Committee on 2 October about the Children and Young people (Scotland) Bill. Responses to each of the questions are below:

**Part 1 – Rights of children**

**What parts of the UNCRC could not be incorporated into Scots law because they are outwith devolved competence?**

The Scottish Government considers that the following provisions of the UNCRC (‘the Convention’) fall within the category of provisions that are outwith devolved competence:-

(i) article 2 – equalities/equal opportunities
(ii) article 3 – insofar as the actions concerning children relate to reserved matters;
(iii) article 7 – insofar as relating to nationality;
(iv) article 8 – insofar as relating to nationality;
(v) article 10 – entry to/exit from a State;
(vi) article 11 - insofar as this provision relates to the establishment of bilateral or multilateral agreements;
(vii) article 17 – in part;
(viii) article 22 - insofar as concerned with the granting of refugee status. It would be competent to take certain measures in relation to individuals who are seeking asylum;
(ix) article 26 – social security;
(x) article 35 – insofar as this provision concerns the establishment of national, bilateral or multilateral measures;
(xi) article 38 – insofar as the issues concern membership of the armed forces.
The Scottish Government is of the view that the terms of the Convention do not readily translate into legal obligations that are directly enforceable in the domestic courts but recognises that insofar as within devolved competence it would be possible to pass legislation that gives effect to the principles outlined in the Convention.

The obligations imposed upon State Parties in terms of Part II of the Convention do not appear to the Scottish Government to be compatible with the legislative competence of the Scottish Parliament hence the limited definition of the term "the UNCRC requirements" which focuses on only Part I of the Convention, not Parts II or III.

Which parts of the UNCRC are not in Scots law but could be incorporated within devolved competence? For each part, why has the Scottish Government chosen not to incorporate?

Insofar as the provisions of the Convention relate to matters falling within the legislative competence of the Scottish Parliament, it is the Scottish Government’s view that Scots law is compatible with the principles underlying the Convention. However, it must be remembered that domestic legislation does not, in our view, always necessarily represent the best way to further the Convention’s principles and that is why our approach to implementation focuses not only on changes to the law where that is appropriate but also on changes in policy as well as improvements in frontline practice.

How will the reports produced under Part 1 of the Bill differ from the reports that the Scottish Government already provides as part of the UN committee process?

The reports prepared under Part 1 of the Bill will be prepared by Scottish Ministers and the authorities listed in Schedule 1 to the Bill. The report by Scottish Ministers will be submitted to the Scottish Parliament and will specify what steps the Scottish Ministers have taken to secure in Scotland better or further effect of “the UNCRC requirements”. The report by other authorities will contain similar provisions. Scottish Ministers must also report on what they have done to promote public awareness and understanding of the rights of children. There is a requirement to report every 3 years. The Scottish Ministers, and in practice also the relevant authorities, will be answerable to the Scottish Parliament for the fulfilment of the duties specified in the report.

Article 44 of the UNCRC places an obligation on State parties, which in this case means the United Kingdom, to report to the Committee on the Rights of the Child, on the measures adopted in the relevant State to give effect to the rights recognised in the UNCRC, and the progress made on the enjoyment of these rights. Such a report is made to the UN Committee, not the Scottish Parliament, and concerns measures adopted in the United Kingdom, either by the UK Government or the relevant Devolved Administrations where appropriate. This report is therefore broader in scope, covering both devolved and reserved matters, than what is proposed in Part I of the Bill. Although Devolved Administrations contribute for their interests to the UK
report, and may seek to influence its content, it is the United Kingdom Government in its capacity as the State party that determines the final terms of the Report.

**Part 2 – SCCYP**

**Whether the Scottish Government agrees that section 5(2) (regarding 7(5)) would allow the Commissioner to undertake a general complaints handling function in the manner described by Tam Baillie on 1 October, or whether it should be interpreted more narrowly?**

The Scottish Government has consistently stated that the new powers being extended to the Children’s Commissioner are not intended to replace or duplicate the function of any other organisation involved in responding to concerns raised by or on behalf of a child, whether at local or national level.

In terms of current practice, we know through our discussions with the Children’s Commissioner that approximately 400 enquiries for support are made to his office each year, most of which are dealt with through the provision of information, guidance and signposting to the relevant complaints process. On occasion, the Commissioner may also support the child in raising their issue with a local service provider. It is then for the service provider to work with the child and their family to respond to the issue raised. Clearly, it is in the best interests of children if such issues can be resolved swiftly through relevant local complaints processes.

We accept that the proposed new power linked to individual investigations is likely to result in an increase in this type of enquiry and we agree it is important that this service continues to be delivered to those children and families who approach the Commissioner’s office. We must also recognise the resource implications associated with an increase in enquiries.

I am aware that the Children’s Commissioner has shared with the Committee his view that the Bill provides new powers to intervene in cases prior to local complaints processes being exhausted. In his evidence, Mr Baillie cited section 5(2)(c) of the Bill as being of relevance in this respect. The explanatory notes which accompany the Bill describe the purpose of section 5(2)(c) as follows:

*Subsection 2(c) amends section 7 of the 2003 Act to provide for the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.*

This provision is designed to offer the Commissioner some flexibility in dealing with a case which could otherwise be dealt with through an investigation. Paragraph 16 of the Explanatory Notes makes clear that the Commissioner may not undertake such an investigation where that would duplicate the work of any another complaint handling body. We would therefore not foresee there being a role for the Commissioner to have extensive, ongoing involvement in a case prior to local processes being exhausted and it is not our view that the Commissioner should take on any mediation-type role.
With regards to the types of cases which might reasonably be covered by an individual investigation, we understand that this is still the subject of some consideration by the Commissioner and his office. However, we have been assured by the Commissioner and other complaints handling bodies that there are instances where the new power could usefully add value. Our own view, as stated in the Financial Memorandum, is that investigations will be relatively few and far between. They may consider aspects of practice in the public, private and third sector so long as this would not duplicate the functions of another body. Whilst difficult to predict in the abstract, we would suggest that there may be scope for the Commissioner to intervene in instances where, for example:

- A public authority is under no statutory obligation to take account of a child’s views and has failed to do so when reaching a decision that will affect them. It may be reasonable for the Commissioner to highlight in such circumstances that, as a matter of best practice, the child’s views should be heard and taken account of in all decisions affecting them. Such an investigation could set a useful precedent for future practice.
- A private company delivering services to the public (perhaps for profit) has failed to take account of a child’s rights. One example may be a company involved in the delivery of public transport services.
- A third sector organisation which is delivering an independent, unregulated service to children or families in the community has failed to take account of a child’s rights. A service could cover, for example, parenting and family support, advice and information services, substance misuse projects, advocacy and a wide range of other community based initiatives.

Ultimately it will be left to the Commissioner to determine the matters which require investigation. The Parliament will of course have oversight of investigations as part of their sponsorship responsibilities in respect of the Commissioner.

Whilst the financial estimates linked to these provisions may seem disproportionate to the number of investigations, it is important to remember that the outcome of such investigations could potentially influence broader practice and ultimately prevent other children from having their rights infringed in future.

Part 3 – Children’s services planning

The Committee has received a petition (PE1440) calling for the Bill to place a duty on local authorities to provide sufficient and satisfying play opportunities for children of all ages and abilities. Could Part 3 of the Bill be used to take the provision of play opportunities into account?

‘Play’ is a key part of a child’s wellbeing, and the Scottish Government would see it covered by the definition of wellbeing set out in the Bill. This includes reference to ‘Active’, ‘Achieving’ and ‘Inclusive’, all issues that involve ‘play’ and so remain at the heart of the Children and Young People (Scotland) Bill. Moreover, we would anticipate that the children’s services planning duties, set out in Part 3 of the Bill, would encompass the contributions that Local Authorities, Health Boards and other relevant service providers can make to supporting play opportunities for children.
This will be addressed in the guidance associated with the planning duties, particularly in the description of the ‘children's services’ to be covered by the Bill.

Part 4 – Provision of named persons

In the course of its two previous inquiries, the Committee has heard considerable concerns about the ability of different public bodies to share information electronically. What plans does the Scottish Government have to improve electronic sharing of information across all those services relevant to GIRFEC?

The Scottish Government has encouraged and supported Local Authorities, Health Boards and other partners to form the Information Sharing Board. The Board’s priorities include supporting the Children and Young People Bill and Getting it Right for Every Child.

The Board is funding local information sharing initiatives to help improve the sharing of information across services delivering GIRFEC. The budget is in excess of £1.5m in 2013-14 and £2m in 2014-15. It is also funding a project specifically to deal with sharing information across partnership boundaries.

National minimum data sets for a child’s plan are currently being agreed to improve consistency in recording and storing information.

Can you clarify whether, under section 19(3), a named person could be drawn from the voluntary and private sector on the basis that they provide a function on behalf of the health board or local authority?

Section 19(3) means that an individual can be identified to act as Named Person if they are an employee of a person who exercises any function on behalf of the service provider (i.e. Health Board, Local Authority or directing authority). That could include voluntary/private sector organisations who exercise such functions. This provision is necessary because, for example, in the Highland Council area, where the Named Person service is already operating, the Health Visitor service is now provided by the Local Authority, rather than the Health Board. Health Visitors are normally the Named Person in respect of pre-school children. But the duty to provide the Named Person service in respect of pre-school children lies with the Health Board, who remains the “service provider” for such children. As such, it is necessary to have a specific provision in the Bill which allows the Named Person to be someone other than a direct employee of the service provider. In addition, there are instances where private midwives and nurses are contracted to provide health services and the provision is also required to cover this situation.

If so, how does this connect with section 26, which appears only to allow information to be provided to the service provider by a service provider or relevant authority – would this mean that if a named person was in a contracted-out service then there would be no duty to share information with them?

Section 26(7) of the Bill caters for such circumstances:
“References in this section to a service provider or a relevant authority include any person exercising a function on behalf of a service provider or relevant authority.”

Section 26(7) aims to ensure that, where provision of the Named Person service is contracted out, the provisions related to information sharing which apply in respect of Local Authorities, Health Boards and directing authorities would also apply to contracted-out bodies exercising functions on their behalf.

One of the stated advantages of having a named person is that it would be much clearer who needs to be contacted where there is a concern about a child. How will that advantage be ensured if the named person changes during the school holidays?

When the Named Person is not contactable during the school holidays, the Local Authority will be required to make arrangements for the Named Person service to be provided. This means that there will always be a member of Education Services staff available to deal with any concerns from families or others.

For example, the process for handling concerns during school holidays in Highland is:

Where there are child protection concerns during the school holidays, the person with the concern should alert the Social Work department or the Police, who will then take action as appropriate.

Where new concerns for a child’s wellbeing arise during the school holidays, these can be passed on to a member of staff in the Area Education Office who will note the concern, access the child’s education record and consider whether immediate action is required. If no immediate action is required, the information relating to the wellbeing concern will be passed to the Named Person on their return.

For those children who have an Education single agency plan, a discussion will be held at the last review before the school holiday about how the plan will be continued after the holiday. Education plans will relate to concerns that exist in the Education setting, and there will not usually be a need for contact with the Named Person during the school holidays.

How is the named person an improvement on the current situation where a lack of continuity exists for families that have frequent home moves?

Section 23 of the Bill applies to the movement of children and young people. Section 23(2) places a duty on the outgoing service provider (i.e. the Health Board or Local Authority in the original area) to inform the incoming service provider (i.e. the new Health Board or Local Authority) with information that is relevant to enable the new Health Board or Local Authority to provide a service, including the Named Person service. Moving from one Local Authority to another and one Health Board to another would therefore initiate the appointment of a new Named Person. This would not require the parents’ consent but they would be informed that they have a new Named Person, and how to contact them. Good practice would be that the
outgoing Named Person would discuss with the parents the information that they plan to share with the new Named Person. The effect of this provision will be that the new Named Person will be given relevant information about the child that will enable them to support the transition to the new area. Where a child has a Child’s Plan, the plan will be shared with the new Named Person and Lead Professional, and will be reviewed following the move.

**What is the rationale for providing for a named person for each child/young person after school-leaving age?**

Most young people who have left school will have the skills and knowledge to express their views and reach decisions. Some, especially those with complex needs, will still require help and support. The Bill will ensure that appropriate arrangements are in place at Local Authority level for children who have left school before the age of 18. The role of the Named Person in these circumstances will be a point of contact for the young person; to provide information and advice; and where appropriate, link the young person into resources and support networks which currently exist for those young people who have left school but need further assistance.

**In evidence to the Committee, Bill Alexander suggested that “the named person would support early interventions but as soon as more than one agency got involved the co-ordinating role would move to a lead professional”. What would be the criteria for when a lead professional would be expected to take over responsibility from the named person?**

Where concerns about a child or young person’s wellbeing require to be addressed by co-ordinated intervention from more than one service or agency, then a Lead Professional can be identified to take on that co-ordinating role. The Named Person will either take on the role of Lead Professional themselves, or will agree with the partners involved in supporting the child/young person, who is most appropriate to take on the lead professional role to manage the multi-agency Child’s Plan. The Lead Professional may be drawn from any of the services or agencies who are partners to the Child’s Plan. The choice of Lead Professional will be dependent on the needs of the child and the interventions and outcomes identified within the child’s plan.

**Bill Alexander also stated that “if we are legislating for the child’s plan why can we not legislate for the lead professional who prepares the more complex child’s plans?” Why has the role of the lead professional not been included in the Bill?**

The Named Person is located within the universal services of health and education and we can place a statutory responsibility on those bodies to make arrangements to provide a Named Person. The Lead Professional will the person who is best placed to address the more complex needs the child, and so can be drawn from any service; they will not necessarily be located within health or education. It is, therefore, difficult to place a duty on an individual body to make the arrangements for the Lead Professional.
The duty to cooperate and arrangements around the Child’s Plan provides a statutory backing to sort out protocols across agencies in a Community Planning Partnership to ensure local arrangements are agreed. What is important is that public bodies agree the arrangements and make sure they work well. This is an area where guidance is more appropriate alongside legislation.

Part 5 – Child’s plan

A targeted intervention is defined as an intervention provided by a relevant authority (section 31(4)). Does this mean that the child’s plan will not be able to provide for support that is delivered by third sector organisations?

Third parties will be able to deliver targeted interventions where these are part of arrangements entered into with either the Local Authority, Health Board or directing authority (as it is technically that body that is ‘providing’ the targeted intervention, albeit through commissioned arrangements).

In relation to the child’s plan, how will any disputes between families and professionals be resolved?

Disputes between professionals should be resolved locally whenever possible using existing Health Board and Local Authority dispute resolution procedures. Guidance will set out the need to have these in place and the requirement that they are visible and accessible to children and parents.

If disputes cannot be resolved locally, we want redress for children/young people and families to be accessible, clear and quick and are currently considering how best to achieve that. Using legislation is one of the ways that may be appropriate.

Part 6 – Early learning and childcare

It has been suggested, for example by Children in Scotland, that the commencement of three year olds entitlement for free childcare means, in practice, that a child can receive less than their full entitlement depending on their birthdate. Can you respond to these concerns and indicate whether the Scottish Government intends to take any action on the matter?

Current entitlement to pre-school education is set out in the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (SSI 2002/90). This Order prescribes the starting points for entitlement as the Autumn, Spring or Summer term following a child’s third birthday until the end of the term immediately before they are first eligible to attend primary school. Children starting their first year of pre-school education will therefore receive one, two or three terms depending upon when their birthday falls. All children will receive 3 terms during their second year of pre-school education.

Those children born in January or February (who may only receive one term in their first year of pre-school education) will remain entitled to an extra year after their second year of pre-school education if their parents wish. Those children will
generally be starting primary school younger (around 4 1/2) than others without this extra year.

Those children born between September to December and who start their pre-school education in the Spring term following their third birthday will potentially receive two terms in their first year of pre-school education. Those children will be closer to 5 years in age at the time of starting school (4 ¾ to 4 years and 11 months) and it is unlikely that those children would want to be held back from starting primary school with an extra year of pre-school education following their second year of pre-school education.

The policy intention is to continue this entitlement through secondary legislation made under the Bill. Local Authorities can and do deliver beyond the minimum statutory hours and the minimum eligible children. Some Local Authorities already commence entitlement closer to the child’s third birthday, e.g. from their third birthday; or, within a month of the child’s third birthday. Even where a child receives their entitlement closer to their third birthday, there will be slight variations in the amount.

We would encourage Local Authorities to use this power to commence closer to the child’s third birthday where they have the capacity to do so; or, where expansion or increased flexibility within the system allows. The immediate priority of this Bill is to build on the high quality system of early learning and childcare that we have; expand those hours and improve flexibility; and introduce an entitlement for our most vulnerable 2 year olds. This is a first step towards the development of a wider early learning and childcare system that meets the needs of all children, parents and families; and, provides a consistent learning journey through early learning and childcare, primary school and beyond.

**Part 7 – Corporate parenting**

**Can the Scottish Government explain the interaction between the corporate parenting duties of the local authority under section 52 of the Bill with their duties to looked after children under the Children (Scotland) Act 1995 and the duty in section 73 of the Bill to promote the wellbeing of looked after children?**

Section 73 of the Bill seeks to insert a new section 23A into the Children (Scotland) Act 1995 ("the 1995 Act") so that where a Local Authority is exercising a function under or by virtue of section 17 of the 1995 Act (in relation to looked after children) or section 22 of that Act (in relation to children in need) they must have regard to the general principle that those functions should be exercised in a way which is designed to safeguard, support and promote the children’s wellbeing.

The Corporate Parenting duties set out in the Bill are wholly complementary to existing provisions in the 1995 Act and new section 23A to be inserted by the Bill. They strengthen the existing person-centred approach to address concerns quickly and effectively to improve the wellbeing of looked after children and formerly looked after young people. The provisions clarify the role and empower the wider public sector to provide looked after children and formerly looked after young people with support that closes the gap in outcomes between them and their non-looked after
peers. It further underpins the objective of having a single system of service planning and delivery across children’s services. At the heart of this is the responsibility of all corporate parents to collaborate.

All measures setting out corporate parenting duties are consistent with the GIRFEC approach; with the child at the centre, encouraging streamlining and cooperation to eliminate unsatisfactory delays that can occur when services work in isolation from each other.

**Schedule 4 sets out a wide range of public bodies that would become corporate parents. Why has the list of bodies been drawn so widely, and is there a risk that, as the Scottish Children’s Reporter Association suggests, this could dilute the concept of corporate parenting and the role of local authorities in its delivery?**

Schedule 3 sets out the list of corporate parents, which was purposely drawn widely from the public sector to encompass as many organisations as possible that have a key role in the decision making processes that affect our looked after children and formerly looked after young people. The policy preference is not to create different tiers of corporate parent but to unify the level of responsibility placed on these organisations - no matter what their role is - in collaborating to ensure the highest level of service planning and delivery is attained by all corporate parents and the third sector organisations who deliver services for them.

We have confidence in the organisations currently identified in schedule 3 to effectively discharge their responsibilities under the provisions in the Bill without compromising their core statutory functions. Section 52 states that these duties are to be exercised by corporate parents “in so far as consistent with the proper exercise of its other functions”. We continue to engage with all organisations who have feedback to offer on the corporate parenting duties as the Bill progresses through Parliament.

Section 50(2) of the Bill allows the Scottish Ministers to, by order, modify schedule 3 to add, remove or vary the entries listed so that, for example, if it turns out that an organisation no longer has a legitimate role as a corporate parent then they can be removed from the schedule. We hope all Corporate Parents can be reassured in this regard.

**Part 9 – Counselling services**

The use of the term counselling has been said to refer to specific professional practices. Why has this term been used, and what is it taken to include?

‘Counselling’ means helping people to adjust or deal with personal problems, etc, by enabling them to discover for themselves the solution to the problems while receiving sympathetic attention from the counsellor. The Scottish Government does not consider that this is limited to counselling by those holding particular professional qualifications. The types of services that will be available will be set out in secondary legislation, following consultation with stakeholders and will make it clear the range of services that will be made available to families and the Scottish Government will
also publish guidance on the subject. The Scottish Government is of course happy to reflect on any concerns that there are services which should be capable of being included within Part 9 but which might not properly fall within the term ‘counselling’.

**Is it the Scottish Government’s intention that the regulations under this Part of the Bill will restrict the eligibility to counselling services to situations where kinship care is a possibility?**

No. The intention of counselling services is to ensure families in the early stages of distress who seek help are provided with appropriate forms of counselling. This will be available where a child’s wellbeing would be at risk of being impaired – in particular where the child is at risk of coming into care. It is intended to act as an early and effective intervention to support parents and where appropriate, can promote the role of a kinship carer.

**Part 10 – Support for kinship care**

**Can you respond to the concerns raised by kinship carer organisations in evidence to the Committee on 24 October that the provisions in the Bill will not adequately support kinship carers?**

The kinship proposals within the Bill are intended to support a specific group of kinship carers who have, or go on to, obtain existing residence and parental responsibilities and rights orders, where the child is eligible. The Kinship Care Order provides an additional option in terms of securing permanence for children who can’t live with their birth parents and for the first time, makes statutory provision in relation to support, thereby offering more support than is currently available in these circumstances.

The precise balance of new rights and needs-based support will be determined in secondary legislation following consultation with key stakeholders including Local Authorities and groups representing kinship carers of which the Scottish Kinship Care Alliance is one. We consulted on the following forms of assistance:

- Financial and practical support with the court petition;
- A start-up grant of £500;
- Transitional support where a kinship care order leads to a child ceasing to be looked after and financial, practical or in-kind support to meet the requirements of a section 11 Contact Order;
- Free Early Learning and Childcare provision for any 2 year old subject to a kinship care order.

Support for kinship carers of **looked after children** is being looked at separately through the Kinship Care Financial Review, which is looking at tailoring support and tackling inconsistencies in the provision of support across Scotland. Recommendations from this review are likely to be announced by the end of the year.
Much of the detail in Part 10 will be provided in regulations. Are you able to provide details of what would constitute an eligible child, and the type of assistance that will be prescribed under regulations? What are the Government’s plans for consulting on the regulations?

Engagement with stakeholders on secondary legislation for Parts 9 & 10 has already started. Kinship carers, kinship care groups and other key stakeholders such as Local Authorities and third sector organisations have an opportunity to feed into shaping this secondary legislation. The intention is that an eligible child will be one whose wellbeing would be at risk of being impaired – in particular where they are at risk of coming into care, if the kinship care assistance is not made available. We anticipate that assistance will include financial & practical support with court applications, start-up grants, transitional support for children coming out of a care setting and Early Learning and Childcare from the age of 2.

**Will families who currently have a section 11 order automatically receive a kinship care order, or will they need to reapply?**

Kinship carers that currently have a section 11(1) order, which gives them the right to have the child living with them & those who have a residence order, if they are a qualifying person (i.e. related to the child, a friend or acquaintance of a person related to the child or such other relationship as may be specified by order), will automatically have a Kinship Care Order. Assistance will then need to be sought from the Local Authority by the kinship carer and will be provided if the child is an eligible child.

**Could you clarify what support would be available under the regulations to a kinship carer who already has a section 11 order?**

Currently there is no specific statutory support for kinship carers with an existing section 11 order. However, kinship carers with existing residence orders and parental responsibilities and rights orders (section 11 orders) will automatically be deemed to have a Kinship Care Order and will be able to access support from their Local Authority as any other kinship carer who applies for a Kinship Care Order would.

Support available under the Kinship Care Order for those with existing section 11 orders will be set out in Secondary Legislation, consultation for which has already started. We anticipate that support will include access to help and support from social work services, who will be able to determine the best form of therapeutic intervention for the circumstances of the family, Early Learning and Childcare from the age of 2 and access to counselling services, if the child is an eligible child.

**Can you clarify whether local authorities will be expected to continue to make payments under current discretionary routes (s.22 and s.50) and, if so, could this provide an ongoing financial allowance irrespective of any support provided under this Bill?**

There is no specific expectation that local authorities will make payments to kinship carers under s22 or s50. The Kinship Care Order provides the carer with some or all
parental responsibilities and rights and will be recognised as any parent would be within the benefits system. Therefore, the kinship carer can claim the same benefits such as Child Benefit and Child Tax Credit as any parent would.

However, s22 and s50 place a duty on a Local Authority to safeguard, promote and maintain a child, regardless of legal status, within their area who is in need. Assistance from s22 and s50 can also include goods and services, as well as discretionary payments. Therefore, assistance may be provided through s22 and s50 to eligible children under a kinship care order irrespective of any other support being provided.

The Kinship Care Order does not alter formal carers’ existing entitlements to allowances – these are subject of a separate review by the Scottish Government.

**Will there be a requirement placed on local authorities to provide financial support for families with a kinship care order or will that be based on an assessment? If so, how will that assessment take place?**

There will be a requirement on Local Authorities to make sure kinship care assistance is made available for kinship carers in their area if the child they are caring for is eligible. Secondary legislation will specify the description of the child that is eligible, it will specify when or how a Local Authority is to consider whether a child is eligible and it will specify the types of assistance that will be available.

It is anticipated that transitional support, including financial support, will be provided for a period 3 years to kinship carers when the child they care for ceases to be looked after and they move onto a kinship care order. After the 3 year transitional period, the kinship carer can continue to seek assistance under their kinship care order from the Local Authority if the child remains an eligible child.

**Part 11 – Adoption register**

**What evidence is there for the need for an element of compulsion in the statutory adoption register?**

Whilst the Scottish Government is pleased with the initial progress of the current non-statutory adoption register, we are clear that it must be designed and built to help find the maximum number of opportunities for every child for whom adoption is in their best interest. If a child cannot be matched locally, it is important to ensure that there is no unnecessary drift and delay in a child being potentially matched to adopters outside the Local Authority. This means every adoption agency must refer both children and approved adopters in a timely way.

We are aware from engagement with adoption agencies, BAAF and other stakeholders that some adoption agencies are reluctant to refer their prospective adopters to the Register (even though they cannot currently match them with any children locally). This was explicitly recognised by BAAF (in their Scotland’s Adoption Register’s submission) where they recognised that “there may be some benefits to mandatory referral in relation to the availability of adoptive families as a resource for all children waiting for a new family” and they acknowledged they were aware that
“some local authorities have not been keen to allow their waiting adopters to access opportunities afforded them through Register services preferring to hold on to them ‘just in case’ they need them for a local child”. We envisage that the statutory requirement on adoption agencies to use the Register will address this issue and increase the Register’s effectiveness.

Both England and Wales are also currently pursuing separate legislative routes for establishing their respective Adoption Registers in statute in recognition that this will help to increase their Registers’ effectiveness.

I hope this response fully answers the questions from Committee. Please let me know if there is any further information required.

Yours sincerely,

Elisabeth Campbell
Bill Team Leader
Children and Young People (Scotland) Bill
28 October 2013

Dear Stewart,

Thank you for the letter from the Education and Culture Committee of the 10 October 2013. Please find a response to each of the questions below:

The Committee would be interested to receive your response to the points made by the Commissioner and, specifically, in relation to his comments on section 27 (see Official Report, Cols 2952-3).

The Assistant Information Commissioner has made a number of points which are helpful and which we will consider. In his initial written evidence, he commented on section 26 and expressed a view that the use of the words 'might be relevant' in that section fail to comply with the data protection principles under the Data Protection Act 1998 (DPA), which provides that personal data must be adequate, relevant and not excessive in relation to the purpose for which it is processed. It is important that section 26(2) is read in its entirety since there are 3 limbs to the test specified there, not one as might be inferred from Mr Macdonald's evidence. We believe that the second limb to the test (that the information "ought to be provided for that purpose") in section 26(2) provides the additional test that the information sharing is proportionate, relevant and necessary, thus meeting the requirements of the DPA. Any legislation that is passed by the Scottish Parliament, and any powers conferred, must be read in the context of being constrained by the ECHR and reserved legislation such as the DPA.

Mr Macdonald also wishes Section 27 to be re-considered, as stated in his supplementary written evidence. Section 27 deals with the situation where a person provides information in circumstances where there is a prohibition or restriction on disclosure. We have some sympathy with the view that there is no absolute right to confidentiality and that where a child is in a position of risk, then relevant information should be shared, proportionately and appropriately. However, we also note the views of the Information Commissioner's Office and Professor Norrie regarding the perceived wider implications of this section and will give this matter further consideration.
It was always our intention to provide further detail on these sections of the Bill in statutory guidance accompanying the Bill and to publish such guidance.

In relation to these sections we are continuing discussions with stakeholders, partners and colleagues. This has included a session with members of Together (Scotland’s Alliance for Children’s Rights), GP’s, Health Visitors, Head Teachers and Parent groups on 16th October, which specifically looked at confidentiality and Section 27. We are also engaging with relevant organisations on the update of the Privacy Impact Assessment, which includes exploring the potential impact of these sections. The evidence that the Education and Culture Committee has received on information sharing, together with our ongoing discussions outlined above, will enable us to fully consider all views on Sections 26 and 27. We are keen to listen and understand concerns, as we wish to get this right.

**Issues Raised by the Finance Committee**

**Named Person Role**

The Committee notes that there were a number of concerns from witnesses with regard to the training costs in relation to the formal creation of "Named Persons". The Committee invites the lead committee to raise the following issues with the Cabinet Secretary -

- That staff other than those listed in the FM may require training and costs have not been provided for this;

- To provide details of the consultation with stakeholders on integrating training within existing CPD courses;

In the Financial Memorandum, training costs were provided for with regards to Local Authorities and Health Boards in taking forward the duties relating to the Named Person and the Child’s Plan. The costs entailed:

- For **Local Authorities**: costs in 2015-16 to cover backfilling of relevant educational staff for 2 days equivalent of dedicated training, at backfilling rates set out in paragraph 47 and Table 8; and

- For **Health Boards**: costs in 2014-15 to develop materials for training health staff and costs in 2015-16 to cover backfilling of relevant health staff for 2 days equivalent of dedicated training, at backfilling rates set out in paragraph 58.

For both sets of bodies, it is expected that training would be delivered in-house, building on existing practice.

Training costs have been calculated on the basis that comprehensive, initial training would be needed for those individuals who would have direct responsibility for carrying out the role of the Named Person: head teachers, deputy head teachers and principal teachers in the case of Local Authorities; and midwives, Health Visitors and other public health nurses in the case of health services. Costs have not been calculated for any other additional training, as it is not anticipated that there would be other statutory requirements to be fulfilled that would need such training.
In this, we would distinguish between training – what is required to fulfil the duties of the Named Person – and awareness-raising – what is required to ensure that other professionals can effectively support the Named Person. In this respect, we are mindful that awareness-raising has been subject to intensive work over the last 5 years. It has benefited from the £7.8 million already invested by the Scottish Government in supporting the implementation of *Getting it right for every child* (GIRFEC) by Community Planning Partnerships (CPPs) since 2008, as well as the clear requirements to raise awareness of GIRFEC through the refresh of Hall 4 ([www.scotland.gov.uk/Publications/2011/01/11133654/0](http://www.scotland.gov.uk/Publications/2011/01/11133654/0)) and the letter to Health Boards on GIRFEC (CEL 29).

In a study commissioned by the GIRFEC Programme Board, completed in September this year, all CPPs reported that they were advancing implementation of GIRFEC, including knowledge and understanding of its core components among relevant staff. As the Financial Memorandum focuses on additional costs, in light of the extensive work of the last few years, we do not believe that such awareness-raising would be required as an extra significant cost.

The Financial Memorandum assumes that in the second year of implementation - for both Local Authorities and Health Boards - the required training for the Named Person and Child’s Plan duties would be incorporated into existing CPD training, rather than supplanting or remaining additional to existing training. These assumptions have been based on consultation with those local areas furthest advanced in implementing GIRFEC - and consequently, those areas with the most experience in addressing training issues. These are, notably, Highland and the City of Edinburgh, but also including Falkirk, Fife, South Ayrshire and Perth and Kinross. Some areas have already advised that they are moving rapidly towards the full mainstreaming of GIRFEC into educational training, such as the GIRFEC group of south-east Scotland CPPs.

**Costs for Local Authorities in Relation to the Delivery of Named Person Duties**

The Committee is concerned that the FM does not provide any details at paragraphs 53 and 54 of the financial savings from the benefits of implementing GIRFEC and invites the lead committee to seek this information from Ministers.

The Financial Memorandum sets out the savings noted by a range of bodies from the implementation of GIRFEC, notably by Highland in paragraph 53. This is set out in the evaluation of the Pathfinder, particularly *The Impact on Services and Agencies Part 2* (which can be found here: [www.scotland.gov.uk/Topics/People/Young-People/gettingitright/publications/highland-report/impact-services-agencies2](http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright/publications/highland-report/impact-services-agencies2)).

Paragraph 54 also sets out savings for Falkirk and Fife. However, these savings have been set out as benefits accruing to relevant services in terms of reduction in time and bureaucracy, rather than monetized financial savings.

The non-cashable savings relate to direct savings – through, for example, reductions in social work caseload, time spent in meetings relating to particular children and young people and documentation – as well as indirect savings – through, for example, reductions in the number of children and young people on the Child Protection Register. This is in addition to the clear benefits experienced by children, young people and their families, not least the reduced demand on services at the more complex end as a result of early intervention over the medium to long term, as set out in the Pathfinder evaluation study.
As with other preventative approaches, financial savings cannot be easily calculated. As the Pathfinder evaluation study concluded in the case of Highland: "The changes that have been introduced are enabling staff to achieve more for the children and young people allocated to them with the same level of resources... It is also more difficult to identify significant non-cashable savings within universal services. This is partly because it is not always possible to isolate the getting it right effect from other changes being introduced." Bill Alexander, Director of Health and Social Care in Highland Council, confirmed this when he gave evidence before the Education and Culture Committee on 24 September: "Financial savings are a complex issue. The bottom line is that our policy has been not to take financial savings out of children's services because of the implementation of getting it right for every child, but that does not mean that we could not have done so. We reinvested the money in early intervention and preventative services. For example, the case loads of social workers have been significantly reduced. We could have reduced the number of social workers, but we did not. We invested in front-line workers who can undertake preventative work. We are about to invest in additional health visitors. We believe that such investment not only makes good professional sense because it means better outcomes for children and families, but is the long game in terms of financial savings. The number of child protection registrations and looked-after children is already going down, so there will be savings from there being fewer children with higher-level needs."

For this reason it has not been possible to translate the savings noted by areas implementing GIRFEC into cash terms.

The Committee is also concerned that no margins of uncertainty appear to have been provided for the assumption that 10% of children and young people would require additional support of 3.5 hours per year and invites the lead committee to seek this information from Ministers.

With respect to the costs to Local Authorities in implementing the duties of the Named Person and the Child’s Plan, the Financial Memorandum sets out assumptions with respect to the additional demand that this is likely to cause for relevant educational staff (paragraph 51). It is assumed that additional activity would be required for 10% of children and young people in Local Authority education, requiring an average of 3.5 hours of additional activity in the first year of implementing these duties. The number of additional hours required has been averaged – clearly some children will require fewer hours, and some more.

The assumptions are based on consultation with those local areas which are furthest advanced in implementing GIRFEC, notably Highland and the City of Edinburgh. As the numbers were relatively consistent across this consultation, a margin of uncertainty was not felt to be required in costs estimate. The Scottish Government notes that in its evidence to the Finance Committee, the City of Edinburgh Council stated: “The Council believes that the costs for... GIRFEC... are accurately reflected based on our understanding of the requirements of the legislation.”

The assumptions are also in line with those made for younger children with respect to the duties of Named Persons and Child’s Plans on Health Boards. For example, in the second year of implementing these duties, it is assumed that relevant health professionals would need to spend an annual average of 4 hours for those children with particular concerns (as set out in Table 11 of the Financial Memorandum).
Costs for Health Boards in Relation to the Delivery of Named Persons Duties

The Committee is concerned about the extent of the disparity between the evidence from health bodies and the Bill team in relation to the estimated costs and savings to health boards arising from the delivery of the Named Person role. In particular, the Committee invites the lead committee to seek the following information from Ministers:

- The view of NHS Lothian that the assumed hourly rate for midwives and health visitors should be in the region of £21 per hour;

In the Financial Memorandum, the Scottish Government has applied an effective hourly rate of £19.04 in calculating the staff costs associated with the duties of the Named Person and the Child's Plan. With regards to the above point made by the NHS Lothian representative in evidence before the Finance Committee:

- The Financial Memorandum sets out costs for the next 5 years based on the mid-point of the relevant salary scale, not the higher point in the scale cited by the NHS Lothian representative;
- The Financial Memorandum factors in the impact of annual leave into the actual number of additional service hours required to carry out these duties; and
- In addressing the additional hours required to fulfil these duties, it is anticipated that some new staff would need to be recruited, and would typically be brought in at the lower end of the relevant scale.

- A detailed explanation as to why the time horizons for the savings to be made from preventative measures are much shorter in the FM than that predicted by many of the health professionals who gave evidence to the Committee;

- A detailed breakdown of the financial savings which have been made by those NHS bodies who have begun to implement GIRFEC and against which the Bill team tested the assumptions in the FM;

The Financial Memorandum sets out a range of assumptions – derived from discussions with, amongst others, the CEL 29 GIRFEC managers' group and the cross-Scotland Children and Young People Nursing Advisory Group – for determining the costs impact of the Named Person and Child’s Plan duties on health services over the first 5 years of implementation. In paragraph 60 and Table 11, these assumptions detail the average time to be spent supporting those children with emerging and significant concerns from birth up to the age of 5. With regards to these assumptions, it is important to note that:

- These are additional costs to health professionals, and do not include the existing time and support that Health Visitors and midwives would normally provide children requiring additional support, particularly in their first year;
- Over time, as individual children grow older, it is assumed that they will require less support from the Named Person as a result of earlier support – so, for example, the individual newborn requiring 10 hours of support in 2016-17 would, on average, require less intensive support in 2017-18 and beyond because of that level of support in her first year;
- The embedding of the GIRFEC approach through a 'big bang' of intensive investment, building on the years of preparatory work through Hall 4 and the response to the CEL 29
letter, should result in a reduction in the intensity of support required by newborns over time; and
• Investment in the firstborn child in a family should mean less intervention required for subsequent children because of the knowledge of the family circumstances that Named Persons will have developed.

To date, no Health Board, as compared to Local Authorities such as Highland and the City of Edinburgh, have yet taken a ‘Big Bang’ approach to GIRFEC investment, so it is not possible to test the Financial Memorandum assumptions with real-world experience in the same way as has been possible for Local Authorities. Where there has been investment in training, development and increased staff capacity, Health Boards have not identified dedicated savings that can be easily linked directly to the implementation of GIRFEC but recognise that GIRFEC is one of a series of contributing factors to supporting a wider focus of public health on the early years. The study on progress of all Scottish CPPs towards implementing GIRFEC, carried out earlier this year, noted that all CPPs – including their participating Health Boards – were advancing in their implementation of GIRFEC.

The Scottish Government will continue to work with stakeholders in resource profiling and workforce planning to support the implementation of the Named Person and Child’s Plan duties across Health Boards.

Early learning and childcare

Partner Provider Uprating

The Committee invites the lead committee to ask why the 2007 figure is being used to allocate additional funding and whether this means that the Government now supports an advisory floor of £4.09 per hour. Further, the Committee invites the lead committee to question whether the funding being provided is sufficient to enable local authorities to pay this rate and whether this rate is considered to be sustainable.

The Committee invites the lead committee to ask Ministers whether the funding for partner provider payments will be reduced in future years if some local authorities continue to pay considerably less than £4.09 per hour.

The Committee recommends that the Government requires local authorities to report annually on spending in relation to pre-school provision, in order that it can ensure that the anticipated levels of investment are being achieved. This should include details of expenditure on partner providers, including hourly rates paid. This information should be published.

The Scottish Government is aware that not all Local Authorities have consistently uprated their partner provider payments since the advisory floor was removed in 2007, although some have and to differing rates. The rate in 2007 was £3.73 per hour. We therefore felt that it was fair to include in the Financial Memorandum an estimate for uprating partner provider payments, based on an inflationary linked increase from 2007. On this basis an increase of £0.36 per hour was estimated, taking the rate to £4.09 per hour.

It is entirely the responsibility of Local Authorities to decide what they pay partner providers for the 475 hours (or additional hours where Local Authorities have delivered beyond the statutory minimum). Within the annual local government financial returns there is no breakdown of costs for partner providers, so we assume those partner provided hours to be covered by staff costs. In estimating staff costs for the additional 125 hours Local Authority estimates collated by COSLA were used.
Again these costs were not broken down into partner provider costs and the assumption is that these costs are covered by the estimated staff costs for the additional 125 hours.

Financial Memoranda typically do not build in forward inflation. Partner provider payments for the 475 hours and the additional 125 hours when introduced, will remain the responsibility of Local Authorities. It is for Local Authorities to determine local settlements with partner providers that are fair and sustainable. It is in the interests of the Local Authorities, who have a responsibility to secure provision and to seek to improve quality, that their partner providers are high quality and stable. This will be part of their considerations in establishing local settlements.

We will cover this issue in statutory guidance which we are developing in partnership with COSLA, ADES, NDNA and other key partners, but we will not monitor and micro manage Local Authority statutory responsibilities within the block grant they receive from the Scottish Government.

**Additional provision for looked after/kinship care 2 year olds**
The Committee would welcome further detail from the Government on the rationale underlying the increased funding for two years olds as announced on 12 September 2013, and clarification of whether any of the assumptions underlying the FM have been revised in order to arrive at the new figure.

The Financial Memorandum includes an estimate of £1.1 million for the costs of an additional 125 hours of provision for looked after 2 year olds. Separately, the Early Years Change Fund currently includes £1.5 million per annum to support local authorities to provide non-statutory provision of early learning and childcare for looked after 2 year olds. Ministers have decided that the full costs of all 600 hours of care should be centrally funded. This means the full cost of the existing 475 hours has been added to the additional costs of the 125 hours and integrated with existing funds which came from the Early Year Change Fund, resulting in a total allocation of £4.5 million. The assumptions in the Financial Memorandum have not been revised.

**Capital costs**
The Committee notes that the FM states that while the estimate is necessarily limited “it has been tested with a number of local authorities.” The Committee invites the lead committee to seek further details as to how this estimate has been tested.

The additional capital costs were discussed with Local Authorities through ADES and with the Care Inspectorate, with reference to adapting existing infrastructure and/or adding additional accommodation. The capital costs are based on the current Scottish Futures Trust metrics which have been used in the Schools for the Future programme. We used the primary school metric which is an allowance of 7.5 square metres per child at a cost of £2,350 per square metre. If you apply this to a new unit for 40 children (full time or morning/afternoon sessions) that would equate to around £700,000. If you applied this to a small unit for 80 children (around the size of a small primary school) this would equate to around £1.5 million. Integrating units with existing schools or other local authority resources would costs less, as would adapting or adding rooms. We discussed and agreed these figures with Scottish Futures Trust and other Scottish Government officials leading on Infrastructure Investment and the Scottish Futures Trust initiative.

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1 *Children and Young People (Scotland) Bill, Financial Memorandum, paragraph 83*
We also cross checked these figures against a recently built nursery for 40 children which included a parent room, staff room, and outdoor play area. The full cost of this nursery was around £900,000 including all contingencies, professional fees and development costs.

**Looked After Children**

**Extending throughcare and aftercare support**
The Committee invites the lead committee to raise the following issues with the Minister -

- The view of some local authorities that the demand for throughcare and aftercare support is likely to be higher than indicated in the FM;

The figures for young people applying for support are based on the limited information available to us from Local Authorities and COSLA. Most Local Authorities do not routinely collect data on how long care leavers have been out of care at the time they are granted support, how many were not considered eligible for support or the length of time someone received support for.

For that reason it has been difficult to ascertain exactly how many young people may come forward for support. Over the last 3 years the number of care leavers has been fairly stable and the numbers in the Financial Memorandum are based on the assumption that this trend will continue.

It is also expected that the numbers of care leavers in the upper age range will be less due to their increased ability to manage independently.

- Why the administrative costs are nearly half of the support costs;

The administrative costs are based on the cost of a worker completing the necessary assessment to ascertain how best to support the care leaver. This may include a number of meetings with the young person and others involved in the life and community of the care leaver. It also involves writing an appropriate care plan. Once this has been completed there is likely to be less intensive and direct work with the young person over a longer period.

- On what basis the costings for support were arrived at given the lack of detail in the Bill regarding the type and timescale of support to be provided.

As the support required by a care leaver can vary enormously an average cost has been calculated. This cost is based on the average caseload of the worker and an assumption that a care leaver – on average - would receive support for a 3 year period. Some care leavers will require much less than this estimate of support for three years and this support is likely to decrease with increasing age and maturity.

**Kinship Care**
The Committee recommends that the lead committee invites the Government to provide further detailed costings of the estimated avoided costs from the diversion of children from formal kinship care.

The Kinship Care Order will not result in the elimination of formal kinship care, but will provide an attractive alternative to families whose impact is expected to be a reduction in the numbers in formal care.
This is very difficult to model, because of the complex behaviour of children going in and out of care, so the conservative assumption is that the Kinship Care Order diverts an individual child from going into formal care for a single year only.

Kinship carers with a Kinship Care Order will be primarily supported from the benefits system in keeping with their parenting role. Therefore, the Local Authority will not be required to provide the full financial support as they do with a formal kinship carer. The net impact of this is a set of savings to local government. The savings arise from Local Authorities no longer paying a kinship care allowance, at an annual average rate of £5,331 per child and from social worker costs of around £3,667 per child (this has been tested with Local Authorities). However, as there is anticipated to be transitional costs in establishing the kinship care order, the Financial Memorandum shows a net additional cost, arising from these transitional costs in year 1.

The avoided costs modelled were taken as averages and the ranges are driven mainly by uptake (low and high) of the Kinship Care Order. In all scenarios there is a saving because the unit cost of supporting a family under a Kinship Care Order is less than if a child is in formal care, and savings materialise immediately.

The costs of diverting children from formal care are summarised in Table 28 of the Financial Memorandum, and is presented as having upper and lower bands, depending on the assumptions used. The 'avoided' costs are estimated to be £3.3-15 million in 2015-16, rising to £10.3-28.2 million in 2019-20. The total impact of both the Kinship Care Order and Counselling Services is modelled in Table 32. The savings are regarded as a conservative estimate.

I hope this response fully answers the questions the Education and Culture Committee have on the Bill. I would be more than happy to provide any further information required.

AILEEN CAMPBELL
Education and Culture Committee  
Children and Young People (Scotland) Bill  
Scottish Human Rights Commission

About

1. The Scottish Human Rights Commission is a statutory body created by the Scottish Commission for Human Rights Act 2006. The Commission is a national human rights institution (NHRI) and is accredited with ‘A’ status by the International Co-ordinating Committee of NHRI at the United Nations. The Commission is the Chair of the European Network of NHRI. The Commission has general functions, including promoting human rights in Scotland, in particular to encourage best practice; monitoring of law, policies and practice; conducting inquiries into the policies and practices of Scottish public authorities; intervening in civil proceedings and providing guidance, information and education.

Introduction

2. The Scottish Human Rights Commission (the Commission) welcomes the opportunity to contribute to the Education and Culture Committee Stage 1 consideration of the Children and Young People (Scotland) Bill (the Bill). The Commission welcomes the policy intentions behind the Bill.

3. The Commission makes three recommendations to ensure the best possible outcome for children and young people in Scotland:

   • That the Scottish Government recommit to the full and direct incorporation of the United Nations Convention on the Rights of the Child (UNCRC) into Scots law and looks to develop a timetable for incorporation.

   • That Section 1 is considerably strengthened and extended to all Scottish public authorities.

   • That the Committee ask the Scottish Government to demonstrate how the impact of the Bill on children’s human rights has been assessed, and consider whether the Bill represents an opportunity to promote the use of human rights impact assessment, including child rights impact assessment.

4. The Commission also highlights a range of key issues of concern that relate to the full realisation of the rights of children and young people in Scotland, which has been raised during the development of Getting it Right? research project and the subsequent participation process to develop Scotland’s National Action Plan for Human Rights (SNAP).¹

¹ For a brief explanation of these see section 5 of this submission.
Incorporation of the UNCRC

5. The UNCRC guarantees the full range of human rights—civil, cultural, economic, political and social rights for children. It has achieved almost universal ratification, with the exception of Somalia, South Sudan and the United States of America.

6. The UK voluntarily undertook to respect, protect and fulfill all of the rights in the UNCRC through the formal process of ratification in 1991. The UK Government, together with the devolved administrations have responsibility for implementing the UNCRC in the UK. As yet, the UK has not fully incorporated the UNCRC into domestic legal systems. The Welsh Assembly, while not incorporating the UNCRC, has adopted a measure requiring “due regard” to be given to the UNCRC and the Scottish Government has pledged to look at options for progressing incorporation.²

7. Article 4 of the UNCRC sets out the general obligations of States Parties with regard to implementation. It requires States Parties to, inter alia:

“undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present CRC.”

8. The UN Committee on the Rights of the Child in its authoritative interpretation of this obligation clarifies that:

“States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems.”³

The Committee welcomes incorporation as the approach to achieve this. As the Committee clarifies:

“Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice.”⁴

9. The Committee has repeatedly called on the UK to incorporate the UNCRC fully into domestic laws,⁵ a call repeated during the Universal Periodic Review of the UK in 2008 and 2012. It has also expressed concern that a number of areas of national law remain inconsistent with the UN CRC, including the low age of criminal responsibility and the law related to corporal punishment of children.⁶ Along with a range of international, regional and national human rights bodies and civil society organisations, the Commission too has repeatedly echoed the

⁴ Ibid, para 20.
⁵ UN CRC Concluding Observations on the UK in 2002 CRC/C/15/Add.188 and in 2008 CRC/C/GBR/CO/4
⁶ Ibid.
calls for incorporation of this (and other) international human rights treaty into the Scottish legal system.\textsuperscript{7}

10. Incorporation provides comprehensive and consistent legal protection and would significantly enhance awareness of children’s rights in Scotland. Incorporation would also aid Scottish Ministers in ensuring compliance with the principles and provisions of the UNCRC and their legal duties under the Scotland Act 1998.\textsuperscript{8} However, the Scottish Government has clearly stated that it does not intend to incorporate the UNCRC through this legislation. Incorporation of the UNCRC, and its Optional Protocols, is long overdue in Scots law.

11. In a recent Study on the legal implementation of the UNCRC, UNICEF found that:

\textit{In countries where there has been incorporation (Belgium, Norway, Spain), interviewees felt that children were more likely to be perceived as rights holders and that there was a culture of respect for children’s rights.}\textsuperscript{9}

12. This Bill provides an opportunity to give statutory expression to the UNCRC in Scots law to enhance the effective realisation of children’s rights.

13. The Commission recommends that the Scottish Government recommit to the full and direct incorporation of the UNCRC into Scots law and looks to develop a timetable for incorporation.

Section 1 of the Bill: Duties of Scottish Ministers in relation to the rights of children

14. Section 1 of the Bill places a duty on Ministers to:

\textit{‘keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements’} and \textit{‘if they consider it appropriate to do so, take any steps identified by that consideration’}.

15. This represents a weaker duty than that first consulted upon in 2011.\textsuperscript{10} The current provision also falls below the duty contained in the Rights of Children and Young Persons (Wales) Measure 2011 and arguably represents a lesser obligation than that already placed on Scottish Ministers under the Scotland Act 1998 to “observe and implement” international obligations.

16. The wording of this provision does not reflect the requirements of Article 3 of the UNCRC, which states that

\textit{‘…in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or...’}


\textsuperscript{8} Under the Scotland Act 1998 it would be possible for Scotland to incorporate the CRC in relation to devolved matters. Schedule 5 section 7.

\textsuperscript{9} Op cit 2.

\textsuperscript{10} Scottish Government (2011), \textit{Consultation on Rights of Children and Young People Bill}. 
legislative bodies, the best interests of the child shall be a primary consideration’

17. The Commission considers that the language contained in this provision is too weak and gives too much discretion to the Ministers to ensure compliance. As a consequence both the policy aim and government accountability are likely to be unsuccessful.

18. Section 1 is one of the key provisions of the Bill. In the absence of full and direct incorporation of the UNCRC this Section should be considerably strengthened and extended to all Scottish public authorities.

19. Further, Section 6 of the Rights of Children and Young Persons (Wales) Measure 2011 provides a power to amend legislation by order where it is within legislative competence and where it relates to an issue raised through regular reports from Welsh Ministers on the due regard duty. A similar provision may be considered for inclusion in the present Bill. It would be crucial to ensure that any powers to amend legislation were subject to the appropriate level of Parliamentary scrutiny.

20. The Commission recommends that Section 1 is considerably strengthened and extended to all Scottish public authorities.

Human Rights Impact Assessments (HRIA)

21. The UN Committee on the Rights of the Child has made clear in its General Comments that effective implementation of the UNCRC cannot be achieved by legislative measures alone.\textsuperscript{11} There a number of additional measures which are required for effective protection and fulfilment of children’ rights. Key tools to ensure children’s human rights are respected, protected and fulfilled in practice include HRIA and budgetary analysis in legislation, policy and practice related to children.

22. HRIA is one of the key approaches to achieve the systematic integration of human rights into the policies, practices, procedures and priorities of government, public and private bodies. Following a review of international and national best practice, the Commission promotes an integrated approach to impact assessment and is currently piloting an integrated equality and human rights impact assessment process with Fife and Renfrewshire Councils.\textsuperscript{12} Human rights impact assessment is inclusive and draws on the range of international human rights obligations undertaken by the State, including the UNCRC, which should be at the heart of decisions which affect children.

23. Ensuring that children’s rights are respected in policy and law demands a continuous process of child rights impact assessment to consider the impact of any proposed law, policy or budgetary allocation on children’s rights. This process should be built into all levels of governance. In this respect, we understand that the Scottish Government has not carried out a HRIA on the Bill.

\textsuperscript{11} See for example UN CRC General Comment No. 5 (2003)
\textsuperscript{12} For further information see Impact Assessment at http://www.scottishhumanrights.com/ourresources/hreqiamaincontent
prior to its introduction in Parliament. The Commission notes that a number of children’s rights organisations including UNICEF UK have also recommended that a child rights impact assessment be included on the face of the Bill. This would have provided a valuable resource to the Education & Culture Committee in their consideration of the Bill through the Parliamentary process.

24. There are good examples of HRIA, focused on child rights, being introduced in the legislative review process. Sweden, in particular, has had a system of child impact assessment for some years, as part of its wider national child rights strategy. The Flemish Parliament in Belgium requires all draft legislation affecting children to be accompanied by a child impact assessment when presented to Parliament since 1997. Scotland’s Commissioner for Children and Young People has developed a comprehensive model of a stand-alone human rights impact assessment focus on children rights.

25. The Commission recommends that the Committee ask the Scottish Government to demonstrate how the impact of the Bill on children’s human rights has been assessed, and consider whether the Bill represents an opportunity to promote the use of human rights impact assessment, including child rights impact assessment.

Scotland’s National Action Plan for Human Rights

26. On 10 December 2013, Scotland’s first National Action Plan for Human Rights (SNAP) will be launched. Its purpose is to focus and coordinate action by public, private, voluntary bodies and individuals to achieve human dignity for all through the realisation of internationally recognised human rights. The evidence base for this action plan has been drawn from a three-year research project and subsequent national participation process to identify the key injustices as well as good practices in human rights realisation in Scotland.

27. This research has highlighted a range of key issues of concern that relate to the full realisation of the rights of children and young people in Scotland. Particular concern was raised about the rights of looked after children, kinship children and care leavers; children with parent/s in prison; children with disabilities, learning disabilities, mental health problems and those with Autistic Spectrum Disorders; children living in poverty, children with additional educational needs; Scottish Gypsy/ Traveller children; and LGBTI young people.

28. The Children and Young People (Scotland) Bill provides a timely opportunity to address many of the issues relating to children and young people that are raised

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13 Scottish Government (2011), Consultation on Rights of Children and Young People Bill.
14 UNICEF UK submission to the Scottish Government consultation on the Rights of Children and Young People Bill. 2012
18 Lesbian, Gay, Bisexual, Transgender and Intersex.
within *Getting it Right?* and the Commission strongly recommends that further consideration is given to the issues. The Commission also wishes to emphasise the importance of participation in the reshaping of this Bill. It is critical that participation goes beyond ‘consultation’ and that the voices of those concerned are not just heard but are actively and constructively engaged in reshaping the Bill.

29. The Commission trusts that these comments will be of assistance to the Committee.

Scottish Human Rights Commission
25 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Scottish Independent Advocacy Alliance

1. Independent advocacy has an important role to play in supporting this clearly stated aspiration.

2. The value of advocacy has been recognised for many years, playing a major role in helping people have their voices heard, putting people who use services at the heart of their design and delivery and ensuring their rights are respected. Independent advocacy supports people to gain access to information and to explore options and consider possible outcomes. Most importantly it helps ensure views, opinions and wishes are listened to and taken into account when decisions are made about their lives.

3. It is usual for children to have quite limited control over their lives and limited ability to influence their own situations and decisions about children will largely be made by others in the child’s best interests. However, these decisions may not always coincide with what the child wants, possibly for very good reasons, but a positive outcome is more likely if the child feels, and is, as fully involved in the decision making process as possible. This is most likely if the child has been properly supported to consider all the issues and available information, to think about different courses of action and the possible outcomes arising from those and they believe that their view and wishes have been given proper consideration when decisions are made.

4. There may be several people in a child’s life who will advocate for them - family members, friends, teachers, support workers and others - however this may at times create some conflict of interest between the decision maker and the child. In such circumstances the child’s views and wishes may not be listened to or may be dismissed without full consideration.

5. Some children in certain circumstances will be very happy to have their family member, friend or known professional be there to advocate for them and it is important that the child has the opportunity to make that choice. However there will be times and certain circumstances when a child will want someone who is there to be wholly on their side with no other agenda, who will help them to speak up. This is when they should have access to independent advocacy.

6. Access to independent collective advocacy is important to provide a forum for groups with a common issue or agenda to come together to influence change to services and the way that they are treated. Being a part of a collective advocacy group helps build confidence, self-esteem and self-awareness for individuals involved. Groups can also help planners and commissioners of services through their contribution to the planning, design, delivery and monitoring and review of
those services. Collective advocacy groups are of particular importance in residential or secure services where individuals may be isolated, away from family and friends and may not always have their voice heard. It is vital that such groups be completely free from any possibility of conflict of interest.

7. Throughout history some children’s voices have not been heard and their wishes have not been considered. Much has and is being done in Scotland and elsewhere to redress this imbalance of power. Scots laws on mental health\(^1\) and on children’s hearings\(^2\) reflect this and entitle the majority of Scotland’s most vulnerable children and young people to use advocacy services.

8. Independent advocacy’s function is to ensure that the child is at the centre in all decision making. This is a fundamental principle of Getting it right for every child (GIRFEC)\(^3\) however, there is no mention of independent advocacy in the key bill for GIRFEC, the Children and Young People (Scotland) Bill 2013 5.

9. We believe that the inclusion of a right of access to independent advocacy (as defined within the Mental Health (Care & Treatment) (Scotland) Act 2003) will be vital to ensure the underpinning principles of GIRFEC, the UNCRC and the Bill are achieved.

10. The Scottish Independent Advocacy Alliance (SIAA) is Scotland’s national membership body for advocacy organisations. The SIAA promotes, supports and defends independent advocacy in Scotland. It aims to ensure that independent advocacy is available to any person who needs it in Scotland.

**Scottish Independent Advocacy Alliance**

**19 July 2013**

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1. Thank you for inviting my views about the children’s rights provisions (Part 1) and the named person duties (Part 4) in the Children and Young People (Scotland) Bill.

2. The Bill contains several references to the publication of new information by the bodies concerned:

In Part 1:
   - S1(3) will require Scottish Ministers to publish information about the steps they have undertaken to secure better, or further, effect in Scotland of the ENCRC requirements and to promote public (including children’s) awareness of the rights of the child.
   - S2(1) will require all bodies subject to the new legislation to publish a similar report every three years.

In Part 3:
   - S10(8)(b) will require authorities to produce and publish children’s services plans.

In Part 4:
   - S24 will require relevant authorities to publish information about the named person who will counsel and advocate for individual children.

3. In each case, the Bill leaves it to the authority to decide the manner in which the information should be made available. The Committee will doubtless be reassured to note that all of the bodies listed in Schedule 1 of the Bill are also subject to the Freedom of Information (Scotland) Act 2002 (FOISA) and therefore have an obligation to produce and maintain a publication scheme which has my approval. This will ensure that the required information in the new Bill will be made proactively available in a form and format accessible to the public and that any applicable charges will be marginal and pre-advertised. My guidance to authorities includes an extensive list of the information I would expect them to publish – this will be updated to reflect the new requirements of the Bill, if passed.

4. There are other information provisions in the Bill which relate to data sharing (s26) and disclosure of information (s27). These matters are outwith my jurisdiction and I would therefore suggest that these could be referred to the (UK) Information Commissioner’s Office which has responsibility for enforcement of the Data Protection Act 1998 and other related privacy legislation.

Scottish Information Commissioner
16 July 2013
1. The Scottish Kinship Care Alliance is the national network of Kinship Care support groups across Scotland. We represent groups from Dundee to Dumfries and are rapidly expanding. This response refers only to the sections of the Bill relevant to Kinship Care.

**Executive Summary**

2. We question the rationale of the Bill to reduce the number of formal Kinship Care placements, and Social Work support for them.

3. The Kinship Care Order is not fit for its stated purpose of supporting more people to become Kinship Carers.

4. Discrimination between the support offered to children in Kinship, and other forms of care, is a violation of the European Convention on Human Rights.

5. We are concerned that the views of Kinship Carers have not been adequately considered during this consultation.

6. Current legislation (section 11) is not fully utilized due to (largely financial) barriers at local authority level. These barriers may prevent proper use of the Kinship Care Order.

7. The current review of financial allowances for Kinship Care must not be decoupled from proposals in this Bill to ensure that overall support increases, and does not decrease.

8. The Kinship Care Order should place a duty on local authorities to primarily provide priority access to specialist psychological and educational services, at minimum as currently available to Looked After Children.

9. Kinship Carers should be closely involved alongside local authorities in prioritising the 'package of entitlements' to be offered under a Kinship Care Order.

10. We applaud the moves of the Kinship Care Order to reconcile the current artificial distinction between formal and informal Kinship Carers. Support offered under the Kinship Care Order should be centred on the needs of the child rather than the previous legal status of the Kinship Carer.

11. We do not agree with the eligibility criteria for support under the new Order. Support should be given to placements to enable them to remain stable, not only when they become unstable.

12. Support should last longer than three years if it is to encourage permanence and respond to the needs of the child.

13. Much clarification is needed on the interplay between the Kinship Care Order and current section 11 Residence Orders.

14. The costs of obtaining a petition (court order) should be covered in all cases,
otherwise it would be a significant deterrent to Kinship Carers wishing to apply for the Order.

15. Access to children’s therapeutic and educational services are the priority in terms of support for Kinship Care placements. Social work support is also required by most Kinship Carers.

16. Transport costs, start up grants, and financial allowance should be available to a higher percentage of recipients of a Kinship Care Order than projected.

17. The cross-boundary issue, when a Kinship Care placement moved to a different local authority and support stops, must be addressed in this legislation.

18. Kinship Care is a hidden and under-recognised form of care for some of Scotland’s most vulnerable children. Resourcing of the Kinship Care Order must be increased for it to increase necessary support for Kinship Care children.

19. Kinship Carers are not foster carers and do not require an equal financial allowance to foster carers. However, financial allowances based on the needs of the child, and taking benefit clawbacks into account, must be available under either the new, or old legislation.

20. In future the SNP may want to consider making Kinship Care allowances a Scottish benefit.

21. Kinship Care children should be able to access the same through-care services as other Looked After young people.

Full Response

Rationale for the Bill

22. We refer to the SPICE briefing on the Bill by Camilla Kidner (p.25 & 26) which points out that there are three different stated aims of the Kinship Care Order:

23. One purpose of introducing the kinship care order in the Bill is: “to reduce unchecked growth in formal kinship care” (financial memorandum para 128). The policy memorandum explains the rationale somewhat differently at para 117 as: “to encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting and whose long term welfare is best served by being cared for in such a way.” The consultation described the policy intention as: “to provide an alternative to being in care (for those children at risk of becoming looked after or already looked after in kinship care) and, in so doing, improve the support available for kinship carers” (para 151, Scottish Government 2012a).

24. We question the Policy memorandum’s rationale for the Kinship Care Order. It is our experience that regular supervision and Social Work input is crucial for most Kinship Care families, facilitating contact with the child's parents, and supporting the Kinship Carer in dealing with difficult behaviour, issues in school etc. Though we have sometimes been concerned by the attitudes or approach to Kinship Care placements by certain Social Workers or Social Work departments, there are very few families in our network who want less Social Work involvement.
25. We agree that more people should be encouraged to become Kinship Carers, but this will only happen if there is increased support for Kinship placements, many of which are currently under-supported, or not supported at all by the Local Authority.

26. Regarding the Bill's rationale “to reduce the unchecked growth in formal kinship care” It is true that the numbers of Looked After Children in Kinship Care are growing, but this is a reflection of the growth of children in Kinship Care and their need for support. We note evidence in the SPICe briefing and also from Citizen's Advice Scotland, CELCIS and others that, as quoted from the SPICe report:

27. "it is interesting to note findings (eg Selwyn et al, 2013) of striking similarities between kinship and foster care placements. There tended to be similar issues creating the need for the placement, similar levels of need, and children tended to make similar levels of progress whilst there. The main difference was that kinship carers tended to persist with a difficult placement for longer than an unrelated foster carer."

28. In other words Kinship Care placements have the same level of need for support as foster care placements. If Kinship Care placements are to be taken off Looked After status they must be provided with equivalent support in terms of corporate parenting from the Local Authority, priority access to specialist services such as psychological and educational help, and financial assistance.

29. We are concerned that the Bill is attempting to save money and improve statistics by taking Kinship Care placements off Looked After Status, rather than aiming to increase the support for, and therefore effectiveness of, Kinship Care placements.

30. We believe the Kinship Care Order is not fit for it's stated purpose of supporting more Kinship Carers, or increasing permanence in Kinship Care placements. Primarily this is because there is no guarantee of additional support as part of the proposed Kinship Care Order, and the Financial Memorandum makes it clear that there will be no additional resourcing to increase services and support. Secondly, since the proposed Order will only last three years it will not give Kinship Care placements stability or permanence. More details are below.

Human Rights Issue

31. It is important to note that the difference in levels of support offered to children of comparable need in Kinship and foster care placements is a violation of articles 8 and 14 of the European Convention of Human Rights on discrimination. This has been proven in a number of test cases in England, Northern Ireland and Wales. Most recently in a high profile case in Tower Hamlets in London.

32. If the Scottish Government's aspiration, as stated in the Bill, is to make Scotland 'the best place for children to grow up in', it should be keen to avoid violating the Human Rights of vulnerable children.

Concern regarding the consultation process

33. We are aware that a number of agencies including the Poverty Truth Commission, Kinship care groups in Glasgow and Clackmannanshire, The Scottish Human Rights Commission and Glasgow Social Work opposed the proposed Kinship Care Order in the September consultation on the Bill suggesting that the existing
Section 11 legislation could deliver the support and permanence by which the new Order was justified. Many also argued that resourcing for Kinship Care placements would need to be increased to enable increased support, since the tight financial budget is one of the reasons that many section 11 placements do not receive the support and permanence which they are legally able to deliver.

34. We are very concerned that these views have not been taken into account and the Kinship Care Order has gone ahead without addressing these key concerns. We are also concerned that despite two recent meetings with the Bill team, the views of the Scottish Kinship Care Alliance – the main body representing Kinship Carers in Scotland – on the Bill, have not been taken into account, and the Kinship Care Order may in fact reduce, rather than increase, the support offered to Kinship Care placements.

Detailed response to the Kinship Care Order

35. Since we accept that the Kinship Care Order is now going ahead despite a majority of responses against it, we have a number of detailed suggestions to make it as effective as possible.

36. Our principle concern is that existing legislation (section 11) is not fully utilized for kinship carers, due to barriers at local authority level. We are concerned that the same barriers will exist for any new legislation unless resourcing is increased and essential support becomes a 'duty' on local authorities.

37. As per the section on Rationale for the Bill above we question the stated rationale in para 117 of the Policy Memorandum, “to encourage more individuals to become kinship carers for those children who do not require regular supervision or corporate parenting and whose long term welfare is best served by being cared for in such a way.” We would suggest an alternative rationale as “to encourage more individuals to become kinship carers, and make kinship care placements more effective for the child, by improving the support and permanence available to 'informal' kinship care placements.”

38. In Para 118 it is stated that the type of assistance provided to those eligible carers with a Kinship Care Order 'will be prescribed by the Scottish Ministers in secondary legislation.' We would like to know what this 'assistance' is likely to entail. We would suggest that the Bill places a duty on Local Authorities to primarily provide priority access to specialist psychological and educational services, at minimum as currently available to Looked After Children, to those in receipt of a Kinship Care Order.

39. There is also a need for financial allowances to support Kinship Care placements. We understand that there is a separate review of financial allowances for Kinship Care placements being carried out and assert that this process should not be decoupled from the Bill. This is necessary to ensure that overall financial support for Kinship Care placements (as part of the Kinship Care Order and/or under existing section 11 and LAC financial support in various Local Authorities across Scotland) does not decrease, but increases in line with the need of Kinship families in poverty whom we are aware are struggling to cope financially.
40. We are pleased that support will also be offered to 16 year olds who have been subject to a Kinship Care Order.

41. Para 119. - We are pleased that early learning and childcare will be offered to children who have been subject to a Kinship Care Order. However, we would suggest that this is not a priority for Kinship Carers, and that funding for child-care could be more effectively used for specialist services such as educational and psychological support for Kinship children, or a Kinship Care allowance.

42. We also applaud that Kinship Carers will be supported in applying for a Kinship Care Order. The type of support offered, and the extent to which this will be duty on local authorities (to be detailed in secondary legislation) will be crucial.

43. We note that by transferring Kinship Care placements away from Looked After status to the Kinship Care Order they may also lose a number of passported benefits (school meals, uniform allowance etc). Most importantly they would no longer be entitled to important through-care or after-care services. We suggest the Kinship Care Order also acts as a passport to these benefits.

44. In para 120 the Policy Memorandum states that the 'package of entitlements' under the Kinship Care Order 'might need to be adjusted following further discussion with local authorities and kinship carers. We would suggest this wording be changed to 'will be adjusted..' and that Kinship Carers are closely involved in designing a suitable package of support, recognising their lived expertise in what is most effective, and also what represents the most efficient use of funds.

Formal and informal Kinship Care

45. We applaud the steps taken under the Kinship Care Order to reconcile the artificial distinction between formal and informal Kinship Carers, by making the Kinship Care Order available for both. This goes some way to recognising that the current distinction between 'formal' and 'informal' Kinship Care (as stated in Financial Memorandum paras 107 – 109) is in many cases arbitrary. We assert that many children in these placements have comparable needs, and the distinction has been made based on social work's involvement in the placement, or other factors relating to the carer and not the child. This is important as support is then awarded accordingly.

46. However, under the new Kinship Care Order it is crucial that those Kinship Care placements coming through either path are offered the same level of support, centred on the needs of the child rather than the previous legal status of the Kinship Carer.

Eligibility criteria for support

47. Para 120 – We are concerned with the eligibility criteria for receiving support. The Bill suggests that eligibility will be based on the risk that the child may become Looked After (ie at risk) in the near future.

48. Firstly we want to note that many Kinship Carers currently try to gain Looked After status, as it is the only way to get social work support, services (psychological, educational and respite) and financial allowance which they desperately require.
Though from a statistical point of view it may appear beneficial to reduce the number of Looked After Children, from a Kinship Carer's perspective this would be very destructive unless the same level of support was offered.

49. This criteria for eligibility creates a perverse incentive to appear to have an unstable placement in order to receive support. On the contrary, if stable placements are well supported they will remain so, whereas by not supporting those who appear stable, you risk de-stabilising them and creating a greater future demand for Looked After status.

50. Eligibility for support should be based on the need of the child, not on the legal status of the carer or the stability of the placement. We note again that Kinship children have comparable needs to those in foster or residential care (who are in some cases their brothers or sisters). Access to services (psychological and educational) to deal with trauma and resultant emotional/behavioural issues, and support to enable their carer to give them stability and attention (such as respite and financial allowance) should be evaluated based on the needs of the child and to support their development.

51. The Financial Memorandum makes it clear that support will only be available to a percentage of those who receive a Kinship Care Order. (e.g some transport costs are expected to only be available for 10% of those who obtain a Kinship Care Order, a means tested start up grant of up to £500 will only be available to 50%, and help with the legal costs of obtaining the order to 66%). These projections clearly demonstrate that the eligibility criteria are intended to be set at a high level, making support unattainable for many children in Kinship Care or comparable need.

52. In para 148 the Financial Memorandum suggests that 'to facilitate properly an earlier intervention approach that is attractive to families and kinship carers and does not stigmatise, local authorities will likely need to develop or commission an alternative type of assessment which provides early parenting support and encouragement'. We agree with the statement, and would be interested to be involved in designing such an assessment.

Three years is not enough

53. Paragraph 122 of the Policy Memorandum states that support under a Kinship Care Order would last 'no longer than three years in most circumstances'. One of the stated rationales for the Kinship Care Order is to increase the permanence of Kinship Care placements, giving Kinship Carers more parental rights and responsibilities. We assert that if the Kinship Care Order only lasts three years it will not provide any stability for Kinship Carers. Evidence (from Buttle UK, Citizens Advice Scotland, CELCIS and our own networks) shows that children in Kinship Care generally require support for the majority of their placement, and their needs may not drastically change after three years or more.

54. We would suggest that there is an annual, or less frequent, review of the needs of the child, and support can be altered accordingly.

What will happen to those not on a Kinship Care Order, or after the Kinship Care Order has expired?
55. It is unclear what will happen to the existing financial allowances and support services provided by Local Authorities. In paragraph 121 of the Policy Memorandum it is stated that 'the Bill will not alter carers' existing entitlements to allowances'. We have a number of questions relating to this statement:

56. If a Kinship Care placement is transferred from LAC status to a Kinship Care Order will they only receive the 'transitional' support offered after an eligibility test (plus any welfare benefits they are entitled to of course), or will they also be entitled to support and financial allowance currently offered to those on a section 11 (which varies between Local Authorities)?

57. Will a Kinship Carer currently on a section 11 be able to chose not to apply for the Kinship Care Order and still receive the existing support offered to section 11 placements?

58. If a Kinship Carer on a section 11 applies for, and is granted, the Kinship Care Order will they continue to receive the existing section 11 support, plus any additional support under the Kinship Care Order? Or will they ONLY receive the new support?

59. If a new Kinship Carer wants to apply for a section 11 will they automatically be directed to the new Kinship Care Order? In which case will they be eligible for the existing support allocated to section 11 placements as well as the new support under the Kinship Care Order (following eligibility test)?

60. Will Kinship Carers currently holding a section 11 Residence Order be automatically transferred to a Kinship Care Order or will they need to apply?

61. Does that mean that those in receipt of a Kinship Care Order will be entitled to the existing support offered under section 11 (which varies in different Local Authorities), as well as any additional support following the Kinship Care Order eligibility test?

62. Also, once the three years of a Kinship Care Order are up, can the Kinship Carer go back to a section 11 status and continue to receive the existing support? If not what support will be offered once the three years has expired?

63. Clarification on these questions is crucial for us to assess the outcomes of the proposals in the Bill.

What support will be available?

64. We applaud the intention of para 123 and 124 of the Policy Memorandum to place a duty will on Local Authorities to assist Kinship Care families with 'distress' such as that related to family conflicts or substance misuse. However, we would add a duty on Local Authorities to provide access to therapeutic and educational support services for children in Kinship Care, according to their need. This is the main concern of Kinship Carers in our network, many of whom are struggling to cope with the behavioural difficulties and health problems of the children in their care, caused by their early years traumas.

65. We would also again note evidence that some local authorities are failing to implement their existing duties to support children in Looked After Kinship Care
placements. Barriers to the proper use of existing legislation should be examined in the context of duties placed under the new Kinship Care Order.

66. We are also concerned that the Kinship Care Order will not provide appropriate social work support, such as that currently offered to Looked After Children. Social Work support is crucial to facilitate contact with the child's parents and other serious issues with behavioural difficulties and referral to appropriate services. There is evidence that Social Work departments are already struggling with high case loads (see Glasgow Social Work's previous response) and many 'Looked After' Kinship Care placements already receive very infrequent visits.

67. The onus will be on Social Work departments to carry out the Kinship Care provisions laid out in the Bill. Significant investment in Social Work departments will be needed to make this possible.

68. We agree with the other types of support available as part of the Kinship Care order (legal aid with getting the Order, transport costs, start up grants, and some financial allowance), though we are concerned about how many carers will be eligible for this support, as stated in the section on eligibility.

69. In particular, we are concerned that the costs of obtaining a petition (court order) for a Kinship Care Order should be covered in all cases, otherwise it would be a significant deterrent to Kinship Carers wishing to apply for the Order. We are concerned that increased funding for Legal Aid will be required to make this possible, as many carers already have difficulty obtaining court actions for Residency Orders (section 11) due to cuts to Legal Aid.

70. We would also note that paragraph 114 of the Financial Memorandum states that many Kinship Carers can use a bus pass and would therefore not be entitled to transport costs. We would again assert that assistance should be based on the needs of the child and not the carer. In many cases Kinship Carers need to use taxis to take distressed children to hospitals, doctors, school and other services. Help with transport costs should be available to a much higher percentage of Kinship Care placements.

The cross boundary issue

71. A common problem for Kinship Carers arises when they take care of a child who's parents live in a different local authority, or move to a new local authority themselves. This can lead to a total freeze on support as the local authorities argue about who is responsible for the child, and neither authority takes responsibility for their care. This issue must be resolved in any new legislation. Support should be allocated via the authority in which the Kinship placement is made and, and should move with the child to wherever they currently live in that placement.

Resourcing more support for Kinship Care placements

72. The Financial Memorandum states that rather than investing more in resourcing Kinship Care placements the Bill will actually save money over the coming years by reducing the support offered to Kinship Carers overall (mainly by taking them off Looked After status).
73. The only increase in spending necessary by Local Authorities will be a total of £2.6 million across Scotland to account for the transition to a new legal framework. There will be no increase in funding for financial allowances, psychological or educational services, respite, or any other form of support for Kinship Care children or their carers. This can only mean less support overall.

74. We assert that more support (primarily services, and also financial allowance) is desperately required for children in many Kinship Care placements. In their September response to the Bill consultation COSLA has also made it clear that the barrier to increasing the support for Kinship Care placements is finance. Local Authorities are already struggling to fulfil their duties to Looked After and section 11 Kinship placements, and have been unable to fulfil the Scottish Government’s 2007 concordat agreement to pay Kinship Care placements an equal rate to foster carers because of inadequate resourcing.

75. The Scottish Government must put considerable financial resources behind the Kinship Care Order if it is to be effective in increasing and improving Kinship Care placements. We would suggest that resourcing of services (psychological and educational support for the child, and respite for the carer) is a priority here, and financial allowance secondary in importance. This should be seen as a perfect fit with Scottish Government priorities on early intervention and preventative spend. Clinical evidence has clearly shown that early years traumas such as foetal alcohol and methadone syndrome, and separation anxiety, commonly experienced by Kinship children, must be treated as early as possible to prevent them becoming ingrained patterns which are likely to disturb their development. If left untreated this will ultimately cost the NHS and other services more in the future. Para 126 and 127 of the Policy Memorandum agree that Kinship Care placements have the best outcomes for children who would have gone into the care system. We assert that unless Kinship placements are better supported more children will end up in formal care, costing the government much more than a well supported Kinship placement.

Financial allowances

76. We note that very little financial support will be provided as part of the current Kinship Care Order. 'Transitional' allowance will only be available for those transferring from Looked After Status, and only 75% are expected to be eligible, for a limited three year period. We note again that children in Kinship Care have the same needs as those in the foster or residential care system, and many Kinship Carers struggle on pensions and basic benefits, and are unable to work due to the demands of the child in their care.

77. We are also concerned that the Bill is relying heavily on the UK benefits system to supplement the finances of Kinship Carers. We are worried that the Bill has not taken account of the UK welfare reforms currently taking effect. These benefit changes will leave many Kinship Carers worse off and in more desperate need of support.

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additional finances, which the Kinship Care Order could provide.

78. We suggest that the Kinship Care Order entitles any successful applicant to a financial allowance. We would be willing to discuss the appropriate level for this allowance with the Scottish Government. It should be noted that many authorities currently pay Kinship Carers of Looked After children considerably more than £70/week, while some also pay those on a section 11. This needs to be discussed and negotiated with Kinship Carers rather than an arbitrary amount designated at this stage.

79. We note that the questions on what would happen to the existing financial entitlements under section 11 are very relevant here.

80. The conclusions of the review of financial allowances for Kinship Care placements which is currently being carried out will also be very important and cannot be decoupled from this Bill. COSLA have stated in their September response that they do not want to be an 'income maintenance' agency, and also note that they are struggling to achieve parity of allowance with foster carers (for Looked After Children in kinship care). Firstly, we again assert that financial allowances should be based on the needs of the child not the legal status of the carer, and should therefore also be available to section 11 (or new Kinship Care Order) Kinship Carers. On this point we want to clearly state that Kinship Carers are not foster carers and do not require a wage from the state for their parenting role. They do however require a basic allowance to enable them to provide for the children in their care in old age. Many Kinship Carers are in poverty and struggling on a pension, and basic child benefits (see evidence from Citizens Advice Scotland). That allowance should take benefit claw-backs into account. Kinship Carers mostly do not, and cannot work, due to their age and the high needs of the children in their care. Some Kinship carers have given up paid employment to enable them to care full time for their children. We look forward to contributing to the review on financial allowances in the near future.

81. Secondly, this raises the question of how the SNP Scottish Government sees financial support for Kinship Care placements in the event of an independent Scotland. Would this be a benefit paid by the Scottish Government? This should be considered with regard to the financial review and the Kinship Care Order.

82. We are also clear that we do not want any increase in support for Kinship Care placements to come from a cut to other parts of children's services (for example increasing social worker's case-loads which will impact on others). A genuine investment in the sector is needed.

83. We are aware that we are asking for a significant financial input, but assert that Kinship Care has been a hidden and unrecognised form of care, which desperately needs recognition and resourcing. Kinship Carers should be rewarded for the high quality and stable caring they give to Scotland's vulnerable children, and for their role in keeping kids out of the expensive care system, not penalised for being a family member.

Through-care services

84. We would also like to respond to the section of the Bill on the provision of After-
care to young people leaving the care system. We agree with CELCIS’s submission to the September consultation:

85. We suggest that if the Scottish Government goes ahead with the plans to introduce a kinship care order, it further legislates to ensure that young people subject to a kinship care order are able to access the same through-care and after-care services as young people who have been formally looked after by the local authority. This would acknowledge the fact that, were it not for the kinship care option, many young people in this situation would be looked after by the local authority and may have similar needs and vulnerabilities as young people who have been looked after by the local authority.

86. We also agree with CELCIS and others that the legal duty should be on local authorities to provide assistance, not on the young person to have to request it. Also, that there should be appropriate mechanisms in place to allow young people to challenge the outcome of their requests for support.

87. Through and after-care services have historically been under-resourced and perhaps seen as a privilege by the Scottish Government. But evidence shows that through-care has a strong determining effect on a young person’s life chances after care. We would urge greater resourcing in this area.

Scottish Kinship Care Alliance
26 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill
Scottish Out of School Care Network

Introduction

1. The Scottish Out of School Care Network (SOSCN) is a Scottish registered charity (SC020520), established in 1991 and is the national infrastructure umbrella organisation providing support, mentoring, training, information and resources to the nearly 1,000 school-aged childcare services in Scotland, which provide childcare, play and learning to over 45,000 children.

2. All of our work is underpinned by a commitment to supporting and promoting the United Nations Convention on the Rights of the Child (UNCRC), in particular Articles 31; the right to culture leisure, rest and play; Article 12, the right to consultation and Article 18; states parties to develop appropriate services to support families, including assistance with childcare for working parents. We also have a particular focus on children in need or on poverty (Article 22) and support the provision of care for children with disabilities (article 23).

3. As a general introduction: our Benefits of Out of School Care Video (SOSCN, 2011) http://www.youtube.com/watch?v=jlDMi4u5k3Q includes parent’s views on both the economic and social support they receive; as well as, of course, children’s voices.

Out of School Care

4. The out of school care (OSC) sector is the second largest provider of childcare within Scotland and is a vital resource for parents (of school-age children) who are in employment, training or looking to return to the workforce. Currently there a total of 994 out of school care services in Scotland, providing places for a total of 45,620 children (Care Inspectorate, 2012).

5. While many out of school childcare services are co-located in schools, they are not managed by the school, but operate completely independently. In fact only a few local authority areas, in particular: Fife, and Perth & Kinross, directly provide school age childcare. The majority of services in Scotland are managed by parent committees, charitable or independent organisations (Care Inspectorate, 2012).

6. There is no, explicit, statutory duty to map the need for, and ensure the provision of school age childcare in Scotland, thus making such services quite vulnerable when cuts have to be made by local authorities. (However, see Annexes 1 and 2 and previous guidance such as “Schools Out”, 2003). This is in contrast to the English “extended schools” legislation which legislates both for the mapping of need and then ensuring provision of services.

7. While, at first sight, this seems to be a policy advantage over what we have here in Scotland for school aged childcare; there are a number of negative aspects of
provision in England, including deregulation proposals for the future development of school age childcare there.

8. It is worth, briefly, comparing the quite different directions here, as this is very relevant to the CYP Bill.

**Regulation, quality and qualifications**

9. All childcare services for children up to the age of 16 in Scotland have to be registered with the Care Inspectorate, whilst providers in England only need to register with Ofsted for children aged less than 8. A recent proposal by the UK government, (DoE, 2013) proposes even lighter touch regulation of school age childcare services and removing any requirement for staff/child ratios or staff qualifications. They also propose to extend from two hours to three the threshold for any childcare provider to register with Ofsted (DoE, 2013).

10. SOSCN does not support this potential diminution of quality and oversight of care for children in other parts of the UK. We also do not support importing the extended schools blueprint into Scotland, with our very different education, social work and integrated children’s services policies, at national and local levels. While we do support the need for out of school care to be put on a more explicit statutory basis, the long tradition of community run and managed services in Scotland should be integrated, not replaced, into any statutory framework.

11. In complete contrast to the low or no qualifications requirement in England, in Scotland workers in school age childcare have to register with the Scottish Social Services Council, with specific set qualification levels, including degree level qualifications for lead practitioners of services. The workforce in school age childcare is predominately female (92%) with the average pay of a lead practitioner less than £11 an hour for an average 27 hour week (SOSCN, 2012a). For now, with services dependent mainly on fee income to run, it is unlikely, despite increased qualification levels that the pay and conditions will improve.

12. SOSCN also provides Aiming High Scotland quality assurance, based on the UNCRC principles; we do this as strong supporters of children’s rights in Scotland. We support a professional workforce educated to levels which match their peers in education, health, social work etc., and for their roles to be recognised as supporters of children's wider social learning and development, especially through play. Out of school care is not just “babysitting” and it should not be viewed as requiring fewer skills and knowledge as teaching. Indeed professional play care staff in out of school care could help teachers develop more play based practice and help schools develop better play grounds and resources for children.

**Costs to parents**

13. On our 2013 membership figures the average costs of a full five evenings after school place is just under £50 a week, while holiday all day care for five days is just over £100 a week. Current UK government reforms and proposals have
reduced the amount and eligibility of childcare tax credits, and a proposed radical overhaul of the childcare voucher scheme initially will not include support for childcare costs of children of five or over, unlike the present scheme: this indicates a real threat to the existence of many current providers of out of school care.

14. If parental subsidies for childcare are reduced, or removed, then the out of school care sector will likely lose a large number of users and become less sustainable to the extent many services will close down, especially small rural services and those operating in areas of need. The majority of services receive no direct grant support but some do access “in kind” support such as free or low cost school lets.

Children in Need

15. Scottish councils are able, under the Children (Scotland) Act 1995, to support placements of children in need (see Annexes 1 and 2), in school age day care services, and, even prior to 1995, subsidised social work places have always been a hidden feature of school age childcare in Scotland, with about 20% of such places reported in surveys of the sector (Scottish Executive, 2003; SOSCN, 2013a). This aspect of support for children in need of care is one which has common ground with the aspirations for vulnerable 2 year old children in the Bill, and, is a starting point for our recommendations here.

International Evidence

16. The recent Scottish Government international review on the best practice of other European countries (Scottish Government, 2013b), includes as examples, such measures as generous parental leave, linked seamlessly with subsidised and well provisioned early education and childcare. Support for school age childcare is a major feature of such best practice in the countries studied (e.g. the Swedish and Danish “Leisure time services” for school age children). The support for childcare and parents, in the best of these countries, ensures that the proportion of women able to work is consistently higher than here in the UK, and that within quality childcare, learning though play is highly valued.

17. Other European wide research emphasises the value of school age childcare in addressing poverty and deprivation (Reid and White, 2007) where the provision of such care can facilitate women entering and remaining in the workforce and make a substantial contribution to children’s welfare. In disadvantaged areas, out-of-school care can contribute to tackling poverty and problem behaviour.

The Children and Young People Bill (CYP) Bill, 2013

18. SOSCN welcomes the CYP Bill and we are involved on Scottish government-led working groups in relation to the CYP Bill. Our invited involvement, we hope, reflects the wider and longer term agenda in terms of the Scottish government’s stated aim to “make Scotland the best place in the world for a child to grow up” (Scottish Government, 2013a). The out of school care sector we support does indeed also cater for children aged 4 and many services are combined care and
education services for under-fives and out of school age. Nevertheless the Bill ignores the need for out of school care and this is a significant omission.

19. We argued in our consultation response to the CYP Bill for greater flexibility in the proposed extended 600 hours so that parents could, for example, purchase holiday care with an out of school care provider to help with the transition from nursery to school for 4-5 year olds due to start school, and, indeed, as many children start school before they are 5, to allow this to be used also for before and after school care (SOSCN, 2012b). Scotland’s Commissioner for Children and Young People also backed this proposal (SCCYP, 2012).

20. We want to see a firmer commitment in the Bill to include childcare for school age children and a useful starting point is to build on the legislation contained in the Children (Scotland) Act 1995, Part 11, Chapter 1, Section 27:

21. “(3) Each local authority shall provide for children in need within their area who are in attendance at a school such care—

- outside school hours; or
- during school holidays,

as is appropriate; and they may provide such care for children within their area who are in such attendance but are not in need. “Our italics (see Annex 1).

22. This seems to be a little known piece of legislation, yet as we noted in the introduction, a very few councils do directly provide out of school care while around 20% of places are subsidised for children in need of extra support. Some further examples of how this is done through the GIRFEC approach are contained in our Expert Symposium report (2013b), which has case studies and examples of subsidised places for children in need.

23. In common with other children and family organisations we also support proposals to extend the Bill in terms of vulnerable two year old children. One way to do this would be to apply the 600 hours provision to all 2 year olds in need, as defined in the 1995 Act (see Annex 2). We would argue that this definition should apply also to children in need, in terms of school age childcare.

24. There are a number of current concerns about children in need, especially in poverty and/or with disabilities, often about continuity of care and support over school holidays. This includes such practical support such as free school meals, but also is a question which arises often in terms of the named person (usually the head teacher) and the child’s plan, as proposed in Getting it Right for Every Child (Scottish Government, 2013c). Supporting school age childcare places would address some of these gaps in continuity of care and support.

25. The CYP Bill should include a reiteration and strengthening of the powers of local authorities to enable provision for children in need as defined above, for support to access any registered, regulated and good quality service for children up to the age of 16, and second to build into this a commitment towards enactment of statutory provision for school age childcare over a specific timescale.
26. We recommend that the Early Years Collaborative approach be extended to include children of school age and this links in clearly with other national policies such as GIRFEC, The Early Years Framework and The Curriculum for Excellence (Cfe).

27. SOSCN believes in terms of the UNCRC that children have a right to play, cultural, leisure, recreational and rest services, provided by out of school care (Article 31) and their parents have a right to support in raising their children (Article 18). Furthermore the UNCRC also requires support for children in need or in poverty (Article 22) with disabilities (Article 23) or refugees (Article 26). Therefore, if the CYP Bill is to fully engage with the UNCRC as the foundation of this legislation, the policy drivers are already there in terms of children’s rights to statutory care, which also links and builds on previous legislation.

28. Of particular relevance to our views on the Children and Young People Bill is that we fully support the comments made by “Together” in their submission and evidence briefing paper for this committee (Together, 2013) in that the proposals do not yet go far enough in embedding the UNCRC. In light of our comments on the UNCRC underpinning articles above, we agree that:

- “The provisions around children's rights in Part 1-3 of the Bill fall short of providing the overarching child rights framework needed to fulfil the Scottish Government's policy intentions.

- Together urges the Education Committee to consider the full incorporation of the UNCRC into Scots law. Incorporation is the way for the Scottish Government to realise its ambition to make Scotland 'the best place to grow up’

- Together urges the Education Committee to consider the need for a child rights impact assessment to be undertaken on the Bill. This would ensure there is an informed and systematic approach to considering children's rights across the Bill." (Together, 2013).

29. SOSCN supports using the UN Convention on the Rights of the Child and Getting It Right For Every Child as the fundamental, underlying, principles of the CYP Bill. We note that this is in marked contrast to childcare policy development in England which suggests a market-led, and not a child-centred approach, to the care of children. We therefore believe Scotland is already going in a positive and very different direction, which has the potential to be truly transformational for children and young people in Scotland. This potential must be fulfilled but it cannot happen without including out of school care as a statutory measure, providing for all children in need, and ensuring that children’s rights are fully embedded in our culture.

Irene Audain MBE, Chief Executive
Andrew Shoolbread, Policy and Research Manager
Scottish Out of School Care Network
Annexe 1: Children (Scotland) Act 1995 extract

1995 c. 36 Part II Chapter 1 Provision of services

Section 27

27. Day care for pre-school and other children.

(1) Each local authority shall provide such day care for children in need within their area who—

(a) are aged five or under; and

(b) have not yet commenced attendance at a school,

as is appropriate; and they may provide such day care for children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) but are not in need.

(2) A local authority may provide facilities (including training, advice, guidance and counselling) for those—

(a) caring for children in day care; or

(b) who at any time accompany such children while they are in day care.

(3) Each local authority shall provide for children in need within their area who are in attendance at a school such care—

(a) outside school hours; or

(b) during school holidays,

as is appropriate; and they may provide such care for children within their area who are in such attendance but are not in need.

(4) In this section—

- “day care” means any form of care provided for children during the day, whether or not it is provided on a regular basis; and

- “school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.
Annex 2: Definition of Children in Need

Children (Scotland) Act 1995

A child is in need if he or she is in need of care and attention because:

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<thead>
<tr>
<th>Section 12 Social Work (Scotland) Act 1968 Section 22(1)</th>
<th>Section 93(4)</th>
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<td>(a) he or she is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless the local authority provides services for him under Part II of the Act; (b) his or her health or development is likely significantly to be impaired, unless such services are so provided; (c) he or she is disabled; or (d) he or she is affected adversely by the disability of any other person in his or her family.</td>
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2. The Act also states that services may be provided:

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<td>(a) for a particular child; (b) if provided with a view to safeguarding or promoting his or her welfare, for his or her family; or (c) if provided with such a view, for any other member of his or her family.</td>
</tr>
</tbody>
</table>
References


Children (Scotland) Act 1995 (asp 1995)


Scottish Parliament (2013a) Children & Young People (Scotland) Bill

Scottish Government, (2013b) *Early Childhood Education and Care Provision: International Review of Policy, Delivery and Funding*

Scottish Government (2013c) *Getting it Right for Every Child* (Online web information) http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright


Scottish Out of School Care Network (2011) *Benefits of Out of School Care Video* http://www.youtube.com/watch?v=jIDM4u5k3Q


Scottish Out of School Care Network (2012b), *Response to Scottish Government’s Children and Young People Bill Consultation* http://www.soscn.org

Scottish Out of School Care Network (2013a) *Online Out of School Care Survey*

Together (2013) CYP stage 1 Briefing


Scottish Out of School Care Network
Education and Culture Committee
Children and Young People (Scotland) Bill

Scottish Parent Teacher Council

Background

1. SPTC is pleased to respond to the Scottish Parliament’s Education and Culture Committee’s Call for Evidence regarding the Children and Young People (Scotland) Bill.

2. SPTC is a membership organisation for parent groups in schools all over Scotland. We also provide information and advice to parents and carers on every aspect of their child’s schooling and the education system as a whole.

3. In our response to this consultation we seek to present a parental perspective and to give balanced feedback on the Bill. At the consultation stage, as now, the questions at the forefront of our mind were simple ones: ‘What problem is this proposal trying to resolve?’ and ‘Will it make a real difference to the lives of children and young people?’

Children’s rights or children’s services?

4. We have been very challenged by the premise in the Bill that there is a comfortable fit between the areas of children’s services and children’s rights. We are not convinced this is true and feel the Bill attempts to straddle both horses, suffering as a result.

5. On the one hand the bill seeks to place obligations on those providing services to families (both parents/carers and young people) and on the other it seeks to strengthen the rights framework (UNCRC) for children and young people, though without full incorporation of the convention into Scots law. We believe this is a missed opportunity and urge the Government to address this obvious issue.

6. We are fully supportive of the proposed changes to the role and remit of the SCCYP, based on the assumption that the resources are provided to ensure the Commissioner can adequately fulfil this extended role.

Universal services versus targeted support

7. From our perspective, the vast majority of children and families require nothing more complicated than high quality universal services provided by motivated and skilled professionals, with parents and carers as advocates when required.

8. What we have witnessed throughout the journey of this Bill is a situation where – understandably – the organisations and individuals engaged in the debate around the Bill come to it with a world view which is focused on the needs of children and families who are facing particularly difficult circumstances.

9. The perspective of the 90% of typical families who ‘get through’ without additional support from social work, health, education or other services has as a result been
largely unheard in the debate. We are therefore concerned that in its attempt to support those children and young people who are experiencing difficulties, this Bill has the potential to draw families into the system unnecessarily, expending time and expensive resources needlessly and potentially detrimentally.

**Named person**

10. We believe the concept of a Named Person for every child is ill thought through and offers no benefit to the majority of children, whose ‘named person’ is already in place – their parent or carer.

11. For most children in receipt of universal services, their parent or carer is the person who has most interest in their wellbeing, knows them best, is committed, has staying power and is most motivated to ensure the health, education and other services they come into contact with deliver for them. This proposal completely fails to recognise that significant relationship and effectively seeks to usurp the role of the parent.

12. We are opposed to this proposal on this ground alone. In addition:

- The Named Person is not defined sufficiently. There is no clarity of thinking within the bill around the role of Named Person as opposed to Lead Professional and, indeed, the significant roles and responsibilities of other professionals. This role will demand that an individual has an oversight of all of a child’s support, plays an active role in ensuring that is delivered and carries the gravitas to influence other professionals. We do not believe such an individual exists at present within the system, with the capacity to take forward such a significant role. The resource implications alone in the creation of this role are enormous and we believe are underestimated in the Bill.

- The pressure on the capacity of the Named Person (eg a guidance teacher with a case load of circa 200 children) has the potential to lead to increased workload and the escalation of issues which may previously have been resolved having taken their natural course without intervention.

- The implications of the Bill’s Section 26 on Information Sharing are a matter of great concern as information regarding a parent which is currently confidential (eg work-related stress which leads to a GP visit) could be shared. We believe such sharing of information is inappropriate and counter to the rights of individuals to confidentiality. By bringing such information to the attention of the Named Person, as suggested in 4.1 above, matters which are by rights confidential could be escalated, drawing families into services.

- This adds to workload across services, breaks trust and disrupts family life.

- We question where the rights of the child are in this proposal as there seems to be no mechanism for the child’s view to be taken into account in the selection/allocation of the Named Person.
• There is potential for disagreement between the Named Person and the parent or carer where they fail to agree on the support or objectives for a child. This would be both destructive and resource-intensive. We query what systems would be required to avoid and deal with this situation, and whose view would take priority. This has not been addressed in the Bill.

**Increased childcare hours**

13. We have previously argued that increasing the hours of childcare for most children is undermining their right to the care of their parent/primary carer and that we should be cautious about the implications of this move. Is it actually driven by economic considerations (ie releasing more parents for paid employment)? Further, the proposal has the potential to increase pressure on parents to return to the workplace when their preferred option would be to be care-givers for their children.

14. We recognise early learning and childcare are of great importance to many children and can lead to improved outcomes as they move through school and beyond. However, this benefit has to be balanced against the rights of parents and children to spend time together, because we also know that strong bonds between child and parent/carer are critical for the development and wellbeing of children.

15. We are concerned the additional hours of funded childcare are more likely to be accessed by families who are already economically active and for whom additional hours reduce the need for them to ‘juggle’ their working lives and childcare; it is arguable that few of these additional hours will in fact be accessed by those families for whom this intervention will make a substantial difference to educational or social outcomes.

16. In relation to childcare provision for looked-after children (particularly those who are looked after at home) we have specific concerns that local authority provision requires to be stable and consistent, not subject to change and withdrawal in response to funding issues. For these children in particular, stability is a fundamental right which effective use of GIRFEC principles should ensure.

17. We agree with the principle of consultation as to the nature of the childcare and education to be provided, however we do not agree that this consultation should be with ‘such persons as appear to ....be representative of parents’. The consultation must specifically be with a cross-section of parents of children who are of pre-school age.

18. We believe the Bill should also include an obligation on local authorities to provide ‘wrap-around’ childcare options for children of all ages, including those with disabilities and other additional support needs.

19. In relation to placement of children, we are well aware of how difficult it is for both parents and children where a placing request is made within authority and so it is a significant concern that pre-school placements might enter the same labyrinth.
It is to be anticipated that only economically active and confident parents would consider this option for a pre-school child.

**Single child’s plan**

20. We believe a single planning approach should be just that: what appears to be proposed is the creation of a further plan which would ‘sit on top of’ existing plans. We would argue there are already too many plans, too many layers for children and their parents to navigate.

21. A child or young person at school could have a PLP, an IEP, and CSP. They may also have a care plan and other plans in relation to their care and support.

22. We would support a single planning approach and a single plan which brings together and simplifies the planning process for both families and professionals working with them. Such a plan requires the active involvement of the young person and their family. A statutory duty should be placed on all the public bodies needed to make the planning and implementation robust and co-ordinated.

**Kinship Carers**

23. We recognise that kinship carers provide parental care to many children in Scotland with little or no support in their role. We believe their care provides continuity of care and sustains family life for many children and young people. We also believe these formal and informal arrangements reduce the financial burden on public services by keeping children out of care. We therefore support the proposals as outlined.

**Conclusion**

24. We support many aspects of the Bill as outlined above.

25. We welcome the Government’s effort in this Bill to strengthen the support of public services around children who need that support, but we oppose strenuously the introduction of the Named Person as it currently stands.

26. We are cautious about the way in which extended hours of childcare will be designed and delivered, and to whom, and urge careful consideration as to how this element of the Bill is drafted.

27. We urge the Government to be bold by enshrining the UNCRC in Scots law as part of this Bill.

Scottish Parent Teacher Council

26 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Scottish Public Services Ombudsman

Background

1. The Scottish Public Services Ombudsman (SPSO) is the independent organisation that handles complaints from members of the public about devolved public services in Scotland. This includes almost all of the organisations listed in the schedules of the Bill. Under the Public Services Reform (Scotland) Act 2010, the SPSO was also given a lead role in improving the handling of complaints by public sector organisations in Scotland.

2. In responding to this consultation, I have concentrated on the section of the Bill which provides Scotland’s Commissioner for Children and Young People (SCCYP) with an increased role in complaints handling. I also highlight that there is a need to consider how best to deal with complaints about the new obligations on public organisations in the bill.

Children and complaints – the SPSO experience

3. I would like to say a little about our experience of children, young people and complaints. In the last 18 months, amongst other issues, we have considered complaints about failures to protect children from bullying; to provide a teenager with appropriate psychiatric care for an eating disorder; decisions to remove respite care; and failures to properly investigate child protection concerns. We have looked at school admission arrangements and we have also had complaints from those unhappy that their involvement in their child’s life has been limited in some way. As the organisation who looks at complaints from prisoners and about prisons, we can also take complaints from young offenders and have received complaints about how children visiting prison have been treated.

4. While these examples show they can be significant in content, the numbers we receive from children and young people are low. Child and early adulthood are similar to old age in that these are times of our lives when we are more reliant on public services. Care of the elderly and services provided to older people, particularly in the health service, remain a regular source of complaints to the SPSO. It is notable that we hear much less often about the services provided to and which impact on children. Almost without exception, complaints are brought, not directly by children and young people, but by parents and carers.

5. The question of why these groups, despite being significant users of public service, have such different rates of complaint to us is not one to which there is a simple answer. There will be positive reasons, for example, children and young people who receive high quality and appropriate service provision will not need to complain. However, it is notable that in 2012/13 only 5% of people who completed our equality monitoring form identified themselves as being under 24.

1 The one significant exception are police organisations.
Barriers to children and young people complaining

6. I consider there are specific barriers in place which make it difficult for children and young people to complain. Some of this relates to age. It can take both confidence and experience to make a complaint about someone who has power over some aspect of our lives and while this is difficult for adults, it is likely to be more difficult for the young. Access to complaints systems is often designed with adults in mind and can prove intimidating and difficult for the young. The Children’s Commissioner for England recently published a very interesting report on complaints from the point of view of young people. It highlights the problems faced and improvements that could be made to make the process more accessible. However, it is also the case that in terms of services most likely to be used by children and young people, health, education and social work, the complaints landscape is not straightforward. There are multiple complaints routes and agencies with an interest in those complaints. The level of complexity of the system itself is likely to provide an additional barrier.

Multi-agency working and complaints

7. Since the publication of the Crerar and Sinclair reviews, significant work has been undertaken both by the SPSO and others to standardise complaints and streamline processes. Complexity remains. One driver of complexity is a direct result of multi-agency working. Multi-agency cooperation is essential to provide joined-up services focusing on the user rather than the needs of the organisations. However, when someone wants to raise a concern they may need to go through a number of different complaints processes because, while care may have been provided jointly, each organisation may still retain their own complaints process for their own area of responsibility. In November 2010, I wrote an article for Children in Scotland magazine and concluded: “Joint working provides many opportunities. A complaint dealt with well by an integrated service can result in improvements for the child concerned and for other children in a more holistic way than if different parts of the complaint had been dealt with by different agencies. Put simply, the opportunities for learning are greater if the responsibility is shared. For this to happen, the approach to multi-agency complaints should be integrated into the service at the design stage so that procedures – and the right culture – are embedded long before any problems arise.”

8. This benefit has not yet been achieved. Complaints are often thought about not at the design stage but far too late in the process, sometimes only at the point when a complaint is made. The benefits set out in the bill of working together to support children will not be fully realised if we do not also accept that there need to be easy and accessible routes to raise complaints.

The new role of the SCCYP to pursue individual complaints

9. Having set out our concerns about complexity, it may now seem odd that I responded positively to the Scottish Government when they consulted about

2 http://www.childrenscommissioner.gov.uk/content/publications/content_585
extending the role of SCCYP to include the ability of individual complaint. In my
response to that consultation, I set out the administrative justice principles that
should inform any system. These includes accessibility. I will simply refer the
Committee to the points I made in detail. In summary, while I was unable to
comment fully because it was unclear at that stage what the role would be, I
highlighted my concern at the low numbers of children and young people using
complaints procedures and suggested this new role -- because of the visibility of
the SCCYP amongst children and the skills they have developed in
communicating with and representing children -- may help with that particular
problem. While there are issues around a potential overlap with other complaints-
handling organisations and how we work together, giving the SCCYP this role will
hopefully allow them to investigate some significant individual issues; to highlight
that children and young people can and should complain; and to develop the role
they already undertake in providing information and support to those who would
like to know how best to complain.

Resourcing the role

10. It should be clear that taking on a complaints-handling role will have a wider
impact on SCCYP than may appear from the number of full investigations set out
in the policy document. SCCYP will decide themselves what complaints it is
appropriate for them to take forward. However, this new role will increase
expectations of what the SCCYP will be able to do for individuals. People will see
them as a place to go to pursue complaints. SCCYP will need to be able to
explain why they will not deal with certain complaints and our experience is that
this is not always an easy task. The role will also provide them with a clearer
mandate to support children and young people who wish to complain. It is this
aspect of the role that I feel may be particularly beneficial. It is important to note
that this role will not be completely new. SCCYP staff already regularly provide
helpful and timely information and advice to callers. However, their new role in
investigating individual complaints will highlight this and drive demand for this
advice and support role. This is a critical part of the role of all complaints-handling
organisations and it is important that it is resourced as well as resource provided
to actually take forward individual complaints.

Dealing with the overlap

11. The legislation currently says that SCCYP should not look at any issues which
are "properly the function" of another person. This may be difficult to identify in
practice. Their particular role is around failures to appropriately consider the
rights, interests and views of children. In the consultation response to the Scottish
Government we explained in more detail how we consider rights and apply that to
cases. I do not repeat that here but it is the case that such failings would likely
amount to service failure or maladministration, the categories which are the
categories we judge complaints by. Our remit is broad and does cover most,
though not all of the public sector.

http://www.spso.org.uk/files/webfm/Media%20Centre/Inquiries%20and%20Consultations/2012/12%2
009%2025%20Response%20to%20consultation%20on%20Children%20and%20Young%20People%2
0Bill%20all%20docs.pdf
12. SCCYP’s role will not be limited to the organisations under our jurisdiction and they will have a particular focus. However, it has to be accepted that it is not immediately clear from the legislation where the boundaries between their and our role will be. To be fair, this is not something that is easy to draft for and drafting too narrowly would restrict the role to the point where it may become impossible to use. It is likely the best approach is a pragmatic one. We have already been in discussion with SCCYP and other complaints-handling organisations and we all agreed on a need to work together to prevent as far as possible any confusion and to make sure we are signposting children and young people to the best and most appropriate organisations. We have had early discussions about how to do this in practice and I look forward to this continuing. As I have said above, complexity can be a barrier. However, we feel there may be benefits for improving accessibility for young people. It will be incumbent on complaints-handling organisations to work together to prevent the problems this could cause. This does not mean there will not be difficult cases or this will not cause certain problems. The final decision on how to weigh the benefits and disadvantages will lie with the Parliament. We are committed to working with others to make whatever system emerges as easy as possible for users.

Technical legislative issues

13. I would like to provide a few comments on the wording of the legislation itself. I am aware that organisations may have pockets of discrete information which when put together may indicate significant systemic failings but that there may be no clear structured way of sharing this information. We have agreements with regulators and others around information sharing and put as much information as we can in the public domain. We have made this searchable to allow anyone to access this. We are though, for very good reasons, subject to specific limitations on what information we can share. It is important that the public feel their complaints are treated confidentially. We are privy to significant amounts of personal information and know there need to be limits. For example, we have taken the very unusual step in a very small number of cases involving children and young people of either not publishing any information or not identifying the public organisation in the published information. In some council areas for example, simply identifying some characteristics of a school in that area would identify a child.

14. The following thoughts are reflections based on our legislation about how to balance the need to share information with the need to protect the interests of individuals.

Flexibility on reporting

15. The legislation as worded provides the SCCYP with the ability to publish some reports of completed investigations. There may be some benefit in giving them the ability, at their discretion, to share information from cases they received and considered but did not take further, subject of course to the need to protect the anonymity of the complainant(s).
Sharing information between organisations

16. In terms of sharing information, there are two sections under which we operate that balance sharing information and restrictions in interesting ways. At present, section 21 of our legislation the Scottish Public Services Ombudsman Act 2002 puts us under an obligation to consult with other UK ombudsman if we consider we have received a complaint which includes matters which could be under their jurisdiction. This was designed to deal with cross-border issues. These have not occurred to the extent that was anticipated so this section has not been much used. It could though be a model for a similar obligation on SCCYP and/or others to consult with each other when complaints may overlap to make sure the appropriate organisation is taking this forward. We would suggest an obligation should not be mandatory as this may be disproportionate but a positive indication that they may do so would likely help with some of the overlap issues mentioned above.

17. Another section which has been little used but may be a helpful model in this context is section 20 of our Act. Section 19 significantly restricts what information we may release and says that we can only do so for specified purposes. Section 20 allows us to release information to certain organisations if we consider there may be evidence which suggests that we are aware of information of particular importance to them because they have specific enforcement powers. At present, this section is limited to a very small number of organisations and circumstances. Our powers of gathering information appear to be more significant than those currently suggested for the SCCYP and I know there are general information sharing provisions in the legislation but would suggest these models merit some consideration. This may, in future, provide models for broader sharing within Scotland between complaints-handling and scrutiny organisations which balance the need to protect confidentiality while allowing important information to be shared.

Dealing with complaints about the duties on public organisations brought in by the Children and Young People (Scotland) Bill

18. The Bill creates a new role, the named person and there are new obligations on public organisations notably around creating a child support plan and co-operation. Any new duties placed on organisations raises the question of what do people do if they are unhappy with the way they are carried out. Many of the organisations are already under our jurisdiction and this may lead to complaints being brought to us. As noted above, the current landscape of complaint-handling provision means multi-agency working can be complex. This is particularly the case around interactions between social work, social care and health.4

19. We have been discussing the implications for us and the organisations under our jurisdiction with the Scottish Government. It may also be worth noting that there is

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also currently a working group looking at social work complaints the outcome of which may be relevant.

Jim Martin
Scottish Public Services Ombudsman
25 July 2013
Response from the Scottish Social Services Council

1. The Scottish Social Services Council (SSSC) is the statutory Non-Departmental Public Body responsible for registering people who work in social services in Scotland, regulating their education, learning and development and generating workforce information for the sector, including the publication of Official Statistics. The SSSC is also one of the partners of Skills for Care and Development, the Sector Skills Council for the social service workforce in the UK.

2. There are approximately 195,000 workers in the social service workforce in Scotland, over 40 per cent of whom are employed by the private sector. The SSSC’s role is to raise standards of practice in social services, to strengthen and support the workforce and to increase the protection of people who use the services. Our vision is a competent, confident workforce, capable of delivering high quality services that has the confidence of the public, those who use services, and their carers.

Response

3. We responded to the Scottish Government consultation on its proposals for a Children and Young People Bill on 24 September 2012. We have nothing further to add to our views as expressed in this response, which we attach for reference.

Scottish Social Services Council
26 July 2013
A SCOTLAND FOR EVERY CHILD

More effective rights for children and young people

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

2. On which public bodies should a duty to report on implementing children’s rights be applied?
   - We have nothing to add to the list of public bodies identified in Annex B.

3. Do you agree that the extension of the Children’s Commissioner’s role will result in more effective support for those children and young people who wish to address violations of their rights?
   - The SSSC aims to protect people who use services and their carers by promoting high standards of conduct and by taking action where the public are at risk. Our role is about investigating allegations which may amount to misconduct of individual registered workers. This may include misconduct relating to children’s rights.
   - We support in principle the proposals to extend the Children’s Commissioner’s role. There is a possibility of potential overlap between the Children’s Commissioner’s role and the functions of other public bodies such as the SSSC. We will require significantly more detail to enable us to assess the possible implications for the SSSC in relation to our regulatory function. For example, a potential overlap may occur where the Commissioner conducts an investigation which relates to a registered worker. There will be a need to be clear about the parameters and triggers for investigations. An unintended consequence may arise where a decision relating to a registrant’s suitability on our Register can not only be subject to the normal appeal to the sheriff, but also subject to additional scrutiny by the Children’s Commissioner. In the interests of clarity and the integrity of the adjudication process, this should be avoided.
   - We make a point later in this response about the changing nature of the social services workforce. The majority of social services workers are now employed by the private and voluntary sector while there has been a recent trend (as part of the Self Directed Support agenda) for some service users to take control of their budgets and make their own choices about the people providing their care. It will be important to ensure that the Commissioner’s new powers take account of these arrangements. It is also worth noting that there are a substantial number of social services workers who are required to register with the SSSC while there are a significant number of additional workers who are required to registered
with other regulatory bodies such as the Care Inspectorate. Social service workers are required to comply with the relevant code of practice.

- We would also question whether the Commissioner will share information about registered workers with the SSSC. A final question would be to clarify what the Commissioner’s role would be in the event of a finding that a child’s right has been breached.

- We have other questions about how the revised role will work in practice but we will wait for further detail about the implementation. If the Commissioner’s role is extended we would welcome the ongoing opportunities to share experiences from our work with them.

A new focus on wellbeing

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

   - We welcome moves to have shared outcomes across services.

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

   - We have no comment to make on this question.

Better service planning and delivery

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

   - We welcome the proposals to place a duty on public bodies to work together on this agenda. One point we would make is that there a range of bodies which have a remit in this area, as illustrated by Annex B of the consultation document. Extending the duty should strengthen and support collaborative working, and should include the duty to share relevant information. There may be a need for guidance to support situations where partnership working may be problematic or where mediation is required.

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

   - We have no comment to make on this question.

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

   - We have no comment to make on this question.

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

- We welcome the proposals to promote the link between local services and outcomes for children and young people. We welcome the moves to place a duty on public bodies to assist the local authority in reporting on a common set of high level outcomes for children and young people, but would extend that duty to private or voluntary sector bodies providing publicly funded services to children. We would welcome further guidance on the implications and the level of support that would be required by local authorities. As an example: The SSSC could provide information about the numbers of referrals by local authorities which led to unsuitable workers being removed from the Register. A key point for us would be to ensure that these reporting arrangements are meaningful; consistent across individual local areas; and can highlight the impact and improvement for those who need the most support. The purpose of the reporting, and therefore the nature of the information gathered, must be useful and directly relate to improving the outcomes and experience of children and young people.

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

- Yes. This may require definition as different people and organisations will have different interpretations of the terminology. For example, what does “safe” mean? It would be expected that ongoing work on GIRFEC will have paved the way for this.

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

- The SSSC agrees in principle to being included as one of the public bodies to assist in reporting outcomes, however we would like further information about the extent of the duty in order to consider this more fully. We would also suggest that the public bodies which are required to report to local authorities are required to collaborate to prevent overlap or duplication, especially around information collected from third parties.

**A SCOTLAND FOR EACH CHILD**

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

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

- We welcome the intention to increase the number of hours of funded early learning and childcare. We welcome any moves to increase the provision of care both during and outwith school hours. The social service workforce has a vital role to play in the delivery of these services and it has been a requirement since December 2011 that all lead practitioners and
managers of day care services for children are required to either hold or be working towards a level 9 Childhood Practice qualification. Evidence shows that the best experiences for children come from qualified staff. It will be vital to ensure that providers can maintain appropriate numbers of qualified staff at all times, and that learning and development opportunities exist to meet that need.

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

- We welcome any moves to increase the flexibility of delivery of learning and childcare. Decisions about the needs of parents and local demand should be taken at local authority level. We note the increasing role of the private and voluntary sector in the delivery of these services. The SSSC’s workforce data shows that the majority of day care of children workers and childminders are now employed by these two sectors. The growth in the number of non-statutory services may present specific challenges both in terms of the delivery of these flexible services and ensuring a qualified workforce is available to provide early learning and childcare services. It may be difficult for some small services to find the time and resources to allow staff to undertake learning and development. Similarly there may also be implications for the work patterns or contracts for some staff. It is vital that the resource implications of learning and development is factored in by those commissioning services.

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

- We believe that this is an issue for local authorities and relevant partnerships to decide.

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

- We would recommend the use of guidance to support this. It is very important that any arrangements suit the needs of the child, not the needs of organisations.

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

- We welcome the proposals to provide additional resources to support the needs of 2 year olds who are Looked After. One question we have is about the implications for children who are not Looked After but are vulnerable and may at risk of becoming so. They may require and benefit from similar support. We suggest that further flexibility may be required where, for example, a Looked After child would benefit from this support prior to their second birthday. We look forward to reading the detailed guidance in relation to this. We would also note, that there may be additional workforce
development issues for staff who are providing early learning to particularly vulnerable children, and the SSSC would be happy to do further work on this.

The Named Person

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

- We agree with this proposal. There will be challenges in ensuring that those undertaking the named person role have the requisite skills and capabilities to undertake the task and would suggest that there needs to be substantial investment in this in order to change both culture and practice. There may be a need for further resources and tools to support these proposals. The SSSC would be able to provide support and knowledge to develop these resources.

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

- We have no comment to make on this question.

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

- We have no comment to make on this question.

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

- We have no comment to make on this question.

The Child’s Plan

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

- We have no comment to make on this question.

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

- The implementation and spirit of the single planning approach requires workers from all disciplines to work collaboratively with families, placing them at the centre of the planning process. We suggest that there are learning and development issues that will need to be addressed in order for practice to be effective. Some of these issues will be shared and can be addressed on a multi-agency basis and some will be sector specific. We would be able to develop tools and resources to support this for social services workers.
Right to support for looked-after children

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

- We have no comment to make on this question.

Corporate Parenting

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

- We have no comment to make on this question.

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

- We have no comment to make on this question.

Kinship care

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

- We have no comment to make on the order. The SSSC and the National Health Service Education for Scotland (NES) are currently working together on the implementation of the Carers and Young Carers Strategies for Scotland. These strategies highlight the need for learning and development opportunities for kinship carers.

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

- We have no comment to make on this question.

Adoption and permanence

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

- We have no comment to make on this question.

Better foster care

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

- We have no comment to make on this question.
30. Do you agree foster carers should be required to attain minimum qualifications in care?

- There is evidence that children growing up in a household where parents have qualifications tend to get a better start in life. Foster carers typically support children with complex care needs, so it would be reasonable to expect that it would be of benefit to children if foster carers were expected to have an appropriate qualification. However, foster carers are not part of a regulated workforce and are caring for children in their own homes, as part of their own families. Is it therefore compatible with the ethos of foster care to require qualifications? A final point that we would make here is that there may be specific safeguarding issues which have to be considered.

- When these fundamental questions are answered, the SSSC would be able to advise on a way forward based on our experiences of regulating more than 50,000 social services workers. We would also be able to offer advice based on our experiences of developing and promoting the Codes of Practice for social services workers and employers. We are aware that there are plans to hold further discussions about these proposals later this year and we welcome the opportunity to contribute to that debate.

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

- We have no comment to make on this question.

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

- We have no comment to make on this question.

Assessing Impact

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

- We have no comment to make on this question.

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

- We have no comment to make on this question.

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

- We have no comment to make on this question.

Scottish Social Services Council (SSSC)
Education and Culture Committee  
Children and Young People (Scotland) Bill  
Scottish Women’s Aid

General comments

1. Scottish Women’s Aid (SWA) welcomes the Children and Young People’s Bill and the Scottish Government’s intention to promote and protect the rights of children and young people in Scotland. The government should take credit for this important piece of legislation and the intention behind it. However, we remain unconvinced that the initial intentions behind this legislation will be realised unless the UNCRC is incorporated into Scots Law.

2. Promoting and protecting children and young people’s rights in a real and transparent way could go some way towards genuinely tackling domestic abuse and is a goal SWA wholeheartedly support. Domestic abuse will continue to blight the lives of far too many of Scotland’s citizens unless we fully understand and address the way in which their rights are undermined and eroded and there is a proper will to address this. There is a wealth of research that demonstrates that children’s rights to be protected, to education, health care, a home, associations with others, leisure, play and to having their views taken account of are all severely compromised as a result of living with domestic abuse (Humphries & Mullender 2000; Hester et al 2006).

3. While we welcome the intention to strengthen existing children’s policy approach through legislation; we are very concerned that some of what is being proposed around information sharing in particular could inadvertently increase risk and further undermine children and young people’s rights.

Specific comments in relation to Part 1

4. SWA supports full incorporation of the UNCRC into Scots Law and would like the Scottish Government to follow the lead of other countries and introduce legislation that truly can be seen as ‘landmark’. In addition to this, in light of the strong commitment demonstrated by government towards tackling domestic abuse, we would like a strong message from the Scottish Government that domestic abuse is a significant rights issue and there is an expectation that this should be recognised in the design and delivery of children’s services.

Specific comments in relation to Part 2

5. SWA welcome the intention to increase powers for The Commissioner for Children and Young People; however, we do not believe that this can be effected without increased resources to carry out this duty.

Specific comments in relation to Part 3

6. It is clear that the needs and rights of children and young people living with domestic abuse cut across many areas. There is some evidence of Community Planning Partnerships and Child Protection Committees working more closely...
with Multi-agency Violence Against Women partnerships which has improved responses. While the GIRFEC approach has gone some way towards encouraging a more consistent and unified approach, there is still a lack of direction and consistency in response to domestic abuse. There is a need to mainstream this issue within all relevant services while at the same time keeping specialist services which offer an invaluable safety net to vulnerable families and can advise practitioners who are working with them.

7. In 2009 the remit of Single Outcome Agreements was widened to become a strategic plan at Community Planning Partnership level, therefore providing a real opportunity to develop coordinated work to tackle domestic abuse. However, SWA carried out an analysis of SOAs in 2008 and 2009 [http://www.scottishwomensaid.org.uk/assets/files/publications/research_reports/SWA%20SOA%20Report%202009.pdf](http://www.scottishwomensaid.org.uk/assets/files/publications/research_reports/SWA%20SOA%20Report%202009.pdf) and our subsequent report documented the lack of priority given to domestic abuse within the majority of SOAs. Our analysis showed that only 5 out of the 32 local authorities in Scotland make specific reference to addressing domestic abuse as a priority in their areas. This despite the fact that the Scottish Government has consistently made this a priority area in recognition of the high numbers of children who are referred to social services and who appear on the child protection register.

8. In attempting to address the lack of consistent outcomes and coordinated approaches to eradicating domestic abuse and its impact on society, the Scottish Government has adopted the Violence Against Women Outcomes Framework. This framework was developed through a consultation process with VAW multi-agency partnerships and piloted within two local authority areas. It illustrates how we can achieve National Priorities (as outlined in the National Performance Framework) through Single Outcome Agreements that promote a shared understanding of domestic abuse and its impact on women, children, and young people as well as a range of joined-up approaches to preventing it. Further work is needed to integrate the VAW Outcomes Framework within local planning structures in order to ensure that the needs and rights of children experiencing domestic abuse are fully recognised and addressed.

**Specific comments in relation to Part 4**

9. This is the area of the Bill that is causing the most concern for SWA, primarily because despite good guidance in relation to GIRFEC our members and children and young people using our services continue to contact us stating that their safety, confidentiality and right to privacy is often compromised. We are clearly not getting it right for children and young people living with domestic abuse and we see no real evidence that the introduction of this Bill will significantly change anything; in fact we are concerned that the introduction of named persons and the lowering of information sharing thresholds could increase risk for this group and undermine rights rather than strengthen them. Sharing information inappropriately and without due care can lead to those fleeing or living with domestic abuse suffering injury or death.
10. There is a lack of clarity around thresholds at which information must be shared; which may mean that the current proposal will be interpreted as legislation for the sharing of any information about any child or young person, their family and family life and personal circumstances even where they are not considered to be at risk. While we do need to identify, support and protect children and young people who are living with domestic abuse we find the lack of clarity around how this should be managed without increasing risk and undermining the right to privacy and confidentiality quite alarming. This could be a huge backward step with regard to a more consistent response to domestic abuse if families are too afraid to come forward and seek help leaving them feeling even more vulnerable and without support.

11. Robust and explicit guidance on responding to domestic abuse and a commitment towards learning and development for all practitioners must be a priority in order to address these risks and increase confidence. Making good decisions about sharing information depends on a good level of awareness and understanding about the dynamics of domestic abuse. A sketchy and prejudiced response is dangerous and contributes to service-enhanced risk.

**Specific comments in relation to Part 5**

12. While we are in agreement with the provisions set out in the Bill relating to the provision and setting up of a child’s plan we remain concerned for all of the reasons stated above in relation to levels of awareness of domestic abuse. Domestic abuse can often be the cause of huge difficulties for families i.e. truanting, absconding, self-harming behaviours etc. and yet is often the hidden issue and one that everyone can be reluctant to address. Efforts to put plans in place that do not address the real problem will inevitably fail. It takes skill, knowledge and expertise to get this right and we would like to see plans that take this into account.

13. One of the most frustrating examples of where risk is often exacerbated for women and their children attempting to flee domestic abuse is the contradictions played out in public and private law proceedings. There are huge tensions and contradictions across work with perpetrators; child protection and child contact arrangements. These three areas of work all involve children and yet do not make for a cohesive and co-ordinated approach. Responding more effectively to domestic abuse as it impacts on adults and children, requires both a unified approach across all of these areas and acknowledgement of the processes of gendering that are situating women as culpable victims. It requires much closer and coherent practices across the three areas of work, with acknowledgement and understanding of professional assumptions and practices of different professional groups.

**Scottish Women’s Aid**

26 July 2013

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Introduction and Context of Evidence

1. The Scottish Youth Parliament (SYP) welcomes the opportunity to give evidence on the Bill. As an organisation inspired by Article 12 of the UN Convention on the Rights of the Child (UNCRC), our vision is of a stronger more inclusive Scotland that empowers young people by truly involving them in the decision-making process. We welcome the Scottish Government’s ambitions to ‘make Scotland the best place to grow up’ and to make ‘children and young people’s rights real’. This Bill represents a golden opportunity to make this vision a reality.

2. Our evidence is directly shaped by extensive consultation in partnership with Young Scot on the draft Bill\(^1\); consultation on the preceding proposals for a Rights of Children and Young People Bill\(^2\); as well as our Youth Manifesto ‘Change the Picture’ which was shaped by 42,804 responses from young people and includes a number of statements directly relevant to young people’s rights and the Bill\(^3\).

Rights of Children

3. The Scottish Youth Parliament recommends that the Bill be used to fully incorporate the UNCRC into Scots Law.

4. As part of the mass consultation which shaped ‘Change the Picture’, 85% of young respondents agreed with the statement “Young people should be entitled to as much protection of their human rights as the law can give them. This means that the UNCRC should be given more force in Scots Law”. Subsequently, a clear majority of our elected Members (MSYPs) supported full incorporation (64%) with just 23% supporting requiring the Government to have ‘due regard’ to the UNCRC at our October 2011 National Sitting.

5. The reasons for young people’s support for full incorporation relate to the potential to make their rights real by making them legally enforceable with clear channels of redress for breaches. Many were aware of the rights the UNCRC affords them and raised instances of where they felt their rights had not been respected, but felt that there were no channels of redress to enforce their rights. The Bill’s proposals to require Ministers to ‘keep under consideration’ children and young people’s rights would not provide any redress for breaches of the

\(^1\) A Scotland for Children – Scottish Youth Parliament response

\(^2\) Consultation on Rights of Children and Young People Bill – Scottish Youth Parliament response
http://www.syp.org.uk/img/consultations/SYP%20Response_RightsChildrenYoungPeopleBill.pdf

\(^3\) Change the Picture – Scottish Youth Parliament Youth Manifesto 2011-16
http://www.syp.org.uk/our-manifesto-W21page-82-
UNCRC, and as such represent a missed opportunity to make young people’s rights real.

6. Fully incorporating the UNCRC would enable action to be taken on issues that young people deem to be priorities for a better Scotland, and allow breaches of their rights to be dealt with suitably. An example of the benefits full incorporation would bring can be seen through issues raised in the Public Petitions Committee’s consideration of ‘Ban Mosquito devices now’ from Andrew Deans on behalf of SYP⁴. Despite use of the device, which targets those under the age of 25 with a loud, unpleasant, high-pitched noise, being recommended for reconsideration amongst the UN Committee Concluding Observations 2008⁵, and in breach of five separate UNCRC Articles in the view of the Children’s Commissioner⁶, the device remains legal to own and operate without restriction in Scotland. Full incorporation of the UNCRC through the Bill would create a basis to end the use of the discriminatory device without having to create additional legislation or to identify long-term health risks, which the Scottish Government suggested were barriers to the device being banned.⁷

7. In addition to the statements relating to the UNCRC and the Mosquito device, 12 of the other issues covered by Concluding Observations were highlighted by young people as amongst their biggest priorities in the Youth Manifesto, including tackling bullying, greater involvement in decision-making, preventing negative stereotyping in the media and ensuring effective PSE in schools.⁸ Full incorporation could bring welcome progress on a range of issues that young people have identified as changes that would make Scotland the best place to grow up.

8. **The Scottish Youth Parliament supports the introduction of a duty on Scottish Ministers to promote public awareness and understanding of the rights of children.** In our consultation with young people on ‘A Scotland for Children’, 61% of survey respondents supported this proposition. With a majority of respondents rating their current knowledge and awareness of their rights as low, including 39% who had ‘never heard of the UNCRC’ before taking part in the survey, this duty is likely to have a positive impact. However, this duty would be made even more meaningful if it were clear to children and young people how they can report instances of their rights not being respected and have remedial action taken if a breach were proven.

**Commissioner for Children and Young People in Scotland**

⁴ PE01367 – Ban Mosquito devices now
http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01367
⁵ http://www.scotland.gov.uk/Publications/2009/08/27111754/10
⁶ Scotland’s Commissioner for Children and Young People Letter to Scottish Parliament Public Petitions Committee, 24 November 2010
http://www.scottish.parliament.uk/S3_PublicPetitionsCommittee/Submissions_10/10-PE1367I.pdf
⁷ Minister for Children and Young People Letter to Scottish Parliament Public Petitions Committee, 13 December 2012
⁸ A Scotland for Children – Scottish Youth Parliament response p. 19
9. The Scottish Youth Parliament supports the extension of the investigatory powers of Scotland’s Commissioner for Children and Young People (SCCYP). This function must be suitably resourced to enable it to meet demand, and caution must be taken when promoting the function to children and young people to ensure that unrealistic expectations of what is likely to happen as a result are not created.

10. As part of our consultation on ‘A Scotland for Children’, 62% of respondents supported the extension of SCCYP’s powers as proposed by the Bill, with just 6% opposed. To meet demand and manage expectations suitable resources must be provided to enable SCCYP to receive complaints and carry out investigations. In promoting the service to children and young people it is important to be clear about the possibilities and limitations of this service. Caution should be exerted to avoid young people being led to believe that SCCYP will carry out a full scale investigation into each and every complaint, and that the Commissioner could compel organisations or individuals to take action to rectify a proven breach.

11. The Scottish Youth Parliament recommends that a requirement be placed on Parliament to debate the findings of SCCYP’s investigations. To ensure that proven rights breaches are taken seriously, we would recommend that the Bill require the full Scottish Parliament or one of its Committees to debate the Commissioner’s report. We would also recommend that the Commissioner is empowered to investigate potential rights violations relating to reserved matters as well as devolved. Young people concerned about their rights not being respected would be extremely disappointed if no investigation could be carried out because of the terms of the devolution settlement. This would enable SCCYP to investigate complaints from young asylum seekers and refugees, or areas where it is not immediately obvious whether an issue is devolved or reserved, such as the Mosquito device.

Provision of Named Persons

12. The Scottish Youth Parliament supports the inclusion of a provision of a point of contact for children, young people and families through an appointed Named Person. However, we recommend that the focus of the function should be as a first point of contact for children, young people and their families looking for information and advice about their wellbeing and ensure that their views are being taken into account when decisions regarding their wellbeing are being made; rather than the Bill’s focus on the role serving as an information sharing hub for agencies.

13. A majority of respondents (51%) supported a requirement for a Named Person for every child. However, when asked what the Named Person should be responsible for, their clear preference was for a young person’s first point of contact if they are looking for advice or information about their wellbeing (chosen by 46% of respondents); being their parents’ or carer’s first point of contact for advice or information about their wellbeing (35%); to make sure their views are being taken into account when decisions about your wellbeing are made (34%)
and to work with them, their parents and other agencies to co-ordinate and plan any support they might require (29%).

14. Significantly, the options of the Named Person being responsible for being a point of contact for other professionals who might have concerns about the young person’s wellbeing (26%) and deciding what information needs to be shared, balancing up a need to protect their wellbeing and respect their privacy (24%) received much lower support than the other options including fictional options we included for comparison. Young people’s support for this role being created appears to depend on its purpose, and we would recommend the focus be placed on the point of contact aspect of the role.

15. The Scottish Youth Parliament recommends that the circumstances in which information about a young person can be shared between agencies without their permission should be made clear in the Bill as well as accompanying guidance. Young people’s right to privacy and confidentiality should be respected unless they are at substantial and immediate risk of harm.

16. In the Dialogue Groups we ran with young people, a number of concerns were raised about confidentiality. These included situations where personal information had been shared between agencies without notifying them; private information being discussed in front of family members at meetings and certain information remaining on their case notes without their permission which they felt to be unacceptable. Whilst recognising the need for information being shared in situations where they might be at risk, there was a clear view that a Named Person should be trustworthy and should not share personal information unless it was absolutely necessary. We note that concerns have also been raised by a number of agencies regarding the information sharing duty going further than current guidance, tipping the balance towards sharing information in many situations rather than respecting young people’s right to privacy. We would not support this situation.

17. The Scottish Youth Parliament recommends that the Bill should include provision for children and young people to have a say in who their Named Person is, and request a change if their working relationship has broken down.

18. When asked about what personal qualities their Named Person should have, participants in Dialogue Groups emphasised that they should be trustworthy, a strong advocate for their rights and interests and that would not judge them on their past. There was a desire from young people to have a say in who their Named Person should be. There was also support for a right for young people to be able to request a different Named Person if their working relationship has broken down. Some participants felt that other professionals, such as a youth

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worker or a social worker, may be a better option as a Named Person for certain young people.

19. Additionally, given the information-sharing duties of a Named Person as proposed in the Bill, and the suggestion in ‘A Scotland for Children’ of a first point of contact for young people about their rights and wellbeing, the role appears to be more than a nominal administrative one. It would also appear to be consistent with children and young people’s right to have a say and have their views taken into account on all matters affecting them, that they should have the ability to influence the identity of their Named Person.

Other Aspects of the Bill

20. The Scottish Youth Parliament supports the provisions in the Bill in principle related to Children’s Services Planning, the Child’s Plan, Aftercare, Corporate Parenting and Support for Kinship Care.

21. Our consultation with young people on ‘A Scotland for Children’ saw majority support for the principle of joint working between public bodies (64%); a requirement for public bodies to publish reports on how children’s wellbeing is taken into account when delivering services (53%) and a single Child’s Plan for those who need it (77%). There was support, particularly in Dialogue Groups for raising the age of entitlement to aftercare support. In specific questions to young people who indicated they had experience of being in care or looked-after, there was support for defining corporate parenting in law, provision for kinship carers to be recognised as having the same rights and responsibilities as birth parents, a new Kinship Care Order and for matching adoptive children and families through Scotland’s Adoption Register.

A Bill for Young People?

22. A general observation on the Bill as a whole is that in the main is that, despite its name, for the most part it applies to under 18s. For instance, in section 75 (1), no definition of “young person” is provided. Consideration should be given to the extent the Bill can apply to young people aged 18 – 25. Examples of how this may be done could include extending the rights provisions of the Bill to them, or by including an entitlement to youth work opportunities in the Bill.

Rob Gowans
Policy and Research Officer, Scottish Youth Parliament
Education and Culture Committee
Children and Young People (Scotland) Bill

Shakti Women’s Aid

General

1. Our response to *A Scotland for Children: A Consultation on the Children & Young People (Scotland)* is informed and led by our knowledge and experience over 25 years of working directly with Black Minority Ethnic children and young people affected by domestic abuse, forced marriage, honour-based violence and other issues of gender-based abuse, issues which deny children and young people of numerous rights as outlined in the UNCRC.

2. We’re also responding as an affiliate and partner to Scottish Women’s Aid and fully support their consultation response, particularly recognising how comprehensively domestic abuse undermines the rights of young people. We, too, recommend a much stronger commitment to training all sectors to these issues and share Scottish Women’s Aid’s concerns around information sharing; domestic abuse and connected gender-based violence situations present real, dangerously complex situations for survivors that are easily exacerbated by indelicate or irresponsible handling of information.

3. We’re pleased the Scottish Government is, with this bill and consultation process, continuing to focus and debate on children’s rights.

Lost Opportunities

4. We’re disappointed however at the continued omission of a duty to give “due regard” to the UNCRC (now a Minister’s requirement to “keep under consideration”); this, and the loss of a specific dedicated bill for children’s services, stops short of the current potential of embedding UNCRC in Scots law. The wording of the Bill considering Minister’s and Public Bodies’ duties lacks clarity as to exact requirements, allowing room for interpretation, inconsistency and potential undermining of purpose.

Commitment to All Children & Young People

5. Any subsequent Act needs to fully to commit to all children and young people in Scotland, ensuring meaningful recourse under the law for denial of such rights, with clear steps for those affected to highlight rights’ infringements, and extended powers for the Children’s Commissioner to act on behalf of groups and individuals.

6. Reflecting the principles of the UNCRC, the Act itself and duties therein contained should also be made clear and accessible for young people. This should include providing information in all languages (including BSL and Easy Read materials) required by children in, and travelling to, Scotland.
7. “The Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.”

8. There needs to be courage and a will to protect all young people’s rights to realise their wishes and voice their ideas and not be silenced by the wants of adults around them. While Shakti has a distinct advantage of working in an impartial space with both young people and adults from many ethnic and faith backgrounds and while supporting the whole person, we are not prescriptive. Other than provide information on rights, options and the law (or act where we are duty-bound to do so) we do not advise what anyone should do according to ‘faith’ or ‘culture’, both concepts being subjective. We believe, particularly in supporting recovery from abuse, in allowing each person to consider aspects of their identity including religious ones, where possible, in a manner of their choosing. Whilst we understand that faith can and has been used as an element of control by perpetrators, creating great anxiety and confusion for survivors (including those we have supported), we’re also sharply aware that ‘cultural’ or faith advice has been sought, by professionals, from adults in a young person’s family or community before, instead of, or with more seriousness than the young person themselves. This advice has then been used to ‘tailor’ services for those young people without considering their own relationship with their faith: basically assuming that young person’s ‘culture’. Note: such enquiries are not often asked, if ever in regard to young people who are white, who also have their own ‘culture’ and possibly faith.

The Central Importance of Training

9. Adults, particularly those making decisions for children and young people need to have knowledge of children’s rights under the UNCRC and issues that serve to deny these rights, in order to be able to ask the right questions when determining whether any action or policy is indeed “rights respecting”.

10. The major problem is lack of training: one example is the current lack of any requirement for Children’s Reporters to be trained in domestic abuse issues, which should be central in making any recommendations for children during court proceedings where abuse is a concern. It is still not common practice for a reporter to fully consider the impact of domestic abuse when presenting recommendations for child contact or custody. As well as our clients’ direct experience, supporting evidence of this includes Dr Kirsteen Mackay’s exploration of the treatment of views of children involved in contact disputes, reflecting a majority of reporters, being from a legal background, still do not require or have specialist training or relevant experience of working with children. The study goes on to show that despite 48% of children stating a wish for no contact, contact is routinely granted in a majority of cases; for a third of children in the study, the outcome did not resemble their wishes. (Also see Dr Gillian Macdonald’s “Domestic Violence & Private Family Court Proceedings: Promoting Child Welfare or Promoting Contact?”).
11. Training is key for all involved in keeping children safe, including those responsible for fostering and adoption, and named persons. Too many professionals likely to be either named person or called to assist named persons still possess little or no knowledge on domestic abuse, honour-related violence, FGM and other abuses of children’s rights especially black minority ethnic children and young people. This lack of knowledge can lead to inaction, apathy, panic or other inappropriate responses, presenting greater risks to those affected.

Article 6: Children and young people have a right to survive and develop and the Government should give as much help as is needed.

12. Lack of knowledge perpetuates varying levels of service and protection for different children and sustains misinformed culturally-relativist thinking of what is ‘appropriate’ for different communities, including issues of abuse. A recent example we have is of being asked by officers involved in a child protection case whether that instance of forced marriage of a minor may be ‘cultural’ and therefore not an issue for intervention. Examples persist despite updated grounds for referral under the Children’s Hearing (Scotland) Act 2011, the Forced Marriage (Protection & Jurisdiction)(Scotland) Act 2011 and all subsequent legal, statutory and multi-agency guidance.

Article 2: You have the right to protection against discrimination.

13. Specialist support services, playing a vital role for many children and young people, should be able to feel confident that contacting or assisting a named person where required and sharing information about a young person (also with, where practical, a regard to Article 16: Right to a private life) will not put that child or young person at further risk or alienate them from engaging with services.

The Named Person

“An individual does not fall within subsection (3) if the individual is a parent of the child or the young person.”

14. Where children or young people’s issues include Honour-based violence or domestic abuse involving extended family members, consideration needs be given as to whether any family members (not just a parent) as ‘named person’ is appropriate. To address risks to children where other community members are part of Honour abuse, or where adults seek to abuse their power as named person, there have to be effective methods of monitoring and clear, accessible ways children or young people can safely voice concerns with a ‘named person’ and have those concerns heard and acted upon.

Adoption Register

15. Any concerns regarding an adoption register focuses on our hope that ‘matching’ pays heed first to specific support needs of those children or young people. Those
with experience of abuse, regardless of ethnicity or ‘culture’, should be matched with carers experienced in working with such children or at the very least with sufficient knowledge of the affects of abuse on children, rather than ethnicity automatically assumed as the most important shared element with suitable carers. Where the creation of an adoption register may seek to better safeguard young people’s details and ensure better monitoring of registered carers (so any bad practice is highlighted and avoided) we can understand the benefits of such a system.

Shakti Women’s Aid
Education and Culture Committee

Children and Young People (Scotland) Bill

Erin Sithibandith

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

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c. The proposals will result in many families actively avoiding contact with services.

d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Skills Development Scotland

Introduction

1. Skills Development Scotland (SDS) is Scotland’s skills body, focused on contributing to the delivery of the Scottish Government’s Economic and Skills Strategies. Our services are further shaped in response to the Scottish Government’s Career Information, Advice and Guidance (CIAG) Strategy and more recently, the Youth Employment Strategy. We set out our vision and future development and delivery plans in our Corporate Strategy (2012-15) and annual Operating Plan (2013-14). This submission provides an overview of our position in relation to the introduction of the Children and Young Peoples (Scotland) Bill.

Targeted Career Information, Advice and Guidance Support

2. SDS welcomes the overall aims of the Bill, particularly the recognition that young people need support at all ages and at different stages of development. We offer a universal Career Information Advice and Guidance and target resource at children and young people who need the most support. SDS services to children and young people are underpinned by the principles and values of Getting it Right for Every Child (GIRFEC).

Part 3 – Children Services Planning

3. Provisions in Part 3, which require local authorities and health boards to develop joint children’s services plans every three years and to report on progress every year, will have a positive impact on areas identified by the Doran Review as requiring improvement for more effective post 16 transitions e.g. stronger partnership working, improved transitions between children and adult services. SDS is supportive of extending the existing range of bodies that have a duty to co-operate within the new children’s services plan as it will mean services provided specifically for children and young people must be planned with the aim of being integrated and represent an efficient use of resources.

Part 4 – Named Person Service

4. SDS is supportive of the proposal for every person under 18 years of age in Scotland to have a ‘named person’ as this will ensure young people get access to the right services at the right time. For children of school age and over, the ‘named person’ duty lies with the local authority. As there is no recommendation in the Bill as to who within a local authority might perform the ‘named person’ role for those who either leave school at 16 who are in secure accommodation or attending an independent school, SDS would welcome clarification of this point. This cohort will include very vulnerable young people who are at a high risk of not moving into education, employment or training and who require targeted support from SDS advisers and other partners. SDS therefore agrees that all young
people participating in post-16 learning, training or work should have access to a “named person”.

**Part 5 – Child’s Plan**

5. SDS is supportive of the provision for a child’s plan to be developed for an individual child if they have a “wellbeing need” that requires a targeted intervention. The duty to prepare the child’s plan lies with the responsible authority and SDS would welcome the opportunity to feed into a young person’s plan where career development planning is required.

6. Child’s plans will importantly cover those leaving school and those who have left school and have a well being need. As mentioned above, SDS’s CIAG service model ensures those at risk of not making a successful post school transition receive targeted one to one support. This specific group of young people are identified in partnership with the school and support is offered to help this group plan their career path, gain career management skills and access opportunities available to them. It is therefore important that career development planning compliments other plans being developed for young people who require targeted interventions.

**Part 7 – Corporate Parenting**

7. Sections 50-59 create a statutory definition of ‘corporate parenting’ and define the requirements of ‘corporate parenting’ duties for organisations, such as SDS.

8. SDS welcomes collaboration between ‘corporate parents’ where they consider that doing so would safeguard or promote the wellbeing of children or young people. The ‘corporate parenting’ provision would provide SDS with a legislative framework within which to continue to actively contribute to relevant activity in relation to children and young people and work collaboratively with local authorities, colleges, training providers and other strategic partners to support improved learning and employment outcomes for this group.

9. The specific provisions in relation to ‘corporate parenting’ in the Bill are compatible with SDS’s aims and objectives and will be helpful in achieving better outcomes for this group of young people. Arrangements for the preparation of a ‘corporate parenting plan’ is also compatible in relation to SDS’s annual planning process which has a specific focus on improving outcomes for vulnerable groups.

**Conclusion**

10. SDS continues to be keen to work collaboratively with partners to support the wellbeing of young people and achieve better learning and employment outcomes for the most vulnerable groups of young people. The specific provisions outlined above will provide a framework for SDS to collaborate more effectively in joint planning with partners, which will enable SDS to deliver its services more effectively and target those who need the most support.

Skills Development Scotland
26 July 2013
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c. The proposals will result in many families actively avoiding contact with services.

d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Education and Culture Committee

Children and Young People (Scotland) Bill

Diane Smith

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Education and Culture Committee  
Children and Young People (Scotland) Bill  

Kolleen Smith  

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2. Intervention should only occur when there is evidence of something wrong. Please consider the outcome of this bill to the future of your country.  

Kolleen Smith  
USA  
25 July 2013
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4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
1. I'm writing to express my opinion regarding the Children and Young People Bill under consideration for the people of Scotland.

2. While this plan claims to ensure the rights of children and improve support services for youth, the plan seems extremely intrusive and onerous. Simply put, it is downright big-brother-ish.

3. How is a plan to assign every single child a special worker to oversee their home life, education, and all other aspects of the child's world actually implemented in a free society, and after the reformation and Age of Enlightenment? Are we now to return to the Dark Ages, the Inquisitions, or perhaps a Nazi style world wherein the government thinks it owns the children rather than the natural parents that the children were born to?

4. As a teacher, former journalist, and parent living in the United States of America, I am very concerned for the parents and children, for the citizens of Scotland. If these are the kinds of laws under consideration there, I would warn anyone I know never to visit, let alone live in Scotland or anywhere in the UK.

5. I am sorry if my words are offensive, but this is an offensive subject. If my country were taking on such a law, I would be terrified. Not because I have anything to fear, since I am not a criminal, but because this is such an over reach of power, it is repulsive to any lover of freedom and liberty and would mean the end of living in a free society, in my opinion.

6. May God help you with your decision regarding this issue.

Catherine M Stachowiak
USA
24 July 2013
SUMMARY

MISCONCEPTIONS AND MYTHS

- It is incorrect to assert that "the UN Convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system"
- The claim that “Only a tiny number of countries—three or four at most—have incorporated the convention into their law” is misleading
- Beware of unfounded spectres and fears
  - The UN Convention is a sophisticated document, with the place of parents and child’s own evolving capacity lying at its core
  - Incorporation would not reduce existing children’s rights, like the paramountcy of the child’s welfare
  - Incorporation would not require changes on matters like the age of marriage or consent to sexual activity
- Incorporation would not be alien to the Scottish legal culture
- Reserved matters do not pose an insurmountable obstacle to incorporation

REASONS TO INCORPORATE

- Incorporation would signal that child-specific human rights are taken seriously in Scotland
- Child-specific rights would become enforceable in Scotland
- Incorporation would get closer to achieving the goal of making Scotland “the best place in the world to grow up in”

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I have taught child and family law for over thirty years in Scotland, at the Universities of Edinburgh, Glasgow and Stirling, and abroad and am the author of numerous scholarly articles and books on the subject. I respond regularly to consultations on law reform and social policy by the Scottish Parliament, the Scottish Government and other relevant bodies and have served on the Family Law Committee of the Law Society of Scotland for many years.
Background

1. In considering the Children and Young People (Scotland) Bill, one of the many important issues being addressed by the Education and Culture Committee of the Scottish Parliament is whether the legislation should incorporate the United Nations Convention on the Right of the Child (the UN Convention) into the law of Scotland.

2. In my written submissions made during the consultation process on the draft Bill, I argued in favour of incorporation¹ and this supplementary evidence relates to that topic only. Since I am currently out of the country, it was not possible for me to give oral evidence to the Committee, but it has become apparent that the issue of incorporation is a matter on which the Committee has received conflicting evidence. My concern is that misconceptions and myths have emerged in the course of the Committee’s deliberations and that the Minister for Children and Young People appears to be accepting some of them as accurate.² This written submission addresses them, before reiterating the reasons why much of the UN Convention should be incorporated into Scottish law. It is my hope that my evidence will be of assistance to the Committee.

MISCONCEPTIONS AND MYTHS

3. The Committee has received evidence from a wide variety of sources, but some of that evidence is inaccurate or misleading and is challenged here.

   • It is incorrect to assert that “the UN Convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system”

4. In his oral evidence to the Committee, my colleague, Professor Kenneth Norrie, asserted that, “the UN Convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system”³ and his written evidence contains a similar statement.⁴

5. That is simply not true in respect of much of the Convention. The dedicated experts from almost all nations who, at the behest of the United Nations, devoted ten years to drafting the UN Convention had every intention that their work would lead to substantive rights for children and young people around the world. How these rights are implemented in individual countries is a matter for each country, of course, but the United Nations Committee on the Rights of the Child (UN Committee), the body that monitors compliance with the UN Convention, made

⁴ Written Evidence of Professor Kenneth McK Norrie to the Education and Culture Committee, 3 August 2013, para 5(i), at: http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/NorrieProfKennethMcK.pdf
clear its unequivocal support for incorporation of the Convention’s key provisions when it noted:

“Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice.”

6. The UN Committee has repeatedly called on the United Kingdom to incorporate the UN Convention into domestic law.

7. Two points are worth noting in this context. First, it is not suggested that every article of the Convention should be incorporated. Parts of the Convention relate to administrative and housekeeping matters and it is simply not necessary to incorporate them. Those articles aside, other provisions may not be appropriate for incorporation. Then there is the issue of Convention rights dealing with matters reserved to Westminster which is addressed separately (see page 7, below). The Human Rights Act 1998 did not incorporate every article of the European Convention on Human Rights into the law in the various parts of the United Kingdom. Yet the 1998 Act has had an enormous impact in promoting human rights in Scotland and experience of incorporating the European Convention provides something of a model for how we might move forward on incorporating the UN Convention.

8. Secondly, drafting a statute incorporating the UN Convention would require considered reflection, something from which the Human Rights Act 1998 benefitted. It is my belief that there is a wealth of talent in Scotland more than able to undertake the task.

- The claim that “Only a tiny number of countries—three or four at most—have incorporated the convention into their law” is misleading.

9. In his oral evidence to the Committee, Professor Norrie asserted that “only a tiny number of countries—three or four at most—have incorporated the convention into their law.”

10. That statement is misleading, not only in terms of number, but, rather more significantly, because it fails to take account of the very different mechanisms countries employ in implementing treaty obligations. In 2007, the UNICEF Innocenti Research Centre reported that two-thirds of countries of the 52 in its

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General Comment No. 5: General Measures of Implementation for the Convention on the Rights of the child, (2003), CRC/GC/2003/5, para 20, at: http://www2.ohchr.org/english/bodies/crc/docs/GC5_en.doc


For example, articles 13 (right to an effective remedy) and 15 (derogation in time of emergency) are not included.

study, chosen for geographic distribution, had incorporated the Convention into domestic law.\textsuperscript{9} More recent research by a number of respected academics, published by UNICEF in 2012, examined 12 countries and found that the UN Convention had been formally incorporated into the law in three of them: Belgium, Norway, Spain.\textsuperscript{10}

11. The 2007 study gives greater insight into what is really happening. In some 22 of the 52 countries it examined,\textsuperscript{11} treaty obligations are not only incorporated into national law automatically, they take precedence over it. Thus, formal incorporation is unnecessary. In a further 10 countries,\textsuperscript{12} treaty obligations form part of domestic law, but do not prevail over it. In addition, some countries, like South Africa, have incorporated parts of the Convention into the domestic constitution.

12. So much for the numbers game. Perhaps the real point is made in the 2012 UNICEF study which found:

CRC incorporation in and of itself is significant. The very process of incorporation raises awareness of children’s rights and the CRC in government and civil society. In countries where there has been incorporation, interviewees felt that children were more likely to be perceived as rights holders and that there was a culture of respect for children’s rights. Whilst incorporation provided opportunities for strategic litigation given that the CRC was part of the domestic legal system, its main value was thought to be in the strong message it conveyed about the status of children and children’s rights, and the knock-on effects for implementation of children’s rights principles into domestic law and policy.\textsuperscript{13}

13. Even if only three or four countries had incorporated the UN Convention into domestic law – and as has been demonstrated that is not the case – it would be no reason for Scotland to hang back. The real question is whether we want the country to be a leader or a follower in terms of respecting children’ rights. Given the benefits of incorporation, it is submitted that Scotland should be grasping the opportunity to incorporate with both hands.

\textsuperscript{11} Argentina, Belarus, Burkina Faso, Chile, Costa Rica, the Czech Republic, Guatemala, Honduras, Italy, Japan, Lebanon, Mexico, Morocco, Nepal, the Netherlands, Paraguay, Syria, Togo, Tunisia, Russia, Slovenia and Viet Nam.
\textsuperscript{12} Belgium, Bolivia, Cyprus, Egypt, Ethiopia, Finland, Korea, Portugal, Rwanda and Sudan (prior to division).
\textsuperscript{13} The UN Convention on the Rights of the Child: a study of implementation in 12 countries, above, para 1.3.
• Beware of unfounded spectres and fears

14. In his written evidence to the Committee, Professor Norrie highlighted a number of dire and unintended consequences that he claimed would result from incorporation of the UN Convention into Scottish law and he cited the examples of the downgrading of the place of the welfare of the child and of the raising of the age of marriage and consent to sexual activity.\textsuperscript{14} This introduces spectres and fears that, in reality, are unfounded.

15. The UN Convention is a sophisticated document. It does not simply lay out a list of human rights for children. Rather, it sets them in the context of an appreciation of the importance of parents and other caregivers in guiding children and is permeated by the concept of the “evolving capacity” of the child or young person.\textsuperscript{15} Grasping the significance and nature of this evolving capacity is crucial to understanding the whole structure and import of the Convention.

16. It is stating the obvious, perhaps, to note that the term “children and young people” covers a wide range of individuals with very different needs and capabilities. In response to that, the Convention is premised on the notion that the child’s capacity to exercise rights responsibly will develop over time. By recognising the child as a rights-holder from birth, the Convention allows for that process of development to begin, with the protective role of parents being greatest in respect of young children and the young person’s own capacity expanding with age. In short, the Convention provides for rights that operate differently in different contexts.

17. The suggestion that incorporating the Convention would downgrade welfare because it makes it “a primary consideration”, when Scots law accords it the status of “the paramount consideration”, is unfounded. Any difference between the two terms is the sort of things with which academics like to amuse ourselves, but any practical difference is minimal.\textsuperscript{16} In any event, where domestic law accords the child more rights than the Convention, then these greater rights prevail, something made perfectly clear in the UN Convention itself when it provides, in article 41, that: “Nothing in the present Convention shall affect any provisions which are more conductive to the realization of the rights of the child and which may be contained in:

(a) The law of the State Party; or

\textsuperscript{14} Written Evidence of Professor Kenneth McK Norrie to the Education and Culture Committee, 3 August 2013, above, para 5(iv).

\textsuperscript{15} See, for example, article 5 which provides: “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

\textsuperscript{16} Take, for example, the case of divorce. There is ample evidence that parental divorce can have an adverse impact on children. It could be argued that, if the welfare of the child is accorded “paramount” status, then parents of children under 18 would simply not be permitted to divorce. If the child’s welfare is only a “primary” consideration, then the interests of others, like parents wishing to divorce, would also carry weight, rendering it more likely that divorce would be available to them. Yet, as we know, the paramountcy of welfare in Scottish law has not precluded parental divorce.
18. It is no part of the scheme under the UN Convention to set fixed age limits on marriage or sexual consent. Nor does the UN Committee seek to dictate to countries what age limits should be set. When commenting on the progress made in implementing the Convention in the United Kingdom (and, thereby, Scotland), the Committee has never raised concern over the age of marriage or sexual consent.

19. Certainly, the Committee sometimes offers general guidance to all states in its General Comments. However, even there, it couches its guidance in diplomatic, advisory language. Thus, for example, when commenting on the age of criminal responsibility, it noted the wide range of ages of criminal responsibility adopted in different states, “from a very low level of age 7 or 8 to the commendably high level of 14 or 16”.

- Incorporation would not be alien to the Scottish legal culture

20. The idea, again advanced by Professor Norrie, that incorporation would be alien to the Scottish legal culture is inaccurate. Scots law has its roots in the civilian legal systems of Europe. Common law has been overlaid on these roots, with the result that Scotland is one of a small number of mixed jurisdictions, drawing on the traditions of both legal families. The Scottish judiciary has long experience of interpreting statutory and non-statutory concepts. So, for example, a whole body of case law has developed interpreting the subtle concept “the welfare of the child”. Similarly, the courts have long experience of addressing the, sometimes conflicting, rights of different stakeholders. I have no doubt that the Scottish legal system is operated by individuals with the talents necessary to deal with the rights under the UN Convention.

21. While the UN Convention embodies some rights that are fairly straightforward, others are more aspirational. The fundamental point to bear in mind, however, is that it is not anticipated that every article of the Convention would be incorporated and it will be for those drafting the statute to distinguish the solid from the aspirations and to find the appropriate means of incorporation. Even in the context of more aspirational rights, there is abundant guidance on how the right should be implemented in the form of reports from the United Nations Committee.

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17 The definition of “child” aside, the only place where a fixed age limits appears in the context of the UN Convention is in relation child soldiers. Article 38(2) of the Convention requires states to “take all feasible measures to ensure” that persons under the age of 15 do not take direct part in hostilities. Later, an Optional Protocol, ratified by the United Kingdom in 2003, was added to the Convention prohibiting compulsory recruitment of persons under the age of 18 into the armed forces and urging states to raise the age for voluntary recruitment: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000), General Assembly resolution 54/263. Arguably, the special case of child soldiers justifies a more directive approach.

18 These can be found at: http://www2.ohchr.org/english/bodies/crc/comments.htm


20 Official Report, Education and Culture Committee, 3 September 2013, col 2682.
on the Rights of the Child, including its highly-informative General Comments.\textsuperscript{21} A Scottish court would not be bound by these sources, of course, but it could use them in appropriate cases just as it used other resources, like reports from the Scottish Law Commission and academic texts.

- **Reserved matters do not pose an insurmountable obstacle to incorporation**

22. As a matter of principle, it would be highly desirable for the UN Convention to be incorporated into all of the legal systems across the United Kingdom. Given the current constitutional framework, there would be practical benefits. That, however, is unlikely to happen in the foreseeable future, but inaction by Westminster is no reason for the Scottish Parliament to do nothing.

23. The issue of reserved matters must be addressed, of course, and any incorporating statute would have to exclude matters reserved to the Westminster Parliament (at least for the time being). Again, this is not an insurmountable obstacle to the Scottish Parliament incorporating such parts of the UN Convention into Scottish law as are within its competence.

**REASONS TO INCORPORATE**

- **Incorporation would signal that child-specific human rights are taken seriously in Scotland**

24. Children in Scotland already have rights under the European Convention on Human Rights so, in that sense, the first step has been taken to acknowledge them as rights-holders. It is important to remember, however, that the European Convention is primarily adult-focused and was drafted at a time when the concept of children’s rights was barely recognised. The UN Convention, in contrast, is child-centred, its primary focus being the rights of children.

25. Incorporating the UN Convention into Scots law would acknowledge that the child-specific human rights of children and young people are as deserving of recognition as are the human rights available to all under the European Convention. It would amount to taking children’s rights seriously – showing that, in Scotland, their rights have the full force of the law and are considered in all contexts.

- **Child-specific rights would become enforceable in Scotland**

26. Having rights is something of an empty concept if one cannot enforce them. With the coming into force of the Human Rights Act 1998, the substantive rights set out in Section I of the European Convention, along with the Protocols which have

\textsuperscript{21} These can be found at: [http://www2.ohchr.org/english/bodies/crc/comments.htm](http://www2.ohchr.org/english/bodies/crc/comments.htm)
been ratified by the United Kingdom,\textsuperscript{22} became part of the domestic law of the various parts of the country.\textsuperscript{23} Proposed legislation is now subject to pre-scrutiny to determine its compatibility with the Convention; the courts may issue a “declaration of incompatibility” in respect of Westminster legislation,\textsuperscript{24} while Acts of the Scottish Parliament will be declared unlawful if they are inconsistent with the provisions of the Convention;\textsuperscript{25} and acts of public authorities may be challenged and declared unlawful where they violate the Convention.\textsuperscript{26} In addition, wherever possible, all legislation must be read so as to be compatible with the European Convention\textsuperscript{27} and Convention rights must be interpreted with full regard to the interpretation of the European organs, particularly the European Court of Human Rights.\textsuperscript{28}

27. The UN Convention, in contrast, has a lesser status. It is no more than a treaty obligation and, as such, every effort is made to honour the obligations under it. So, for example, where a statute is ambiguous, it will be interpreted in a way that will lead to compliance with the UN Convention.\textsuperscript{29} However, where a provision of Scottish law is clear, the fact that it is unambiguously inconsistent with the UN Convention means that the statute, rather than the Convention, will prevail.\textsuperscript{30} There is no pre-scrutiny of proposed legislation to check whether it complies with the UN Convention and acts of public authorities are not open to challenge simply because they violate it.

28. By incorporating the UN Convention into Scottish law, the child-specific rights it contains would become enforceable through a process that is as accessible and available as is the process for enforcing rights under the European Convention. This becomes particularly important when one remembers that a party who is unhappy with a domestic court’s decision on European Convention rights can, ultimately, take the case to the European Court of Human Rights. A party who is dissatisfied with the decision of a Scottish court on a matter governed by the UN Convention has no such “last resort” since there is no Court of the Rights of the Child.\textsuperscript{31}

- Incorporation would get closer to achieving the goal of making Scotland “the best place in the world to grow up in”

\textsuperscript{22} Protocols 1, 6 and 13.
\textsuperscript{23} Human Rights Act 1998, s.1(1).
\textsuperscript{24} Human Rights Act 1998, s. 4(2).
\textsuperscript{25} Scotland Act 1998, s.29.
\textsuperscript{26} Human Rights Act 1998, s.6.
\textsuperscript{27} Human Rights Act 1998, s. 3(1).
\textsuperscript{28} Human Rights Act 1998, s. 2(1).
\textsuperscript{31} While the Optional protocol on the Rights of the Child on a Communications Procedure, General Assembly resolution 66/138, 27 January 2012, established what is, effectively, a complaints procedure, that protocol is not yet in force and, in any event, is unlikely to be ratified by the United Kingdom any time soon, if it is ratified at all.
29. Referring to the Children and Young People (Scotland) Bill, the Minister for Children and Young People expressed the view that, “With the bill, we have set out our ambition to make Scotland the best place in the world to grow up in.”\[^{32}\] In many respects much fine work has already been done in Scotland in implementing the obligations under the UN Convention. So, for example, children’s participation rights are facilitated at various levels of government\[^{33}\] and legislation requires that children’s views are heard when decisions affecting them are taken by courts and tribunals in both the “private law” and “public law” spheres.\[^{34}\] Thus, incorporating the UN Convention would not effect a sea-change in the country but, rather, would be the continuation of a process already begun.

30. Yet the Minister’s goal remains just that: a goal. There is much room for improvement in terms of respecting children’s rights. So, for example, there remains concern over both the hearing of children’s views and their impact on outcomes in the court setting\[^{35}\] and the defence of “justifiable assault”, available to parents who hit their children (within the permitted parameters),\[^{36}\] is a continuing embarrassment on the world stage.

31. By incorporating the UN Convention into Scottish law, Scotland would join that band of world-leaders that have already done so, whether by specific legislation or otherwise. Certainly, Scotland will not become “the best place in the world to grow up in” as long as we lag behind the more proactive nations of the world.

Elaine E Sutherland
28 October 2013

\[^{33}\] That the Scottish Government includes a Minister for Children and Young People is a good example, as is the Scottish Youth Parliament.
\[^{34}\] Express statutory provision began with the Children (Scotland) Act, ss 11 and 16, and has continued through more recent legislation, including the Adoption and Children (Scotland) Act 2007 and the Children’s Hearings (Scotland) Act 2011.
\[^{36}\] Criminal Justice (Scotland) Act 2003, s 51.
Education and Culture Committee

Children and Young People (Scotland) Bill

Connie Threlkeld

1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can't be trusted-only government can.
Introduction

1. Together welcomes the opportunity to respond to this Stage 1 Call for Evidence on the Children & Young People (Scotland) Bill. This response specifically focuses on the extent to which the provisions in the Bill will succeed in achieving the Scottish Government’s policy aim of ‘making rights real’ for children and young people. In producing this response, Together has consulted widely with its membership through seminars, meetings and ongoing face-to-face consultation.

2. Together recognises that the Bill provides a crucial opportunity to ensure that that the principles of the UNCRC become a reality for all children and young people in Scotland. We warmly welcome the policy intentions behind the Bill and particularly endorse the intention to ‘ensure children’s rights properly influence the design and delivery of policies and services by placing new duties on Scottish Ministers and the public sector’. However, Together is disappointed that the Bill does not provide the strong duties on Ministers and public bodies needed to fulfil this policy intention. Together’s key messages to the Education & Culture Committee are that:

- The provisions around children's rights in Part 1-3 of the Bill fall short of providing the overarching child rights framework needed to fulfil the Scottish Government's policy intentions.

- Together urges the Education Committee to consider the full incorporation of the UNCRC into Scots law. Incorporation is the best way for the Scottish Government to realise its ambition to make Scotland ‘the best place to grow up’.

- Together urges the Education Committee to consider the need for a child rights impact assessment (CRIA) to be undertaken on the Bill. Some provisions included in the Bill may actually violate children's rights (particularly around information sharing) and be contrary to the Scottish Government's intentions. A CRIA would ensure there is an informed and systematic approach to considering children's rights across the Bill.

Incorporation of the UNCRC into Scots law

3. Together is clear that the Scottish Government’s policy intentions would be best realised through the full incorporation of the UNCRC into Scots Law. The UN Committee on the Rights of the Child has twice recommended that the

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1 Para. 3 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
2 Para. 2 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
UK Government takes measures to bring its legislation in line with the UNCRC. Incorporation would provide the overarching legislative framework that is needed. It provides strong, clear and robust duties for Ministers and public bodies that systematically embed children's rights into policy-making and service delivery. It brings about comprehensive accountability mechanisms including legal redress for children. Full incorporation would embed children's rights into the planning, implementation and monitoring of all policies and services, providing the legislative and culture change needed to truly 'make rights real' to children.

4. **Incorporation would create a culture of respect for children and their rights.** An important consequence of incorporation would be the culture it would help to create. It would provide a strong signal from the Scottish Government that all levels of government - and society at large - must take the UNCRC seriously. A recent UNICEF UK study revealed that incorporation of the UNCRC not only influences the development and implementation of legislation, but is also crucial in fostering a children's rights culture. The study concludes that incorporation 'increases the likelihood that children are perceived as rights holders, and over time generates a culture of respect for children’s rights.' It showed that incorporation gave politicians, public officials and non-governmental organisations who wanted to advance the cause of children’s rights a 'hook' or 'leverage' that was particularly influential when it came to ensuring integration of the principles of the UNCRC in domestic law and policy.

5. **The Scottish Government themselves recognise the fundamental role of legislation in inspiring a step-change in Scotland's ambition for its children,** stating in the Policy Memorandum of the Bill that: 'While there is no one policy or initiative that can bring about the kind of change required, there is a fundamental role for legislation: to accelerate the progress that has already been made and to ensure a consistent structure within which services operate; [...] and to inspire renewed debate and ambition for what Scotland’s children and young people can expect.'

6. **An example of this in practice is the development of equality law in Scotland and across the UK.** This has effected real cultural change through the introduction of legal liability for public bodies, private bodies and individuals. Inclusion, equality of opportunity and anti-discrimination are now central principles of government policy and have been welcomed by Scotland at large. The Welsh Government reflects that the duty placed on Ministers to have 'due regard' to the UNCRC has already resulted in a culture change and is having positive outcomes for children. Since the introduction of the duty in 2012, there has been more commonplace participation of children in developing policy across

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5 Including Belgium, Norway, Cyprus, Finland, France, Portugal, Spain, Japan and Argentina.
6 Para 52. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum
the Welsh Government, and a shift in the way Ministers consider children’s rights alongside budgets.\textsuperscript{7}

7. The gradual reform of legislation in Scotland in different areas has led to inconsistent implementation of the UNCRC across local and national government and across a range of public bodies. In turn, this has led to uneven and inconsistent outcomes for different groups of children. Examples of this include children with a disability being disproportionately affected by funding cuts within local authorities and inconsistent access to advocacy for looked after children.\textsuperscript{8}

8. Support for incorporation of the UNCRC into Scots law continues to be widespread. This was reflected in responses to the Rights of Children and Young People Bill consultation in December 2011.\textsuperscript{9} Despite there being no question in the consultation paper around the incorporation of the UNCRC into domestic law, 40% of all responses from children’s organisations and 25% of all responses from public bodies (including several local authorities and NHS Boards) voiced their support for the full incorporation of the UNCRC into law. Only 6% of children’s organisations and 4% of public bodies specifically expressed an opinion against full incorporation.\textsuperscript{10} 86% of children taking part in the Children’s Parliament’s consultation on the Bill said that the UNCRC should ‘be like a law that people have to obey’.\textsuperscript{11}

9. Very many countries have either directly incorporated the UNCRC or given it a prominent place in their domestic law. This includes European countries such as Belgium, France, Norway and Spain through to those more far afield such as Japan and Argentina.\textsuperscript{12} Many other countries that have ratified the UNCRC do not need to incorporate it into domestic law as their international treaty obligations automatically form part of their domestic law or are otherwise applicable and can be invoked in domestic courts. This is not the case in Scotland.

10. Incorporation is possible in Scotland. A legal opinion from Aidan O’Neill QC commissioned by UNICEF UK is clear that it is within the powers of the Scottish Government and Scottish Parliament to directly and fully incorporate the UNCRC into Scots law in relation to devolved issues.\textsuperscript{13}

\textsuperscript{8} Together (2012) State of Children’s Rights report
\textsuperscript{9} Scottish Government (2011). Consultation on the Rights of Children and Young People bill
\textsuperscript{10} http://www.scotland.gov.uk/Publications/2012/02/8619/downloads (accessed July 2012)
\textsuperscript{11} Children’s Parliament (2011) Rights of Children and Young People Bill: A response from children facilitated by the Children’s Parliament
\textsuperscript{13} UNICEF UK (2012) Advice from Aidan O’Neill QC, Matrix Chambers on the ability of the Scottish Government under current devolved arrangements to fully and directly incorporate the UNCRC into domestic law
Part 1 - Rights of Children

11. Together agrees with the Scottish Government that legislation is needed to ensure the UNCRC influences future legislation, policy and practice and welcomes the recognition that the articles of the UNCRC ‘form a framework against which to evaluate legislation, policy and decision-making structures’. Together also welcomes the intention to place a duty on Ministers to recognise their responsibility to implement the UNCRC.

12. An essential mechanism needed to achieve these policy intentions is the routine use of child rights impact assessments (CRIA). The Welsh Government reports that the Welsh Measure introduced in 2012 has had a positive impact on children's rights across policy, legislation and practice and that CRIAs are now used to systematically consider the UNCRC. CRIAs have been routinely conducted on policy and legislation including the Climate Change Commission, Housing White Paper and End Violence and Domestic Abuse Against Women White Paper. As a result, more guidance documents are making reference to the UNCRC and influencing how public bodies comply with the guidance issued. The Welsh Government believes that children, young people and their families will soon see the positive impact this is making, as organisations and those working with and for children become more aware of the UNCRC and its implications in their work. In order to ensure the UNCRC influences future legislation, policy and practice, the routine use of Child Rights Impact Assessments to inform government decision-making must be included on the face of the Bill.

13. The duty on Ministers to ‘keep under consideration’ lacks transparency and provides no mechanism through which Ministers are accountable in their decision-making. Ministers would be under no obligation to demonstrate how they have fulfilled the duty, nor outline how they assess if they ‘consider it appropriate’ to take steps to further the UNCRC. The Scottish Government has disregarded responses from NGOs, academics and public bodies to the Bill consultation in which they called for a stronger duty on Ministers and one that is extended to include public bodies. Incorporation of the UNCRC into Scots law would place strong, meaningful duties on Ministers and public bodies that would systematically embed the UNCRC into policy and practice.

14. Together welcomes the intention to promote a greater understanding of children's rights and recognises the impact the duty on Ministers could have if properly implemented. Together welcomes the Scottish Government's assertion that this

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14 Para. 43 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
15 Para 41. Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
17 Scottish Government (2012) Analysis of Responses to the Children and Young People Bill Consultation
duty is ‘providing a mechanism in domestic law’\textsuperscript{18} to ensure future governments continue to recognise what is already an existing international obligation. If this duty is to achieve its policy intention, it must be included within a stronger, overarching child rights framework. Together recommends that the Education Committee considers placing an implementation scheme on the face of the Bill that provides a strategic and comprehensive approach to executing and resourcing all duties on Ministers and public bodies in relation to the rights of children.

15. Together welcomes the duty on Scottish Ministers to report to the Scottish Parliament every three years. It is questionable whether placing a duty on public bodies to report without an accompanying implementation duty will make any tangible difference. A public body would be able to fulfil this duty by reporting that no steps were taken to further its responsibility of the UNCRC requirements. This would make no difference to the lives of children and is a very long way from the Scottish Government’s policy intention. To make reporting duties meaningful, they must be matched by strong, clear and robust children’s rights duties as detailed above. Incorporation of the UNCRC would embed clear and robust measures of accountability and provide the transparency needed to ensure key bodies understand the impact their work is having on protecting and promoting children’s rights.

Part 2 - Commissioner for Children & Young People

16. Together welcomes the Bill’s proposed extension to the Commissioner’s powers. This will serve as a useful and important tool to examine alleged violations of children’s rights and must be resourced adequately. It will not address all instances where children may wish to seek redress and should not be viewed as a substitute for child-friendly redress mechanisms across public bodies and services. In order to fully meet the intention of ‘empowering children to exercise their rights’\textsuperscript{19} the UNCRC must be incorporated into Scots law. The proposed extension to the Commissioner’s powers is welcomed. Incorporation of the UNCRC would complement this non-legal means of redress for children by providing a means of legal redress when obligations under the UNCRC are not met and progress cannot be made through other means.

Part 3 - Children’s Services Planning

17. Together welcomes the duties on public bodies to prepare, review, implement and report on children’s services plans. However, there is a disjoint between the provisions in Part 1 around children’s rights and those in Part 3 around children’s wellbeing. To successfully realise the policy intention of ensuring ‘children’s rights properly influence the design and delivery of policies and services’\textsuperscript{20} there needs to be an overarching framework that explicitly embeds the UNCRC into the planning, implementation and monitoring of children’s services. This would ensure services are provided in a way that best safeguards, support and

\textsuperscript{18} Para 52. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum
\textsuperscript{19} Para 45. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum
\textsuperscript{20} Para. 3 Scottish Government (2013) Children & Young People (Scotland) Bill Policy Memorandum
promotes both the UNCRC requirements and the wellbeing of children. Incorporation of the UNCRC into Scots law would provide an overarching legislative child rights framework that embeds the UNCRC into the planning, implementation and monitoring of children's services.

Part 4 - Provision of Named Person

18. The Bill proposes a new information sharing duty for public bodies and service providers which would introduce a radical change in the existing information sharing provisions. It would involve significantly lowering current accepted information sharing thresholds and broadening the grounds for such information sharing to concerns in all areas of a child’s wellbeing. The Scottish Government has not consulted on this new duty. If the current proposals for information sharing are implemented in legislation, professionals will be likely to share more information than is necessary and proportionate and important information will be lost amongst large quantities of information being shared. There is also a risk that children will be less likely to engage fully with confidential services which could in turn put vulnerable children at risk. Any proposals around information sharing must take consideration of the best interests of the child, consideration of the child’s views and involve the child’s consent. The current proposals do not offer a balance between children's rights and the need to share information.

Child Rights Impact Assessment

19. Together has already written to the Convenor to urge the Education & Culture Committee to consider the need for a Child Rights Impact Assessment (CRIA) to be undertaken on the Children & Young People (Scotland) Bill to inform the Committee's gathering of evidence at Stage 1. Such an impact assessment would provide a valuable tool to support the scrutiny of evidence presented to the Committee at Stage 1 and ensure that there is an informed and uniform approach to considering children's rights across the entire Bill. The measures already taken to assess the impact of the Bill on children are welcome and provide a solid foundation from which a CRIA can be started. However, they do not currently equate to a full CRIA and do not systematically consider children's rights across the entire Bill. Both the Privacy Impact Assessment and human rights considerations included in the Policy Memorandum are out-of-date and there has been no systematic analysis of the Bill's provisions against the rights enshrined in the UNCRC. Unless a full child rights impacts assessment is undertaken on the Bill, there is a real danger that its provisions could bring a patchy and inconsistent approach to considering children’s rights across government, resulting in some violations of children’s rights being embedded in legislation.

About Together

20. Together (Scottish Alliance for Children’s Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the UN Convention on the Rights of the Child (UNCRC) in Scotland. We have 232 members including large international and national non-
governmental organisations (NGOs) such as UNICEF UK, Save the Children, Barnardo's and CHILDREN 1st through to volunteer-led playgroups and after school clubs. Our activities include:

- Collating an annual *State of Children’s Rights* report to set out the progress made to implement the UNCRC in Scotland.

- Working in partnership with the Scottish Government and Scotland's Commissioner for Children and Young People (SCCYP) on the *Scottish Children's Rights Implementation Monitoring Group* to develop a common understanding on progressing the UNCRC.

- Submitting the NGO alternative report to the UN Committee on the Rights of the Child to provide an independent NGO perspective on the extent to which Scotland is meeting its UNCRC obligations.

**Together (Scottish Alliance for Children’s Rights)**

26 July 2013
Overview

1. UNICEF UK advocates for the protection and promotion of children’s rights. UNICEF has a specific role under the United Nations Convention on the Rights of the Child (UNCRC) to give advice and assistance to States Parties in implementing children’s rights. This submission concentrates primarily on Parts 1 and 2 of the Bill (the rights measures and the Children’s Commissioner); however, we recognise that there are significant (and potentially negative) rights implications for children within other provisions in the Bill, particularly around new proposals for information sharing.

2. UNICEF UK welcomes the leadership shown by successive governments in Scotland in implementing the UNCRC, and commends the intention of the current government to make rights a reality for children. We welcome the focus the rights measures – when taken together – will give to children’s rights in Scotland, but are disappointed they do not amount to a stronger imperative on Ministers and public authorities to respect and protect children’s rights.

3. The measures to implement the UNCRC in the Bill fall significantly short of incorporation, neither enshrining the rights in the UNCRC into Scots law nor providing any new avenues of legal redress for children. UNICEF UK research (presented at an event in the Scottish Parliament earlier this year) shows that the strongest formulation of children’s rights and the most powerful force for implementation within a nation comes through the direct incorporation of the UNCRC into domestic law. This approach is the most effective and immediate way of achieving the sustained cultural change\(^1\) that will put “children and young people at the heart of planning and delivery of services and [ensure] their rights are respected across the public sector”.\(^2\) As such, we would like to see a far more ambitious approach from Scottish Government in its legislative implementation of the UNCRC.

4. With this in mind, we urge the Committee to consider the following overarching issues in its examination and analysis of the Bill:

- Perhaps as a result of the amalgamation of two Bills into one, the Bill fails to create a consistent children’s rights framework for Scotland, within which both government decision-making and local service delivery will sit. This cultural and legal disconnect must be addressed through amendments to the Bill (with a particular focus on Parts 1 and 3, among others) but also through a review of existing legislation to ensure a joined-up approach to legislation, policy and services affecting children.

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\(^2\) Children and Young People (Scotland) Bill: *Policy Memorandum*, paragraph 2
• Stronger duties on those whose decisions and actions affect children – including both Ministers and public authorities – are necessary to give fuller effect to the UNCRC.

• Mechanisms to ensure transparency and achieve the systematic consideration of children’s rights (such as routine child rights impact assessment and an implementation scheme) are missing from the face of the Bill – their absence will compromise the effective implementation of the proposed duties.

• Scottish Government must set out its longer-term vision for children’s rights in Scotland and the steps it proposes to take to achieve this.

Incorporation of the UN Convention of the Rights of the Child

5. UNICEF UK’s experience and research shows legislative steps are essential to embed the UNCRC within legislation, policy, practice and attitudes towards children. The direct incorporation of the UNCRC into Scots law is UNICEF UK’s preferred model and would, with immediate effect, make the principles and provisions of the UNCRC a reality for children in Scotland. This would place duties on public authorities to respect and protect children’s rights, and allow children to challenge violations of their rights in the courts. In essence, it would serve to build a sustainable culture of children’s rights, and enable children to be secure in the enjoyment of their rights.

6. We recognise that it is the current government’s policy to take a step-by-step approach to implementing the UNCRC, and that Ministers ‘are not of the view that wholesale incorporation...represents the best way [forward]...’. Yet this approach has led to inconsistency in the way the UNCRC is implemented across Scotland, and the reality that many children remain unable to realise the full extent of their rights, or to seek appropriate help when those rights are violated. Direct incorporation of the UNCRC would enable gaps in the coverage of current legislation affecting children’s rights to be closed and would embed the overarching principles of the UNCRC (non-discrimination in the application of rights; the best interests of the child; the right to life, survival and development; and the right to express views and be heard) into Scots law for all children.

7. Our comparative research in 2012 found that incorporation is, in and of itself, significant in raising the status of children within society. Certain countries (including Norway, Belgium and Spain) have already incorporated the UNCRC, and there is strong evidence that this has given new life to and a positive outlook

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3 Transposing the UNCRC into Scots law in the same way that the European Convention on Human Rights was transposed into UK law through the Human Rights Act 1998. This is within the power of Scottish Government and Scottish Parliament, see Aidan O’Neill QC (2012), Legal opinion for UNICEF UK.

4 UN Committee on the Rights of the Child (2003), General Comment 5, paragraphs 19-20

5 Letter from the Minister of Community Safety and Legal Affairs to the Rt Hon Lord McNally (August 2012), setting out Scottish Government’s position on incorporation in response to recommendations arising from the Universal Periodic Review http://www.togetherscotland.org.uk/pdfs/Scottish%20Government%20UPR%20response%2029-08-2012.pdf

6 See consecutive reports from Together (the Scottish Alliance for Children’s Rights) on the State of Children’s Rights in Scotland
on the implementation of children’s rights. A renewed focus and commitment is also evident in Wales as a result of the Rights of Children and Young Persons Measure 2011 (which places a due regard duty on Welsh Ministers in the exercise of all their functions). Although the Measure falls short of incorporation, it clearly demonstrates the value of child rights legislation in achieving the systematic consideration of children’s rights.

8. There are of course a range of steps the Scottish Government can take in light of its strong commitment to enshrining the UNCRC in statute that fall short of direct incorporation. Children’s rights duties on Ministers and public authorities are important; considering also how to give legal force to the four general principles of the UNCRC (see paragraph 6 above) would be another important step. One example of how this could be achieved would be the extension of the best interests paramountcy principle in the Children (Scotland) Act 1995 to all children; another could be an administrative approach that gives additional weight to the best interests of the child (Article 3, UNCRC) in the consideration of whether it is appropriate for Ministers to take steps that could give better or further effect to the UNCRC in Scotland.

9. For more information on the benefits and effects of incorporation, we refer the Committee both to the submission from Together and to our aforementioned research on the legal implementation of the UNCRC.

Part 1 – the Rights of Children

10. Political and administrative duties can play a fundamental role in securing respect and protection for children’s rights, and in changing attitudes towards children within society. To do this however, such duties must be strong, transparent, and supported by robust accountability measures including, but not limited to, child rights impact assessment. The Bill provides for a duty on Ministers to keep under consideration the ways in which they might achieve better or further implementation of children’s rights. While a statutory provision on children’s rights and the additional emphasis it places on existing duties on Ministers under international law and the Scotland Act 1998 is welcome, we are very concerned that the proposed duty may do no more than enshrine the status quo in statute if its meaning and intent are not further clarified. This is a particular concern with regard to the test of appropriateness through which Ministers will decide whether or not to take steps to further the UNCRC requirements. UNICEF UK has sought legal advice from a prominent QC on the application and limitations of the rights duties in the Bill; we would be happy to elaborate on these areas in more detail during our oral evidence session with the Committee.

11. An important deficiency of the consideration duty as drafted is that Ministers are under no obligation to demonstrate how they have fulfilled their duty to consider the UNCRC, nor to outline any steps they have identified but decided not to take, nor provide reasons for not taking such steps. They must only report on the steps they have taken to secure better or further effect of the UNCRC requirements. This lack of transparency and accountability will make it extremely difficult to hold

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Ministers to account either politically or legally, thus fundamentally undermining the effectiveness of the duty. It is also clear that a consideration duty will not, in itself, entitle an individual to challenge acts or decisions of Scottish Government or public authorities on the ground that those acts or decisions are not compatible with the UNCRC. There are stronger duties – such as requiring Ministers to act compatibly with children’s rights – that would be more effective in protecting children, promoting cultural change, and achieving Scottish Government’s specific policy goals.

12. Child rights impact assessment (CRIA) is an important mechanism for ensuring consistent and systematic scrutiny of government decision-making against the UNCRC. As well as being essential to enable Ministers and officials to keep the UNCRC genuinely under consideration in relevant matters, a CRIA will ensure Ministers can be held accountable for the actions they choose – or choose not – to take to further the requirements of the UNCRC. CRIA mechanisms are in place in countries such as Wales, Sweden and Belgium, and have also been used to a more limited degree elsewhere (such as Australia, Canada, Ireland and New Zealand).8 CRIA – broadly, initial screening based on an understanding of the UNCRC rights and the obligations of duty bearers; more detailed analysis of the impact of proposed action on those rights; the use of data (including children’s views) to inform that analysis; the development of alternative solutions to better implement the UNCRC requirements; and appropriate follow-up – has found to be effective in the development of rights-respecting legislation and policy. The added value that a CRIA can bring to existing impact assessment requirements is clear through the Welsh experience (see, for example, the development of the Human Transplantation Bill).9 Above and beyond the need for CRIA to be included on the face of the Bill to ensure consistency, transparency and accountability, we remain concerned that a full CRIA has not, to date, been undertaken on the Bill, particularly given the implications of many of its provisions for the rights of children in Scotland.

13. The Bill must provide for an implementation scheme to be developed in order to support, develop and roll out the various rights measures within the Bill. This will support Scottish Government to meet its aspirations for children through the legislation. Under the Rights of Children and Young Persons (Wales) Measure, Welsh Ministers must set out the arrangements they have put in place to deliver the child rights duty they are under, and consult on the scheme with children, the Children’s Commissioner and other relevant stakeholders. Moreover, the scheme must be approved by a resolution of the Welsh Assembly. This approach has been effective in driving progress and in supporting officials and practitioners to develop a child rights approach to their work, and has meant that, even with a change in government, the commitment and impetus to the implementation of the Measure and to children’s rights more generally has continued. It seems to us

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9 Welsh Government (2013), Children’s Rights Scheme: Report on the compliance with the duty under Section 1 of the Rights of Children and Young Persons (Wales) Measure 2011
that such an approach is essential to the effective discharge of a Ministerial duty on children’s rights.

14. UNICEF UK’s research has shown that achieving the right balance of legal and non-legal measures when implementing children’s rights is crucial. We strongly support the new duty on Ministers to promote awareness and — importantly — understanding of the UNCRC. We would like further clarification from Ministers on how this duty will be delivered (and resourced), with particular attention to addressing the recommendation made by the UN Committee on the Rights of the Child in 2008 that “systematic training” be given to “all professional groups working with or for children, in particular law enforcement officials, immigration officials, media, teachers, health personnel, social workers and personnel of childcare institutions”, as well as to government officials. Significant thought will also need to be given to how knowledge and understanding of children’s rights will be institutionalised across government and the public sector, ideally within a broader implementation scheme (see paragraph 13). UNICEF UK’s research and experience in developing rights-respecting programmes at a local level, evidence from the Welsh experience, and learning from the roll-out of GIRFEC to date all underline the importance of training and capacity-building on the application of children’s rights in order to improve outcomes for children.

15. UNICEF UK welcomes, in principle, the duty on Scottish Ministers to report on the steps they have taken to secure better or further effect of the UNCRC and to raise awareness of children’s rights. However, as dealt with in paragraph 11, this duty must include a duty to report on action they have identified but decided not to take. The three-year reporting cycle adds a valuable domestic dimension to the international child rights reporting process (which takes place every five years). An interim report at the end of the first year following the duties coming into force may be a useful mechanism to ensure momentum is retained at a time of significant political and economic change.

16. UNICEF UK welcomes the greater focus the duty on public authorities to report steps they have taken to implement children’s rights will put on the UNCRC at a local level. However, this reporting duty is not accompanied by any obligation on public authorities to act to better implement the UNCRC, important because it is often at a local level that children will experience rights violations. This omission will have a serious impact on the extent to which a rights culture can truly be developed in Scotland — without a children’s rights duty on public authorities to reflect any duty on Ministers, the legal machinery for promoting and securing children’s rights is weaker than it otherwise could be. We would like to see public authorities placed under a duty to implement the UNCRC to ensure that children’s rights can genuinely become the framework for services and decisions that affect children and young people in Scotland. Such duties would also provide consistency across public functions both geographically but also no matter

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10 UN Committee on the Rights of the Child (2008), Concluding observations: United Kingdom of Great Britain and Northern Ireland, paragraph 21
11 UNICEF UK’s programmes in Scotland comprise the Baby Friendly Initiative, Rights Respecting Schools, and Child Rights Partners (the latter currently in development)
whether those functions are delivered by local authorities, the private sector or the voluntary sector.12

Part 2 – Scotland’s Commissioner for Children and Young People

17. UNICEF UK welcomes the proposed extension of the powers of the Commissioner for Children and Young People to include handling individual complaints from children. This is an important function of a children’s ombudsman and one which provides a valuable mechanism of last resort for children who have not been able to seek justice for a particular rights violation. UNICEF’s recent global study on the role and impact of children’s commissioners found that a strong mandate to respond to individual complaints was “essential”, and that the complaints mechanism “operates as a remedy for specific cases of rights violations affecting an individual child…and also serves to reveal broader, systemic problems in the realisation of child rights”. A strong, independent national champion such as this is a fundamental cornerstone of efforts to improve outcomes for children.13 It is important that adequate and secure resources are guaranteed for the delivery of both the new and existing functions of the Commissioner.

18. It is important that the Commissioner’s new powers to investigate individual cases are seen as complementary to existing complaints procedures and advocacy services that children may use. Scottish Government must continue to place emphasis on the development and improvement of other child-friendly advocacy and complaints procedures at the local and national level.

Part 3 – Children’s Services Planning

19. One of the notable challenges in the Children and Young People Bill has been to join up the GIRFEC approach to children’s services with the broader children’s rights framework Scottish Government aspires to. This Bill offers the rare opportunity to embed children’s rights across the design and delivery of law, policy and services impacting on children and young people. To do this effectively, a child rights framework needs to be introduced within children’s services planning, through which public bodies can safeguard, support and promote the rights and well-being of children in their area. There are many opportunities to do this within the existing clauses in the Bill, not least of which is looking creatively at how comparable duties on well-being, planning and reporting may be broadened in scope to include explicit duties on child rights implementation. This would also aid in reducing the reporting burden on local authorities by (rightly) bringing together their responsibilities for children’s rights with those for child well-being.

UNICEF UK
26 July 2013

12 UN Committee on the Rights of the Child (2005), General Comment 5, paragraphs 40-44 – State Parties have a responsibility for ensuring the compliance of non-State actors with the UNCRC; the reporting duty on public authorities in clause 2 as it currently stands does not cover those delivering public functions such as private or voluntary sector providers. http://www2.ohchr.org/english/bodies/UNCRC/docs/GC5_en.doc
1. UNICEF UK was pleased to be invited by the Education and Culture Committee to give oral evidence on the Children and Young People (Scotland) Bill on 1 October. This paper provides supplementary written evidence following that session, in order to clarify and expand upon a number of points arising from Committee members. It builds upon and should be read in light of our written submission to the Committee dated July 2013.

2. The strongest formulation of children’s rights and the most powerful force for implementation within a nation comes through the direct incorporation of the UN Convention on the Rights of the Child (UNCRC) into domestic law. The UN Committee on the Rights of the Child explicitly stated in its General Comment on the implementation of the UNCRC that it “welcomes the incorporation of the Convention into domestic law, which is the traditional approach to the implementation of international human rights instruments in some but not all States. Incorporation should mean that the provisions of the Convention can be directly invoked before the courts and applied by national authorities and that the Convention will prevail where there is a conflict with domestic legislation or common practice.” The UN Committee’s preference for incorporation was reiterated in its concluding observations on the UK in both 2002 and 2008.

3. International comparative research undertaken by UNICEF UK in 2012 looked at different legal approaches to implementing the UNCRC. We found a number of useful models from the countries we explored that provide a foundation for Scotland to build on. For instance, Norway added the UNCRC to its Human Rights Act in 2003 to sit alongside the European Convention on Human Rights – this was a critical point in the implementation of the CRC in Norway and prompted the further integration of children’s rights principles across other legislation. In Belgium, while the UNCRC became part of their domestic law on ratification and sits above statute law, more recently a decision was taken to formally incorporate children’s rights into the constitution and support this through a comprehensive process of child rights impact assessment. In Spain, although the 1978 constitution gave protection to children’s rights and the ratification of the UNCRC in 1990 made it part of domestic law, an additional law in 1996 established legal rights for children in accordance with the UNCRC. This enshrined certain civil rights and the primacy of best interests in Spanish law. There are also examples in other countries of legislative approaches to implementing the UNCRC, with regional constitutions in German Länders enshrining child rights, a constitutional amendment in Ireland to incorporate Article 3 (best interests), the introduction of key features of the UNCRC into the South African Constitution and, nearer to home, the introduction of a duty on Welsh Ministers to give due regard to the UNCRC when exercising all of their functions.

4. One of the challenges often referred to in debates on giving legal expression to the UNCRC is the perceived difficulty of enshrining economic, social and cultural rights into law given their “aspirational” nature. However, these rights in the UNCRC are substantial

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1 UN Committee on the Rights of the Child (2003), General Comment 5: General Measures of Implementation of the Convention on the Rights of the Child
and well-articulated, governed by the principle of progressive realisation – an expectation that governments will implement these rights to the maximum extent of their available resources while ensuring a minimum standard is met for all children. Economic, social and cultural rights are also critical in addressing inequalities that disproportionately impact on children. The UN human rights system recognises all rights – whether civil and political, or economic, social and cultural – as universal, indivisible and interdependent. The UN Committee on Economic, Social and Cultural Rights is clear that certain rights are capable of immediate judicial protection (for example, non-discrimination, equal rights, and free and compulsory primary education provision), and it is our experience that others can be made so with sensible drafting. Judges already deal with resource and reasonableness principles on a daily basis in Scotland and the UK; in other countries, South African judges are already adjudicating on economic, social and cultural rights to prescribed limitations due to changes in the written constitution. And in practical drafting terms, the UK Child Poverty Act 2010 offers a good example of where such rights are already part of our legislative order.

5. UNICEF UK has welcomed the way in which Parliamentarians have engaged in the debate over incorporation during Stage 1 of the Bill, and we have been pleased to see the level of support for children’s rights across all sectors in Scotland. Going forward, and with a view to achieving a sustained and meaningful change for every child, we would like to see a detailed roadmap from Scottish Government on the further implementation of the UNCRC – through both legal and non-legal measures. This could include, short of direct incorporation, progress on strengthening the proposed Ministerial duties (to require compatibility or, at the very least, due regard), the incorporation of the general principles of the UNCRC into Scots law for all children, duties on public authorities to implement the UNCRC to give children’s rights real strength at the local level, and an explicit constitutional recognition of children’s rights.

6. Returning to the Children and Young People Bill itself, it is essential that the proposed Ministerial duties and the GIRFEC child rights framework are underpinned by mechanisms that will support those making decisions affecting children to systematically consider (and therefore better implement) the UNCRC. We urge the Committee to consider how the experience in Wales of rolling out a mandatory child rights impact assessment process (CRIA) and of creating an implementation scheme to drive the delivery of the due regard duty across Welsh Government can be usefully adapted to the Scottish context. Since the Rights of Children and Young Persons (Wales) Measure was passed in 2011, Welsh Government has reported increased engagement of children in shaping and developing both policy and legislation; more accessible information being produced for children, including on the Welsh Government Budget; specific changes to policy and legislation as a result of child rights impact assessment; and the beginnings of a cascading effect of the duty at local level through policy, guidance and cultural change. That this momentum has

3 The general principles of the UNCRC - non-discrimination in the application of rights; the best interests of the child; the right to life, survival and development; and the right to express views and be heard – are substantive rights as well as overarching principles through which other rights should be interpreted.

4 CRIA are in place in a range of countries - nationally, in Wales, Sweden, Norway and Belgium, and locally/regionally in Australia (Melbourne), Canada (New Brunswick – on all policies and legislation since early 2013), Ireland, and New Zealand. CRIA is also a tool recognised and used by the World Bank in its Child Focused Analyses related to its Poverty Strategy Impact Assessment, and the EU is now using a CRIA in relation to overseas development aid (supported by UNICEF).
continued apace for several years and shows little sign of slowing is as much the result of the strong legal framework and implementation scheme in place as the genuine political and public commitment to respecting and protecting children’s rights.

7. In closing, we refer the Committee to legal opinions commissioned by UNICEF UK from Aidan O’Neill QC on the relationship between the UN Convention on the Rights of the Child and the Scotland Act 1998, and from James Wolffe QC on the relative merits of the rights provisions in Part 1 of the Children and Young People Bill. We also support the points made by Scotland’s Commissioner for Children and Young People in his supplementary written evidence setting out the benefits of incorporation.

Sam Whyte
Policy and Parliamentary Manager

3 October 2013
Education and Culture Committee  
Children and Young People (Scotland) Bill  

UNISON Scotland

1. In its response to the initial consultation, UNISON Scotland stated that it had supported the principles of *Getting it Right for Every Child* (GIRFEC) since its inception and we believed that many of the measures contained in the proposed Bill could strengthen joint working to improve the welfare of children.

2. However, we also noted that the biggest block to staff being able to deliver on ‘Getting it Right’ is the pressure of high workloads and limited and reducing resources. The Government needs to recognise this if it is to turn the aims of the Bill into a reality for children in Scotland.

**Resources**

3. The projections about savings arising from the new systems are quite optimistic and will take time to realise. We pointed out in our original submission that we might see an initial surge in the number of children becoming looked after because of better information highlighting intractable parenting difficulties at an earlier stage.

4. Recent research in London has shown that a ‘well-resourced stable and confident’ frontline social work workforce had a bigger impact in reducing the number of children becoming looked after than services labelled as ‘early intervention’ had. There is also anecdotal evidence of this in some areas of Scotland with a correlation between fully staffed frontline social work teams, for example, reduced child protection registrations.

5. We have looked at the Financial Memorandum, but are not quite sure how all the figures will be allocated, but clearly health resources will need to be increased heavily to account for the additional workload on health visitors, etc. for the birth to 5 years – we believe there will need to be a major increase in staffing levels.

6. We are also aware that there will need to be an increase in child development officers/early years staff, to account for the additional hours, and need assurances that sufficient resources will be able to cope with this, as we do not yet know how the extra childcare hours will introduced.

**Information sharing**

7. We are detecting a move towards lawyers and courts individualising issues in terms of front line professionals. This gives us concern about the continuing lack of clarity as to what the thresholds are for sharing information in terms of data protection legislation. Our members are anxious that a culture of staff feeling the need to cover their backs can lead to routine sharing of confidential information with no consistent safeguards regarding how this is stored or used.
8. Information sharing without consent based on risk to well-being rather than risk of harm is therefore a contentious area. Different agencies have different thresholds for what they believe justifies intervention in children’s and families’ lives and these are not always informed by a rights context. The SHANARRI indicators could result in lower and blurred thresholds of information sharing which compromise the rights of children and their families to “privacy” and will leave practitioners vulnerable too.

**Children’s Rights**

9. We welcome the accent on the rights of children in line with the UNCRC but we are disappointed that the measures appear weaker than first intended. In any case the challenge is to translate rights into reality at service delivery level and, most importantly, in the court and children’s hearings system. Our members are still encountering instances, despite the intentions of legislation, where the emphasis is on adults’ rights over children at the expense of the rights of children. Monitoring of the impact of measures intended to improve children’s rights is needed to assess whether legislation is having the intended impact.

UNISON Scotland

29 August 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
Education and Culture Committee

Children and Young People (Scotland) Bill

Christina Vegas

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Education and Culture Committee

Children and Young People (Scotland) Bill

Collin Vis

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Education and Culture Committee
Children and Young People (Scotland) Bill

Voice

1. The aims of the Children and Young People (Scotland) Bill are admirable. However, care must be taken to ensure that the principles of the Bill are in fact able to be applied in practice to ensure success. We would not wish for the aims of the Bill to merely be aspirational, in practice. In our view it will therefore be essential for the matters within the Bill to be explored in greater detail and for the appropriate resources to be ring-fenced to enable the proposals to be realised.

2. Our particular comments are as follows:

3. It is noted that the Bill makes no mention of out of school care, which is currently a non-statutory service. It is our organisation’s view that the cost of out of school care also requires to be addressed.

4. It is noted that the Commissioner can investigate the extent to which a service provider has regard to the rights, interests and views of children. Further detail on this procedure is required. For example, would such an investigation be carried out jointly with other bodies? Would there be a right to review previous investigation outcomes? Would there be a right of appeal?

5. With regards to the GIRFEC key element: “a lead professional where there are particularly complex needs or where different agencies need to work together”, with the CAF model in mind, the question arises as to whether legislation is in fact required.

6. We would agree that staff training is a key requirement in the successful implementation of the GIRFEC approach. It is of concern that to date there has been no systematic, on-going and development opportunities for education staff in this respect. CPD is an area which tends to suffer in terms of funding when budgets are tight. It is our view that investment in training, for all professionals working with children, is essential for success in the GIRFEC approach. Detail of how this training would be delivered is required. For example, would there be shared, single, basic training in relation to the principles and purpose of GIRFEC, with individual local authorities providing a second stage of training regarding their own local approach?

7. With regards to the proposed statutory duties in relation to GIRFEC, particularly the role of the named person, there is a danger that planning and reporting takes precedent over “doing” or carrying out actions which may be required. Our organisation considers that workload pressures would be a concern and would impact upon the effectiveness of GIRFEC in practice. Workload issues therefore need to be identified and addressed; a working group to consider workload and avoidance of bureaucracy for those working with children may be beneficial in this respect.
8. With regards to the plan relating to services in the local authority area, it is noted that health boards could be involved in more than one plan. It is essential that support for health boards in undertaking a co-ordination role is provided. The question also arises as to how health boards can align priorities with all local authorities within their boundary areas. This will require particular consideration in line with the extended duty to co-operate.

9. We agree with the view expressed that, with regards to Single Outcome Agreements, there is a mis-match with the Bill’s proposals. This now needs to be addressed. Additionally, consideration must be given to what issues this will highlight, operationally. For example, duplication of effort needs to be avoided.

10. Details of how a particular single child’s plan is to be managed, in the event that they move between local authorities, needs to be provided.

11. With regards to the named person service, further detail is required regarding the maximum upper age. For example, in relation to those individuals with special needs. The position of teenage parents also requires consideration. Would three separate named people be involved, for each of the parents and child, and how would they liaise with one another?

12. With regards to children in secure accommodation, it is noted from the statistics that a minority remain in such accommodation after six months. We would therefore submit that there may be a case for there being an externally named person, rather than the manager of the secured accommodation, for continuity purposes.

13. Consultation responses to date had suggested that a nursery manager might be a more appropriate named person for children attending pre-school education. Consideration will also require to be given to the role of private day care managers and child minders as named persons.

14. With regards to the involvement of a named person and concerns regarding the position of parents, it is our organisation’s view that the role of the named person should not extend to representation of a child’s best interests in potential conflicts with different agencies and parents/corporate parents.

15. Care will need to be taken to ensure that assumptions are not made about who will require intervention or the circumstances where children will require the intervention of a named person. How inclusive is this?

16. With regards to the financial memorandum, clarification of how this was calculated would be helpful. It is essential that the potential costs of implementation of the proposals are considered in full.

17. We agree with the proposal that school attendance at Hearings will be facilitated and that information on a child’s education is available for Childrens’ Panel members. School and nursery staff may have the greatest insight in this respect, due to their level of contact with children and young
people on a daily basis. However, workload demands will require to be considered to ensure that this can operate in practice.

18. With regards to Section 45(1)(b) of the Bill, with regards to an education authority assessing whether a 2 year old requires an alternative to early learning and childcare, any potential conflict with the responsibilities of the health boards requires consideration.

19. Staff will require clarity upon sharing requirements when concerns exist at a lower level, to ensure that staff are confident in their approach in such circumstances. I.e. how is the test of proportionality to be applied in practice? It is essential in our organisation’s view that the guidance to be provided covers this aspect in detail.

20. With regards to page 21 of the SPICe briefing, we note reference to the specific grant in England, within the Standards Fund. We would note that this was not the amount paid to most parents. The position is variable across England and varies according to provider type. There is now a single funding formula within each local authority.

21. With regards to kinship care specifically, we would be interested to hear of any plans to clarify who would be disqualified from kinship care support because they are a “parent”.

Voice
24 July 2013
Introduction

1. Within critical sociology attempts to understand and explain changes in social policy often focus upon the socio-economic changes that have taken place. What is in essence a left wing critique of modern capitalism, this approach often emphasises the issue of power and inequality, focusing on structural questions like poverty to explain the ‘real’ problems in society. This paper in contrast focuses less on these socio-economic issues than upon the nature of institutions today and the expanding nature of state and professional intervention and colonisation of everyday life – a form of colonisation that is arguably impacting upon every adult child relationship – and undermining the socialisation of the young.

2. This is a process that has been identified, particularly in the United States, since at least the 1950s, but which has become more systematic and qualitatively problematic in the last two decades in the UK – not least of all, because of the collapse of political life. In this regard this paper, unlike those that focus on the ‘neo-liberal’ nature of society, suggests that many of the problems discussed below have developed less because of the enforcement of any right wing agenda, but rather, because today there is no agenda.

The Problematisation of Behaviour

3. In the 1990s as the social and political imagination shrank ‘big’ outlooks, whether national or international declined, while smaller things, like ‘community’ (Bauman, 2001) and the ‘individual’ (Beck and Beck-Gernsheim, 2002) emerged as the focus for government and state attention. Ironically, as Hobsbawm notes however, this focus on community did not reflect a new vibrancy in community life but actually emerged at a time ‘when communities in a sociological sense became hard to find in real life’ (Hobsbawm 1994: 428). Likewise, the new focus in social policy on the individual reflected something quite different from the individual of previous times. The moral and political subject of the past is today far more likely to be understood and engaged with through a fragmented psychosocial lens, one that is increasingly preoccupied with how we behave and react, rather than what we believe and how we consciously act (Waiton 2008).

4. As the understanding of social problems moved away from structural questions an increased gaze was set upon the behaviour of individuals within politics,
schools, communities and families. Within the realm of politics, the Labour MP Frank Field, for example, argues that we have entered a period where the 'politics of behaviour' is central (Field, 2003). The government has helped to make the problem of antisocial behaviour into a national issue and in schools the behaviour of pupils has become of great concern for education authorities and teacher's unions alike. Meanwhile behaviour in the home and the issue of parenting has become problematised and understood as a relatively new 'skills' based issue necessitating expert intervention (Furedi, 2001).

5. Consequently, the 'management of behaviour' has become a growth industry, something that is at times imposed, but is perhaps more often demanded or seen as a necessary form of support in our more individuated world.

6. If the telecommunications advert is correct and we really are the product of 'every one to one we've ever had', it increasingly appears that these one to ones should be carried out with the assistance of a third party, or at least by following a form of awareness training that helps us to understand the correct way to act and react to one another in our daily lives.

7. It is this emerging and professionalised framework through which everyday interactions occur which is the focus of this paper. Interactions that were often informal, or were informed by the specific nature of a professional relationship with a young person – like that of a teacher and pupil – have been transformed in recent years. Through the problematisation of relationships, a form of colonisation of the 'lifeworld' has emerged, a process that is arguably undermining the spontaneous and autonomous relationships between people – and especially between adults and children. This is a process that despite its intentions should be understood as a form of antisocialisation.

Dr Stuart Waiton
Lecturer, SHS – Sociology
University of Abertay Dundee
Introduction

1. Who Cares? Scotland has a vision of a Scotland where all children and young people with experience of care are understood, believed in and given every opportunity to thrive. We are committed to working across Scotland with children and young people with experience of care, to help them speak out, secure their rights and ensure their qualities and successes are recognised across society. We seek to do this by influencing the people, cultures and systems that will positively affect their quality of life. Given this, we are pleased to answer the call for evidence from the Scottish Parliament’s Education and Culture Committee, on the general principles of the Children and Young People (Scotland) Bill, which was introduced to Parliament on 17 April 2013.

The aspiration of the Children and Young People (Scotland) Bill

2. The Bill’s Policy Memorandum states that:

"It is the aspiration of the Scottish Government for Scotland to be the best place to grow up in. The objective of the Children and Young People (Scotland) Bill is to make real this ambition by putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector”.

3. Who Cares? Scotland (WCS) welcomes this Bill and indeed the intentions of it; however we believe that for it to truly realise its own stated aspiration, then the Bill needs to address one key short-fall in order to make Scotland the best place to grow up for young people who come from a care background.

Care Leavers (Extension of aftercare support for care leavers up to 26 years of age)

4. 87% of the LAC&YP consulted with for our initial consultation response in Autumn 2012 to the Bill’s proposals, supported the proposal to increase the age to which they can access support from their Local Authority to 26 years of age. As well as feeling that this support should be there, they felt it was specifically required in key areas such as housing, advocacy provision, in seeking employment and education, and for having someone to go to / talk to. Given this, WCS and LCT supports the sentiment in the Bill Part 8 (Aftercare) - however, it there are a number of areas of concern for us in relation to this proposal which need strengthened

Areas of concern

5. How the level of support for the care leaver is going to be measured / assessed (Part 8, Paragraph 60, Section 2)
6. The responsibility implied seems to lie with the care leaver to seek this support (Part 8, Paragraph 60, Section 2)

7. The assessment process which will be applied to determine ‘eligible needs’ of the care leaver (Part 8, Paragraph 60, Section 2, Sub-section C); where ‘eligible needs’ is to be determined by Scottish Ministers in relation to a care leaver’s ‘care, attention or support’ needs (Part 8, Paragraph 60, Section 2 Sub-section E)

8. The options available to the local authority to transfer the responsibility to support the care leaver onto another departments / legislative provisions, if it deems appropriate as a result of the assessment process (Part 8, Paragraph 60, Section 2, Sub-section C)

9. Ambiguity around the terms ‘advice, guidance and assistance as it considers appropriate having regard to the person’s welfare’ (Part 8, Paragraph 60, Section 2, Sub-section C)

Main risks of this approach

10. Assessment process will assess need on priority, where priority determinant will likely be based on a normative criteria as set by Scottish Minister’s (similar to the Homelessness etc. (Scotland) Act 2003 assessment’s process)

11. Care leavers only likely to seek this assessment where they are approaching or in crisis; impacting heavily on the potential to intervene early and put solutions into place to prevent care leaver getting anywhere near the crisis point. Likelihood that the service via Part 8 of Bill will predominantly be focussed on redressing the crisis / impending crisis, which is both costly and least effective in facilitating medium to long-term service planning strategies for the care leaver.

12. Early intervention for care leavers, means earliest intervention and for the purpose of Part 8 of the Bill, the risk is that the assessment process and the subsequent support, guidance or advice put into place, will not come at the earliest possible point for the care leaver (in line with point 2 above)

13. The potential for the local authority to effectively ‘discharge’ their duty to provide the ‘support, advice and guidance’ necessary to meet the needs and welfare of the care leaver seems high. For instance, in relation to housing options for the care leaver, what legal safeguards are there in the Bill, to prevent this discharge of duty to the Homelessness legislation and the Housing Department, which in effect would actually provide support to the care leaver via temporary accommodation of some sort, to ensure they are housed?

14. The complexities of creating an assessment process which accurately and routinely (very important), determines both the current point in time need of the care leaver (i.e. today as they present), along with the medium to longer term needs of the care leaver (i.e. next month, next year and so on). The focus on point in time need creates a huge risk in itself, of again, only ever ‘fire-fighting’ and crisis managing a care leaver’s current situation. This in itself is a costly and resource intensive process.
Proposed insertions / amendments

15. The assessment process in Part 8 needs removed altogether. We want this so that the responsibility is not on the young person to present as being in need. We want young people up to the age of 26 to be able to return to care. This will place the responsibility of recognising and meeting the need of young people on the Local Authority.

16. We also want the current provisions to allow for children and young people who have been looked after for a continuous period of 13 weeks up to and including 16 years of age to be able to remain in care up to 26 years of age. To realise this, the following proposed amendments are suggested:

- An application made by a person under section 29, subsection (2) [of the Children Scotland Act 1995], to continue to be accommodated, or to return to being accommodated with their current or former placing local authority should be accepted.

- The duty to provide advice, guidance and assistance to this person (to the age of 26 years old) continues as required and as appropriate with regards to the person’s welfare and their needs in relation to their care, attention or support levels.

- This duty is not discharged where the person under section 29, subsection (2) [of the Children Scotland Act 1995] leaves their accommodated status before reaching 26 years of age; leaves and then returns to their accommodated status before reaching 26 years of age once or multiple times; remains in their accommodated status continuously to 26 years of age.

17. In addition to this, this would mean that the trusting and often loving relationships which these young people held whilst in care could continue, instead of them being severed abruptly in the way they are just now. Legislation which facilitates this is the key to the solution. This would also remove the need for a care leaver to negotiate with a range of other - and in most cases new - professionals to then undergo various associated assessment processes to be both accommodated and supported. We therefore recommend that the inclusion of the following principle for the Bill and detailed guidance to outline what this means should be included:

- All children and young people are supported to develop long-term, sustainable and loving relationships with their families and/or professionals.

18. We are adamant that this is the only way to properly tackle and redress the ridiculously poor outcomes which care leavers across Scotland experience. By doing this, the Local Authority would also be able to regularly monitor and review young people’s need on an on-going basis up to 26-years of age. The data gathered in this way, for young people from care up to 26 years of age, would therefore help local and national government better understand the issues and outcomes over time. This would help to inform services for future generations
of young people in the care system in Scotland. It would also go some way to redress the poor longitudinal pathway data which currently exists for young people from care.

19. We envisage that these amendments would take 5-years to implement in practice from the enactment of the Bill and that they would make Scotland a global leader in care provision for children and young people. We have achieved this with our Homelessness Legislation in 2003 – and we believe that a similar vision and commitment should also be realised here. In addition, legislating for this, completely embraces the preventative spend and early intervention agenda which GIRFEC, the Bill and this Government have as its cornerstones.

20. Given the significance of the Children and Young People Bill, legislating for young people from care to be able to stay in, or return to care up to 26 years of age is vital to giving them a chance to live a life which isn’t rooted in poverty, disappointment and the prospect of premature death. It is time for Scotland’s young people from care to be given the chance to succeed in their lives; to be happy, to be understood and accepted and to be in control of what paths they take.

Why this amendment matters to Scotland’s care leavers

21. Scotland’s 1,300 or so care leavers each year, face bleak futures; and in many cases futures which they have little or no real control over. At 16 years of age, most young people in care need to go on a journey which most parents would never want for their own children. Not only are they forced to say good-bye to the placement which they called home for however many years – but they also have to say good-bye to the people in their lives which they built up trust and loving relationships with. In fact, for most young people who leave care, this is the biggest trauma of all. Young people who leave care (mostly at 16-years of age) are then expected to take care of themselves. Yes there are organisations and professionals which they can get help and support from; yes there is welfare support which they can access; yes they can access education and employment opportunities; yes they can access housing and yes they can dream and look forward to their future in the same way as other young people. However without someone by their side who they know and trust, guiding them through thick and thin; pointing them in the right direction and helping to get them back on track where they take a wrong turn, then chances are, these young people won’t even know where to start with planning for their future. Resilience alone won’t help them achieve this and the thought of having to do it alone or with people who are ‘new’ to them… is probably the most daunting of all.

22. Right now, it is up to the discretion of a Local Authority as to whether they provide support to a care leaver after they leave care, and this links into their economic status - i.e. if they are in employment, education or training(1). This current

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1 See table 3.5 for LA and national overview on the provision of aftercare services based on economic status -
support does not go far enough to provide the support they need and deserve and the biggest risk with the current Part 8 proposals is that these issues will still continue. In addition to this, a positive economic status at 16 or 18 years of age is quite an ask for a young person from care and the range of social and well-being indices and outcomes which surround them, are not encouraging and is precise evidence of just how vulnerable they are.

- **Education**: The number of looked after children who leave care and enter and sustain a positive destination (i.e. are in education, employment or training) is also lower when compared to non-looked after peers - 64% of looked after children who left school during 2010/11 were in a positive destination at the time of the initial destination survey, compared with 89% of all school leavers. Six months after entering their positive destination, this percentage dropped to 55% for looked after children – so sustaining their positive destination is an issue(2).

- **Housing**: A young person from care should never have to present as homeless to be accommodated and it is estimated that around 1/3 of the current care leaver population have had to present as homeless to be housed.

- **Criminal Justice**: 50% of Scottish prisoners have been in care(3) and the Polmont prisoner population is estimated at up to 80% from a care background.

- **Mental Health**: 45% of those aged between 5 to 17 years of age were assessed as having a mental disorder(4).

23. We believe that our recommended proposed amendments to Part 8 would help to secure more positive destinations for young people from care; and most importantly, that these positive destinations could be sustained due to the support they have surrounding them, provided by the people which they hold trusting and nurturing relationships with.

**Corporate Parenting**

24. LAC&YP still have a very limited knowledge of what corporate parenting (CP) is and what it means for them. Whilst WCS and LCT support the expansion of CP duties to a wider range of public bodies, it is vital that new CPs are given detailed guidance and understanding on what this role means to them. Without this, the current ambiguity surrounding the role of CPs, and the lack of understanding amongst LAC&YP on this, is at risk of continuing. **We recommend that the Bill considers LAC&YP as a specific socio-economic / equalities group, for the purpose of Part 7.** This would then allow all CPs to consider how they deliver

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Tbid


services and include LAC&YP in their strategic plans and outcomes setting more specifically than the provisions – as they as they currently stand – allow for. This would also help CPs to both demonstrate how they are considering LAC&YP and the progress they have made / or are making on that.

Who Cares? Scotland
26 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

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   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
1. I am writing as an experienced practising GP with an academic interest in child health. I am currently professor of primary care and rural health at the University of Aberdeen, and my previous academic post was senior lecturer in Infant Mental Health in the University of Glasgow. As well as writing on the basis of substantial clinical experience, I have published a large number of research papers and reports on the subject of preventive child health. These can be provided if required.

2. I welcome the Children and Young People (Scotland) Bill and support its general aspirations. Specific areas that are valuable include improvements in permanency planning for looked after children and the provision of better early learning and childcare. I do, nevertheless, have some concerns about the lack of specificity in the draft bill in relation to provision of services to children under three years of age.

3. The only universal services used by almost all parents of children under three years are midwifery, health visiting\(^1\) and general practice\(^2\). Each of these professions has a specific role in supporting parents, and in recent years a range of well-intentioned but ultimately misguided policies has led to a fragmentation both of the services that each is able to offer and to inter-professional communication. Examples include: recent failures of communication between midwives and GPs since the Refreshed Maternity Services Framework; the abolition of universal preventive child health contacts between six weeks and school entry in 2005\(^3\) (partially reversed this year); the ending of the training of health visitors in child developmental assessment since 2001\(^4\); the introduction of corporate caseloads and skill mix teams in health visiting, leading to loss of personal continuity of care; the disengagement of health visitors from general practices; and a progressive disengagement of GPs from the delivery of preventive child health services\(^5\). Effective preventive spending could substantially reverse these trends\(^6\).

4. My specific recommendations are as follows:

   - That the named person for preschool children should always be a qualified health visitor
   - That the professional title ‘health visitor’ be restored to its former statutory status, with specific reference to training and expertise in child development and parenting support
   - That all those working with preschool children should have a duty to report concerns about those children’s health, wellbeing and development to the named health visitor
   - That health visitors should have a statutory duty to communicate concerns about child wellbeing and development to general practitioners and to others as required
   - That general practices should have a named, attached health visitor.
• That health visitors should have a maximum caseload of 200 children under five years, with smaller caseloads being allocated to those working in areas of deprivation or those working with high risk groups.

• That each child should have the right to an annual assessment of developmental progress before the age of five years by a qualified health visitor or in exceptional cases by a general practitioner. These assessments should include investigation of language development, motor function, social behaviours, capacity for attention and of the parent's relationship with the child. We know that developmental vulnerability cannot be adequately predicted on the basis of pre-existing risk factors. Furthermore there is now substantial evidence that many children with remediable problems have failed to have these problems addressed since the introduction of Scotland's bold policy of abolishing its universal child health surveillance programme. This policy, at variance with practice in all other developed nations, should be reversed.

• These assessments should be considered as a child's right: parents and carers should not be considered to have an automatic right to refuse on behalf of their child. There is some evidence that children who are not seen at preventive care contacts are more likely to have problems. Failure to find ways to include all children in a universal child health programme (there are, for example, good systems for ensuring universal coverage in the Netherlands), thus risks increasing social inequity.

5. I have given evidence to government committees on these matters in the past and would be happy to give evidence in person if this would be helpful.

Reference List


Prof Philip Wilson
Professor of primary care and rural health
University of Aberdeen
17 August 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Robert Withall

1. Even in country Australia I have heard of this, I find what is proposed by the Scottish government in the children and young persons bill part IV, unbelievable. With Scottish blood in my veins, it is boiling. Please reconsider this outrageous bill and throw it out on the rubbish dump where it belongs. Who in the world do you think you are to send social workers into people’s homes to supervise the life of a child from when they are born, usurping the authority of the parents and giving that authority to yourselves. Government has no right whatsoever in this area, pull your heads in and get on with what you are supposed to be doing, and keep your devilish lust for power away from interfering where you have no business being. I remind you, you are not parents and have no right too even consider taking over the role of father and mother.

Robert Wishall
Australia
25 July 2013
1. I am writing to express my strong opposition to Part IV, the “Provision of Named Persons,” of the Children and Young People Bill. This bill proposes a massive invasion of every family and transfers the authority and the rights of parents to government monitors. Parents are the ones who act in the best interests of their children. Please reject all measures contained in the Children and Young People Bill that directly oppose the rights of parents protected in international law. Specifically,

   a. The “named person” should be an opt in/opt out service, not mandatory.

   b. Personal data should never be gathered or shared without consent, as it breaches both the UK Data Protection Act and Article 8 of the ECHR. There must be a child protection concern to necessitate sharing this data, not merely a “wellbeing” concern which falls short of the data protection sharing threshold.

   c. The proposals will result in many families actively avoiding contact with services.

   d. There is a need for legal redress to be available against any professional who “gets it wrong” for a child.

2. It is my understanding from the Schoolhouse Home Education Association that officials are already implementing policy related to the named person provision, resulting in a number families in Scotland experiencing issues related to this bill. Families have been hounded by professionals who refuse to go away, interfere into family life without legitimate reasons, and seek to mislead families about their parenting choices. Parents’ rights will continue to be damaged if the bill is passed and fully implemented.

3. Please act to protect the fundamental human right of parents to direct the upbringing and education of their children and reject the Children and Young People Bill.

4. Ultimately this bill appears to be motivated by a philosophy that is at odds with those that undergird a free society. Specifically, the notions that government should be limited and only intervene when necessary or provided for under objective standards, that a free people are competent to raise their own children without interference or uninvited “help” from government bureaucrats, that information about children should be protected and only shared when written consent is given by parents or legal guardians. And finally, that in a free society the rights of families and the irreplaceable relationship between parents and children must be protected and respected. The proposed Scottish legislation turns the notion that parents are responsible for their children on its head and basically says that parents can’t be trusted-only government can.
1. The Bill's proposal to increase provision of free pre-school education to 600 hours is to be welcomed. Previous research has shown that whether sessions were full day or half day did not influence child outcomes (Sylva et al, 2004) so assuming appropriately trained staff and high quality provision, the proposed plans for five half day sessions a week should allow three year old children sufficient access to educational and social experiences to assist in promoting early development.

2. The increased number of hours of free preschool education proposed by the Bill not only helps parental availability for employment, but in addition such programmes can also provide much needed parental support and feedback about their children’s development for parents in disadvantaged communities. Our pilot study (Woolfson & King, 2008) showed improved parenting capacity in parents whose vulnerable two year olds participated in an early education programme compared to those who had not. Furthermore these parents showed better adjustment to the daily hassles of situations with their children that challenge parents than comparison group parents. Participating parents also gained valuable new insights and understanding into their children’s behaviour and their role as parents. Parents learned from informal experiences including casual observation of their children interacting with children/staff and undertaking activities in the education programme, talking to other parents, as well from more formal experiences such as direct advice from staff in meetings with their keyworker and parent support groups. Pre-school staff therefore should be trained, not only in how to promote children’s development themselves, but in how to help parents in a supportive, non-judgmental, non-didactic manner.

3. The issue of access to free pre-school education for disadvantaged and vulnerable two year olds is however one which requires further consideration. Notably, the UK Effective Provision of Pre-School Education (EPPE) project found age of attendance to be important, with those attending pre-school before age three demonstrating higher cognitive and peer sociability gains than those beginning at three years (Sylva et al, 2004).

4. The importance of investing in the early years is well recognised by public health professionals, development psychologists and economists (Heckman, 2006; Marmot, 2010; Woolfson et al, submitted). US Head Start, Early Head Start, Smart Start and the Abecedarian projects as well the (EPPE) project have all shown the importance of early education for IQ, cognitive, social and emotional development, language skills, concentration and school attainments (Campbell & Ramey, 1995; Abbott-Shim et al, 2003; Barnett, 1995; Kazimirski et al, 2008; Love et al, 2005; Sylva et al, 2004).

5. We (Woolfson et al, submitted) recently carried out a Scottish pilot of the Early Development Instrument (EDI), an extensively internationally validated tool that measures how well local communities prepare their children for transition to
school. Our analysis of vulnerabilities in different developmental domains for our local authority sample showed that 15.4% children were vulnerable (i.e., concerningly low) in their development in two or more domains. We do not know whether these local data represent national developmental vulnerabilities for Scotland as a whole, but it is worth noting that lower figures of 12.4% and 11.8% developmental vulnerability in two or more domains were reported for the Canadian national sample and the Australian national sample respectively.

6. In our local Scottish EDI pilot we also observed socio-economic gradients in readiness for school, with children in the most deprived socio-economic quintile 3.36 times more likely to be vulnerable in two or more domains than those in the most affluent quintile.

7. Addressing these EDI findings has important implications for planning and delivery of services for disadvantaged and vulnerable children. Collecting EDI data nationally in Scotland on a triennial basis as currently carried out across Australia can provide holistic, community-level data that can be used both prospectively for early years service planning as well as retrospectively for evaluation purposes.

8. Not only is evidence accumulating for the influence of early development on these proximal school factors, but longitudinal research has also demonstrated positive effects on outcomes much later in life such as economic productivity, social participation, family relationships, criminality, and mental health (Irwin et al., 2007; Schweinhart et al., 2005; Kuh & Ben-Shlomo, 2004). Returns to society over the lifespan are therefore expected to more than repay initial investment in early education (Ludwig & Phillips, 2007).

9. The above findings suggest that the Scottish Government might consider extending these plans to include all vulnerable or disadvantaged two year olds in order to achieve its aim of ‘strengthen(ing) the role of early years’ support in children’s and families' lives’.

REFERENCES


Prof Lisa Woolfson
Professor of Psychology
24 July 2013
The Issue

1. There are children in Scotland whose needs are not met, and whose voices are not heard, because of difficulties in accessing the legal processes that could protect them. This is not primarily a resource issue: it is about taking steps to ease their access to resources that already exist. The Children and Young People Bill could be a vehicle for safeguarding these children and their rights.

This Submission

2. This paper has been written by a short-life working group of professionals united by their concern that gaps in legal structures mean that vulnerable children, in particular those separated from their families\(^1\), are unable to (i) access or properly instruct legal representatives and/or (ii) ensure that their best interests are met within the legal processes that they are involved with.

3. The issue was identified in the course of the work that some members of the group were undertaking in relation to the pilot Scottish Guardianship Service which is funded by the Scottish Government and was recently applauded by the House of Lords and House of Commons Joint Committee in Human Rights\(^2\) but it has implications for a wider group of children and young people in Scotland.

4. This paper aims to highlight key issues particularly relevant to this small but extremely vulnerable group of children. It will then discuss potential solutions that we would respectfully ask the Committee to consider in their discussions around the Bill.

Some Particular Points

5. The following scenarios have been identified by the group:-
   a. Where 16 and 17 year old separated children cannot access legal structures or protections in Scotland because of differing treatment, both in law and in practice, related solely to their age;
   b. Where children do not have the capacity because of their age to instruct legal representation to put forward their views and secure their

\(^1\) ‘Separated children’ is the term used in most countries to describe those children who are outside their country of origin and separated from their parents or legal or customary care giver. In some cases they arrive in their own. In other cases they may be accompanied by an adult who is not their parent or legal or customary carer. In some cases, they may be removed from their legal or customary care giver through legal proceedings in the UK.
asylum, refugee or immigration status and no-one else has the 
authority to do this for them. In Scotland, children have full legal 
capacity at the age of 16, and may be judged to have legal capacity at 
an earlier age; 
c. Where children do not have anyone with the responsibility and 
authority to pursue their best interests in legal proceedings. This is 
regardless of whether a child has the capacity to instruct their own 
legal representative.

6. These issues raise concerns about Scotland’s compliance with the UN 
Convention on the Rights of the Child and other international instruments which:
- Define a child as anyone under 18;
- Require account to be taken of both the views and interests of children 
  when decisions are made about them; and
- Prohibit discrimination on any grounds, including age.

Case Studies

7. The following are case studies. Each case study does not reflect an actual client 
but includes a combination of issues that has arisen from actual and current 
cases in order to demonstrate the matters set out in this paper.

Scenario 1 – Lucy

8. Lucy is a seven year old girl born in Tanzania. She has one older sibling who is 
16 years old. Lucy’s parents are from Tanzania and have lived in the UK for six 
years, but they do not have permission to stay in the UK. For this reason, the 
children are also Tanzanian nationals and they do not have permission to stay in 
the UK.

9. Lucy and her older sibling were removed from the care of their parents by the 
local authority six years ago because of severe physical abuse. Each child has 
a different social worker and has been placed with a separate foster family in a 
separate local authority area. The children have little contact with one another.

10. The local authority is seeking permanence orders for the siblings which are 
contested by their parents. Her elder sibling has an immigration solicitor, but 
Lucy is too young to instruct a solicitor herself.

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3 There is a presumption that a child of 12 or more will be able to instruct a solicitor in any civil matter, 
as s/he will be presumed to be of sufficient age and maturity to have a general understanding of what 
it means to do so; Section 2(4A) of Legal Capacity (Scotland) Act 1991. This presumption can, 
however, be rebutted if a solicitor thinks a younger child has a general understanding of what it 
means to instruct a solicitor, or if a solicitor does not think a child of 12 or more has the general 
understanding required.
Issues from Scenario 1

11. The local authority and Lucy’s foster carer wish to instruct a solicitor to regularise Lucy’s residence in the UK. Neither of these individuals, however, have the automatic right to do so as this is a parental right still held by Lucy’s parents until such time as it is removed, either in the interim or permanently, by way of an order by the court.\(^4\)

12. Since Lucy’s best interests are likely to conflict with her parent’s interests, a solicitor could not take instructions from Lucy’s parents on her behalf. This is the case, in part, because the immigration position of the parents may depend on remaining in the UK only to contest the permanence orders.

13. Since Lucy cannot obtain legal representation, she remains illegally resident in the UK. There is no realistic prospect that she would be returned alone to Tanzania by the Home Office, yet she has no means of communicating with the Home Office to regularise her status unlike her elder sibling. She is therefore being denied access to a practical and effective remedy to her immigration position.

14. Lucy may also suffer disadvantage in other ways as she has no document to confirm her right to reside in the UK. She is likely to lose out on certain entitlements which flow from having permission to stay in the UK, for instance lawful access to healthcare,\(^5\) the ability to take a summer job at the relevant age, the ability to travel in and out of the UK with her foster family on holiday and delay in being able to register as a British national child as she requires to permanently reside in the UK in order to do so. It is likely that these issues will become more prevalent as Lucy becomes older thus affecting her health, welfare and development and integration into Scottish society all of which potentially compounds her vulnerability.

Scenario 2 – Hung

15. Hung was located by police on a raid on a cannabis cultivation farm. He was arrested, charged with an offence under the Misuse of Drugs Act and is currently in a Young Offenders Institution.

16. Hung is from Vietnam and states that he is 16 years old. Police and Social work believe him to be over the age of 18 and he is treated as such. Social work have

\(^4\)In England and Wales, the local authority automatically obtains parental responsibilities when a child comes into their care (Section 33(3) of the Children Act 1989). The position is not automatic in Scotland. The Children (Scotland) Act 1995 ensures that parental rights and responsibilities remain with a parent until such time as a court order expressly removes them even if a child is taken into the care of a local authority (Section 11 of the Children (Scotland) Act 1995 and Section 42 of the Children’s Hearings (Scotland) Act 2011).

\(^5\) There is a gap within the NHS Scottish Regulations for this type of situation and technically these children would need to pay in order to utilise the NHS. It is accepted that this situation would be unlikely to occur in Lucy’s case and in practice she would gain access to the NHS. She may, however, find it more difficult as she gets older.
stated that even if Hung were 16, he would not be treated as looked after by them as per their practice with separated children over the age of 16.

17. Hung narrates an account to his immigration lawyer that would suggest he may have been the victim of human trafficking. He also states that he has been sexually exploited by the people who brought him to the UK. He furthermore has information which may suggest that he is 16. He is not sleeping and states that he cannot think straight. He is scared.

18. Hung’s instructions to both his criminal and civil solicitors continuously change. He tells his criminal solicitor that he thinks that he wishes to plead guilty to the offence he has been charged with. He wants to get out prison and believes that this will be the quickest way of doing so as he will get a shorter sentence.

19. Hung keeps changing his advice to his civil solicitor. His instructions to his civil solicitor depend on his mood. When frustrated and upset he is clear that he does not wish his civil solicitor (i) to contest the determination regarding his age, (ii) to provide information to the relevant authorities regarding human trafficking; or (iii) to make a claim for asylum. Hung however keeps changing his mind on all 3 points.

Issues from Scenario 2

20. At age 16, Hung has full legal capacity in Scots Law and his solicitors accept instructions on that basis representing Hung in order to give effect to his views and wishes.

21. In a situation like Hung, however, a child’s views may conflict with what is in his best interests. A child might, for example, in a moment of frustration, say they want to return to their country of origin. They may well change their minds later, but the system will have acted on their expressed wish. Or a trafficked child might want to plead guilty to an offence such as cannabis cultivation, just to get it over with and avoid identification as a victim of trafficking, thus evading the protection from criminalisation and other care that should be extended to them under national and European law.

22. A 16 year old is still a child in terms of the UN Convention on the Rights of the Child as well as definitions related to trafficking so his best interests should be represented and taken into account in any decision but it is not clear in Hung’s case who has the legal right and responsibility to do so.

23. There are certain legal proceedings where individuals can be appointed by a Children’s Hearing and court to put forward the views and best interests of a

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child if it is necessary to do so.\textsuperscript{8} These individuals enter the proceedings in order to protect the legal rights of the child allowing the child to participate and be represented. Both individuals will prepare reports on what outcome would best safeguard the child’s interests. They will take account of the child’s views, but do not need to follow them (unlike the child’s legal representative who has to take instructions from the child where that child has the capacity to give them\textsuperscript{9}). The asylum/immigration and criminal processes that Hung is involved in do not make provision for this kind of person who could promote his interests. In order to protect Hung’s interests, someone needs to be able to act to promote and protect his interests both before and during these legal proceedings.

24. Hung has a legal representative to put forward his views but there is no individual appointed to ensure his best interests are also taken into account. This is because he is not a participant in the type of process or procedure where one could be appointed and in any event his interests require to be promoted at the earliest opportunity.

25. The situation becomes more complex in the case of Hung as professionals have not accepted his self-declared age. This leads to a process of age assessment undertaken by a local authority social worker. If the individual is deemed to be a child, the local authority will have greater responsibilities than if they were an adult.

26. In Hung’s case, even if his stated age were to be accepted and he were to be released from detention, he has been told that he will not access full support and services as a “looked after child”\textsuperscript{10}. This determination is made on the basis of his age alone rather than on an assessment of need\textsuperscript{11}. Social workers therefore can have a conflict of interest which means they cannot always effectively advocate for the child’s best interests.

27. There is therefore a need to ensure that the child’s views and best interests are taken into account. The ‘interests’ dimension may be lacking where a child’s

\textsuperscript{8} If a child is within the Children’s Hearing System in Scotland then it is likely that a Safeguarder would be appointed. In other civil proceedings, such as a divorce action, a Curator Ad Litem would be appointed.

\textsuperscript{9} However, where there is a clear conflict between the duty to act on instructions and the duty to act in the client’s best interests, a solicitor may need to withdraw from the case which is clearly not a satisfactory conclusion.

\textsuperscript{10} A child under 16 will in general become “looked after” by the local authority (section 17(6) of the Children (Scotland) Act 1995 and accommodation will be provided (under section 25 of the Children (Scotland) Act 1995). Local authorities in Scotland owe a wide range of duties to children that are “looked after” by them. Support (in the form of money to pay accommodation and living expenses) can be provided by the local authority to 16/17 year olds under section 22 of the Children (Scotland) Act but they will not be “looked after” by them so the same range of duties is not owed to these children by the local authority as would be to a “looked after” child.

\textsuperscript{11} A difference in treatment based on age alone, and not an assessment of an individual’s needs, may be a breach of Article 2 of the UN Convention of the Rights of the Child. R (on the application of HC (A CHILD BY HIS LITIGATION FRIEND CC) v (1) SECRETARY OF STATE FOR THE HOME DEPARTMENT (2) COMMISSIONER OF POLICE OF THE METROPOLIS (2013)
judgement is impaired due to their personal history and current stress, and/ or the child is over 16 years of age\textsuperscript{12}.

**How these matters could be addressed**

28. The group has been exploring ways of using current law more imaginatively, in particular by utilising some of the provisions in Part I of the Children (Scotland) Act 1995 as well as the Children’s Hearings process. For instance the utilisation of Section 11 of the Children (Scotland) Act 1995 in order to request a court to make an order appointing a suitable person to act as guardian and to invest in them the necessary parental rights and responsibilities to do so. This would include the right and responsibility to instruct a solicitor and/or to promote the child’s best interests.

29. It is not yet clear how successful these approaches will be. However, even if successful, there will remain gaps as an order under section 11 is reliant on the identification of an appropriate individual who is willing to act as a guardian in this context. Problems arise for separated children because:-

a. By definition, there may be no family member who could act as guardian.

b. Lucy's foster carer may be such an appropriate person. However, most separated children are not placed in foster care.

c. The relevant legislation notes that the guardian must be an individual and therefore cannot be a local authority.\textsuperscript{13}

d. More often than not, such as in the case of Hung, the child will not have access to a suitable individual that would be willing to act in place of their parent in this context.

30. Furthermore, as the law currently stands, Section 11 cannot apply to children who are 16 and 17.

**Recommendations**

31. There are therefore a number of legal changes that could make it easier to protect the rights of these children, and these are what we would like the Committee to consider:

a) Review of how Scotland identifies a child by establishing an independent system for age assessment. Currently this is carried out by local authority social workers with challenge undertaken by judicial review. Because it

\textsuperscript{12} The EU Anti-Trafficking Directive on Human Trafficking states that a guardian and/or representative shall be appointed for child victims of human trafficking when the holders of parental responsibility are, as a result of a conflict of interest, precluded from ensuring the child’s best interests and/or from representing the child (Art 14(2). Where appropriate, a guardian shall be appointed for unaccompanied asylum seeking children who are victims of human trafficking (Art 16(3), and in criminal matters, a representative be appointed (Article 16(4). These roles may be performed by the same person, legal person, institution or an authority (Recital 24).

\textsuperscript{13} Sections 11(5) and 15(4) of the Children (Scotland) Act.
has such significant consequences for a child, it may best be undertaken within a court setting through an action of declarator of age, operating under prescribed time limits. Such an option is not, however, seen as child friendly and little used (if at all). Another option would be the proposal set out by Sheriff Brian Kearney in his paper on Age Ascertainment which is fully endorsed by this group.

b) Review of how Scotland thereafter treats a child in its legislation and practice, for instance:-

i. Extending the responsibility and right of legal representation and promotion of a child’s welfare to age 18. It is currently 16\textsuperscript{14}. This would give more options for those separated children who, while not legally incapacitated from instructing a solicitor, might be practically incapacitated due to trauma and disorientation. Such an amendment would not diminsh young people’s autonomy because this is already protected by the Age of Legal Capacity (Scotland) Act 1991, and preserved through the definition of “legal representative” set out in the 1995 Act\textsuperscript{15}. Extending the age to 18 would be consistent with the age limits set out in the UN Convention on the Rights of the Child.

ii. Review of a 16/17 year old separated child’s access to the children’s hearings system under the Children’s Hearings (Scotland) Act 2011.

iii. Adding child trafficking to the offences listed in Schedule 1 to the Criminal Procedure (Scotland) Act 1995. This would help protect children in a number of ways, including easing access to the Children’s Hearings system.

iv. Clear and unequivocal guidance to local authorities regarding 16/17 year old separated children and how they should be looked after by local authorities in line with the position in England and Wales\textsuperscript{16}.

c) Identifying a person or body with authority to take action to protect a child’s rights in a situation of last resort when no-one else can\textsuperscript{17}. Traditionally in Scotland, the “ultimate parent” or parens patriae role has been located within the Court of Session. It would be simpler and more accessible to nominate a specified person as the holder of this responsibility (in addition to, rather than instead of, the Court). They would need to be able to

\textsuperscript{14} In terms of sections 1 and 2 and 15(16) of the Children (Scotland) Act 1995.
\textsuperscript{15} Section 15(5) and (6) of the Children (Scotland) Act 1995.
\textsuperscript{16} Where support to separated children is based on a needs assessment and that for the majority of such children, they should be supported under the equivalent to section 25 of the Children (Scotland) Act 2005. This position is as a result of case law later clarified by the Department for Children, School and Families.
\textsuperscript{17} UN Committee General Comment No 6 [2005] – Treatment of Unaccompanied and Separated Child outside their Country of Origin notes at paragraph 33 that States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child’s best interests.
ensure that a child has access to their own legal representation and/or promote the child’s best interests. This is key in Scotland as a local authority does not automatically obtain rights and responsibilities when a child is in their care and there is no solicitor of last resort in Scotland as there is in England and Wales. One option would be to extend the role and power of the Children’s Commissioner but further discussion as to how this would operate in practice would be required. This kind of mechanism would have benefits for a wider range of children, including those for whom the local authority holds parental responsibility, where there may be no outside check on how they exercise it.

Conclusion

32. The authors of this submission would be very happy to explain and expand on these suggestions in writing or in person should the Committee so request.

Kathleen Marshall, (Chair)
Child Law Consultant and former Children’s Commissioner for Scotland

Kirsty Thomson
Solicitor, Head of Women and Young Persons’ Dept, Legal Services Agency

Brian Kearney
Sheriff (Retired)

Clare Tudor
Independent Consultant and Trainer in children involved in forced migration

Jillian McBride
Guardian, Scottish Guardianship Service

Graham McPhie
Independent Social Work Consultant

Working Group on Legal Representation of Vulnerable Children, Including Separated Children
27 August 2013

18 The Office of the Official Solicitor (England and Wales) has the statutory function of, among others, representing minors incapable of representing themselves.

19 In some cases, local authorities could have a conflict of interest where a child required a large input of resources which the local authority was reluctant to provide.
WAVE Trust

Stage 1 Submission to the Scottish Parliament’s Education Committee on the Children and Young People (Scotland) Bill 2013

1. WAVE Trust is an independent UK-wide charity with an office in Scotland. WAVE is a recognised leader in the early years’ arena. It particularly focuses and has expertise on the primary prevention of child maltreatment (abuse, neglect and living with domestic violence). WAVE’s Founder/CEO (George Hosking) and its Scotland Director (Dr Jonathan Sher) have had the privilege of testifying before Committees of the Scottish Parliament several times in recent years – and would be pleased to do so again.

2. WAVE welcomes the Children and Young People (Scotland) Bill and supports both its overall direction of travel and the great majority of its specific provisions. Our extensive international evidence base and practical experience across the UK (including Scotland) confirms the importance and value of this Bill’s intentions to:
   a) deepen the extent to which children’s rights are understood and made real;
   b) develop and implement a single, holistic, integrated plan for each child;
   c) enhance the positive impacts of ‘Getting it right for every child’ (GIRFEC);
   d) embed the SHANNARI model/definition of ‘wellbeing’ in Scots law;
   e) reduce the delays and difficulties in permanence planning;
   f) provide additional, and more flexible, early learning and childcare; and,
   g) make adult services to parents more helpful in relation to affected children.

3. However, WAVE Trust thinks that this Bill, as introduced, does not fully reflect the analysis – and is not sufficiently robust to achieve the aspirations – articulated so well in the Scottish Government’s accompanying Policy Memorandum. Consequently, WAVE Trust encourages the Scottish Parliament to take greater advantage of the historic ‘window of opportunity’ available now by strengthening several key elements of this proposed legislation. Doing so will keep Scotland at the forefront of UK policy and practice in relation to the youngest generation of our citizenry.

4. Because of the space limitations noted in the invitation to submit evidence pertinent to the Children and Young People (Scotland) Bill, WAVE’s contribution here will only include the ‘headline’ points and brief explanations. The body of the evidence supporting all the points made here can be found in our latest major report – Conception to age 2: the age of opportunity – launched in March 2013. A hard copy of this report has now been sent to every member of the Education Committee and its staff, as well as to the most relevant Cabinet Secretaries and Scottish Ministers. Although jointly authored with England’s Department for Education, the international evidence and basic messages are applicable in the Scottish context, too.

5. WAVE Trust’s main recommendations for improving this Bill are to:
   - Make ‘preventing harm from happening in the first place’ a cornerstone of this legislation’s approach and provisions
   - Ensure that ‘preventative spending’ is reinforced by, and made accountable through, this Bill
   - Accord the earliest years of life (pre-birth to age 3) far more direct and meaningful attention/action
➢ Meet the need for both more health visitors and improved professional
development/support for this group of Named Persons
➢ Incorporate the entire UN Convention on the Rights of the Child into Scots law

6. Make ‘preventing harm from happening in the first place’ a cornerstone of this
legislation’s approach and provisions. The Scottish Government’s original consultation
about this Bill, and the latest Policy Memorandum that accompanies it, offers an accurate
and compelling case – in harmony with the Christie Commission’s findings and
recommendations – for “a decisive (later cited as a “fundamental”) shift toward prevention.”
In fact, it states that: “The Bill is founded upon this preventative approach.”

7. And yet, while the words ‘prevention’ and ‘preventative’ appear nineteen times in the
Policy Memorandum, they are not used even once in the actual Bill. This is not merely a
point about language. The Bill’s provisions are weighted heavily toward reacting once
harm to a child has occurred, i.e. when wellbeing needs are identified; children’s problems
become apparent outwith the family; and, ‘targeted interventions’ are triggered by meeting
agency/professional thresholds. WAVE completely agrees with the necessity of
responding as early, fully and effectively as possible to children experiencing significant
harm or adversity. But, reacting is not the only option.

8. One weakness of the proposed Bill can be found in the lack of a healthy balance
between policies, practices and approaches that prevent such needs, problems and harm
from compromising children’s lives and life chances – and those that are basically about
limiting the damage, cleaning up the mess and preventing further harm from happening.
Both are vital, but the balance between them must become much more equal in order for
the good intentions about – and the enormous potential savings and benefits of –
preventative spending to be realised in practice.

9. One potential way to improve the balance would be to amend Part 3 of the Bill (on the
aims and implementation of children’s services planning) to include provisions that give
equal weight and responsibility to primary prevention. WAVE Trust would be happy to
assist in the development of such a refinement to this part of the Bill.

10. Ensure that ‘preventative spending’ is reinforced by, and made accountable through
this Bill. Effective primary prevention would predictably reduce the need for some current
children’s services (and the planning/resourcing of them). It has been repeatedly observed
that the Scottish Parliament and Scottish Government publicly giving priority to
‘preventative spending’ resulted in a significant amount of ‘rebranding’ of existing public
and voluntary activities, programmes and resource allocations as now being ‘preventative’.

11. This Bill creates an opportunity to provide meaningful definitions of, and greater clarity
about, what does (and does not) constitute ‘preventative spending’. Provisions could be
added to the Bill that create a regularly occurring process that makes categorising,
analysing and reporting public expenditures as ‘preventative’ more accurate, transparent
and accountable.

12. Accord the earliest years of life (pre-birth to age 3) far more direct and meaningful
attention/action. Paragraphs 15-21 of this Policy Memorandum clearly, succinctly and
accurately make the case in favour of governmental action on, and investment in, child
wellbeing from the antenatal period through the first months and years of life. It rightly cites
the innovative and promising work currently underway in Scotland – from the Early Years
Collaborative, through refreshed maternity and infant nutrition frameworks, to the expansion of Family Nurse Partnerships.

13. And yet, as was the case with prevention, there is a wide gap between the excellent analysis/conclusions about the importance of the earliest years of childhood found in the Policy Memorandum and the actual content of this proposed legislation. In practical terms, this Bill treats early learning and care as beginning at the age of 3 (or 2, if the child is looked after) when public investment is increased from 475 to 600 hours per annum. There is silence about any new statutory duty in relation to the healthy development, preventative spending or the enhancement of child wellbeing during the years between the end of parental leave and the start of pre-school.

14. The point is not that every worthwhile public investment in, or governmental support for, the earliest years of children’s lives must have a statutory foundation. That would be exaggerating what primary legislation is intended to do or should be expected to accomplish. Nevertheless, especially during periods of economic adversity and financial constraints, a statutory duty establishes a clear line between what the public sector must do and what are merely good ideas to consider when resources are more plentiful. WAVE Trust strongly supports Scotland’s public sector investing more robustly and wisely in the earliest years of life as a matter meriting an additional statutory foundation (as is also true of children’s rights and GIRFEC). WAVE’s Age of opportunity report offers a detailed set of findings and recommendations that could be a source of improvements to this Bill.

15. WAVE’s international evidence gathering on, and analysis of, child maltreatment – i.e. abuse, neglect and living with domestic violence – reveals that most such harm to children begins during the earliest years of life (pre-birth to pre-school). This has led WAVE to create the 70/30 initiative to reduce child maltreatment by 70% by 2030. While ambitious, we also believe it to be an intensely practical and achievable commitment.

16. The foundations upon which the 70/30 work is being built are: ‘Every baby wanted and nurtured’ and ‘Every parent prepared and supported’. It should be noted that WAVE explicitly uses the term ‘parents’ to include mothers, fathers, kinship carers, step-parents, foster/adoptive parents and other de facto parents. We encourage this Bill to be equally explicit in its inclusiveness to ensure that it does not inadvertently establish a hierarchy among adults in the parenting role, in terms of their preparation and support. Young children rarely have any say in who will act as their parent, but all of them need those adults to be the best parents that they are capable of becoming.

17. There are elements of WAVE’s 70/30 initiative that might be worth considering for inclusion in the Bill, if the Scottish Parliament desires a stronger focus on prevention and the earliest years. For example, 70/30 is undertaking work around: preconception health; foetal alcohol harm; infant social/emotional development (e.g. attunement and attachment); parental mental health; informed choices and explicit planning about parenthood (rather than ‘falling pregnant’); and, formal and informal education about parenthood and child development for students (most of whom are prospective parents). This is a primary prevention approach that could complement and extend the existing aims of the Children and Young People (Scotland) Bill. Again, WAVE Trust is available to assist the Education Committee and/or the Scottish Government in considering how such elements could also become part of this legislation.

18. Meet the need for both more health visitors and improved professional development/support for this group of Named Persons. Within GIRFEC, the Bill
emphasises the Named Person element. WAVE agrees (as the Scottish Government’s accompanying documents state) that midwives should be first Named Persons and that there should be an overlap during the antenatal period with the health visitor who will become the Named Person upon that baby’s birth. WAVE suggests that health visitors be explicitly recognised as the Named Person for pre-school children in this Bill.

19. Equally important, WAVE recommends that this legislation ensure there will be a sufficient number of health visitors to properly carry out the responsibilities envisaged for them. Unlike the assumptions made in the Financial Memorandum accompanying this Bill, this will require more health visitors, lower caseloads and significant new pre-service and continuing education for this group of Named Persons. The relevant research is very clear and persuasive about the need not only for more health visitors, but also for this workforce to be better prepared, knowledgeable and skilled in both building positive, trusting relationships with mothers/fathers/carers and promoting/assessing the social/emotional development of young children.

20. Incorporate the entire UN Convention on the Rights of the Child into Scots law. WAVE supports going beyond the Bill’s limited approach. This will help ensure that all parties are likely to better understand all children’s rights and to take them seriously. For example, while Article 12 about the right of children and young people to have a say in decisions affecting them is well-known, others of particular relevance to child protection and preventing child maltreatment (such as Article 19) are rarely referenced or employed.

21. There is a window of opportunity open now in Scotland – particularly in relation to prevention and early years – that did not exist a decade ago and is not guaranteed still to exist a decade from now. Strong cross party agreement has been repeatedly expressed by the Scottish Parliament in favour of: preventative spending; anticipating and precluding child maltreatment from happening in the first place; and, giving priority to the earliest years of life.

22. Since the Children and Young People (Scotland) Bill is the most major piece of legislation likely to be considered by this Parliament, it represents an unequalled chance for these cross party agreements and priorities to be tangibly reflected in the laws of the nation. Truly ‘making Scotland the best place in which to grow up’ should start at the very beginning of every child’s life – and will be (and be perceived as) true, if and when Scotland becomes the least likely place in which to ever become burdened by child maltreatment. No legislation can guarantee that goal, but this legislation can still become even stronger in ways that significantly increase Scotland’s chances of success.

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This submission has been prepared by Worldwide Alternatives to ViolencE (WAVE) Trust: http://www.wavetrust.org

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July 2013
Collective supplemental evidence to the Scottish Parliament about the *Children and Young People Bill*

**Putting the Baby in the Bath Water:**
Give priority to prevention and first 1,001 days

1. This document offers the shared views and recommendations of a wide variety of organisations and individuals (listed at the end). All the signatories appreciate the Scottish Parliament and Scottish Government’s desire to enact legislation that will move our nation closer to becoming ‘the best place to grow up’. We all share that goal and understand that the *Children and Young People Bill* is the one major legislative proposal since the Scottish Parliament was created that directly focuses on children’s rights, children’s services and the wellbeing of children and young people. It represents a crucial and welcome window of opportunity. We propose five additional ways to make the most of this opportunity.

2. It is a complex *Bill* of many parts. Our view is that when seen as a ‘jigsaw puzzle’, one fundamental piece is missing. The *Bill* does not provide a robust statutory foundation for positive action during the first 1,001 days of life (from pre-birth to age 2).

3. There is a disconnect between the case made for the *Bill* in its accompanying Policy Memorandum and actual provisions proposed within the *Bill*. We think this *Bill*, as introduced, should be amended to connect the dots between its Policy Memorandum and the *Bill* itself. Its excellent analysis of the wisdom of investing in the earliest years through preventative spending is not reflected in what this legislation actually proposes to do.

4. We do not believe that primary legislation is the only, or always the best, way of advancing policy, practice and positive results. However, this Bill is premised upon the belief that a statutory foundation is required for Getting It Right For Every Child (GIRFEC), children’s rights, early learning and childcare, as well as the care system for looked after children and young people. *If this premise is correct, then it should apply equally to creating a strong statutory basis for positive, practical, prevention-oriented policies and practices that enhance the earliest months and years of childhood. Not to do so will predictably lead (over time) to the earliest years receiving lower priority and less support than other areas enjoying ‘must do’ status within public agendas and budgets.*

5. Crafting the specific language is a task for MSPs, parliamentary staff and the Bill team. We strongly recommend five areas for improvement within this *Bill*:

- **Government involvement in the initial training and continuing education of those working with the mothers/fathers/carers during the first 1,001 days of every child’s life should give priority to developing effective, positive, relationship-based support.** The Government should also ensure that sufficient numbers of very skilled, knowledgeable, relationship-focused supporters for mothers/fathers/carers are available and sustained for at least these first 1,001 days. **More and better** support is necessary.

- **Public bodies should be required to promote, and accord priority to, effective policies and actions that result in positive/secure attachment between very young children and their mothers/fathers/carers.** Universal services and supports, supplemented and extended as needed, should be designed and delivered in ways that result in the healthy emotional, social,
intellectual and physical development of all children from pre-birth to age 2 throughout Scotland.

- This Bill should require robust assessments/measures of the extent to which – and reasons why – positive/secure attachment and other key dimensions of healthy emotional, social, intellectual and physical development are (or are not) being achieved with all children (pre-birth to age 2) in Scotland. These assessments should create the evidence base that generates effective interventions benefitting young children and their families swiftly and fully.

- The Scottish Parliament should integrate prevention explicitly into the aims of children’s services planning already listed in the Bill. This should lead to meaningful planning for, and regular reporting of progress toward, a better balance between prevention and reaction by public bodies. Priority should be accorded to ‘primary prevention’, which keeps harm to young children in Scotland from happening in the first place.

- MSPs should act upon this unique chance to reinvent and reinvigorate the health visiting profession as an indispensable part of Scotland’s early years workforce.

6. None of these significant steps toward Scotland really becoming ‘the best place to grow up’ have been included in the Children and Young People Bill, as introduced. These are major omissions that could, and should, be corrected before this legislation is enacted.

7. These five recommended substantive improvements to the Bill are not just good ideas. There is an ever-expanding national and international body of evidence proving the case that what happens (or fails to happen) during the first 1,001 days of life has a powerful and enduring influence not only on the rest of every child’s life – but also on the wellbeing of our families, schools, communities, economy and society.

8. Put simply, there now is compelling evidence that: a) beyond genetics, parent/child relationships, in general, and the quality of attachment, in particular, shape brain development; b) such brain and central nervous development in very early childhood shapes lifelong attitudes and behaviours; and, c) these attitudes and behaviours shape everything from school success to criminality – and from employability to mental health problems or substance abuse.

9. Many of the signatories to this supplemental evidence have already provided such data and research findings to the Education Committee. Upon request, we can provide additional information – as well as specific suggestions about how and where to build our recommendations into this Bill. Prevention, preparation and support for the earliest years of life are matters that should no longer be subject to the changing preferences of, and pressures upon, successive national and local governments. Only as part of Scots law can these cornerstones of a healthy, fair and successful Scotland take their rightful place on the ‘must do’ list for public policy and governmental action.

10. In summary, we, collectively and individually, encourage the Scottish Parliament to literally ‘put the baby in the bath water’ by adding these missing elements to this Bill. Doing so will make preventative spending and pragmatic, positive action during the first 1,001 days of life a reality, rather than remaining a good intention outwith its boundaries.
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WAVE Trust coordinated this collective statement on behalf of the signatories. Please contact Dr Jonathan Sher with any questions, comments or suggestions at jsher@wavetrust.org or on 0744 333 1953.

September 2013
Summary of Young Scot and Scottish Youth Parliament Consultation Activity
Children and Young People (Scotland) Bill

Introduction and Background

Young Scot and the Scottish Youth Parliament (SYP) were approached by the Scottish Government to undertake a large scale consultation with young people aged 11-25 on the issues raised in ‘A Scotland for Children’. We undertook the following activities:

- A National Survey to gauge quantitative views and opinions from young people, based on the issues identified in ‘A Scotland for Children’. The survey received a total of 1,445 responses, both online and offline between 8th August and 17th September 2012.
- Seven Dialogue Groups between 31st August and 2nd October to gather qualitative views from specific groups of young people, including young homeless, young people in secure accommodation, young people with life-limiting medical conditions, LGBT young people, young Muslim females and young mums.

Prior to this, SYP and Young Scot conducted consultation activity on the draft Rights of Children and Young people Bill in autumn 2011. This included the following activity:

- Consultation session with Members of the Scottish Youth Parliament (MSYPs) at the October 2011 SYP National Sitting.
- An online survey and three local workshops on issues contained in the consultation, which saw a total of 94 responses.

The 2011 SYP Youth Manifesto ‘Change the Picture’, created following a mass consultation which saw 42,804 responses from young people, included a statement relevant to the Committee’s consideration of the Bill. This document summarises the findings of these consultation activities.

‘A Scotland for Children’ consultation activities

To enable analysis and comparison of the findings from the National Survey and the Dialogue Groups, the proposals in ‘A Scotland for Children’ were grouped into four themes.

Theme 1: Rights and Wellbeing of Children and Young People

- 53.2% of survey respondents had little or no awareness of the rights given to them by the UN Convention on the Rights of the Child, with 38.9% reporting that they had ‘never heard of the UNCRC before now’. Almost all participants in Dialogue Groups had not heard of the UNCRC.
- 60.8% of survey respondents agreed that the Scottish Government should ‘be required by law to make sure that children and young people are aware of the rights given to them by the UNCRC’.
• 62.1% of respondents thought that SCCYP should ‘be able to carry out an investigation on behalf of individual children and young people who contact him if their rights aren’t being respected.’
• 90.2% thought that the SHANARRI Wellbeing Indicators were a good definition of children and young people’s wellbeing.

Theme 2: Wellbeing and Public Bodies

• 63.9% agreed that ‘public bodies in a local area should be required by law to work together to ensure that children and young people’s wellbeing is improved’
• 53.3% thought that ‘public bodies should be required to put together and publish reports on how they’re making sure that they’re taking into account children and young people’s wellbeing when delivering services.’
• In the Dialogue Groups there was support for a duty for joint working between public bodies, but a mixed reaction to the requirement to publish a report. Some participants felt that it would require agencies to demonstrate how they are planning services with young people in mind, whilst others felt that public bodies reporting on their own activities would lie, would begrudge writing the report and would treat it as a ‘box-ticking’ exercise.

Theme 3: Caring for Children and Young People

• 50.9% thought that ‘changing the law to make sure there is a Named Person for every child and young person [was] a good idea.’
• When asked about the responsibilities a Named Person should have, the most options which were most popular with young people were: being the young person’s first point of contact if they are looking for advice or information about their wellbeing (chosen by 45.7% of respondents); being their parents’ or carer’s first point of contact for advice or information about their wellbeing (35.2%); to make sure their views are being taken into account when decisions about their wellbeing are made (33.9%) and to work with them, their parents and other agencies to co-ordinate and plan any support they might require (29%).
• The options of the Named Person being responsible for being a point of contact for other professionals who might have concerns about the young person’s wellbeing (25.6%) and deciding what information needs to be shared, balancing up a need to protect their wellbeing and respect their privacy (24.3%) were chosen by fewer participants than fictional options we included for comparison.
• Concerns were expressed in some of the Dialogue Groups regarding confidentiality and information-sharing. A number of participants had experience of situations where personal information had been shared between agencies and services or retained without their permission and discussions about private information taking place in the presence of their family members.
• The majority of the Dialogue Groups agreed that it was important that young people have the right and ability to influence the identity of their Named Person. One group in particular felt strongly that young people should have
the right to request a different Named Person if they don’t like working with the one they have been assigned.

Theme 4: Looked-After and In Need Young People

- 77% of survey respondents thought that having one single Child’s Plan would make at least some difference ‘in improving things for young people who are in need or looked after’.
- When asked what the most effective ways of involvement in the Plan’s development would be, the most effective option in the view of survey participants was to give young people and their families the right to be asked for their views, with a majority of all participants (53%) selecting this option. The next most popular options related to the plan being clear and easy to understand (‘have the right to ask for the information in a format or a way that they can understand’ with 38.3% and ‘be given a copy of the plan in a format of their choice’ with 33.5%).
- There was some evidence from the online survey of a balance of responsibilities being best, which was also raised by one of the Dialogue Groups. The group agreed that ideally the plan “should be 50/50 between professionals and the child and their family. Everyone should work together.”
- Survey respondents were roughly evenly split between those who thought the care leaving age should stay at 21 (36.4%) and those who thought it should be older (26.5% for 25, and a number of others choosing a range of ages older than 22, including a number who thought it should be available up to the age of 30 or ‘until it is no longer required’.)
- In the Dialogue Groups, there was strong support for the age of after-care support being raised to 25, with participants in one group commenting that they had been ‘dropped like a hot potato at the age of 21’.

Specific questions for young people with experience of being in care.

We asked online survey participants who indicated that they were in care or looked-after, how much difference defining corporate parenting, as described in ‘A Scotland for Children’, in law would make to the services they receive. In total, this represented just over 450 participants, although this may be slightly inflated by some participants misunderstanding ‘looked after at home’ which had a particularly high number of respondents (32.6% of the total). A further indicator of this may the high proportion of respondents declaring themselves to be ‘not sure’ (45% of those answering the question). To try and account for this, the percentages displayed below include the total of all answering the question, and the percentage of those selecting an answer other than ‘not sure’.

- The largest group felt that including the definition of corporate parenting, as set out in ‘A Scotland for Children’ in law would ‘make a big difference to the services I receive’ (21.4% of all answering, 39% of those with an answer other than ‘not sure’.) The next largest group felt it would be a good idea, but with a different definition (12.1% or 22.1%), with 8.8% (or 16.1%) feeling it would make a small difference.
- We asked respondents which public bodies or agencies they thought this might apply to personally. The most popular options were the NHS or Health
Board (29.1%), their local authority (28.3%), the Scottish Government (25.4%). Other options with some support included Children’s Hearing’s Scotland (15.2%), the Scottish Social Service Council (13.7%) and the Care Inspectorate (11.3%). 6.4% of respondents thought none of the options would apply to them personally, with a significant percentage ‘not sure’ (48.1%). On the whole, there seems to be a reasonable degree of support for including the definition proposed in ‘A Scotland for Children’ in law as a definition of corporate parenting. Given the range of agencies young people felt would apply to them personally, the list in the consultation document would seem appropriate.

- We asked those online survey respondents that indicated that they were in kinship care (29 respondents) whether there was a need for a change in the law so that a family member that cares for them is seen as having the same rights and responsibilities as their parents whilst they’re living with them. 45% felt that it should be with just 7% disagreeing. 48% were not sure.
- When we asked respondents whether there should be a change to help kinship carers access support from local authorities or other agencies, 48% were in favour with 10% opposed. 41% were unsure.

Rights of Children and Young People Bill consultation activities

Scottish Youth Parliament National Sitting

SYP ran a consultation session based on the proposals in the Rights of Children and Young People Bill with our MSYPs at our October 2011 National Sitting. 92 MSYPs took part in a discussion on the proposals, before answering a series of questions as follows:

- When asked how well they thought children and young people’s rights were respected in Scotland, 48% thought the current situation was ‘OK’, 24% thought they were well-respected and 28% thought children and young people’s rights were not well respected.
- 64% thought the law should ‘fully incorporate the UNCRC’, with 23% thinking it should ‘require the Scottish Government to have due regard to the UNCRC’.
- When asked what age the proposals should cover, 39% thought they should cover children and young people up to the age of 18; 14% up to ‘21 if they had been looked after’; 17% up to ‘21 even if they haven’t been looked after’; and 26% ‘another age older than 21’ (25 was commonly mentioned in open discussion).
- 54% thought the proposals would make ‘a small difference’ to the lives of children and young people in general, with 21% thinking they would make ‘a major difference’ and 26% ‘no difference at all’.
- 48% thought the proposals would make ‘a small difference’ the way Children’s Services were delivered; 13% thought they would make ‘a major difference’ and 26% ‘no difference at all’.

Survey and Workshops
Young Scot and SYP also devised questions for an online inquiry on the Rights of Children and Young People Bill. Young Scot hosted the survey and carried out three participative workshops, engaging a total of 94 young people. The findings included:

- Many of the young people who took part were unaware of what the United Nations Convention of the Rights of the Child (UNCRC) is, which is a large focus of this Bill. Therefore it made it difficult for them to fully understand how the Bill could make a difference and have a positive impact on their lives.
- Many young people did feel that this Bill could make some difference to how Children’s Services are delivered and how young people receive them but the workshop participants (young people from minority ethnic backgrounds, those who are looked after or accommodated, have a disability or have additional learning needs) did not see this.
- The concept of ‘due regard’ was something that they found hard to understand, especially as it only related to Scottish Ministers and not staff in public services. Rather than the UNCRC being given ‘due regard’ they felt that it should be fully incorporated by the Scottish Government as this will have more of an impact on the lives of children and young people.
- The Scottish Government propose to raise the age of young people covered under this Bill to 21 if they have been in care. There was agreement that it was important to support those who need it most but that it was desirable for all young people up to the age of 21 to be covered.

**SYP Youth Manifesto**

The Scottish Youth Parliament’s Youth Manifesto 2011-16, ‘Change the Picture’ was created by direct consultation with young people on a series of policy statements. The Youth Manifesto, which saw a total of 42,804 responses from young people shapes SYP’s policy and campaigning activity. Though several of the statements have some relevance to the issues raises, the following statement is of direct relevance to the Bill:

“**Young people are entitled to as much protection of their human rights as the law can give them. This means the United Nations Convention on the Rights of the Child (UNCRC) should be given more force in Scots law.**” 85% of respondents agreed with the statement, 6% disagreed with 9% ‘not sure’.

Young Scot and Scottish Youth Parliament
8 July 2013
Education and Culture Committee
Children and Young People (Scotland) Bill

Your Voice

1. This submission proposes a right of access to Independent Advocacy for Scotland’s looked after and accommodated children and young people.

2. Your Voice provides Independent Advocacy to vulnerable children and young people from North Lanarkshire, and is a member of the Scottish Government’s National Steering Group on Advocacy for Children and Young People.

3. The Scottish Government recently said that Independent Advocacy ‘is vital in…effectively supporting people to ensure their views are taken into account and that they are heard’ and is ‘a crucial element in achieving social justice’\(^1\). Scots laws on mental health\(^2\) and on children’s hearings\(^3\) reflect the importance of advocacy and entitle the majority of Scotland’s most vulnerable children and young people to use advocacy services.

4. Independent Advocacy’s function is to ensure that the child is at the centre in all decision making, a fundamental principle of Getting it right for every child\(^4\). Independent Advocacy is key to the wellbeing of vulnerable children and young people, and to the culture change that Getting it right requires. However, there is no mention of Independent Advocacy in the main bill for Getting it right, the Children and Young People (Scotland) Bill.

5. This Bill proposes a duty on Ministers to raise awareness and understanding of children’s rights. The provision of Independent Advocacy is a highly effective, practical means of raising this awareness and understanding.

6. Scotland’s flagship children’s rights legislation could easily incorporate a right to Independent Advocacy as a practice-level mechanism for safeguarding children’s rights. The majority of Scotland’s most vulnerable children already have access to independent advocacy\(^5\).

7. In Scots law, children and young people with learning disability or mental ill health have a right of access to Independent Advocacy\(^6\). There is reason to believe that the Children and Young People (Scotland) Act could incorporate a right of access to Independent Advocacy for looked after and accommodated children and young people within existing budgets. Across Scotland, advocacy was available to looked after and accommodated children and young people in 30 of Scotland’s 32 local authority areas in 2011-12, and in 29 of these authorities that advocacy was

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\(^1\) Consultation on Independent Advocacy – Guide for Commissioners: [http://www.scotland.gov.uk/Publications/2013/04/3733](http://www.scotland.gov.uk/Publications/2013/04/3733)


\(^6\) Footnote 2
independent\textsuperscript{7}. There is no evidence of a general cost difference between independent and non-independent advocacy.

8. For this new right to take effect, one local authority would need to move from non-independent to independent advocacy provision (based on 2011-12 data). The two local authority areas which had no advocacy provision for looked-after and accommodated children and young people did have spend on Independent Advocacy in 2011-12, for adults\textsuperscript{8}.

9. Recommissioning of advocacy services tends to take place routinely and in quite short cycles. The required changes could take effect within a short timeframe, at no additional cost, and with no new requirement on most of Scotland’s health boards and local authorities.

\textbf{Your Voice}
\textit{26 July 2013}

\textsuperscript{7} Footnote 5
\textsuperscript{8} Footnote 5
Introduction

1. YouthLink Scotland is the national agency for youth work. It is a membership organisation and is in the unique position of representing the interests and aspirations of the whole of the sector, both voluntary and statutory. This evidence does not claim to be the position of any one individual member organisation, or of all member organisations. Individual organisations may hold views which differ from the opinions presented here. We have consulted with our membership on this evidence, in line with our consultation response protocol, and the submission incorporates the views of those members who responded to the request for feedback.

General comments

2. Overall we welcome the Scottish Government’s commitment to furthering the rights and wellbeing of children and young people. However, the decision not to undertake a Child Rights Impact Assessment (CRIA) on the Bill should be reconsidered. A CRIA would help to ensure that children and young people’s rights underpin all aspects of the Bill. Moreover, it would help to identify provisions which could potentially infringe children’s rights.

3. The children’s services provisions do not consistently reference young people’s rights, which suggests that rights are being compartmentalised rather than seen as an over-arching framework. The Bill should include more about awareness-raising on its provisions and the considerable impact these are likely to have on the children’s and young people’s sectors.

4. We have some concerns around the role of the third sector, as the term ‘service providers’ is used inconsistently. When the Bill talks about planning and design, it seems to exclude voluntary sector organisations who do not deliver services under contract to a local authority, and only specifically includes them when discussing the delivery of services.

UNCRC

5. The Bill only requires Ministers to ‘keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC’ As currently worded, this duty is too weak and could create loopholes, and as such is unlikely to fulfil the Scottish Government’s policy objective of furthering the UNCRC and giving it a firmer basis in legislation.

6. Instead, we believe that the Bill should incorporate the UNCRC into Scots Law. This would provide the best means of supporting the wellbeing and rights of young people and their families, and would provide an overarching, consistent
approach to ensure that rights inform all areas of policy and practice. It would also send out a strong message about the importance that Scotland places on children and young people and their rights. We support the views of Together, the Scottish Alliance for Children’s Rights, in relation to this section of the Bill, and refer to their evidence for further detail.

7. Incorporation would also have the benefit of strengthening young people’s right to access educational, cultural and leisure activities which meet their needs (Articles 29 and 31). This would provide a basis for equal access to youth work opportunities across Scotland. All young people should be able to access a range of opportunities, regardless of where they live, but this is not currently the case, as noted in the Scottish Government’s evidence to the UK’s forthcoming report on the implementation of the UNCRC. Young people highlight youth work as a priority, yet the evidence shows that the availability of opportunities is inconsistent.¹

8. Regardless of the level of regard that is decided upon, the Bill should extend the duty on UNCRC to public bodies, not just Ministers. It is public bodies who deliver the services that directly affect young people’s lives – e.g. housing, transport, education – and this is where the opportunity to ‘make rights real’ lies.

Scotland’s Commissioner for Children & Young People (SCCYP)

9. We welcome the extension of SCCYP’s powers so that it can undertake investigations on behalf of individual young people. However, there are concerns over whether SCCYP has the capacity and resources to undertake such investigations. Moreover, this is a reasonably high-level means of resolving problems, and it is essential that young people also have access to means of redress that are local and less formal. There are also broader issues around young people’s ability to access Legal Aid and the availability of advocacy services which are suited to their needs.

10. The Bill only requires service providers to respond to SCCYP’s recommendations, which lacks teeth. Rights need to be enforced, otherwise there is a risk that they will become meaningless. At the very least, Parliament should be required to consider the Commissioner’s investigative reports.

Shared planning

11. It is unclear how the shared planning provisions will link to the Public Bodies (Joint Working) Bill. This Bill requires adult health and social care services to integrate, and also makes it possible to integrate children’s services. In some areas of Scotland, children’s services could end up being integrated, but not in others. This means that the shared children’s service planning provisions will have to link up to these new models – which could be complex as areas will take varying approaches to integration.

12. We are also uncertain as to how the Bill will link to Community Planning Partnerships and Single Outcome Agreements (SOAs). Community Planning Partnerships should ensure that SOAs are compatible with the children’s services plan, and that the plan is reflected in the defined outcomes and indicators of the SOA. The Bill requires local authorities and health boards to agree the children’s services plan. If shared children’s services planning is integrated with CPPs, however, then other organisations will also need to be involved in the planning. We welcome this, but the Bill will need to address this inconsistency.

13. Shared planning must also be linked to the Requirements for Community Learning and Development (Scotland) Regulations 2013. These regulations require education authorities to undertake an assessment of community learning and development needs in their area, and to publish three year plans accordingly. It is imperative that these assessments and plans take full account of children and young people’s needs, and that, in turn, children’s services planning takes full cognisance of the role and contribution of community learning and development.

14. The Community Empowerment and Renewal Bill aims to improve community engagement in community planning processes. If, as argued above, shared children’s service planning is to be part of community planning processes, then that will need to be reflected in this Bill.

**Named Person**

15. A much clearer understanding of how the Lead Professional and the Named Person roles will work together is required. In section 28, there is a need for a new clause which clearly sets out the relationship, underpinned by statutory guidance defining each role.

16. Young people should be made aware of who their Named Person is, and how to contact them. They should be able to have a say about who the Named Person is, and to challenge the allocation if they so wish. This is particularly important where there is a breakdown in the relationship. However, there needs to be a balance, and the guidance accompanying the Bill should provide clarity for both parties regarding the nature of the relationship.

17. There should be a set limit on the number of children and young people that any one Named Person is responsible for. Otherwise, caseloads could become unmanageable and the relationship rendered meaningless.

18. The financial memorandum assumes that for children and young people of school age, the Named Person will be a teacher. However, this is not explicitly stated in the Bill, which only requires the Named Person to be an employee of the ‘service provider’ (defined as the local authority). The legislation could be clarified so that voluntary sector organisations are included in the definition of service provider, and so that there is the option for professionals working with young people but who are not teachers to undertake the Named Person role, if appropriate and wanted by both parties. There also needs to be clarity over the arrangements for
providing the Named Person service during the school holidays when teachers may be unavailable.

19. This section does not take full account of the position of vulnerable young people who are disengaged from the formal education system, as provision for continuation of the Named Person service is only made for young people who have reached 18 and are still attending school or are in secure accommodation. What about young people who leave school at 16 and are not in education, employment or training? These young people would still benefit from a Named Person service. However it would not be appropriate for a school teacher to be the Named Person for a young person in this position. This is why the issue of which professionals can deliver the Named Person service needs to be more clearly addressed in the Bill. There should also be greater clarity over who would provide the Named Person service for young people from Travelling Communities.

**Child’s Plan**

20. Redress mechanisms are lacking from these provisions. If it is decided that a Child’s Plan is not needed for an individual young person, can they challenge this so that they can access the support they need? Review mechanisms are also needed in order to ascertain whether the Plan is working and what impact it is having in relation to the young person’s outcomes.

21. The Bill only makes provision for seeking young people’s views on their Plan ‘where reasonably practicable’, which does not go far enough, and is not the same as acting in line with those views. Instead, authorities should be required to obtain the child or young person’s views, in a manner that is appropriate for their age and maturity (although maturity should not be used as an excuse to disregard young people’s views).

22. The Child’s Plan must address transition. It should take full account of how service providers intend to support young people through transition periods, and should start to look at transition arrangements at an early stage, as this is more likely to result in positive outcomes.

**Information sharing**

23. The Named Person and Child’s Plan provisions require extensive information-sharing between service providers where a child or young person is assessed as having a ‘wellbeing need’. This is a significant lowering of the previous threshold, which requires the sharing of information when there is a risk of ‘significant harm’. The Privacy Impact Assessment identifies a number of high-level risks in relation to these provisions, including the possibility that information could be shared with the wrong people or disclosed/accessed inappropriately, and that inappropriate or incorrect information could be recorded and shared. There are also questions regarding how long this information will ‘follow’ a young person around. It would be inappropriate for this information to extend into adulthood. How and when files on individual young people will be closed and disposed of? Will this be after a set
period of time, or after the young person reaches a specified age, or will it be at the Named Person or Lead Professional’s discretion?

24. The Bill must do more to protect young people’s right to confidentiality and privacy, which they have under the European Convention on Human Rights (ECHR) in addition to the UNCRC. The views of young people and their families on information sharing must be sought and taken into account, and their consent given. The guidance accompanying these provisions must be clear and robust, and complaint mechanisms must be accessible and young-person friendly so that there is an appropriate means of redress. We support the views expressed by SCCYP, NSPCC Scotland, cl@n childlaw and CELCIS in their briefing on confidentiality and information sharing, which provides further detail on this issue.

Early learning and childcare

25. We support the provisions, but would argue that children and young people need support and access to suitable opportunities at all ages and stages of development, not just in the early years. It is crucial that non-statutory services such as youth work do not see their budgets cut in order to fund the early learning and childcare provisions.

26. Under the UNCRC, young people have the right to access educational, cultural and leisure activities which meet their needs (Articles 29 and 31). Youth work enhances learning and development and is highly valued by young people, who deem it a priority. However, the availability of opportunities for young people is inconsistent and patchy. Equal access to youth work opportunities across Scotland would strengthen this part of the Bill, as it would further young people’s rights while at the same time supporting parents by providing safe and appropriate activities for young people outside of school hours. The level of provision could be determined through statutory guidance.

Aftercare

27. The provisions on aftercare are to be welcomed as they place a duty on local authorities to provide support to care leavers up until their 26th birthday; however, we would seek to strengthen the provisions by amending the Children (Scotland) Act 1995, so that local authorities are required to offer through-care and aftercare to young people who have been looked-after at any point. Aftercare supports young people through transition periods and can help them to reach a positive destination. At present, if a young person is no longer being looked-after when they turn 16, there is no duty on the local authority to provide aftercare, even if the young person was removed from a care order only a few days before their 16th birthday. Given the extremely poor outcomes for care leavers, it is vitally important that we do all we can to support young people in this position.

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Counselling

28. Evidence suggests a real demand for this type of support, especially from parents of teenagers. However it would appear from the financial memorandum that this measure will only apply to families ‘with children in distress’. The legislation needs to be clearer about the eligibility criteria. Furthermore, we would argue that support is needed much earlier in the process before a child or young person gets to the stage of distress.

Wellbeing

29. We welcome the decision to place wellbeing on a more formal footing and to define wellbeing in relation to the SHANARRI indicators. However, the term ‘wellbeing needs’, which is used in the Bill in relation to the Child’s Plan, could be interpreted in a number of different ways by service providers. All children and young people could be considered to have ‘wellbeing needs’. It is also unclear as to how wellbeing needs could enforced in the way that rights can, and we have concerns that the term could effectively be meaningless.

YouthLink Scotland
24 July 2013
Local Government and Regeneration Committee

Committee Memorandum on the Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill

26 September 2013
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Local Government and Regeneration Committee

Remit and membership

Remit:

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:

Richard Baker
Cameron Buchanan
Stuart McMillan
Anne McTaggart
Stewart Stevenson
Kevin Stewart (Convener)
John Wilson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
David Cullum

Senior Assistant Clerk
Fiona Darwin

Assistant Clerk
Seán Wixted

Committee Assistant
Fiona Sinclair
Local Government and Regeneration Committee

Committee Memorandum on the Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) Scotland Bill

INTRODUCTION

The Committee reports to the Education and Culture Committee and the Health and Sport Committee as follows—

1. The Local Government and Regeneration Committee agreed to take evidence at Stage 1 on the Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill in relation to the delivery of local government services. Both bills include proposals for joint working between local government and public bodies. Our main focus of interest in the Bills is the proposals for integrating and sharing public services. The proposals for the integration of public services are inextricably linked to issues covered in recent and ongoing inquiry work, particularly the public service reform inquiry.

COMMITTEE INTEREST

Introduction

2. The Children and Young People (Scotland) Bill (“the CYP Bill”), aims to put children and young people at the heart of planning and delivery of services and ensure that their rights are respected across the public sector. Part 3 of the CYP Bill aims to improve the way in which services support children and families by promoting cooperation between planning children’s services, placing the child at the centre of this process.

3. The Public Bodies (Joint Working) (Scotland) Bill (“the PBJW Bill”), provides the framework which will support improvement of the quality and consistency of health and social care services through the integrated delivery of health and social care in Scotland. This framework permits integration of other local authority services with health services.

4. Our interested is in how the Bills, with related key aims, complement each other and work together to help deliver and support the Public Service Reform agenda.

Approach

5. We agreed to consider those parts of the Bills relevant to its remit. We did not issue its own call for evidence but included questions in the Health and Sport Committee call for evidence, as lead committee for the PBJW Bill. For the CYP Bill, we considered evidence submissions received by the Education and Culture Committee, the lead committee for this Bill.
6. We targeted specific organisations to supply written evidence given the Bills may have an impact on them. Written submissions were received from—

- Association on Directors of Education in Scotland;
- Argyll and Bute Council;
- Audit Scotland on behalf of the Auditor General for Scotland and the Accounts Commission;
- Coalition of Care and Support Providers (CCPS);
- Children in Scotland;
- Children’s Hearings Scotland;
- COSLA;
- GPs at the Deep End;
- Housing Coordinating Group;
- Midlothian Community Planning Partnership;
- NHS Ayrshire and Arran;
- Police Scotland;
- Royal College of General Practitioners;
- Scottish Fire and Rescue Service (SFRS);
- UNICEF UK, and
- West Lothian Community Planning Partnership.

7. We took oral evidence from relevant witnesses in a single evidence session on Wednesday 4 September 2013—

- NHS Ayrshire and Arran;
- GPs at the Deep End;
- East Ayrshire Council;
- North Ayrshire Council, and
- Housing Coordinating Group.

8. Finally, we then took oral evidence from the Cabinet Secretary for Health and Wellbeing, Alex Neil MSP (“the Cabinet Secretary”) and the Minister for Children and Young People, Aileen Campbell MSP (“the Minister”) jointly, on both Bills.

9. Our findings and recommendations are reported to the respective lead committees, and to the Parliament, in this memorandum.

FINDINGS AND RECOMMENDATIONS

Is there a consistency of approach across legislation?

10. Our recent inquiry into Public Services Reform in Scotland\(^1\) had a strong focus on partnership, joint working and shared services in line with the Christie Commission recommendations. A significant part of that work was looking at Community Planning Partnerships (“CPPs”) which are a key delivery agent in driving forward public service reform. During that inquiry we were informed that the forthcoming Community Empowerment and Renewal Bill (“CER Bill”) will include

provisions strengthening relationships and responsibilities of partners in CPPs in order to improve accountability and ultimately enhance joint working.

11. We expect to be the lead committee for consideration of the forthcoming CER Bill and have noted that the provisions requiring joint or integrated working in the PBJW Bill and the CYP Bill are inextricably linked. They all share the overarching purpose of public sector reform.

12. Evidence taken by us generally acknowledges the desirability of better integration of services while ensuring that the approaches taken to integration across the public sector remain compatible. Evidence highlighted actions that need to be undertaken to ensure that links and relationships between the new partnerships, CPPs and Single Outcome Agreements work.

13. Consultation responses on Part 3 of the CYP Bill referred to the need for a linkage to other legislation, in particular the PBJW Bill, the forthcoming CER Bill and recent legislation on self-directed support. There was concern that between the CYP Bill and the PBJW Bill, two processes for service planning were being established. The Royal College of Nursing suggested that this showed 'little strategic thinking' 2. Disability groups highlighted their particular concern for well integrated systems of service provision across age groups, policy areas and geographical areas.

14. Both the Cabinet Secretary and the Minster in evidence stated similar aims for their Bills, principally ‘improving outcomes for service user’ while recognising that the approach taken differed. The Bills, we were told, “complement one another” 3 and “will streamline structures and make it easier to see the focus for partnership working” 4.

15. The Cabinet Secretary in evidence told us that—

“...the umbrella for all of this is the Government’s guiding principles and strategic objectives, which include not only community empowerment and renewal but public sector reform, to ensure that better-quality services are delivered more cost effectively and timeously; patient-centred healthcare and social care; and, indeed, person-centred education. Those underlying principles are not restricted to my bill, Aileen Campbell’s bill or Derek Mackay’s community empowerment bill; they are universal and part and parcel of our broad principled agenda for changing Scotland for the better.” 5

16. COSLA noted clear links between the PBJW and the integration of adult health and social care services and suggested that it was possible “some local partnerships may wish to consider the inclusion of children’s services in those arrangements.” 6

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2 Royal College of Nursing written submission to the Education and Culture Committee on the Children and Young People (Scotland) Bill (Submission 83): http://www.scottish.parliament.uk/S4_EducationandCultureCommittee/Children%20and%20Young%20People%20(Scotland)%20Bill/RoyalCollegeofNursingScotland.pdf [Retrieved 19 Sept 2013].

3 Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2526.


5 Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2535.

6 COSLA written submission:
17. We support the drive for public services reform and recognise the desirability of taking a flexible approach, endeavouring to identify an approach which fits the particular policy.

18. Argyll and Bute Council noted—

“…implementation of joint working will require a major culture change for both the Local Authority and our NHS colleagues, there will need to be changes in behaviours and attitudes and a willingness to overcome obstacles, driven by strong and enthusiastic leadership. We need to improve on staff and community involvement and overcome risk aversion to achieve truly customer-led service delivery. We also face financial and logistical challenges, particularly given the rurality of our environment; however it is clear that unless we achieve both economies of scale and economies of skill, through this opportunity for joint working, we will not be able to meet the demographic-demand challenges of the future.”

19. We agree with the sentiments expressed in that comment. We would like to see a mechanism put in place to monitor and review the approaches taken to ensure that lessons can be learned across portfolios and best practice identified across the boards. We note the submission by Audit Scotland which states that “it is essential that services are able to work well together to respond to needs whilst making the best use of existing resources and delivering high quality services.”

20. In the following section we consider specific system issues raised in evidence.

System issues

21. A number of ‘system’ issues were raised in evidence which were categorised by one witness as “strategic planning systems”. These included the necessity for processes to communicate well with each other and about duplication of statutory frameworks requiring multiple plans for children.

22. We heard from NHS Ayrshire and Arran that—

“A significant amount of work needs to be done to resolve the systems that we have and to ensure that we are working to a common system and a common language. In Ayrshire and Arran we have AYRshare; we hope that that will take us some way down that road, but there is still a need for the organisations that we work with—education, social work and health—to have their own systems underneath all of that. That is an industry in itself and they all have different reporting mechanisms that work within that.”

http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/COSLA_CYPPBJW.pdf [Retrieved 19 Sept 2013].
Audit Scotland written submission to the Health and Sport on the Public Bodies (Joint Working) (Scotland) Bill, p41 (Submission PBJW0066):

Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2505.

Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2514.

23. In our recent work we have increasingly been hearing about benefits accruing from co-location of buildings and people. East Ayrshire indicated that “co-location of certain services has been a really positive move”.\textsuperscript{11} Although it was made clear that while co-location is helpful, the key is improved information sharing. This is true for both electronic communications, but better yet, and more simple, by professionals talking to one another. Co-location can of course assist this process, but is not a prerequisite for conversations and information sharing to take place.

24. Written evidence from GP’s at the Deep End noted that—

“Our faith in the instrumental efficacy of technology and proliferation of process-orientated tasks should not displace what is essential to effective integration working practices, namely sustained professional relationships that are built on mutuality and trust.”\textsuperscript{12}

25. Collaboration between GPs and other partners exists on many different levels. Working collaboratively promotes a collective determination to reach objectives where sharing information and experiences contributes to a more detailed local knowledge of individual patients and their families. This is vital to planning effective support services for patients, addressing their unmet health needs and anticipating when they will need to access specialized services.\textsuperscript{13}

26. The Cabinet Secretary indicated that he “would not like to prescribe that co-location is always a prerequisite to approving any delivery plan” before adding that “in the examples that I have seen, co-location is definitely very advantageous.”\textsuperscript{14}

27. \textbf{We welcome all moves towards co-location of services recognising local solutions are required to meet local needs.} We agree with the evidence of NHS Ayrshire and Arran that—

“good communication and professionals talking to professionals to ensure that we are talking the same language and that we understand the issues will be critical to the whole process.”\textsuperscript{15}

The role of GPs

28. The evidence we received from GPs at the Deep End highlighted the central and critical role that doctors can, and do, have with those affected by these Bills—

“General practice is the main public service that is in regular contact with virtually the whole of the general population, with substantial cumulative knowledge and experience of people’s problems and consistently reported high levels of public trust. These intrinsic features make General Practices the natural hubs around which integrated care should be based, with groups of General Practices supported, within the context of local service

\textsuperscript{12} GPs at the Deep End written submission: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/GPs_at_the_Deep_End.pdf [Retrieved 19 Sept 2013].
\textsuperscript{13} Ibid.
planning, to deliver integrated care in partnership with secondary care, area-based NHS services, social work and community organisations.”

29. In evidence the Cabinet Secretary was keen to stress the role that the health sector will play under the PBJW Bill and referenced work that had been commissioned by government to look at where the public health function would sit in future. **We encourage this approach and urge that the role of GPs as key partners is embedded into development, planning and delivery under both Bills.**

Role for the Housing Sector [Public Bodies (Joint Working) (Scotland) Bill]

30. In evidence to us the Housing Coordinating Group made an eloquent plea for greater recognition and inclusion on the face of the PBJW Bill as a partner within integrated authorities. Suggesting that the success of the new integrated authorities—

“…will largely depend on effective joint strategic commissioning to which the housing sector can make a crucial contribution. The current arrangements for involving the housing sector have not produced a consistent nor adequate approach and the Bill, as it stands, could result in an ‘integrated authority’ deciding not to involve the housing sector as a partner. To ensure that housing issues, and the housing sector, form an integral part of contributing to the delivery of national outcomes, the HCG urges that the contribution of the housing sector be recognised within the legislation, urging the new ‘integrated authorities’ to involve their strategic housing partners.”

31. Going on to say that—

“Housing providers offer varying levels of care and/or support to vulnerable adults and older people, and have long been committed to working with colleagues in health and social care to enable people to continue living in the community rather than institutional settings. There are examples where this has happened already and the Bill could promote this approach more widely across the country. The housing sector has much to contribute to this agenda.”

32. The Housing Coordinating Group expressed concerns that they may not be involved by new integrated authorities at the strategic level stating that “proper engagement with the housing sector in both planning and delivery will be required.”

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16 GPs at the Deep End written submission: [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/GPs_at_the_Deep_End.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/GPs_at_the_Deep_End.pdf) [Retrieved 19 Sept 2013].


18 Housing Coordinating Group written submission: [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Housing_Coordinating_Group.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Housing_Coordinating_Group.pdf) [Retrieved 19 Sept 2013].


20 Ibid.
33. The Cabinet Secretary agreed it was essential that the housing sector be involved, noting that there is a stream of work ongoing—

“…to best ensure that the housing function is involved at grass-roots level in the partnerships. It may not necessarily be the case that housing bodies are separately represented on partnership boards, but I think that the most important element is what happens in the localities underneath the partnership board area. That is where the close working relationship between health, social work and housing is vital.”

34. The Minister also emphasised the specific requirement to consult social landlords at section 10 of the CYP Bill when preparing a children’s plan.

35. **We agree that the housing sector need not be represented on partnership boards in all cases, but would expect that in situations when housing is likely to be central to the delivery of successful partnership working, they are involved at board level.**

**Measuring outcomes, costs and benefits**

36. Both Bills seek to set in place policies which have the aim of improving outcomes for users, carers and their families. The PBJW Bill seeks to plan and deliver quality and sustainable care services. Similarly the CYP Bill through early intervention and preventative spend is also intended to produce benefits both in the short and also increasingly the long term.

37. This has challenges in measuring outcomes and benefits as Jim Carle eloquently described—

“Public organisations are quite used to looking for short-term gains over one, two or three years, but we are not used to looking at someone who will be born today and the benefits for them or the reduction in their uptake of services in later life.”

38. Children in Scotland suggested “that current performance and reporting requirements are linked to earlier, specific policies and strategies and they may not reflect the shift of focus towards prevention, early intervention and the early years.”

39. Audit Scotland in their submission on behalf of the Auditor General for Scotland and the Accounts Commission suggested that looking ahead—

“Any outcome measures must be transparently reported and available to the public and this information should be used to drive improvement. National measures are useful but partners also need a mechanism for

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24 Children in Scotland written submission, paragraph 21: [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/ChildreninScotland1.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/ChildreninScotland1.pdf) [Retrieved 19 Sept 2013].
ensuring local needs and priorities are met and for measuring the difference that specific services are making to the individual.”

40. We explored how outcomes and benefits can be measured. Witnesses agreed that numbers are available but that they focus on costs, are generally short term measuring the impacts of existing services. It is “harder to look at less tangible issues such as wellbeing in communities and longitudinal things”.

41. The Cabinet Secretary in response noted that outcomes are not on the face of the PBJW Bill for two reasons—

“One is that outcomes change. The outcomes that you would set today would be very different from the outcomes that you would have set, say, five years ago. I suspect that they would also be very different from what they would be in five or 10 years’ time as service provision changes—how we do things in these fields changes continually. Therefore, if you put the outcomes in the bill, you would need to introduce primary legislation every time you wanted to amend them. The national outcomes will be set out in secondary legislation.”

42. We are content that outcomes should not be placed on the face of either Bill for the reasons given. We draw the Scottish Government’s attention to the Audit Scotland submission and we will, as part of our ongoing work in scrutinising benchmarking by local authorities, look closely at the measures introduced and crucially how they are used to learn from others and improve performance.

The role of CPPs

43. Since we published our original report on Public Services Reform the Scottish Government have advised that community planning has been significantly strengthened. Recent review work by the Accounts Commission for Scotland and Auditor General for Scotland, together with internal quality assurance processes, have identified a range of key strengths as well as some key areas for development which chime with some of our findings.

44. CPPs will have key roles to play if the overarching aims of these Bills are to be realised. We note the views of Audit Scotland, on behalf of the Auditor General for Scotland and the Accounts Commission for Scotland in their submission that—

25 Audit Scotland submission on behalf of the Auditor General for Scotland and the Accounts Commission, paragraph 17: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Audit_Scotland.pdf [Retrieved 19 Sept 2013].
26 Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2508.
27 Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2533.
“There is a need for a clear articulation of how these new arrangements fit with CPPs given the significant leadership and co-ordinating role for local public services that the Scottish Government/COSLA see for CPPs in their Statement of Ambition for Community Planning and Single Outcome Agreements.”

45. We heard in evidence how well the North Ayrshire Council CPP works with their integrated children’s services partnership. We note that the forthcoming CER Bill will seek to strengthen further the roles and responsibilities of partners in CPPs. In the meantime we consider it important that the Scottish Government provide clarity around implementation of the Bills and how they fit with the role of CPPs in the new partnerships and arrangements.

Consultation with service users and role of third sector

46. In our recent work we have taken a close interest in the extent to which service users are consulted and the methods used to engage them. We have been critical of engagement practices, in particular tendencies towards doing things to people as opposed to undertaking meaningful consultation. We note that neither Bill requires consultation at the level of individual service users although we were told by the Cabinet Secretary that for the PBJW Bill—

“The planning and delivery principles in the bill encapsulate the Christie commission’s principles by putting the person at the centre of service planning and delivery and require a focus on prevention and anticipatory care planning.”

47. We acknowledge that both Bills require levels of consultation and were pleased to be told that “it is essential that we have real engagement with local communities” and of the need “for communities to inform professional practice”.

48. The Minister indicated that guidance will make the role of the child and family “explicitly clear”.

49. The Cabinet Secretary responded to criticisms we received from the third sector, for example the Coalition of Care and Support Providers in Scotland, about the lack of community involvement in the PBJW Bill at the planning, design and delivery stages. He indicated that he envisaged the third and independent sector being represented on boards in every case. Adding that involvement in service redesign and consultation exercises “will be required”.

50. We note the determination of the Scottish Government to involve service users and the third sector at every stage, we recognise this need not be set out on the face of the Bills and expect guidance to make the roles of

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30 Audit Scotland submission on behalf of the Auditor General for Scotland and the Accounts Commission, page 2: [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Audit_Scotland.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Inquiries/Audit_Scotland.pdf) [Retrieved 19 Sept 2013].
all parties clear. We are interested in what role the National Community Planning Group will have in the preparation of guidance.

Transition arrangements for children to adult services

51. Consultation responses on the CYP Bill from both Capability Scotland and For Scotland's Disabled Children highlighted the need for good planning when young people move from children's services to adult services, or move between local authority boundaries. Young disabled people will use services planned under the CYP Bill and under the PBJW Bill.

52. We asked the Minister how the quite different mechanisms for integrating services will improve children’s transition to adult services. In response she suggested that the transition will in future be “far smoother” adding—

“I believe that there are two big differences between dealing with children and dealing with adults. First, there is the very crucial role that the education system plays with children and for which there is no equivalent for adults, particularly older people. Secondly, children by definition do not legally have the capacity to make decisions for themselves. However, adults do and I note that there are special arrangements for adults with incapacity. The fact that these two bills cross-reference each other means that we are singing from the same hymn sheet—and that is very important.” 37

Named Person provision [Children and Young People (Scotland) Bill]

53. Although not a matter falling within our remit, we received evidence in relation to Part 4 of the CYP Bill, the Named Persons provision. We draw to the attention of the Education and Culture Committee the exchanges which took place on the Named Persons provision at our meeting on 4 September. 38 In particular we highlight the concerns raised around time, burdens and resources on both health and education professionals in undertaking this role as well as questions around continuity of provision. We also draw attention to the outstanding issue of who should be the named person for children being home educated.

54. In drawing this to attention we are not expressing any view on the substantive issue.

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37 Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Col 2534.
38 Local Government and Regeneration Committee, Official Report, 4 Sept 2013 Cols 2511, 2513, 2517 and 2523.
ANNEXE A: EXTRACT OF MINUTES

19th Meeting, 2013 (Session 4), Wednesday 12 June 2013

Public Bodies (Joint Working) (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1, and agreed that it wished to consider those parts of the Bill relevant to its remit. The Committee also agreed not to issue its own call for written evidence, but to ask to include questions in the call for evidence being issued by the Health and Sport Committee, as the lead committee for Bill. Furthermore, the Committee agreed to take oral evidence on the Bill, after the summer recess, and to report its findings and recommendations to the lead committee, by way of a memorandum.

Children and Young People (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1, and agreed that it wished to consider those parts of the Bill relevant to its remit. The Committee also agreed not to issue its own call for written evidence, but to consider relevant submissions received by the Education and Culture Committee, as the lead committee for Bill, in response to that committee's call for written evidence. Furthermore, the Committee agreed to take oral evidence on the Bill, after the summer recess. Given the parallels in policy between the Bill and the Public Bodies (Joint Working) (Scotland) Bill - in relation to issues such as joint working and the development of shared services - the Committee agreed to take oral evidence from relevant witnesses, jointly, on both Bills. Finally, the Committee agreed to take evidence from the relevant Scottish Ministers on both Bills, and to report its findings and recommendations to the lead committee, by way of a memorandum.

22nd Meeting, 2013 (Session 4), Wednesday 4 September 2013

Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill: The Committee took evidence on the Bills from—

- Jim Carle, Child Health Commissioner, NHS Ayrshire and Arran;
- Dr Anne Mullin, GPs at the Deep End;
- Eddie Fraser, Head of Community Care, East Ayrshire Council;
- Carol Kirk, Corporate Director (Education and Skills), North Ayrshire Council;
- Mary Taylor, Chief Executive, Scottish Federation of Housing Associations, and Member of the Housing Coordinating Group;
- Alex Neil, Cabinet Secretary for Health and Wellbeing, Aileen Campbell, Minister for Children and Young People, Kathleen Bessos, Deputy Director Integration and Reshaping Care, John Paterson, Divisional Solicitor (Food Health and Community Care), Alison Taylor, Team Leader Integration and Reshaping Care, Philip Raines, Head of Child Protection and Children's Legislation, and Magdalene Boyd, Solicitor (Communities and Education), Scottish Government.
Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill (in private): The Committee considered the evidence received.

24th Meeting, 2013 (Session 4), Wednesday 25 September 2013

Children and Young People (Scotland) Bill and the Public Bodies (Joint Working) (Scotland) Bill (in private): The Committee considered a draft memorandum to the lead committees on the Bills. Subject to various amendments, the memorandum was agreed to.
ANNEXE B: ASSOCIATED WRITTEN AND ORAL EVIDENCE

Wednesday 4 September 2013

Oral Evidence

NHS Ayrshire and Arran;
GPs at the Deep End;
East Ayrshire Council;
North Ayrshire Council;
Housing Coordinating Group;
Cabinet Secretary for Health and Wellbeing
Minister for Children and Young People

Written evidence

NHS Ayrshire and Arran
GPs at the Deep End
North Ayrshire Community Planning Partnership
Housing Co-Ordinating Group

Other written evidence

Association of Directors of Education in Scotland
Argyll and Bute Council
Audit Scotland
Children in Scotland
Children's Hearings Scotland
Coalition of Care and Support Providers in Scotland
COSLA
Midlothian Community Planning Partnership
Police Scotland
Royal College of General Practitioners
Scottish Fire and Rescue Service
UNICEF UK
West Lothian Community Planning Partnership
On resuming—

Children and Young People (Scotland) Bill and Public Bodies (Joint Working) (Scotland) Bill: Stage 1

The Convener: Agenda item 5 is an oral evidence-taking session on two bills that are currently undergoing parliamentary consideration: the Public Bodies (Joint Working) (Scotland) Bill and the Children and Young People (Scotland) Bill. The bills are being considered by the Health and Sport Committee and the Education and Culture Committee, respectively.

Although this committee is not a formal secondary committee for the consideration of the bills, each of the bills might have a significant impact on the functions of local government in Scotland in relation to the delivery of adult and children’s services. In keeping with the Presiding Officer’s agenda for more focused and joined-up working by committees, we have decided to hold this one-off evidence-taking session on both bills with some key witnesses and to report our findings to the lead committees.

The aim of the session is to ensure that the bills are scrutinised from a local government perspective as well as to deliver joined-up scrutiny of cross-cutting legislation by the committees of the Parliament. This session will also inform the committee’s on-going work on the implementation of the Christie commission principles across the public sector in Scotland.

The witnesses have made written submissions, which members have before them. We have also received a further 13 written submissions from other organisations, and we have had regard to the written submissions that were given to the lead committees.

I welcome Jim Carle, the child health commissioner with NHS Ayrshire and Arran; Dr Anne Mullin, from the general practitioners at the deep end group; Eddie Fraser, the head of community care in East Ayrshire Council; Carol Kirk, the corporate director for education and skills at North Ayrshire Council; and Mary Taylor, the chief executive of the Scottish Federation of Housing Associations and a member of the housing co-ordinating group.

We are rather short of time, but do any of our witnesses wish to make a short statement?
Mary Taylor (Scottish Federation of Housing Associations and Member of Housing Co-ordinating Group): I would welcome the opportunity to do so. I will try to be brief.

It is clear that housing seems to be absent from the debate about the integration of health and social care, so we are delighted to have an opportunity to speak to the committee today. The housing sector—on whose behalf I am speaking; I am not here solely on behalf of the SFHA—supports the broad aims of joined-up working and improved outcomes in relation to health and wellbeing. We see ourselves as already making significant contributions to outcomes around healthy living and independent living, and positive outcomes for individuals and communities.

We support the broad thrust of what is happening, but the focus on the institutional and structural aspects of integration without reference to housing creates a risk that, in our view, this committee could do something to address. For example, in the papers for today’s meeting, there is virtually no mention of housing, other than in the paper from the housing co-ordinating group. That might be what you would expect, but I am here to make the case for revising the proposals as they stand in order to allow better strategic engagement with the housing sector, from strategic commissioning down to locality planning at whatever scale that turns out to be.

Unless the housing sector, which has experience of strategic planning and has the practical capacity and appetite to make a contribution on the ground, is involved, there is a risk that there will be poorer-quality and more expensive outcomes than might have been achieved with housing involvement at an earlier stage. That is not what we want for ourselves or for our older generations and relatives.

The Convener: That was an extremely useful contribution, so I will begin by following it up.

In the past, there were moves to create homes for life. However, we have seen various welfare reform changes, with more to come, which kind of impede that ambition—I am thinking of the bedroom tax and so on. Of course, this Parliament does not have powers to address those issues at the moment, which is probably an impediment to what you would like to see. Do you wish to comment on that?

Mary Taylor: I am not going to elaborate on the bedroom tax, in the interests of time. I could go on at great length, but all that I would say is that it does not completely undermine the sector’s capacity, although it certainly erodes it and we are working to address that.

There are all sorts of issues, particularly in the engagement of the housing sector in strategic planning through the local housing strategy and housing contribution statements, and, as I said earlier, it would be a risk to the objectives and goals of the integration exercise to miss the opportunity to involve housing in those things.

The Convener: Would it be fair to say that those changes do away with the concept of homes for life?

Mary Taylor: Not necessarily. There are a number of people affected by the bedroom tax, but there are also a number of people who are not affected by it, and there is no requirement on anybody to move as such. The English regime for housing policy is quite different from the Scottish one, and Alex Neil, when he was Minister for Housing and Communities, made it quite clear that there was no suggestion that the homes for life notion was going to be done away with.

I point out that, in speaking for the housing sector, I am speaking not only for social housing providers. Our housing co-ordinating group involves people who work right across the spectrum, including care and repair projects that help elderly owner-occupiers to undertake repairs to their homes and to engage the services that they need to keep them living independently in their homes. This is not just about social housing.

The Convener: Thank you. There are obviously high expectations for both bills and for what services can be expected to achieve. People are obviously looking for improvements once the bills come into place. When do you think that the benefits will start to be demonstrated?

Jim Carle (NHS Ayrshire and Arran): I believe that the benefits are already becoming manifest and have been for some time. Children’s services, in the broadest sense, have been working towards a similar integration agenda, understanding that by working together we can produce better outcomes for children and young people.

The challenge for us is measuring the impact of, for example, the early years collaborative over a longer period of time. Public organisations are quite used to looking for short-term gains over one, two or three years, but we are not used to looking at someone who will be born today and the benefits for them or the reduction in their uptake of services in later life. Children’s services have been working hard on that agenda, and we hope that the two new bills will go some way to supporting that new process.

Dr Anne Mullin (GPs at the Deep End): From a general practice perspective, working in deprived areas we have not seen benefits yet.

We are looking from a slightly different standpoint from other services that are represented on the panel. The deep end group
thinks that there is potential in the legislation, and we would like to explore some of that potential with the Scottish Government. We have outlined specific proposals in areas where we feel we could and should make a difference, but that needs to be supported with all the things that we have suggested in our proposals, such as the additional time for consultations that we need when working with very comorbid people in deprived areas; support for serial encounters in general practice, which are key to people’s holistic and long-term care; attached staff who are specifically named social workers, addiction workers and health visitors; and a nationally enhanced service for vulnerable children. The list goes on.

We have outlined those proposals, and members can access those documents. If the proposals are incorporated and recognised, we feel that general practice can play its part with our other partners in primary care.

**The Convener:** Having visited some doctors’ surgeries during the recess—everybody thinks that we take long holidays, but it is actually more work—I am aware of the need for increased consultation times. Surgeries that I visited made a plea for that, but I believe that your contract is governed by a deal with the UK Government. Is that correct?

10:30

**Dr Mullin:** There is perhaps some scope for that now. I am not involved in contract negotiations, which are for the British Medical Association, but there is some appetite to revisit the contract and consider what could be more appropriate for the national health service up here. The primary care services in Scotland and England bear no resemblance to each other any more. We feel that primary care is far more protected up here and we want to develop the role of general practice, particularly in the equalities agenda. We feel that it is very important for us to get involved.

**The Convener:** You would say that it would be best for the BMA to negotiate with the Scottish Government rather than the Westminster Government over many of these things.

**Dr Mullin:** That is my opinion, yes.

**Carol Kirk (North Ayrshire Council):** I concur with Jim Carle that we are already seeing a lot of the benefits. I chair our integrated children’s services partnership, which has representatives from the police, health, social services, housing and the voluntary sector. Over the years—particularly the past two years—we have seen a significant coming together in specific actions in relation to children. Before that, we would come together much more around a project.

The situation has now changed and we are looking at significantly different ways of working together. We are considering the co-location of health visitors within our early years establishments and we have established a multi-agency domestic abuse team, which is having a major impact on the number of children who are referred to the children’s panel. There is a lot of good joined-up working on specific issues such as those, and it is beginning to bear fruit.

Within the North Ayrshire community planning partnership, we are considering putting our children’s services into the health and social care partnership along with adult services. With my other hat on, I am the director of education and skills, and it does not cause me anxiety that health is no longer going to be part of the council as such. I think that the networks and the work on the ground are solid enough that it does not matter what headings we have on the management structures. If there is working together in an integrated and effective way, it matters less where the budget sits and where the managers and the reporting structures are.

Our partnership reports directly to the CPP, which takes a very active role—as does the chief officers group—in monitoring the outcomes for children. As Jim Carle said, that proves a challenge, as some of the short-term measures are not easy to define. In some of the work that we are doing, particularly with our youngest children, we are seeking long-term societal change and there is a challenge in that. I am happy to see the focus on integrated children’s services in the bill, but we need to be careful that we are not creating additional planning structures instead of refining the planning structures that we have both at the corporate level and at the level of the individual child.

**The Convener:** Thank you. It is refreshing to hear that a CPP seems to be working well in that regard. Getting it right for every child has played a part. Can you outline the importance of what that programme has achieved? Has there been any resistance within the CPP to a move to preventative spend?

**Carol Kirk:** GIRFEC has been a catalyst in changing a lot of the thinking. We have established local resourcing groups, which have been in place for four or five years. That has meant that multi-agency teams can provide a very quick response for children who need additional support but who are not at the level at which the reporter is approached and compulsory measures of care are sought. That has served us well both in keeping children out of compulsory care and in preventing situations whereby they are either out of school or out of the local authority. We have seen significant change around that.
A significant piece of work around GIRFEC has been carried out across the three Ayrshire councils. The information-sharing project, which is called AYRshare, started in South Ayrshire and has been rolled out to North Ayrshire. In essence, the three integrated children’s services planning groups came together to take things forward. We think that the approach will help all the agencies that are involved to get a handle on issues much more quickly and to be able to share information at that level.

GIRFEC has significant strengths and I think that people are signed up to it. There are issues to do with the planning around GIRFEC. We still have additional support needs planning, so there is sometimes an issue for us and for people in health about which plan to have for a child. There is still a bit of a cluttered landscape, but that will probably change over time.

I have not detected a reluctance in relation to preventative spend. However, there is significant difficulty in disengaging in relation to costs that are incurred for children who require a residential placement or intensive support, in order to invest in support further down in the early years.

Our joint chief officers and the CPP have made significant investment. We have put more than £1 million into preventative spend for young children, which meant that hard decisions had to be made elsewhere. There is not an unwillingness to spend in that way; it is just that there are groups of young people at the upper end of the spectrum who need continuing support, and it is difficult to disengage the money that is being spent on them so that it can be diverted elsewhere.

The message is beginning to get out that preventative spend is having an impact. It is having an impact on the number of exclusions from school and the number of young people whom we place outwith the authority, and there are fewer referrals to the reporter. There is hard evidence that spend is effecting change.

Mary Taylor: The convener asked when the benefits will materialise. As other people said, to some extent the benefits are already materialising.

That is true even in relation to housing planning and the development of new services that are preventive in essence and that aim to be low cost. That can happen where there are good relationships such as my colleagues on the panel have described. However, for every area where there are good working relationships there is an area—if not many areas—where working relationships are not necessarily good.

In particular, I cite the experience of the reshaping care change fund. Change fund plans have often been developed without reference to housing and without recognition that housing can achieve a huge amount upstream, at costs that are relatively low in the context of health budgets. Until relatively recently, people had not even got to the point at which they had the opportunity to sign off change fund plans—and that has happened only after a lot of pushing.

That is part of the argument for stronger recognition of the role that housing can play and for not leaving things to chance and the accident of good relationships.

Eddie Fraser (East Ayrshire Council): As members might have anticipated, I concur with most of what other witnesses have said. I emphasise the need for continued partnership working with housing in the new health and social care partnerships. We all know that there will be demographic change and that the number of older people will grow. Older people need appropriate housing so that they can continue to live in the community.

In my area, the focus of the council house building programme has been on houses for older people and how we can build houses that can support adults who have complex needs—that is the other area in which close partnership working with housing is needed.

We absolutely support de-institutionalisation and people living in their communities, but the fact is that we have individual support packages costing £200,000 dotted all over a town instead of some way of delivering them effectively through a type of core and cluster model. The issue is very much to do with the link between care and housing, and we in East Ayrshire have been able to deliver some successes in that respect.

I also agree that through housing we can get some early wins not just for organisations but for individuals. If by working through care and repair we can get simple things such as handrails installed without the need for elaborate assessment processes, people get what they need quickly and it proves cost effective. Indeed, one of our major successes has been the ability to put money into such areas through the change fund.

We have also been able to give money to the voluntary sector in order to give people practical support. Older people get depressed if they have to sit and look at an overgrown garden, and providing money to certain voluntary organisations that get young people into work and to do Scottish vocational qualifications while, at the same time, giving older people some practical support has proved to be a big success for us.

As for other early wins, co-location of certain services has been a really positive move. We have a number of good examples where such co-location has helped to increase communication. For example, the co-location of all our mental
health and learning disability services has given us immediate wins.

We have also been able to develop our intermediate care and enablement services to support early discharge from hospital and prevent admissions. Indeed, our statistics show how successful we have been in consistently improving the delayed discharge situation and, most important, in helping older people stay at home.

One of the positives of the proposed changes is that everyone will be clearer about how to access services. It will certainly help if, instead of general practitioners making referrals to a whole range of different people, we have clarity about who they can refer to. Having quicker decision making instead of decision making by committee will also make things clearer for us.

We also have to look at locality working, because we cannot have separate approaches to that issue in the various bills that are around at the moment. We have single communities, and we have to consult those communities together; after all, the priorities for those communities and how they want some of the national priorities to be implemented should come from them.

In that respect, it is essential that we have real engagement with local communities and that our local GPs are involved in that process. With the development of community health partnerships, we have lost the engagement of GPs in local healthcare co-operatives. We need GPs to come back into the process in a meaningful way that allows them to see the changes that are being made and to influence what is going on in communities.

The bills contain many opportunities, but it only makes sense to do this together on the front line at community level.

Anne McTaggart: Do our health colleagues foresee any practical issues for local authorities and health boards in trying to implement both bills together?

Jim Carle: Yes, there are a number of issues. Aligning both processes will be problematic and what could be regarded as strategic planning systems will give us issues. However, we are not going to run away from them; instead, we are going to grab and make the best of them.

There will be problems in ensuring that the two processes communicate well with each other. In planning for the implementation of the Children and Young People (Scotland) Bill, we need to be conscious of actions that are being taken on the other side. The recognition of the need to work better together did not come as early in the process as we would have wished, but it is now there and we are starting to build from that basis.

However, the fact that we are dealing with two separate processes that come from slightly different perspectives has been problematic, and it would have been much more helpful had they been brought together much earlier in the process.

An awful lot more could have been learned from the experience of children and young people’s services under GIRFEC and the processes that we have had to go through. Carol Kirk mentioned a number of gains. Under GIRFEC, we have had to look at culture, systems and practice. What we have done well is to change our culture and move away from our silo working practices towards having, on occasion, large meetings at which we work through all of our issues, recognise that we have more than one audience for anything that we are trying to deal with and move forward from that. However, we see the potential hurdles and are working towards dealing with them.

10:45

Dr Mullin: We could have a long discussion on where things could again go very badly wrong in Glasgow, as happened last time, so it is important to get it right this time. Purely from a GP perspective, one of the biggest lessons is on the need to engage directly with general practice. There are different models in Glasgow’s community health partnerships but, in Glasgow south, where I am from, we have a large established GP committee that engages with senior management to discuss policy and to consider local initiatives. That committee has minuted meetings, we report back to local colleagues and we have set up learning events and so on, so the situation is progressing. We feel that that should be built on, because it is a good way of implementing stuff that comes to us that sometimes seems very hierarchical and full of bureaucratic speech.

For example, we just want to know whether, if a GP identifies that someone has an unmet need, there is actually a service that the patient can be put into. At the moment, there is a mismatch. In our anticipatory care planning, we go out and visit housebound elderly people, who were traditionally chipped out of the QOF, or quality and outcomes framework. We now identify a lot of unmet need, but we do not have the resources to match the need. The discussion needs to be linked into the views of those experienced professionals who can inform the process about what needs to happen in parallel as the work progresses. We realise that that is not quick work—it is slow work—but it has to be a two-way thing.

Carol Kirk: There have been particular issues for health colleagues, who have some very complex arrangements. For example, I know that health representatives on our group often have
complex reporting arrangements that they need to go through. The two chief officers in the CPP have managed to cut through some of that, but a considerable amount of work is required. Therefore, there is potential to simplify a lot of what we do. We need to learn from the work on integrated children’s services in taking forward integration of health and social care, but we also need to learn from the work that has been done in adult services on how we create the momentum to make some of the changes. Perhaps a bit of joined-up learning still has to happen on that.

The Convener: Ms Taylor, do you want to comment?

Mary Taylor: We did not comment on the Children and Young People (Scotland) Bill at all. All that I would say is that, in the consultation on the integration of health and social care, children’s services and housing services were lumped together. Given that, in this committee, a focus on children’s services tends to exclude a focus on housing services, my only plea is that, in the absence of housing provisions in the Public Bodies (Joint Working) (Scotland) Bill, the committee should still pay attention to the housing dimension of the argument.

The Convener: I think that you have got that message across, Ms Taylor.

Eddie Fraser: We need to be careful that we do not lose anything in the changes. Community health partnerships currently have a responsibility for people from cradle to grave—for children, adults and older people. If we move to health and social care partnership committees that have a responsibility only for adults and older people, we need to be careful that children’s services are not left sitting without an easy strategic voice in community planning partners such as councils and health boards. In taking the agenda forward together and planning across both bills, we need to ensure that the change is for betterment and that there is no loss of strategic planning.

The Convener: Does Anne McTaggart want to respond to any of those comments?

Anne McTaggart: No, that is fine. Thank you.

Margaret Mitchell: Dr Mullin mentioned that GPs are doing good things but they sometimes run out of resources. One way of addressing that—I put this point to all the panel—would be to ensure that positive outcomes are assessed and logged. Particularly for local authorities, will the new requirements be integrated into benchmarking? How do you assess the outcomes—both positive and negative, as you can learn from the negatives, too—and then do things differently? Perhaps we can go round the panel and ask people about that.

We have heard positive things this morning about how people are sharing and integrating services, which is welcome news. Equally, we have heard good things from CPPs in the past that have not then materialised in local communities. It would be helpful to have a little more detail on how you will pin this down.

Eddie Fraser: We can evidence that through numbers. Sometimes, that is about the number of hospital admissions for people over 75. We can also evidence it through measures such as the number and proportion of our elderly population who stay at home. It is much harder to look at less tangible issues such as wellbeing in communities and longitudinal things. If we do preventative spend, we need to do it so that people do not need certain health and social care services in 20 years’ time. That applies to everything from the 50-year-old male with an alcohol problem to unborn children. We must look at how we do that, but it is sometimes difficult to do and it will be longitudinal.

We can use indicators. One issue is the extent to which we put together anticipatory care plans. I accept that, unless we follow those up, we have gone through a process without improving someone’s life but, if we can put such plans in place, we can show that we have improved someone’s life. We currently have indicators that show what the situation is, but it is much harder to capture the positive and tangible things that we will see as we take the approach forward.

Mary Taylor: First, some of our colleagues in the housing co-ordinating group are actively working with the outcomes group on the definition of the outcomes and on the targets and indicators that go with all of that. Our general view is that wellbeing is not sufficiently addressed and that there is still too much focus on the costs and impacts of existing services rather than on the services that there might be in future, but I do not want to rehearse that in greater detail now.

Secondly, some members of the SFHA have undertaken social return on investment studies into the impact of the benefit of services and those have shown the value of the services concerned. I can send you details of a project done by Link Housing Association, which showed that, for every pound that it invested in an advice and information service, it got £27 of value back. A study by Hanover (Scotland) Housing Association, Bield Housing Association and Trust Housing Association looks at the value of adaptations for older people. I can send you details of those studies.

The Convener: I think that we have seen them before, but we would be happy to see them again.

Carol Kirk: An issue with benchmarking is that it tends to be done against individual services and
individual parts of the service. For example, it is easy for me to benchmark in education and we are benchmarked to the hilt across other services. Schools benchmark against other schools and benchmarking is embedded in the system.

We are also good at benchmarking against children at the acute end, if you like. We are good at benchmarking around looked-after children and children who come into the child protection world. Benchmarking around children when there are issues of wellbeing or neglect is quite difficult and we tend to rely on input measures—on what we are doing to address the issue—as there is a conceptual difficulty in benchmarking the impact that we have. However, we have done quite a lot of work to try to identify indicators and we think that we are getting there by looking at the stretch aims of the early years collaborative. We are working back to establish how we get there and which measures tell us that we are getting there.

We have taken forward an investment in the Solihull approach to parenting jointly with East Ayrshire Council, South Ayrshire Council and NHS Ayrshire and Arran. We can measure how many people are using the approach and what impact they feel that it is having on their clients or the families that they deal with, but it is difficult to develop hard measures of what it is saving us and what difference it makes to the wellbeing of children. A lot of work is going on in that area, but it is still in its infancy.

Margaret Mitchell: Previously, you gave us a good example of something tangible when you referred to the number of exclusions from school going down, but I take the point that it is not always possible to give such examples.

Dr Mullin: We could look at the epidemiology of the statistics that are being collected on issues such as unscheduled admissions to hospitals and the number of days that elderly people spend in hospital before they get moved to a nursing bed. I agree that some of the more qualitative outcomes take longer to develop, because we often need to involve the patient or client in the research agenda, and that work requires commitment.

There are a lot of short-term measure outcomes, but there are not a lot of long-term measure outcomes. A lot of our evidence on early interventions comes from the Olds study, which is on-going. We have nothing similar to that here, but we were prepared to look 20 years down the line at what happened earlier, and how we prevented something from happening. Social return on investment was mentioned. Action for Children published an interesting report about a family intervention project in Northampton and the money that was saved if it intervened early on.

There are ways of pulling together research strands into an integrated proposal. The GPs at the deep end group is working on that. We are very keen to do that research, but it would need to be resourced to give us the staff and the ability. At the moment, there is very little evidence to show for all the work that is going on.

Jim Carle: The question is excellent and quite difficult to answer for a number of reasons, but I agree with what my colleagues have said.

GIRFEC gives us the model for change and a common language so that we can communicate with one another. However, we need to develop a number of areas in a much more integrated way. We need to develop better systems for looking at contribution and developing the contribution analysis that looks at all the different systems that contribute to the wellbeing of a child, at how we measure or quantify the benefits that those systems can bring together and the impact that they have on the child.

We need to move away from looking at children in the sense of talking about what we do with a five-year-old, for example, and pick up on the life-course approach. What do we do when we are preparing young people for parenthood? What do we do to help new parents to develop? How can the issues that were identified during the early years be carried forward into primary and secondary school? How do we measure that across the life course of the child? There needs to be some sort of longitudinal analysis of the benefits of the different contributions that are made across the different systems.

One key benefit of joint working is that we all come to the table with a number of different skills. A public health approach to the issues would be extremely beneficial and helpful. As a science, public health has the skills to enable us to develop a proper contribution analysis. We need to ensure that, once we have established an agreed way forward, we stick to it over a long enough period of time to see the benefits coming from the process in which we engage just now. For example, the early years framework is helpful and positive. It gives us a good focus on prevention and the early identification of issues and it gives us the opportunity to engage positively with parents.

One of the key things that has been missing from our discussion so far is the contribution that communities can make to the process. How many of the answers to the questions that the professionals are asking lie within communities? They can inform professional practice.

The combination of approaches from the different disciplines and sciences that are involved will help to take us forward. However, we do not yet have systems that can measure the total
contribution to an individual child over their life course, and that is very much what we want to have a look at and start to develop.

**Margaret Mitchell:** Finally, I want to ask about the implications of the provision in the Children and Young People (Scotland) Bill that every child should have a named person. Do the witnesses have concerns about that? Is it necessary? Sadly, some children have chaotic lifestyles, so many different public bodies might have to share information. It would be helpful if you could give us your views on that.

**Jim Carle:** In Ayrshire and Arran, systems are well advanced. We know that our health visiting team will pick up the role of named person for the under-fives. Our midwifery service will be working hard to take that forward.

If we are to do more than just implement the wording of the bill and instead try to achieve the bill’s aim of a much better society in Scotland, and if we are to improve our culture, we have to consider the amount of time that it will take to engage with more difficult families. We believe that that is a significant burden that will, I admit, build up over a period of time for our midwifery and health visiting services.

11:00

We have time to meet our statutory obligations and we are doing that fairly well, but if we are to have a conversation with a new mum around alcohol, how it relates to foetal alcohol syndrome and the impact that that could have on her, her children and her family over the later life course, that requires the development of a relationship. The current systems do not allow for that on every occasion. That approach also requires the development of good communication skills and the ability to raise difficult issues and agendas, which will be problematic.

We are asking the health visitor, as the named person, to co-ordinate all the information that comes from a number of services and pull it together to adopt a basic analysis to identify whether there are issues for the particular family, and then to pass on those issues. However, that will take a significant time, and we are not confident at present that the resources are there in those services to enable that.

We will be able to perform our services according to the word of the legislation, but that is not our issue. If you really want us to get behind the issues that exist and find resolutions for them, that will take time and resources, and at present they are not there. We expect to see investment being recycled, if you like, from the money that is being put into the early years collaborative later in the life course. We hope to see a reduction in the number of children who are looked after and accommodated, for example. However, we do not have systems that can identify where those savings have been made, because that will perhaps happen 10 to 15 years later. Then there are questions about how to recycle that funding back into the early years to continue the process and build on it.

There are a number of challenges in the issue that Margaret Mitchell asked about.

**Dr Mullin:** I agree with a lot of what Mr Carle has said. For the under-fives—pre-schoolers—it is logical to have health visitors as the named person. For schoolchildren, there is a massive gap. If a child becomes vulnerable at four or five, they will probably still be vulnerable at six, seven and eight, but I do not believe that there is enough capacity for that work to be on-going in a meaningful way in the education system.

I am quite relaxed about the named person idea. Most people have a named general practitioner, and GPs are often the source of referral for many different agencies that are looking for bits of information or have something to tell us about a family or individual. I would like the GPs—and GPs at the deep end have stated this desire strongly—to have far more involvement with vulnerable children and families. There needs to be something more substantive in general practice.

**Carol Kirk:** There is a challenge for a lot of services. We have discussed whether, given that probably more than 98 per cent of three to five-year-olds are in early years provision where they are seen every day by nursery practitioners, the named person would have been better situated in that place. We have raised that on a number of occasions.

We have been operating with GIRFEC and the GIRFEC guidance for some time, but it is not easy. In primary schools, the headteacher or the additional support needs co-ordinator, who is often either a depute or a principal teacher, usually gathers information from a range of agencies. That can be quite complex and time consuming, even before the information is looked at. The issue is not that there is a lack of willingness but that the capacity that is required to do that is a strain on the system.

However, that is perhaps not as much of an issue as that of looking at a young person with more complex needs and the transfer from that approach to someone being the lead professional. That tends to sit with social services, but that is not necessarily where it should sit. In some cases, it would be better for it to sit with the school or with a health professional. A bit more work is needed
on that to free up the time for the appropriate professionals to take that role.

In our consultation on the issue with parents, we had quite a kickback about the term “named person”. A number of our parent councils expressed significant concern about it, with people saying, “I should be my child’s named person.” When we explained the concept behind it, they were fine with it, but their initial reaction to the name was not one of unqualified approval. That is a challenge. We need to be explicit about what the role is and how it will be implemented. Some of the things around information sharing and the shared systems that will be used will make the process less onerous, but there is still an issue about how that comes together.

We are also concerned about the issue of who the named person is for children who are home educated. Local government education departments have no locus in that regard. With regard to health, who would take that forward for young people of primary and secondary school age? That is not explicit in the legislation. If we want to have a net to catch every child, we should be aware that there is a group of children that could slip through that net.

**The Convener:** Miss Taylor, this is not really your field.

**Mary Taylor:** That is correct. I have nothing to add.

**Eddie Fraser:** I concur with Carol Kirk. There is a difference between the most vulnerable children, who have a lead professional and multi-agency involvement, and the wider population of children, in relation to whom the concept involves allowing easy, named access to that world and enabling proportionate access to professionals rather than having people who are involved with them every day of their lives and who take over some of the role of parents.

**Margaret Mitchell:** Miss Taylor, do you have no locus in this? Some information about housing and what is going on in a home can be very pertinent. I would imagine the SFHA might have something to say in that regard.

**Mary Taylor:** A social landlord might have an understanding of what is going on in a home—that occurred to me as I listened to the responses. However, we have opted not to make any formal comment in that regard, and I do not want to simply react to things today. I think that the important point is that the landlord’s relationship is primarily with the householder, who will always be an adult, even if they are 16, 17 or 18.

**The Convener:** It would be fair to say that housing assistants throughout the country play a major role in finding difficulties and pointing them out, but they are unlikely to be the named person in this regard. That is the key thing. That is why I said that this was not really your field. I am sure that housing assistants and housing visitors will continue to do what they have been doing in this regard for many years.

**Mary Taylor:** It is not because we are not aware of chaotic lifestyles or whatever. I could elaborate on that, but this is not the place.

**Richard Baker:** Carol Kirk said that there was a potential to simplify structures to benefit services, which is something that we would all support. She also said that we need to be careful that we do not just create additional structures rather than simplify the structures in a way that will make the process easier.

Will the Scottish Government get that balance right? Obviously, we are also considering the Public Bodies (Joint Working) (Scotland) Bill. Is the balance right as the proposals stand, or does it need to be worked on further?

**Carol Kirk:** It possibly needs to be worked on further. Even in the Children and Young People (Scotland) Bill there is much more of a statutory imperative around children’s services planning, which I think that people would welcome, but I would ask why we need a plan on corporate parenting that sits outwith that. I cannot see why that would not be merged into the same plan, given that the plan is concerned with a range of vulnerable children.

With regard to issues around the individual children, there is a complex framework, not only for local government but for parents. GIRFEC provides a structured and helpful way of planning for a child, in the round, and I am supportive of that. However, it crosses over with, for example, a co-ordinated support plan for a child who has complex needs. The additional support needs legislation does not sit entirely comfortably with the guidance around GIRFEC. It is possible to merge them, but it would still involve having two statutory frameworks, which does not make sense to professionals working in the area and probably makes less sense to parents.

**The Convener:** I return to a point about GIRFEC. I mentioned that I visited some doctors’ surgeries during the recess. I am interested in systems that do not talk to one another and which complicate the spread of information. What are your experiences of that? Could a bit of common sense and a bit of gumption be applied to deal with some of that? Do we overly complicate such systems?

**Jim Carle:** Yes, it is a real issue. The professionals are good at communicating with one another, but if we want to deal with the issues that are on the table, we need to have a better look at
that issue. I will pronounce this really carefully, but the Scottish Government needs to GIRFEC itself; it needs to look at the interrelationship between different bits of legislation, how they cut across each other and the number of demands that have been put on different aspects of professional organisations.

We do not need conflicting legislation. We do not need legislation that tells us to report to 16 different organisations, all on the same subject. A number of issues that we are dealing with in local authority and health board areas come from that source.

A significant amount of work needs to be done to resolve the systems that we have and to ensure that we are working to a common system and a common language. In Ayrshire and Arran we have AYRshare; we hope that that will take us some way down that road, but there is still a need for the organisations that we work with—education, social work and health—to have their own systems underneath all of that. That is an industry in itself and they all have different reporting mechanisms that work within that.

Somebody who sits in my position frequently answers the same questions to a number of different aspects of the Scottish Government. Again, that is about public money and public time that could be used better and more effectively on the issues that we have to deal with—issues that the other members of the panel have outlined so well.

The Convener: The term GIRFEC has to be said very carefully—I nearly did not say it the right way there.

Dr Mullin: Sensitive data sharing is a real issue for general practice and other agencies: how you filter what you talk about informally, in corridor chat and various other ways, and what you are prepared to put down on paper.

With child protection issues, it is fairly straightforward. I do not think that many GPs wring their hands over that. If they suspected anything, they would divulge that information quite readily. However, we are talking about the majority of vulnerable children in this country—probably about 20 per cent of 1 million children—who have unmet needs. The sharing of information around the subtleties of parenting and all the issues around deprivation and so on is a big piece of work that still needs to go on because some parents are very reluctant—naturally enough—for you to speak to other agencies about their own personal, private lives because that impacts on their parenting skills.

The only way round that is for extensive work to be done between the front-line GPs and social work, which is probably the main referral agency if you are talking about catapulting into the child protection system or legislative intervention. Otherwise, the majority of children who are vulnerable in general practice will just be signposted to other services for support; they are not being signposted into prosecuting the parents because they are battering their children. We are talking about parents who are not coping, for whatever reason.

A lot of such information comes into the consultation and the issue is how that is filtered. It is about experience—having experienced GPs who have met a lot of children and families in their lifetime—but it is also about having the work supported within the GP contract.

The Convener: I ask everyone to be brief, because I am hoping to get another question in. Ms Kirk, please.

Carol Kirk: That is right. The particular issue is not at the child protection end; it is the very large group of children for whom poverty and difficult home circumstances are impacting. We need to get much better at direct communication around that issue that possibly does not involve social services.

With AYRshare, one thing that we have considered—in fact, we had a meeting about it yesterday—is how GPs can have automatic access to the system. They might have a wee concern because they do not feel that some information can be shared of its own right but, if they have access to what other professionals have put on the system, that maybe builds a picture and allows them to say that they have a real concern. Achieving that level of shared information as easily as we can is a real issue for us.

11:15

Eddie Fraser: One of my responsibilities is to run out-of-hours social work services across Ayrshire. Working with three social work systems and trying to get out-of-hours health information is a difficult challenge. Improved information sharing, whether it be electronic or, better still, just talking to each other, would be a real move forward. That is where co-location comes in. I mentioned some of the services that we have co-located, such as mental health and learning disability services. In that situation, a social worker will just go along to the learning disability nurse and say, “Will you come out with me today and see this?” That communication happens and it works. On another level, we need to consider how to develop electronic information systems. I know that, through the Public Bodies (Joint Working) (Scotland) Bill, some money is being made available to move that on, but that has been a challenge for us for at least the past decade.
**John Wilson:** I want to follow up on a point that Mr Fraser made earlier, although my question has been partly answered in the previous round of answers. Mr Fraser referred to the fact that GPs are not as actively involved in the community health partnerships as they could be. My concern about the named person and protecting vulnerable young people is about how we ensure a smooth transition from pre-school to the school period and that the appropriate professional is the named person. For pre-school, that person could be the health visitor, but when the child starts school, it could be a social worker, a teacher or someone else. Might that give rise to issues? We must ensure that every child has a named person who can not only gather information but give it to other professionals to ensure that the child is protected.

**Eddie Fraser:** At a very basic level, one measure of success is that the child and family know who the named person is. Sometimes, in my service, when someone is asked whether they have a social worker, the answer will be yes, but they will give the name of somebody who left two years ago. Sometimes, the answer will be no, but we know that the person has a social worker. There are real issues about whether the role of named person will fulfil its function. You are right that children move through systems. If the approach is to be successful, who the named person is must be clearly communicated to the child and family. Families continually tell us that the lack of continuity in the people who support them is a real issue. I know that GP colleagues will say that, a lot of the time, the continuity comes through their practice.

**Carol Kirk:** The key to the issue is good relationships between early years establishments and health visitors. Health visitors will have a huge case load of children for whom they are the named person. When those children transit from the early years establishments to school, the named person will become someone in the school although, if the child is very vulnerable, the health visitor might retain that role until an appropriate time for handover. The key issue is to ensure that transition meetings take place and transition plans are produced for any children about whom a health visitor has a concern. Linking the health visitors directly to the early years establishments and involving them in the transition to primary 1 is the key way of ensuring that that happens. Another key issue is ensuring that, when a child moves into primary 1, the parents know who the named person is.

**Mary Taylor:** I wanted to come back on the previous question, but I am happy to wait until the end if you want.

**The Convener:** Fine. Dr Mullin?

**Dr Mullin:** I do not want to go into too much detail about the named person for over-fives. That is still something that has to be worked out. We are still often the referral point for older children, because agencies have withdrawn for whatever reason, because they do not need help any more, or because they have become vulnerable again. Because most people have a named GP, services or people will come to the GP. There is a big schism between education and general practice; there is not enough dialogue there.

The deep end has talked about integrated working and attached workers, but the only way to make any of the systems work is to have integration of communication. It is about professionals being able to communicate with and understand one another, and child health in general practice has been peripheral to many of those developments, although we are often the central point of referral for many agencies. The deep end has a clear view on that, which is outlined in our proposals.

**Jim Carle:** I agree 100 per cent with what Carol Kirk said. We need to align health visitors carefully with early years establishments, and a good relationship needs to be built and maintained in that process. My concern for health visitors is about the resource requirements and the additional burden that that will bring. GPs are the critical partners in most of what we do in children’s and young people’s services. They are the pivotal point around which families revolve, so communication systems must be developed well to support their practice. If there is a hierarchy within the system, they are among the most valuable partners.

Our difficulty is in assessing what happens with health visitors beyond the age of five, when the burden of being the named person is placed on our education colleagues, who must have good support systems in place. We are new to the whole process. We do not yet have a huge amount of experience of those transition arrangements, but good communication and professionals talking to professionals to ensure that we are talking the same language and that we understand the issues will be critical to the whole process. The strength behind that is that we have well-established communication frameworks where we can raise those issues, and we will find shared resolutions. However, the problems should not be underestimated, either in terms of the additional resource required or in terms of the critical nature of the relationship between health visitors and early years establishments.

**The Convener:** Miss Taylor, I shall let you come back very briefly.

**Mary Taylor:** On the general issue about systems not talking to one another, there is an
With regard to the other side of the operational information, I know that there are projects in Glasgow where housing associations are actively working with police and fire services to ensure that they get effective data sharing, information sharing and knowledge sharing at a local scale, so that they can tackle problems on a preventive basis. They have been able to document the extent to which they have saved lives and extensive budgets on vandalism, fire damage and other things.

However, I return to the point that I made at the beginning, about strategic information. There is a whole lot of information around strategic planning that relies on decent data sharing and integration of practice around strategy, and that is where housing can make a significant contribution—but only if it is required.

**John Wilson:** I have no further questions.

**The Convener:** I thank the witnesses for their evidence, which has been useful.

11:24

*Meeting suspended.*

11:33

*On resuming—*

**The Convener:** We move to our final panel. I welcome from the Scottish Government Alex Neil, the Cabinet Secretary for Health and Wellbeing; Aileen Campbell, the Minister for Children and Young People; Kathleen Bessos, deputy director for integration and reshaping care; John Paterson, divisional solicitor for food, health and community care; Alison Taylor, team leader for integration and reshaping care; Philip Raines, head of child protection and children’s legislation; and Magdalene Boyd, solicitor for communities and education.

I ask the cabinet secretary to make opening remarks.

**The Cabinet Secretary for Health and Wellbeing (Alex Neil):** Thank you for inviting Aileen Campbell and me to make statements and answer questions. I will confine my remarks to the Public Bodies (Joint Working) (Scotland) Bill, which deals with the integration of adult health and social care. The bill’s purpose is to provide a framework for the integration of health and social care, with the aim of improving outcomes for service users, carers and their families. That is at the heart of our policy.

We are legislating for national health and wellbeing outcomes that will underpin the requirement for health boards and local authorities to plan effectively together to deliver quality and sustainable care services for their constituent populations. It is important that the bill aims to bring together the substantial resources of health and social care to deliver joined-up, effective and efficient services for the increasing number of people with longer-term and often complex needs, many of whom are older.

The bill requires health boards and local authorities to establish integrated arrangements through partnership working and it requires statutory partners to integrate via one of two models—delegation to a body corporate that is established as a joint board, or delegation to each other as a lead agency, which involves three possible models. Health boards and local authorities will be required to delegate functions and budgets to the integrated partnerships, and secondary legislation will set out such matters and will cover adult primary care and community care, adult social care and aspects of acute hospital services.

Integrated partnerships will be able to include other services, such as children’s services, when a local arrangement is made to do so. That already works well in areas across Scotland, such as West Lothian and Highland.

Each partnership will be required to establish locality planning arrangements, which will provide a forum for local professional leadership of service planning. Integrated partnerships will also be required to prepare and implement strategic commissioning plans that will use the totality of resources that are available across health and social care to plan for local populations’ needs. It is important that professionals, service users, GPs and the third and independent sectors will be embedded in that process as key decision makers.

The bill is in the context of public service reform. Alongside the Children and Young People (Scotland) Bill, which Aileen Campbell is leading, it is part of the Government’s broader agenda to
deliver public services that better meet the needs of people and our communities. The Public Bodies (Joint Working) (Scotland) Bill provides a legislative framework for partnership working at strategic and local levels that involves professionals, service users and partners. The planning and delivery principles in the bill encapsulate the Christie commission’s principles by putting the person at the centre of service planning and delivery and require a focus on prevention and anticipatory care planning.

As for why we need to legislate, my predecessor, the Deputy First Minister, proposed to Parliament in December 2011 the introduction of the bill, which had cross-party consensus. We are all aware of attempts in the past to integrate the services, with greater or lesser success. Underpinning the process with a legislative requirement is essential to achieving our objective.

We are not starting with a blank sheet. In many areas across Scotland, bodies are already working in partnership to deliver integrated services. We have considered the evidence from across the UK and we are mindful about applying it in Scotland. However, I am clear that, to achieve consistent progress, it is necessary to set out in legislation a framework that is not too prescriptive and will deliver the necessary changes to meet the future demand on services. I welcome the opportunity to provide further clarity on the bill to the committee.

The Convener: Does the minister have anything to add?

The Minister for Children and Young People (Aileen Campbell): Yes. Good morning and thank you for inviting me to give evidence on part 3 of the Children and Young People (Scotland) Bill—on children’s services planning—which was introduced in Parliament on 17 April. The bill is fundamental to securing the Scottish Government’s aim of making Scotland the best place in the world to grow up in. Through the bill, the Scottish Government aims to ensure that children’s rights properly influence the design and delivery of policies and services. The bill aims to improve how services support children and families, to strengthen the role of early years support in children’s and families’ lives and to ensure better permanence planning for children and their families.

The report of the Christie commission on the future delivery of Scotland’s public services highlighted that services must better meet the needs of the people and communities that they serve. In welcoming the report, we set out a vision of reform through early intervention and preventative spending, greater integration and partnership locally, workforce development and a sharper and more transparent focus on performance.

The Children and Young People (Scotland) Bill will be fundamental to our achieving those ambitions on rights and services. It aims to put Scotland at the forefront of providing services that give children, young people and their families what they need and deserve, and find better ways of offering better life chances to each and every child in Scotland.

I am delighted to have an opportunity to speak to the committee about part 3 of the bill, which is on children’s services planning. In recent years, there has been increasing integration in how public bodies develop, plan and operate services to support children and young people. However, unless services work together, there is a danger that something important will be missed and a child or young person’s wellbeing will suffer. Children and young people need not just coordinated services but services that share an holistic approach to wellbeing and early intervention. Children deserve services that routinely and consistently consider the full spectrum of their needs.

Part 3 sets out the duty of local authorities and health boards, with the assistance of other public bodies and third sector organisations, to work together to develop joint children’s services plans every three years. The intention is that bodies that are responsible for expenditure and for planning and delivering services will work together to improve the wellbeing of all children and young people in their area.

Currently there is no requirement for public bodies to report collectively on how the lives of children and young people are improving. To give the public and children and young people a full picture of how wellbeing is being promoted, supported and safeguarded, local authorities and health boards will report each year on the extent to which they have achieved the aims of their children’s services plan. That will enhance the implementation of getting it right for every child and make a direct and accountable link for the public between local services and outcomes for children and young people.

I hope that I have given the committee some useful background information. I will be happy to take questions from the committee on part 3.

The Convener: Thank you, minister. The evidence that we heard today on the difference that GIRFEC has made was mainly positive. However, a few things cropped up, one of which was the perennial question about communication and systems that do not talk to one another. How will we tackle the issue, which causes great difficulty sometimes?

Another interesting issue that was raised was how we deal with named persons for children who
are home educated, given that an educationist would normally be the named person for a child of school age. Will you respond to those points, minister?

Aileen Campbell: It is good to hear that you had such a positive session on GIRFEC. As you know, GIRFEC has been around for a while. The bill provides the opportunity to embed the approach further, putting the child at the heart of the design and delivery of services.

You asked about communication. Part 3 is about ensuring that joint working happens. I think that this morning the committee heard good examples of joint working and the strong relationships and good communication that are crucial to the delivery of services that a child or family needs.

There is the joint services element of the bill, and we want a reporting mechanism that brings together local authorities and health boards. We will ensure that such an approach is standardised and embedded in the bill, to ensure that there is an holistic approach that reflects the child’s holistic needs and promotes the child’s wellbeing.

As the bill progresses through the Parliament, I know that the Education and Culture Committee, which is the lead committee, will take a strong interest in the named person aspect, because of the issues that have arisen in that regard. From our point of view, the named person is a big part of the GIRFEC approach. It is about ensuring that services are delivered consistently, that families have a point of contact and that support is in place.

We are well aware of the issues that have arisen in relation to home-educated children. We are working with stakeholders to ensure that, through guidance for example, procedures are put in place to reflect the parental choice to educate a child at home—it is right that there is such a choice, because the parent is the person who knows the child best. We will ensure that that is reflected in the bill and in the guidance.

The Convener: Mary Taylor, the chief executive of the Scottish Federation of Housing Associations, told us this morning that the housing sector is not really taken into account in either bill. She thinks that the sector has a major part to play in integration. Will you comment on that, cabinet secretary?

Alex Neil: Absolutely. I agree with Mary Taylor that it is essential to involve the housing sector, particularly the social housing sector. Many of the issues that we are dealing with, whether delayed discharge, aids and adaptations or a range of other issues, clearly require the involvement of housing associations and local authority housing departments. We have a stream of work going on, which I commissioned a few months ago, to see how we can best ensure that the housing function is involved at grass-roots level in the partnerships. It may not necessarily be the case that housing bodies are separately represented on partnership boards, but I think that the most important element is what happens in the localities underneath the partnership board area. That is where the close working relationship between health, social work and housing is vital. Both the ministerial steering group and the bill steering group are looking at how best to achieve that.

The Convener: Minister, do you want to follow up on that?

Aileen Campbell: Yes. Section 10(1)(b)(ii) in part 3 of the Children and Young People (Scotland) Bill explicitly refers to consulting “such social landlords as appear to provide housing in the area of the local authority”.

when the local authority is preparing a children’s services plan, so there is explicit recognition of the role that housing can play in a child’s wellbeing.

The Convener: Thank you.

Margaret Mitchell: Good morning. It is clear from the very comprehensive opening statements from the cabinet secretary and the minister that both bills contain provisions that require consultation on their respective shared services provision. Section 6(2)(a) of the Public Bodies (Joint Working) (Scotland) Bill requires consultation to be with “such persons or groups of persons appearing to the Scottish Ministers to have an interest”.

Section 10(2)(a) of the Children and Young People (Scotland) Bill requires consultation with organisations that “represent the interests of persons who use or are likely to use any children’s service”.

However, neither bill appears to require consultation with individual service users.

Despite your emphasising that the provisions are based on the Christie commission recommendations and that we are putting children at the heart of the process, the fact of the matter is that, as you have explained it so far, there does not seem to be a requirement to consult the child or the young person.

Aileen Campbell: As Margaret Mitchell correctly notes, the ethos of the bill is getting it right for every child and putting the child at the centre of service design and delivery. The bill mentions setting out guidance on how consultation might take place on potentially bringing into the
planning process third sector providers and whoever else is appropriate, which will include the child and the families. However, as we develop the guidance, we can certainly make it explicitly clear that consultation should recognise the role of the child and the family and ensure that they have a full and active role in the service design and delivery that is going on around them.

**Margaret Mitchell:** May I put a specific, quite technical question to you, minister? You will be aware that the Children (Scotland) Act 1995 drew everything affecting children into a single act. The act had three overarching principles, but the key one was to require the child to be given the opportunity to express their views. Obviously, their welfare is required to be a paramount consideration and there is the requirement that the minimum proportion of state intervention be preferred over disproportionate intervention in family life. Subsequent legislation affecting children and young people—for example, on children’s hearings and adoption—has ensured that those requirements are incorporated, but that is not the case with the Children and Young People (Scotland) Bill. Why is that?

**Aileen Campbell:** Again, the bill takes appropriate account of the child and the family. That is the ethos of GIRFEC, which is about ensuring that services provide support to families when they need it and that such intervention is appropriate and timely, and is delivered at the right point to avoid crises, given that intervention is most effective when it is done as early as possible.

It is worth recognising that the 1995 act is still in place and that our aim is to ensure that we make the bill as good as it can be, that we can work things through in consultation with stakeholders and that our guidance reflects the points that you have raised as much as it can.

Philip, do you have anything to add?

**Philip Raines (Scottish Government):** Section 9, which relates to the aims of the children’s services plan and sets out many of the principles that we want to underpin the planning of children’s services—and, by extension, the way in which children’s services are carried out—makes it clear that planning should take place in a way that “best safeguards, supports and promotes the wellbeing of children in the area concerned ... is most integrated from the point of view of recipients, and ... constitutes the most efficient use of available resources”.

We wanted to make many of those principles explicit in the bill to ensure that they underpin the planning that takes place. As the minister has said, we will work with stakeholders on the detail of that and how that will work in practice as we develop guidance.

**Margaret Mitchell:** The fact that the issue is not implicit in the bill as it has been in other bills has led some to comment that this is a duty on public services rather than anything in particular to do with the rights of the child. That, I think, is the technical point.

Do you wish to comment on the suggestion made by an earlier witness that, in view of this legislation and potentially competing legislation, the Scottish Government should GIRFEC itself?

**Aileen Campbell:** Should what itself?

**The Convener:** GIRFEC itself.

**Margaret Mitchell:** They were referring to getting it right for every child. The suggestion was that the Scottish Government should look at the various bits of legislation that might compete with, conflict with or duplicate one another.

**Aileen Campbell:** The bills complement one another; in fact, a lot of work has been done to ensure that not just these two bills but all the bills that we introduce complement one another. From my point of view, the Children and Young People (Scotland) Bill is about ensuring that the United Nations Convention on the Rights of the Child is taken far more into account in the work that we as a Government do. That applies not just to this bill but to all our work across Government, regardless of whether we are talking about legislation. The Government has been working in a joined-up way to ensure that the bills are complementary and that the work of Government in future dovetails and provides the good outcomes that we expect to emerge from the bills that we are presenting today.

**Margaret Mitchell:** Did you hear the previous panel’s evidence?

**Aileen Campbell:** I did not catch it all. Did you wish to raise a specific issue?

**Margaret Mitchell:** I simply refer you back to the specific examples of conflicting legislation and duplication that were highlighted and suggest that the previous panel’s evidence on that specific point might be worth looking at.

**The Convener:** I am sure that, as per usual, the minister will do so.

**Richard Baker:** Although the previous panel was very enthusiastic about the potential for integrating and improving services through legislation, the witnesses asked that, in pursuing this agenda, we were careful not to create new and additional structures instead of simplifying things. How would you allay such concerns?

**Alex Neil:** To some extent, the legislation will streamline structures and make it easier to see the focus for partnership working. We have clearly specified that one of two models must be adopted:
the lead agency model that has been adopted in the Highland area or the joint corporate body model, which I think will be adopted in most if not by all of the rest of Scotland. As a result, there is scope for many existing committees to be streamlined. For example, one of the consequences of the enactment of the Public Bodies (Joint Working) (Scotland) Bill will be that there will be no need for separate CHPs because their work will in effect be incorporated into the partnership. Moreover, with the introduction of a much more formal structure, the many formal and informal organisations involving health boards and local authorities at local level can be collapsed. In that way, the legislation will simplify the structure.

The role of the chief officer in the partnership will also be crucial because they will do two things: first, report to the partnership board—or the lead agency, if a lead agency model has been adopted—but, secondly, report to the respective chief executives of the local authorities. For example, such an approach has been up and running very successfully in West Lothian for eight years now and integration and co-ordination at parent organisation level have been substantially enhanced as a result of the partnership’s work.

I should stress that, from day 1, we want the acute health sector to be actively involved in the partnerships. When we involve acute care in the community, many of the barriers that exist between the primary care sector and social care, and between the primary and secondary care sectors, start to get broken down. A good example of that is the hospital at home programme that NHS Lanarkshire initiated, which is now being rolled out across the country. I think that that will remove barriers and bureaucracy, cut red tape and lead to much more localised provision.

In addition, we have commissioned—jointly with our colleagues in the local authorities—some work to look at where the public health function would sit in future. In the post-war situation, the public health responsibilities were given exclusively to local authorities. Under Ted Heath, they were transferred exclusively to the new health boards. South of the border, they have been split up between the health boards or their equivalents and the local authorities. My view is that a successful public health policy requires the health boards and the local authorities, with their respective remits, to work in an integrated fashion. I think that an opportunity exists, particularly in public health, not just to enhance the service, but to break down the barriers that have traditionally existed between the different sectors and to streamline the entire process.

Richard Baker: That is helpful, but there is still a concern about the details of what is proposed and how it will work in practice. In its submission to the committee on the two bills, Audit Scotland said:

“Significantly, the relationship between CHPs and the new integrated health and social care arrangements ... and changes to children’s services ... are not clear.”

Will greater clarity be provided on some of the working arrangements before the bills are finalised?

Alex Neil: I am surprised by that comment, because I believe that Audit Scotland is represented on the group that is chaired by Pat Watters, the former leader of the Convention of Scottish Local Authorities, which is looking specifically at enhancing the role of the CHPs in relation not just to health and local authorities, but to the entire public sector operation at local level.

It is likely that the output from that group, which includes representatives from a wide range of organisations including COSLA and the Society of Local Authority Chief Executives and Senior Managers, will take forward in a substantial way greater co-ordination and integration of services across the board at local level. In particular, I know—because I am a member of the group—that it has had serious and in-depth discussions about the need for bodies such as health boards and local authorities, and others, to discuss annually their strategic budget proposals before they agree to implement those proposals, in an effort to ensure that across the public sector, in each local authority area, we maximise the impact of the public pound. Therefore, I am surprised that Audit Scotland has made that comment.

Richard Baker: Well, it has made it, so—

Alex Neil: I draw your attention to the work of the group that is chaired by Pat Watters.

Richard Baker: I am sure that you and Pat will discuss the matter—

Alex Neil: Absolutely.

Richard Baker: I do not want to labour the point, but it is worth reflecting on the fact that Audit Scotland raised the issue specifically in relation to CHPs.

Alex Neil: Pat’s group is looking specifically at the role of CHPs and how there can be much greater integration and co-ordination across the public sector in each local authority area.

The Convener: I am sure that the committee will talk to Mr Watters again shortly, because we said that we would.

Stuart McMillan: Good morning, panel.

My question is directed mainly at the cabinet secretary. The Public Bodies (Joint Working) (Scotland) Bill is, obviously, about public bodies; it is not about other organisations. Prior to the
summer recess, the committee concluded the latest instalment of its inquiry into public services reform. An issue that came up in all three of the stages of the inquiry that we undertook was community and third sector involvement in the shaping and delivery of public services.

During one of the visits that I undertook over the summer, a council of voluntary services made the point that the Public Bodies (Joint Working) (Scotland) Bill appears to make no mention of community involvement. Now, I accept that the bill is about public bodies rather than about communities per se, but it appeared to that CVS that the bill is about something that is being done to people rather than in conjunction with the community. Should there be a wider discussion with communities to provide that involvement?

12.00

Alex Neil: Let me make it clear that, as should be evident from the policy memorandum and from the bill itself, we see the third and independent sectors as having a very important role not just in the delivery of services but in the design and architecture of services.

I think that there is a bit of a misconception here, and let me explain why. Because the health board and the local authority are the public fund holders, only they have a vote on the partnership board. However, as we have seen in West Lothian and elsewhere, the third and independent sectors are represented on the boards. We would envisage that happening in every case because the third and independent sectors clearly have a major role to play. Obviously, we need to ensure that there is no conflict of interests, because we cannot have people who are competing in a tender for service delivery simultaneously sitting on the board. However, those governance issues are not new and have been with us for a long time.

You just need to look at West Lothian, which is a kind of exemplar for the joint corporate body model in Scotland, to see that the third and independent sectors have a role not only in terms of board membership but—more important, actually—in designing and delivering services at the locality level. They are heavily involved in that. Also, where there are any proposals for service redesign, the third and independent sectors are involved in the process and in the consultations on the redesign of services. I would take West Lothian as a very good example. We would expect that kind of standard of consultation with, and standard of involvement of, the third and independent sectors to be followed. Indeed, we will require that, and we will incentivise the use of the third and independent sectors where that is appropriate.

Stuart McMillan: That is helpful, thank you.

The Convener: Cabinet secretary, you have mentioned that West Lothian is probably the exemplar for this kind of work. In the evidence from East Ayrshire Council earlier today, we heard that co-location can help a lot in that regard. Obviously, West Lothian Council has its new civic building, where teams from across the public sector can work side by side at desks next to one another. That seems to make joint working easier. In your opinion, is co-location required to ensure that all these things work properly?

Alex Neil: I would not like to prescribe that co-location is always a prerequisite to approving any delivery plan, but I must say that, in the examples that I have seen, co-location is definitely very advantageous. In the East Ayrshire Council headquarters building on London Road in Kilmarnock, the co-location of services there is definitely a huge advantage in providing for integrated delivery.

I draw your attention to a pilot project that is being run in the mining village of Dalmellington in East Ayrshire. That joint project, which involves the third sector as well as the local authority and the health board, is using telehealth to help older people with co-morbidities. Over the 21 months that the pilot has been running, the GP in charge says that, for the 20 older people with co-morbidities who are involved in the pilot, there has been a reduction in hospitalisation of that cohort group that has been of the order of 70 per cent. That is a very practical example.

Similarly, in your part of the world, convener, in Aberdeen and Aberdeenshire, social workers are co-located in some of the NHS Grampian community hospitals. In Fife, although the partnership boards have not yet been set up formally—they are still prototypes—there is already co-location of health and social workers, for example in Dunfermline, and there is no doubt that it adds great value to the quality and efficiency of service delivery.

The Convener: We have heard your Dalmellington story before, cabinet secretary, and I am glad to hear it again, as I have been telling it elsewhere.

Minister, do you have anything to add on co-location?

Aileen Campbell: The cabinet secretary said that co-location is not a prerequisite for greater integration, but the anecdotal evidence from the service user's point of view is convincing. If someone needs a bit of extra support, they can go to a service that is co-located with social workers, GPs or whoever and they do not face the stigma that is attached to seeking help from that service because they are entering a building in which a
variety of different services are provided. People can be a bit more proactive in seeking help and can feel reassured that there will not be any stigma attached to that and that people will not start talking about them. The anecdotal evidence from the point of view of the service user is compelling regarding how they feel when they enter a place where different services are co-located. They find that a good experience for them.

The Convener: Thank you very much.

John Wilson: Good afternoon, cabinet secretary and minister. Cabinet secretary, you have spoken about integration measures. According to our Scottish Parliament information centre briefing, there will be two broad models of integration, which will be broken down into four different models. The first model is the body corporate model, under which local authorities and health boards will come together to form a joint board that will be separate from the local authorities and health boards and will be led by a chief officer. Do you see that chief officer being separate from the health board and the local authority, and will that require the creation of a new post?

Alex Neil: It will be a statutory post after the bill has been passed. That said, we must be pragmatic. Again I refer to West Lothian, where the chief officer has come from a health board background but is on the senior management team of both the local authority and the health board. The important thing is that the chief officer reports primarily to his or her own board but also has a line of responsibility to the chief executive of the local authority and to the health board. In West Lothian—and, indeed, in other areas where it is earlier days than in West Lothian—that arrangement has worked very well.

John Wilson: What I am trying to get at is whether we will see the creation of a new administrative structure for the delivery of services. If we create a new administrative structure, how will that be paid for?

Alex Neil: By definition, the partnership board is a new administrative structure because such boards do not exist at present, and the role of the chief officer is a new position in that sense. The important thing in paying for that is the integrated budget. I will give you a good example. I have been encouraging local authorities and health boards up and down the country to follow the example of West Lothian and establish a step-up, step-down centre as one way of improving the transition from hospital back into the community. The centre has also contributed to the elimination of delayed discharges in West Lothian. If West Lothian did not have a partnership board, the health board’s and the local authority’s respective shares of the funding for the project would have to go through separate decision-making processes within both the local authority and the health board, through the committee structure and all the rest of it.

When you have integrated budgets, that is decided internally, within the partnership board. The decisions can be made quicker but, more important, they will be taken in the context of the strategic plan that is laid down and agreed by the partnership board, which would obviously have to be endorsed by both the health board and the local authority. You get much quicker decision making and much more co-ordinated and integrated approaches. The evidence from north and south of the border—from Torbay, for example—is that the quality of the decision making is far better. Most important, not only do you end up with far better outcomes, but those outcomes are delivered far more cost effectively, which is a big prize.

John Wilson: I welcome what you said about West Lothian, but you are not promoting the West Lothian model throughout Scotland; four different models of integration can be taken from the proposals that are before local authorities and health boards. Would it not have been better to have applied the West Lothian model of integration throughout Scotland, so that a uniform model would be adopted by all local authorities and health boards?

Alex Neil: From day 1, including under my predecessor, Nicola Sturgeon, this has been an iterative process of discussion between us, the local authorities, which have been represented by COSLA and SOLACE, and the third and independent sectors. My approach to the development of the models, and indeed to the whole bill, has been to try to get consensus among the local authorities, the health sector, the Scottish Government and the third and independent sectors. On the basis of those bodies’ experience, track record and expertise in delivering the services, they are all pretty much of the opinion that there should be a degree of choice so that each area can decide how best to deliver in their area. Highland has decided on a particular variation of the lead-agency model and all the indications are that it is beginning to work well and to deliver substantially improved services and outcomes.

We have said all along that it would be inappropriate for us to sit in Edinburgh and prescribe every detail of the arrangement in each of the 32 local authority areas. How you would structure services in Glasgow, where you have one health board and six local authorities, is completely different from how you would structure them in the Borders, where you have one local
authority and one health board with coterminous boundaries.

We are saying that the principles that matter to us are that there is a statutory underpinning to the integration of adult health and social care and that there is an integrated board, budget and strategic plan. That is why the bill sets out the framework. Within that framework, we are saying to local people, “You decide what’s best for your area, because politicians and civil servants sitting in Edinburgh don’t know enough about what’s happening in your local area to dictate to you how all the i’s are dotted and all the t’s are stroked.”

John Wilson: Having said that, can you assure us that the reporting and monitoring regime carried out by the Scottish Government will be consistent across all models of integration used by health boards and local authorities?

Alex Neil: Absolutely. We have said clearly that, in measuring success, the key thing that we are interested in is the national outcomes. You might ask why the outcomes are not on the face of the bill. They are not there for two reasons. One is that outcomes change. The outcomes that you would set today would be very different from the outcomes that you would have set, say, five years ago. I suspect that they would also be very different from what they would be in five or 10 years’ time as service provision changes—how we do things in these fields changes continually. Therefore, if you put the outcomes in the bill, you would need to introduce primary legislation every time you wanted to amend them. The national outcomes will be set out in secondary legislation.

Secondly, I am not going to take a unilateral decision on what those outcomes will be. All along, we have proceeded on a partnership basis with our friends in the local authorities and the third and independent sectors, and I think that this will work much better if we can get agreement on what the national outcomes should be and on how we measure success. We are more likely to achieve success if from day 1 everyone is signed up to what has been defined as success.

12:15

John Wilson: I am well aware that outcomes should not be set out in the bill. After all, you will know from your own constituency, cabinet secretary, that things can change dramatically with one report.

Alex Neil: They have improved enormously in the past two years.

John Wilson: I am glad that you have friends in local government throughout Scotland.

Anne McTaggart: Now that we are into the afternoon, I wish the cabinet secretary and minister good afternoon.

I have two quick questions. How will the quite different mechanisms for integrating services that are set out in each bill improve children’s transition to adult services?

Alex Neil: I will let Aileen Campbell take the lead on this question, but I point out that the Public Bodies (Joint Working) (Scotland) Bill, which deals with adult health and social care, does not make a statutory requirement with regard to the integration of health and social care per se. However, coming back to the examples of the Highlands and West Lothian, I note that, in both cases, even with their different administrative arrangements it was agreed almost from day 1 that they needed to integrate their children’s health and social care services.

I believe that there are two big differences between dealing with children and dealing with adults. First, there is the very crucial role that the education system plays with children and for which there is no equivalent for adults, particularly older people. Secondly, children by definition do not legally have the capacity to make decisions for themselves. However, adults do and I note that there are special arrangements for adults with incapacity. The fact that these two bills cross-reference each other means that we are singing from the same hymn sheet—and that is very important.

Aileen Campbell: Some of the consultation responses to the lead committee have acknowledged that the transition from children’s to adult services can be challenging. The two bills allow for greater planning in both services; the Public Bodies (Joint Working) (Scotland) Bill will help to provide far more planning in adult services, while the Children and Young People (Scotland) Bill will require improvements in children’s services to recognise the breadth of different people and services involved in a child’s life. The fact that the two systems will improve planning will give us the ability to make the transition far smoother than might have been the case in the past. Indeed, that is the benefit of having these two approaches; greater emphasis on planning and improvement from children’s point of view to reflect the breadth of services involved in a child’s life will enable a better transition to adult services, which will also be improved through better planning.

Anne McTaggart: With regard to CPPs, how do these bills tie into the proposed community empowerment and renewal bill?

Alex Neil: Obviously, the community empowerment and renewal bill has a wider remit; it is not entirely about, but very much has an
emphasis on, physical assets, how the community obtains such assets and such matters. However, the umbrella for all of this is the Government’s guiding principles and strategic objectives, which include not only community empowerment and renewal but public sector reform, to ensure that better-quality services are delivered more cost effectively and timeously; patient-centred healthcare and social care; and, indeed, person-centred education. Those underlying principles are not restricted to my bill, Aileen Campbell’s bill or Derek Mackay’s community empowerment bill; they are universal and part and parcel of our broad principled agenda for changing Scotland for the better.

**Aileen Campbell:** I echo the cabinet secretary’s comments. When we seek to help families and children, we must ensure that we build from an asset-based approach—indeed, the chief medical officer is keen to promote approaches that build from a family’s strengths—and I think that that dovetails very nicely with the community empowerment work that Derek Mackay will be taking forward.

Local authorities already publish children’s services plans and West Lothian, for example, sets out very clearly how such plans integrate with the wider CPP family. The fact that structures are already in place to reflect community planning needs will also be reflected in how we move forward on this issue, with CPPs no doubt playing a crucial role in making the improvements that we expect to emerge from the Children and Young People (Scotland) Bill. I also imagine that our approach will reflect the single outcome agreements that local authorities will be finalising.

I hope that that covers your question.

**The Convener:** Thank you very much for that useful evidence.

Before I move the meeting into private session, I ask for everyone’s co-operation in clearing the room quite quickly. We need to get through a lot of business before we meet the European commissioner at 1 o’clock.

12:21

*Meeting continued in private until 12:45.*
WRITTEN SUBMISSIONS TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

NHS Ayrshire and Arran
GPs at the Deep End
North Ayrshire Community Planning Partnership
Housing Co-Ordinating Group

Association of Directors of Education in Scotland
Argyll and Bute Council
Audit Scotland
Children in Scotland
Children's Hearings Scotland
Coalition of Care and Support Providers in Scotland
COSLA
Midlothian Community Planning Partnership
Police Scotland
Royal College of General Practitioners
Scottish Fire and Rescue Service
UNICEF UK
West Lothian Community Planning Partnership
Local Government and Regeneration Committee

Children and Young People (Scotland) Bill

Submission from NHS Ayrshire and Arran – Paper 1

1. The potential benefits which might accrue from shared working arrangements, both for the organisations involved and for those in receipt of services;

In June 2013 Ayrshire and Arran NHS Board approved the following:

- The adoption of the body corporate model for the integration of health and social care, between Ayrshire and Arran Health Board and each of the three Ayrshire Local Authorities
- The creation of a Transition Integration Board and thereafter a Shadow Integration Board in each Local Authority area to plan for the establishment of formal Health and Social Care Partnerships in North, South and East Ayrshire under the direction of Integration Joint Boards
- The establishment of the post of Chief Officer for the North, South and East Ayrshire Health and Social Care Partnerships
- The appointment process for the Chief Officer to each Health & Social Care Partnership.

This process was mirrored by each of our Local Authority Partners through their own systems. It should be noted that Ayrshire and Arran Health Board has three Councils within its boundaries.

A requirement of this model is the establishment of an Integration Joint Board in each partnership area. To progress this, arrangements are being made for a Transition Integration Board to be in place as soon as practicable followed by a Shadow Integration Board from 1 April 2014 with the Integration Joint Board being established by 1 April 2015, or in line with the timetabling as set out in the final legislation.

As we progress we will continue to build upon our positive and well established relationships with our Local Authority partners. We anticipate that the establishment of the joint management teams will result in a number of benefits.

Efficiencies and benefits are anticipated to arise as follows:

- The focus on outcomes (providing this is reflected in performance regimes)
- The introduction of locality planning – this should streamline community engagement across the four sectors and maximise the opportunities for
an assets based approach while engaging local users, carers and professionals in an agenda which is real for them. It should also bring a sharper focus on tackling health inequalities

- The principle of joint and equal responsibility – this should help reduce “hand offs” between the statutory agencies
- The engagement of the third and independent sectors as strategic partners – this is already helping to shape effective plans in services for older people
- A logical framework reflected in the flow of the Bill from the model of integration to the integration plan to the strategic plan with consistent integration planning principles throughout – this will bring a much higher level of consistency and focus to joint endeavour
- Stronger working relationships with adult services resulting in a more family focused approach
- Enhanced working relationships with our third sector partners
- Improved information sharing.

2. **The rationale for having a separate approach in both Bills to establishing joint working arrangements.**

Although the subject matter of the Bills is different, there are significant similarities in the approach taken to achieve the underlying aim of integrated or shared services. Both Bills have implications for the development of shared services involving local government, the health service and other parts of the public service. We would accept that it is necessary to have two separate Bills given the subject matter but it would have had a number of advantages if the approaches could have been more closely aligned.

3. **In what area potential savings might arise?**

It is difficult to offer a definitive statement as children’s services in implementing GIRFEC (Getting It Right for Every Child) and the Early Years Collaborative have had a clear focus on integration and better joint working for a number of years, and we would anticipate that the implementation of the Children and Young People (Scotland) Bill and Public Bodies (Joint Working) (Scotland) Bill would further enhance this process. We can however reasonably anticipate that savings would result from the following:

- An improved approach to making investment and disinvestment decisions based on a clear process and evidence base and best use of integrated resources
- Greater potential to reduce costs through a joint strategic commissioning process which is based on improving outcomes at both a strategic and individual level, supports effective service change and views issues from a user’s perspective.

- Enhanced processes for early identification and intervention for example:

  Effective and secure sharing of information within and between agencies is fundamental to the protection of children. AYRshare is a mechanism for sharing information across partner agencies will lead to a more effective integrated approach to assessment, single child’s plan and common chronology ensuring we are compliant with the GIRFEC transformational change programme. It will link current computer systems and support business processes. Enabling coordinated and efficient support, well informed personnel working in partnership, enhancing our ability to achieve appropriate and timely interventions leading to improved outcomes.

- Better outcomes for our Children and Young People

  - Enhanced information sharing (Specifically between Adult and Children’s services)
  
  - A more integrated strategic approach
  
  - More effective use of current resources (reducing any overlap in service delivery)
  
  - Significant potential to streamline services that are currently delivered by both the LA and Health.

4. Whether there are any issues around the proposals covering consultation on, and development of, strategic plans/service plans between the respective areas involved?

There is a need to ensure that staff are fully engaged and consulted in the decision making process leading to implementation, with regard to both Bills. A consistence of approach across all staff groups is critical as is gaining commitment from staff which should be regarded as a marker for success.

NHS Boards will require, in strategy, policy and performance to make explicit children’s rights and steps taken to comply with this section of the legislation. This will require a culture shift across health services and whilst it is welcomed, it poses certain challenges. Further guidance on implementation and monitoring performance would be welcome and this would also help to support a consistent approach across the country.
It is suggested there will be particular challenges for those who work in services where the adult is the primary receiver of care and their understanding as to compliance with children’s rights in practice is crucial to the implementation of the legislation. In addition, health practitioners may face conflict in balancing the rights of adults receiving care with those of the adult’s children.

NHS Boards will require clarity on the role of the corporate parent and the implications of this. Consideration will need to be given to the role of adult health services in particular in relation to those 16-25 years and action taken to ensure they understand the legislation and the interface with vulnerable adult legislation.

Concern about possible duplication of effort e.g., preparing a children’s services plan and a corporate parenting plan. We will be required under the new bill to produce individual children’s plans which will bring together all of the relevant information and resulting actions but we still have a requirement under the Education (Additional Support for Learning) (Scotland) Act 2004 for individual support plans.

The Children and Young People’s Health Strategy for Ayrshire and Arran, sets out the broad vision for improving and promoting health, developing health services and addressing inequalities for children and young people in Ayrshire and Arran. This document forms the health chapter of each of our Local Authority partners Integrated Children’s Services Plans. This supports an equitable approach to meeting and addressing the health needs of our children and young people. Our plan for the establishment of three Health and Social Care Partnership’s in North, South and East Ayrshire has the potential to result in a significant variance in agreed priorities which may result in an inequitable approach.
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<td><strong>1.</strong></td>
<td><strong>Do you agree with the general principles of the Bill and its provision?</strong></td>
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<td>Yes. The general principles and provision are welcomed and follow on from the previous consultation on the Scottish Government’s proposals, responses made, and the Scottish Government’s subsequent response to these.</td>
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<td><strong>2.</strong></td>
<td><strong>To what extent do you believe that the approach being proposed in the Bill will achieve its stated policy objectives?</strong></td>
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<td>The Bill sets out a coherent framework within which integration can be progressed but leaves room for local partnerships to develop “best fit” solutions within statutory boundaries. It is felt that this strikes a good balance and it is believed will help to achieve the stated policy objectives. The extent to which the stated policy objectives will be achieved will be largely determined by two factors: (1) moving from a focus on outcomes at a high strategic level to personal outcomes for individuals to ensure seamlessness at point of service delivery (2) effective locality plans which link to, and heavily influence the Integration Authority strategic plans.</td>
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<td><strong>3.</strong></td>
<td><strong>Please indicate which, if any, aspects of the Bill’s policy objectives you would consider as key strengths.</strong></td>
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|   | The coherence of the policy objectives is a key strength. They will have to be followed through at a personal and locality level supported by an approach which values enablement and coproduction.  
Aspects of the policy memorandum are welcome reminders:  
- “Integration is not an end in itself – it will only improve the experience of people using services when partner organisations work together to ensure that services are being integrated as an effective means for achieving better outcomes”;  
- “legislation alone will not achieve the scale or improvement that is required . . . Leadership is key, locally and nationally . . .” |
4. **Please provide details of any areas in which you feel the Bill’s provisions could be strengthened.**

It may be that the following will be picked up in regulations etc but as it stands, the Bill could be strengthened in the following areas:

a) public accountability arrangements – section 33 mentions a performance report. It may be helpful to link this to a focus on outcomes for avoidance of doubt;

b) statutory public engagement responsibilities – for instance it would be helpful to clarify the position of Public Partnership Forums (PPFs). In Ayrshire, the PPFs have proven to be very effective support to public engagement arrangements across the totality of health provision;

c) consultation arrangements – various references are made to issues such as the preparation of the integration plan but there is a substantive issue to be addressed concerning any implications for consultation arrangements in relation to proposals for service change made by the Integration Authority;

d) following on from this, it may be helpful to clarify approval processes in instances where a strategic plan proposes major service change. In particular whether the Cabinet Secretary will continue to hold what would effectively be veto powers over the Integration Authority’s plans;

e) whilst it is helpful that the Bill makes consistent reference to integration planning principles these are silent on the need to ensure effective clinical / care governance;

f) staff governance is a statutory requirement of NHS Boards and the Bill is fairly silent on what arrangements (if any) Integration Authorities will be required to put in place.

 g) there is a need to be more explicit about how the Integration Authority will be scrutinised jointly, by external scrutiny agencies;

h) in terms of analytical review of the Bill as a whole, there may be a case for considering whether the balance between what is on the face of the Bill and what will be in regulations could be improved. For instance while regulations will define the scope of integration, it is on the face of the Bill that the responsibilities of a Chief Officer are subject to the agreement of Scottish Ministers.
5. **What are the efficiencies and benefits that you anticipate will arise from your organisation from the delivery of integration plans?**

Efficiencies and benefits are anticipated to arise as follows:

- the focus on outcomes (providing this is reflected in performance regimes);

- the introduction of locality planning – this should streamline community engagement across the four sectors and maximise the opportunities for an assets based approach while engaging local users, carers and professionals in an agenda which is real for them. It should also bring a sharper focus on tackling health inequalities;

- the principle of joint and equal responsibility – this should help reduce “hand offs” between the statutory agencies;

- the engagement of the third and independent sectors as strategic partners – this is already helping to shape effective plans in services for older people;

- a logical framework reflected in the flow of the Bill from the model of integration to the integration plan to the strategic plan with consistent integration planning principles throughout – this will bring a much higher level of consistency and focus to joint endeavours;

- an improved approach to making investment and disinvestment decisions based on a clear process and evidence base and best use of integrated resources;

- greater potential for a joint strategic commissioning process which is based on improving outcomes at both a strategic and individual level, supports effective service change and views issues from a user’s perspective.

6. **What effect do you anticipate integration plans will have on outcomes for those receiving services?**

Integration plans will bring a rigour to setting out what the Partnership is responsible for and how it will be funded. Coupled with the strategic plan setting out how the Partnership will deliver its responsibilities it will give greater transparency to how all of this directly relates to improving outcomes. Crucially, however, it must also link to effective locality plans which should capture how refreshed relationships between the statutory, third and independent sectors and local communities can also improve outcomes.
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<td>There will be a need to ensure that there is sufficient Non-Executive Director capacity within NHS Boards to support the effective running of the Integration Authorities. This may be a particular challenge for NHS Boards with several Local Authorities within their Board area.</td>
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Local Government and Regeneration Committee
Children and Young People (Scotland) Bill
Submission from GPs at the Deep End

Contents

- General comments concerning General Practice and the Two Bills
- Responses to 4 questions
- Summary of Deep End Report 18 on Integrated Care (Annex A)
- Deep End Proposal for a National Enhanced Service for Vulnerable Families (Annex C)

General comments concerning General Practice and the Two Bills from A Deep End Perspective

As a GP the barriers that prevent me working more closely in partnership are excessive workload, uncertainty and anxiety over job security, high turnover of staff, short life span of community projects, bewildering array of services and pathways, lack of time and difficulty in getting hold of people, dysfunctional and overly large planning committees, incomprehensible and verbose communications from on high, abstract rationalist planning that disparages experience and organically developed systems, a remorseless rise in demand and expectations, a self-defeating emphasis on measurable factors that undermines the quality of interpersonal relationships and care.

Deep End GP

General practice is the main public service that is in regular contact with virtually the whole of the general population, with substantial cumulative knowledge and experience of people’s problems and consistently reported high levels of public trust. These intrinsic features make General Practices the natural hubs around which integrated care should be based, with groups of General Practices supported, within the context of local service planning, to deliver integrated care in partnership with secondary care, area-based NHS services, social work and community organisations.

The Deep End Report 18 on Integrated Care (Annex A) lists the essential ingredients of an integrated care approach. Attached workers, lay link workers and protected time are keys to joint working. Local leadership needs respect, support and representation (not consultation) within locality planning and acknowledgement of practitioners’ experiential knowledge to develop an ‘ecology of practice’ (Fisher & Owen, 2008).
In front line care the two main barriers to integrated care are firstly, the inverse care law, whereby practices serving the most deprived areas are insufficiently resourced to meet patients’ needs, and secondly, poor links between general practices and many other area-based health and social services. These challenges are clearly stated in Deep End Report 12 on Vulnerable Children and Families (Annex B). This report highlights the frustration of practice teams who remain limited in their ability to deal with children with unmet needs in vulnerable family settings. Current policies aimed at family support unfortunately often fail to explicitly outline the contribution of General Practice to child safeguarding.

The policy memorandum for the Children and Young People Bill makes no reference to General Practice, while the memorandum for the Public Bodies only refers to General Practitioners as a group to be consulted. There is no recognition of general practice as the natural hub of local health systems, based on its intrinsic features of population contact and coverage, continuity, cumulative knowledge and trust.

Although many services are involved in caring for children, practice teams often have additional substantial contact with and knowledge of a child’s family, including the health of parents and carers, which is relevant to understanding child well-being on a case by case basis. Most GPs recognize and value the continuity with families and possible opportunities for early intervention that should define universal child health care within the primary care structure. This remains an unrealized aspiration at present because the system does not support the full potential of General Practice’s contribution towards safeguarding children.

General Practitioners at the Deep End address this concern in Report 20 What can NHS Scotland do to prevent and reduce health inequalities?, which advocates for a National Enhanced Service for Vulnerable Families (Annex C), providing a more explicit role and additional pro rata support for general practices serving vulnerable families in very deprived areas.

**Working Outside A Managerialist Framework**

*Locality planning is not just about commissioning and budgetary planning but about organically growing trust, relationships and local systems that make integrated working and smoother decision-making possible. Front line staff and volunteers are the people who will or will not work as partners to make services more integrated and seamless for patients. However, they need to be given the resources to be able to do this, and not loaded with endless targets developed remotely. I hope this legislation will not be another missed opportunity to create the kind of organisational environment which makes it possible to grow this kind of trust and people-based system of care that patients expect and deserve.*

*Deep End GP*

General Practitioners at the Deep End welcome the different approach in Scotland, from the rest of the UK, which encourages localism, favouring less central control
and trusting professionals to work with and shape policy development (Greer, 2005). However, the Joint Bodies Bill appears concerned mainly with a second attempt at the structural integration of current local health and social care organizations. Policy consolidation is not a linear process, as the recent attempt at Community Health Partnerships has shown, resulting in ineffective integrated care for patients and widespread professional scepticism about the new arrangements.

General Practitioners at the Deep End question any assumption that the budgetary and accounting arrangements of senior managers are the key factors in enabling or preventing partnerships. In reality this superstructure rests on a foundation of human factors that are not given sufficient weight in these proposals.

The Joint Bodies Bill only mentions general practice in terms of how general practices working in localities should be represented within the new joint working arrangements. It is also important to consider the essential ingredients of care arrangements providing integrated continuity of care for large numbers of people. At present the opportunities for GPs to engage directly with locality planning arrangements are limited, patchy and inconsistent.

References


Specific Questions

Q1. What benefits which might accrue from shared working arrangements, both for the organisations involved and for those in receipt of services?

- It is important to acknowledge that despite the consensus that collaboration within health and social care is more effective than single agency approaches there are substantial problems associated with the adoption of this principle.

- Documented problems include a lack of definitional clarity surrounding partnership, endless organisational restructuring and barriers between core and third sector agencies. A general lack of valid evidence of improvement to service delivery and user outcomes means that we know ‘relatively little about what works’ (Glasby & Dickinson, 2008, p.38)

- It is imperative to acknowledge that policy imperatives can lead to unintended consequences in the delivery of services. The increasing bureaucratisation of managerial systems has resulted, we believe, in fragmentation of health service provision.

- Services that Deep End GPs regard as attached and intrinsic to effective universal and targeted health provision (e.g midwifery services, pact teams and health visitors) are now professionally and strategically removed from General Practice, resulting in less opportunity to provide a coherent effective health service. There are additional barriers to effective working between primary and secondary that Deep End Report 18 on Integrated Care (Annex A) highlights, especially in relation to the provision of seamless care for the frail elderly population. Within the hospital setting, perverse waiting time targets and financial penalties result in difficulties for vulnerable children who often miss hospital appointments and are not offered second appointments.

- The Deep End Project has outlined how general practice can contribute to the conceptual and theoretical coherence of partnership working, by developing community based solutions, better use of support services and increased patient participation in their own health and well-being.

- Our proposals build on the work already taking place in General Practice where the serial encounter is key to developing holistic unconditional healthcare and where General Practice may be the most suitable setting to promote resilience in communities and empower patients and their carers in managing their health needs (Mola, 2013).

- Collaboration between GPs and other partners exists on many different levels. Working collaboratively promotes a collective determination to reach objectives where sharing information and experiences contributes to a more detailed local knowledge of individual patients and their families. This is vital to planning effective support services for patients, addressing their unmet health needs and anticipating when they will need to access specialized services.
The complexity of health issues that are a consequence of multimorbidity, beginning earlier in Deep End practice patients, requires informational continuity and continuity of care to ensure that services are best matched to the patient’s requirements. The Deep End believes that General Practice is the natural hub of such a health care system partly because of the serial encounter between GPs and their patients and the detailed health information that is held in patient records. If the ethical considerations to sharing sensitive information are explored at the outset of the integration agenda then it is more likely that professionals will be able to better plan patient care that is acceptable to patients.

We know a great deal about the psychosocial consequences of adverse early years experiences. We also know that a robust primary care health system is important to improving the wellbeing of vulnerable children and their families (Klevens & Whitaker, 2007; Scribano 2010). Given that almost all children and families have a named GP and will consult with their GP regularly we need to promote the role of general practice in supporting vulnerable children. The Deep End has provided a detailed proposal that both clarifies the role of GPs in child safeguarding and describes the structural process to allow this. The legislation if interpreted appropriately, can underpin this process and ultimately General Practice can contribute to better outcomes for vulnerable children.

If we are allowed to maintain organizational autonomy but promote mutuality between professionals then reciprocity and trust will become embedded into the process. This will build effective teamwork as professionals begin to mutually understand the concepts of ‘unmet needs’ and ‘vulnerability’. The principle underlying collaboration is to improve patient care. In order to do this requires a framework that provides the time required to develop formal and informal means of interaction between professional groups strengthens and stabilizes team working and also makes the lines of responsibility clearer when planning health and social care provision.

Q2 What is the rationale for having a separate approach in both bills to establishing joint working arrangements?

From a GP perspective this is not relevant. In GP consultations in practice or during houses visits we are presented with dilemmas that are resolved pragmatically with practical solutions. What is valuable is having an extensive network of readily accessible interagency contacts when planning the support of vulnerable patients and time to co-ordinate the support package. This may be required immediately or developed over time depending on the patient’s circumstances. Joint planning arrangements are strategic processes that should be guided by the frontline professionals and remain patient centred if we are to achieve the aims of the integration agenda.

Within the context of vulnerable children and families the strategic planning aspect of joint working arrangements should ensure that the
options to GPs are multifaceted. This should be encapsulated within the Children’s Plan and recognise that vulnerable children are often sign-posted by general practitioners to supportive services. Most vulnerable children do not reach thresholds of intervention that would trigger involvement of statutory services. The ‘targeted’ intervention is frequently embedded within the universal provision of child health care in general practice. It is incumbent on the relevant health authority to recognise this important gatekeeper role for general practice as it establishes its role as a ‘corporate parent’. The mechanism for GPs to inform this process as it is developed would require the contractual arrangement that the Deep End has suggested in its report.

- In respect of adult services the newly formed ‘Integration Authority’ must be prepared to canvas GP views widely on the implementation and evaluation of the integration agenda. There should be very direct lines of communication between this body and general practice, other professionals and patients as the changes are implemented.

Q3 **In what areas might potential savings arise?**

- The compelling arguments for greater integration of health are driven by rising demand for service and the need to reduce public expenditure. However, there is a lack of economic evaluation of cost effectiveness across studies (Ellis et al, 2006) therefore the savings remain theoretical and are yet to be realised.

- There are potential savings in adult services for example, if pooled budgets in health and social care genuinely result in less time spent in hospital for elderly patients who can be discharged into nursing homes. It remains unclear however how barriers to transferring savings in secondary into primary care will be removed.

- In children’s services savings may result from minimising the consequences of adverse childhood experiences that persist into adulthood. These might include time lost at work through illness and injury, absent school attendance in the short and long term, indirect costs of special education, adult mental health and other healthcare services and the costs to judicial system. Many of these costs savings would be indirectly related to interventions in childhood which would include the proactive identification of vulnerable children in a primary care setting. This would require a different approach to the economic evaluation of such interventions.

- There are not only potential economic savings through the integration of health and social care services. There are intangible savings for example reducing mental anguish and social stigma and are applicable to both adult and children’s services.
Q4 What other issues are there around the proposals covering consultation on, and development of, strategic plans/service plans between the respective areas involved?

- In adult services irrespective of how the ‘integration authority’ is realised there should be robust mechanisms that ensure the engagement with frontline professionals who are tasked with implementing the policy. This is challenging to achieve in General Practice but having a GP lead for each locality/practice and an infrastructure to engage widely with colleagues through for example, protected learning events, would ensure that policy directives are meaningfully guided and influenced by local population needs.

- Governance and accountability processes need to be widely understood and transparent to uphold the integrity of the integration agenda and discourage professional scepticism about the contribution of integration of health and social care. There should be clarity about individual and collective accountability at all levels of strategic planning and during each stage of the implementation of the integration agenda.

- Integration of health and social care and its evaluation are long term processes. Both should be evaluated using a robust research approach specifically because there is a lack of a convincing evidence base for integration of health and social care (Cameron & Lart et al 2013). The Deep End in collaboration with the South Glasgow CHP has proposed such a project but this requires a sustained commitment from Government to support the work and allow frontline professionals and patients to participate in the development of the integration agenda.

- Well intentioned reforms must not exacerbate the margin of error when dealing with the complexity of family circumstances with respect to safeguarding children which are often attributed to deficient interagency working and a failure to share information. Standardisation and micromanagement of decision making in situations where evidence can often be ambiguous and contradictory defeats the purpose of having an integrated system because it cannot support complex decision making in its human, social and organisational context. The Deep End believes that a ‘light-touch’ system design is required whose purpose is not to intensify the bureaucracy of professional working but to free up time, support flexibility and intelligent professional discretion to cope with the contingencies of situations as they arise on a case by case basis. The professionals and patient experience should be driving the development of integrated services, not the system.

- Our faith in the instrumental efficacy of technology and proliferation of process-orientated tasks should not displace what is essential to effective integration working practices, namely sustained professional relationships that are built on mutuality and trust. The Deep End research proposal
outlines very clearly the importance of acknowledging the multifaceted aspects of vulnerability and how this maybe inculcated into an agenda that supports professional involvement in vulnerable patient groups in a meaningful way. For example biological, neurological and psychosocial factors may be relevant to the definition of the vulnerable adult or child but in the context of knowledge sharing between professionals this process is ‘slippery’ (difficult to codify) and ‘sticky’ (difficult to share across boundaries) (Reder & Duncan, 2003). Furthermore, acknowledging that non-electronic communication is a component of reaching sound inter-professional agreement (Saario, Hall & Peckover, 2012) is vital to avoid fallacious circular reasoning in complex decision making. If we are to achieve the aims of the integration agenda time must be given to professionals to have regular face-to-face meetings to discuss their own anxieties and share professional opinion in often emotionally and morally charged cases to sustain confidence in their decision making.
References


Dr Anne Mullin, Govan Health Centre

Professor Graham Watt, University of Glasgow

on behalf of the Deep End Steering Group

23rd August 2013
INTEGRATED CARE

This report and recommendations draw on research evidence, previous Deep End reports and discussion groups at the second national Deep End conference at Erskine on 15 May 2012.

- To avoid widening inequalities in health, the NHS must be at its best where it is needed most.
- The arrangements and resources for integrated care should reflect the epidemiology of multimorbidity in Scotland, including its earlier onset in deprived areas.
- Better integrated care for patients with multiple morbidity and complex social problems can prevent or postpone emergencies, improve health and prolong independent living.
- Policies to provide more integrated care must address the inverse care law, whereby general practitioners serving very deprived areas have insufficient time to address patients' problems.
- Patients should be supported to become more knowledgeable and confident in living with their conditions and in making use of available resources, for routine and emergency care.
- The key delivery mechanism for integrated care is the serial encounter, mostly with a small team whom patients know and trust, but also involving other professions, services and resources as needs dictate.
- The intrinsic features of general practice in the NHS, which make practices the natural hubs of local health systems, include patient contact, population coverage, continuity of care, long term relationships, cumulative shared knowledge, flexibility, sustainability and trust.
- Health and social care professionals working in area-based organisations (e.g. mental health, addiction and social work services) should be attached to practices, or groups of practices, on a named basis.
- Practices should be supported to make more use of community assets for health via a new lay link worker role.
- The quality and timeliness of hospital discharge information should be a consultant responsibility and audited as a key component of the quality of hospital care.
- Practices needed protected time to share experience, views and activities, to connect more effectively with other professions, services and community organisations, to develop a collective approach and to be represented effectively.
- Collective working between general practices is best achieved with groups of 5/6 practices, as shown by the Primary Care Collaborative and Links Project. Larger groupings are less likely to achieve common purpose.
- Locality planning arrangements should be based on representation (not consultation), mutual respect and shared responsibility.
Practitioners and managers agree that there are not enough resources to respond to need, resulting in a focus on fire fighting, raised thresholds for engagement and missed opportunities for early intervention.

Local teams are often aware of vulnerable children and families before serious problems develop, but lack the resources to intervene and to make a difference. Investments are needed in home support, free nursery places and other ways of supporting families.

The many suggestions made in this report can result in greater efficiency, especially via better joint working, but do not address the fundamental problem of resources.

Hundreds of professional teams are involved in providing care for vulnerable children and families, and all need to work well, both individually and as components of an integrated system.

The system needs accurate information on the numbers and distribution of vulnerable children and families, including but not restricted to children on child protection registers, as a basis for resource distribution, audit and review.

Effective joint working depends on colleagues being well informed concerning each others’ roles, how they may be contacted locally and the constraints under which they work.

Information about the progress of particular cases needs to be shared between professions and services, so that each is aware of what is happening. There is an urgent need for bespoke IT which links systems and professionals.

Pregnancy is an important opportunity to demonstrate the integration of professionals and services working to identify and help vulnerable mothers and their families.

Professionals and services should be accountable not only for their own contribution but also how this connects with the contributions of others. The “connectedness” of care should be a major policy, management and practitioner objective, concerned not only with joint working around crises, but also continuity of care as required throughout childhood.

Professionals acquire local knowledge and develop trusted relationships with families that are crucial for long term preventive care. There is a need to support and retain such staff, to value the relationships they have developed and to use the information they acquire, via regular multidisciplinary meetings.
ANNEX C : From Deep End Report 20

WHAT CAN NHS SCOTLAND DO TO PREVENT AND REDUCE INEQUALITIES IN HEALTH?

Vulnerable children and families

Current thinking
It is uncontested that vulnerability in early years and beyond impacts adversely on child and adult physical and psychological dimensions of well-being. [1–2] A conservative estimate of the economic cost of the vulnerable child to society in the UK is £735 million annually [3].

Where is general practice?
The Deep End manifesto and reports on vulnerable families [4–5] clearly outlined the contribution that general practice can make to safeguarding children and families. GPs contribute to the process of ongoing family assessment and support [6–7] and are well placed to understand the specific challenges that result in the vulnerable family and the vulnerable child [8].
A skilled and long term professional relationship, built on trust, that provides a low-level of inquiry into the circumstances of the vulnerable family [9] is key because vulnerable parents are often avoidant and suspicious of supportive services [10]. Furthermore, the majority of vulnerable children will not meet sufficient thresholds of harm or endangerment that will trigger formal child protection proceedings [11]. The Deep End has consistently highlighted the ‘multiple jeopardy’ that economically poor and disadvantaged families face [12] with poverty an enduring characteristic of families who would be considered vulnerable. The Deep End recognises the clear association between disadvantage with social class and adverse effects on child health in the first 10 years of life [13] with increased mortality rates [14]. The impact of poverty and the accumulative effect of negative factors on health outcomes of vulnerable children are highlighted in the Deep End Austerity Report [15]. This publication contextualises current research concerns to real-life narratives of vulnerable families who are living within the constraints of swingeing cuts across health and social care budgets.
That said, knowing and stating our contribution to supporting children and families is of limited value if general practice does not have the strategic support within policy directives and contractual obligations to undertake this challenging area of health care.

Current policy – is it collective and inclusive?
Whilst we welcome the acknowledgement of the role of the GP in Scotland’s national child protection framework [16] and the RCGP child health strategy [17] this is not replicated in other important policy directives. For example GIRFEC, whose ethos is at the heart of government policy in ensuring that all children in Scotland are ‘safe, healthy, achieving, nurtured, active, respected, responsible and included’ [18–19] and the National Parenting Strategy [20], do not mention GPs. This is disappointing
given that the newly instated 30-month child development check will address issues of ‘child development and physical health, parenting capacity and family matters including domestic abuse and parent-child relationships, along wider parental health such as smoking, alcohol or drug abuse, and mental and physical health’ [20]. It is obvious to the Deep End group where the obligation to general practice provision lies in addressing this agenda.

Given that there has been a noticeable decline in preventative child health care in general practice since the implementation of ‘Hall 4’ [21], the Deep End have advocated for a National Enhanced Service for Vulnerable Families (NES). This approach will not diminish the reach of a universal child health care system but recognises the need to reduce disadvantage in vulnerable families by developing services according to the needs of the community.

How would the proposal work, both internally within practices, and externally in practices’ relationships with others?

The NES is a collaborative model that promotes organisational learning where all involved professionals meet regularly to discuss their vulnerable children caseloads. It is hypothesised there would be immediate gains in terms of improved health outcomes and consistent support for vulnerable children.

The NES would build on the work that is already done in some GP practices where GPs have regular and minuted meetings with their health visitors but it remains ‘unofficial’ as there is no contractual requirement to do so. Across practices the NES could be the basis of a protected learning event to disseminate results (similar to the COPD pilot in the South Glasgow CHP) and would include other relevant professionals in the learning agenda.

The attached social worker is not a new idea for general practice and many practices have positive experiences of working with a named social worker across health and social care domains. It would seem axiomatic that the unmet needs of vulnerable children and families require that both professions collaborate but there is a paucity of evidence of effective practices in complex families where health and social care professionals have intervened [22].

The NES provides the mechanism to improve a positive working environment where professional roles are clarified and shared understanding of the language of vulnerability is achievable. It also begins to address a pressing need to meaningfully research the complexity of child welfare outcomes in ‘real world’ situations [23].

How would progress be consolidated, with practices learning from each other?

A rolling programme of protected learning events funded through the CHP structure. There is a learning coordinator within each CHP (these appear to be new posts but are welcome if they have this remit). Of equal importance is recording the long term outcomes of vulnerable children that would require substantial investment in preventative health care and would provide a robust research database.
How would individual practices and groups of practices be accountable for the additional resource?

At present there is no mechanism for GPs within CHPs to be directly responsible for monies spent. Financial sector spending would have to be carefully evaluated with appropriate management support and would require robust accountability and governance structures.

Is the proposal for all practices, with each being resourced pro rata according to need, which could be taken forward within local areas; or something for Deep End practices only, requiring a network approach?

This would not be exclusive to Deep End practices as the NES is embedded within the principles of universal health care for children. Realistically, it would be anticipated that the strong influence of poverty on child health outcomes and vulnerability would ensure a greater proportion of vulnerable children would be identified within Deep End practices. Nonetheless, the NES would be relevant to all practices in Scotland.

Who are the significant partners/funders and how can they be influenced?

SG, HBs, health and social care professions. There is an expectation that SGPC and the BMA will acknowledge the call for greater emphasis on child health matters within the forthcoming contract negotiations. This would reflect the profession’s aspiration for an improvement to the structure of child health care provision in general practice and primary care. This is envisaged under a broader approach of child safeguarding that at present remains patchy and inconsistent.

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1. The potential benefits which might accrue from shared working arrangements, both for the organisations involved and for those in receipt of services;

The Public Bodies (Joint Working) (Scotland) Bill requires local authorities and health boards to adopt formal partnership arrangements. In June 2013 the Council and the Health Board approved proposals to move forward with a “Body Corporate” model. A Chief Officer for the partnership will be jointly appointed in the Autumn, and a joint committee will be established to oversee the development of the partnership with a view to this taking operational responsibility from April 2014. We envisage there will be a joint management team established before this date. The immediate benefits will relate to shared management and accommodation. As we progress with our strategic plan we expect to identify agreed priorities for the partnership in relation to joint service delivery. This will result in the identification of further benefits for both organisations.

Public Sector and Third Sector partners should work together at a local level with the aim of realising an increased share of public sector expenditure for the Third Sector through engagement in service design, commissioning and procurement activities.

Strategic commissioning provides the basis for assessing and forecasting needs, agreeing desired outcomes, considering options, planning the nature, range and quality of future services and working in partnership to put these in place.

By bringing other partners resources into the mix in a more meaningful way, this could improve CPPs more widely and would help pave the way for the Community Empowerment and Renewal Bill.

Within the Children and Young People (Scotland) Bill, the proposal is to strengthen children’s planning and to reinforce the development of integrated service delivery across the range of partners. While we welcome an approach that streamlines planning for children we are concerned about possible duplication of effort e.g., preparing a children’s services plan and a corporate parenting plan (rather than incorporating the latter into the former). We are also concerned that any crossover with the ASN legislation needs to be dealt with if the landscape is to be clarified especially around the need for a separate child’s plan.

In terms of the benefits to those in receipt of service, we are clear that this is the main driver behind both pieces of legislation. In North Ayrshire we intend to place our Social Services children and families service within the Health and Social Care Partnership and we believe this will strengthen our service delivery to vulnerable children by working closely with services provided to their parents/carers e.g., mental health and substance misuse. At the same time we will ensure that the links between the universal services within health and education are strengthened and we
have a programme to deliver prevention and early intervention initiatives across the
children’s services partnership. This involves social work and health staff being
located with early years staff. We already have co-located services with Police
Scotland.

We have identified a range of outcomes across all care groups and would intend to
identify our priorities for development and implementation within both our HSCP
integration plan and our Children’s Services Plan. For example,

**Older People**
- Through integrated teams working locally.

**Outcomes**
- Prevent hospital admissions
- Sustain people safely at home
- Maximise independence.
- Reduce social isolation.
- Support Carers.

**Vulnerable Children**
- Through co-located teams including social workers/health visitors/early years
  staff/teachers.
- Through specific joint initiatives.

**Outcomes**
- Sustain more children at home.
- Improve outcomes for children who are neglected.
- Reduce admissions to residential schools.
- Maximise independence for children with disabilities.
- Improve transition between child and adult services.
- Improve support to families and carers.

These are two examples of our current considerations. The key aspect will be how
we implement our redesigned services to reduce barriers from the point of view of
those who use the services.

2. **The rationale for having a separate approach in both Bills to establishing
   joint working arrangements.**

Presumably the difference in approach relates to the difference in the range of
partners involved in adult and children’s services. There are particular issues about
the need for clear partnership agreements between the universal services of health
and education. The HSCP shares a common client/patient group within adult
services and a common client/patient group of vulnerable children.

3. **In what area potential savings might arise?**

In relation to the Public Bodies (Joint Working) (Scotland) Bill, this is a difficult
question to answer at this stage and is one of the difficulties within integration. Local
authorities have made substantial savings over the past four years, while the NHS
has been protected. This is likely to mean the level of savings available without affecting operational capacity will be less for local authorities. It will be a challenge to maintain costs within existing budgets. Therefore our key benefit must come from integration through i) reducing duplication at the point of service delivery and streamlining some senior management, but mostly middle management; ii) improved deployment of resources as a result of better planning; iii) implementation of the neighbourhood planning approach so that services are focused on the areas where they will have the biggest impact; and iv) common priorities.

We are also considering how the range of ‘support services’ required by health and social services would be best delivered. At this stage it is not possible to say if this will lead to efficiencies or if in fact some may require additional initial investment. ‘Support services’ include; Finance; Human Resources; Legal Services; IT and Property; Facilities Management.

Further savings or investment redirection will be achieved as the partnerships progress.

We have developed a range of initiatives to improve services to elderly people through the Older People’s Change Fund.

For the past two years we have also been funding a range of prevention and early intervention initiatives for children which we are tracking in relation immediate impact and efficiencies down the line.

We would be happy to provide further information if the committee was interested.

4. **Whether there are any issues around the proposals covering consultation on, and development of, strategic plans/service plans between the respective areas involved?**

The main issue in relation to consultation and development of plans will be around timing to ensure we do not duplicate effort or create consultation fatigue. There will be clear structures established within the HSCP to involve the full range of stakeholders and we will need to utilise these as far as possible. We have developed a “neighbourhood planning approach” within North Ayrshire which brings together all the Community Planning partners. We would see this as a key way of reducing disruption and maximising synergy. We believe this approach fits with the requirements of both Bills.
1 Introduction

1.1 The Housing Coordinating Group (HCG) welcomes this opportunity to contribute to the Committee’s stage 1 scrutiny of the Public Bodies (Joint Working) Scotland Bill.

1.2 The HCG consists of the Association of Local Authority Chief Housing Officers (ALACHO); the Chartered Institute of Housing in Scotland; the Scottish Federation of Housing Associations (SFHA); Glasgow and West of Scotland Forum of Housing Associations (GWSF); the Housing Support Enabling Unit (HSEU); and Care and Repair Scotland. Thus, this evidence comes from representative bodies of strategic housing authorities, social housing providers (councils, housing associations and co-operatives), the housing profession, and many third sector providers particularly Care and Repair services.¹ To reflect our common views, in this response we use the collective term “the housing sector”.

1.3 Together we make a very significant contribution to national outcomes on health and well-being by:

- Co-ordinated strategic planning of the supply and quality of housing and related services across tenures and stages of life;
- Providing individuals with information and advice on housing options;
- Directly providing or facilitating, ‘fit for purpose’ housing for rent and for sale / part sale, that gives people choice and a suitable home environment;
- Providing local, personal, preventative services such as aids and adaptations, and care and repair or “handyperson” schemes;
- Building capacity in local communities.

This paper sets out a response to each of the committee’s questions.

1.4 In summary, the housing sector supports the principles of integration for improved outcomes set out in the Bill and understands the need for legislation to promote joint working to pursue these principles. The success of the new ‘integrated authorities’ will largely depend on effective joint strategic commissioning to which the housing sector can make a crucial contribution. The current arrangements for involving the housing sector have not produced a consistent nor adequate approach and the Bill, as it stands, could result in an ‘integrated authority’ deciding not to involve the housing sector as a

¹ The Joint Improvement Team has provided support and assistance to the Housing Coordinating Group
partner. To ensure that housing issues, and the housing sector, form an integral part of contributing to the delivery of national outcomes, the HCG urges that the contribution of the housing sector be recognised within the legislation, urging the new ‘integrated authorities’ to involve their strategic housing partners.

2 **How will the proposed legislation affect the ‘housing sector’?**

2.1 Housing planning and housing services already play a fundamental role in providing ‘homes or a homely setting’ for those using health and social care services particularly as people face long term conditions.

2.2 Housing providers offer varying levels of care and or / support to vulnerable adults and older people, and have long been committed to working with colleagues in health and social care to enable people to continue living in the community rather than institutional settings. There are examples where this has happened already and the Bill could promote this approach more widely across the country. The housing sector has much to contribute to this agenda.

2.3 The Bill sets out a requirement on local authorities and health boards to set up new integrated authorities’ but leaves it to local areas to decide whether and how to involve the housing sector. The possibility that any ‘integrated authority’ could lack the involvement of the housing sector at a strategic level is of some concern. Whilst the need to maintain a focus on housing issues in order to achieve the outcomes of integration has been acknowledged, proper engagement with the housing sector in both planning and delivery will be required.

3 **What do you see as benefits that can accrue from the proposed legislation?**

3.1 The main efficiencies and benefits potentially arising from integration plans are likely to be improved living conditions for our tenants and residents rather than benefits accruing directly to housing organisations themselves. There is increasing recognition of the preventative benefits of housing investment such as keeping people safe at home longer through the timely provision of appropriate housing adaptations, or the reduction of respiratory illness through efficient modern central heating systems. The housing sector argues for an investment dividend arising from an established link between housing investment and a consequential reduction in other more expensive forms of provision such as hospital treatment or long term stays in care homes.

3.2 The ‘housing sector’ has much to contribute to achieving the objectives of integration but its contribution would be put on a more secure footing through a continued commitment to the Housing Contribution Statements (HCSs) and through Community Planning Partnership arrangements to ensure that housing issues and housing sector are properly tied in with Joint Strategic Commissioning plans (JSCPs) and the delivery of the national outcomes.
being developed – the first three of which are particularly pertinent to housing: Healthier Living; Independent Living and Positive Experiences and Outcomes.

3.3 The development of a set of national outcomes will be fundamental in pursuing this objective and we look forward to further opportunities to reflect on the way housing related issues are reflected in the national outcomes and indicators.

3.4 There are also efficiencies and benefits to be had for the housing sector to work with integrated authorities rather than separately with social care and health. Equally, it is important that integrated authorities work with the housing sector otherwise the opportunity joint working presents will be lost in some areas. One way to ensure that this joint working occurs is to require the new partnerships engage formally with the strategic function of housing in local authorities and delivery of housing more generally. This is too important to leave to chance.

3.5 A central policy objective of the Bill is to provide ‘joined up quality health and social care services in order to care for people in their homes or a homely setting where it is safe to do so’. The requirement that integration authorities share a budget and that they develop JSCPs mark a real step change from previous aspirations about joint working and are key strengths of the Bill. The housing sector has much to contribute to the overall policy objective but its role and contribution needs to be strengthened, as set out below.

3.6 The policy memorandum (para 9) states, and we agree, that an aim of the legislation is to deal with the variations in quality across the country. The forthcoming review of National Care Standards provides a significant opportunity to explore the scope to align regulatory standards with the principles of the Bill and the associated national outcomes being currently being developed.

3.7 The policy memorandum, which suggests (paras 98 onwards) that the scope of Bill should extend to adults of all ages, creates an opportunity to offer more consistent approaches to people with similar conditions or situations irrespective of their age. This may particularly assist those living in areas of deprivation, especially those with long term conditions, who are likely to face poorer health outcomes.

3.8 The Bill requires an integration authority to consult with service users where it decides to change the arrangements for carrying out of integration functions. Consultation is required where an authority wants to make changes ‘significantly affecting provision of service in an area’. This could be interpreted to include large tendering exercises, in which case this new duty might provide a means of ensuring that there is a process of consultation with service users in relation to such exercises. This is to be welcomed in order to achieve better outcomes for those using services.

4 Are there any concerns that you have around the proposed legislation?
4.1 The success of the new partnerships will largely depend on effective joint strategic commissioning plans (JSCP). It has already been acknowledged that housing plays a part in effective planning and Housing Contribution Statements (HCS) were introduced in 2012/13 as a way of highlighting the potential housing contribution to existing JSCPs. This first round of HCSs has been reviewed by the Joint Improvement Team and various issues have been highlighted. Whilst we acknowledge the challenge that local partnerships faced in developing and agreeing HCSs within a short timescale we nevertheless think it important to take the opportunity to learn lessons from the exercise.

4.2 The review found that although HCSs were submitted with partnerships’ JSCPs, only a minority actually integrated issues around improving housing and housing related services into the body of the JSCP. There was a tendency for the HCS to appear as a “bolt on”. HCS could be the key mechanism for linking Local Housing Strategies with JSCPs, and will be vital for the housing sector to play a strategic role in meeting the national outcomes associated with integration of health and social care. The housing dimension of integrated planning needs to be dealt with within the JSCP rather than sitting on the margins. In other words, we believe the best place for housing to demonstrate its actual and potential contribution to improving outcomes for people within the health and social care system is through proper integration of housing issues within JSCPs.

4.3 To further the integration of housing issues in JSCPs there needs to be a shared understanding of data relating to housing, health and social care, and a shared commitment to producing meaningful information from such datasets for planning purposes. We note that a review of the guidance relating to Housing Need and Demand Assessment (HNDA)\(^2\) is currently underway. This will consider explicitly improvements needed to aid our collective understanding of the housing needs of vulnerable groups such as older people and those with particular needs, and we propose that revised HNDAS be regarded as part of the toolkit required for JSCPs.

4.4 Together with ALACHO and SFHA, the JIT is currently surveying the sector to extend understanding of the housing sector’s experience of the first round of HCS. The review of HCSs submitted in March 2013 identified that these tended to consider housing with care and adaptations, but there was concern about a lack of focus on housing advice, lower level housing support services and other housing related services. The sector, working with the Scottish Government will use the information obtained to provide feedback and advice to practitioners across the housing health and social care sectors on how the housing contribution to JSCPs might be improved.

4.5 The Bill sets out integration across all adult age groups rather than simply older adults and this seems appropriate given the experience of housing providers in deprived areas where the onset of long term conditions tends to happen at a lower age. We note, however, that much of the Bill continues to

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\(^2\) Housing Need and Demand Assessments are undertaken to assess local housing need and demand to inform the development of local housing strategies and development plans.
focus solely on the needs of older people and suggest this should be addressed if the principles set out in the Bill are to be pursued effectively.

4.7 Effective leadership at a local level will be crucial if the required change is to be implemented. The role of social landlords as a community anchor at a local level could be fundamental to helping to link leaders within public bodies with local people and leaders in the voluntary sector and in community based organisations. The Bill could be strengthened by requiring integration authorities to work with housing and the third sector as partners rather than simply adhering to principles to engage with ‘community and local professionals’. As a comparison, there is currently in place a requirement that Reshaping Care for Older People Change Fund plans are signed off by four signatories: the NHS Board, the local authority, the third sector and the private sector. We would urge that the housing sector be given formal recognition as a signatory for future integration plans in addition to the third sector.

4.8 There is a lack of clarity about the elements of funding which will go into integrated budgets and the extent to which local authority budgets currently directed at housing related services, such as housing support for homeless people, will be expected to be part of this. If each integration authority is left to decide this there is a risk that the financial context within which housing related services operate will become increasingly complex, to the detriment of the individuals who currently benefit from such services, with an increased risk that the policy objectives set out in the Bill will not be achieved.

4.9 Social landlords and many of the individuals they serve are already dealing with financial uncertainty resulting from welfare reform. It will be important that the financial arrangements introduced under the Bill do not destabilise housing related services further.

4.10 The HCG agrees with the planning and delivery principles as set out in the Bill (sections 4 and 25). These are in line with those originally set out in the consultation document and have gained the support of housing professionals across the sector. The ‘housing sector’ has much to contribute to the objectives of integration and the opportunity to put this on a more secure footing should not be missed.
Local Government and Regeneration Committee

Children and Young People (Scotland) Bill

Submission from Association on Directors of Education in Scotland

Part 3 Children's Services Planning

1. We support the requirement, the aims and the process indicated for the Children’s Services Plan. However, in section 13, we believe that the prime aim should be to focus on the outcomes for children and young people rather than the mechanisms for planning.

2. In relation to guidance in Children’s Services Planning, it would be important to ensure that there are long term evaluations of the impact on children and families rather than reportable short term proxy measures which may divert attention from the long term aims of the legislation.

3. We have significant concerns around section 17 and the default powers of the Scottish Ministers. This appears to be focussed almost entirely on the role of Scottish Ministers to change structures and to direct resources rather than a consultative and meditative role where they feel that Councils and Health Boards are not achieving best outcomes required for children. This has significant implications for local authorities which were not made explicit during the consultation period.

4. There is no suggestion anywhere else in the document that joint boards are a prerequisite for effective Children’s Service Planning. As an organisation with particular interest in education we would have concerns that decisions could be made to divert resources from this function to support underfunded pressures in other areas of children’s services. This would appear to be increased centralisation of decision making which does not sit comfortably with local democratic responsibility for services.

Association on Directors of Education in Scotland
August 2013
Local Government and Regeneration Committee

Public Bodies (Joint Working) Bill

Submission from Argyll and Bute Council

1. I refer to your letter of 26th June and would offer the following comments which have not been formally considered by the Council given the timescale for reply but nevertheless I trust that it will be helpful.

2. Argyll & Bute Council welcomes the introduction of the Bill, whilst recognising the challenges, going forward, that are inevitable during a period of transformational change.

3. The key objectives identified by the Christie Commission and the intent of the Bill provide us with the impetus to make the changes required to deliver our vision for the people of Argyll & Bute. The remote and rural nature of this area means that we have already, of necessity, developed a strong Health and Care Strategic Partnership that supports many excellent, and some award winning, integrated services. Through Reshaping Care for Older People (RCOP) and the move to Joint Commissioning we have further enhanced that partnership by fully involving the Third and Independent sectors as equal partners on the RCOP Project Board and in all of the associated workstreams.

4. Over the last 4 years we have developed a comprehensive joint reporting framework for adult care services, with monthly reporting that both informs strategic decision making and supports pro-active operational management.

5. We recognise that both service delivery and performance reporting need to continue to move towards an outcome-focused approach, going forward. We have recently hosted presenters from the Swedish Esther Network and we are considering how we can implement that model in Argyll & Bute.

6. Implementation of joint working will require a major culture change for both the Local Authority and our NHS colleagues, there will need to be changes in behaviours and attitudes and a willingness to overcome obstacles, driven by strong and enthusiastic leadership. We need to improve on staff and community involvement and overcome risk aversion to achieve truly customer-led service delivery. We also face financial and logistical challenges, particularly given the rurality of our environment; however, it is clear that unless we achieve both economies of scale and economies of skill, through this opportunity for joint working, we will not be able to meet the demographic-demand challenges of the future.

7. At present we are looking towards a Body Corporate model of implementation. We have appointed a project team to scope the Council’s position and inform our
Elected Members and we look towards commencing joint planning for integration, with our NHS colleagues, in the early autumn.

8. The Argyll and Bute Council has supported the Children and Young People Bill through the COSLA consultations. In particular the Council welcomes the:

- Emphasise on Children and Young People’s Rights
- Promotion of GIRFEC principles (child’s plan and named professional)
- Extension of early years support (minimum 600 hours for 3 and 4 year olds)
- Improving permanence planning and LAC outcomes (right of care leavers to be assessed for support until their 25th year)
- Defining of corporate parenting and the duties of the corporate parent

9. The Council are, however, cautious as to the accuracy of the take up assumptions and the actual cost of implementation. The position taken by CoSLA in subsequent negotiations with the Scottish Government in respect of the financial arrangements reflects these concerns in detail and highlights discrepancies in funding for local government in comparison with recurring funding arrangements for the NHS. The Council are also concerned that there are proposals similar those in the recent Bill on Health and Social Care integration to give Ministers powers to establish Joint Boards, including the transfer of staff and functions from councils and Health Boards, if both sides fail to deliver integrated children’s services planning as set out in the Bill.

10. I would highlight the following link to further detail of the council’s position in relation to the Children and Young Persons Bill:


Roddy McCuish
Leader
Introduction

1. Audit Scotland is the public sector audit agency undertaking the external audit of the majority of public sector bodies in Scotland. We do this on behalf of the Auditor General for Scotland (for the NHS and central government) and the Accounts Commission (for local government). We provide this written evidence to assist the Local Government and Regeneration Committee with its interest in the *Public Bodies (Joint Working) (Scotland) Bill* and the *Children and Young People (Scotland) Bill* and their potential impact on local authority functions and partnership/joint working.

2. The Auditor General and the Accounts Commission welcome the opportunity to comment on the implications of the Bills and how the joint working arrangements established by them will link with the work of Community Planning Partnerships (CPPs).

Issues highlighted in audit work

3. This response draws on a wide range of audit work, in particular our report on *Improving Community Planning in Scotland* (March 2013). This report highlights that there is now a renewed focus on community planning which provides a clear opportunity to deliver a step change in performance. This will require strong and sustained shared leadership. There are many examples where joint working is making a difference for specific communities and groups across Scotland. However, our report concluded that overall, and ten years after community planning was given a statutory basis, CPPs are not able to show that they have had a significant impact in delivering improved outcomes across Scotland.

4. Over a number of years, Audit Scotland has highlighted the need to improve how public services work together to meet the needs of the people of Scotland and make the best use of available resources. We have highlighted in several reports the need for barriers to partnership working to be addressed. It is encouraging that both the *Public Bodies (Joint Working) (Scotland) Bill* and the *Children and Young People (Scotland) Bill* seek to address these problems. However, questions remain about the implications for CPPs and the responsibilities of local government from the introduction of these Bills.

5. There are a series of key issues not addressed within the Bills or the associated documents, and further information is needed to understand how these changes will work in practice. Significantly, the relationship between CPPs and the new integrated health and social care arrangements (through the *Public Bodies (Joint Working) (Scotland) Bill*) and changes to children’s services (through the *Children and Young People (Scotland) Bill*) are not clear.

6. There is a need for a clear articulation of how these new arrangements fit with CPPs. We noted in *Improving Community Planning in Scotland* that:

   “There is a risk that wide-ranging reforms of public services in Scotland creates tensions between national and local priorities for change. Significant changes are under way aimed at integrating health and social care services, creating national police and fire services and regionalising colleges, all of which are important..."
community planning partners. It is essential that those who lead and manage local public services work together to ensure that they are providing public services in ways that make sense locally, while delivering the stated intention of the reforms. Equally, the Scottish Government has a key role to play by:

- ensuring ‘joined-up’ approaches to reform across government
- clearly and consistently setting out how it expects services to be provided in an integrated way
- streamlining policy guidance and arrangements for measuring performance across different parts of the public sector, and making sure they are consistent with each other.

At present, it is not clear how important aspects of the community planning review and health and social care integration developments are being integrated. For example, how policy guidance on governance and accountability arrangements is being coordinated and how performance reporting requirements will be aligned.”

7. It is still unclear, now the Public Bodies (Joint Working) (Scotland) Bill has been published, how some of these tensions will be resolved. There are similar issues with the Children and Young People (Scotland) Bill, for example, how the requirement to produce a children’s services plan will fit with the work of the CPP in each local area.

8. It essential that sound governance and accountability arrangements are in place, that organisations are able to respond flexibly to local needs and that there is some national monitoring of progress in improving services in line with policy intentions. Any new governance and accountability arrangements should be effectively aligned with existing arrangements.

9. The new integrated arrangements will be responsible for directing significant resources, representing a significant proportion of local government services. Under the Public Bodies (Joint Working) (Scotland) Bill, the new integrated partnerships may opt to include other services, such as services for children. Given the potential scale of these integrated arrangements, in terms of both the resources involved and the policy areas covered, it is even more important that the links to CPPs are clear and fully understood. There are also tensions between the introduction of a statutory partnership for health and social care services and the non-statutory CPPs. We have provided more detailed written evidence to the Health and Sport Committee to assist its scrutiny of the Public Bodies (Joint Working) (Scotland) Bill which you might find helpful. (Full submission set out in appendix 1). In relation to the Public Bodies (Joint Working) (Scotland) Bill, it is unclear how the external audit function will be funded and arranged and how it will work in practice. In taking forward the new arrangements, consideration will need to be given to audit committee and scrutiny arrangements, alongside the external audit issues we have raised.

10. The Public Bodies (Joint Working) (Scotland) Bill gives Ministers powers to make certain decisions about how services are planned and delivered locally, including powers to issue directions to local authorities, health boards or integration joint boards, about the functions related to the Bill, or in the integration plan. These powers are significant and need to be carefully considered given the unique position of local government as democratically accountable to their local communities.

11. The Children and Young People (Scotland) Bill covers a wide range of services for children. The Bill includes provisions for enforcement, which state that if a local authority or health board do not comply with the planning requirements or with
Ministerial guidance about these plans then Scottish Ministers can transfer their children’s services planning function to other health boards or local authorities or require joint boards to be established to plan services. This has significant implications for local authority services and needs to be considered further in taking forward the new arrangements. We note that the extent of the proposed ministerial powers set out in the Bills are different, with the powers in the Children and Young People (Scotland) Bill greater than those indicated in the Public Bodies (Joint Working) (Scotland) Bill.

12. There is significant overlap between the agencies involved in CPPs and those who will need to be involved in the arrangements set out in the Bills. This is another reason why there needs to be clarity about the role of various organisations in these joint working arrangements, their focus and how their performance will be measured, in order to make best use of resources in the local area. There is a risk that this may lead to duplication and a cluttered partnership landscape if this is not fully addressed.

13. Links between various performance management and reporting arrangements are unclear, for example, how the children’s services plan will link to the Single Outcome Agreement for each CPP. There are lessons to be learned from other partnership arrangements. When commenting on Community Justice Authorities in An Overview of Scotland’s Criminal Justice System, we noted:

“Although CJAs were established in 2007, there are no agreed measures to assess their performance or impact. As a result, CJAs use a range of different performance indicators developed locally with different systems for reporting and presenting data. CJAs have recently agreed to improve information sharing and to look at developing a common set of core measures and associated information requirements.

The lack of agreed performance indicators across the range of services designed to reduce reoffending means the cost-effectiveness of different local projects cannot be compared.”

14. Any outcome measures must be transparently reported and available to the public and this information should be used to drive improvement. National measures are useful but partners also need a mechanism for ensuring local needs and priorities are met and for measuring the difference that specific services are making to the individual.

15. Finally, the Committee is interested in views about the impact on local authority functions. It is difficult to be specific about the potential impact from the Public Bodies (Joint Working) (Scotland) Bill, given the needed for further details in key areas (see appendix 1). The Children and Young People (Scotland) Bill will potentially have a significant impact on local authority services. This includes specific changes, such as increasing early learning and childcare, but also the potential for a major change in how services are controlled, through the ministerial powers noted above.

Further information

16. We hope that you find our comments helpful and should you require any further information please contact Fraser McKinlay, Director of Performance Audit and Best Value, Audit Scotland, 18 George Street, Edinburgh, EH2 2QU, e-mail fmckinlay@audit-scotland.gov.uk.
Appendix 1

SCOTTISH PARLIAMENT HEALTH AND SPORT COMMITTEE

PUBLIC BODIES (JOINT WORKING) (SCOTLAND) BILL

WRITTEN SUBMISSION BY AUDIT SCOTLAND ON BEHALF OF THE AUDITOR GENERAL FOR SCOTLAND AND THE ACCOUNTS COMMISSION

Introduction
1. Audit Scotland is the public sector audit agency undertaking the external audit of the majority of public sector bodies in Scotland. We do this on behalf of the Auditor General for Scotland (for the NHS and central government) and the Accounts Commission (for local government). We provide this written evidence to assist the Health and Sport Committee’s scrutiny of the Public Bodies (Joint Working) (Scotland) Bill.

Background
2. The Auditor General and the Accounts Commission welcome the opportunity to comment on the Public Bodies (Joint Working) (Scotland) Bill and to contribute to the future integration of adult health and social care in Scotland. This submission refers to the experience and audit evidence gathered through the work Audit Scotland has carried out on our behalf. This response draws on a wide range of audit work, but in particular Audit Scotland’s reports on Review of Community Health Partnerships (June 2011) and Commissioning social care (March 2012).

3. The Committee invites comments on a number of questions and we have focused our response around them.

Question 1: Do you agree with the general principles of the Bill and its provisions?
4. We support the principle that public services should be designed around the needs of the service user, and that public bodies should seek to overcome the organisational barriers that get in the way of delivering seamless integrated health and social care. Over a number of years, Audit Scotland has highlighted the need to improve how health and social care services work together to meet the needs of the people of Scotland. It is essential that services are able to work well together to respond to needs whilst making the best use of existing resources and delivering high quality services. We have highlighted in several reports the need for barriers to partnership working to be addressed and the importance of having a joint vision and clear priorities for the use of shared resources. It is encouraging that the Bill seeks to address these problems.

5. In our previous report on Community Health Partnerships (CHPs), we highlighted that a more systematic and joined-up approach to planning and resourcing health and care services is needed to ensure that health and social care resources are used efficiently. We saw few examples of good joint planning underpinned by a comprehensive understanding of the shared resources available. This message was echoed strongly in our work on Commissioning social care where we found slow progress with strategic commissioning and limited joint working. One of our concerns about CHPs related to their lack of strategic influence over how resources were used...
in the local area. The principles in the Bill aim to improve these issues, however, the change needed is significant and this is a challenging agenda.
Question 2: To what extent do you believe that the approach being proposed in the Bill will achieve its stated policy objectives?

6. The Bill requires NHS boards and councils to work together to meet the needs of the people in the local area. There are specific aspects of the Bill that should address some of the concerns we have raised in previous audit work and help to achieve the stated policy objectives. In particular, the obligation to prepare, publish, monitor and report against a local integration plan, and involve and consult with service users and carers in developing the plan, should provide a focus for driving forward the policy intention of the legislation. The extent to which this will be effective will be dependent at least in part on the quality and effectiveness of local leadership and the commitment of local partners to the plan and to the delegation and sharing of resources. Similarly, the role of the Integration Joint Monitoring Committee will be important in providing oversight and challenge.

7. However, the change needed is significant and there are some areas of the Bill where more detail is needed.
   - It is not clear from the Bill how local people will be engaged in the changes proposed, whether the new partnerships will be central or local government bodies and how audit arrangements will operate.
   - To date, GPs, clinical professionals and social care staff have not been fully involved in service planning and resource allocation for health and social care services. The lack of influence that CHPs have had over overall resources has been a barrier to professional staff engaging with CHPs. This needs to be addressed because these professional staff influence a large proportion of the health and care budget as a result of their decisions. The role of professionals is unclear in the Bill.
   - The Bill provides little detail about how locality arrangements might work in practice. There needs to be a real contribution from professional staff groups to informing how resources are used and services improved.

8. In our report on Community Health Partnerships, we highlighted that partnership working between one or more organisations is challenging due to the differences in accountability arrangements and differences in organisational cultures, planning and performance and financial management. The proposals set out in the consultation appear to address some of these challenges but greater clarity is needed in some areas, include how acute NHS resources will be affected and how funds will flow via the new arrangements. The real test will be how the partnerships work in practice.

9. There are lessons to be learned from other partnership arrangements. When commenting on Community Justice Authorities in An Overview of Scotland’s Criminal Justice System, we noted:

   “Although CJAs were established in 2007, there are no agreed measures to assess their performance or impact. As a result, CJAs use a range of different performance indicators developed locally with different systems for reporting and presenting data. CJAs have recently agreed to improve information sharing and to look at developing a common set of core measures and associated information requirements.

   The lack of agreed performance indicators across the range of services designed to reduce reoffending means the cost-effectiveness of different local projects cannot be compared.”
10. The proposals set out in the Bill seek to avoid some of the above limitations, for example, the expectation that the local strategic plan will have regard to national health and well-being outcomes should ensure a greater focus on performance expectations.
Question 3: Please indicate which, if any, aspects of the Bill’s policy objectives you would consider as key strengths

11. Our reports on CHPs and Community Planning Partnerships (CPPs) highlight the importance of applying certain key principles to underpin successful partnership working. It is encouraging that the Bill recognises the importance of these key issues, including the need for leadership, vision, clear roles and responsibilities and for risks to be identified and managed. Accountability arrangements and processes also need to be clear. Partners should have a shared understanding about what success looks like and that there are arrangements in place to monitor and publically report on progress. Although these issues are identified in the Bill, this needs to be an area of focus when the Bill is implemented.

12. We have commented in a number of our reports about the lack of joined-up, transparent and comparable performance measures for health and social care services. This makes it very difficult to build a clear picture of relative performance and does not help the public or the Scottish Parliament to be assured about the quality and efficiency of the service. Therefore, we welcome the proposal for a set of nationally agreed outcome measures. When taking the Bill forward, it is important to be clear how these new measures will fit with existing frameworks such as Single Outcome Agreements (SOAs) and HEAT.

Question 4: Please provide details of any areas in which you feel the Bill’s provisions could be strengthened

13. There are a number of key issues not addressed within the Bill or associated documents, and further information is needed to understand how these changes will work in practice. If these issues are not addressed in the Bill, they need to feature in subsequent implementation guidance. These issues fall into six main areas:

- **Resources.** In previous audit work we have highlighted that, for successful partnership working, it is essential that budgets and resources are clearly set out and agreed by all partners. The partners should be clear about the rationale for how money is allocated and spent, and efficiencies should be sought through sharing of resources and improved ways of working. There needs to be transparency about how devolved budgets have been determined and what resources are included in the devolved budget. Our work has shown that these key principles have not been applied fully in partnerships in Scotland to date.

From the information in the Bill, there are clear potential risks and tensions around how organisations will determine which budgets will be included in the integrated budget and the implications of this for their own governance and accountability arrangements. It is essential that there is clarity at a local level about governance and accountability arrangements and how risks will be identified and managed, and that there are effective dispute resolution arrangements in place. There is no minimum requirement for resources or services to be included in the new arrangements. This creates a risk of significant differences of approach across the country.

Linked to this point, it is unclear from the Bill the role that other policy areas will play, specifically housing. It is important that the new arrangements maximise the valuable contribution that housing can play in improving care and support for older people. More details on how self-directed support and personalisation of care will be addressed through the new partnerships would also be useful.
• **Links between health and social care integration and Community Planning.**

The relationship between the new partnerships and the existing Community Planning Partnerships (CPPs) is not clear from the Bill. There is a need for a clear articulation of how these new arrangements fit with CPPs given the significant leadership and co-ordinating role for local public services that the Scottish Government/COSLA see for CPPs in their Statement of Ambition for Community Planning and Single Outcome Agreements. That document identifies community planning arrangements as being at the core of public service reform and ‘providing the foundation for effective partnership working within which wider reform initiatives, such as the integration of health and adult social care… will happen.’ Specifically it is not clear how accountability and outcomes/performance management will link between CPPs and the new health and social care partnerships. It essential that sound governance and accountability arrangements are in place. Any new governance and accountability arrangements should be effectively aligned with existing arrangements to avoid further complicating approaches to governance and accountability - we noted in our report on Community Health Partnerships that:

“Approaches to partnership working have been incremental and there is a cluttered partnership landscape. CHPs were set up in addition to existing health and social care partnership arrangements in many areas. This has contributed to duplication and a lack of clarity of the role of the CHP and other partnerships in place in a local area. There is scope to achieve efficiencies by reducing the number of partnership working arrangements”

Given that the new integrated arrangements will be responsible for significant resources, and may opt to include other services, such as services for children, it is even more important that the links to CPPs are clear and fully understood.

• **Implications for audit and scrutiny arrangements.** The Bill does not set out whether the corporate body will be a local government or central government body. This has significant implications for financial arrangements and for the audit function. There are other potential issues for auditing and other scrutiny arrangements because of these changes. Specifically, if local partners opt to establish a body corporate there will be implications for internal and external audit arrangements. For example, the VAT status of the new body will need to be clarified. These issues have implications for audit and inspection arrangements as well as Parliamentary scrutiny. Furthermore, there are different budgeting cycles for NHS and Local Government bodies. It is also unclear from the Bill and associated documents, how the external audit function will be funded and arranged and how it will work in practice. In taking forward the new arrangements, consideration will need to be given to audit committee and scrutiny arrangements, alongside the external audit issues we have raised. There is a need for more detail on how these integrated services will be regulated and inspected through the work of Healthcare Improvement Scotland and the Care Inspectorate to ensure that there is appropriate independent public assurance about the performance of the new partnerships.

• **Governance arrangements.** The Bill sets out plans for a Chief Officer. This addresses one of our concerns that the existing CHP model was not given sufficient powers and authority to lead on key decisions about how resources are used in the local area. However, there are challenges and tensions with this proposed approach and the role and remit of the Board of the NHS board and the council elected members. There needs to be clear arrangements for any disagreements between the partners, including disagreements about finances, services, performance, and leadership to be resolved. The Chief Officer may be accountable for significant
resources; therefore, the leadership dynamic within both the NHS board and the Local Authority will be shifted by this arrangement. It is essential that there is more clarity about how the Chief Officer will report into the NHS board and into the Local Authority, and that clear performance management and accountability arrangements are put in place.

- **The role of health and care professionals.** The Bill recognises the importance of health and social care professionals being at the heart of making the partnerships a success. However, there is a lack of detail on how this will work in practice. We recognise the need for a degree of local flexibility to allow partnerships to respond to local needs, but we have noted in previous audits that historically these professional groups, such as GPs, have not played a key role in partnership working to date. Their involvement will be critical to the success of the new arrangements.

- **Ministerial powers.** The Bill gives Ministers wide-ranging powers to make certain decisions about how services are planned and delivered locally, including powers to issue directions to local authorities, health boards or integration joint boards, about the functions related to the Bill, or in the integration plan. These powers are potentially significant, in particular in relation to the role and responsibility of local government. For that reason, more information on the circumstances in which Ministers might seek to exercise these wide-ranging powers would be useful.

**Question 5: What are the efficiencies and benefits that you anticipate will arise for your organisation from the delivery of integration plans?**

14. The new arrangements will require NHS boards and councils to improve and share information on how resources are used locally for specific groups within the local community. Audit Scotland has highlighted a number of gaps in information which could be addressed through this approach. Specifically, we have highlighted previously a lack of information on community services to inform how best to use shared resources for the local area. The new arrangements may make it easier for health and social care providers to see their services as part of a single system of care, making it easier to reduce overlaps and to ensure that people receive the care they need, while best use is made of existing resources.

15. We recognise the major challenge in integrating health and social care services. We have previously commented that there has been no large-scale shift in the balance of care to community services and on the lack of joint resourcing in Scotland, and consider that many partnerships will find agreeing on the resources to devolve to the integrated budget difficult. Our recent report on Commissioning social care found that there was a way to go to develop how services are planned and commissioned within a single agency, not least between partners. This will be a major change for partners and require strong leadership, investment and support to make the change.

**Question 6: What effect do you anticipate integration plans will have on outcomes for those receiving services?**

16. The intention from the Bill is for a clear change to how services are planned and managed as a result of the proposals. The Scottish Government, and local agencies, will need to consider the potential cost implication of these changes and the impact on professional staff who deliver frontline services. The focus should be on improving outcomes for local people as well as on integrating systems and services. The introduction of a core set of national outcome measures and the requirement on
partners to jointly plan and use their resources to best meet local needs are welcome. The Bill provides the opportunity for better coordination of services and making better use of available resources at a local level.

17. Any outcome measures must be transparently reported and available to the public and this information should be used to drive improvement. National measures are useful but partners also need a mechanism for ensuring local needs and priorities are met and for measuring the difference that specific services are making to the individual.

18. The Scottish Government, together with NHS boards and councils, will need to ensure there is minimum disruption to existing services and service users during the move to better integration. NHS boards and councils need to continue to deliver services to those who need them during this period of change and must ensure that people are not adversely affected. Whilst these changes are under way, it will be important to maintain the progress made by CHPs at a local level.

Further information
19. We hope that you find our comments helpful. Should you require any further information please contact Fraser McKinlay, Director of Performance Audit and Best Value, Audit Scotland, 18 George Street, Edinburgh, EH2 2QU, e-mail fmckinlay@audit-scotland.gov.uk.
Children and Young People (Scotland) Bill
Submission from Children in Scotland


1. Children in Scotland is the national umbrella agency for organisations and professionals working with and for children, young people and families, with around 400 members. We welcome the opportunity to respond to the Finance Committee’s call for evidence on the National Performance Framework, as part of the process of scrutinising the Scottish Government’s draft Budget for 2014-15.

2. Our comments in this submission reflect our remit to support and promote improved outcomes for children, young people and their parents/carers, so our contribution focuses on these aspects of the NPF.

General Observations.

3. The National Performance Framework project was always going to be a major challenge to deliver and the Scottish Government is to be commended for its ambition in drawing together a hierarchy of strategic objectives, supported by national outcomes and key indicators. The shift of focus towards measuring outcomes, rather than inputs and processes was also a positive development. However, while we welcomed the inclusion of some outcomes and indicators in the NPF directly related to children and young people, they only represent around 16% of the 50 indicators in the Framework and only two indicators relate directly to pre-school children.

4. Children in Scotland has also welcomed the major shift of policy towards the principles of prevention, early intervention and a strong focus on the early years. As we note below, however, we consider that it is too early to come to a reasoned view as to whether resources are following the shift of policy to any significant extent.

The NPF as a means of measuring improved outcomes for children, young people and families.

5. Life chances and outcomes for children and young people are directly affected by a whole range of environments and issues covered by the NPF eg deprivation, housing, play and recreational space, health and other inequalities, public safety etc. We suggest, therefore, that scrutiny of only the few indicators which refer to children and young people would present a seriously incomplete and potentially misleading picture of progress in dealing with the many aspects of Scottish life which affect children.
6. Rather than focus solely on the specific outcomes and indicators relating to children and young people, we recommend, therefore, that the Scottish Government must take a broader overview across all relevant elements of the NPF to ensure that it can present a full picture of progress in improving outcomes in a positive and sustainable way for the youngest members of Scottish society.

**Choice of outcomes and indicators.**

7. We are aware that the Scottish Government is not directly responsible for day to day delivery of the services which will, in reality, determine whether improved outcomes are generated for our children, young people and their families. Therefore, identifying available and consistent data and information from a wide range of service providers, notably local government and the NHS Boards, was always going to be a major challenge.

8. There was always unease, however, that the indicators directly affecting children and young people were dictated by what information was readily available, rather than what would be the optimum measures to show that the lives and opportunities for our children and young people are being improved. While the limited national outcomes aimed directly at children and young people are laudable, we have significant reservations as to whether the related national indicators are sufficient to show if they are being delivered.

9. For example, the indicator “improving children’s services” seems focused entirely on child protection inspection results. It is clearly important to know that child protection services are scrutinised and improved where needed, but we suggest that this indicator either needs to be retitled “improving child protection services” or the range of services covered by the indicator needs to be widened. The Care Inspectorate’s new methodology goes beyond child protection services, so there is perhaps an opportunity to realign this indicator to cover a wider range of services which, we believe, would be the more desirable and meaningful option.

10. Inspection reports are essentially retrospective audits on the performance of services, rather than measurement of sustained and improved outcomes for those who use them. This contention applies to the indicators around positive inspections of schools and pre-school settings. These are valuable in reassuring parents and funders that providers are offering high quality services, but we would argue that they say little about the experiences of children and young people and whether outcomes for them are actually improving and thus contributing to meeting the associated national outcomes.

11. The national indicators around healthy birth weight, dental health, weight and physical activity are certainly useful as quantifiable ways of looking at the health and development of children but they are effectively proxy measures. We are not convinced that what are statistical snapshots tell us nearly enough for anyone to take a reasoned view on whether outcomes for our children are improving, particularly in respect of the early years.
Proposals for improvement.

12. Children in Scotland accepts that, in the current financial environment, developing expensive and extensive new data collection systems may not be a viable option and we recognise the benefits of using existing and consistent data sources wherever possible. Our question remains, however, as to whether the national indicators which are directly aimed at children and young people really provide the right and right amount of information to show progress in meeting the associated national outcomes.

13. Children in Scotland also questions whether advances in Scottish Government policy priorities aimed at children, young people and parents/carers (and their associated measures) have resulted in the NPF being overtaken and sidelined as far as looking at progress in improving outcomes for children and young people. In suggesting this, we see considerable and positive scope to create a more meaningful and streamlined framework and better alignment between the Framework and other current and developing measures of improved outcomes for children and young people.

14. The current planning and policy environments relating to children and young people are very complex. In our view, they do not link up well, thus adding to bureaucracy and lack of clarity for practitioners, planners, policy makers and families. Children in Scotland has been concerned for some time that planning for children’s services, a legal requirement under the Children (Scotland) Act 1995, is largely peripheral to wider Community Planning and the associated Single Outcome Agreement (SOA) process. As we indicate earlier in this submission, outcomes for children and young people are affected by a wide range of environmental and societal factors and we firmly believe that plans for direct support to children and young people should not be seen as separate from wider community development.

15. The duty on local authorities to produce and publish children’s services plans is augmented in the Children and Young People Bill, currently at Stage 1 in Parliament. Children in Scotland’s evidence to the Education Committee suggests that there should be formal links between Community Plans, SOAs and Children’s Services Plans. In our view, the Bill provides an opportunity to make these much needed links and for the Scottish Government to look again at whether SOA targets/outcomes adequately cover the interests of children and young people.

16. The Bill also describes a “wellbeing framework” based on the Getting It Right for Every Child (GIRFEC) principles of Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included (SHANARRI). Our understanding is that there is to be a suite of indicators and measures to help demonstrate progress, based on SHANARRI principles and that these should be included in progress reports on delivery of children’s services plans.

17. Children in Scotland considers that it would both sensible and feasible to use measures and indicators, based on the SHANARRI framework, as a
foundation for reporting at locality level, aggregate such information to Community Planning Partnership level and then include it in national reporting, eg through SOAs, which, ultimately, would feed into the National Performance Framework. This would provide "bottom up" performance information to aid direct service providers at locality level, local policy and planning partnerships, national government and Parliament in respect of assessing successful delivery of national outcomes, policy priorities and resource allocation.

18. If the SHANARRI indicators are well designed and measured consistently, this would ultimately provide the National Performance Framework with a wider range of more meaningful and relevant information on how children and young people are faring in Scotland.

19. Children in Scotland also believes that the Growing Up in Scotland research outcomes could serve as a useful input to the national outcomes set out in the NPF, again making better use of existing sources of information.

20. Growing Up in Scotland (GUS) is a large-scale and ongoing longitudinal research project aimed at tracking the lives of several cohorts of Scottish children from the early years, through childhood and beyond. The research covers key domains which are very relevant to the national outcomes in the NPF, including cognitive, social, emotional and behavioural development, physical and mental health and wellbeing, childcare, education and employment, home, family, community and social networks, involvement in offending and risky behaviour.

**Opportunity to rationalise and streamline indicators.**

21. We suspect that many current performance and reporting requirements are linked to earlier, specific policies and strategies and they may not reflect the shift of focus towards prevention, early intervention and the early years.

22. We suggest, therefore, that the Scottish Government should take the opportunity to review the plethora of performance and other reporting information it currently gathers (and plans to gather in future) in respect of improving outcomes for children and young people. As matters stand, Children in Scotland would contend that there is a need for greater cohesion and scope for significant rationalisation which could save scarce human and financial resources that could be better used to support front line services and improve outcomes.

23. For example, we understand that an ongoing project, the Early Years Collaborative, is developing a new suite of stretch aims and targets, based around a quality improvement model. While Children in Scotland has always welcomed greater emphasis on the early years, we suggest that the Scottish Government should be invited to set out in detail how these new measures fit with GIRFEC/SHANARRI indicators, the indicators which underpin the Early Years Framework and the reporting requirements in the Children and Young People Bill. Our hope is that these could be rationalised and streamlined, rather than creating additional burdens on hard-pressed service providers.
24. There is also a major issue around the availability of robust baseline data to form the foundations from which progress can be monitored and the Scottish Government should ensure that it has sufficient baseline information to support improved indicators and measures in respect of improving outcomes for children and young people.

**Links between NPF priorities and spending decisions.**

25. Children in Scotland welcomes the policy intentions and rationale behind shifting resources towards prevention, early intervention and the early years, including the prospects of generating savings to the public purse in the short, medium and long terms. However, it seems to us that there is no consistent understanding or definition of what prevention and early intervention mean in practice, so we question how effective any attempt to categorise and quantify the allocation of resources would be.

26. In addition, it is very difficult to obtain information on how much is spent in Scotland on supporting children's services and to track trends. Local authority financial returns are one complex, source of information. Our understanding is that NHS spend on children and young people is almost impossible to identify, due to the way in which budgets are structured. Against this backdrop (coupled with the virtual removal of ring fenced budgets for local government), we suspect that it will be difficult for the Scottish Government and for Parliament to measure from a meaningful baseline whether there is a shift of resources towards the prevention and early intervention priorities.

27. Another factor which will conspire against shifting resources is that this initiative has come about at a time of severe pressures on public sector budgets and we know that local authorities and other providers are already struggling to meet their existing legal obligations to children and families. We consider that there is very little in the way of “slack” in the financial system which would allow a major shift of resources, while still ensuring that current statutory duties are met.

28. While the Scottish Government’s Change Fund is a useful incentive, our partners have pointed out to us the dilemma they face in transferring increasingly scarce resources to meet revised priorities, particularly identification of the budgets which might be reduced and the consequences of doing so. For example, existing children and families with multiple, complex and challenging needs will still require extensive and expensive support over time and reduction or withdrawal of support could have very serious consequences for all concerned.

29. Given the serious financial conditions facing the public sector in Scotland, we suggest that policy makers, planners and practitioners need to take careful stock of current activities to ensure that they are delivering improved outcomes for children and families and value for money. Where there is spending on provision that is clearly failing to deliver, shutting down such activities and transferring resources into services and actions that have been
proven to work, may be another option to free up human and financial capital. Diverting resources into prevention and early intervention priorities would certainly be welcome, but it is equally important to have common definitions, measures and indicators to ensure that such resources are delivering genuine and sustainable improvements to outcomes.

30. The desired transitions in resource terms will, in our view, take much longer to emerge and progress is likely to be slow and variable across Scotland. The consequence of this is likely to be that the improvement in outcomes for children and young people envisioned by the Scottish Government, and supported by Children in Scotland, will take longer to emerge. We are not advocating a shift away from the policy aims of prevention, early identification of problems and early intervention from the earliest years in a child’s life, but offering something of a “reality check” in managing expectations.

Conclusion.

31. In conclusion, Children in Scotland supports the rationale and aims which underpin the National Performance Framework, but we can see considerable scope to enhance the range and quality of information on children and young people that feeds into it. In this submission, we offer suggestions which, we hope, might provide more relevant and comprehensive information, while streamlining the means of reporting at local and national levels.

32. While we believe that it is too early to respond in detail to all the questions posed by the Finance Committee, we wish the Scottish Government, Scottish Parliament and the key national and local agencies who plan and deliver services for children and young people every success in making these ambitious and laudable changes to the ways in which services for children, young people and families are planned, provided and funded.

Jackie Brock
CHIEF EXECUTIVE.
Local Government and Regeneration Committee

Children and Young People (Scotland) Bill

Submission from Children’s Hearings Scotland

Introduction

1. Children’s Hearings Scotland (CHS) is a Non-Departmental Public Body established under the Children’s Hearings (Scotland) Act 2011, which entered into force on 24 June 2013. CHS assists the National Convener with the delivery of her functions in relation to the recruitment, selection, appointment and re-appointment, training, retention and support of volunteer panel members within the Children’s Hearings System. Further information about CHS and the National Convener can be found on our website www.chscotland.gov.uk.

Children and Young People (Scotland) Bill: Part 3

2. CHS welcomes the strengthening of the legal framework for children’s services planning. However, at this stage we have some reservations about the duty being imposed on the National Convener. There are two reasons for this. First, children’s hearings themselves are not providing a service to children and families and panel members have no direct role in children’s lives, other than the critical role of decision makers within the care and justice tribunal for children and young people and families. Secondly, there is an additional complexity in relation to compliance with the European Convention on Human Rights (ECHR) and the need to maintain the independence of the children’s hearing.

3. We would welcome clarity and additional guidance to ensure that specific duties and expectations of different agencies and public bodies are set out to promote a real understanding of roles and responsibilities within the children’s planning framework.

4. We also think it is disappointing that the involvement of children, young people and families is not addressed within these sections of the Bill.

Public Bodies (Joint Working) (Scotland) Bill: s44

5. CHS welcomes the proposal contained in s44 to allow the Common Services Agency to enter into arrangements to provide legal, technical and administrative services with, amongst others, public authorities. In relation to this, we strongly welcome the statement in para 138 of the Policy Memorandum that the delivery of shared services by the Common Services Agency will “not be mandatory and it will remain a matter for these bodies themselves to determine the benefits of engaging with the Common Services Agency.” We consider it essential that the use of the services provided by Common Services Agency be optional. For example, in relation to legal services we would welcome the opportunity to discuss the provision of assistance with employment, property or contractual issues but in relation to legal
advice and assistance on matters relating to the Children’s Hearings System, the specific expertise required could not be provided by the Common Services Agency. If it became mandatory to use the Common Services Agency to provide shared legal services CHS and the National Convener would be at a significant disadvantage to the current position in this respect.

6. CHS currently has agreements with the Scottish Children’s Reporter Administration (SCRA) for the provision of human resources, procurement, payroll and transactional finance services, with National Records of Scotland (NRS) for procurement services and with the Scottish Government Information Service and Information Systems (ISIS) department for IT services. Based on this experience we think it is essential that the basis on which the shared service operates is crucial. In particular it is essential that the service provided is flexible, responsive, and is capable of being tailored to individual public authorities. Public authorities are a diverse group and have different needs depending on their size and the area in which they operate. It is important, therefore, that the service provided by the Common Services Agency is capable of being customised to the needs of the particular public body.

Children’s Hearings Scotland

August 2013
Local Government and Regeneration Committee
Children and Young People (Scotland) Bill
Submission from Coalition of Care and Support Providers

1. CCPS welcomes the opportunity to contribute to the Committee’s consideration of the Public Bodies (Joint Working) (Scotland) Bill (the ‘Joint Working Bill’) and the Children and Young People (Scotland) Bill (the ‘Children’s Bill’), in relation to the proposals relating to children’s services planning and shared services that they respectively contain. We have provided some initial feedback to both the Health and Sport Committee and the Education and Culture Committee on these two bills. The following points are drawn from those submissions and focus on the benefits and concerns for care and support providers, in relation to service planning.

Re Joint Working Bill

2. We have three points to note in relation to the proposals for service planning: firstly, the need to strengthen the role of the third sector in strategic planning; secondly, to make specific provision for the independent scrutiny of planning processes; and thirdly, the need to clarify the links between planning processes elsewhere (e.g. existing community planning via the CPP, and proposals for service planning in the Children’s Bill).

3. We very much welcome the emphasis in the Joint Working Bill on ‘strategic planning’. Ss. 23-30 provide for a framework for joint strategic planning, based on a set of integration delivery principles and include the establishment of a ‘consultation group’ to develop and agree the strategic plan.

4. While we strongly support the requirement for joint strategic commissioning, the involvement of non-statutory partners needs to be significantly strengthened. We are concerned that the Bill does not adequately reflect the policy intentions set out in the policy memorandum, which says: ‘... the full involvement of the third and independent sectors, service users and carers, will be embedded as a mandatory feature of the commissioning and planning process. This will strengthen the cross-sector arrangements that have been established during the first two years of the Change Fund.’

5. The Joint Working Bill places duties on integration authorities to consult the third sector (and, in certain sections, to consult third sector service providers specifically). In our view this duty is not strong enough. The third sector, and providers specifically, should be treated not as consultees, but as full partners in the planning

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1 At page 24.
and delivery of care and support. Otherwise, the effect of the Bill will be to ‘downgrade’ the third sector (and indeed the private sector) from the status it has already been accorded in respect of similar processes for Reshaping Care for Older People and the Change Fund, where relevant plans must be signed off by four partners equally: the NHS Board, the local authority, the third and the private sectors. To underline this point, we note that the Financial Memorandum identifies the costs of clinical involvement in locality planning (estimated at £3 million, points 88 and 89) but no cost is identified for involvement of the third sector in either locality or strategic planning, which perhaps tells its own story.

6. We have also argued that there needs to be a level of independent scrutiny of the strategic planning process. However, the Joint Working Bill makes no reference to any requirement for independent scrutiny of integration authorities in respect of quality, performance or the achievement of national outcomes. The Health and Sport Committee has supported CCPS in promoting the view that poorly commissioned care poses as much of a risk as poorly delivered care: it is therefore a major disappointment that whilst the policy memorandum is specific on the need for independent scrutiny of strategic commissioning\(^2\), the Bill itself makes no reference to it.

7. Linked to the above point, the Bill’s requirements for integration and strategic planning do not appear to be sufficiently co-ordinated with related legislative instruments (both existing and proposed). We are aware, for example, that the Joint Improvement Team (JIT)’s recent survey of progress on integration indicated that a fair number of partnerships are considering including children’s services in their integration plans. This raises a question about how integration plans in these areas should interact with the requirements set out in the Children’s Bill with respect to children’s services planning, and/or to requirements regarding community planning more generally. There is a risk that these various pieces of legislation will lead to a multi-layered, yet unco-ordinated, set of planning requirements for public authorities.

Re Children’s Bill

8. There are two principal issues we have raised in connection with the proposals in Part 3 of the Children’s Bill, which reflect similar concerns raised in respect of the Joint Working Bill. The first is that we would like to see the engagement of the third sector more clearly embedded in the joint services planning; and second, related to this, we would like to see greater consistency between the joint planning proposals in the Children’s Bill and the Joint Working Bill, as well as greater clarity about how the different planning processes will relate to each other.

9. The proposals in the Children’s Bill for service planning build on the provisions in the Children (Scotland) Act 1995 but appear to fall short of the level of collaborative

\(^2\) At para 131 onwards.
strategic planning that is being developed in the context of the integration of adult health and social care noted above. The Joint Working Bill provisions on strategic planning, while not going as far as we would like, appear to be a significant step up from the more basic ‘duty to consult’ requirements in Part 3 of the Children’s Bill, not least because they require the involvement of a range of stakeholders (including voluntary sector service providers) from the beginning of the planning process, and include both a set of principles and a structure for the process.

10. Interestingly, while there is only a basic ‘duty to consult’ with voluntary sector service providers in the Children’s Bill, there appears to be a ‘duty’ placed on voluntary and independent sector providers, social landlords and others (in s.10(6)) to ‘meet any reasonable requests to participate or to contribute to the preparation of the plan’.

11. We welcome wide participation in the planning process, but we query the extent to which this legislation can place ‘duties’ on non-statutory bodies. Thus we would like to see clarification of the meaning of this provision in relation to both the policy aim and the legal impact. As set out above, we consider the approach taken in the context of the Joint Working Bill, (where duties are placed on statutory bodies to undertake a process of joint planning that includes voluntary sector providers and others) to be a better model.

12. In the context of involvement in strategic planning, it is notable that the financial memorandum for the Children’s Bill anticipates no extra costs as a result of these planning proposals based on the assumption that local authorities already have a duty to produce integrated children’s services plans. As with the Joint Working Bill, there is no consideration given to the costs that might come with wider participation in the planning process by voluntary sector providers and others. However, we think that there will be potential costs to voluntary sector providers, not just from engagement with the planning process but also in connection with the duties to provide information, advice and assistance (e.g. ss.14, 26, and elsewhere in the Bill) and that this should be reflected in the financial memorandum.

CCPS August 2013

About CCPS
CCPS is the coalition of care and support providers in Scotland. Its membership comprises more than 70 of the most substantial third sector providers of care and support, supporting approximately 270,000 people and their families, employing over 45,000 staff, and managing a combined total annual income in 2009-2010 of over £1.2 billion, of which an average of 73% per member organisation relates to publicly funded service provision.
Care and support in the third sector

The third sector is at the forefront of quality care and support in Scotland. More than a third of all care and support services registered with the Care Inspectorate are provided by third sector organisations. In many areas of care and support for adults and older people – including care home provision, care at home and housing support – third sector services receive a higher proportion of ‘very good’ and ‘excellent’ quality gradings from the Care Inspectorate than their counterparts in either the public or the private sector.
Introduction

1. COSLA welcomes the opportunity to provide written evidence to the Education and Culture committee on the Children and Young People Bill. We have been pleased by the inclusive way that Scottish Government has worked with COSLA in the development of the Bill and we hope to continue this positive approach in evidence to Parliament.

2. We acknowledge that this response is longer than we would typically submit on a Bill. However, the legislation is arguably the most significant change to children’s services since devolution so we believe all sections need to be considered carefully. The Bill is positive and ambitious, and it is worth emphasising that COSLA supports the policy intentions behind much of the Bill. As a result the majority of our work on the development of the Bill has focused on practical challenges of implementation and the resources required by local authorities.

3. The Children and Young People Bill is a complex piece of legislation with significant financial implications for local authorities. The accuracy of the Scottish Government’s analysis and therefore the funding that would be made available depends on a large number of assumptions that will not be fully tested until the Bill is implemented. Councils have concerns over the future financial impact of the policies and that for this reason the financial implications to local authorities require in-depth scrutiny during the parliamentary passage of the Bill. COSLA has gained a confirmation from the Scottish Government that it is the intention to fully fund the requirements of the Bill, but with the implementation stretching beyond both the current spending review period and the end of this current parliament in 2016 then future budgetary decisions would be dependent on the result of several spending reviews. The commitment made by this administration to fully fund the Bill must be honoured in future years by whatever Government is in power and kept under on-going review. We also believe that it will be necessary for both COSLA and Scottish Government to jointly scrutinise and monitor the spend on this legislation, to ensure that local government is and continues to be sufficiently resourced to carry out the new duties that will be enacted.

Summary of Bill

4. COSLA supports the policy intentions of the Bill’s proposals on:
   - Children’s rights;
   - Children’s services planning and Getting it Right for Every Child
   - Early learning and childcare, and
   - Looked after children.

5. However, we have a number of important points to make on the implementation of Bill proposals, and the financial implications of the legislation. COSLA will be
responding to the Finance Committee call for evidence in relation to the Financial Memorandum for the Bill, but we also provide summaries of comments on the financial issues in this submission of evidence. We also have a small number of concerns with specific proposals in the Bill - chiefly relating to new powers being sought by Ministers and proposed changes to the Children’s Hearings Scotland Act. These and other issues are discussed in more detail in the sections below.

Part 1 - Rights of Children
6. Children’s rights are well embedded within the practice of local government. We believe that no public sector organisation is likely to object to the proposal for realisation of children’s rights as stated in the proposals. Issues around transparency of decision making and policy implementation and scrutiny are of equal importance to local government, as other public sector organisations. COSLA has maintained since the Bill proposals were consulted upon in 2012 that we remain of the view that the duty of due regard need not extend beyond ministers when councils are already addressing children’s rights. Local authorities have already made much progress especially in the school setting, in terms of the promotion of children’s rights.

7. A number of organisations such as the Children’s Parliament are working with children on this issue. In explaining rights issues to children, it often provides clarification for adults working and caring for children and young people that the focus of the rights in the UNCRC are not about giving children the right to say no, but rather the ability to feel safe, secure and healthy with their help, guidance and support. We believe that this understanding helps and empowers children and young people.

8. COSLA remains of the view that organisations and structures such as the courts and Children’s Hearings need to acquire a clear understanding of the UNCRC in terms of their dealings and undertakings to children and young people. In that context, we are prepared to accept the proposals as set out in part 1 of the Bill

Part 2 - Commissioner for Children and Young People
9. COSLA would be concerned if the use of the proposed additional powers as set out in Part 2 of the Bill became a “naming & shaming” exercise. Equally we would be concerned if the additional powers were to be used in a way that would duplicate both the existing complaints procedures & external inspection by Education Scotland and the Care Inspectorate. While we acknowledge that the Explanatory Notes for the Bill make reference to the Commissioner not duplicating roles of other organisations, this still leaves an opening for the Commissioner to investigate something that would be better handled by another agency.

10. It is our view that any powers should be used only as a last resort after all other avenues are exhausted.

11. Equally, we are clear that there needs to be clear guidance available to councils on what the UNCRC means for them in the delivery of children’s services, in light of Part 1 of the Bill, as well as Guidance on how and in what circumstances the
Office of the Commissioner will have the scope to implement the additional powers.

**Part 3 - Children’s Services Planning**

12. For many years, COSLA has argued for better integration of public services locally. Whist we therefore accept the intention behind the Bill to improve integration and planning for Children's services, COSLA believes that to be effective in practice any Bill proposals must not exist in a vacuum and should add value to other existing arrangements.

13. In particular, we want to be sure that Children’s services planning contributes to and is driven by the wider Community Planning arrangements that all partners are engaged in locally. This should be the forum through which partners should come together to develop partnership approaches to improving outcomes. For example there is an existing duty for local authorities to produce integrated children’s services plans, linked to Community Planning. Although we would argue that more needs to be done to put CPPs at the centre of reform our view is that this Bill should be an opportunity to drive that work forward in the context of children’s services, and avoid any chance of competing agendas or duplication arising.

14. It is therefore important that Committee considers how the Bill sits within this existing landscape; the activity going on to strengthen community planning, and alongside the developing Community Empowerment Bill which will set out in statute the new framework for Community Planning.

15. There are also clear links to the current proposals on the integration of adult health and social care services and it is possible that some local partnerships may wish to consider the inclusion of children’s services in those arrangements. Ultimately, it will be for individual local authorities and their health board counterparts to make that determination. We would also add that other organisations/people with an interest in children’s services within the voluntary or private sector that are not always directly connected to CPPs will also have a key to play in these tasks and should be equally covered by the proposals.

16. There is one aspect to the proposals in children’s services planning with which COSLA does not support. Part 3 paragraph 17 proposes Ministerial powers to establish joint boards, should there be concern that insufficient progress is being made in terms of integration. This was a late addition to the Bill, and one which had not been previously discussed with COSLA. Whilst we can understand the desire on the part of any Government to ensure the successful implementation of its policies, the discretionary powers taken within this section of the Bill are extensive and allow for the transfer of staff, property and functions to the new boards.

17. The powers appear also to be linked to section 16 of the Bill which concerns powers to issue direction to public bodies, including local authorities. Section 16 is a concern in itself as it allows Ministers with the broad scope to issue directions to local authorities and health boards on the exercising of their functions. We firmly believe that decisions on the operation of services, including how best to
tackle outcomes, are best taken at the local level in close collaborations with partners. Taken together one interpretation of sections 16 and 17 is that local authorities and health boards could be restructured if directions of Ministers were not followed to the liking of the Government of the day.

18. This is a concern for anyone who champions local democracy, but given our good relationship with Government it is strange that Ministers feels the need to seek such strong powers. Local government has demonstrated a strong commitment to both the Bill and children’s services improvement generally and we have a strong track record of arguing for better, outcomes focused integrated services. This is consistent with our representation to the Christie Commission and our recent work to agree a vision for local government. We are also uncomfortable with notion that Parliament is being asked to grant powers to Ministers to restructure the public sector in a way that normally would require the full scrutiny afforded to primary legislation. It is possible to argue that these powers not only undermine local democracy, but national democracy too.

19. COSLA is completely opposed to the powers described in paragraph 17 and have made this point already to Government. Our principled position as agreed by our Convention is that there is no need for such powers, and that they should be removed from the Bill.

Part 4 - Provision of Named Persons

20. Scottish local government has been delivering the Getting It Right for Every Child approach for some years and recognises the value of GIRFEC in the improvement of children’s services. The proposal that the Named Person role should sit with local government, with the inference, though not expressly set out, that the role should sit with with schools in terms of their contact with children and young people from 5 to 18 years is welcome. It is clear that outside the family or care structure, children and young people have the most contact with school teaching and support staff. The Financial Memorandum provides for resources to be made available to provide GIRFEC training for senior teaching and support staff in schools and provide resources for backfill, while training is undergone. COSLA has worked with Scottish Government in testing these figures based on the current situation. As noted in the introduction this is a necessary area that will need to be monitored and scrutinised in future years to ensure funding is available for the provision to be sustainable.

Part 5 - Child’s Plan

21. The value of a Child’s Plan is already recognised since the GIRFEC approach was launched. COSLA has worked with Scottish government to promote the approach across local authorities. It is reasonable therefore that COSLA continues to support in principle, the proposals regarding a Single Child’s Plan. The idea of a child’s plan is one that we completely support, but there is a need to consider how the plan relates to other plans. The best example is the coordinated support plan which is set out in ASL legislation. We understand that Government is looking at how coordinated support plans sit with respect to the child’s plan – with the option that a CSP could form part of the child’s plan where this is appropriate being perhaps the best solution. In an ideal world we would not require two pieces of legislation – this Bill and ASL legislation – to describe
different aspect of children’s services planning, but it is the practical reality on the
ground that is most important. It is therefore important that legislation and
guidance makes clear how both the child’s plan and coordinate support plans will
operate in practice.

22. In principle COSLA would accept that children, young people and families should
be involved in the development of a Child’s Plan, where possible. However, in
practical terms, while local authorities will seek to improve life chances for
children and young people, managing expectations against practicality and the
needs of other vulnerable members of the community will continue to be
addressed by councils.

Part 6 - Early Learning and Childcare
23. COSLA supports the expansion of early learning and childcare as proposed in
the Bill. The proposals in the Bill came about as a result of considerable joint
discussion between COSLA, ADES and Scottish Government. This is also the
most costly section of the Bill, and from the start COSLA recognised the very
significant implications of the proposals on local authority resources.

24. The figures within the financial memorandum were developed through the work of
COSLA with local authorities. They are the best figures we have for the
implementation of this section of the Bill, and it is worth noting that local
authorities have indicated that they are broadly happy that they are an accurate
assessment of implementation costs in line with the agreed approach to
delivering this aspect of the Bill, that is, to deliver the 600 hours in as practical a
way as possible and without the additional requirement of more flexibility for
parents. However, as we have already outlined the implementation of the Bill will
stretch beyond the end of this spending review, which means it needs to be
recognised that it is future budgets that will determine how effectively this policy
can be implemented. Parliament needs to be aware that any shortfall in future
funding will be felt by local government and ultimately parents and children.

25. Following discussions with Scottish Government we agreed that the Bill would
require local authorities to deliver the increased hours in as practical way as
possible by August 2014 with no immediate requirement for more flexibility for
parents. This recognised practical challenges facing local authorities, and the
short lead time to implement the additional hours in time for the start of the
academic year 2014/15. In subsequent years additional flexibility will be
introduced gradually, in consultation with parents, and within the overall
resources made available by Scottish Government. Delivering increased
flexibility is more complex and costs more money as a result, so it is important to
understand that local authorities will only be able to implement what they are
funded to deliver. Local authorities have the flexibility to tailor future delivery of
600 hours of early learning and childcare to meet local needs, incorporating the
views of parents.

26. On the basis that these issues have been agreed with Scottish Government, we
support the proposals outlined in the Bill.

Part 7 - Corporate Parenting
27. COSLA has long been an advocate of corporate parenting and has been an enthusiastic supporter of publications such as ‘These are our Bairns’. This section of the Bill is important as for the first time it will set out a legal definition of what it means to be a corporate parent, and extend this to other public bodies – the corporate family, to extend the analogy.

28. We agree that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies and those acting on their behalf to provide the best possible care and protection for looked after children. In addition, it would be helpful if other public bodies or community planning partners have their roles clarified to achieve better outcomes through joint working. This will require the updating of guidance on corporate parenting.

29. We have to be clear though that the corporate parent cannot act in the same way as a birth parent. As such, any definition requires to define the parameters of the responsibility lucidly and to manage expectations in terms of the financial and human resources it would involve. However, local authorities and other public bodies can and do use their influence and weight in innovative ways to support both children in care, and those who have recently left it.

30. It is also important to note that any formalised definition of corporate parenting will have practical resource challenges in terms of on-going training/briefing sessions to ensure organisational wide commitment for councils and other community planning partners. At the same time though it should be acknowledged that there are some real examples of good practice around the country in relation to corporate parenting from councils that should be promoted.

31. One concern that we have on part 7 of the Bill again relates to powers of Scottish Ministers to issue direction to public bodies – including democratically elected local authorities. As with part 3 of the Bill we are not certain why Ministers feel they need to seek the ability to direct public bodies as set out in section 58. Local government has shown a strong commitment to the concept of corporate parenting in recent years and developed a good partnership with Government. Local and Scottish Government have a shared goal for improving lives of looked after children, so it seems disproportionate for Ministers to require the ability to issue directions. On a practical note we would also argue that the powers presuppose that Ministers somehow know better than local agencies about how to meet the needs of children in their care. We do not doubt Government’s commitment on this subject, but the experience of elected members and local professionals across all agencies and services must be respected.

Part 8 - Aftercare
32. COSLA is supportive of the policy intent of the extension of aftercare provision to young people that have previously been looked after. We understand that Government are looking for authorities to provide a level of support broadly consistent with what is provided currently on a discretionary basis for 19-21 year olds. However, paragraph 60, sub-section 8 states that Ministers will determine such types of support, the detail of eligibility will not be determined until secondary legislation. It is therefore important to emphasise that the full
implications of this policy on local authorities will not be known until the secondary legislation is passed.

33. Currently, there is no equivalent legislation or statutory guidance for such type of support for 19-21 year olds. The decision on eligibility is made by the local authority, as they have the skills and expertise to assess the individual case. Potentially paragraph 60, sub-section 8 could restrict the provision local authorities can offer and could lead to a difference in the provision that is currently provided and the provision that could be provided after the legislation is implemented. It also restricts the flexibility a local authority has to amend the elements of support available to eligible kinship carers to reflect changing circumstances or the future identification of further support needs.

34. The assumptions that Government make on the number of young people leaving care and percentage of young people expected to be successful in applying for support seem reasonable and are based on national statistics and the experience of local authorities.

35. Our concern on this issue is one that we have no way of knowing what the impact of welfare reform will be on this group of young people, so there is every possibility that the numbers seeking assistance may not fall as much as expected. Early indications of the impact of welfare reform show significant increases of presentations in many authorities for this service.

36. Further, COSLA has less certainty over the accuracy of the costings of this aspect of the Bill due to the difficulties for local authorities in estimating the financial impact. In particular, we are not convinced that the Scottish Government have accurately estimated the average annual cost of support (£3142 per young person). This figure includes an estimate that the average cost for travel would be £400 per year; that emergency payments up to £200 per year could be payable and that payments to outside agencies (such as for third sector support) would be around £1500. It also includes an estimate of staffing costs required to support the young person. From discussions with local authorities we believe that these costs underestimate the actual cost of supporting a young person who has left care. In particular we are aware that some local authorities have indicated a concern that travel costs are not realistic and do not factor in cost of travel particularly in rural areas.

37. Finally, if the subsection detailed above remains in the Bill the actual cost will not be clear until secondary regulations have been passed potentially leading to a gap in funding which could undermine the intention of this section of the Bill.

Part 9 - Counselling Services

38. We believe the intention of this section of the Bill is to ensure that families in the early stages of distress are provided with support. The move towards early intervention is welcomed by COSLA however the provisions set out within Part 4 19 (5) already provide for this to happen under the functions of the “named person”. This section of the legislation may therefore duplicate the earlier section.
39. Further, if the section remains the term “counselling” used is unhelpful and should be replaced with support. Counselling is a specific form of formal support that will not be appropriate for all families. All forms of support (e.g. family group decision making, drug and alcohol support groups etc) should be considered after an assessment of need is carried out. Also, as there is no definition of ‘eligible child’ within the Bill it is difficult for local authorities to be able to assess the impact of this. As things currently stand local authorities are to provide undefined counselling services to parents or those with parental rights and responsibilities of an undefined group of children.

40. Further, it should be noted that as consequence of this provision children and families may also be brought into the care system at a far earlier stage than is currently the case.

Part 10 - Support for Kinship Care
41. The policy intention of kinship care orders is to help families become more able to deal with the issues which they face, without the need for formal care. The number of children looked after in formal kinship care arrangements has grown significantly in recent years and is projected to increase further. A mechanism that provides families with a better alternative to formal care is therefore welcome. It has also been well discussed over the last few years that the growth in kinship care and the corresponding increasing in kinship care allowances have put pressure on local government finance. By transferring parental rights to carers, the orders should allow families to better access other financial benefits from the DWP. The Government believes that this should go some way to reduce the financial pressure on local authorities, but it also, just as importantly, minimises the distinction between kinship care and the lives of other families.

42. In the end how successful orders prove to be at reducing payment of kinship care allowances will depend on how attractive the orders are to families. At this point of time it is difficult to project accurately how many families will take out a kinship care order. Uptake will depend on a number of factors such as impact of welfare reform, the support provided by authorities and the detail of how orders will operate - including eligibility and length of support – which will be set in secondary legislation. The interplay of these variables makes it difficult to know for certain whether the financial assumptions made by Government are accurate. Again, we would reiterate that local authorities will only be able to implement what they are funded to deliver.

43. The accuracy of the financial assumptions is the biggest issue that we have discussed with Scottish Government. When COSLA discussed with local authorities the financial implications of this aspect of the Bill no national picture emerged, and it is clear that local authorities have found it difficult to evaluate the future impact of the policies. With accuracy depending on the financial assumptions made, without actually implementing the legislation and testing the assumptions for real, there will always be a degree of risk for local authorities. For example, the Scottish Government predicts a 6.5% continual annual increase until 2019-20 of those applying for a kinship care order. Over the past 3 years Falkirk Council have seen around a 30% increase whilst Inverclyde has seen a 37% increase since 2011. Both Councils, in different ways, have proactively...
supported families to move to kinship care orders. Whilst not all local authorities have experienced such significant increases this clearly demonstrates the potential increases local authorities are likely to face if the order is popular with kinship carers (which is the intention). Further, we are aware that the recent experience of some authorities of the introduction of Adoption Orders shows that the financial costs to councils were underestimated. Additionally, the assumptions relating to estimating the take-up and level of costs per Order made by Scottish Government that underpin the figures for this complex area are numerous, increasing considerably the potential for the actual costs to differ from the estimated costs.

44. The figures which have been developed by Scottish Government are a genuine attempt to assess the cost/benefits of kinship care orders. It is our hope that kinship care orders are a success and provide an alternative to formal care for some families. However, with considerable uncertainty over how many families will take up an order, the financial risk facing local government is potentially significant. The exact size of this risk depends on how accurately Scottish Government has modelled the take up of kinship care orders. We therefore believe it is necessary that both COSLA and Scottish Government jointly scrutinise and monitor the spend on this legislation to ensure that local government is, and continues to be, sufficiently resourced to carry out the new duties that will be enacted.

Part 11 - Adoption Register
45. Local authorities always put children first and will have good reasons for currently not using the register. We are aware, for example, that some local authorities already recruit enough people who are willing to adopt to meet the needs of children in their area. Councils in this position may therefore not feel an urgent requirement to join the register. Presently, consortia arrangements work very well between local authorities in various parts of the country.

46. COSLA accepts that the development of the national register is a positive one and we are aware that its usage is rising. It provides local authorities with another option when trying to place vulnerable children with adoptive families across Scotland. However, the proposal to move to a national adoption register through compulsion for local authorities should only be considered where there is complete confidence that it is in the interests of children to do this.

Part 12 - Other Reforms - Children’s Hearings
47. As mentioned in the summary to this submission, the sections of the Bill which relate to amendments to Children’s Hearings (Scotland) Act 2011 give us concern. During the passage of the 2011 Act through Parliament COSLA raised some real concerns about centralisation of services and the establishment of a new national body – Children’s Hearings Scotland (CHS) – to run what had been local services. In particular we were worried that the newly established office of National Convener would only have to consult local authorities when drawing up area support teams. There was no requirement to reach a mutual agreement. For COSLA it seemed inappropriate that an unelected official should have this power, and that it was actually more appropriate for the Convener to have to
reach agreement with local authorities concerned. In the end Parliament agreed with our position.

48. The proposed amendment in section 69 reverses the decision taken by Parliament and reinstates the original intention of Government. This is not something that COSLA can support. Whilst we have been told by both CHS and Government officials that the Convener would listen closely to views of local authorities concerned, there is still an issue of principle about the head of national body potentially acting against a decision of a democratically elected authority.

49. We are also very concerned about the proposal in section 70 to allow the National Convener to effectively compel a local authority to deliver specific support services to area support teams. At the moment CHS has to reach agreement with councils on support services. We expect that the dialogue between CHS and individual authorities is not always easy given the financial constraints faced by the whole public sector. Nonetheless, we would argue that this dialogue is necessary and allows for mutual agreement to be reached. This has to be preferable to the potential forcible allocation of staff, property and services against the will of the local authority, and potentially to the detriment of other services.

50. We would ask that Parliament considers carefully whether it is appropriate for the National Conveners of CHS to have these powers. It is COSLA strongly held view that the 2011 Act should not be amended as proposed in the Bill.

Part 12 - Other Reforms – School Consultations
51. COSLA currently does not have any comment to make on this section. However, we have a long standing interest in this area and will be responding to the Government’s consultation on possible changes to the Schools (Consultation) (Scotland) Act 2010. We would be happy to provide the Committee with additional evidence on any changes to the Bill that might be proposed at stage 2.

Conclusion
52. We acknowledge this is a long and complex response, but this matches the length and complexity of the Bill. COSLA has been working on the Bill for many months and would be happy to use our experience to help the Committee’s scrutiny of the legislation. We would therefore be happy to attend oral evidence sessions and to work with the Committee and individual members on all aspect of the Bill.

24 July 2013
Local Government and Regeneration Committee
Children and Young People (Scotland) Bill
Submission from Midlothian Community Planning Partnership (Getting It For Every Midlothian Child Response)

1. Getting it Right for Every Midlothian Child (GIRFEMC) is a partnership within the Community Planning Partnership in Midlothian. The GIRFEMC Board includes representation from elected members, the Council, NHS, Police Scotland, Midlothian Youth Platform, voluntary sector, SCRA and the Child Protection Committee.

2. The GIRFEMC Board welcomes the Scottish Government’s request for our views as to how the proposed joint working arrangements established in the Children and Young People (Scotland) Bill will link with the work of the Midlothian Community Planning Partnership.

3. The Children and Young People (Scotland) Bill is founded on the key principles of early intervention and prevention that are designed to deliver better outcomes, more efficient use of public funds and sustainable economic growth.

4. For 2013/14 Midlothian took the opportunity to review its Community Planning process and have amalgamated the Single Outcome Agreement and Midlothian Community Plan which is known as the Single Midlothian Plan. Midlothian Council made clear its commitment to and civic leadership role for community planning by ceasing to have a separate corporate strategy, instead agreeing to adopt the Single Midlothian Plan as the Council’s strategic document. This places community planning at the centre of the ‘way forward’ for council services and requires each service plan within the Council to demonstrate how it will support the delivery of shared outcomes. Public sector partners have also agreed to use the Single Midlothian Plan as the strategic context for their service planning in the area and a Chief Finance Officers’ Group has been established, reporting to the board, to align budgets with priorities and support the planning cycle. This is work in progress and the current year’s plan does not yet reflect a shared budgeting approach.

5. The Community Planning Partnership structure includes service users in a variety of ways, from formal user groups in community care, to seeking the views of young people on specific topics through the Midlothian Youth Platform, including supporting these young people to undertake their own consultations with their peers. We recognise that the views of services users and the public is a vital part of the process and acknowledge that further work needs to be carried out in this area.
6. Each year we carry out a strategic assessment of the priorities in the Single Midlothian Plan and invite members of the public to have input. The responses received are incorporated into our strategic planning event where we discuss and agree our priorities for the forthcoming year. The GIRFEMC thematic group carries out consultation with service users and their families throughout the year and the introduction of the Children and Young People (Scotland) Bill will require additional consultation.

7. Midlothian is working closely with Colin Mair of the Improvement Services in relation to the Single Midlothian Plan and in his feedback he has said that he is pleased with our plan but we need to concentrate on fewer priorities to enable us to do them better.

8. There is an expectation that each Community Planning Partnership will demonstrate how it is giving priority to six of the 16 national outcomes. Midlothian has decided that it will focus on: -

- Economic recovery and growth
- Employment
- Early Years
- Safer and stronger communities and reducing reoffending
- Health inequalities and physical activity
- Outcomes for older people.

Midlothian has set Economic recovery and growth, Early Years and Positive destinations for young people leaving school as its key priorities.

9. In December 2012 the Council agreed to adopt the following principles across all Council services: -

- Communities are partners in service design and delivery
- Services are targeted and focused
- Best value outcomes are delivered through partnership working

For the Midlothian to achieve its aspirations significant and transformational change is required. The public have confirmed that they wish to be actively involved as partners in decision making and local service development and that resources should be redirected towards preventative approaches and to reduce inequality, even if this means the reduction of other services.

10. Throughout all priority setting exercises we ensure that our partner organisations are included with joint working at the heart of our successes in delivery of the Single Midlothian Plan’s priorities and we propose to continue to develop this when the Children and Young People (Scotland) Bill is introduced.
I refer to the above and provide the following comment on behalf of Police Scotland.

I note at the outset that the Children and Young People (Scotland) Bill has provided guidance on wellbeing within section 74 whilst there would appear to be no such clarity in the Public Bodies (Joint Working) (Scotland) Bill. I would ask for clarity as to whether this is a deliberate position, to leave the matter silent in the latter, or if the terms set out in section 74 are intended to be a precedent applicable to both Bills.

I have hereafter provided comments related to both Bills.

The Children and Young People (Scotland) Bill

Police Scotland welcome this legislation and the clarity related to children’s rights, children's services planning, the provision of a named person service and the guidance on information sharing; all of which will promote, support or safeguard the wellbeing of the child or young person. The Bill seems entirely consistent with a drive to improve outcomes for our communities through improved joint working.

As discussed above, the provision set out in sections 74(1) and 74(2) assist greatly when advising Officers and Staff as to how we may best assess when a child is in need of support and provides a framework on which we can relay this information to partner agencies.

In particular, the role of the named person will substantially benefit and support cases where we engage with children and young people and have concerns related to their wellbeing. This opportunity for early and effective intervention, through appropriate and measured steps, will assist to prevent any escalation of concerns and minimise the opportunities for harm.

The proposals arising from this Bill affect Police Scotland as follows;

1. As a single service we have opportunities to consistently apply the principles of the Bill across the country, whilst allowing for local arrangements and engagement with partner agencies.
2. Application of the Indicators as set out in sections 74(1) and (2) supports our national training strategy and how we instruct our Officers and Staff to recognise, record, assess and share concerns appropriately.
3. The provision of a named person provides clarity on notification processes for low level concerns; and will support existing arrangements in place for child protection cases where an immediate investigation is required.
4. The duty to help the named person also provides clarity and an avenue for appropriate support to be sought when required.
5. The provision of a child’s plan will assist the Police to work more effectively with partners.

The Public Bodies (Joint Working) (Scotland) Bill

Whilst the Police Service of Scotland is not specifically mentioned in the Bill, we acknowledge that through our functions we have a clear role to play in supporting the health and wellbeing of our communities. It is a fact of Policing that we are called to attend at many varied scenarios, and our Officers and Staff are frequently the first point of contact where concerns are identified and provide opportunity for early intervention.

As indicated in the opening paragraphs above, we note the strong reference to wellbeing and would welcome consideration of the clarity provided by the above Children and Young People (Scotland) Bill being provided in this respect also.

Clearly, the Police Service of Scotland work across and with all Local Authorities and Health Board areas hence we would appreciate being involved in any consultations locally related to the development of integration plans.

Observations

The main focus of expenditure within the Public Bodies (Joint Working) (Scotland) Bill is clearly aimed at adult services. There may be value in some provision and comment being provided on impact, if any, against universal provision.

There may also be value in considering how this Bill links with the Adult Support and Protection (Scotland) Act 2007, which sets out a threshold for notifications of concerns to Local Authorities with a duty to investigate. There are many situations where the Police come across concerns, which do not meet that threshold, however uncover circumstances of concern related to a multiple of factors. As discussed above, clear definitions and understanding of ‘wellbeing’ would greatly assist in this regard.

Malcolm Graham
Assistant Chief Constable
Local Government and Regeneration Committee

Children and Young People (Scotland) Bill

Submission from the Royal College of General Practitioners

The Royal College of General Practitioners (RCGP) is the academic organisation in the UK for general practitioners. Its aim is to encourage and maintain the highest standards of general medical practice and act as the ‘voice’ of general practitioners on education, training and issues around standards of care for patients.

The College in Scotland came into existence in 1953 (one year after the UK College), when a Scottish Council was created to take forward the College’s interests within the Scottish Health Service. We currently represent over 4750 GP members and Associates in Training throughout Scotland. In addition to a base in Edinburgh, the College in Scotland is represented through five regional faculty offices in Edinburgh, Aberdeen, Inverness, Dundee and Glasgow.

Comments

Advocating children’s rights and the ability to hold organisations and services to account is important. It will be interesting to see how it works out and what legal challenges are made. We very much hope that it improves outcomes for all children and young people and especially the most vulnerable.

1. We welcome the Children and Young People (Scotland) Bill and support its general aspirations. Specific areas that are valuable include clarification of the ‘named person’ role, improvements in permanency planning for looked after children and the provision of better early learning and childcare. We do, nevertheless, have some concerns about the lack of specificity in the draft bill in relation to provision of services to children under three years of age.

2. The only universal services used by almost all parents of children under three years are midwifery, health visiting1 and general practice2. Each of these professions has a specific role in supporting parents, and in recent years a range of well-intentioned but ultimately misguided policies has led to a fragmentation both of the services that each is able to offer and to inter-professional communication. Examples include: recent failures of communication between midwives and GPs since the Refreshed Maternity Services Framework; the abolition of universal preventive child health contacts between six weeks and school entry in 20053 (partially reversed this year); the ending of the training of health visitors in child developmental assessment since 20014; the introduction of corporate caseloads and skill mix teams in health visiting, leading to loss of continuity of care; the disengagement of health visitors from general practices; and a progressive disengagement of GPs from the delivery of preventive
child health services\textsuperscript{5}. Effective preventive spending could substantially reverse these trends\textsuperscript{6}

3. Our specific recommendations are as follows:
- That the named person for preschool children should always be a qualified health visitor
- That the professional title ‘health visitor’ be restored to its former statutory status, with specific reference to training and expertise in child development and parenting support
- That all those working with preschool children should have a duty to report concerns about those children’s health, wellbeing and development to the named health visitor
- That health visitors should have a statutory duty to communicate concerns about child wellbeing and development to general practitioners and to others as required
- That general practices should have a named, attached health visitor.
- That health visitors should have a maximum caseload of 200 children under five years, with smaller caseloads being allocated to those working in areas of deprivation or those working with high risk groups.
- That each child should have the right to an annual assessment of developmental progress before the age of five years by a qualified health visitor or in exceptional cases by a general practitioner. These assessments should include investigation of language development, motor function, social behaviours, capacity for attention and of the parent’s relationship with the child. We know that developmental vulnerability cannot be adequately predicted on the basis of pre-existing risk factors\textsuperscript{7}. Furthermore there is now substantial evidence that many children with remediable problems have failed to have these problems addressed since the introduction of Scotland’s bold policy of abolishing its universal child health surveillance programme\textsuperscript{8;9}. This policy, at variance with practice in all other developed nations, should be reversed.
- These assessments should be considered as a child’s right: parents and carers should not be considered to have an automatic right to refuse on behalf of their child. There is some evidence that children who are not seen at preventive care contacts are more likely to have problems. Failure to find ways to include all children in a universal child health programme (there are, for example, good systems for ensuring universal coverage in the Netherlands), thus risks increasing social inequity.

Specific Details within the proposals

4. SPICE document

P13 5\textsuperscript{th} para re the NHS: The proposals are likely to involve at least 1 extra hour/year per child of GP work in assessing and report writing (at present often done as a goodwill gesture, but with increased level of accountability needed and increased interagency co-operation, more GP work is envisaged. To make it sustainable, costs and GP capacity needs to be factored in)\textsuperscript{10}.
“Well-being” is defined by the child being safe, healthy, achieving, nurtured, active, respected, responsible and included. “Well-being” examples would help compare one case with another so we know where the threshold is. Many children in “normal” families go through times of life when their well-being is compromised so help in knowing when to signal this would be of value. We agree we should include “Welfare” as well as well-being.

Information Sharing – It would be helpful for GPs to include something from the GMC’s “Protecting Children and Young People” 2011 document. Once information has been shared without the permission of the parents or child or young person, it is difficult to keep track of what they don’t know has been shared so we would recommend that in most cases the child or young person or parent is informed when information is shared (except where it poses more risk). We attach a useful Information Sharing summary by Jonathon Leach, an RCGP member.

Early Years provision
We support good quality Early Years’ provision, but it has to be more than a crèche facility. Early identification of learning and developmental issues through proper play and learning facilities, supervision, teaching and reporting from the Early Years to the parents and GPs should be encouraged.

Looked After Children and Care Leavers
We support the proposals aimed at supporting the transition from care to independent adult life which has been sadly lacking. We support stability of placements, registration with a GP and communication with GPs on a regular basis.

P23 Counselling
Although it is clarified in the text that this means Family Mediation therapy or group therapy for those families listed. We would question the evidence of effectiveness of this expensive and potentially time-wasting exercise unless clear targets, time frames and penalties are used. Too often children and young people are returned to abusive families because of feigned compliance with “counselling”. The ones who are shown to respond are generally the milder, more straightforward cases (such as Domestic Abuse where the abused partner separates and institutes effective exclusion).

P25 Kinship care
Kinship care is challenging and the carers are often silent about their difficulties except to the GP. Those taking on kinship care need ongoing support. The children or young people have extra needs and their well-being has already been compromised.

Adoption
The proposals appear to shorten delays and unnecessary bureaucracy which very often occur in the adoption process so we hope these lead to better outcomes for those children and young people.
Reports on Corporate Parenting and Children’s Rights
Having to make regular reports on children’s and young people’s rights should keep the issue at the forefront of the corporate mind which is welcome but will involve ongoing costs.

5. Policy Memorandum

The aims of the policy are admirable.
We note that those being home-schooled are not mentioned. Concerns over this group of children should prompt their inclusion in these excellent plans to improve the welfare and well-being of children and young people.

Section 1.43 Respecting, recognising, children’s rights. RCGP has many contacts in the third sector and regularly comments and supports publications connected with improving care pathways for children and young people and responding to feedback and complaints. Examples include the Contact a Family leaflet on accessing GPs, the Meningitis Trust “Yellow Book”, the Foetal Alcohol Disorders charity educational materials for GPs. RCGP is working with the National Children’s Bureau after their report (2013) “Opening the door to accessing GPs”.

Conclusion

Providing a lot of support in early years is most likely to have long lasting benefit, the evidence supports this and this is emphasised in the document. What is missing for us is supporting young adults who are out of work. GPs routinely spend a great deal of time writing letters of support for people who, due to ongoing health conditions, would have great difficulty in obtaining and maintaining work. There appears to be no organisation or person that we can refer these individuals to for support and training. We need to invest in these young people who should have a personal responsibility to contribute to society but in return society should have a responsibility to offer opportunity and training for all young people so that they have a future. The cost of this would be offset by later savings in social, medical and societal costs.

Dr John Gillies
Chair
August 2013
Reference List


(10) RCGP 2022 Vision
Requests for access to Medical Records for Safeguarding Reasons
PCCSF documents © Jonathan Leach 29/05/2013

1. General Practice is increasingly being requested to supply clinical information for safeguarding reasons. On most occasions the decision to divulge information is straightforward, however it can become problematic and especially when third party information is requested (for example when it relates to the medical care of parents or carers).

2. Requests for information are usually made by social care colleagues who are governed by very similar professional guidances to health professionals. Both nationally and locally, reviews of cases reveal that frequently it is failing to pass on information that leads to harm. Whilst health professionals correctly are sometimes concerned about divulging sensitive clinical information, guidance from the General Medical Council (and others) is that a doctor is more likely to be criticised for not passing on relevant information.

3. Guidance on when and how information is to be divulged is available from a range of Organisations these include:

   1. The General Medical Council

      Confidentiality is important and information sharing should be proportionate to the risk of harm. You may share some limited information, with consent if possible, to decide if there is a risk that would justify further disclosures. A risk might only become apparent when a number of people with niggling concerns share them. If in any doubt about whether to share information, you should seek advice from an experienced colleague, a named or designated doctor for child protection, or a Caldicott Guardian. You can also seek advice from a professional body, defence organisation or the GMC. You will be able to justify raising a concern, even if it turns out to be groundless, if you have done so honestly, promptly, on the basis of reasonable belief, and through the appropriate channels.

      Your first concern must be the safety of children and young people. You must inform an appropriate person or authority promptly of any reasonable concern that children or young people are at risk of abuse or neglect, when that is in a child’s best interests or necessary to protect other children or young people.

      You must be able to justify a decision not to share such a concern, having taken advice from a named or designated doctor for child protection or an experienced colleague, or a defence or professional body. You should record your concerns, discussions and reasons for not sharing information in these circumstances.

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Additionally, the GMC provides the following guidance:

Ask for consent to share information unless there is a compelling reason for not doing so. Information can be shared without consent if it is justified in the public interest or required by law. Do not delay disclosing information to obtain consent if that might put children or young people at risk of significant harm.

Tell your patient what information has been shared, with whom and why, unless doing this would put the child, young person or anyone else at increased risk.

Get advice if you are not sure what information to share, who to share it with or how best to manage any risk associated with sharing information.

2. Working Together to Safeguard Children 2013 provides the following guidance:

Effective sharing of information between professionals and local agencies is essential for effective identification, assessment and service provision.

Early sharing of information is the key to providing effective early help where there are emerging problems. At the other end of the continuum, sharing information can be essential to put in place effective child protection services. Serious Case Reviews (SCRs) have shown how poor information sharing has contributed to the deaths or serious injuries of children.

Fears about sharing information cannot be allowed to stand in the way of the need to promote the welfare and protect the safety of children.

What to do if a request for information is received

4. Given the very clear advice on the requirement to share information the following process is recommended with the clear understanding that there would need to be good reasons not to share relevant information.

Upon receipt for a request for information:

1. Confirm the identity of the requestor and bona fide nature of the information requested. This should usually be in writing and should include some information on why request is being made.
2. Confirm whether you hold any information on the patient
3. Consider whether consent to release information can be sought and if possible, gain consent. In some cases this is possible, whereas in others (for example when

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4 Working Together to Safeguard Children - Department for Education 2013
a Police investigation is taking place), it maybe inappropriate and/or potentially unsafe.
4. If releasing information without consent, document your reasoning.
5. If not releasing information, document any advice sought and your reasoning.
6. Reply in a timely manner to the requestor providing relevant information.
7. If in doubt seek advice - this is available from local child protection specialists (such as the Named GP for Safeguarding or Named Nurse) or from Defense Organisations.
Local Government and Regeneration Committee
Children and Young People (Scotland) Bill
Submission from Scottish Fire and Rescue Service (SFRS)

How the proposals will affect the Service

The proposals will have a number of implications for the SFRS; the Service seems to fit the definition of an “other service provider” of “children’s services”.

In terms of the proposals, the SFRS may be consulted and have an opportunity to participate in or contribute to the preparation of the children’s services plan and agree the plan. These requirements would apply to any subsequent review of the plan. The SFRS would then be responsible for providing any services or related services in accordance with the plan.

If the SFRS participated it would require to have regard to any guidance issued by the Scottish Ministers after having responded to any related consultation about the guidance and additionally would be required to comply with any direction issued by Scottish Ministers.

The SFRS facilitates children’s participation in projects such as young firefighter programmes, fire reach, etc., albeit subject to the availability of funding which was previously sourced externally. Such children’s projects could potentially fall within the definition of children’s service or related service (i.e. service or support) in that it would be capable of having a significant effect on the wellbeing of children. Certainly, if not available to children generally then on occasion such projects are introduced with the stated aims and objectives of addressing children with needs of a particular type e.g. awareness of fire risks and home fire safety; deterring fire setting; deterring fire hydrant vandalism etc., although such projects are not in themselves an SFRS function at this time. The Scottish Government’s 2009 report entitled “Scotland Together”, acknowledged the importance of Fire and Rescue Service safety programmes for children and young people.

The perceived benefits that can accrue

The proposals should promote a standardised, multi-agency approach to the delivery of children’s services and it is anticipated that such action would deliver better outcomes for children and young people across Scotland.

Concerns that the Service has around the proposed legislation

Participation in inter-agency (emergency services and charity) sports projects, such as street football to deter anti-social behaviour does not appear to be caught by the definitions.
Does the Bill fit with the reform process

It is anticipated that the proposals will support a standard, formalised approach to planning and service delivery. As such it is expected that the Bill will assist the SFRS to achieve the aims of fire reform; in particular the proposals will assist to improve local services and strengthen the connection between fire services, communities and local authorities.

The Public Bodies (Joint Working) (Scotland) Bill

The role of the SFRS in the joint boards and any role the SFRS expects to have in future

It is anticipated that effective partnership working between the SFRS, local authorities and health services will continue to take place through Community Planning Partnerships.

It would be beneficial for the SFRS to be appropriately involved in planning and decision making in line with its role as a Community Planning partner agency.

With respect to Part 2 Shared Services, would the SFRS as a non-departmental body of Scottish Government fall within the definition of “persons” as currently provided for at Section 44(2)? If not, it should be included as it may wish to partake of the services narrated at Section 44(3) if these were to prove best value for public monies. The SFRS appears to fall within the definition of “Scottish public authority” provided for at Section 126 of the Scotland Act 1988 but this position is not confirmed.

Anticipated efficiencies and benefits that will arise for the SFRS from the delivery of integration plans

It is intended that integration plans will support the effective delivery of the National Performance Framework and Single Outcome Agreements. The SFRS corporate planning framework and associated key performance indicators reflect these aims and objectives. As such there are perceived benefits for the SFRS, for example more effective management of individuals who are in receipt of services and are at specific risk from fire for some reason; perhaps people suffering poor health including mental health, or addiction for example. The Scottish Government’s 2009 report entitled “Scotland Together”, acknowledged the link between house fires and casualties, and a range of health and other factors.

Anticipated effect that integration plans will have on outcomes for those receiving services

Integration should achieve a standard, formalised approach to planning and service delivery and such action should deliver better outcomes for service users.

Does the Bill fit with the reform process
It is expected that the Bill will assist the SFRS to achieve the aims of fire reform, specifically in relation to improving local services and integration with community planning partnerships.
Local Government and Regeneration Committee

Children and Young People (Scotland) Bill

Submission from UNICEF UK

Overview
1. UNICEF UK advocates for the protection and promotion of children’s rights, and UNICEF has a specific role under the United Nations Convention on the Rights of the Child (UNCRC) to give advice and assistance to States Parties in implementing children’s rights. This brief submission is intended to support the Local Government and Regeneration Committee to consider Part 3 of the Children and Young People (Scotland) Bill in light of related legislation. It focuses primarily on how obligations under the UNCRC can be effectively mainstreamed through children’s services planning and delivery.

2. UNICEF UK welcomes the leadership shown by successive Scottish governments in implementing the UNCRC, and commends the intention of the Bill to make rights a reality for children. We recognise that the rights measures in the Bill – when taken together – give new focus to children’s rights in Scotland, but are disappointed they do not amount to a stronger imperative for Ministers and public authorities to respect and protect children’s rights.

3. It is fundamentally important that the Children and Young People provide a clear and robust child rights framework for the delivery of children’s services across Scotland. This is not only to reflect the evolution of a child rights focus at a national level but also to ensure all children, regardless of their circumstances or geographical location, have the opportunity to develop to their full potential. With this in mind, we urge the Committee to actively consider the following issues in its scrutiny of Part 3 of the Bill:

   i. The Bill fails to create a systematic children’s rights framework for Scotland, within which both government decision-making and local service delivery will sit. This cultural and legal disconnect can be addressed through better integrating the rights and well-being provisions in Parts 1 and 3 of the Bill.

   ii. Complementary duties on those whose decisions and actions affect children and young people – namely public authorities – to act to give better effect to the UNCRC, rather than simply to report on what they have done to implement it.

   iii. Bringing together duties on children’s rights and children’s services reporting in order to put children’s rights at the heart of children’s services planning and delivery, improve the effectiveness of local reporting mechanisms, and to reduce the burden on public authorities.

Incorporating the UNCRC into Scots law
4. As the Committee will be aware, the UNCRC was adopted by the United Nations in 1989 and ratified by the UK Government in 1991. It was the first internationally binding human rights treaty to comprise the full range of civil, political, economic, social and cultural rights. It is a unique instrument in that it focuses on these rights in the context of the particular needs of children. The
UNCRC contains 42 substantive rights for every child under the age of 18, and places corresponding duties on governments to support children to realise those rights and develop to their full potential.

5. UNICEF UK’s experience and recent research shows that legislative steps are essential for embedding the UNCRC within legislation, policy, practice and attitudes towards children. The step-by-step approach taken by successive governments to child rights implementation has led to significant inconsistency and gaps in the extent to which children are able to enjoy the full extent of their rights. The direct incorporation of the UNCRC into Scots law would make its principles and provisions a reality for children, placing duties on Ministers and public authorities to respect and protect children’s rights, and allowing children to challenge violations of their rights. This approach would provide not only the foundation for a sustainable culture of children’s rights in Scotland but also the most effective and immediate way of putting “children and young people at the heart of planning and delivery of services and [ensuring] their rights are respected across the public sector”.

6. For more detail on the case for incorporation and UNICEF UK’s analysis of the child rights duties on Ministers in Part 1 of the Bill, see our submission to the Education and Culture Committee dated July 2013.

Building a child rights framework for local government

7. Part 3 of the Children and Young People Bill sets out a series of duties related to children’s services planning to achieve the full implementation of GIRFEC across Scotland and improve the well-being of children. These duties inter alia require local authorities and health boards (hereafter referred to as public authorities) to prepare children’s services plans every three years and report annually on their implementation. The aim of a children’s services plan is to safeguard, support and promote the well-being of children in a local area.

8. Clearly, one of the notable challenges in drafting the Children and Young People Bill has been in joining up a well-being approach to children’s services with the broader children’s rights framework Scottish Government aspires to. This disconnect risks undermining attempts to “make rights real” for children and young people in Scotland. The Bill could successfully embed children’s rights across the design and delivery of law, policy and services impacting on children and young people, but to achieve this a child rights framework needs to be introduced within children’s services planning, through which public authorities can safeguard, support and promote the rights and well-being of children in their area.

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2 See consecutive reports from Together (the Scottish Alliance for Children’s Rights) on the State of Children’s Rights in Scotland
3 UN Committee on the Rights of the Child (2003), General Comment 5, paragraphs 19-20
4 Transposing the UNCRC into Scots law in the same way that the European Convention on Human Rights was transposed into UK law through the Human Rights Act 1998. This is within the power of Scottish Government and Scottish Parliament, see Aidan O’Neill QC (2012), Legal opinion for UNICEF UK.
5 Children and Young People (Scotland) Bill: Policy Memorandum, paragraph 2
9. There are many opportunities to do this within the existing clauses in the Bill, not least of which is looking creatively at how comparable duties on well-being, planning and reporting can be broadened in scope to embed a child rights based approach and include explicit duties on child rights implementation⁷, and also at how these reporting duties can be streamlined to enable a more efficient, effective and coherent picture of local service provision for children across local authority areas. It is also important that these duties, in and of themselves, reflect the principles of the UNCRC. For example, the planning duty in Clause 10 should explicitly reference children as a group that should participate in the development of the children’s services plan.

10. Although we welcome the greater focus that the duty on public authorities in Clause 1 (2) to report steps they have taken to implement children’s rights will put on the UNCRC at local level, it is important to recognise that the duty is not yet accompanied by any obligation on public authorities to act to better implement the UNCRC. This is important because it is often at the local level that children experience rights violations. This omission will have a serious impact on the extent to which a rights culture can truly be developed in Scotland – without a children’s rights duty on public authorities to reflect a duty on Ministers, the legal machinery for promoting and securing children’s rights is weaker than it otherwise could be.

11. We would like to see public authorities placed under a positive duty to implement the UNCRC to ensure that children’s rights genuinely become the framework for services and decisions that affect children and young people in Scotland. Such duties would also provide consistency across public functions both geographically but also no matter by whom those functions are delivered – local authorities, health boards, the private sector or the voluntary sector.⁸

12. The systematic consideration of children’s rights, and the use of a child rights based approach to delivering services for children, is essential to ensuring children’s rights are respected, protected and realised, no matter who the child is or what their personal circumstances are. UNICEF UK’s experience in developing rights-respecting programmes at a local level⁹, evidence from the national implementation of the Rights of Children and Young Persons (Wales) Measure 2011, and learning from the roll-out of GIRFEC to date all underline the importance of training and capacity-building on the application of children’s rights in order to improve outcomes for children. With this in mind, we strongly support the new duty on Ministers to promote awareness and – importantly – understanding of the UNCRC in Part 1 of the Bill. However, from a local implementation perspective, we would like further clarification from Ministers on

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⁷ For example, within clauses 9 (aims of children’s services plan), 10 (process for children’s services plan), and 13 (reporting on children’s services plan)
⁸ UN Committee on the Rights of the Child (2005), General Comment 5, paragraphs 40-44 – State Parties have a responsibility for ensuring the compliance of non-State actors with the UNCRC; the reporting duty on public authorities in clause 2 as it currently stands does not cover those delivering public functions such as private or voluntary sector providers.
⁹ UNICEF UK’s programmes in Scotland comprise the Baby Friendly Initiative, Rights Respecting Schools, and Child Rights Partners (the latter currently in development)
how this duty will be delivered (and resourced) in relation to those delivering services for children and young people.  

**Contact details**

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10 UN Committee on the Rights of the Child (2008), *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, paragraph 21
Thank you very much for the opportunity to contribute to the Local Government and Regeneration Committee’s examination of both the Children and Young People (Scotland) Bill, and the Public Bodies (Joint Working) (Scotland) Bill1 in terms of their implications for local authority functions and partnership/joint working.

West Lothian Community Planning Partnership has considered these pieces of legislation, and how the proposed joint working arrangements established by them will link with the development work of our partnership and are pleased to offer the following comment,

“West Lothian Community Planning Partnership is a mature, strategic alliance with well established arrangements for joint working and achieving partnership outcomes. We have recently completed the draft version of our new Single Outcome Agreement – to be titled Achieving Positive Outcomes – which focuses on ‘tackling inequality’. The development of the new SOA has been guided and informed by forthcoming legislations and concurrent and independent reform processes and builds on an already well advanced governance structure and partnership understanding of key emerging issues such as prevention, early intervention and outcomes approaches.

The emerging agendas and proposed new legislation likely to relate to the development of the new Bills mentioned are unlikely to be against the direction of travel already agreed by the CPP Board and underpinning structures. The processes already underway to review the CPP governance structure and performance management arrangements are being developed with these potential changes in mind. The visions within these proposed legislation fit with our own ambitions for the wider community of West Lothian.”

I hope this response is useful,

Lorraine Gillies
Delegated Powers and Law Reform Committee

50th Report, 2013 (Session 4)

Children and Young People (Scotland) Bill

Published by the Scottish Parliament on 1 October 2013
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Christian Allard
Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:
Delegated Powers and Law Reform Committee

50th Report, 2013 (Session 4)

Children and Young People (Scotland) Bill

The Committee reports to the Parliament as follows—

1. At its meetings on 10 September and 1 October 2013 the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Children and Young People (Scotland) Bill at stage 1 ("the Bill")¹. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill ("the DPM")².

OVERVIEW OF BILL

3. This Bill was introduced by the Scottish Government on 17 April 2013. The Education and Culture Committee is the lead Committee.

4. In broad outline, the Bill concerns the rights and wellbeing of children and young people, and the duties of public authorities to support children, young people and their families. It places duties on the Scottish Ministers and other public authorities in line with the requirements of the United Nations Convention on the Rights of the Child, and amends the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people.

5. The Bill also makes provision about the way public services work to support children and young people, by providing for a single planning approach for children who need additional support from services ("child’s plans") and creating a single point of contact around every child or young person (the “named person service”).

¹ Children and Young People (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd.pdf

² Children and Young People (Scotland) Bill Delegated Powers Memorandum available here: http://www.scottish.parliament.uk/S4_Bills/CYPB_-_Delegated_Powers_Memorandum_2.pdf
It also requires authorities which provide children’s services to have a coordinated approach to planning and delivery of those services, and makes provision about the approach to assessing the wellbeing of children and young people.

6. The Bill also extends the duties of local authorities to provide early learning and childcare for pre-school age children and extends the support available to looked after children and young people leaving care. It makes provision for counselling services and other forms of assistance to be made available to parents and kinship carers, and creates a statutory adoption register for Scotland.

7. Finally, the Bill amends existing legislation which affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical arrangements in the areas of children’s hearings support arrangements and school closures.

DELEGATED POWERS PROVISIONS

8. The Committee considered each of the delegated powers in the Bill.

9. At its first consideration of the Bill, the Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers:

   - Section 3(2) – Authorities to which section 2 (duties in relation to the UNCRC) applies
   - Section 4(4) – Interpretation of Part 1
   - Section 7(3) – Children’s services planning: power to specify services which are to be included in or excluded from the definition of “children’s service” or “related service”
   - Section 7(5) – Children’s services planning: power to modify the definition of “other service provider”
   - Section 8(2) – Requirement to prepare children’s services plan
   - Section 10(1)(b) – Children’s services plan: process
   - Section 15(1) – Guidance in relation to children’s services planning
   - Section 16(1) – Directions in relation to children’s services planning
   - Section 17(2)(b) – Children’s services planning: default powers of Scottish Ministers
   - Section 19(3)(b) – Named person service
   - Section 32(2)(b) – Content of a child’s plan
   - Section 33(8) – Preparation of a child’s plan
   - Section 35(5) – Responsible authority: special cases
Section 44(2) – Mandatory amount of early learning and childcare

Section 46(2) – Duty to consult and plan on delivery of early learning and childcare

Section 47(2) – Method of delivery of early learning and childcare

Section 50(2) – Corporate parents

Section 57(1) – Guidance on corporate parenting

Section 58(1) – Directions to corporate parents

Section 60(2)(e) – Provision of aftercare to young people

Section 60 - Consequential amendment to regulation-making power in the Regulation of Care (Scotland) Act 2001

Section 61(1) – Provision of counselling services to parents and others

Section 62(1) – Counselling services: further provision

Section 64(2) – Assistance in relation to kinship care orders

Section 65(2)(c) – Orders which are kinship care orders

Section 66(3) – Kinship care assistance: further provision

Section 68 – Scotland’s Adoption Register
Inserting section 13B(2) into the Adoption and Children (Scotland) Act 2007 – Power of direction

Section 68 – Scotland’s Adoption Register
Inserting section 13E(2) into the Adoption and Children (Scotland) Act 2007 – Power of direction

Section 71 – Appeal against detention of child in secure accommodation
Inserting section 44A(3) into the Criminal Procedure (Scotland) Act 1995

Section 74(6) – Assessment of wellbeing

Section 77(1)(b) – Subordinate legislation

Section 78(a) – Ancillary provision

10. At its meeting of 10 September the Committee agreed to write to Scottish Government officials to raise questions on the remaining delegated powers in the Bill. This correspondence is reproduced at Annexes A and B.
11. In light of the written responses received by the Committee, it agreed that it did not need to draw the Parliament’s attention to the following delegated powers:

- Section 13(1)(b)(ii) – Reporting on children’s services plan
- Section 17(6) – Children’s services planning: default powers of Scottish Ministers
- Section 30(2) – Interpretation of Part 4 (provision of named persons)
- Section 32(2) – Content of a child’s plan
- Section 37(5) – Child’s plan: management
- Section 68 – Scotland’s Adoption Register
- Inserting section 13E(1) into the Adoption and Children (Scotland) Act 2007 – Power to make regulations
- Section 78(b) – Ancillary provision
- Section 79(2) - Commencement

12. The Committee’s comments and, where appropriate, recommendations on the other delegated powers in the Bill are detailed below.

**Section 28(1) – Guidance in relation to named person service**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Guidance
- **Parliamentary procedure:** None

**Section 29(1) – Directions in relation to named person service**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Direction
- **Parliamentary procedure:** None

**Provision**

13. Sections 28(1) and 29(1) confer power on the Scottish Ministers to issue guidance and directions to service providers about the exercise of named person service functions under the Bill. Service providers are health boards, local authorities and the directing authorities of independent or grant-aided schools. The principal function of service providers is to make an identified individual (a named person) available in relation to every child or young person. That individual will have responsibilities in relation to the wellbeing of the child or young person.
Comment

14. The Committee asked the Scottish Government whether it considers that it would be appropriate to publish guidance or directions issued under these powers, in light of the potential impact of the named person service on children or young people and their families.

15. The Scottish Government responded that it does consider it appropriate and therefore intends to publish guidance and, if relevant, directions under the powers in sections 28(1) and 29(1) of the Bill.

16. The Committee welcomes the commitment to publication given by the Scottish Government. However, in addition to the intentions of the current administration as regards use of delegated powers, the Committee requires to consider how those powers might be exercised from time to time by future administrations. In that light, the Committee concludes that it would be appropriate for the Bill to impose a duty on the Scottish Ministers to publish guidance and directions under sections 28(1) and 29(1).

17. The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 28(1) and 29(1).

18. The Committee asks for further comment on this in the Scottish Government’s response to this report.

Section 39(1) – Guidance on child’s plans

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Guidance
- **Parliamentary procedure:** None

Section 40(1) – Directions in relation to child’s plans

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Direction
- **Parliamentary procedure:** None

Provisions

19. Section 39(1) enables the Scottish Ministers to issue guidance to any person in connection with that person’s functions under Part 5 of the Bill, while section 40(1) enables Ministers to issue directions to local authorities, health boards and directing authorities.

20. Part 5 of the Bill provides for a child’s plan to be created for every child with a wellbeing need which is considered to require targeted intervention. The child’s plan will set out an overview of the young person’s needs, the actions which require to be provided to meet the assessed needs, who will undertake those
actions, and the desired outcomes. A child’s plan is to be prepared and managed by the responsible authority. Depending on circumstances, that authority will be a local authority, health board or the directing authority of an independent or grant-aided school.

Comments

21. The powers in sections 39(1) and 40(1) raise similar issues to those raised by sections 28(1) and 29(1), discussed above. The Committee accordingly asked the Scottish Government whether it considers that it would be appropriate to publish guidance or directions issued under these powers, in light of the potential impact of the exercise of functions relating to child’s plans on children and their families.

22. The Scottish Government responded that it does consider it appropriate and therefore intends to publish guidance and, if relevant, directions under the powers in sections 39(1) and 40(1) of the Bill.

23. The Committee welcomes the commitment to publication given by the Scottish Government. However, as above, the Committee requires to consider how delegated powers might be exercised from time to time by future administrations. In that light, the Committee concludes that it would be appropriate for the Bill to impose a duty on the Scottish Ministers to publish guidance and directions under sections 39(1) and 40(1).

24. The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 39(1) and 40(1).

25. The Committee asks for further comment on this in the Scottish Government’s response to this report.

Section 43(2)(c)(ii) – Duty to secure provision of early learning and childcare

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

Provision

26. Section 43(2)(c)(ii) enables the Scottish Ministers by order to prescribe additional categories of children who are eligible for the mandatory amount of early learning and childcare. (Section 43 itself specifies one category of child eligible for such childcare, being a child aged 2 or over who is, or has been at any time since their 2nd birthday, looked after or subject to a kinship care order).

27. The Explanatory Notes to the Bill and the DPM state that it is likely that the power will be used to specify that 3 and 4 year olds will be eligible for early learning and childcare from the first term after their 3rd birthday in a similar way in
which the current law does by virtue of the order made under section 1(1A) of the Education (Scotland) Act 1980 (which the Bill amends).

Comment

28. The Committee asked the Scottish Government to explain why it considers it appropriate that an order setting the eligibility criteria for early learning and childcare is subject to the negative procedure.

29. The Scottish Government explained that the power is part of a longer term ambition to increase and improve early learning and childcare for all children, and that there is pressure to increase the categories of eligible children in a number of directions. The power in its current form offers maximum flexibility to enable work towards that longer term ambition.

30. The Scottish Government stated that it agrees with the Committee that the setting of eligibility criteria for early learning and childcare is a matter of substance with a significant impact on children. However, in its view that does not necessarily mean that it is appropriate to make the power subject to the affirmative procedure. The Scottish Government considers that the circumstances are such in this case that the negative procedure is appropriate.

31. The reason the Scottish Government gives in support of that view is that the power will not modify the provision made about eligibility in the primary legislation. The Committee notes however that this is simply because a choice has been made not to include the eligibility criteria on the face of the Bill (other than in relation to children aged 2 or over who are, or have been, looked after or subject to a kinship care order). That in the Committee’s view is not a good reason to avoid detailed Parliamentary scrutiny. In carrying out its scrutiny of delegated powers, the Committee considers the substance of the provision to be made, as well as whether it involves modification of primary legislation.

32. The Committee also notes that, in contrast, the power in section 44(2) of the Bill to modify the mandatory amount of early learning and childcare (i.e. the annual number of hours to be provided) is subject to the affirmative procedure, as is the power in section 47(2) to modify the way in which an education authority must deliver early learning and childcare. The initial mandatory amount of early learning and childcare, and the method of providing it, are set out on the face of the Bill in sections 44 and 47 respectively.

33. The Scottish Government explains that “the potential effect of [the powers in sections 44(2) and 47(2)] could mean a significant change to the infrastructure and funding of early learning and childcare and therefore it is appropriate that those powers are afforded a more detailed level of scrutiny in the form of affirmative procedure”. It appears to the Committee however that an increase in the numbers of children eligible for early learning and childcare by virtue of specifying additional categories of eligible children under the power in section 43(2)(c)(ii) could have a similarly significant effect on education authority infrastructure and funding. Accordingly the explanation given does not appear to provide a strong basis for distinguishing between the various powers.
34. More generally, it is not clear to the Committee that amending the number of hours of early learning and childcare to which eligible children are entitled is any more significant than setting and amending the categories of children who may access that entitlement. The setting of eligibility criteria might be thought to be of equal, if not greater, significance.

35. The Committee concludes that specifying categories of children who are entitled to early learning and childcare is in the nature of a substantive matter which might be expected to attract the affirmative procedure. While the current policy intention is that the power will be used to specify 3 and 4 year olds, it may of course be used to make different provision in the future. The Scottish Government response refers to pressure to increase the categories of eligible children to include, for example, 2 year olds living in deprivation, 2 year olds who have a disability or additional support needs, or all 2 year olds. These appear to be significant matters which it is anticipated Parliament may wish the ability to debate in full.

36. The Committee therefore asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.

37. The Committee asks for further comment on this in the Scottish Government’s response to this report.

Section 61(3) – Provision of counselling services to parents and others

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
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<tr>
<td>Parliamentary Procedure:</td>
<td>Negative</td>
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Provision
38. Section 61(3) enables the Scottish Ministers by order to specify the description of “eligible child” for the purposes of section 61(2). That section provides that the parents of, or persons with parental rights and responsibilities in relation to, an eligible child will be eligible for counselling services.

Comment
39. On considering the power, the Committee was content in principle with the exercise of the power by subordinate legislation. However, it sought further explanation of the choice of the negative procedure.

40. The Scottish Government explains that, in its view, changes to the description of “eligible child” are unlikely to be controversial and consequently it would not be good use of Parliamentary time to initiate a debate on each occasion the power is used. It states that any change to eligibility would most likely be to extend eligibility rather than narrow it, therefore improving the provision of
counselling services to parents and others and ensuring the Government continues to meet the needs of children and families in need.

41. The Scottish Government’s response also explains that, given the nature of the counselling services provided in each area, no change to provision could be effected without substantial consultation and engagement with the service providers and users across each local authority area, which would be undertaken by the Scottish Government. The Committee notes however that there is no requirement on the face of the Bill for such consultation or engagement.

42. The Committee also notes that the Scottish Government’s response overlooks the fact that the power enables the Scottish Ministers not merely to change or extend the eligibility criteria, but to set down the initial eligibility criteria. “Eligible child” is not defined on the face of the Bill, so the power, if used, will be used to specify the initial eligibility criteria. The Committee is prepared to accept that if changes to the criteria are unlikely to be controversial, then the initial setting of the eligibility criteria may also be uncontroversial. However it does not consider that the Government has fully explained why the matter is unlikely to be controversial.

43. Moreover, while the current policy intention is to use the power to set and then potentially extend eligibility, rather than narrow it, the Committee requires to consider the use to which the power could potentially be put in the future. While it accepts the Government's explanation (in paragraph 26 of Annex B) that the eligibility of the parents or carers of certain children for counselling services is not perhaps as fundamental as the provision of aftercare to formerly looked-after children (which is enabled by provision made in section 60(2) of the Bill), it is clearly a matter which may be of significance to the affected individuals. That suggests that the affirmative procedure may be appropriate for the exercise of the power in section 61(3). It is not the sort of power to make operational or technical provision which the Committee might normally expect to attract the negative procedure.

44. The Committee therefore asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.

45. The Committee asks for further comment on this in the Scottish Government’s response to this report.
Section 64(4) – Assistance in relation to kinship care orders

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

Provision
46. Section 64(4) enables the Scottish Ministers by order to specify the description of an “eligible child” for the purposes of the kinship care assistance provisions.

Comment
47. On considering the power, the Committee was content in principle with the exercise of the power by subordinate legislation. However, it sought further explanation of the choice of the negative procedure.

48. As in relation to the power at section 61(2) discussed above (provision of counselling services for parents and carers of eligible children), the Scottish Government’s view is that changes to the description of “eligible child” are unlikely to be controversial and consequently it would not be good use of Parliamentary time to initiate a debate on each occasion the power is used. It states again that any change to eligibility would most likely be to extend eligibility rather than narrow it, therefore ensuring the Scottish Government continues to meet the needs of children living in kinship arrangements.

49. Again, the Scottish Government’s response also explains that no change to the eligibility description specified would be effected without substantial consultation and engagement with the service providers and users across each local authority area, which would be undertaken by the Scottish Government. The Committee notes however that there is no requirement on the face of the Bill for such consultation or engagement.

50. The Committee notes again that the Government response overlooks the fact that the power enables the Scottish Ministers not merely to change or extend the eligibility criteria, but to set down the initial eligibility criteria. The Committee is prepared to accept that if changes to the criteria are unlikely to be controversial, then the initial setting of the eligibility criteria may also be uncontroversial. However it does not consider that the Government has fully explained why it considers that the matter is unlikely to be controversial.

51. Moreover, while the current policy intention is to use the power to set and then potentially extend eligibility, rather than narrow it, the Committee requires to consider the use to which the power could potentially be put in the future, and the impact which eligibility, or lack of eligibility, for certain assistance would have on those affected. While it accepts the Scottish Government’s explanation (in paragraph 28 of Annex B) that the eligibility of children, young people or their carers for kinship care assistance may not be as fundamental as the provision of aftercare to formerly looked-after children (which is enabled by provision made in section 60(2) of the Bill), it is clearly a matter of significance. Depending on how it is specified in an order under section 64(2) of the Bill, kinship care assistance will
potentially confer significant benefits on those entitled to it, and may include the provision of counselling, advice, financial support and access to council services.

52. The Committee is accordingly of the view that the issue of eligibility is a substantive matter which Parliament would expect to have the opportunity to debate. In its view, the Scottish Government has not explained why it considers eligibility for kinship care assistance to be of a technical, administrative or other non-controversial nature, such that the negative procedure might be appropriate. From the information available to the Committee, it appears to be a matter for which Parliament’s approval should be required.

53. The Committee therefore asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.

54. The Committee asks for further comment on this in the Scottish Government’s response to this report.

Section 68 – Scotland’s Adoption Register

Inserting section 13A(1) into the Adoption and Children (Scotland) Act 2007

Power conferred on: The Scottish Ministers
Power exercisable by: Arrangement
Parliamentary procedure: None

Provision

55. Section 68 of the Bill inserts section 13A(1) into the Adoption and Children (Scotland) Act 2007. It requires the Scottish Ministers to make arrangements for the establishment and maintenance of Scotland’s Adoption Register. Section 13B(1) provides that such arrangements may in particular authorise an organisation (a “registration organisation”) to perform the Scottish Ministers’ functions in respect of the Register, and provide for payments to be made to that organisation.

Comment

56. The Committee asked the Scottish Government why it is considered appropriate to authorise a registration organisation to perform the Scottish Ministers’ functions in respect of the Register, and to provide for payments to be made to that organisation, by way of arrangements rather than in subordinate legislation.

57. The Scottish Government explained that there is an organisation which currently operates a non-statutory adoption register in Scotland and the Scottish Ministers may consider it appropriate to authorise this organisation to carry out their functions in relation to the Register once the Bill is enacted, given that the organisation has the relevant skills and experience which may be required. For
this reason, it is considered that it would be more appropriate to make the authorisation by arrangement as opposed to in subordinate legislation. The Scottish Government’s response does not say, but the Committee presumes that this is considered to be a more appropriate way of delegating authority because the organisation is not a statutory body or other public authority. The Committee notes that it would nevertheless be possible for subordinate legislation to delegate functions to an organisation such as a charity or private company.

58. The Scottish Government adds that funding arrangements are already in place for this non-statutory register and that these may be used as a basis for the arrangements for the funding of the new register. It is not therefore considered appropriate to provide for payments to the registration organisation by way of subordinate legislation. Again, the Committee accepts this explanation but considers that it would have been possible to replicate the existing funding arrangements in subordinate legislation, if considered appropriate.

59. As regards publication of the arrangements once they have been made by the Scottish Ministers, the Scottish Government states it expects that the details will be made available on the website of Scotland’s Adoption Register.

60. The Committee notes that it appears that the power in section 13A(1) as read with section 13B(1)(b) would enable arrangements to be made requiring payments to the registration organisation by third parties as well as by the Scottish Ministers. If an arrangement is to be capable of imposing liability to make payments on persons other than the Scottish Ministers, the Committee considers that the arrangements should be clear and accessible to those who may be affected.

61. More generally, the Committee notes that any arrangements made under the power will potentially authorise the registration organisation to perform all the Scottish Ministers’ statutory functions relating to the Register (other than the function of making subordinate legislation). This will include the potentially significant functions of receiving information for inclusion in the Register, and disclosing information from it. The exercise of those functions has the potential to substantially affect those individuals concerned.

62. In the interests of transparency and accountability therefore, the Committee would have expected at the very least that a duty be imposed on the Scottish Ministers to publish details of the arrangements once made.

63. The Committee accordingly draws the attention of the lead committee to the power in section 13A(1) as read with section 13B. This power proposes to enable the Scottish Ministers, by arrangements, to delegate their functions in respect of the Register (other than their function of making subordinate legislation) to a registration organisation. It also proposes to enable the Ministers, by arrangements, to provide for payments to be made to such an organisation, which may include payments by persons other than the Scottish Ministers. The Committee considers that any arrangements which impose liability for payment should be clear and accessible to those affected by them.
64. The proposal is that this delegation of functions and the making of provision about payments to the organisation be achieved without the need for subordinate legislation or parliamentary procedure, and without any requirement for publication of the arrangements entered into.

Section 68 – Scotland’s Adoption Register

Inserting section 13A(2) into the Adoption and Children (Scotland) Act 2007

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary Procedure: Affirmative

Provision

65. As referred to above, section 68 inserts section 13A into the Adoption and Children (Scotland) Act 2007 (the 2007 Act), which requires the Scottish Ministers to make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register. Section 13A(2) provides that the Scottish Ministers may by regulations prescribe information or types of information to be included in the Register. Examples are given of the types of information which may be included. The power also enables the Scottish Ministers to provide for how information is to be retained in the Register, and to make such further provision in relation to the Register as they consider appropriate.

66. Section 13C expands the purposes for which regulations under section 13A(2) may be made. It enables provision to be made in connection with the supply of information for the Register from adoption agencies to the Scottish Ministers or to a registration organisation authorised on the Ministers’ behalf. It also enables further provision to be made in connection with specified matters relating to the supply of such information.

67. Section 13D provides that regulations under section 13A(2) may also make provision about the disclosure of information from the Register. Information may be disclosed to adoption agencies or to other persons specified in the regulations, for certain specified purposes (including any purpose relating to adoption). The power also enables further provision to be made in connection with specified matters relating to the disclosure of such information.

Comment

68. The Committee asked the Scottish Government why the Bill does not define what information the Register is to contain or make provision about what it is to be used for, and why the wide powers taken in section 13A(2) to make provision about the Register are not limited or defined in any way.

69. It also asked for further explanation regarding in what way it is currently anticipated the Register may alter and extend beyond containing information about children and adopters, as referred to in the DPM.
70. The Scottish Government submits that although the Bill does not define the information which the Register is to contain, it is clear from the types of information which may be included in the Register (as provided for in subparagraphs (i) to (v) of section 13A(2)(a)) that the information will all relate in some way to children who are considered suitable for adoption, or to prospective adoptive parents. The Committee notes however that the list of types of information referred to is an illustrative list of examples only, and that the power is wider than that and may be used to prescribe other information or types of information.

71. Moreover, the Committee considers that the Scottish Government has not explained what the Register is to be used for. It appears that the purpose of the Register is likely to be to facilitate adoption in some way, but this is not made clear on the face of the Bill. Were section 13A to define or make provision about the purpose or intended use of the Register, the Committee considers that that would go some way to limit the very broad powers in section 13A(2) to make regulations about the Register.

72. The Scottish Government also considers that paragraphs (a), (b) and (c) of section 13A(2) limit or restrict the power to a certain extent (see paragraphs 29 and 30 of Annex B). As stated above, paragraph (a) provides a non-exhaustive list of information which might require to be included in the Register. The Committee accepts that this provides a guide to the intended use of the power, but not a limitation or restriction on its use. Given that the policy intention is that the information to be provided will relate in some way to children who are considered suitable for adoption, or to prospective adoptive parents, the Committee considers that the power conferred by paragraph (a) should be restricted to that extent.

73. As regards paragraph (b), the Committee accepts that paragraph is limited to enabling provision to be made about how information is to be stored. The Committee disagrees however with the Scottish Government's view that it is clear from paragraph (c) that regulations will be restricted to making provision about “other administrative matters associated with the operation of the Register”. Paragraph (c) confers a broad power to make such further provision in relation to the Register as the Scottish Ministers consider appropriate. If the intention in taking the power is, as stated, to enable provision to be made about administrative matters associated with the operation of the Register, then the Committee considers that the power has been drawn too widely. Its terms should be restricted to give effect to the more limited policy intention.

74. As regards the intention that the Register may alter and extend beyond containing information relating to children and adopters, as referred to in the DPM, the Scottish Government explains that there are no current plans for such an extension (although the type of information required about children and adopters may be extended in future). The Committee welcomes this clarification regarding the current intention, but considers that the power in section 13A(2)(a) as currently drafted would allow information to be prescribed for inclusion in the register which goes beyond information concerning children suitable for adoption and potential adopters. It therefore repeats its conclusion above that the power should be
restricted to the prescribing of information concerning children considered suitable for adoption and prospective adopters, if that is the policy intention.

75. The Committee also asked the Scottish Government to provide reasons for taking powers in section 13C to make provision about the supply of information to the Register, and in section 13D about the disclosure of information, in regulations under section 13A(2).

76. The Committee welcomes the explanation of these powers which the Scottish Government has provided. The reason given in relation to the power to make provision about the supply of information under section 13C is to enable the Scottish Ministers to prescribe the detailed processes for operating the Register. The Committee accepts that much of the information which may be prescribed under section 13C relates to operation of the Register. However it considers that prescribing the information which an adoption agency must disclose to the Scottish Ministers or to a registration organisation (section 13C(1)), and prescribing persons other than parents or carers whose consent may be required to the disclosure of information (section 13C(2)(a)(ii)) are substantive rather than operational matters. Nonetheless, it notes that the regulations will be subject to the affirmative procedure and considers that this confers a sufficient degree of scrutiny on the Parliament in relation to the more substantive matters.

77. The reason given in relation to the power to authorise disclosure of information under section 13D is that the power will be used to prescribe detailed information which it is not considered appropriate to make provision for in the Bill. In light of the fact that the purposes for which information may be disclosed under those regulations is, for the most part, set out on the face of the Bill, the Committee considers that explanation to be acceptable.

78. The Committee therefore accepts in principle the power under section 13A(2), as supplemented by sections 13C and 13D, to make regulations in relation to Scotland’s Adoption Register. It is also content with the choice of the affirmative procedure for those regulations. However, it asks the Scottish Government to consider bringing forward amendments to section 13A at Stage 2 to make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain.

79. The Committee also asks the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(a) to reflect the stated intention in taking the power, which is to enable information or types of information relating to children considered suitable for adoption, or to prospective adopters, to be prescribed for inclusion in the Register.

80. The Committee also asks the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(c) to reflect the stated intention in taking the power, which is to enable provision to be made about other administrative matters associated with the operation of the Register.
81. The Committee asks for further comment on these matters in the Scottish Government’s response to this report.

Section 74(3) – Assessment of wellbeing

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Provision

82. Section 74(2) contains a list of indicators with reference to which a person required by the Bill to assess the wellbeing of a child or young person is to carry out such an assessment. Section 74(3) requires the Scottish Ministers to issue guidance on how those indicators are to be used to assess wellbeing.

Comment

83. Once again, this power to issue guidance raises similar issues to those discussed earlier in this report in relation to sections 28(1) and 29(1), and 39(1) and 40(1). The Committee asked the Scottish Government whether it considers that it would be appropriate to publish guidance on how the wellbeing indicators are to be used by those with functions under the Bill to assess the wellbeing of a child or young person.

84. The Scottish Government responded that it does consider guidance on wellbeing indicators an appropriate mechanism to set out further detail, therefore it is the intention for guidance to be published.

85. For the reasons discussed earlier in this report in relation to the powers in sections 28(1) and 29(1), and 39(1) and 40(1), the Committee concludes that it would be appropriate for the Bill to impose a duty on the Scottish Ministers to publish guidance issued under section 74(3).

86. The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance issued by the Scottish Ministers under the power contained in section 74(3).

87. The Committee asks for further comment on this in the Scottish Government’s response to this report.
ANNEX A

Correspondence with the Scottish Government

On 10 September 2013, the Delegated Powers and Law Reform Committee wrote to the Scottish Government as follows:

Section 13(1)(b)(ii) – Reporting on children’s services plan

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative

1. Section 13(1)(b)(ii) confers a power on the Scottish Ministers to prescribe, by order, outcomes in relation to the wellbeing of children in a local authority area. Section 13(1)(b) requires a local authority and each relevant health board to publish a report every year on the extent to which the provision of services in accordance with the children’s services plan has achieved certain defined aims and any outcomes prescribed using the power in sections 13(1)(b)(ii).

2. The Committee asks the Scottish Government:

- Given that section 13(1)(b) enables the Scottish Ministers to prescribe outcomes in relation to wellbeing of the children in an area, as regards assessment of the children’s services plan for that area, how will the power achieve its stated aim of allowing the reports to reflect any changes in children’s services or related services?

- How will the power be used to achieve its stated aim of reflecting “changes in the measures of wellbeing” when it is a power to prescribe outcomes in relation to wellbeing”?

- What are the reasons for taking the power?

- Given the significance of the matters to which the power relates why it considers that the negative procedure is appropriate and that more detailed parliamentary scrutiny is not required?

Section 17(6) – Children’s services planning: default powers of Scottish Ministers

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative

3. Section 17(6) enables the Scottish Ministers, by order, to constitute a joint board of the local authority and relevant health board(s) for an area, to exercise a function relating to children’s services planning under the Bill. The power is available where the Scottish Ministers consider that making a direction under section 17(2) regarding the exercise of the function has been insufficient or would be insufficient.

4. The Committee asks the Scottish Government:

- To clarify whether the power is to constitute a joint board comprising the local authority and health boards which are failing to exercise the function, or the local authority and health boards which have been directed to exercise the function or would be so directed were such a direction considered likely to be sufficient, or either or both of the above, and whether it considers the meaning to be sufficiently clear from the wording of section 17(6)?

Section 30(2) – Interpretation of Part 4 (provision of named persons)

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Affirmative

5. Section 30(2) confers power on the Scottish Ministers by order to modify schedule 2 of the Bill to add a person or description of persons, remove an entry in it or vary an entry in it. Schedule 2 contains a list of “relevant authorities”. Persons or bodies which are relevant authorities are subject to the duties in Part 4 to help named persons and to share information with named person service providers.

6. The Delegated Powers Memorandum states that the reason for taking the power is “so that the service providers in schedule 2 can be modified in the future should new relevant authorities be created, or current service providers’ names changed”. This explanation appears to confuse the role of service providers in Part 4 with the role of relevant authorities. “Service provider” is defined in section 30(1) as a health board, local authority or directing authority. Service providers have the function under the Bill of providing a named person service to children and young people. “Relevant authority” is defined in section 30(1) as a person listed, or within a description listed, in schedule 2. Relevant authorities are required to help named persons and to share information with service providers.

7. The Committee asks the Scottish Government:

- Whether, as stated in the Delegated Powers Memorandum, the power is sought to enable changes to be made to the definition of service providers, or whether it is instead intended that the power is being taken to enable schedule 2 to be modified in the future should new
relevant authorities be created, or current relevant authorities’ names changed?

Section 32(2) – Content of a child’s plan

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

8. Section 32(2) confers power on the Scottish Ministers by order to make provision as to information that is or is not to be contained in a child’s plan, and the form of a child’s plan.

9. The Delegated Powers Memorandum states it is important that the Scottish Ministers have the ability and flexibility “to amend what should be included in the plan”.

10. The Committee asks the Scottish Government:

- Whether it agrees that the power at section 32(2) does not enable Ministers to add to, modify or remove any of the matters listed in section 32(1)?

- To explain the reasons for taking the power, and give an example of the sort of information which might be required to be contained, or not to be contained, in a child’s plan?

- Why does the Government consider that the negative procedure is appropriate and that more detailed parliamentary scrutiny is not required?

Section 37(5) – Child’s plan: management

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

11. Section 37(5) confers power on the Scottish Ministers by order to make provision about the management of child’s plans, including provision about when and how a child’s plan is to be reviewed in accordance with section 37(1); who is to be the managing authority of a child’s plan; when and to whom management of a child’s plan is to or may transfer under section 37(4)(b); when and how a new targeted intervention may be included in a child’s plan; and the keeping, disclosure and destruction of child’s plans.
12. The Committee asks the Scottish Government:

- To explain why the negative procedure is considered to be appropriate, given the breadth of the power and the potential scope to use it to make substantive, as opposed to procedural, changes to the management of child’s plans, which changes may impact on children subject to child’s plans, and on their families?

Section 43(2)(c)(ii) – Duty to secure provision of early learning and childcare

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

13. Section 43(2)(c)(ii) enables the Scottish Ministers by order to specify additional categories of children who are eligible for the mandatory amount of early learning and childcare. Children may be specified by age range or other description.

14. The Committee asks the Scottish Government:

- To explain further the choice of negative procedure, given that:
  - setting the eligibility criteria for early learning and childcare may be considered a matter of substance with a potentially significant impact on children and families; and
  - provision in relation to the mandatory amount of early learning and childcare (section 44) and the way in which an education authority must deliver early learning and childcare (section 47) is set out on the face of the Bill, with power to modify that provision being subject to the affirmative procedure in each case.

Section 61(3) – Provision of counselling services to parents and others

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

15. Section 61(3) enables the Scottish Ministers by order to specify the description of “eligible child” for the purposes of section 61(2). That section provides that the parents of, or persons with parental rights and responsibilities in relation to, an eligible child will be eligible for counselling services.

16. The reason given in the Delegated Powers Memorandum for the choice of parliamentary procedure is that the eligibility test is likely to require to be amended from time to time. The Committee notes that the affirmative procedure would also enable amendment from time to time, and considers that the matter of eligibility for counselling may be thought to be a matter of significance for affected individuals.
The Committee asks the Scottish Government whether there are further reasons for the choice of negative procedure.

17. Section 60(2) of the Bill amends the Children (Scotland) Act 1995 to confer power by regulations to specify “eligible needs” in relation to the provision of aftercare to young people. That power is subject to the affirmative procedure.

The Committee asks the Scottish Government in what respect does the power in section 61(3) to specify eligibility for counselling services differ from the power in section 60(2), so as to make negative procedure more appropriate?

Section 64(4) – Assistance in relation to kinship care orders

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

18. Similarly to Section 61(3), Section 64(4) enables the Scottish Ministers by order to specify the description of an “eligible child” for the purposes of the kinship care assistance provisions.

19. The reason given in the Delegated Powers Memorandum for the choice of parliamentary procedure does not accurately describe the scope of the order-making power, given that it may be used to specify the initial eligibility criteria for kinship care assistance, in addition to adding to or amending those criteria. The Committee considers that the matter of eligibility for assistance may be thought to be a matter of significance for affected individuals.

The Committee asks the Scottish Government what the reasons are for the choice of negative procedure.

20. Section 60(2) of the Bill amends the Children (Scotland) Act 1995 to confer power by regulations to specify “eligible needs” in relation to the provision of aftercare to young people. That power is subject to the affirmative procedure.

The Committee asks the Scottish Government in what respect does the power in section 64(4) to specify eligibility for kinship care assistance differ from the power in section 60(2) power, so as to make negative procedure more appropriate?

21. Section 68 inserts section 13A into the Adoption and Children (Scotland) Act 2007 (the 2007 Act). Section 13A(2) provides that the Scottish Ministers may by regulations prescribe information or types of information to be included in the Register. This may include information relating to children who adoption agencies consider ought to be placed for adoption, persons considered by adoption agencies as suitable to have a child placed with them for adoption, matters relating to such children or persons which arise after information about them is included in the Register, or children or prospective adopters outwith Scotland. The Scottish Ministers may also by regulations provide for how information is to be retained in
the Register, and make such further provision in relation to the Register as they consider appropriate.

22. The Committee notes the Bill does not define what information the Register is to contain, or make provision about what it may be used for. Instead it grants extremely wide powers to Ministers to establish to do so in regulations.

23. The Committee asks the Scottish Government:

- To explain why that is the case, and why the wide powers taken in section 13A(2) to make provision about the Register are not limited or defined in any way?

- To give the reasons for taking powers in section 13C(1), (2)(a)(ii) and (3) to use regulations under section 13A(2) to make provision about the supply of information for the Register, as no explanation of these powers is provided in the Delegated powers Memorandum?

- To explain the reasons for taking powers in section 13D(2) and (3) to use regulations under section 13A(2) to make provision about disclosure of information, as again no explanation of these powers is provided in the Delegated Powers Memorandum?

- To explain further in what way it is currently anticipated the Register may alter and extend beyond containing information about children and adopters, and what sort of information might be included in it?

Inserting section 13E(1) into the Adoption and Children (Scotland) Act 2007

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<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
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<td>Parliamentary Procedure:</td>
<td>Affirmative</td>
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24. Regulations under section 13E(1) of the 2007 Act may authorise a registration organisation to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies, and may require adoption agencies to pay or receive such sums through the registration organisation.

25. The reason given in the Delegated Powers Memorandum does not appear to describe the effect of the power taken accurately. New section 13E appears to be a power to give a registration organisation or other person specific functions in relation to payments by adoption agencies. It does not appear to be a power to amend the registration organisation authorised to act on Ministers’ behalf. Such a power appears to be contained in section 13B, which is a power to make arrangements to authorise an organisation to carry out functions on Ministers’ behalf.

- The Committee therefore asks the Scottish Government to explain the reasons for taking the power.
Section 78(b) – Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Generally negative but affirmative procedure if making textual changes to an Act.

26. Section 78(b) enables the Scottish Ministers to make such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of the Act. The Delegated Powers Memorandum states that the power will be subject to the negative procedure and provides justification for that choice. However, it appears from the face of the Bill that the power is subject to the affirmative procedure where it is used to amend primary legislation.

27. The Committee asks the Scottish Government:

- To confirm that the power is subject to negative procedure other than where it makes textual amendment of the Bill or any other Act, in which case it is subject to affirmative procedure notwithstanding the alternative statement and justification provided in the Delegated Powers Memorandum?

Section 79(2) - Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Laid in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010

28. Section 79(2) provides that the Scottish Ministers may appoint days on which the provisions in the Bill come into force by commencement order if they are not commenced by the Bill. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

29. The Committee asks the Scottish Government:

- Whether it considers that section 79(3) enables the same transitional, transitory or saving provision to be made in a commencement order under section 79(2) as could be made in an ancillary order under section 78(b)?
• If so, why is it considered that both powers are necessary, and what considerations are likely to determine which power is used to make provision in any individual case?

30. An order under section 78(b) is subject to negative procedure (except where textual amendment of an Act is proposed, in which case affirmative procedure will apply). However, an order under section 79(2) containing transitional, transitory or saving provision would be laid only and not subject to further parliamentary procedure.

• The Committee asks the Scottish Government to explain why the difference in Parliamentary procedure is thought appropriate?

Section 28(1) – Guidance in relation to named person service

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Section 29(1) – Directions in relation to named person service

Power conferred on: The Scottish Ministers
Power exercisable by: Direction
Parliamentary procedure: None

31. Part 4 of the Bill provides for a named person service to be made available to all children and young people, and confers various functions on service providers in connection with the provision of such a service.

32. Sections 28(1) and 29(1) confer power on the Scottish Ministers to issue guidance and directions to service providers about the exercise of those functions.

33. The Committee asks the Scottish Government:

• Whether it considers that it would be appropriate to publish guidance or directions issued under the powers in sections 28(1) and 29(1), in light of the potential impact of the named person service on children or young people, and their families?

Section 39(1) – Guidance on child’s plans

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Section 40(1) – Directions in relation to child’s plans

Power conferred on: The Scottish Ministers
34. Part 5 of the Bill provides for a child’s plan to be created for every child with a wellbeing need which is considered to require targeted intervention. Section 39(1) enables the Scottish Ministers to issue guidance to any person in connection with that person’s functions under this Part of the Bill, while section 40(1) enables Ministers to issue directions to local authorities, health boards and directing authorities.

35. The Committee asks the Scottish Government:

- Whether it considers that it would be appropriate to publish guidance or directions issued under the powers in sections 39(1) and 40(1), in light of the potential impact of the exercise of functions relating to child’s plans on children and their families?

Section 68 – Scotland’s Adoption Register

Inserting section 13A(1) into the Adoption and Children (Scotland) Act 2007

36. New section 13A(1) of the Adoption and Children (Scotland) Act 2007 inserted by section 68 of the Bill requires the Scottish Ministers to make arrangements for the establishment and maintenance of Scotland’s Adoption Register. Section 13B(1) provides that such arrangements may in particular authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register, and provide for payments to be made to that organisation.

37. Does the Committee agree to ask the Scottish Government:

- Why it is considered appropriate to authorise a registration organisation to perform the Scottish Ministers’ functions in respect of the Register, and to provide for payments to be made to that organisation, by way of arrangements rather than in subordinate legislation?

- In what respect the power differs from the power in section 13E(1) of the 2007 Act to authorise a registration organisation or any other person to act as agent in respect of payments by adoption agencies, which power is to be exercised by way of regulations subject to the affirmative procedure?

- What the intentions are regarding publication of the proposed arrangements?

Section 74(3) – Assessment of wellbeing
38. Section 74(2) contains a list of indicators with reference to which a person required by the Bill to assess the wellbeing of a child or young person is to carry out such an assessment. Section 74(3) requires the Scottish Ministers to issue guidance on how those indicators are to be used to assess wellbeing.

- The Committee asks the Scottish Government whether it considers that it would be appropriate to publish guidance on how the wellbeing indicators are to be used by those with functions under the Bill to assess the wellbeing of a child or young person?
ANNEX B

On 17 September, the Scottish Government responded as follows:

1. This letter sets out the Scottish Government’s response to the Delegated Powers and Law Reform Committee’s letter of 10 September. The Scottish Government thanks the Committee for their comments and the opportunity to consider these matters. In doing so, this letter seeks to provide an explanation of the following matters:

Section 13(1)(b)(ii) – Reporting on children’s services plan

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Given that section 13(1)(b) enables the Scottish Ministers to prescribe outcomes in relation to wellbeing of the children in an area, as regards assessment of the children’s services plan for that area, how will the power achieve its stated aim of allowing the reports to reflect any changes in children’s services or related services?

2. The Scottish Government considers that section 13(1) requires to be read in its entirety. Each local authority and health board has to prepare a report setting out the extent to which services have been provided in accordance with the children’s services plan (section 13(1)(a)) and the extent to which that provision has achieved the aims listed in section 9(2) and outcomes prescribed by Ministers by Order (section 13(1)(b)).

3. This allows the Scottish Ministers to broaden the scope of the report to cover additional material regarding outcomes to be achieved that they consider should be taken into consideration. In that respect the power to prescribe additional outcomes will reflect changes in children’s services, related services or the measures of well-being as stated in the Delegated Powers Memorandum.

How will the power be used to achieve its stated aim of reflecting “changes in the measures of wellbeing” when it is a power to prescribe outcomes in relation to wellbeing”?

4. If over time the measures of wellbeing change the order making power can be used to ensure that the report prepared under section 13(1) takes these into account. These changes can be reflected in the report.

What are the reasons for taking the power?

5. To support effective reporting on children’s services planning across Scotland, the Scottish Government believes it to be advantageous to set a series of common indicators, developed with stakeholders, that should feature in the preparation, and subsequent reporting on, children’s services plans as set out in this part of the Bill. This would build on the extensive work that has already taken
place, both within Scottish Government through the National Performance Framework, and among stakeholders, particularly SOLACE, to develop common indicators that enable a national picture of the wellbeing of children and young people to be developed on a consistent basis across Scotland. The powers set out in section 13(1)(b) are intended to enable such indicators to be developed, in consultation with local authorities, health boards and other key stakeholders, as part of the preparation for the new children’s services plans under this part of the Bill.

6. While a set of indicators have not yet been defined, they would need to draw upon existing datasets, be widely recognised as being able to capture the different dimensions of ‘wellbeing’, as defined as SHANARRI in the Bill, and allow for changes to be measured over time. This would be a minimum dataset; as part of wider community planning processes, and building on the good practice already in place for local authorities developing Integrated Children’s Services Plan under the Children (Scotland) Act 1995, we would anticipate that a wider set of measures would be used by local partnerships in developing the new children’s services plans. By using a common framework for considering the wellbeing of children and young people, the planning around children’s services in different parts of Scotland will have a common, but not identical, basis. How the indicators will be used specifically in the development of the plans and the proposed annual reporting against those plans will be set out in guidance through discussion with stakeholders, but it is anticipated that the measures would enable progress to be considered in each local area over the period of the children’s services plan and beyond.

7. As the power relates to the development of a common set of measures with local stakeholders, building on the existing technical work that has already been done in this area, a negative procedure has been considered more appropriate.

**Given the significance of the matters to which the power relates why it considers that the negative procedure is appropriate and that more detailed parliamentary scrutiny is not required?**

8. The Scottish Government considers that it is appropriate for the power to prescribe outcomes to be exercised by negative procedure. The Scottish Government does not consider that there should be a requirement to debate every Order made under this subsection given that the purpose of the Order is to add to a list of outcomes. Clearly use of negative procedure does not prevent the Order being subject to Parliamentary debate should Members have difficulties or concerns with regard to what is proposed on any occasion that the power is used.

**Section 17(6) – Children’s services planning: default powers of Scottish Ministers**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order
- **Parliamentary procedure:** Affirmative
To clarify whether the power is to constitute a joint board comprising the local authority and health boards which are failing to exercise the function, or the local authority and health boards which have been directed to exercise the function or would be so directed were such a direction considered likely to be sufficient, or either or both of the above, and whether it considers the meaning to be sufficiently clear from the wording of section 17(6)?

9. Following further discussion with COSLA, the Scottish Government now intends to seek the removal of the joint board powers from section 17 (i.e. 17(6)-(9)) by Stage 2 amendment. As a result, the power will no longer be required.

Section 30(2) – Interpretation of Part 4 (provision of named persons)

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Whether, as stated in the Delegated Powers Memorandum, the power is sought to enable changes to be made to the definition of service providers, or whether it is instead intended that the power is being taken to enable schedule 2 to be modified in the future should new relevant authorities be created, or current relevant authorities’ names changed?

10. The Scottish Government confirms that this power is being taken to enable Schedule 2 to be modified in the future should new relevant authorities be created, or current relevant authorities’ names be changed.

Section 32(2) – Content of a child’s plan

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Committee asks whether it agrees that the power at section 32(2) does not enable Ministers to add to, modify or remove any of the matters listed in section 32(1)?

11. The Scottish Government agrees that the power at section 32(2) does not enable the Scottish Ministers to add to, modify or remove any of the matters listed in section 32(1) of the Bill. The intention in taking this power is to allow additional information to that described in section 32(1) to be added to the child’s plan as appropriate, and to allow for the format of the plan to be changed as required.

To explain the reasons for taking the power, and give an example of the sort of information which might be required to be contained, or not to be contained, in a child’s plan?

12. The Scottish Government advises that this power is being taken because the information which may require to be contained in a child’s plan may change over time. There are other existing legislative requirements relating to plans for
children, which may affect the information to be included in a child’s plan – for example, in respect of children who have or require a co-ordinated support plan in terms of the Education (Additional Support For Learning) (Scotland) Act 2004, or children who are “looked after” in terms of the Children (Scotland) Act 1995 and, as such, who have or require a “child’s plan” in terms of the Looked After Children Regulations 2009. This power is intended to be used to specify the minimum data set in a way which takes account of these existing requirements. It also allows for changes to the child’s plan to be made in response to changes in the legislation governing these other plans.

**Why does the Government consider that the negative procedure is appropriate and that more detailed parliamentary scrutiny is not required?**

13. An order made under this section will allow for detail to be provided as to the content and format of a child’s plan. As noted above, the information required to be contained in a child’s plan may change over time, for example to reflect future changes in other pieces of secondary legislation. These matters relate to operational issues, and are considered too detailed to be on the face of the Bill. As noted above, an order made under this section will not allow the primary content of a child’s plan, as set out in section 32(1), to be amended. They will not change policy.

14. Additionally, there is a precedent for this type of power being subject to the negative resolution procedure, as the provisions relating to co-ordinated support plans in the Education (Additional Support For Learning) (Scotland) Act 2004 allow the Scottish Ministers to make regulations as to the form and content of such plans and the relevant enabling power, at section 11(8) of the 2004 Act, is subject to the negative resolution procedure.

15. For these reasons, the Scottish Government considers that it is appropriate that the power in section 32(2) be subject to the negative procedure.

**Section 37(5) – Child’s plan: management**

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To explain why the negative procedure is considered to be appropriate, given the breadth of the power and the potential scope to use it to make substantive, as opposed to procedural, changes to the management of child’s plans, which changes may impact on children subject to child’s plans, and on their families?

16. This procedure allows the Scottish Ministers to make provision about the management of a child’s plan, including when and how a child’s plan is to be reviewed and the keeping, disclosure and destruction of child’s plans. This power is being taken in order to make provision about the detailed operational systems...
which underpin the policy position as set out in the Bill. These matters are considered too detailed to be on the face of the Bill. They will not change policy. They will not amend primary legislation.

17. Additionally, there is a precedent for this type of power being subject to the negative resolution procedure, as the provisions relating to co-ordinated support plans in the Education (Additional Support For Learning) (Scotland) Act 2004 allow the Scottish Ministers to make regulations as to the procedures for the review of such plans and the keeping, disclosure and destruction of such plans - the relevant enabling power, at section 11(8) of the 2004 Act, is subject to the negative resolution procedure.

18. For these reasons, the Scottish Government considers that it is appropriate that the power in section 37(5) be subject to the negative procedure.

Section 43(2)(c)(ii) – Duty to secure provision of early learning and childcare

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To explain further the choice of negative procedure, given that:

- setting the eligibility criteria for early learning and childcare may be considered a matter of substance with a potentially significant impact on children and families; and

- provision in relation to the mandatory amount of early learning and childcare (section 44) and the way in which an education authority must deliver early learning and childcare (section 47) is set out on the face of the Bill, with power to modify that provision being subject to affirmative procedure in each case.

19. The Scottish Government comments that the current policy of securing early learning and childcare for eligible children is part of a longer term ambition to increase and improve early learning and childcare for all children. There is a strong consensus and wide support for this ambition, with pressure to increase the categories of eligible children, e.g. 2 year olds living in deprivation; 2 year olds who have a disability or additional support needs; all 2 year olds.

20. The power will allow the Scottish Ministers to specify additional categories of “eligible pre-school child” in the future, which provides maximum flexibility and enables work towards this longer term ambition. The Scottish Government agrees that the setting of eligibility criteria for early learning and childcare is a matter of substance with a significant impact on children. However, that does not necessarily mean that it is appropriate to make the power subject to affirmative procedure, but it is considered that negative procedure is appropriate in the circumstances.
21. The power in section 43(2)(c)(ii) of the Bill contrasts with the powers in section 44 and 47 of the Bill. The potential effect of these powers could mean a significant change to the infrastructure and funding of early learning and childcare and therefore it is appropriate that those powers are afforded a more detailed level of scrutiny in the form of affirmative procedure.

22. In contrast, the power in section 43(2)(c)(ii) will not modify primary legislation. The power cannot be used to modify the categories of "eligible pre-school child" already listed in section 43(2)(a), (b) and (3) of the Bill; instead the power will either (i) add to the categories of eligible pre-school child as part of the longer term ambition discussed above, or (ii) provide more detail about the age range or description of such eligible pre-school children. The power therefore will be used to put more meat on the bones of the fundamental longer term policy ambition to increase and improve early learning and childcare for all children.

23. The Scottish Government would also add that there is precedent for this type of power being subject to negative resolution procedure as the precursor to the power contained in section 43(2)(c)(ii) of the Bill which was contained in section 1(1A) of the Education (Scotland) Act 1980 (the 1980 Act) was also subject to negative procedure (in terms of section 1(4A) of the 1980 Act).

24. For these reasons, the Scottish Government would submit that it is appropriate that the power in section 43(2)(c)(ii) be subject to negative procedure.

Section 61(3) – Provision of counselling services to parents and others

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The Committee asks the Scottish Government whether there are further reasons for the choice of negative procedure.

25. When deciding on whether to use affirmative or negative procedures, the Scottish Government has sought to strike a balance between making proper use of valuable Parliamentary time and focusing a more detailed level of Parliamentary scrutiny where appropriate. The Scottish Government’s view is that changes to the description of "eligible child" are unlikely to be controversial and consequently it would not be good use of Parliamentary time to initiate a debate on each occasion the power is used. Any change to eligibility would most likely be to extend eligibility rather than narrow it – therefore improving the provision of counselling services to parents and others and ensuring we continue to meet the needs of children and families in need. In addition, given the nature of the counselling services provided in each area, no change to provision could be effected without substantial consultation and engagement with the service providers and users across each local authority area, which would be undertaken by the Scottish Government.
The Committee asks the Scottish Government in what respect does the power in section 61(3) to specify eligibility for counselling services differ from the power in section 60(2), so as to make negative procedure more appropriate?

26. The Scottish Government’s view is that given the high level of interest in what might constitute the eligible needs of those requiring aftercare by a wide range of stakeholders (including the Scottish Parliament) and the fact that eligible needs are not otherwise defined in our Bill amendments to section 29 of the Children (Scotland) 1995 Act (as amended by Bill section 60), the affirmative Parliamentary procedure is more appropriate. The legal definition of “eligible needs” in an order made under section 29(8) of the Children (Scotland) 1995 Act will have such a large bearing on whether or not a young person will receive aftercare, it is felt that Parliamentary debate would constitute appropriate use of valuable Parliamentary time and that Parliamentary scrutiny would be useful here.

Section 64(4) – Assistance in relation to kinship care orders

Power conferred on: The Scottish Ministers  
Power exercisable by: Order  
Parliamentary Procedure: Negative

The Committee asks the Scottish Government what the reasons are for the choice of negative procedure.

27. As above, the Scottish Government’s view is that changes to the description of “eligible child” are unlikely to be controversial and consequently it may not be good use of Parliamentary time to initiate a debate on each occasion the power is used. The reasons for this would be that any change would likely be to extend rather than narrow terms of eligibility – ensuring we continue to meet the needs of children living in kinship arrangements. No change to the eligibility description specified would be effected without substantial consultation and engagement with the service providers and users across each local authority area, which would be undertaken by the Scottish Government.

The Committee asks the Scottish Government in what respect does the power in section 64(4) to specify eligibility for kinship care assistance differ from the power in section 60(2) power, so as to make negative procedure more appropriate?

28. As previously noted, the Scottish Government’s view is that the changes effected by the power in 64(4) are unlikely to be controversial and would be subject of thorough consultation with the sector therefore negative procedure is felt to be most appropriate. However, given the legal definition of “eligible needs” in section 60(2) of the Bill will have such a large bearing on whether or not a young person will receive aftercare it is felt that greater Parliamentary scrutiny would be useful here making the affirmative parliamentary procedure more appropriate.
Adoption Register

The Committee notes that the Bill does not define what information the Register is to contain or make provision about what it is to be used for and asks for an explanation as to why that is the case, and why the wide powers taken in section 13A(2) to make provision about the Register are not limited or defined in any way?

29. As stated in the Delegated Powers Memorandum, given that this is likely to be a lengthy list of very detailed information, and given the information which is prescribed is likely to be amended from time to time as the adoption process changes, it is considered to be more appropriate for it to be provided for in regulations than the Bill. Although the Bill does not contain a definition as such of what information the Register is to contain, it is submitted that it is clear from the examples of the types of information which may be included in the Register which are provided for in subparagraphs (i) to (v) of section 13A(2)(a) that the information will all relate in some way to the children who are considered suitable for adoption, or to the prospective adoptive parents.

30. As to limitations on the power, we think that paragraphs (a), (b) and (c) of section 13A(2) do go some way to limit the power. As stated above, it is submitted that it is clear from the examples provided for in paragraph (a) that the information which is likely to be included in the Register will be restricted to information which is relevant to adoption. It is also the Scottish Government’s view that it is clear from paragraphs (b) and (c) that the regulations will be limited to or restricted to making provision for how this information is to be stored and to other administrative matters associated with the operation of the Register.

To give the reasons for taking powers in section 13C(1), (2)(a)(ii) and (3) to use regulations under section 13A(2) to make provision about the supply of information for the Register, as no explanation of these powers is provided in the Delegated powers Memorandum?

31. Section 13C(1) provides that regulations under section 13A(2) may prescribe the information which must be provided to the Scottish Ministers by an adoption agency about children who it considers ought to be placed for adoption or persons who were included in the Register as such children and persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons.

32. The reason for providing that regulations under section 13A(2) may also prescribe this information, is to enable the Scottish Ministers to specify what information must be supplied by adoption agencies for entry in the Register. As with section 13A(2) above, this will be a lengthy list of detailed information which may be amended from time to time, therefore it is considered more appropriate to provide for this in regulations as opposed to in the Bill.

33. Section 13C(2)(a)(ii) provides that regulations under section 13A(2) may also prescribe those persons whose consent must also be obtained before an adoption
agency may pass information in relation to a child to the Scottish Ministers for entry in the Register.

34. The reason for providing that regulations under section 13A(2) may also prescribe this information, is to give the Scottish Ministers the flexibility to amend the list of those persons whose consent has to be obtained before information is shared with Ministers should this be required, without having to amend primary legislation.

35. Section 13C(3) provides that regulations under 13A(2) may (a) provide that information is to be provided to a registration organisation instead of to the Scottish Ministers, (b) provide for how and by when information is to be provided, (c) prescribe a fee which is to be paid by an adoption agency when providing that information and (d) prescribe the form in which consent is to be given for the purposes of subsection (2).

36. The reason for providing that regulations under section 13A(2) may also provide for the above is to enable the Scottish Ministers to prescribe the detailed processes for operating the Register and to allow changes to be made to the processes if required (without the need to amend primary legislation).

37. The procedure in relation to all of the above is affirmative, as the power to make the regulations is in section 13A(2). This allows Parliament a more detailed level of scrutiny which is considered appropriate given it relates to the establishment of a new statutory Register and how it will develop to meet any changes in the adoption process.

To explain the reasons for taking powers in section 13D(2) and (3) to use regulations under section 13A(2) to make provision about disclosure of information, as again no explanation of these powers is provided in the Delegated Powers Memorandum?

38. Section 13D(2) provides that regulations under section 13A(2) may authorise Ministers or a registration organisation to disclose information derived from the register to an adoption agency for the purposes set out in subparagraphs (i) and (ii) of paragraph (a) or to any person (whether or not established or operating in Scotland) specified in the regulations for the purposes set out in subparagraphs (i) to (v) of paragraph (b).

39. The reason for providing that regulations under section 13A(2) may also provide for the above, is to enable the Scottish Ministers to authorise disclosure of information from the Register to adoption agencies for the purposes set out in subsection (2)(a), to specify any other person that this information may be disclosed to provided it is disclosed for the purposes set out in subsection (2)(b), to set out the detailed terms and conditions for such disclosures, the detailed steps to be taken by adoption agencies receiving this information and to allow the Scottish Ministers to prescribe a fee in respect of a disclosure of information. As above, this will be detailed information which may need to be amended or added to from time to time and therefore it is not considered appropriate to make provision for this in the Bill.
To explain further in what way it is currently anticipated the Register may alter and extend beyond containing information about children and adopters, and what sort of information might be included in it?

40. There are no current plans to extend the Register beyond containing information about children and adopters (though the type of information about children and adopters required may be extended in future)

Inserting section 13E(1) into the Adoption and Children (Scotland) Act 2007

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary Procedure: Affirmative

The Committee therefore asks the Scottish Government to explain the reasons for taking the power.

41. This power enables the Scottish Ministers to authorise a registration organisation or any other person to act as an agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

42. The reason for providing that regulations under section 13A(2) may also enable the Scottish Ministers to authorise a registration organisation or other person to act as agent is because the Scottish Ministers may or may not choose to make such an authorisation (hence it is not provided for in the Bill). Further, if the Scottish Ministers do choose to exercise the power to authorise either a registration organisation or some other person to act as agent, they may wish to exercise the power subsequently to amend this authorisation and this power would then allow them to choose a different person to act as agent for the payment.

43. However it is appreciated that the power in section 13E differs from the power in section 13B(1), which is a power to make arrangements to authorise an organisation to carry out the Scottish Ministers functions relative to the Register.

Section 78(b) – Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Generally negative but affirmative procedure if making textual changes to an Act.

To confirm that the power is subject to negative procedure other than where it makes textual amendment of the Bill or any other Act, in which case it is subject to affirmative procedure notwithstanding the alternative statement and justification provided in the Delegated Powers Memorandum?
44. The Scottish Government confirms that the power in section 78(b) is subject to negative procedure (by virtue of section 77(4)) other than where it makes textual amendment of the Bill or any other Act, in which case it is subject to affirmative procedure (by virtue of section 77(3)) notwithstanding the alternative statement and justification provided in the Delegated Powers Memorandum.

Section 79(2) - Commencement

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<td>Power exercisable by:</td>
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<td>Parliamentary procedure:</td>
<td>Laid in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010</td>
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Whether it considers that section 79(3) enables the same transitional, transitory or saving provision to be made in a commencement order under section 79(2) as could be made in an ancillary order under section 78(b)?

45. The Scottish Government considers that whilst there is some degree of overlap between the two powers, in practical terms the power in section 79(3) is more likely to be used for simple transitional, transitory or savings provisions whilst the power in section 78(b) is more likely to be used for more complex transitional, transitory or savings provisions.

If so, why is it considered that both powers are necessary, and what considerations are likely to determine which power is used to make provision in any individual case?

46. The Scottish Government considers that it is necessary and appropriate that there should be two mechanisms for the making of transitional, transitory or savings provisions for the purposes of, or in connection with, the coming into force of the Bill. The commencement order power under section 79(2) and (3) of the Bill would likely be used to make simple transitional, transitory or saving provision, whilst the power in section 78(b) would be used for more complex transitional, transitory or savings provisions.

The Committee asks the Scottish Government to explain why the difference in Parliamentary procedure is thought appropriate?

47. The Scottish Government considers that, in light of our comments above, where a commencement order made under section 79 of the Bill contains simple transitional, transitory or savings provisions then it is appropriate that the order is simply laid and not subject to any further Parliamentary procedure. However, where an order is made under section 78(b) and which as mentioned above is likely to contain more complex transitional, transitory or savings provisions then it is appropriate that such an order be subject to more detailed Parliamentary scrutiny.
Section 28(1) – Guidance in relation to named person service

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Section 29(1) – Directions in relation to named person service

Power conferred on: The Scottish Ministers
Power exercisable by: Direction
Parliamentary procedure: None

Whether it considers that it would be appropriate to publish guidance or directions issued under the powers in sections 28(1) and 29(1), in light of the potential impact of the named person service on children or young people, and their families?

48. The Scottish Government confirms that it does consider it appropriate and therefore intends to publish guidance and, if relevant, directions under the powers in sections 28(1) and 29(1) of the Bill.

Section 39(1) – Guidance on child’s plans

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Section 40(1) – Directions in relation to child’s plans

Power conferred on: The Scottish Ministers
Power exercisable by: Direction
Parliamentary procedure: None

Whether it considers that it would be appropriate to publish guidance or directions issued under the powers in sections 39(1) and 40(1), in light of the potential impact of the exercise of functions relating to child’s plans on children and their families?

49. The Scottish Government confirms that it does consider it appropriate and as such intends to publish guidance and, if relevant, directions under the powers in sections 39(1) and 40(1) of the Bill.

Section 68 – Scotland’s Adoption Register

Inserting section 13A(1) into the Adoption and Children (Scotland) Act 2007

Power conferred on: The Scottish Ministers
Power exercisable by: Arrangement
Parliamentary procedure: None
Why it is considered appropriate to authorise a registration organisation to perform the Scottish Ministers’ functions in respect of the Register, and to provide for payments to be made to that organisation, by way of arrangements rather than in subordinate legislation?

50. There is an organisation which currently operates a non-statutory adoption register in Scotland and the Scottish Ministers may consider it to be appropriate to authorise this organisation to carry out their functions in relation to the Register going forward, given the organisation has the relevant skills and experience which may be required. For this reason, it is considered that this authorisation would be more appropriate to be made by arrangement as opposed to by subordinate legislation.

51. It is not considered appropriate to provide for payments to the registration organisation to be in subordinate legislation given that funding arrangements are already in place for the non-statutory register and therefore that these may be used as a basis for the arrangements for the funding of the new register.

In what respect the power differs from the power in section 13E(1) of the 2007 Act to authorise a registration organisation or any other person to act as agent in respect of payments by adoption agencies, which power is to be exercised by way of regulations subject to the affirmative procedure?

52. At present there is no requirement for adoption agencies to use the non-statutory adoption register and there is no organisation or person which currently acts as agent in relation to payments by adoption agencies. Once use of the statutory register becomes a requirement, there may or may not be a need for the Scottish Ministers to authorise an organisation or person to act as agent, although it is not currently envisaged that this power will be used. If it is used, as previously noted, the Scottish Ministers may subsequently seek to amend the person acting as agent.

What the intentions are regarding publication of the proposed arrangements?

53. It is expected that the details will be made available on the website of Scotland's Adoption Register.

Section 74(3) – Assessment of wellbeing

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

The Committee asks the Scottish Government whether it considers that it would be appropriate to publish guidance on how the wellbeing indicators
are to be used by those with functions under the Bill to assess the wellbeing of a child or young person?

54. The Scottish Government confirms that it does consider guidance on wellbeing indicators an appropriate mechanism to set out further detail, therefore it is the intention for guidance to be published.
Finance Committee

Report on The Financial Memorandum of the Children and Young People (Scotland) Bill

The Committee reports to the Education and Culture Committee as follows—

INTRODUCTION

1. The Children and Young People (Scotland) Bill (“the Bill”) was introduced in the Parliament on 17 April 2013.

2. The Policy Memorandum (PM) states that the Bill’s intention is to make Scotland the best place for children to grow up in by “putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the public sector.”

3. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

4. Rule 9.3.2 of the Standing Orders sets out the requirements for the FM accompanying a Bill. It states that—

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

5. In June 2013, the Committee agreed to seek written evidence on the FM (available at page 36 of the Explanatory Notes) from a range of organisations potentially affected by the Bill.

6. A total of 24 submissions were received and these can be accessed on the Committee’s website via the following link: Children and Young People (Scotland) Bill - Written Evidence on FM.

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1 Children and Young People (Scotland) Bill. Policy Memorandum, paragraph 2
7. At its meeting on 18 September 2013 the Committee took evidence on the FM from three separate panels of witnesses and the Official Report of the evidence session can be found on the Parliament’s website here: Finance Committee, Official Report, 18 September 2013

Overview

8. The FM states that the Bill’s primary purpose is to “address the challenges faced by children and young people who experience poor outcomes throughout their lives.” A table providing an overview of the Bill’s provisions can be found on pages 36 - 38 of the FM.

9. The FM states that “there have been methodological challenges in estimating the costs of some provisions,” explaining that “these challenges in large part relate to estimating how the preventative approach set out here will result in future avoided costs.”

10. The majority of costs are expected to fall on local authorities. Total costs in the first year of implementation of the Bill’s provisions are estimated at £79.1m, peaking at £138.9m in 2016-17 then falling back to £108.9m by 2019-20. However, the Government subsequently informed the Committee, in a letter from the Minister for Children and Young People dated 12 September 2013, that it intended to provide funding over and above that indicated in the FM in respect of certain provisions within the Bill.

11. The Bill’s estimated costs largely relate to two particular proposals, the provision of a “Named Person” for every child in Scotland and the extension of early learning and childcare provision for three and four year olds and some two year olds. Net savings are also anticipated as a result of proposals relating to kinship care, family therapy and counselling services.

12. In written evidence COSLA stated that the Bill was “a complex piece of legislation with significant implications for local authorities. The accuracy of the Scottish Government’s analysis and therefore the funding that would be made available depends on a large number of assumptions that will not be fully tested until the Bill is implemented.”

13. COSLA further stated that, in its view, there were “several areas” of the Bill for which the Government’s assumptions (and therefore the financial implications for local authorities) were “not robust enough.”

14. When asked to explain how it had arrived at its assumptions, the Bill team acknowledged “that the availability of base evidence is quite variable across the range of policy areas covered in the Bill.” It explained that it had “tried to get the

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[3] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 2
[4] Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 4
[5] COSLA. Written submission, paragraph 26
[6] COSLA. Written submission, paragraph 4
best estimates that we could and tested them quite extensively\textsuperscript{8} with COSLA and with other stakeholders. However, it also noted that the best available evidence was “patchy in some places and non-existent in others.”\textsuperscript{9} It therefore stated that those estimates “could of course be looked at again in the light of further evidence from authorities and health boards as they prepare for and implement the provisions.”\textsuperscript{10}

15. The Bill team went on to explain that it had tested the assumptions relating to different parts of the Bill in different ways and highlighted that, as it had had to estimate averages over Scotland as a whole, “you would not expect every area to fit in with the national average.”\textsuperscript{11}

16. COSLA noted that it had received confirmation from the Government that it intended to “fully fund the requirements of the Bill”.\textsuperscript{12} However, COSLA also pointed out that the Bill’s implementation period was expected to stretch beyond the current spending review period and beyond the life of the current parliament stating that “the commitment made by this administration to fully fund the Bill must be honoured in future years by whatever Government is in power and kept under on-going review.”\textsuperscript{13}

17. When asked by the Committee to confirm that the Government would fully fund the costs of the Bill to local authorities, and whether it would commit to doing so in circumstances where they might exceed those figures in the FM, the Bill Team stated—

“The Government has promised to fully fund the additional costs. The financial memorandum represents our estimate of additional costs as at earlier this year. Of course, more information will come out, now and as we proceed towards implementation of the measures, and the Government is committed to ensuring that additional costs are properly assessed as they arise and are funded as appropriate.”\textsuperscript{14}

18. It should be noted that both the Committee and the respondents to its call for evidence were generally supportive of the principles underlying the Bill\textsuperscript{15}. Indeed, the Committee’s predecessor in the third session stated in its Report on Preventative Spending—

“The Committee agrees...that the focus for all decision makers, including the Scottish Parliament and the Scottish Government, should be on the more effective implementation of early years policy. The Committee recommends that both the Scottish Government and the Scottish Parliament take the lead

\textsuperscript{8} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2989
\textsuperscript{9} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2993
\textsuperscript{10} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2993
\textsuperscript{11} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2998
\textsuperscript{12} COSLA. Written submission, paragraph 27
\textsuperscript{13} COSLA. Written submission, paragraph 27
\textsuperscript{14} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2988
\textsuperscript{15} Gavin Brown MSP dissented from this sentence with regard to the Bill’s “Named Person” provisions.
in delivering a radical step change in the existing approach to early years intervention.”\textsuperscript{16}

19. However, the Committee has a number of concerns in relation to the robustness of the estimates and assumptions upon which the FM is predicated and these are discussed below.

GETTING IT RIGHT FOR EVERY CHILD (GIRFEC)

Named Person Role

20. The Bill formally creates a “Named Person” for every child in Scotland from birth until they leave school and the PM states that he or she “will usually be a practitioner from a health board or an education authority, and someone whose job will mean they are already working with the child.”\textsuperscript{17}

Costs in Relation to Training

21. In order to deliver the Named Person role, education and health service staff will require training, creating a requirement to backfill staff while this training takes place.

22. In order to estimate training costs, the FM assumes that the Named Person role for school age children would be undertaken by senior staff within schools (although the Bill itself does not specify that this should be the case). This assumption has implications for the backfilling costs as senior staff have lower frontline teaching commitments. The FM estimates that the total cost of providing teaching backfill for two days’ of training to all Head Teachers, Deputy Head Teachers and Principal Teachers in Scotland would total £398,097.

23. The FM states that health boards would incur “similar costs”\textsuperscript{18} to those incurred by local authorities for school-age children for children aged between 0 and 5. It estimates that the development of training materials would cost approximately £300,000 in 2014-15 and that backfill costs covering two days’ training for all midwives, health visitors and public health nurses would result in a total cost of £1,088,949 (based on an estimated average hourly rate of £19.04).

24. In written evidence, the RCN suggested that staff other than those listed in the FM would also require training, stating that “the figures must reflect the needs of the wider team of staff nurses, nursery nurses, health care support workers and administrative staff who will also require protected time for training.”\textsuperscript{19} Similarly, the City of Edinburgh Council stated that it “would expect staff other than teachers to also require training which will incur additional costs.”\textsuperscript{20}

25. The FM assumes that the costs detailed above relating to training for both local authority and health board staff would be one-off costs falling in 2015-16. Whilst it acknowledges that such training would also be required in future years, it states that

\textsuperscript{16} Scottish Parliament Finance Committee. 1st Report, 2011 (Session 4), paragraph 36
\textsuperscript{17} Children and Young People (Scotland) Bill. Policy Memorandum, paragraph 68
\textsuperscript{18} Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 58
\textsuperscript{19} Royal College of Nursing Scotland. Written submission, paragraph 4
\textsuperscript{20} City of Edinburgh Council. Written submission, paragraph 25
“going forward this training will then form part of standard Continued Professional Development (CPD), and be absorbed as part of the on-going training requirements of these organisations.”

26. However, some respondents questioned this assumption in written evidence with COSLA, for example, stating that “the suggestion that the on-going training can be absorbed into CPD is unrealistic” as it would displace other training on CPD days and require additional time.

27. In oral evidence, the City of Edinburgh Council stated—

“The one training issue that arises for the council is that funding to train the named person on GIRFEC is focused purely on education staff and, in addition, is not recurring; there is an assumption that it will be absorbed into overall continuous professional development activity across the council after the first year.”

28. The RCN stated that “NHS Education for Scotland needs to come up with a proper costed education and training strategy, which might last a number of years.”

29. NHS Lothian stated “the big issue for us is backfill, which has a cost implication, for freeing up staff to undertake the training, especially as we do not have the people to backfill with. Again, it is not just about the money, but about having capacity within the system.”

30. When asked whether the FM’s assumption that the costs of training backfill within the NHS was likely to be subsumed after one year, NHS Lothian responded—

“there will always be on-going training costs, as we have staff turnover. Perhaps the training will not be as intensive as the initial training, depending on how the bill pans out and what is required. We try to build training costs into our workforce planning as part of NHS Lothian’s financial plan, but I do not think that the training costs will go away. We will always have to do multi-agency training, and I think that it will be in a menu of wider training.”

31. Commenting on the evidence, the Bill Team explained its assumption was that a specific roll-out of training would be required in the first year. It then stated, “for every year thereafter, we assume that - and we have tested this with a number of stakeholders - it will be integrated into existing continuing professional development, as is the case with training for additional support for learning needs under the Education (Additional Support for Learning) (Scotland) Act 2004.”

32. The Bill Team went on to describe how it expected that existing CPD courses for education staff would need to change in order to integrate the way in which the

21 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 48
22 COSLA. Written submission, paragraph 6
26 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2985
Named Person should work rather than the training being undertaken in addition to their existing CPD. (3002) It also commented with regard to NHS staff, “it is not as though a lot of this is new; there should already be a significant awareness of GIRFEC and its issues.”

33. When questioned about evidence submitted to the lead committee by the Association of Headteachers and Deputies in Scotland which stated “we are unconvinced that the training costs identified are adequate for successful implementation of this legislation,” the Bill Team suggested that it would “go back to people who had implemented GIRFEC” noting that the City of Edinburgh Council had implemented the approach and “did not seem to have issues about a recurring significant additional cost.” It went on to suggest “I imagine that a national body is required to reflect the diversity of views that come forward, some of which are from folk who do not necessarily know how the GIRFEC training will be put into practice. Other views come from people who have had experience in implementing GIRFEC, so they can say how it works.”

34. The Committee notes that there were a number of concerns from witnesses with regard to the training costs in relation to the formal creation of “Named Persons”. The Committee invites the lead committee to raise the following issues with the Cabinet Secretary—

- That staff other than those listed in the FM may require training and costs have not been provided for this;
- To provide details of the consultation with stakeholders on integrating training within existing CPD courses;
- COSLA’s view that the suggestion that on-going training can be absorbed into CPD is unrealistic;
- Whether, given the evidence received by the Finance Committee, the Government remains content that the training costs identified in the FM are adequate.

Costs for Local Authorities in Relation to the Delivery of Named Person Duties

35. With regard to local authorities, the FM notes that “there will be costs in carrying out these duties as part of a system change.” It assumes that additional costs would be non-recurring (once the system has “bedded in”), suggesting that the additional hours would be accommodated through efficiency savings. It predicts that such costs would be incurred by schools in relation to an estimated 10% of children and young people who would require additional support from local authority services over and above that already provided (estimated at an additional 3.5 hours per year).

36. The FM estimates that this would amount to a total additional cost in teacher staffing time in the first year of £7,814,691 before giving examples of the efficiencies

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32 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 51
and benefits that have arisen from the adaptation of the GIRFEC approach by certain local authorities, including Highland and Fife in paragraphs 53 - 54. The Committee notes, however, that the FM does not provide any details of the financial savings arising from these efficiencies.

37. The costings are based on the assumption that 10% of school age children would require an additional 3.5 hours of support per year. It should be noted that the costings would vary considerably should the actual number of hours differ from the 3.5 hours assumed. The FM does not appear to provide any indication of the margins of uncertainty in respect of these estimates as required by Rule 9.3.2 of the Standing Orders (although in relation to some other provisions within the Bill, ranges of costs based on alternative assumptions have been provided).

38. The costs noted above are only applied in 2016-17, as it is assumed that they would be off-set by savings resulting from the early intervention approach in subsequent years. The FM cites evidence from the Highland Pathfinder evaluation which found tangible benefits as a result of the GIRFEC approach. However, these appear to relate to the GIRFEC approach as a whole, rather than to the Named Person role specifically. Also, they are not presented in financial terms, so it is difficult to assess how they might compare to the costs presented for the Named Person role. A number of local authorities questioned this assumption in written evidence with Scottish Borders Council, for example, stating that in its view—

“additional funding to support the Named Person needs to be available for more than one fiscal year. The Highland Pathfinder showed it took several years to implement the cultural changes required within and across organisations in order to implement GIRFEC. Scottish Borders Council believes funding requires to be available over three consecutive years starting in 2014/15 to ensure the successful establishment of the Named Person role.”

39. Similarly, COSLA commented that: “the assumption…that some form of system change will accommodate these costs for years 2 onwards is speculative and basically assumes that £7.8m can be saved from elsewhere in the system to accommodate this”. It further stated that it was “not the experience of some local authorities that implementing GIRFEC is reducing the number of meetings or administration.”

40. In response to questioning on this point the Bill Team stated that COSLA had admitted in evidence to the Education and Culture Committee “that the area is difficult and complex, so there is no suggestion that there is an alternate methodology or better way of doing it - COSLA recognises that there is a lot of uncertainty.”

41. The Bill Team then pointed towards its work with areas that have already been implementing GIRFEC such as Highland Council. It noted the evidence from City of Edinburgh Council which was broadly in agreement with it and stated that it had

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33 Scottish Borders Council. Written submission, paragraph 7
34 COSLA. Written submission, paragraph 7
35 COSLA. Written submission, paragraph 8
tested its estimates with other local authorities including Fife, Angus and South Ayrshire. It further pointed out that written evidence had been received from Falkirk, Fife and South Ayrshire Councils and contended that none of them had “necessarily contested the underlying assumption about the way in which the savings kick in relatively quickly.”

42. Whilst the City of Edinburgh Council had explained in oral evidence that, as it had already largely implemented the Named Person provisions, it did not consider it a major issue, it expressed “some concern” that the funding was not recurring.

43. When asked whether it would be willing to review its estimates in the face of opinions contesting its estimates, the Bill Team explained that it had to—

“draw the estimates that we have made from a logical basis. If councils are able to put forward a series of arguments that clearly undermine that basis, as opposed to just saying “We don’t agree” - I think they have to say something a lot more substantive than that - we will want to look back at the assumptions.

A number of the areas are difficult to estimate, so we certainly remain open to having such discussions. We would want to test all suggestions with people who have real experience in implementing GIRFEC, as opposed to people who have a speculative - if I may put it that way - concern about what things might be like in their area and what they think implementation might involve.”

44. It expanded on this point, stating—

“We would not want to change assumptions on financial assessments on the basis of submissions without a good deal of appropriate evidence to demonstrate where the costs are rising...The Government has said that it will fund fully the cost to local authorities. That will have to be kept under review as we implement the provisions. We should get a lot more information as we get closer to the implementation of the bill, not just through the GIRFEC implementation programme board but through developing the regulations. It is a constantly changing picture. Funding decisions will obviously have to depend on the information that is available at the time. That information will move us on from the point at which the financial memorandum was produced.”

45. The Committee is concerned that the FM does not provide any details at paragraphs 53 and 54 of the financial savings from the benefits of implementing GIRFEC and invites the lead committee to seek this information from Ministers.

46. The Committee is surprised that the FM anticipates local authority costs relating to the “Named Person” provisions to be incurred for one year only and

38 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2949
41 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 3004
that no net costs are predicted from the second year after implementation onwards, and invites the lead committee to raise this with Ministers.

47. The Committee notes that these efficiency savings would appear to relate to the implementation of GIRFEC as a whole and invites the lead committee to seek clarification as to what savings have been realised specifically in relation to the Named Person role.

48. The Committee is also concerned that no margins of uncertainty appear to have been provided for the assumption that 10% of children and young people would require additional support of 3.5 hours per year and invites the lead committee to seek this information from Ministers.

Costs for Health Boards in Relation to the Delivery of Named Persons Duties

49. With regard to the NHS, the FM states that the functions of a Named Person “will require some additional activity for midwives, health visitors and public health nurses.”\(^{42}\) The estimates as to how much additional time would be required are based on the assumption that 80% of children would require “marginal support”, 2% would have complex needs and would already be receiving significant support (thereby incurring no additional costs in relation to the named person), with 18% having emerging or significant needs resulting in an additional 10 hours support per child per year, reducing to between three and eight hours as the system beds in. These costings assume that the preventative approach will result in reducing resource requirements over time (falling from £16.3m in 2016-17 to £10.8m by 2019-20). In the case of the NHS, the costs are assumed to be ongoing (in contrast to the approach taken for local authority costs) as they are not expected to be fully offset by efficiency savings.

50. The FM also estimates that a further £1,949,519 would be required during the first year only for “additional administrative support” costs arising to local authorities from the “handling of any additional information sharing between the Named Person and other practitioners...as well as administration relating to the Child’s Plan”\(^{43}\). As noted by the RCN in written evidence, the FM adopts a different approach with regard to NHS staff, whom it does not consider would require additional administrative support.

51. In written evidence, NHS Lothian stated that it estimated that the actual cost of the Named Person service would be greater than was stated in the FM. It also suggested that additional recruitment would be required in order to fully deliver the role and that the assumed hourly rate of £19.04 for midwives and health visitors on which the estimated costs were based was an underestimate which should be “more in the region of £21 per hour.”\(^{44}\)

52. The RCN expressed concerns relating to the FM’s expected rapid reduction in additional hours required to address the needs of children with emerging or significant concerns, stating “if the approach is effective there may be a small reduction over time, but currently health visitors have no capacity to engage

\(^{42}\) Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 59
\(^{43}\) Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 55
\(^{44}\) NHS Lothian. Written submission, paragraph 28
effectively with families and communities in a way that models the preventative approach.”

53. In oral evidence, the RCN expanded on this point, stating that it was—

“based on an assumption that by 2018-19 some children will be being born into families with whom the named person is familiar, which will lead to a significant reduction in additional work. We think that that considerably overstates the efficiencies that will be achieved in that way. Another assumption is that less time will be spent dealing with families who are in crisis. It is a huge assumption that within two years there will be far fewer families in crisis. There will be families in crisis for many years to come.”

54. Whilst NHS Lothian expressed confidence that the approach would achieve savings, it stated that “they are more likely to occur in services for later in the life course. To truly change the culture and achieve the savings later in the life course, we think that we need to invest more heavily in midwifery services and health visitor services.”

55. NHS Lothian went on to suggest that the estimated savings set out in the FM might be realised over a longer time scale stating, “perhaps in 10 to 15 years, when we have been really effective with our early intervention and with our adult programmes to address substance misuse et cetera, we will see a changing picture, and health visitors will need to do less. However, the assumption is a bit flawed and the more we have discussed it following the publication of the policy memorandum, the more we have picked up that view from our peers throughout Scotland.”

56. When questioned by the Committee on its predictions that the costs to the NHS of working with the 20% of children with significant issues would reduce from £10.2m in 2016-17 to £5.3m in 2018-19, the Bill Team explained its belief that “that will be a reflection of the impact of early intervention and the intensive work that will be put in at the start of the roll-out of the named person role. For example, the zero to one-year-olds will receive quite intensive support in 2016-17, but we estimate that by 2019-20 they will not require as much intensive support. That is reflected in the tapering of the costs.”

57. In response to further questioning on this point from the Committee, the Bill team defended its predictions, explaining that as the figures contained in the FM related to additional hours spent with such children, it “would expect that to bear some fruit in the following year...as those kids become one-year olds.” When asked why it anticipated a reduction in the amount of time that would require to be spent with new-borns in this category, from an average of ten to eight hours within two years of implementation, it explained that its expectation was that, as the role “gets bedded-in over time” and as midwives have a more active role pre-birth,

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49 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2998
50 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2991
savings would develop and such “intensive involvement” would no longer be required.

58. The Bill Team went on to explain that “the impact of getting in early is in ensuring that the problems - this is the whole principle of having the named person - that people would not necessarily have spotted previously can be recognised and addressed quickly. We would expect that impact to be reflected pretty immediately. On average, we would expect to see benefits for those kids in successive years as they get older.”

59. Pointing towards the evidence from the Highland pathfinder initiative, the Bill Team stated “We tested our assumptions in areas that have gone very far forward with GIRFEC, such as Highland, which has developed it in pathfinder. We believe that our assumptions are reasonable. We tested them with managers who are responsible for taking forward the implementation of GIRFEC across NHS boards. The feedback that we got from them is that they are not unreasonable assumptions.”

60. When asked for further examples of bodies on which its estimates were based, the Bill Team referred to NHS managers with responsibility for the implementation of GIRFEC. It went on to acknowledge, in response to the point that evidence from the NHS witnesses appeared to contradict this position, that there would be contrary views on what was a complex issue before stating—

“I come back to talking about the basis on which we drew the estimates, which was largely the experience of those areas that have pioneered GIRFEC, and assumptions on the way in which early intervention would kick in. I have not heard evidence today that specifically challenges that; the earlier witnesses just said that they would see gains being developed during seven or 15 years, which was one of the expressions used earlier. I would find that surprising for an individual child’s life. We tested those assumptions out with a specific group that was responsible for implementing GIRFEC. That is the basis on which we have derived those costs.”

61. NHS Lothian stated in oral evidence that in order for its health visitors to truly capture the needs of individual families, “it will require a significant amount of their time; we estimate about five hours per family”. It went on to express concerns that it was not sufficiently staffed to meet current demand and predicted, “we think that we will, as we improve our intervention in early years, require more staff in order to be more effective in that intervention.” Referring to investment in aspects of the health visitor system, it went on to state that “even that additionality will not be enough to enable full implementation of the named person approach in the timeline that is envisaged.”

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51 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2991
52 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2999
54 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 3001
56 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2970
57 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2972
62. Highlighting the importance of adequate resourcing in order to achieve the Bill’s aims, the RCN stated in oral evidence—

“Proper resourcing is absolutely essential because if we are raising expectations with families to the effect that they will have the support of a named midwife, health visitor or teacher, we have to put in place the resources to support the professionals who deliver that service, or we are setting them up to fail. That is why the resources behind the bill are so important.”


63. When questioned on this point, the Bill team explained that, as health boards will be at different stages of implementation—

“it is difficult to be able to say exactly how health boards will move forward on this, the areas where significant expansion might be needed in the number of health visitors and the areas where, because they have already implemented the named person service to a significant extent, changeover might not be as major an issue as it will be for others.”


64. The Bill team further stated that the Government was “engaging with stakeholders to get a sense of the issues or problems that might be emerging” and that it had set up a programme board to monitor implementation and feedback information, including “where the problems are emerging and, indeed, what the resource implications are going to be.”


65. The Committee is concerned about the extent of the disparity between the evidence from health bodies and the Bill team in relation to the estimated costs and savings to health boards arising from the delivery of the Named Person role. In particular, the Committee invites the lead committee to seek the following information from Ministers—

- The view of NHS Lothian that the assumed hourly rate for midwives and health visitors should be in the region of £21 per hour;

- A detailed explanation as to why the time horizons for the savings to be made from preventative measures are much shorter in the FM than that predicted by many of the health professionals who gave evidence to the Committee;

- A detailed breakdown of the financial savings which have been made by those NHS bodies who have begun to implement GIRFEC and against which the bill team tested the assumptions in the FM;

- Details of the extent to which the Named Person role is already being implemented in different areas and how/whether this will be taken into account in the funding provided for implementation.
66. The most costly of the Bill’s proposals are the plans relating to early learning and childcare. The Bill proposes to increase the statutory provision of pre-school education from the current 475 hours per year to 600 hours per year for 3 and 4 year olds and for 2 year olds who are (or have been since turning 2) looked after or subject to a kinship care order. The estimated costs, which fall solely to local authorities, peak at £108.1m in 2016-17, falling back to £96.2m in 2018-19.

67. On 12 September 2013, the Minister for Children and Young People wrote to the Convener of the Finance Committee outlining plans to increase funding in respect of the extension of early learning and childcare provision. The letter set out plans to increase funding by £4.2m per year. The additional funding relates to the costs of providing early learning/childcare to two year olds who are looked after or subject to a kinship care order (additional £3.4m), and to the costs of uprating payments to partner providers (additional £0.8m). However, details of how the revised figures related to the original calculations set out in the FM or why this additional funding is required were not provided.

68. All costs in the FM relate to estimated additional costs over and above the costs currently incurred by local authorities in the delivery of 475 hours of pre-school provision. This section of the FM specifically states that all costs are shown at 2011-12 prices. As the basis for costs elsewhere in the FM is not explicitly stated it is unclear whether this approach has been taken consistently across all aspects of the FM.

69. The FM states that “local authorities will have full flexibility to develop and re-configure services and provision to meet local needs and circumstances” and that the range of approaches will be “reflected in incrementally increasing revenue costs, front loaded in the first three years with capital to adapt or expand accommodation in response to local consultations.” It goes on to state that “the main additional costs arising…will be staff costs.” Once the capital costs end in 2017-18, staff costs account for around three-quarters of the total costs.

70. The FM states that “working closely with COSLA and individual local authorities, the additional staff costs associated with a range of patterns of delivery have been estimated.” It goes on to note, however, that “the incremental increase in flexibility is more complex to estimate than just additional hours” and points out “that models of flexibility used have been indicative examples developed by local authorities in advance of consultation with local populations” before stating that it had had “sought to mitigate this uncertainty by working closely with COSLA and others on their models and estimates of anticipated costs, and by building in an incremental approach which allows re-configuration of services in response to consultation which is planned and manageable.”

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61 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 73
62 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76
63 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 76
64 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 75
71. The FM further states that “these models are only examples and, therefore, costs are indicative,” as “the final models developed by local authorities will vary according to locally identified need and cannot be anticipated in advance of consultation.” However, it does not provide details of the basis for the costings presented or present any alternative scenarios. It does state, however, that five different models “were analysed for staff implications and costs” although limited detail is provided on these models other than to say that local authorities were asked to cost five different options (reflecting the options set out in the consultation paper, *A Scotland for Children*, paragraph 101). East Renfrewshire Council acknowledged that “it was inevitably going to be a difficult exercise to cost” but also noted that “Given the range of models, it would have been thought that a range of costs per year would also have been determined”.

72. Staff costs increase over time and this appears to be the reflection of an “incremental” approach as more costly, flexible models are introduced over time (or a combination of model is offered). However, it is not clear from the FM what assumptions have been made in respect of implementation, or what effect different implementation options might have on the costs. It is unclear whether the modelling takes into account population projections over the period concerned.

73. In its written submission, GIRFEMCP commented that: “Midlothian Council is in the process of carrying out an options appraisal, including costing, for the increase in early learning and childcare hours and these estimates come in significantly below the figures in the FM (once they have been extrapolated using the population aged under five in Midlothian as a proportion of the Scottish population).” Scottish Borders Council “anticipated that the figures quoted in the FM (based on this council’s proportionate share of the national Grant Aided Expenditure) will be sufficient to cover additional costs”, but noted that it had “not agreed their delivery model so it is difficult to give a definitive response at this stage”. The City of Edinburgh Council stated that the costs for early learning/childcare were “accurately reflected based on our understanding of the requirements of the legislation” but cautioned that any requirement for greater flexibility for parents could have implications for delivery costs.

**Partner Provider Uprating**

74. The FM notes that “broadly, local authorities secure around 40% of provision through independent, private and third sector partners” and anticipates similar levels of usage in the future. It goes on to estimate the hourly costs for such facilities to be £4.09 per hour per child although this does not appear to reflect actual

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65 *Children and Young People (Scotland) Bill. Financial Memorandum*, paragraph 76
66 *Children and Young People (Scotland) Bill. Financial Memorandum*, paragraph 76
67 *East Renfrewshire Council. Written submission*, paragraph 13
68 *East Renfrewshire Council. Written submission*, paragraph 7
69 *Children and Young People (Scotland) Bill. Financial Memorandum*, paragraph 76
70 *Getting it Right for Every Midlothian Child Partnership. Written submission*, paragraph 8
71 *Scottish Borders Council. Written submission*, paragraph 4
72 *City of Edinburgh Council. Written submission*, paragraph 9
73 *COSLA. Written submission*, paragraph 11
74 *Children and Young People (Scotland) Bill. Financial Memorandum*, paragraph 82
payments to providers at present and the FM refers to a lack of consistency of approach across local authorities. The £4.09 figure is based on a recommended floor level for payments to providers set in 2007, uprated to reflect inflation over the period since 2007. However, the NDNA noted in its written submission that its most recent survey of nurseries had found that: “the mean hourly rate nurseries receive for funded pre-school places from their local authority is £3.28.”

75. In oral evidence the NDNA stated—

“the cost of the service is £4.09 an hour for the 500 hours. Edinburgh is currently being given £3.26 an hour for the 500 hours. Glasgow, which now contractually has to provide 600 hours, receives £2.72 per child. The figure of £4.09 has evidently been based on the advisory floor, which ceased to exist several years ago, with an inflationary link added into it.”

76. Pointing towards increased overheads the NDNA went on to express concerns that these levels of funding would impact on the sustainability of some businesses within the sector. This point had been acknowledged in the FM which stated that the NDNA “and some partner providers have raised the issue of unsustainable funding levels for the majority of partner providers placements, especially if the patterns of placements change to full or half days.”

77. In a letter from the Minister for Children and Young People to the Convener of the Finance Committee on 12 September 2013, the Scottish Government set out its intention to provide £2m rather than £1.2m in respect of the costs of partner provider uprating (Scottish Government, 2013). This appears to reflect a change in assumptions about the levels of payments to partner providers currently in place, although no further details were provided. It is unclear how the Scottish Government would intend to ensure that this additional funding is passed on to partner providers.

78. In response to questioning on this point, the NDNA welcomed the increase but suggested that the Government should take steps to ensure that any additional funding to local authorities in respect of partner provision is distributed to partner providers, suggesting that the reintroduction of the advisory floor would be the recommended way of achieving this. However, it went on to clarify in response to further questioning, that it did not advocate the reintroduction of an advisory floor of £4.09 but that a figure of £4.51 (uprated annually in line with inflation) would be more reasonable on condition that the funds were “delivered to partner providers equally and fairly.”

79. The Bill team, however, explained that the Bill contained no mechanism to ring-fence funding to ensure it was passed on to partner providers by local authorities stating, that at present, “Government policy is not to dictate to local authorities how they should spend their money but to provide money within the overall envelope of their single outcome agreement.” In response to further questioning on this theme it stated that “it is a matter for local authorities between them to arrange for the
provision of early learning and childcare, so it is not something that we are getting involved in.”

80. When asked to expand on this the Bill team explained that the Government was “putting an obligation on local authorities to ensure that there is provision” for 600 hours of early learning/childcare stating “it is up to local authorities to decide how they will deliver on that obligation, but we expect them to deliver on it properly and we will provide the funding to help them to do that.”

81. It also pointed out that a duty would be placed on local authorities to report on how they had delivered all their children’s services.

81. The Committee would welcome further details from the Government on the rationale underlying the increased funding for partner provider uprating as announced on 12 September 2013 and whether any of the assumptions underlying the FM have been altered in order to arrive at the new figure.

82. The Committee is surprised that the funding for uprating partner provider payments is based on the level of an advisory floor from 2007 updated in line with inflation rather than the actual amounts paid by local authorities to partner providers. The NDNA has provided figures which suggest that the nurseries are paid an average of £3.28 rather than £4.09 and that Glasgow pays only £2.72 per hour.

83. The Committee invites the lead committee to ask why the 2007 figure is being used to allocate additional funding and whether this means that the Government now supports an advisory floor of £4.09 per hour. Further, the Committee invites the lead committee to question whether the funding being provided is sufficient to enable local authorities to pay this rate and whether this rate is considered to be sustainable.

84. The Committee invites the lead committee to ask Ministers whether the funding for partner provider payments will be reduced in future years if some local authorities continue to pay considerably less than £4.09 per hour.

85. The Committee recommends that the Government requires local authorities to report annually on spending in relation to pre-school provision, in order that it can ensure that the anticipated levels of investment are being achieved. This should include details of expenditure on partner providers, including hourly rates paid. This information should be published.

Additional provision for looked after/kinship care 2 year olds
86. The FM provides for an additional £1.1m per year to fund the extra provision for two year olds who are looked after or in kinship care. The Minister for Children and Young People subsequently wrote to the Committee stating:

“Following helpful discussions with COSLA we have decided to increase the amount allocated to local government for this priority area by £3.4 million to a total of £4.5 million. This is to reflect the importance we place on the early

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80 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2998
81 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2992
learning and childcare agenda and to integrate monies previously provided to support looked after 2 year olds via the Early Years Change Fund.\textsuperscript{82}

87. Whilst welcoming this increase funding in oral evidence, GIRFEMCP suggested that it was “quite concerning”, stating “if one element of costs can go up fourfold after they have been thought about more, can other elements of costs do the same? If they could, the shortfall would be significant.”\textsuperscript{83}

88. When asked to clarify the reasons for this increase, the Bill team explained that the original estimate related to additional hours for looked-after two-year-olds whilst the figure in the letter related to “the overall funding position for looked-after two-year-olds in its entirety.” It went on to explain that—

“At the moment, there is an element of funding that flows to local government through the early years change fund. In arriving at the figure of £4.5 million, ministers sought to address overall costing issues with the provision for looked-after two-year-olds in its entirety, rather than the additional hours that are set out in the financial memorandum.”\textsuperscript{84}

89. The Committee invites the lead committee to seek clarification as to why the £3.4m which appears to have been previously allocated to local authorities through the Early Years Change Fund is now being added to the £1.1m provided for in the FM.

90. The Committee also invites the lead committee to seek clarification as to whether the £3.4m represents additional funding, or just a realignment of existing funding.

91. The Committee would welcome further detail from the Government on the rationale underlying the increased funding for two years olds as announced on 12 September 2013, and clarification of whether any of the assumptions underlying the FM have been revised in order to arrive at the new figure.

Capital costs
92. The FM states that “capital costs will be required to adapt existing provision for additional hours and associated accommodation needs” and that its “estimates are based on Scottish Futures Trust metrics for primary schools” specifying “an allowance of 7.5 square metres per child at a cost of £2,350 per square metre.”\textsuperscript{85}

93. In written evidence, East Renfrewshire Council commented, “There is not much detail on how the total capital of £30m per year for 2014-2017 has been determined”\textsuperscript{86} and that “the starting point for each authority will be different based on existing capacity, potential development, availability of partnership provider places and model of delivery to implement the flexible 600 hours of provision agreed with

\textsuperscript{82} Minister for Children and Young People
\textsuperscript{83} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2956
\textsuperscript{84} Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2989
\textsuperscript{85} Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 83
\textsuperscript{86} East Renfrewshire Council. Written submission, paragraph 10
stakeholders. It is therefore difficult to ascertain at a local level if the allocation of this will be sufficient to meet local needs.”

94. When asked to expand upon how the predicted costs had been arrived at, the Bill team stated “we do not have a baseline survey of what infrastructure is currently in place; nor do we know how local authorities will decide to increase capacity” (i.e. whether this would be done through new build or by extending existing buildings). (3006) As its assumptions had not been based on “a thorough and detailed assessment”, the Bill team accepted that “this is one area in which the estimate represents a best guess.”

95. The Committee notes that the FM states that while the estimate is necessarily limited “it has been tested with a number of local authorities.”

The Committee invites the lead committee to seek further details as to how this estimate has been tested.

LOOKED AFTER CHILDREN

Extending throughcare and aftercare support

96. The Bill makes provision for local authorities to provide financial support and assistance to eligible care leavers up to and including the age of 25 (rising from the current cut-off age of 21). The FM estimates that the extension of throughcare and aftercare support will result in additional costs to local authorities of £3,871,515 in 2015-16, rising to £4,033,640 in 2016-17 and 2017-18 before falling to £1,777,046 from 2018-19. The numbers eligible (and the resulting costs) decline after the initial increase reflecting the change in eligibility rules.

97. The FM provides a detailed explanation of the methodology used to arrive at these estimates which is based on a number of key assumptions as follows—

- 65% of care leavers aged 19-25 will be granted support.
- Average support costs are £2,100 a year per young person.
- The average cost of dealing with an application is £1,042.
- One-off support of £2,000 will be available to 25% of applicants

98. These assumptions form the basis for the estimated costs. No analysis is presented to indicate the effect that alternative assumptions would have on the costs, despite a number of references to limited data availability. COSLA has raised concerns over the accuracy of the estimates, commenting—

“COSLA has less certainty over the accuracy of the costings of this aspect of the Bill due to the difficulties for local authorities in estimating the financial impact. In particular, we are not convinced that the Scottish Government have accurately assessed the average annual cost of support, estimated at £3142

87 East Renfrewshire Council. Written submission, paragraph 10
89 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 83
per young person in the FM...from experience a figure nearer £6,000 per person is considered more realistic by some local authorities.”  

99. West Dunbartonshire Council also commented in its written submission that the FM’s assumptions relating to thoroughcare and aftercare were—

“speculative and generate an indicative demand that reduces by 1,000 cases by 2019/20. There is clearly a risk that this reduction in demand won’t occur and therefore the costs to local authorities are under-costed. In addition the assumption that the increase in successful applicants will increase to 65% is not evidenced and there is a risk that the success rate could be higher than this – again resulting in costs to local authorities.”

100. Whilst the City of Edinburgh Council’s written evidence stated—

“In relation to thoroughcare and aftercare the estimates of the numbers taking advantage of the legislation and the number that would cease to receive support as their age increased also differed, with the Council believing the numbers taking advantage to be higher and the number ceasing to be lower.”

101. In oral evidence, the City of Edinburgh Council welcomed the provisions but stated that, whilst it would not quibble with the FM’s estimates of the specific costs relating to aftercare, “we think from our experience that more young people would take up the opportunities than the financial memorandum estimates.”

102. It went on to state “if training, the kinship care measures and thoroughcare and aftercare are not properly funded, the risk is that money will be diverted from earlier intervention into supporting the other aspects of the bill and, actually, it will become counterproductive. That is my greatest concern.”

103. Falkirk Council suggested that the FM’s estimated costs relating to aftercare were “unrealistic” in its experience and underestimated the likely costs to it of providing such support.

104. The Committee also questioned witnesses on the estimated average cost of processing and assessing thoroughcare and aftercare applications. The FM estimates this to be £1,042 (almost exactly half of the average estimated costs for the provision of aftercare support of £2,100 per individual per year) and states that this estimate is “based on average caseloads and average worker salaries” without providing any further information.

105. The City of Edinburgh Council explained that care leavers would undergo an iterative process of assessments but stated that “the way in which those figures are

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90 COSLA. Written submission, paragraph 16
91 West Dunbartonshire Council. Written submission, paragraph 5
92 City of Edinburgh Council. Written submission, paragraph 20
93 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2960
95 Falkirk Council. Written submission, paragraph 4
96 Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 101
separated out does not make a lot of sense to me either.” GIRFEMCP also expressed uncertainty about the basis for this figure, which, it stated “seems very high,” before speculating that it might refer to the cost of the througcare and aftercare teams divided by the number of young people whom they support.

106. The Bill team explained in oral evidence that regulations setting out the types and timescales of support available along with its eligibility criteria had yet to be developed but that the process of developing them would provide an opportunity for local government and other key stakeholders to provide continuing feedback to the Government.

107. **The Committee invites the lead committee to raise the following issues with the Minister—**

- The view of some local authorities that the demand for throughcare and aftercare support is likely to be higher than indicated in the FM;
- Why the administrative costs are nearly half of the support costs;
- On what basis the costings for support were arrived at given the lack of detail in the Bill regarding the type and timescale of support to be provided.

**Kinship Care**

108. The FM predicts that the provisions in relation to kinship care will lead to a reduced dependency on formal care (with less formal care providing a less costly model) resulting in estimated gross savings of between £8 and £20m by 2019-20. Transitional costs of £2.6m in 2015-16 are included in the estimates but ongoing costs are not provided as any such costs are assumed to be offset by savings. GIRFEMCP questioned this assumption in its written submission noting that “in some cases the FM offsets… savings in the short term, where in fact it may be many years, and in some cases a generation or longer, before the provision of, and funding for, some services can be reduced.”

109. The FM states that the associated costs “can be broken down into different categories; the cost of formal carers obtaining a kinship care order, the cost of informal carers obtaining a kinship care order; the transitional costs for local authorities; and the avoided costs of formal care.”

110. The FM predicts that from 2017-18 between 6% and 11% of formal carers would apply for kinship care orders. It states that these estimates are based on numbers already applying for section 11 orders under the Children (Scotland) Act 1995 and “assumptions tested with some local authorities.”

111. COSLA, however, stated that “there is a concern…that this new order will not be embraced by families and therefore not free up monies as assumed. The

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99 [Getting it Right for Every Midlothian Child Partnership. Written submission, paragraph 10](#)
100 [Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 117](#)
101 [Children and Young People (Scotland) Bill. Financial Memorandum, paragraph 119](#)
potential loss of income to families during this period of economic pressure may well play a significant part in decision making by families considering this option."\footnote{102}

112. The City of Edinburgh Council also cast doubt on the assumption that many families who currently have a child who is looked after by kinship carers would wish to seek a new kinship care order, stating—

“That order has to be made attractive to families, but there is no evidence at the moment that it will be particularly attractive to them. We do not think that there is robust evidence that families will move from a position in which their child is looked after and they get a set of resources to support that situation, to the new kinship care order. The underlying financial assumptions in the modelling are not consistent with the experience of the City of Edinburgh Council.”\footnote{103}

113. The FM also predicts that between 1.5% and 3.5% of current informal carers would apply for kinship care orders, thereby becoming eligible for a range of support at the expense of the local authority.

114. In oral evidence the City of Edinburgh Council stated that in its view—

“the assumptions of potential savings…are exaggerated. We also think that there are potential additional costs, because the estimate in the memorandum that only between 1.5 and 3.5 per cent of informal kinship carers will come forward for the new kinship care order is an underestimate…Basically, our conclusion is that there is a great deal of financial risk for local authorities. Certainly, the City of Edinburgh Council does not believe that that element of the bill is funded, given the proposals as they stand. I know that it is the Government’s intent to fully fund the bill but, in respect of kinship care, we do not think that that will be the case.”\footnote{104}

115. The Council went on to comment that, as far as it could tell, the FM’s estimate that between 1.5% and 3.5% of informal kinship carers might come forward to be assessed for a formal order “has just come out of the air.”\footnote{105} In its view, many more families were likely to come forward for an assessment as it could entitle them to future financial support. GIRFEMCP supported this assessment stating that “the figure for kinship carers could be many times what is estimated, depending on the circumstances.”\footnote{106}

116. Acknowledging that it was impossible for exact figures to be provided in the FM, GIRFEMCP also suggested that more than 3.5% might come forward and stated—

“The point is that there is a significant risk that the costs will increase beyond what is included in the memorandum and beyond any funding that is provided. How will those costs be met? Will there be an on-going review by the Scottish Government of the costs inherent in the bill, with changes in the funding as we

\footnotesize\textsuperscript{102} COSLA. Written submission, paragraph 22
\footnotesize\textsuperscript{103} Scottish Parliament Finance Committee. \textit{Official Report, 18 September 2013}, Cols 2947-2948
\footnotesize\textsuperscript{104} Scottish Parliament Finance Committee. \textit{Official Report, 18 September 2013}, Col 2947
\footnotesize\textsuperscript{105} Scottish Parliament Finance Committee. \textit{Official Report, 18 September 2013}, Col 2951
\footnotesize\textsuperscript{106} Scottish Parliament Finance Committee. \textit{Official Report, 18 September 2013}, Col 2951
move forward? Alternatively, will the charges be fixed early on, with authorities being told, “That is the settlement” and that they will have to provide for any additional costs?”

117. With regard to its estimates of the numbers it expected to apply for formal kinship care orders, the Bill team stated “it would seem reasonable, given that we are looking at something that is a variation of an existing instrument - a section 11 order - to look at how section 11 orders have been taken up to date. We can derive estimates from that about the number of kinship carers and informal carers who will come forward. The estimates suggest that the numbers are, relatively speaking, quite low.”

118. In relation to the avoided costs resulting from the overall package of kinship care measures, a number of councils expressed concerns relating to the assumptions made in the FM. Falkirk Council noted that: “there is no substance behind the estimated avoided costs [from diverting children from formal kinship care] and the margin for error is significant”. The City of Edinburgh Council noted that—

“There was also a significant difference in the assumptions of value of savings, or avoided costs that would be delivered to the Council as a result of the new legislation. The difference was due to a view, by the Council, that the stated aim of the legislation itself would not lead to the reduction of Looked After Children entering kinship care and therefore the level of savings is significantly over estimated.”

119. When asked whether the FM’s estimate that avoided future costs for 2015-16 would be between £3.5 and £15m, the City of Edinburgh Council replied “I think that even the lower estimate is potentially exaggerated. The difficulty is that the estimates are not based on any firm evidence.”

120. When asked to expand upon its suggestion that savings related to kinship care were exaggerated in the FM, it explained that “it is very difficult to make these kinds of future estimates. We are being asked to accept that the kinship care element of the bill is fully funded on the basis of speculative savings - and they are completely speculative savings - so the bill is not fully funded in that respect”

121. It went on to explain that—

“the council does not believe that the number of looked-after children entering kinship placements will reduce by the levels that are estimated. That is because the modelling that has been done in the financial memorandum is based on the increase in the number of looked-after children in kinship placements between 2007 and 2011 across the country, which grew by 87 per cent. In the City of Edinburgh Council area, the equivalent growth was only 29

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109 Falkirk Council. Written submission, paragraph 5
110 City of Edinburgh Council. Written submission, paragraph 4
112 Scottish Parliament Finance Committee. Official Report, 18 September 2013, Col 2950
per cent, so, projecting ahead, there is not the same growth for us to make that saving from - it is just not there. That is the biggest number. 113

122. Edinburgh Council also pointed out that many of the details of how kinship care orders would work remained to be set out in secondary legislation and that it therefore did “not know what will be available to families, how the orders will operate and what expectations there will be on local authorities around how long families should get support for, the nature of the support and what it might cost.” 114

123. In response to questioning on this point, the Bill team stated that “the process of developing those regulations will enable feedback to be made, and that feedback will continue as the relevant teams in the Scottish Government work with stakeholders in implementing them.” 115

124. The Bill team acknowledged the challenges it had faced stating, “there is no real precedent for kinship care, so we are having to give our best guess and make assumptions in working out when the savings kick in”. It went on to state, however, that it “stood by the logic and proxies” from which its estimates had been drawn, explaining that it operated on “the very simple principle that if you can get one child out of kinship care for one year, you can save about £9,000.” 116

125. The Committee is again concerned about the significant disparity between the estimates provided in the FM and the views of local authorities.

126. The Committee recommends that the lead committee invites the Government to provide further detailed costings of the estimated avoided costs from the diversion of children from formal kinship care.

CONCLUSION

127. The Committee has a number of concerns in relation to some of the costings within this FM and notes that there is a lack of evidence to support the figures provided for some aspects of the Bill. In particular, the Committee makes the general point that the Government needs to develop a more robust methodology for forecasting potential savings from preventative policy initiatives. There is also a need to develop measures to ensure that the actual savings are effectively monitored and reported. The Committee intends to raise this issue as part of its budget scrutiny.

128. The Committee recommends that the actual spending and savings arising from this Bill are reported on annually as part of the draft budget.
ANNEXE A: INDEX OF ORAL EVIDENCE SESSIONS

22nd Meeting, 2013 (Session 4) Wednesday 18 September 2013
Alistair Gaw, Head of Support to Children and Young People, City of Edinburgh Council; Magnus Inglis, Performance and Planning Officer, Getting it Right for Every Midlothian Child Partnership; Inez Murray, Chair, National Day Nurseries Association, Glasgow Network; Jim Carle, Child Health Commissioner, NHS Ayrshire & Arran; Sally Egan, Associate Director and Child Health Commissioner, NHS Lothian; Clare Mayo, Policy Advisor, Royal College of Nursing; Tim Barraclough, Deputy Director, Childrens Rights and Wellbeing, Scott MacKay, Finance Business Partner, Education and Lifelong Learning, and Phil Raines, Head of Child Protection and Childrens Legislation Policy, Scottish Government.

ANNEXE B: INDEX OF WRITTEN EVIDENCE

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- Letter from Aileen Campbell, Minister for Children and Young People, to Convener
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

22nd Meeting, 2013 (Session 4)

Wednesday 18 September 2013

Present:

Gavin Brown Malcolm Chisholm
Kenneth Gibson (Convener) Jamie Hepburn
John Mason (Deputy Convener) Michael McMahon

Apologies were received from Jean Urquhart.

Children and Young People (Scotland) Bill: The Committee took evidence on the Financial Memorandum from—

Alistair Gaw, Head of Support to Children and Young People, City of Edinburgh Council;

Magnus Inglis, Performance and Planning Officer, Getting it Right for Every Midlothian Child Partnership;

Inez Murray, Chair, National Day Nurseries Association, Glasgow Network;

Jim Carle, Child Health Commissioner, NHS Ayrshire & Arran;

Sally Egan, Associate Director and Child Health Commissioner, NHS Lothian;

Clare Mayo, Policy Advisor, Royal College of Nursing;

The Deputy Convener: Agenda item 2 is to take evidence as part of our scrutiny of the financial memorandum for the Children and Young People (Scotland) Bill. We will hear from two panels of witnesses who have submitted written evidence to the committee, and then put questions to Scottish Government officials. If any of the participants would like to respond to a question or make a point, please indicate to me or to the clerk.

I welcome our first panel of witnesses, who are Alistair Gaw from the City of Edinburgh Council, Magnus Inglis from Midlothian Council, and Inez Murray from the National Day Nurseries Association. The process is that committee members will ask questions. We are aiming for about one hour for the session. Normally, the convener starts but, for a change, we will start with questions from committee members.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): There are several interesting aspects of the bill, from a policy and a financial point of view. I will start with kinship care arrangements, which are probably the main concern in the City of Edinburgh Council’s submission.

There is a fairly complex underlying policy change. I ask the representative from the City of Edinburgh Council to explain the basis of its concerns. Obviously, the other witnesses can comment, but the City of Edinburgh Council highlighted the issue. I think that, mainly, the council is sceptical about the potential savings that will result from the kinship care changes. It would be helpful if Mr Gaw and others could start by explaining their views on that.

Alistair Gaw (City of Edinburgh Council): I am happy to do that. Obviously, we support kinship care. Whenever a child needs to live with alternative carers because the parents cannot care for them, the first port of call is always the extended family. Those arrangements are made in a number of ways and often do not involve the local authority at all. Nevertheless, when the local authority is involved and, in particular, when a child is looked after with a kinship carer, the local authority has substantial duties and financial commitments.

The concerns that are expressed in our written submission are based on the fact that the assumptions of potential savings—the avoided costs that are set out in table 28 in the financial
memorandum—are exaggerated. We also think that there are potential additional costs, because the estimate in the memorandum that only between 1.5 and 3.5 per cent of informal kinship carers will come forward for the new kinship care order is an underestimate. That is based on our experience and on the numbers that we have at present.

Basically, our conclusion is that there is a great deal of financial risk for local authorities. Certainly, the City of Edinburgh Council does not believe that that element of the bill is funded, given the proposals as they stand. I know that it is the Government’s intent to fully fund the bill but, in respect of kinship care, we do not think that that will be the case. Our position is consistent with that of the Convention of Scottish Local Authorities, and we want to ensure that, as the bill proceeds, we have the opportunity to ensure that the funding for the measures is realistic.

There are a number of unknowns in relation to the pressures on local authorities on kinship care. In part, that stems from the modelling of the numbers, which is not consistent with our experience. There is also the impact of welfare reform across the United Kingdom, which could have an impact on the benefits that are available to carers. A third issue relates to—sorry, it has gone for a second, but I will come back to that.

We do not think that the estimates in the financial memorandum are consistent with our experience. Before I conclude and allow further questions, I will give one example of that. The overall avoided costs are based on figures for the growth in the number of kinship carers in Scotland from 2007 to 2011. Over that period, the number of looked-after children in kinship care grew by 87 per cent. However, in Edinburgh, the growth was only 29 per cent. Therefore, the model is based on a false premise, because the avoided costs in the financial memorandum are nothing like the costs that we will avoid.

Malcolm Chisholm: Will the avoided costs arise because children will not become looked-after children? Is it the idea that the kinship care order will cost less than the looked-after children arrangements? Is that what the projected savings are based on?

Alistair Gaw: That is right. An assumption is being made that many families who currently have a child who is looked after with kinship carers will seek to have the new kinship care order, which is a private law measure and a variation on an order under section 11 of the Children (Scotland) Act 1995.

That order has to be made attractive to families, but there is no evidence at the moment that it will be particularly attractive to them. We do not think that there is robust evidence that families will move from a position in which their child is looked after and they get a set of resources to support that situation, to the new kinship care order. The underlying financial assumptions in the modelling are not consistent with the experience of the City of Edinburgh Council.

09:45

Malcolm Chisholm: That is helpful. I am sure that those policy issues will be taken up by the lead committee. Does anyone else want to comment on the issue?

Inez Murray (National Day Nurseries Association): Kinship care, when it comes to looked-after children, is only relevant to the private, voluntary and independent sector in relation to the funding that will come for two-year-olds.

Malcolm Chisholm: The biggest cost in the bill is the 600 hours of early learning and childcare going through local authorities. In a way, that is the centrepiece of the bill. Are people confident about the estimates around that? What steps will local authorities have to take, as the planners and commissioners, to ensure that the 600 hours is delivered? Put another way, is most of the additional money for extra staffing? If so, is the funding being presented for that adequate?

Magnus Inglis (Getting it Right for Every Midlothian Child Partnership): Midlothian Council has considered how we could deliver the minimum 600 hours through additional early years and childcare provision. The projections that we are looking at are quite different from the figures that are in the financial memorandum. We are still in the early stages yet. We are looking at projections, and we are working out costs with the accountant, but the figures that we are coming out with are substantially lower than the estimates in the bill.

Other complications could emerge but, in the current financial situation, without having absolute certainty that the provision will be funded or by how much it will be funded, local authorities are looking to achieve the best way forward for the provision with the least cost attached for councils.

Inez Murray: The PVI sector provides about 40 per cent of the provision for three to five-year-old children. We provide the flexibility that is required by working parents and those parents who are accessing training prior to going back into the workplace.

Partners are crucial to local authorities. They allow them to meet their statutory requirements in making the provision for three to five-year-olds. As we said in our submission, there is currently a
funding shortfall, which will only increase with the extended hours.

The NDNA did a survey recently. Respondents said that, on average, they were losing £584 per child per year with funding costs. If we extend the provision to 600 hours—which we are already doing in Glasgow—the loss will be in the region of £738 per child per year. We therefore have issues of sustainability.

Malcolm Chisholm: Does Edinburgh have a view on that?

Alistair Gaw: It has been covered by my colleagues.

Malcolm Chisholm: The last area that I wish to ask about, among the headline or salient issues that people are talking about in relation to the bill, is the named person issue. There are policy controversies around that, but what about the cost? I am told that Edinburgh already implements the measure, more or less, but I am not sure whether that is true when it comes to the detail. I wonder whether the cost estimates are accurate or adequate.

Alistair Gaw: Because the provision is largely implemented already, we do not consider it to be a major issue as far as the council is concerned. There are still some concerns about the funding of named persons for under-fives, where the responsibility rests with health visitors—I think that you will hear more evidence on that later this morning—but, because our authority has implemented a lot of the measures already, the three and a half hours provision is viewed as adequate.

We have some concern that the funding is not recurring. The funding for the health service and for health visitors and their training and development is recurring, but that is not the case for local authorities. That has been pointed out already. Colleagues such as Magnus Inglis might wish add something on this. I know that some other councils have concerns that the funding for the named person is not adequate to cover their needs, particularly if they have a longer journey to go on in order to implement getting it right for every child.

There are also some issues that are still to be negotiated with the education unions regarding what the named person approach means overall for job sizing for staff—in particular, for primary headteachers.

Magnus Inglis: There are certainly concerns about how the named person requirement can be implemented in practice within Midlothian. It will be useful to learn from Edinburgh how it has proceeded with it. For example, if the onus is on the education side to provide the named person, there are significant holidays through the course of the year—in particular, seven weeks during the summer—and we need to look at how we cover them. How do we arrange circumstances so that referrals are handled, there is somebody who can deal with them and they are flagged up to the appropriate person? I can imagine what would happen if you went to teaching unions to say, “Right, we would like you to do this over the summer holidays for however many hours every week.” I am not sure that that would go down well with them.

Malcolm Chisholm: Okay. That is enough information for me. Thank you.

The Convener (Kenneth Gibson): I apologise to our guests and my colleagues for my lateness. I am afraid that I thought that the committee started at our usual time of 10.00. I was just sitting upstairs in my office, scratching myself and waiting to come down. I thank the deputy convener, John Mason, for holding the fort in my absence. Gavin Brown will ask the next questions.

Gavin Brown (Lothian) (Con): I want to go through the written submissions that each of the witnesses has helpfully submitted to the committee. I will start with Alistair Gaw from the City of Edinburgh Council.

Mr Gaw, if I heard you correctly, you said that, in relation to the kinship care element of the bill, Edinburgh’s view is that the savings that are laid out in the financial memorandum are exaggerated. Did I write down correctly what your view is?

Alistair Gaw: Yes.

Gavin Brown: Can you expand on that for the public record? Looking specifically at the memorandum, to what degree are those savings exaggerated: are they out marginally or are they out enormously? It would be helpful to get a rough idea of what sort of figures we are talking about.

Alistair Gaw: The first point is that it is very difficult to make these kinds of future estimates. We are being asked to accept that the kinship care element of the bill is fully funded on the basis of speculative savings—and they are completely speculative savings—so the bill is not fully funded in that respect.

The main issue has two elements to it. First, as regards savings, the council does not believe that the number of looked-after children entering kinship placements will reduce by the levels that are estimated. That is because the modelling that has been done in the financial memorandum is based on the increase in the number of looked-after children in kinship placements between 2007 and 2011 across the country, which grew by 87 per cent. In the City of Edinburgh Council area, the equivalent growth was only 29 per cent, so,
projecting ahead, there is not the same growth for us to make that saving from—it is just not there. That is the biggest number.

There is also a distinction in respect of informal kinship carers—this is fiendishly complicated and I apologise to members. I think that everybody wrestles with the number of different types of kinship carer arrangements that exist, but that is the reality of the landscape that we are working in. Formal kinship carers are carers of children who are looked after by the local authority on a statutory basis, and it is estimated that, across the country, there are about 3,000 such children. There is also an estimate that there are about 16,000 informal kinship care arrangements in the country, where wider families are caring for children—although nobody really knows.

The financial memorandum estimates that between 1.5 and 3.5 per cent of informal kinship carers may come forward for an assessment for a kinship care order. There is no substance to that estimate or reference to where it came from; as far as we can see, it has just come out of the air. We think that many more families who are in informal kinship care arrangements will come forward for an assessment because attached to that assessment is support for those families in the future.

Gavin Brown: You obviously cannot speak for other councils—some of them have submitted evidence—but I assume that you have spoken informally to other councils. Is your sense that Edinburgh is alone in this respect, or do you get a feeling that your view is shared?

Alistair Gaw: If you examine the submissions from other local authorities—Dundee City Council, Falkirk Council and others—you will see that the concerns are consistent.

Magnus Inglis: I agree. The estimated range of 1.5 to 3.5 per cent will depend on the circumstances and the support made available to kinship carers through the order. However, the figure for kinship carers could be many times what is estimated, depending on the circumstances.

Gavin Brown: Mr Gaw, in response to Mr Chisholm’s questions, you referred specifically to table 28 in the financial memorandum. I wonder whether you could say more, now or later, about the table—in particular, the bottom two sections of the table on lower and upper estimates for avoided future costs for each of the financial years from 2015-16 to 2019-20.

Let us take 2015-16, just because it is the first one. The lower estimate for avoided future costs touches £3.5 million and the upper estimate is just over £15 million. Is it your view that the lower estimate is more likely, or do you think that that estimate is a little optimistic? I take your point that you feel that the savings are exaggerated, but I am just trying to get a feel for where you think the savings might lie if we take 2015-16 as the example.

Alistair Gaw: I think that even the lower estimate is potentially exaggerated. The difficulty is that the estimates are not based on any firm evidence.

I have a couple of other reasons for my view of the estimates. I was going to say earlier when my mind went blank that the other issue is that much of how kinship orders will operate will be determined in secondary legislation. We therefore do not know what will be available to families, how the orders will operate and what expectations there will be on local authorities around how long families should get support for, the nature of the support and what it might cost. That is one issue.

In addition, the estimates are premised on the assumption that, if kinship care orders are made and some initial work is completed with families, they will no longer need any on-going support of the type that is provided. However, that is not the case in reality. Even some families who do not have any formal involvement through a legal statutory order—for example, some children are on section 11 orders, which is an informal kinship care arrangement whereby the extended family have parental rights—need quite high levels of support from local authorities, although other families will not need any support. Some of the assumptions on which the estimates are modelled must therefore be looked at more closely.

Gavin Brown: That is helpful. Thank you.

I will move on to the getting it right for every Midlothian child partnership submission. Mr Inglis, you state in your submission that it will be very difficult to find funds and resources to meet the additional duties in the bill, and I think that you have touched on that in your comments here. However, you commented specifically in your submission on having a named person service, presumably for those aged five to 18, over school holiday periods. I guess that that would not apply to those aged zero to five. Can you expand on what you think the difficulties are going to be with that? Have you had any feedback or response from those in charge of the bill about how that might be managed?

Magnus Inglis: It is not so much that there is a difficulty but that arrangements need to be made to provide cover for school holiday periods. One proposal that Midlothian considered was extending the ability of the call centre to deal with referrals through putting in place staff who will deal with them, record their details and put them into the system, which then needs to flag that up as something to be dealt with by somebody. The
question is whether over the holiday period that responsibility falls to a social worker or somebody else. Who takes on the responsibility as named person when the education service is not available because of the school holidays?

As I said, it is not necessarily a difficulty; it is just about finding the resources and staff and making arrangements. Also, in order to provide the named person service when the schools are in, we need to ensure that the relevant information is available. If a referral comes in, they need to have access to appropriate systems. For example, we have a social work system and we are looking at the potential for putting that into schools so that headteachers and so on have access to it. However, that comes with set-up costs, and there must be arrangements to ensure that the information is kept in a secure manner and does not get out. A lot of detail still needs to be worked out for the implementation of the named person service on the ground.

**Gavin Brown:** Am I right in thinking that you said that the named person will not undertake that role during the school holidays and that there will be a temporary named person arrangement?

10:00

**Magnus Inglis:** My recollection is that the bill does not specifically say who the named person is intended to be, but it is assumed to be part of the education remit of the council. Given that education staff have substantial holidays, we do not want to be in a situation in which someone calls up in the first week of the summer holidays with information about a child that they are looking to put to the named person and then nothing happens for six or seven weeks. Something has to be in place. That may not mean that the nominated named person changes at that point in time, but somebody needs to step in and fill that role, even if there is no sheet of paper that says that they are the named person for that child during that time.

**Gavin Brown:** In paragraph 5 of your submission, you say that, when the child turns five, the named person stops being from the NHS and starts being from the school, under the auspices of the council. There does not appear to be any formal budget line or cost set out for that. Is that an easy process, with no costs involved?

**Magnus Inglis:** Some work is being done in that regard. There is a pan-Lothian protocol, and information is already shared among local authorities, health boards and so on. At this point, we need to get a bit more information about exactly what will be involved, what information will be recorded and how that will be transferred from one place to the next. Will it all be recorded on a computer system? Will the information be taken from one computer system to another? Will that work be funded? Information technology staff in the councils and the NHS will need to get that all arranged and ensure that that information can be retained securely.

**Gavin Brown:** I have a question for the NDNA. We have a letter from the minister dated 12 September. I do not know whether you have seen it.

**Inez Murray:** I have seen it, but I do not have it with me.

**Gavin Brown:** I will read out to the part that is relevant to you:

"The Financial Memorandum includes an estimate of £1.2 million for uprating partner provider payments in line with inflation from 2007."

Does that change your submission to this committee?

**Inez Murray:** I think that that specifically refers to two-year-olds. It does not refer to three to five-year-olds. It refers to the new provision that is being put in place.

**Gavin Brown:** It does not specifically say what it refers to. You may or may not be right.

Paragraph 14 of your submission says that you believe that "the assumptions made around early learning and childcare are flawed and therefore the projections will also need reconsideration."

Can you expand on that?

**Inez Murray:** At present, local authorities give a variety of different levels of funding to partner providers. As I have already stated, partner providers are crucial to the statutory requirements. I am sure that my colleagues who are here will agree that local authorities cannot provide the level of education for three and five-year-olds that is necessary, so they need to partner with the private, voluntary and independent sectors.

At present, the cost of the service is £4.09 an hour for the 500 hours. Edinburgh is currently being given £3.26 an hour for the 500 hours. Glasgow, which now contractually has to provide 600 hours, receives £2.72 per child. The figure of £4.09 has evidently been based on the advisory floor, which ceased to exist several years ago, with an inflationary link added into it.

Our feeling is that that is not a sufficient level of funding, when you take into consideration the staffing costs. Nowadays, we are, quite rightly, upskilling our workforce and ensuring that they have an appropriate level of education to care for
and educate these children, which means that our staffing costs are increasing dramatically. Business rates are increasing, as are the costs of rent, resources, utilities, food and consumables. The costs that are inherent in caring for and educating children are rising considerably. Getting the right amount of funding is crucial. In real terms, it is very difficult to look after a child for 600 hours at a rate of £4.09 per hour.

If we look further on, the NDNA’s big issue is sustainability. If the funding is so low that it is not worth a business’s while to operate, because it is losing money, nurseries will cease to exist or will come out of partnership, which will create concerns for local authorities.

**Gavin Brown:** Am I right in thinking from paragraph 10 of your submission that you think that the break-even point is £4.51 per child per hour? Your submission does not say that, but you say that there is a shortfall.

**Inez Murray:** I am sorry; I am a nursery owner from Glasgow. I chair the NDNA’s Glasgow network, but I am not the NDNA’s chief executive or director of communications, who would normally attend but cannot be here today. In all honesty, I cannot answer your question.

**Gavin Brown:** That is fair enough. I gave that figure because you said that £4.09 would leave a shortfall of 42p per child per hour. I added together those figures.

**Inez Murray:** My policy manager is sitting behind me, so she will take notes and come back to the committee.

**Gavin Brown:** It would be useful and helpful to have the figure confirmed.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** This is one of the most important bills that the Parliament can consider. We could have an interesting discussion about the policy implications, but we are here only to look at the financial memorandum. Before I get into the nuts and bolts of that, can I take it as our starting perspective that we all welcome the bill and the idea that we will embed children’s rights and do more to support the most vulnerable children?

**Alistair Gaw:** Absolutely.

**Inez Murray:** Absolutely.

**Jamie Hepburn:** It is useful to know that we all agree.

In its submission on the financial memorandum, the City of Edinburgh Council says:

“The Council believes that the costs and any savings for Children’s Rights, GIRFEC, Early Learning/Childcare and Other Proposals are accurately reflected based on our understanding of the requirements of the legislation.”

Is that still the case?

**Alistair Gaw:** That is the position that the council has taken. We have particular concerns about the modelling of the bill’s costs in relation to kinship care, throughcare and aftercare, and about the impact on vulnerable children. However, we have no major issues with the other provisions overall.

**Jamie Hepburn:** I will put a similar question to the getting it right for every Midlothian child partnership. Your submission says:

“The notes and details of the methodology used to calculate the estimates in the FM are welcomed and have been very useful”.

Is that still the case?

**Magnus Inglis:** Yes. As Alistair Gaw said, there can be concerns about how some figures have been arrived at, but it has been useful to have the information about how many of the figures were calculated.

Gavin Brown mentioned the letter that talks about the change in estimated costs—I believe that they are for the additional childcare hours for looked-after two-year-olds. There has been a fourfold increase in those projected costs—from £1.1 million to £4.5 million—on the basis of negotiations with COSLA. That is quite concerning. If one element of costs can go up fourfold after they have been thought about more, can other elements of costs do the same? If they could, the shortfall would be significant.

**Jamie Hepburn:** You are the first person from a local authority whom I have ever heard say that a fourfold increase in an element of local authority funding might be concerning. That is an interesting perspective.

**Magnus Inglis:** I am referring not to that individual element but to the general application of the point to other elements of the bill.

**Jamie Hepburn:** So you do not think that the increase is concerning; I presume that you welcome it.

**Magnus Inglis:** I welcome anything that helps the council to achieve the savings that it needs to achieve.

**Jamie Hepburn:** I think that we are talking a little at cross-purposes, because the letter has two elements. One aspect applies across the board to three and four-year-olds, whereas the other aspect concerns two-year-olds.

The letter states—I will not necessarily quote it all, but I will get things clear—that the initial financial memorandum put in
"£1.1 million for extending funded early learning and childcare to two year olds who are looked after or subject to a kinship care order."

The letter goes on to say that the figure will increase by £3.4 million to £4.5 million. I understand that Midlothian welcomes that, but can the other witnesses set out their position? I presume that you also welcome it.

Alistair Gaw: Yes.

Inez Murray: Absolutely. We welcome any funding for the children. As you rightly say, this is all about the children of Scotland.

Jamie Hepburn: Gavin Brown read out another part of the letter and I will read it out again. It states:

“The Financial Memorandum also includes an estimate of £1.2 million for uprating partner provider payments in line with inflation from 2007.”

I presume, Ms Murray, that the £4.09 figure comes from that estimate. However, Gavin Brown did not add that the letter goes on to say:

“We now think this figure should be in the region of £2 million to more accurately reflect the financial pressures on local authorities and partner providers, and this too has been reflected in the Budget.”

The figure has been increased from £1.2 million to £2 million. I presume that you also welcome that.

Inez Murray: Yes.

We would also recommend that, when the money comes to local authorities, it gets to the partner providers in the way that the Government anticipates. We recommend that the bill reintroduces the advisory floor, because that is a very good way of ensuring that the money from the Government that comes through the local authorities goes to the partner providers.

Jamie Hepburn: Clearly, that will be a matter for the lead committee, but it is on the record and I am sure that that committee will pick up on it. However, the fundamental point is that this is a significant increase—

Inez Murray: As long as it is a relevant and robust funding package that is going to meet the needs of the providers to provide the high-quality education that our children require.

Jamie Hepburn: Essentially—you can tell me if I am correct—your point is that the funding increase is welcome, so long as it comes to the partners as appropriate.

Inez Murray: Yes.

Jamie Hepburn: I have one final question. Obviously, I have an interest in the issue as the deputy convener of the Welfare Reform Committee, because it has focused on the matter. Mr Gaw spoke about the challenge of welfare reform. Could you say a little bit more about how welfare reform interacts with the bill and, specifically, its financial provisions?

Alistair Gaw: I am no expert on welfare reform—

Jamie Hepburn: Neither is the UK Government, but that is another matter.

Alistair Gaw: There is no doubt that if you look at the potential for throughcare and aftercare provision, for example, a lot of the work that we do with young people who leave the care system is about trying to ensure that they are in employment, have decent accommodation and have a chance to get on with their lives. If, for example, what is colloquially known as the bedroom tax affects their income, that could have an impact on their overall level of income.

Similarly, kinship carers may or may not fall into a category that is exempt from these measures. We do not yet know what their position will be, but there are undoubtedly risks for them in some of the potential consequences of welfare reform and how that might impact on their responsibilities. If the same levels of benefits are not available to them as have been in the past, any better-off assessment that a council does will inevitably mean that the council will have to put in more money to top up their income. There are a number of ways in which the interplay between the Department for Work and Pensions and the benefits system, and what we try to do with kinship carers, can have unintended effects.

The Convener: The now-deposed deputy convener has some questions.

John Mason (Glasgow Shettleston) (SNP): Thank you. I waited two years to chair the committee for five minutes, so that was good.

We have covered a lot of ground already. I will come back to Ms Murray on a few of the figures, although I realise that that is maybe not your specialist area.

You suggested that nurseries are losing money. How does that work? Is cross-subsidy taking place? What is happening?

Inez Murray: The survey showed that when we look at the real costs that are involved—this is across the whole of Scotland; also there is funding for two and a half or three hours of education provision for three to five-year-olds, depending on the local authority—the costs are probably subsidised by the daily rate and things that parents have to pay for their child’s place.
John Mason: So parents or whoever are paying slightly more, in effect to subsidise the lower rate—

Inez Murray: Yes, because of the inherent costs that I talked about.

John Mason: Am I right in saying that, as your numbers increase, the marginal cost per extra child is not great, because you already have your heating, lighting and so on?

Inez Murray: I accept that. That leads me to another point. Some local authority areas will not partner with a high-quality nursery in an area where there is a nursery that is perhaps not of such good quality. Parents then choose to send their children not to the local authority nursery but to the non-partner nursery, because of the quality of provision. Parental choice is an issue. It is important that local authorities partner with good-quality provision.

John Mason: Are the local authorities transparent about how much it costs to have a child in one of their facilities?

Inez Murray: No. It costs far more—

John Mason: You reckon that it costs far more.

Inez Murray: Oh, yes.

John Mason: Is that the feeling of local authorities? Do their facilities cost a lot more than facilities in the private sector cost?

Magnus Inglis: I am not in a position to comment on that, I am afraid.

John Mason: Fair enough. Let me go over some of the ground that we have covered. The NDNA would like a floor, which would be higher than £2.72—perhaps around £4.

Inez Murray: Yes, or as much as—well, we understand that money is tight, but if we want high-quality provision for our three to five-year-olds, in partnership with nurseries, we must have relevant and appropriate funding.

John Mason: Thank you.

I want to ask about looked-after children and throughcare and aftercare. Various figures have come up. It says in the financial memorandum:

“annual support costs have been estimated at an average annual cost of £3,142 per young person”.

However, COSLA suggested a figure of £6,000. I was quite surprised by that. I accept that it is hard to project figures, but when we consider current costs, how can there be such a difference between what the FM says and what COSLA says?

In addition, it says in the FM that the estimated cost of the assessment and application process is £1,042. It seems strange that the assessment should account for half the cost of support. Will you comment on that, Mr Gaw?

Alistair Gaw: I think that the assessment is separate from the provision of services. Edinburgh does not have a particular issue with the levels in the financial memorandum, but some colleagues across the country think that an estimate of overall costs of up to £6,000—I stress “up to”—is more accurate. We are talking about resources to deal with crisis or emergency situations that young people find themselves in and to pay for advice, training and counselling.

Young people’s needs as they leave the care system and become more independent vary enormously, so it is quite misleading to try to put a single figure on that. The figures are very rough averages—you will notice that the phrase “up to” is used quite a lot in the financial memorandum—which is why Edinburgh did not have a particular issue with them.

John Mason: Costs are more predictable for younger children but vary more for the older age group. Is that right?

Alistair Gaw: It is, absolutely. We hugely welcome the fact that there is potential for support of and provision for very vulnerable young people up to the age of 25. It is clear that young adults can go to many other avenues for support without having to go back to the local authority as the corporate parent to support them but, nevertheless, we said in our submission that, although we would not quibble with the figures in the financial memorandum—the potential £200 for emergency payments, the £1,200 for a counselling course or whatever—we think from our experience that more young people would take up the opportunities than the financial memorandum estimates. That is to do with the work that we put in to keep in touch with young people as they become young adults.

It is clear that good practice in what we would like to promote across the country is really good engagement, particularly for young people who do not have any extended family, so that they have somewhere to fall back on and they can go out, make a mistake, come back and get support. Those services are critical for their long-term health benefits and for long-term positive outcomes, which can, of course, save the taxpayer a huge amount of money.

John Mason: Okay. Your answer is good.

In comparison with the level of support that somebody receives, the £1,000 for dealing with an application seems quite heavy, but perhaps that
Alistair Gaw: Will you point to the part of the financial memorandum to which you are referring, please, Mr Mason, as I am not completely sure of that?

John Mason: I refer to table 19 on page 63 and paragraph 101, which refers to “estimated application/process costs at £1,042 (based on average caseloads and average worker salaries).”

It jumped out at me that, if we are spending half as much on assessing somebody as we are on supporting them, it would be better if we just gave them £1,000.

Alistair Gaw: If a young person is going through the care leaving process, they will have a pathway plan and there will be an assessment. All that work is done, and it is an iterative process. They do not have to come back in and get a completely new assessment with a whole load of administration around that. The way in which those figures are separated out does not make a lot of sense to me, either.

John Mason: Okay. Thanks very much.

Magnus Inglis: I was not sure whether that was the cost of the throughcare and aftercare teams divided by the number of young people whom they support. I agree with Alistair Gaw and John Mason. The figure seems very high. There is not a formal application process involved that would cost that amount of money. My speculation was therefore that that was the cost of those teams divided by the number of children whom they support.

John Mason: Thanks very much. [Interruption.]

The Convener: It is good that the children next door in the crèche are so keen to make a contribution to our deliberations.

Jamie Hepburn has a wee supplementary question.

Jamie Hepburn: I do not have a question, convener, although I thank you for allowing me the chance to ask one. It occurred to me that I should have declared an interest in questioning Ms Murray, as my children attend a nursery that is in partnership with the local authority. I thought that I should put that on the record.

The Convener: Thank you for that.

I will wind up with some questions, as committee members have exhausted theirs. I usually kick off the questions, but decided to let the committee charge ahead, for obvious reasons. That was interesting, as committee members often complain that I take all the juicy questions and they have the ones that are left over. There has been a wee bit of a reversal of roles.

I want to get clarification from Ms Murray of issues that came up in the NDNA submission. Obviously, we have discussed much of that. Paragraph 9 of that submission talks about the advisory floor. It says: “uprating this figure is inappropriate and forms a weak basis for estimating future costs.”

However, the appendix, which talks about directing “sufficient funding to nurseries”, says: “One option might be to reintroduce an advisory floor minimum level of funding and review this annually—in some local authorities funding ... has remained static since the advisory floor was removed several years ago.”

Will you clarify exactly what your position is on the advisory floor?

Inez Murray: The advisory floor that we recommended would be introduced so that all local authorities would know what was there for children. Money is now coming through grant-aided expenditure and is not being distributed equally among providers. Was the second bit of the question about the advisory floor?

The Convener: The submission says that uprating the advisory floor “is inappropriate and forms a weak basis for estimating future costs”, but it goes on to say that perhaps it should be reintroduced. I am wondering why there is a contradiction in saying that it is “inappropriate and forms a weak basis for estimating future costs”, and then saying that it should perhaps be introduced but reviewed annually.

Inez Murray: That refers, I think, to what the advisory floor was previously and the fact that the figure of £4.09 is based on the advisory floor that was discontinued.

The Convener: Okay.

Although the figure is supposedly £4.09 a child, given that staff ratios are moving from 1:10 to 1:8, that will mean £32.72 per hour, because there will be one member of staff looking after eight children. It is not a one-to-one service. We were all thinking, “£4 an hour?”, but looking at the issue from that perspective puts a different complexion on things.

In paragraph 15 of your submission, you say: “We are not confident that partner providers of early learning and childcare can meet the costs associated with the Bill unless measures are taken ... to ensure sufficient funding is allocated to local authorities and actually reaches providers in the form of a viable hourly rate.”
Can you provide us with details of how much that should be? If the Government is to increase funding, what would a viable hourly rate be?

Inez Murray: What we are saying is that the £4.09 plus the 42p that Gavin Brown mentioned makes it a much more viable unit. As ever, we would accept as much money as possible—everyone does. You say that the staff ratio is 1:10 or 1:8 but, as has been discussed, there are different elements of cost that have to be taken into account.

If we want our children to grow up in such a way that we do not incur the costs of care later on in life that we have had to meet, all the research shows that good-quality early years education from the ages of three to five is the best way to go, because it gives children the stability of a good start in life. Naturally, the more funding that we have in place, the better the provision that we can make. The level of qualification of the staff is crucial in that regard.

The Convener: We would all fully agree with that; the issue is that funding is always limited and that, when it comes to what you have suggested, we have to strike a balance between the public purse and—

Inez Murray: Absolutely; I am sorry to interrupt.

The Convener: Not at all.

Inez Murray: The most important thing is that the funding that the Parliament decides on is delivered to the partner providers equally and fairly.

The Convener: So, are you suggesting that the figure of £4.51 that you have mentioned would be a reasonable amount if it were uprated annually, to take account of inflation?

Inez Murray: I suppose that I would have to say yes to that. I have not done figures on the back of that but, compared with the £2.72 that I receive at the moment, that would make a huge difference.

The Convener: Of course—comparatively, it would be almost like a lottery win.

Incidentally, why is there such variation?

Inez Murray: In Glasgow, it is because we are contracted to provide 600 hours. The funding was not upped at all because of a lack of money, but we were told to provide 600 hours.

The Convener: You are expected to provide an extra 125 hours for nothing.

Inez Murray: I think that we included the average figure in our submission. The advisory floor would even that out and make things fairer.

The Convener: It would at least ensure that you were resourced for those extra 125 hours.

I have one more question. Paragraph 17 of your submission is quite interesting. In it, you say:

“There is presently an inequity in the number of hours of preschool education to which a child is entitled, depending on their birthdate”.

You say that the report “An Equal Start”

“highlighted that this can mean a funding gap to families of £1,000 per child, depending on their birthdate.”

Can you tell us a bit more about that?

Inez Murray: That is because the cut-off date for a child to be able to go to school is 28 February. A child can go to school if they reach school age before that date.

The other issue is that the local authorities will not pay for the extra—I am sorry, but I am not getting this right; I will need to rethink what I am saying.

The Convener: Sure—take your time.

Inez Murray: The fact is that a child who goes into nursery school in May will not get any funding for that last term; they will not get funding until the term following the child’s third birthday.

We are talking about nursery-age children, at pre-school, not school-age children. The children who are three after that, or before that, get extra terms of funding. Does that make sense?

10:30

The Convener: Yes—so, because of the fairly arbitrary—

Inez Murray: It is just an age-related thing. That is what happens in most local authorities—they do not get funding until the term following the child’s third birthday.

The Convener: You feel that that should be addressed, I am sure.

Inez Murray: It is an issue.

The Convener: It seems somewhat unjust to me—although all my children were born in the summer months, and my youngest is 15.

Mr Inglis, you say in paragraph 6 of your submission:

“The Bill will require more midwives, health visitors, teachers and school administration staff, childcare staff, family counsellors etc.”

However, you do not specify how many for a local authority such as Midlothian. We will be producing a report, with some recommendations to the minister, so we want to tie down some of the figures. If Midlothian had robust information on that, we could perhaps extrapolate some data across Scotland. What figures do you have for your local authority?
Magnus Inglis: I am just checking.

The Convener: I was quoting from paragraph 6, about halfway down.

Magnus Inglis: I did some estimates based on the additional hours that would be needed for a named person in the teaching or education role. In Midlothian, that would work out as about 2.2 full-time-equivalent teaching posts. That is based on a very rough estimate. I see that I have taken out the figure for additional administrative support, and I do not have the figures for the other roles in front of me. I also considered the numbers of additional support assistants for administration in primary and secondary schools—but I do not have a note of those with me, unfortunately.

The Convener: It would be good if you could provide us with any of that information.

In paragraph 11, you talk about the “resources to meet the additional duties of the Bill.”

You state:

“This may be most severe regarding the additional hours of childcare/early learning which, based on the figures in FM, are estimated at up to £1.8 million per year for Midlothian Council.”

You say “up to £1.8 million”. How close to £1.8 million are we talking about? Over how many years? Is that something that would go on for one, two, three or four years, or is it a permanent additional burden on the council?

Magnus Inglis: I looked at the estimated costs of the provision in the bill across the whole of Scotland, and I then considered the population of Scotland from zero to five years, as well as the population of Midlothian from zero to five years. I then worked out the figures between them. On that basis, the costs provided in the financial memorandum extrapolated to Midlothian Council would be £1.3 million in 2014-15, £1.7 million in 2015-16 and £1.8 million in 2016-17, and they would then level out at £1.6 million per year thereafter.

The Convener: Thank you for providing that clarification.

In paragraph 9, you say:

“It is noted that the FM has an extremely wide range of estimates, with the savings in the upper estimate coming in at up to nine times that of the lower estimate.”

What impact do such differentials have on the council’s ability to plan ahead?

Magnus Inglis: All local authorities are currently under significant financial pressure; Midlothian Council is by no means alone in that. We are looking to achieve savings. We have achieved savings of £13.5 million over the past three years, and we are looking to achieve similar savings in the near future. It will depend on how funding for the provisions in the bill is arranged. If the actual cost of delivering the measures on the ground comes out at the top level of the estimates in the financial memorandum, there will be a significant funding shortfall for Midlothian Council, which would be unsustainable in the long term.

The Convener: You talk about a significant shortfall. What are we talking about?

Magnus Inglis: If the estimates of the savings vary by up to nine times—in the letter that was released recently, the funding was quadrupled and, by extension, so were the expected costs—the costs for the council could easily be another £1 million a year. The costs for the additional early learning and childcare are estimated to be £1.8 million a year, but if that comes out as the wrong figure, and the amount is significantly more than that, it would be a massive financial commitment for the council.

The Convener: Obviously, the Scottish Government has to consider the estimates that it has produced when it is drafting the legislation. However, it seems that your local authority is not completely au fait with its own estimates. How do we square the circle if a local authority does not know exactly how much implementation will cost? How can we expect the Scottish Government to cover all the bases in estimating the cost for all of Scotland?

Magnus Inglis: I completely agree: it is impossible for the Scottish Government to come up with exact figures. To return to some of the earlier comments, we do not know until we deliver the implementation how much it will cost.

For example, 1.5 per cent to 3.5 per cent of current informal kinship carers will come forward and claim under the new kinship care order. When word of what is available and what is supported goes round kinship carers throughout Scotland, the scheme could become very popular and a significant proportion of people could come forward. It is very difficult for local authorities and community planning partnerships to estimate what the costs will be, and it is equally difficult for the Scottish Government to do so.

The point is that there is a significant risk that the costs will increase beyond what is included in the memorandum and beyond any funding that is provided. How will those costs be met? Will there be an on-going review by the Scottish Government of the costs inherent in the bill, with changes in the funding as we move forward? Alternatively, will the charges be fixed early on, with authorities being told, “That is the settlement” and that they will have to provide for any additional costs?

The Convener: Would you be looking for some kind of contingency funding for the first two or
three years, in case there are costs that no one has foreseen or the costs are significantly higher than you or the Scottish Government have considered?

Magnus Inglis: That would be a prudent step. The budgetary and financial pressures on local authorities are significant. As we have mentioned, the bill is welcome and contains a lot of good work, but we do not want to have started providing services or changed the way in which we deliver things before we discover that there is a shortfall in funding because we have been too successful.

It could be some years before some of the savings from the prevention agenda are realised, so there is currently a short-term, transition period in which we have to fund what we are currently doing for all the people who are already involved in the system, while also funding the preventative steps such as the additional hours for early learning and childcare.

However, until that period has passed and we have reaped the benefits of those prevention measures, there is a big funding requirement.

The Convener: Mr Gaw, much of your submission relates to areas that colleagues—one of whom represents Edinburgh and one of whom represents Lothian, including Edinburgh—have covered. We have discussed kinship care, throughcare and aftercare in detail. Your submission also raises wider issues. On those, will you say a wee bit about the impact of training costs on City of Edinburgh Council?

Alistair Gaw: With regard to GIRFEC in particular, and the named person—

The Convener: With regard to the whole bill. We are looking at the financial memorandum as it relates to the entire bill.

Alistair Gaw: Yes. We do not see training costs as a major concern; we are much more concerned about whether the modelling of the costs around kinship care, throughcare and aftercare is realistic, as we think that there may be unintended consequences.

The one training issue that arises for the council is that funding to train the named person on GIRFEC is focused purely on education staff and, in addition, is not recurring; there is an assumption that it will be absorbed into overall continuous professional development activity across the council after the first year. A completely different approach has been taken in respect of health visitors, and there is recurring money for health boards to ensure that health visitors maintain their skills. We see that as a bit of an inconsistency.

The Convener: Is that something that irks the council? I was going to ask you about it.

Alistair Gaw: Overall, if it is implemented properly, the bill has the potential to be revolutionary in shifting the balance of care and supporting early intervention and prevention, and training is part of that. If training, the kinship care measures and throughcare and aftercare are not properly funded, the risk is that money will be diverted from earlier intervention into supporting the other aspects of the bill and, actually, it will become counterproductive. That is my greatest concern.

The Convener: I am going to wind up the session in a moment, but do any of our guests have any further points that they feel the committee has not covered and that they wish to touch on?

Magnus Inglis: One query that I have is about the statement in the Scottish Parliament information centre briefing on the financial memorandum that COSLA has confirmed that the Government has confirmed that the bill will be fully funded. Alistair Gaw mentioned that issue previously. However, there is still a degree of uncertainty among local authorities, and certainly in Midlothian Council, about exactly what funding will be forthcoming to support the bill. We are doing a lot of work on how early years care and childcare will be put in place and on the costs involved in that, but we are trying to do so without quite knowing how much money we will get. From our perspective, it would certainly be useful to know how much money we will get, so that we can say how we will allocate it and provide the final details on how we will proceed. I am not sure whether the same applies in Edinburgh.

Alistair Gaw: As my colleague Magnus Inglis said, it would be prudent to have some contingency for the bill, and that would be my plea. We fully support the measures in the bill and we think that it absolutely heads in the right direction, but the reality is that there has been enormous difficulty in trying to model the costs of the measures, particularly those on looked-after children. We do not think that the estimated costs are robust. If the money comes out of the GAE in the next spending review, there will be major problems for us. It is important that, as COSLA has asked, we maintain an overview and ensure that, as the measures unfold and we get the details of the secondary legislation, sufficient resource is in place to enable the objectives of the bill to be met.

The Convener: Ms Murray, do you have any further points?

Inez Murray: No—I just stress how important it is to get it right.

The Convener: If we recall that the bill’s primary purpose is to
"address the challenges faced by children and young people who experience poor outcomes throughout their lives",

it is clear that we have to get it right. Mr Inglis makes a good point that I was going to raise directly with the bill team—I had noted that in the SPICe briefing.

I thank the witnesses for responding so well to our questions, and I thank members for their questions. We will now have a five-minute suspension to allow for the changeover of witnesses.

10:42

Meeting suspended.

10:47

On resuming—

The Convener: We continue our scrutiny of the financial memorandum for the Children and Young People (Scotland) Bill. I welcome our second panel of witnesses, who are Jim Carle of NHS Ayrshire and Arran, Sally Egan of NHS Lothian, and Clare Mayo of the Royal College of Nursing. We will go straight to questions. As usual, the first question will be from me. Normally, I ask a question of a specific witness—sometimes the whole panel—so if other panel members wish to add anything, please feel free to do so.

As I am an Ayrshire MSP, my first question is for Mr Carle. In paragraph 4 of your submission, you state:

"the financial implications were not well represented or discussed at the events"

that your colleagues attended. In paragraph 11, you say:

"The expressed views suggest that NHS Boards will not be able to meet the financial costs incurred by the Bill."

Will you elaborate a wee bit on that?

Jim Carle (NHS Ayrshire and Arran): In the process that we went through, people were entirely focused on health and social care integration and the consequences of the new bill. We had lots of interesting discussion, but very little information was provided at the meetings to outline the financial implications or, indeed, how those implications were to be assessed.

We very much welcome the bill and have no issues with its content. We also welcome the support that has been given to the GIRFEC process in reaching full implementation. However, we are concerned that, to achieve not just the letter of the bill but the cultural change that we hope for, we will need to invest more heavily in early intervention and prevention.

We believe that the current system is effective, but if midwives and health visitors, in taking up the role of named person, are truly to capture the needs of individual families, it will require a significant amount of their time; we estimate about five hours per family, depending on the nature of the family and the nature of the intervention that is required. Our concern is that we do not have the necessary numbers of staff to meet current demand and we think that we will, as we improve our intervention in early years, require more staff in order to be more effective in that intervention.

We are confident that savings will be made through integration of systems. Alignment of our systems locally with the systems of local authorities and so on will achieve savings, but they will not be apparent within midwifery services or health visitor services; they are more likely to occur in services for later in the life course. To truly change the culture and achieve the savings later in the life course, we think that we need to invest more heavily in midwifery services and health visitor services.

The Convener: NHS Ayrshire and Arran covers about a third of a million people, so it offers quite a good snapshot of Scotland and we could possibly extrapolate from it to a reasonable extent. What additional health visiting staff would you require? What additional support staff would you require? What resource would you need to make this bill work in Ayrshire and Arran?

Jim Carle: I would love to be in a position to give you accurate figures on that—

The Convener: Ballpark figures would help. Would you need £1 million? Perhaps £10 million? Anything that you can give us would help the committee in its deliberations.

Jim Carle: We made some crude estimates of the additional health visiting staff and midwives that we would need and came up with a figure of about 10 additional midwives and 15 to 20 additional health visitors, at a cost of £21 an hour. The bill, I think, says £19.40—

The Convener: It says £19.40, actually.

Jim Carle: Yes—that is the estimated average across Scotland, which is perfectly appropriate and reasonable, given the figures that the Government had to work with. In Ayrshire and Arran, most of our health visiting staff are in the higher pay bands and the higher age groups, and we are conscious that that will make a significant difference to organisations that are as large as ours.

The Convener: Ms Egan, what is the position in Lothian, which is a much larger health board? Do you agree with what has been said?
Sally Egan (NHS Lothian): We have done quite a bit of financial modelling in relation to the early years change fund and in response to the implications of the bill. Across Lothian, we have just short of 50,000 children under five and around 9,500 to 10,000 children in the making in the midwifery case loads. We modelled on that assumption.

I was on the GIRFEC working group that informed the financial memorandum from a health perspective, and we considered the additionality for midwifery at the various stages in the child’s development, pre-birth and post-birth. Based on those assumptions, we came to the conclusion that the sum would be around £21 an hour. The £19.04 that the financial memorandum group came up with was based on a midpoint—band 6—health visitor and midwifery grading.

We looked at our age profile across the workforce and reckoned that, if we costed on that basis, we would be facing incremental drift very quickly, because most of our staff are fairly high up the increment scale. Therefore, our costings are based on the midpoint plus two incremental points above that, which brought us to the figure of £21. Factoring in our known birth rate and health visiting case loads, we concluded that we would need an additional 49 health visitors and 20 midwives. Again, as with Jim Carle’s figures, those calculations are fairly crude. They are based on a lot of discussion with staff on the front line and on what we know from our early implementation of GIRFEC in Edinburgh.

Edinburgh was a learning partner and is probably a bit further down the road of taking on the named person approach in health visiting. That requires additional work, so we spoke to a lot of people before we worked out the financial implications.

The Convener: In paragraph 29 of your submission you say:

“We do not think we can meet these costs”.

You go on to say:

“Nor do we think there is the capacity within the Health Visiting workforce in Scotland to respond within the timeline”.

It is not only about money, but the people who deliver the service.

Sally Egan: Yes—it is about human resources.

There is a general feeling in Scotland that we have not developed our health visiting workforce to meet the growing needs and demands of our population of vulnerable children. I was chief nurse in Edinburgh for a number of years, and I know that health visitors in Lothian were having to support more and more high-level child protection work, which in their opinion meant that the universal services did not get the attention that they would have liked them to have had. Health visitors were having to prioritise.

I cannot speak for other health boards, but in Lothian we recognised the issue some five to seven years ago and we have tried to grow our health visiting workforce and the infrastructure to support it. For example, we normally fully fund and train six health visitors through the Queen Margaret University postgraduate training programme, but this year we are training 12 health visitors. That is really in response to projections on retirement across Lothian. We have an ageing workforce and we need to attract young and enthusiastic people into nursing and midwifery.

We have started to grow the number of health visitors who graduate from Queen Margaret University. We cannot guarantee that we will keep them in NHS Lothian—they are free to take up jobs elsewhere—but we are trying to make the job as attractive as possible by ensuring that the support infrastructure is in place.

We also invested significantly to enable health visitors to take on the 27 to 30-month review this year. We are further investing to enable them to support the assessment of looked-after children this year. However, even that additionality will not be enough to enable full implementation of the named person approach in the timeline that is envisaged.

The Convener: The RCN says in paragraph 7 of its submission that health visiting would require another 355 whole-time equivalent posts to deliver what is envisaged in the bill. Paragraph 15 states:

“Nearly half (45%) of the NHS Scotland health visiting workforce is aged 50 or above.”

There are clearly concerns about staff capacity. Ms Mayo, how confident are you that we will be able to recruit the additional people who are needed to carry out the work, if we assume that the funding is put in place to pay them?

Clare Mayo (Royal College of Nursing): If action is taken rapidly and funding is put in place, we can do it. However, there are two issues. First, on getting it right for every child and the named person approach in the bill, it is great that the Scottish Government costed the additional hours, with the committee’s help, but our concern is that the costings do not take into account the normal workforce planning allowances. If we were to factor in the additional 22.5 per cent that the Scottish Government agrees is needed to cover annual leave, maternity leave and so on, the required number of additional whole-time equivalent posts would be closer to 450.

Secondly, the ageing workforce gives us an additional issue, as Sally Egan said. Additional
posts are required to implement the bill, and additional posts are required to replace the existing workforce as many staff retire.

Our concern is that there are different approaches to health visitor training across Scotland. We would like the Cabinet Secretary for Health and Wellbeing to take action and to commission NHS Education for Scotland to develop health visiting programmes rapidly with national funding, so that training is consistent throughout Scotland.

NHS Lothian has led the way, but in other health board areas people are expected to do health visitor training on a bursary, with no guarantee of a job at the end of the training, rather than being seconded to do the training on a salary. There needs to be equity of educational provision throughout Scotland, with equity of terms and conditions in how people can undertake those education opportunities. That needs to happen now.

11:00

The Convener: On additional staffing, it is clear that Scotland is not uniform—some areas will have severe pressure and others will have less pressure. What should the Scottish Government do to address geographic issues?

Clare Mayo: The Scottish Government is undertaking a number of pieces of work under the chairmanship of Rosemary Lyness, who is NHS Lanarkshire’s director of nursing. A significant review of capacity is going on. We need to find out the number of health visitors across Scotland—the Information Services Division is doing that work.

Work is also going on on robust workforce planning and case loads, which are weighted according to need, geography, rurality and the significant deprivation issues that many areas face. Once we have robust ways of deciding how many health visitors we need and where we need them, every health board will be in a position to look closely at its particular needs, with the support of robust evidence-based approaches.

The Convener: My next question is to whoever wishes to answer, although it relates to Ms Mayo’s submission. Earlier, local government colleagues expressed concern that the financial memorandum considered training only in the NHS and not in local authorities. The RCN’s submission says that “office space, travel expenses, administrative support and consumables” are not included, and that “Paragraph 55 of the Financial Memorandum makes the case for administrative support in schools”, but

“The same administrative support for the Named Person approach and developing and implementing a Child’s Plan is required in the NHS.”

It is odd that funding for training in local government and for administrative support in the NHS seems to be lacking. I have no doubt that we will put that to the bill team, who will follow the current witnesses. What is the impact of the requirement for additional resources?

Clare Mayo: The financial memorandum allocates a one-off sum to NHS Education for Scotland to develop a training package. We feel that more detail behind that is needed. NHS Education for Scotland needs to come up with a proper costed education and training strategy, which might last a number of years. National resources are needed, but no provision is made for face-to-face training or the cost of delivering that training across Scotland.

We have asked for a properly costed education and development plan to be behind the sum that is to go to NHS Education for Scotland, and for the wider team to be included in the training programme. The success of getting it right for every child, as it has been implemented, is that it is a multiprofessional, multi-agency approach for every child and family. Delivery of the training in that way is powerful.

We should not divide off the health service and say, “There’s the health bit.” We should look at everybody who is involved in a child’s plan and everybody who is involved as a named person—that includes the wider teams and not just those who play the named person roles. The wider training for the whole of the workforce who are involved with children needs to be looked at and costed robustly.

Sally Egan: I support everything that Clare Mayo said. Various things are going on locally, but the question is whether that training is sufficient for the future role. Given the wider implications of being a named person under the bill, we will need to up our game on training. We need to make our staff really aware of the importance of information sharing and we need to support our information-sharing processes but, at the moment, we do not have the infrastructure to do that. How staff handle data and share information is an important part of the training.

For NHS Lothian, we have a Lothian and Borders partners group, and we are trying to develop training modules across the partners so that there is some consistency. The big issue for us is backfill, which has a cost implication, for freeing up staff to undertake the training, especially as we do not have the people to backfill with. Again, it is not just about the money, but about having capacity within the system.
Another part of our work in Lothian and Borders is that our GIRFEC development manager—she works for the five local authorities in our area, the two health boards and the police—will work with Queen Margaret University on the postgraduate health visitor course to ensure that the newly qualified health visitors have an understanding of what the named person role entails. That aspect is not really covered in any depth in the current curriculum, because it was not part of the previous review. So, as well as working with NES, we need to work with higher education institutions to ensure that our courses cover the named person role as part of the core competences.

**Jim Carle:** I fully endorse what my colleagues have said, so I would not want to repeat it. However, I just note that the bill’s costings for the health sector are predicated mainly on the named person function, which will require significant investment in terms of information and developing appropriate systems to take it forward. In NHS Ayrshire and Arran, we have developed Ayrshare, which is an online system that allows the development of a single child’s plan and the single chronology under GIRFEC. The system is inputted by, and shared jointly with, our local authority colleagues, and it will eventually be widened.

There will also be significant costs for the health sector from implementing the bill’s provisions for looked-after and accommodated children. If the health sector is to perform fully its function for that group of children, that will involve additional costs because we must make far more robust and effective the initial health needs assessment for looked-after and accommodated children. We will also have to develop systems by which we can support our local authority colleagues in deciding on the most effective place for the children and young people. We want to ensure that those places are as close to children’s homes as possible.

There are therefore a number of issues in the bill that might not have an obvious impact on the health sector but which we believe will have impacts over time. I support strongly the view that we need joint training on implementing the bill’s provisions. Further, we must take on board the burden for effective monitoring and evaluation of the different systems and the costs that will be associated with that, although it is extremely difficult to say at this point in time what those costs will be. We would argue for keeping under review, for at least the next two to three years, the financial implications of the bill’s implementation so that we can feed back much more accurate information to committees such as this, which would give you a sound basis on which to make decisions for the future.

We strongly feel, though, that we are not in a position to tell you what the additional burden will be. We are clear that we will make savings, but there will also be costs. The task is to strike the right balance between savings and the requirements for additional investment.

**The Convener:** Thank you for that. I open up the session to committee colleagues, and the first to ask questions will be Malcolm Chisholm, followed by Jamie Hepburn.

**Malcolm Chisholm:** It will probably be only one question, because most of what I was going to ask about has been covered. I was particularly interested in the costs of the named person role, and Mr Carle gave a comprehensive answer on that.

However, I am also interested in two of the RCN’s policy proposals, which might have financial implications. In fact, that is certainly the case for the health visitor proposal. The RCN has strongly emphasised that the named person should always be a health visitor and believes that there should be a statutory entitlement to universal health visiting services, which I find an attractive proposal. I am also interested in NHS Lothian’s discussion about health visitors and midwives, so my question is perhaps more for NHS Lothian and Sally Egan. Is your choice in that regard a policy or financial one? Would it make any difference financially whether the named person was a health visitor or a midwife?

In the interests of saving time, I will roll it all up in one question to the RCN. Obviously, you have a big focus in your initial submissions to this bill and to the Public Bodies (Joint Working) (Scotland) Bill on your concern about two legislative proposals that are likely to lead to two different approaches to the planning, delivery and governance of integrated care. Again, I suppose that we should not stray too much into the wider policy implications, but I am interested in whether you think there are financial consequences of that policy decision. I suppose that that is two questions.

First, I am interested in hearing from Sally Egan on NHS Lothian’s view on midwives, as distinct from health visitors.

**Sally Egan:** Within NHS Lothian, we have agreed that the midwife will be the named person for the mother and for the unborn child. The child does not have legal status until it is born, but our midwives are—and have been for a number of years—very involved in early detection around vulnerability and child protection, so we are not starting from scratch with our midwives.

We have also refreshed the maternity framework in Scotland and we have a policy on reducing antenatal inequalities, so the role of the
midwife is recognised within the GIRFEC policy context, as you know. We have been training our midwives to take on the named person role, but with a recognition that there will be co-ordination, an administration support function and so on.

We see the midwife being the named person up until the child is born and then until the 10th day after they are born. Obviously, when the baby is born they may come out of hospital very quickly after birth, but the baby could go to a neonatal unit, so there are a lot of discussions going on about who the named person would be for children who are not discharged home with the mother. Within our universal pathway, the midwife would hand over to the health visitor around the 10th day, but where there was vulnerability, they would start planning together for that child’s needs and that family’s needs as early as possible with a recognition that that would involve people other than the midwife.

One of the things that we are trying to do is to embed some of the earlier recommendations in “Health for all children”, which was about midwives and health visitors working more proactively together during the antenatal period. That work has started.

Within our pathway, we see the midwife taking on the named person role, provided that they have the infrastructure to support them. We would not see them taking on the lead professional role. We have not spoken about that role and it is not within the legislation. However, the midwife would certainly take on the named person co-ordinating role because they would be looking after the mother and the unborn child. On the 10th day, we see the health visitor taking over. Currently, we have a model in which a qualified registered nurse or health visitor would see a child and family at least four times in the home setting, unless there were reasons why they could not gain access, so we see the health visitor as being the one who takes over the named person role.

For our teenage pregnant population, where they are part of the family nurse partnership programme, we see the family nurse as being the named person for that family. We also see that the health visitors and the family nurses cannot do it all, so there will be support from a mix of other professionals. We have a lot of that at present—support from nursery nurses, children and family centres and so on. Increasingly, our health visitors have staff nurses specialising in children and early years within their skill-mix establishment, but essentially we see the named person role being taken by the midwife, health visitor and FNP nurse in the main for that prebirth to preschool population.

Clare Mayo: As Mr Chisholm said, we believe that the bill should clearly state that the named person for the under-fives—following on from the midwife—should be a health visitor. That really confirms what is already happening in practice, but the statutory entitlement to a universal service will give consistency across Scotland. It will have financial implications, but we believe that it is necessary in order to deliver the named person service that matches the vision in getting it right for every child.

Proper resourcing is absolutely essential because if we are raising expectations with families to the effect that they will have the support of a named midwife, health visitor or teacher, we have to put in place the resources to support the professionals who deliver that service, or we are setting them up to fail. That is why the resources behind the bill are so important.

11:15

On the policy question about the bill going through Parliament at the same time as the Public Bodies (Joint Working) (Scotland) Bill, there appear to be anomalies between the two bills. However, we are greatly reassured that the Local Government and Regeneration Committee is examining the two bills side by side. We hope that, as a result of consideration being given to the governance processes in the children’s services planning part of the bill, and the similar issues on joint working in the Public Bodies (Joint Working) (Scotland) Bill, the two bills will work in a way that does not have negative financial consequences and the two sets of planning proposals will blend coherently. It is important that the committees that are responsible for those bills ensure that that is the case.

Malcolm Chisholm: If your favourite model was adopted, irrespective of whether it is good in policy terms, would that provide cost savings—or is that not really the main point?

Clare Mayo: That is not really the main point although, whichever model is proposed, it needs to be effective from a financial point of view as well as a governance and service delivery point of view.

Jamie Hepburn: I have not looked at the bill in great detail, but it is probably fair to say from the coverage that it has been fairly controversial, perhaps more because it is misunderstood than anything else.

Today, we are hearing concerns about the financial implications. Is it not the point that, as Sally Egan said, we are not starting from scratch? Given that midwives and health visitors have a role in the early part of a child’s life, there is already a de facto named person. That perhaps reflects the point that Ms Mayo made. The approach already happens in practice because, I
It is a case of looking at things holistically and looking at the whole pathway for children. Our modelling has been based on the assumption that health visitors are doing a lot of work at the moment, but the bill is asking for more than that. If we look at things in the wider context of the early years framework, there has to be more early intervention. The size of an average health visitor case load ranges from 250 to 350 nought to five-year-olds. How can the health visitor be the named person for that number of children, whose ratio of need extends from the highly vulnerable end—the additional needs end—to the universal end? How can health visitors be all things to all people, given their case loads?

Jamie Hepburn: I have a final question, which is specifically for Ms Egan. It is on an entirely different area of the bill—the duty that it will place on public bodies to report on the steps that they have taken to further the United Nations Convention on the Rights of the Child—which you address in paragraph 35 of your submission. It is important to put on record what you say:

“NHS Lothian recognises that undertaking more robust assessments will result in unidentified needs having to be met. While NHS Lothian staff agree with this in principle, it is expected that additional resources will be required to implement the plans. Lothian has a diverse population with around 19% of the population from ethnic minority backgrounds, and in Edinburgh it is much higher at around 26%. Although not all of these children and young people will have additional needs, there will be a number who will require interpreters (consultations take much longer), who may be socially isolated and have increased mental health needs. Therefore additional resources will be needed to ensure that these children and young people’s needs are identified and met that have not been outlined in the current Financial Memorandum.”

However, the fact that Lothian—particularly Edinburgh—has a diverse population and may have groups of young people who require interpreters has not come about as a consequence of the bill, so the question is: what happens at the moment? I presume that interpreters are provided.

Sally Egan: That does happen, but we need to prioritise. Getting interpretation services is a huge burden, particularly in antenatal care, when women need know what is happening, particularly during labour. The bill and the financial memorandum outline what has to happen for
GIRFEC and the named person to be implemented, but we in NHS Lothian have been trying to address the growing requirement to meet the needs of our early years population, which is a highly diverse population. The same is true of additional learning in schools—we need to work out how we can meet the needs of children in that context.

We must recognise the issue. It is not associated with the bill per se, but it is something that we feel very strongly about. Our parent groups, which we consulted on the bill, felt that we had to get across the point about our minority ethnic population. We have a very high population of people from Poland and eastern Europe, as you know, but we have all sorts of other populations, too.

**Jamie Hepburn:** You say that the issue is not related to the bill, but in your submission you said that it was related to the bill. That clarification is helpful.

**Sally Egan:** As a consequence, we need to ensure that account is taken of those populations when the named person proposal is implemented.

**Jamie Hepburn:** Of course—I do not doubt that, but my point is that the circumstances that you identify in your submission do not arise as a consequence of the bill. You have agreed with that, which is helpful.

**Gavin Brown:** The largest cost that will fall on the NHS as a consequence of the bill is the cost of health visitors and public health nurses for what the financial memorandum refers to as the 20 per cent of children about whom there will be emerging or significant concerns. In 2016-17, which I suppose will be the first full year of implementation, £10 million of the £16 million cost to the NHS is attributed to health visitors and public health nurses for that cohort. The cost is shown as £10.2 million in 2016-17, but two years later, in 2018-19, it has fallen to £5.3 million. That is a drop of almost—but not quite—50 per cent in a two-year period. Is that credible?

**Clare Mayo:** Our written submission states that if the approach is effective there may be a small reduction over time, but that health visitors currently have little capacity to engage effectively with families and communities in a way that models the preventative approach.

As we have just heard from Sally Egan, most health visiting time is tied up in working with the families who need the most support. Health visitors do not currently have the capacity to undertake the preventative approach that is at the heart of the getting it right for every child agenda. The development of a child’s plan requires significant time and co-ordination, and at the centre is a relationship with a child and their family. Meetings need to be arranged, for example, and such demands are not going to reduce year on year at the rate that the modelling in the financial memorandum suggests. If we are going to make a real—and lasting—difference to families, that additional health visiting capacity needs to be sustained.

**Sally Egan:** I agree with Clare Mayo. I do not think that the cost will reduce significantly, because every year another 10,000 kids are born or come into Lothian, with the same percentage ratios for those who have vulnerabilities and additional needs.

Perhaps in 10 to 15 years, when we have been really effective with our early intervention and with our adult programmes to address substance misuse et cetera, we will see a changing picture, and health visitors will need to do less. However, the assumption is a bit flawed, and the more we have discussed it following the publication of the policy memorandum, the more we have picked up that view from our peers throughout Scotland.

I am the chair of the Scottish child health commissioners group, and I am also a member of the group—to which Clare Mayo referred—that Rosemary Lyness is about to kick off in Scotland to address various workstreams. The general consensus among the child health commissioners and the public health nursing advisory group is that the financial model in that part of the bill is a bit off-course. We will not see a difference that quickly.

**Jim Carle:** I fully support what has been said. The presumption that such a reduction in funding will be appropriate at that time in the process is flawed. We need to accept that we have to take what is very much a generational approach to try to turn the situation around. We will not see—if I can put it rather crudely—better parents until we have been undertaking the process for 10 to 15 years or thereabouts. At that point, we may be turning the situation around entirely, which we anticipate being able to do.

Where we are struggling is that we do not anticipate that the reduction in the percentage of families who require intensive intervention will come into play until much later in the life course. We are looking at seven years, perhaps, before we see any great impact. If we look at the birth pattern of the average family in Scotland, we see that most children, from the oldest to the youngest, happen to be born within a seven-year period, and we have to accept that the need for intervention in families will remain for a significant period of time.

**Gavin Brown:** Can you clarify the two figures that you mentioned, Mr Carle? You talked about 10 to 15 years, and towards the end of your answer you mentioned seven years. What will
happen in 10 or 15 years that will not happen in seven years? Is it just a gradual process, or is there something significant about the seven years?

Jim Carle: It is a gradual process, but we expect to see individual families turning around and being healthier—if I can put it that way—within a seven-year period because that roughly corresponds with the birth profile that we are dealing with. When I was talking about a 15-year approach, I was thinking about the timescale in which the young people who are born today, for example, will be heading towards parenthood. We hope that early intervention will mean that people are better parents in future.

Gavin Brown: That is helpful.

11:30

Clare Mayo: I will make a couple of specific points. The figures in paragraph 60 of the financial memorandum are based on an assumption that by 2018-19 some children will be being born into families with whom the named person is familiar, which will lead to a significant reduction in additional work. We think that that considerably overstates the efficiencies that will be achieved in that way.

Another assumption is that less time will be spent dealing with families who are in crisis. It is a huge assumption that within two years there will be far fewer families in crisis. There will be families in crisis for many years to come.

Table 11 gives estimated additional midwife, health visitor and public health nurse hours for the coming years. However, a new 27 to 30-month check is being introduced, to identify toddlers who need additional support, and to reflect the new approach the figure for three-year-olds needs to remain at 10 hours for each year until the cohort of children who are in the zero to one age group in 2016-17 reach the age of three. That would reflect that we are picking up toddlers with additional needs now. Table 11 shows a fairly steep reduction in hours over the next four years, but we question those assumptions.

Gavin Brown: According to table 11, in 2016-17 a four-year-old will need 10 hours of additional work but by 2017-18 a four-year-old will need only four hours of additional work. That strikes me as an extremely large drop in a single year. What are your views on that?

Sally Egan: Some of this is to do with the idea that if everyone intervenes earlier and more intensive work is done, by the time a two-year-old is four they might need less intensive intervention than might be needed in year 1 of full implementation.

As I said, the working around this was fairly crude and was based on what we knew and what our staff were telling us, which we fed back to the GIRFEC team in the Government. We really do not know—it is an unknown quantity. People need to realise that assumptions are based on the best anecdotal evidence and data—we looked at our numbers at the time—but on-going review will be needed to ensure that we are making a difference.

The early years collaborative has three workstreams, which will look at the periods from pre-birth to a year old, a year to three years old and three years to five years old. There are high-level targets in there. We need to consider whether we are improving outcomes—it is not just about reducing hours. If we are not improving outcomes, we might find that we need more hours. That is a real possibility.

Everything is interrelated. If the health visitors find need that has not previously been identified, they will need resources so that they can support those families. Will we have enough early years provision for children who are not looked after? There will be additionality for looked-after two-year olds, but a child should not have to become looked after to secure additional intervention. It worries health visitors that they might pick up a lot of need for early intervention and then have to intervene without support from other people. It is all tied up with the wider picture about the resources that will be available to help health visitors to deliver the agenda.

Gavin Brown: We have considered the additional hours that might be required; another factor that affects the cost is the hourly rate that applies. The financial memorandum applies an hourly rate of £19.04 for midwives, health visitors and public health nurses. Clare Mayo, do you think that the accurate figure would be £19.04 plus the 22.5 per cent to which you referred in your submission, or should a figure higher than £19.04 apply? What is the official RCN position?

Clare Mayo: I think that the £19.04 was calculated on the basis of the mid-point of the scale, with national insurance added. Given that 47 per cent of the workforce are over 50 and most of them are on the upper end of the pay band, £19.04 per hour does not accurately reflect what the current workforce is paid. Sally Egan said in her submission that that certainly does not reflect what the current Lothian workforce is on. We took into account the fact that we are looking to recruit rapidly a significant number of newly qualified health visitors, which would take the average figure down, and perhaps the mid-point would be reasonable going forward. However, I certainly agree with Sally Egan. The figure does not reflect the salary bill for the current health visiting
workforce, as most of them are at the upper end of the pay spine.

**Gavin Brown:** Is it fair to say that, in the early years of the policy, taking the mid-point will not be correct, whereas down the line it might be?

**Clare Mayo:** The £21 an hour figure is more accurate for the current postholders in the health visiting workforce.

**Gavin Brown:** For clarity, if the £21 an hour figure is accurate, is it the RCN’s view that the actual cost is £21 an hour plus 22.5 per cent, or does the £21 encapsulate that?

**Clare Mayo:** No. The 22.5 per cent is critical, because health visiting hours cannot be bought. Those hours have to be translated into posts. That is what the 22.5 per cent is about: it is about turning hours into posts. That is a separate calculation.

**Gavin Brown:** I get that, but what I am trying to establish is whether, if we take £21 as the figure, we need to add 22.5 per cent to that to get an accurate reflection of the costs.

**Clare Mayo:** Yes.

**Gavin Brown:** Thank you. That is helpful.

I have a final question. Another cost in table 13 is described as “Training backfill”. In 2015-16, around £1 million is allocated to training backfill. In 2016-17, there is approximately zero pounds, and the figure is zero pounds for every year after that. The financial memorandum says that training costs will be “subsumed” in future years. Is that a fair assumption, or is it likely that there will be some training costs after the initial year?

**Sally Egan:** There will always be on-going training costs, as we have staff turnover. Perhaps the training will not be as intensive as the initial training, depending on how the bill pans out and what is required. We try to build training costs into our workforce planning as part of NHS Lothian’s financial plan, but I do not think that the training costs will go away. We will always have to do multi-agency training, and I think that it will be in a menu of wider training.

I think that our Midlothian colleague spoke earlier about the children affected by parental substance misuse training for working with parents who have drug and alcohol problems. I think that it will be part of a wider training package for the whole early years delivery, not specifically for the named person. We are already developing modules through LearnPro that staff in both adult and children’s services can use, which will give them the basis of what getting it right for every child is about and what the roles of the named person, the lead professional and so on are.

**The Convener:** That has exhausted the committee’s questions. Are there any further points that the witnesses feel the committee has not covered and on which they wish to comment? You do not have to do so, but please feel free to do so if you want to.

**Sally Egan:** This is a simple point. In response to your questions to our Midlothian colleague earlier, we have a breakdown of the additionality in midwifery and health visiting by the community health partnerships in Lothian. For Midlothian, the breakdown is an additional six health visitors and two and a half midwives. That might help the committee to get a perspective on what things mean in respect of the staffing population in Midlothian. We have the same information for the other local authorities, which I can give the committee if it wants it.

**The Convener:** That is very helpful. Does Ms Mayo or Mr Carle wish to add anything?

**Jim Carle:** I would like to reinforce a couple of points. We are strongly of the view that the situation needs to be kept under review. We would fully accept the need to take on board the burden of ensuring that we have effective monitoring and evaluation systems in place so that we can feed back accurate information to you, but if we are truly to change the culture in Scotland and grasp this opportunity, in which we strongly believe, we need to consider the need for on-going investment in the early years to achieve the outcomes that we are trying to achieve.

**Clare Mayo:** Similarly, I think that there is a huge opportunity in the Children and Young People (Scotland) Bill to resource a universal health visiting service so that every family in Scotland has a named health visitor who can support people in their roles as new parents. There is a huge opportunity, but it must be properly resourced. I urge the Finance Committee to look carefully at the figures and ensure that there are the resources behind the bill to make a difference for families.

**The Convener:** Thank you. I do not know whether we can ensure that the resources are there, but we can certainly lobby for them to be there.

Thank you very much. I appreciate the questions from the committee and, most important, of course, the evidence from our witnesses.

There will be another brief suspension of five minutes or so to allow the bill team to get into position.
Meeting suspended.

On resuming—

The Convener: We still have a lot to get through today, and colleagues have loads of questions that they are keen to ask. We will therefore get into them more or less straight away.

I welcome our third panel of witnesses on the financial memorandum to the Children and Young People (Scotland) Bill. They are Mr Tim Barraclough, Mr Scott Mackay and Mr Phil Raines, who are from the Scottish Government’s bill team. You are all very welcome. I understand that there will be a short opening statement.

Tim Barraclough (Scottish Government): Good morning. The Children and Young People (Scotland) Bill forms part of the Government’s programme to meet ministers’ ambition to make Scotland the best place in the world to grow up. As members are already well aware, the bill’s provisions are many and detailed. The key principles that thread through the bill are early intervention and prevention; the rights of children and young people; putting the child or young person at the centre of services and ensuring that services are designed around them to meet their needs; and the most efficient and effective deployment of public services, focused on achieving outcomes.

The bill builds on the ever-growing body of expertise, knowledge, understanding and experience relating to the wellbeing of children and young people. It is a broad-ranging bill and covers a number of related policy areas, some of which are large and complex. As members know, those include measures around children’s rights; the getting it right for every child approach, which is designed to help services to co-operate and collaborate to meet children’s needs; a substantial extension of the free provision of early learning and childcare; and a number of measures to provide further support to looked-after children and those in kinship care.

The financial memorandum sets out the Government’s best estimates, at the time of the bill’s introduction earlier this year, of the costs of all those measures. In formulating the estimates, we drew on evidence from a wide range of stakeholders, who each brought their own different perspectives to the task. Accommodating all that evidence, taking into account the uncertainties that exist and then projecting the future impact of what are complex measures on a national basis—a Scotland-wide basis—meant that we had to make a number of assumptions in developing the estimates. As members have already heard, the only true test of those assumptions will come with the implementation of the bill’s provisions.

As I said, the bill builds on approaches and good practice that have been developed in previous years. Scottish ministers have already made a significant investment in services for children and young people, confident in the long-term benefits—tangible and intangible—that that will bring. Ministers intend to continue with that investment and, as part of the discussions on the funding settlement for future years, they have committed to fully fund the additional costs to local authorities that arise from the bill.

The team are happy to take any questions that members may have on the bill and its financial memorandum.

The Convener: Thank you very much for that opening statement. As is normally the case, I will start with a few questions; I will then open out the session to colleagues.

First, I take you to the SPICe briefing’s executive summary, which says:

“The majority of costs (around 90% on average) fall on local authorities. According to COSLA, the Scottish Government has committed to fully funding the requirements of the Bill in respect of their impact on local authorities.”

Does that remain the case? In a number of circumstances, costs could go beyond what is in the financial memorandum. Are there contingencies to ensure that what has been stated is indeed the case?

Tim Barraclough: The Government has promised to fully fund the additional costs. The financial memorandum represents our estimate of additional costs as at earlier this year. Of course, more information will come out, now and as we proceed towards implementation of the measures, and the Government is committed to ensuring that additional costs are properly assessed as they arise and are funded as appropriate.

Scott Mackay (Scottish Government): That will be taken forward as part of the continuing discussions between ministers and local government in negotiating settlements.

The Convener: We received a letter from the minister, Aileen Campbell, who spoke about additional moneys “for extending funded early learning and childcare to two year olds”, with an additional £3.4 million giving “a total of £4.5 million.”

There is also
an estimate of £1.2 million for uprating partner provider payments”.

which will become £2 million.

Why is there such a differential, for example between £1.1 million in the original estimate and £4.5 million? That seems quite a difference.

Scott Mackay: The original estimate sets out our assessment of the additional hours required for looked-after two-year-olds. The letter that you received refers to the overall funding position for looked-after two-year-olds in its entirety.

At the moment, there is an element of funding that flows to local government through the early years change fund. In arriving at the figure of £4.5 million, ministers sought to address overall costing issues with the provision for looked-after two-year-olds in its entirety, rather than the additional hours that are set out in the financial memorandum.

The Convener: On the methodology, it has been suggested that the basis for many of the assumptions in the financial memorandum is unclear. A number of organisations, including COSLA and individual local authorities, have questioned that.

Can you talk us through how some of the assumptions were derived? As you will have heard from this morning’s evidence, there is quite a difference of opinion around how the assumptions will work in reality.

Tim Barraclough: It is fair to say that the availability of base evidence is quite variable across the range of policy areas covered in the bill. We tried to get the best estimates that we could and tested them quite extensively, not only with COSLA but with other stakeholders. We had a series of meetings at which we went through our cost assumptions and tested them against the information that the stakeholders could provide at the time.

Phil Raines (Scottish Government): It might be helpful to pick up on specific assumptions, because we will have arrived at and tested each set of assumptions in different ways. At the end of the day, however, we have to provide a cost estimate, so we use the best information that we have to develop a national picture—and I stress the word “national”. Clearly, given some of the assumptions and costs used in developing national averages, you would not expect every local area to fit exactly with the national average. You heard earlier from Alistair Gaw—I am sure that we will discuss the kinship care order in due course—and although his position might reflect what goes on in Edinburgh we have to take the evidence that suggests what the national picture might be. There is a question about how that funding goes to local areas, but that is a subsequent issue that I am sure we can also discuss.

The Convener: Why, then, have costs highlighted by the RCN for

“office space, travel expenses, administrative support and consumables”

not been included? Moreover, what consideration has been given to capacity with regard to health visitor numbers, which is an issue that we discussed with the previous panel?

Phil Raines: I guess that there are two sets of issues with regard to the development of health visitor numbers and indeed health visitor capacity: first, our assumptions about additional workloads; and, secondly, our assumptions about current experience. We have to test out those assumptions, particularly in respect of GIRFEC, because, as has often been said at this committee and elsewhere, there is a significant tradition of implementing GIRFEC and therefore experience to draw on.

Traditionally, in many of the calculations for health visitors’ administrative costs, those costs are subsumed within their general costs; indeed, that distinction has arisen from the way in which local authority costs are provided. I have to say that with regard to consumables and accommodation I am not sure what sort of costs we would be talking about. However, the key cost with regard to health visitors and the way in which NHS would carry out its GIRFEC duties arises with regard to the 18 to 20 per cent of children with particular concerns.

The Convener: What is your response to NHS Lothian’s comment that

“We do not think we can meet these costs within our current financial allocation. Nor do we think there is the capacity within the Health Visiting workforce in Scotland to respond within the timeline”

and that the bill’s assumptions in that regard are wholly unrealistic?

Phil Raines: You raise a couple of sets of issues. On the question whether the health board can meet the costs within its existing capacity or financial settlement, the financial memorandum is testament to our view that there is a need for some form of additional capacity and therefore a need to meet certain additional costs. The question of how those costs are to be met will have to be discussed with NHS boards, taking account of the capacity of the current health visitor
workforce and how that might need to expand over time.

We are happy to go through the specific assumptions that underlie the costings in the bill but I can tell the committee that a lot of time and work have gone into devising them and thinking them through. The underlying principle of those assumptions is early intervention—intervening in the life of a child or a family at an early stage when trouble might be starting to happen saves costs further down the line.

I noticed that some of the discussion with the previous panel revolved around table 11. I am happy to go through that, but many of the assumptions around it work on the basis that, if there is more intensive intervention than currently exists with nought to one-year-olds, the same level of intervention will not necessarily be required in the following years, as they get older, because we will have intervened early and taken the necessary steps to prevent problems from arising. We would expect that that early intervention will lead to less time being spent year on year.

12:00

The Convener: Indeed we would, but we would not expect a precipitous reduction. People who work at the coalface and deal with those children say that there will be significant improvements, but that that will happen not over a couple of years or three years but over a much longer period. Their concern is that, given their experience, the figures, in terms of delivering the savings that you are talking about over a short period, are not realistic, and that that would lead, two or three years after the bill has been passed, to significant funding shortfalls.

Phil Raines: I am a bit surprised by that. If you look at table 11, you will see that we have put in an additional 10 hours for the nought to one-year-olds in the first year that is listed, which is 2016-17. That is not the time that every health visitor should be spending on kids with emerging significant concerns at present, but what we expect to be put in additionally. We would expect that to bear some fruit in the following year—2017-18—as those kids become one-year-olds. The assumption is that the 10 hours that we invest on average, because some will require far more intensive work than others—will bear fruit and that such an intensive investment of health visitor time will not be needed as we go forward.

The Convener: In table 11, why do the 10 hours for nought to one-year-olds in 2016-17 and 2017-18 then go down to eight hours? Why is there assumed to be a 20 per cent reduction in need for newborn children?

Phil Raines: We would expect that, as the health visitor role gets bedded in over time and in particular as midwives have a much more active role at the pre-birth stage, savings will develop. As GIRFEC becomes, if I can use the expression, the air that services breathe, which is what all the provisions in the bill aim to ensure, we expect that, over a couple of years, we will not need such intensive involvement from the early stages, although we will still require significant involvement, and that is reflected in the provision of eight hours from 2018-19 onwards.

The Convener: I will allow my colleagues to come in in a minute because they are all keen, but I want first to ask the panel a further question about nursery provision. You will have seen the comments that Inez Murray makes in the National Day Nurseries Association submission, paragraph 15 of which states:

“We are not confident that partner providers of early learning and childcare can meet the costs associated with the Bill unless measures are taken by government to ensure sufficient funding is allocated to local authorities and actually reaches providers in the form of a viable hourly rate for high-quality provision for children.”

You will have heard that some authorities have been quite naughty about passing on funding. What will you do to ensure that the funding is realistic and that it is delivered directly by local authorities to partner nurseries?

Tim Barraclough: The bill does not provide a mechanism for local authorities to pass on funding to partner providers. Ultimately, there are different arrangements in different areas between local authorities and their partner providers. At the moment, Government policy is not to dictate to local authorities exactly how they should spend their money but to provide money within the overall envelope of their single outcome agreement. There is no specific proposal that we can put forward or would have in place to say that there will be some kind of ring fencing that will force local authorities to pass on funding to partner providers.

The Convener: Indeed, so you cannot guarantee that what you are trying to achieve through the bill will be achieved. Local authorities might not pass on the money to those who will have to deliver at the sharp end.

Tim Barraclough: We are putting an obligation on local authorities to ensure that there is provision and that the 600 hours of early learning and childcare are available. Again, it is up to local authorities to decide how they will deliver on that obligation, but we expect them to deliver on it properly and we will provide the funding to help them to do that.
The Convener: Without further duties, is it not the case that some local authorities are more likely than others to be—let me try to put this diplomatically—much more supportive of the bill’s aims? We might find significant differences in delivery across the country.

Tim Barraclough: Local authorities will also be under a duty to report on how they have delivered all their children’s services, so such matters will then become part of public information. I do not think that we are in a position to say what position local authorities might take in implementing the bill. All that we can say is that the bill will require them to undertake a number of duties, including the provision of the early learning and childcare hours, and we expect them to deliver that.

The Convener: I will now open out the discussion to colleagues.

Michael McMahon (Uddingston and Bellshill) (Lab): My question is, similarly, on the assumptions that have been made in the financial memorandum. Mr Barraclough, in your opening comments you said that the only true test of those assumptions will come with implementation. That is a given, as we will not entirely know until then. However, best estimates and educated guesses, as well as evidence from abroad, suggest that investment in prevention involves an initial cost that needs to be met if we are to achieve the desired outcomes that we ultimately want to see. The submissions to the committee and the evidence that I have received from talking to people about their perceptions of the bill suggest that the assumptions that you are working on do not meet with the general concept of preventative spend.

For example, the provision of foster care is currently so far behind the curve that, even if we invest more in that, we will still fall way short of what would be required to achieve the outcomes that you are predicting in the financial memorandum. If the assumptions that you are working on are flawed from the outset, you cannot possibly achieve the predictions that are in the financial memorandum. Is that not the case?

Tim Barraclough: All that I can say is that, as some of the evidence that we have seen says, the Scottish Government has provided the best estimates that were available at the time of the introduction of the bill for the provisions that are in the bill. There are wider issues about whether we can achieve all the policy aims of ministers, but the bill is only one part of a much wider policy programme to deliver better outcomes for children and young people. A range of other measures might need to be undertaken to support what the bill is contributing to achieve.

We went through a rigorous process of finding the best available evidence, which is patchy in some places and non-existent in others. We have made some assumptions on how the measures will play out over time, but those estimates could of course be looked at again in the light of further evidence from authorities and health boards as they prepare for and implement the provisions. These are the best estimates that we could put together at the time.

Michael McMahon: From the evidence that we have received, the best estimates from NHS boards, children’s charities, local government bodies and foster care organisations all say that your best estimates are wrong. Somebody is getting it wrong, so why are you right and all those other organisations wrong? Those organisations are looking at good evidence that comes from their experience and from comparable investments in other jurisdictions. Why is it that all those organisations are wrong and your best estimate is right?

Tim Barraclough: I am not saying that all those organisations are wrong. As I said in my opening statement, we received a wide range of submissions from a wide range of stakeholders, some of whom were saying quite different things. We had to make our best judgment on which of those needed to be incorporated into an estimate for the additional costs of the bill and which needed to be thought about or looked at in future in the light of further evidence.

As I said, at the moment we have gathered together evidence—this is not just evidence generated internally within the Scottish Government—from consultation with a number of stakeholders. In particular, with COSLA we had a very intensive going through of all the provisions that relate to local authorities. Some of the evidence that we have seen has suggested that our estimates are as good as they can be in the light of the evidence available.

Scott Mackay: We have taken the steps that we can to test our assumptions with key stakeholders prior to arriving at the figures that we have put in the financial memorandum.

Michael McMahon: Is all the evidence to substantiate your position available?

Tim Barraclough: The financial memorandum sets out where the Government has placed its judgment. Some evidence was gathered from meetings and from the submissions that the Government received as part of the consultation process. Some of that information will be available, but some of it came from sitting down with organisations such as COSLA to work through the estimates.
Phil Raines: I add that it is not as if all this is new. Michael McMahon refers to the approach that has been taken to preventative spend. Some areas of the bill are new. For example, there is no real precedent for kinship care, so we are having to give our best guess and make assumptions in working out when the savings kick in. However, there is a lot of experience with GIRFEC, so we can draw on the experience of people who have gone a long way down that road. We therefore understand the kind of savings that will be made, the kind of experience that staff will have in developing GIRFEC and taking it forward and the timescale within which that might take place.

Michael McMahon: It is therefore strange that organisations that are involved in GIRFEC say that your estimates are all wrong.

Phil Raines: Not the City of Edinburgh Council nor Highland Council, which are among the local authorities that have perhaps been taking forward GIRFEC most actively. Authorities that have not taken it forward as actively will obviously have more concerns and more uncertainty about how it might operate in their areas.

The Convener: Jamie Hepburn has a question.

Jamie Hepburn: Actually, convener, you have already covered the area that I wanted to explore, so I have no questions at this time.

The Convener: Okay. John Mason has a question.

John Mason: My questions follow on from what Michael McMahon said. A number of phrases such as “best estimates” and “best guess” were used in the previous answer. This is a major bill and I think that everybody welcomes its intentions. Is it fair to say that we are going into largely unknown territory, for example on kinship care, and that neither you nor the previous witnesses have a great idea of the needs, the costs, the demand or any of that? Is that not basically where we are at?

Phil Raines: If we take the example of kinship care, I am not sure that that is the case. The figures are a best-guess estimate, because it is a new policy area and we do not have any obvious precedents. It is not like the throughcare and aftercare proposals, because in that case we have some understanding of how the system operates now for 19 to 21-year-olds, so we can make some assumptions that can be reasonably tested about how that approach will be applied up to the age of 25 or 26, although there may be differences of opinion about how the policies are applied.

Kinship care is different, but we stand by the logic of the kinship care model and the proxies—if I can use that term—from which we have drawn the estimates. The kinship care order operates on the very simple principle that if you can get one child out of kinship care for one year, you can save about £9,000. The bill tries to do that in three ways. It does it through the kinship care order, which is in effect an existing instrument—a section 11 order under the Children (Scotland) Act 1995 with some modifications—to entice people in kinship care to move across to a less expensive way of achieving permanence for children. The bill also tries to achieve it by diverting children who might be in informal care and children in families where a crisis might be emerging through family counselling measures to avoid them going into care. We have drawn the estimates from the best evidence that is available.

I know that Alistair Gaw and others talked about the assumptions that went into trying to predict the numbers. It is a tricky business to try to work out what the numbers will be, but it would seem reasonable, given that we are looking at something that is a variation of an existing instrument—a section 11 order—to look at how section 11 orders have been taken up to date. We can derive estimates from that about the number of kinship carers and informal carers who will come forward. The estimates suggest that the numbers are, relatively speaking, quite low.

We have therefore added to those estimates and suggested that a higher percentage of those people might well come forward. I point out, however, that we have drawn on the available national data and the experience of people who have tried to seek permanence through the existing instruments.

12:15

John Mason: I do not disagree with you, but I have to say that my worries increase whenever you use phrases such as “best available”.

The Convener: How long is a piece of string?

John Mason: Exactly.

You have argued the case for how this will be better for one child, but I think that we are all convinced of that. Our questions are actually more about the number of children who are out there and the number in informal kinship care, and the only impression that I have had from the witnesses we have taken evidence from is that such information is extremely uncertain and very vague. Given that I am past being convinced that there are any certain numbers out there, my next question has to be about the review process that is in place. If a local authority, the local NHS board or whoever finds things to be quite different from what had been expected, how quickly will that be fed through to Government and how quickly will the figures be reviewed?
Phil Raines: It all depends on the different provisions in the bill. With regard to looked-after children, a key element of liaison between the Scottish Government, local government and key stakeholders will be the development of the regulations on this issue. Those regulations will be key to how the kinship care order and throughcare and aftercare are taken forward, because they will set out the types of support that might be available, the timespan over which that support might legitimately be offered and the tests that will apply to people who wish to be considered for the kinship care order or throughcare and aftercare. The process of developing those regulations will enable feedback to be made, and that feedback will continue as the relevant teams in the Scottish Government work with stakeholders in implementing them.

As for GIRFEC, the Scottish Government and the relevant team has for years now been very actively engaged in implementing the approach across the country. I am saying this off the top of my head—the figure is certainly in the financial memorandum—but the Scottish Government is putting something like £7.8 million to £8 million into engaging with stakeholders to get a sense of the issues or problems that might be emerging. We have also set up a programme board comprising the Scottish Government and stakeholders to monitor and keep an eye on the assessment of implementation. In short, the mechanisms for feeding back information on how the policy is being put into practice, where the problems are emerging and, indeed, what the resource implications are going to be are already in place, but they are different for different parts of the bill.

John Mason: Mr Raines—I think—said in a previous response that meeting the need for more health visitors was a matter for health boards. Again, I am concerned by the uncertainty over this issue. We have, for example, heard evidence about the number of health visitors that will be needed, adding on cover for holidays and all that kind of thing, and whether they can be trained in time.

Phil Raines: I note, first of all, that these provisions will be implemented by 2016-17 and that we have costed and indeed put together timescales for implementation.

I have two comments on this matter. First of all, this is established practice in the NHS. Chief executive letter 29, I believe, made it very clear that GIRFEC should be implemented across the NHS while health for all children 4—or HALL 4—made it clear that this was to be a very important part of the roles of health visitors and key health staff. It is not as though a lot of this is new; there should already be a significant awareness of GIRFEC and its issues.

As for calculating what might be required, we can calculate where the gap is and what additionally will be required to take these duties forward. How health boards choose to do that is partly a discussion that they need to have with national Government anyway, but the issue is also how each individual health board can take these things forward. After all, they will all be in different places and starting from different points in implementing GIRFEC. At the moment, therefore, it is difficult to be able to say exactly how health boards will move forward on this, the areas where significant expansion might be needed in the number of health visitors and the areas where, because they have already implemented the named person service to a significant extent, changeover might not be as major an issue as it will be for others.

John Mason: I have a question on staff costs in nurseries. A rate of £4.09 per hour was suggested in evidence, but we heard that Glasgow was paying £2.72 per hour and that the actual costs may be about £4.51 or thereabouts. Is there no involvement from the Government in that? Is how that works left entirely to local authorities so that if, say, nurseries were to close, that would just be one of those things?

Tim Barraclough: At the moment, it is a matter for local authorities between them to arrange for the provision of early learning and childcare, so it is not something that we are getting involved in.

John Mason: Thank you.

Gavin Brown: In the previous evidence session, we focused on the cost to the NHS. We heard evidence from representatives of two health boards and the Royal College of Nursing who, when asked whether the cost estimates were credible, said no. The estimated cost for working with the 20 per cent of children with significant concerns is £10.2 million in 2016-17, dropping to £5.3 million in 2018-19. How did you arrive at a figure that is close to a 50 per cent drop over a two-year period?

Phil Raines: I think that the majority of that will be from the reduction in staff costs, but I need to look at the table in question.

Gavin Brown: It is the bottom line in table 13.

Phil Raines: The most significant reduction is clearly to do with the role of health visitors with the children who have the most needs. The information in table 13 is based on table 11: it is our estimate of the reduction in the number of hours that the health visitors would need to spend with the zero to five-year-olds. We believe that that will be a reflection of the impact of early
intervention and the intensive work that will be put in at the start of the roll-out of the named person role. For example, the zero to one-year-olds will receive quite intensive support in 2016-17, but we estimate that by 2019-20 they will not require as much intensive support. That is reflected in the tapering of the costs.

**Gavin Brown:** The evidence that we heard from health organisations was that that was simply incorrect and that we would not get anywhere like that drop in two years; they suggested that it would take seven years or, in some cases, 10 to 15 years. How did you reach your view that the costs would drop so dramatically and quickly?

**Phil Raines:** I refer to the answer that I gave the convener earlier, which is that table 11 is based on the assumption that, if there is significantly more intensive support for zero to one-year-olds in year 1 of the roll-out of the bill’s provisions, they will not require as much investment, on average, as they become older and become the one-year-olds of the following year and the two-year-olds of the year after that. Clearly, though, some will require quite intensive investment all the way through. However, the impact of getting in early is in ensuring that the problems—this is the whole principle of having the named person—that people would not necessarily have spotted previously can be recognised and addressed quickly. We would expect that impact to be reflected pretty immediately. On average, we would expect to see benefits for those kids in successive years as they get older.

It might be true for some children that the intensive intervention in their lives when they are one-year-olds is still going on when they are five or six. However, if that were true for all the children in the 18 to 20 per cent group, that would suggest that the operation of the named person and the whole ethos of early intervention are questionable. As the child gets older, we would expect there to be some gain from intervening in their first couple of years.

**Gavin Brown:** The experts from whom we heard said that they would expect gains but that they would be small initially and become larger over time. Do you think that those experts did not understand table 11?

**Phil Raines:** They may well have understood table 11. We tested our assumptions in areas that have gone very far forward with GIRFEC, such as Highland, which has developed it as a pathfinder. We believe that our assumptions are reasonable. We tested them with managers who are responsible for taking forward the implementation of GIRFEC across NHS boards. The feedback that we got from them is that they are not unreasonable assumptions.

**Gavin Brown:** You have taken it up with health boards, but the health boards that spoke to us said that you were wrong. Who are the stakeholders who disagree with what we have heard this morning?

**Phil Raines:** Those people who are furthest forward in implementing GIRFEC, which are areas such as the Highlands, and those groups that have been most closely associated with the roll-out of GIRFEC within each of the individual health boards—the GIRFEC implementation groups, which I believe are called CEL 29 managers groups.

**Gavin Brown:** Your view is that Highland would agree with you. Which other key stakeholders would agree with you?

**Phil Raines:** I have set out the areas that we have spoken to.

**Gavin Brown:** Just for clarity, was the Highland example based on 100 children?

**Phil Raines:** Was the Highland example based on 100 children?

**Gavin Brown:** Yes.

**Phil Raines:** The Highland example is based on the 2006 to 2009 pathfinder, which was developed and rolled out across the region as a whole.

**Gavin Brown:** Okay, we will leave that point but, for the sake of clarity, the only stakeholder that you can name that agrees with you is Highland.

**Phil Raines:** And those managers who are responsible for implementing GIRFEC across NHS boards.

**Gavin Brown:** Okay, but we heard a contrary view from NHS boards earlier, so where is the evidence from the managers who you describe?

**Phil Raines:** There will be contrary views about this.

**Gavin Brown:** That is what I am saying.

**Phil Raines:** We are drawing on the experience of those people who have implemented GIRFEC or are closely associated with GIRFEC. Other views will come to bear.

**Gavin Brown:** This is quite important. You are saying to the committee that the views that we heard from NHS boards—the official NHS board
Phil Raines: I am not sure that what you heard would count as the official NHS view. I imagine that there is a range of different views about implementing GIRFEC because, as has often been pointed out, it is quite a complex area that requires looking at assumptions and, to a large extent, testing it on the way that it has been rolled out by those who, if you will, are pioneering the approach across Scotland.

Gavin Brown: I do not want to dwell on the point, but do you see my issue? This parliamentary committee has received formal written submissions from NHS boards, which we then questioned. In my view, therefore, that is the official NHS view. You are saying to me that you have evidence from others within the NHS who disagree. As a parliamentary committee, we cannot just take the word of someone who says, “This is what other people think.” The process is that we look at the evidence, analyse it and make decisions on it, so my question is this: where is the evidence that supports the view that you have just given?

Phil Raines: I come back to talking about the basis on which we drew the estimates, which was largely the experience of those areas that have pioneered GIRFEC, and assumptions on the way in which early intervention would kick in. I have not heard evidence today that specifically challenges that; the earlier witnesses just said that they would see gains being developed during seven or 15 years, which was one of the expressions used earlier. I would find that surprising for an individual child’s life. We tested those assumptions out with a specific group that was responsible for implementing GIRFEC. That is the basis on which we have derived those costs.

Gavin Brown: I am not satisfied with that response, but I will not dwell on it because we are not getting anywhere.

The other issue that I wanted to focus on was the cost of GIRFEC for local authorities. The Government view is that the cost in additional teacher staffing time in the first year will be £7.84 million but, for every year after that, the cost will be nil—there will be no cost at all for any local authority. How did you reach that conclusion?

Phil Raines: The assumption is that, for the first year, there will need to be a specific roll-out of training around the named person and the child’s plan. The financial memorandum sets out the number of staff that will be involved and the backfilling ratios, as well as the costs for how we think the development of materials might take place, and what have you. For every year thereafter, we assume that—and we have tested this with a number of stakeholders—it will be integrated into existing continuing professional development, as is the case with training for additional support for learning needs under the Education (Additional Support for Learning) (Scotland) Act 2004.

12:30

Some of the training that teachers are required to do annually, such as child protection training, will change significantly when the named person system is in place, because the way in which child protection is dealt with will change significantly. We imagine that, rather than the named person training being added to the existing complement of continuing professional development that local authority staff and, in particular, education staff require, the existing CPD courses will need to change to integrate the way in which the named person system should operate. The named person is not a role that stands separately from what teachers or health visitors do. A lot of it—in fact, the heart of it—is based on the way in which things should be done at present. For example, a lot of it is based on ideas of child protection. So the way in which child protection training is provided should take into account that named person training.

Gavin Brown: Okay, but let us forget about training for a minute and think instead about the implementation of the additional 3.5 hours that will be required for the 10 per cent cohort. You say that that will cost £7.8 million in year 1 but will not cost anything in year 2, and you say that you have tested that with stakeholders.

The stakeholder that has had the most mentions from the Government bill team is COSLA. You have road tested your assumptions with it—I think that the expression that was used was that you have done “intensive” work with COSLA. However, on the issue of staff costs, the COSLA submission says that the assumption that there will be no costs in year 2 is “speculative” and basically assumes that the money “can be saved from elsewhere in the system to accommodate this.”

The submission continues:

“COSLA is of the view that the ... cost identified for staff time should be funded on a recurring basis.”

It goes on to say:

“It is not the experience of some local authorities that implementing GIRFEC is reducing the number of meetings or administration.”

You have relied heavily on COSLA in reaching your assumptions, but it has reached a polar opposite view from the bill team—COSLA says
that the funding should be recurring, whereas you say that it should be nil.

Phil Raines: I would not say that we relied heavily on COSLA for the assumptions; I think that we said that we had intensive discussion with COSLA about the issue.

We worked with COSLA on whether we could develop a methodology or way of calculating the costs and benefits that arise from GIRFEC. I believe that, in statements to the Education and Culture Committee yesterday, COSLA admitted that the area is difficult and complex, so there is no suggestion that there is an alternate methodology or better way of doing it—COSLA recognises that there is a lot of uncertainty.

I am certain that some of COSLA’s members would challenge the basis on which the figures have been derived. We have derived the estimates on the basis of areas that have been implementing GIRFEC. That necessarily means a smaller number of areas. In particular, we have worked with Highland Council and the City of Edinburgh Council. Members will have noticed that Alistair Gaw, who works in an area that has been fairly active in taking forward GIRFEC, did not seem to have significant concerns about the assumptions. We have tested the estimates with other areas such as Fife, Angus and South Ayrshire.

Gavin Brown: Do all those areas agree that the cost will be nil from year 2 onwards?

Scott Mackay: I draw your attention to the written submission from the City of Edinburgh Council, which states:

“The Council believes that the costs for Children’s Rights, GIRFEC, Early Learning/Childcare and Other Proposals are accurately reflected based on our understanding of the requirements of the legislation.”

Gavin Brown: One council says that, but COSLA, which represents all the councils, takes the polar opposite view. Which other councils say that the cost will be nil, which seems counterintuitive?

Phil Raines: I believe that the committee has received submissions from Falkirk, Fife and South Ayrshire councils. I am not sure whether you have one from Angus Council, but it was one of the councils that we spoke to. Certainly, if memory serves, although I believe that Falkirk might have drawn attention to our estimate with regard to the number of hours per child on average—the 3.5 hour figure—I do not believe that the other three councils necessarily contested the underlying assumption about the way in which the savings kick in relatively quickly.

Gavin Brown: So, you are saying that all the other councils that have submitted evidence think that a cost of zero for year 2 onwards is accurate.

Phil Raines: We would give significant weight to the views of people who have had experience in implementing GIRFEC in the ways that the bill proposes, because they have been at the front line and have seen how GIRFEC works in practice. We would naturally take a line from their experience.

Gavin Brown: If a majority of councils held the opposite view, would you change your assumptions and the funding that would flow through the bill?

Phil Raines: We have to draw the estimates that we have made from a logical basis. If councils are able to put forward a series of arguments that clearly undermine that basis, as opposed to just saying “We don’t agree”—I think they have to say something a lot more substantive than that—we will want to look back at the assumptions.

A number of the areas are difficult to estimate, so we certainly remain open to having such discussions. We would want to test all suggestions with people who have real experience in implementing GIRFEC, as opposed to people who have a speculative—if I may put it that way—concern about what things might be like in their area and what they think implementation might involve.

Tim Barraclough: GIRFEC is already being rolled out across the country. As Mr Raines said, there is a GIRFEC implementation programme board, which is monitoring the implementation and trying to assess what is involved. It will get back evidence on how everything is working across the country. We would not want to change assumptions on financial assessments on the basis of submissions without a good deal of appropriate evidence to demonstrate where the costs are rising.

As I said right at the beginning, the Government has said that it will fund fully the cost to local authorities. That will have to be kept under review as we implement the provisions. We should get a lot more information as we get closer to the implementation of the bill, not just through the GIRFEC implementation programme board but through developing the regulations. It is a constantly changing picture. Funding decisions will obviously have to depend on the information that is available at the time. That information will move us on from the point at which the financial memorandum was produced.

The Convener: Thank you. That concludes questions from committee members, but I still have a few to ask.
I will start by following up Gavin Brown’s questions. On the one-off costs that Gavin Brown touched on, the Association of Headteachers and Deputes in Scotland said:

“We are unconvinced that the training costs identified are adequate for successful implementation of this legislation.”

COSLA commented that the suggestion that the on-going training can be absorbed into continuing professional development is “unrealistic.” Those bodies are saying that to go from £7.8 million to zero just cannot happen. Surely the Association of Headteachers and Deputes in Scotland and COSLA are significant bodies.

Phil Raines: We would go back to the people who have implemented GIRFEC. Alistair Gaw did not seem to have issues about a recurring significant additional cost, and the City of Edinburgh Council has taken this approach forward.

I imagine that a national body is required to reflect the diversity of views that come forward, some of which are from folk who do not necessarily know how the GIRFEC training will be put into practice. Other views come from people who have had experience in implementing GIRFEC, so they can say how it works.

The Convener: As Gavin Brown said, it seems counterintuitive that this training can just be squeezed into existing training with absolutely no cost, including materials, time or other expense. I just cannot see how the figure can be zero. If you had said that it was going from £7.8 million down to £2 million or £1 million, people might have thought, “Okay, fair enough”, but it is very difficult for me to accept that zero is a realistic sum of money as we go from one year to the next.

Phil Raines: The materials have largely been developed, so I think that we would just be tweaking them in-house—

The Convener: Materials get upgraded and replaced. They do not last for ever. There has to be a budget for that.

Phil Raines: That is true for any training that is being taken forward.

The Convener: A lot of eggs have been put into the Highland basket. I understand that things are working well there, but how can you extrapolate from what is happening in Highland to predict what will happen in Glasgow, where the socioeconomic difficulties are on a much more massive scale? Glasgow has some very deprived communities, and there is not deprivation on the same scale in Highland, so we would expect Glasgow to be much more difficult to tackle.

Phil Raines: That is a fair point, and it is one of the reasons why the assumptions have been tested in a variety of areas, which represent communities in which the make-up of the population of children and young people is quite different, such as Edinburgh city, Falkirk, Fife and South Ayrshire. We included a mix of rural and urban areas, areas that experience significant deprivation and areas that do not generate the same level of concern. Glasgow might not necessarily be the same, but we tested assumptions in areas that face many of the issues that Glasgow faces in implementing GIRFEC.

The Convener: Capital costs did not come up in evidence this morning, so I will raise the issue before we round off our deliberations. Capital costs have been estimated at £30 million each year over three years. I am always suspicious of such round figures. When people say the estimated cost is £7.8135 million, I think, “Oh, work’s been done there”, but when they give a figure like £20 million or £30 million I think that they have guessed.

East Renfrewshire Council noted the issue and said in its submission:

“There is not much detail on how the total capital of £30m per year for 2014-2017 has been determined.”

Will you give us a wee bit of information about how the capital costs were arrived at?

Tim Barcalaough: Yes. The starting point is that there is very little evidence from which we can draw assumptions about the increase that will be needed for infrastructure as a result of the bill.

The capital costs are based on the Scottish Futures Trust metrics that are currently used for the Scotland’s schools for the future programme. Our assumption about the additional infrastructure that might be needed is based on those metrics. We do not have a baseline survey of what infrastructure is currently in place, nor do we know how local authorities will decide to increase capacity, where that is needed. Will they do so through new build or through additions or adjustments to existing capital assets?

We talked to the people who are responsible for the Scottish Futures Trust initiative, to get a relatively rough-and-ready proxy for the capital infrastructure that might be needed. The primary school metric gives an allowance of 7.5m² per child, at a cost of £2,350 per square metre. If we apply the metric to a new unit for 40 children, we get a cost of about £700,000, but that can vary depending on the size of the unit. If we double demand to 80 children, we are talking about £1.4 million. A sum of £30 million would enable up to 60 new stand-alone units—if that was how local authorities chose to increase capacity—to be provided nationally.
As I said, the assumption is not based on a thorough and detailed assessment, authority by authority, of what currently exists and what authorities might want to put in place. That evidence is simply not available. Therefore, you are probably right, in that this is one area in which the estimate represents a best guess.

The Convener: Will councils bid for the funding or will they have an allocation?

Phil Raines: They will have an allocation.

The Convener: Does the early years change fund come into play in this context?

Tim Barraclough: The element of the early years change fund that relates to provision of childcare for two-year-olds is being transferred across to the overall envelope for early learning and childcare in future years—I think that the minister alluded to that in her letter to the committee.

12:45

The Convener: Thank you for providing that clarification. I have—you will be glad to hear—just one last question.

What further detailed work will be carried out to flesh out the resource implications of the bill? You have talked about reviews in the evidence that you have given us, but what on-going work will be done to ensure that we hone the figures prior to implementation so that we get a much more accurate reflection of what the costs will be from 2016?

Tim Barraclough: It is often easier to come up with more accurate estimates of what provisions will cost once the detail is clearer. As we have developed the bill, people have said that they need more clarity about what it will mean in practice. At the moment, we are going through the process of thinking about what will go in secondary legislation to flesh out the requirements. On the basis of that, we will continue to discuss with all the stakeholders who are affected what it will mean in terms of resourcing for them.

Phil Raines: The work will be different for different parts of the bill. Under GIRFEC, there is already a programme board and it has active monitoring and engagement work under way. That will continue to look at what we might call the implementation requirements and any resource requirements from the bill.

A lot of the work on early learning and childcare will come through the hub of COSLA, but there will be a lot of discussions going on between the relevant teams in the Scottish Government and COSLA—not least on issues such as distribution, which you raised—and also with the NDNA and other key players about how the funding requirements may start to look over time.

There will also have to be a lot of engagement on looked-after children, again through COSLA but also through the Association of Directors of Social Work and with some of the key stakeholders who have actively engaged in the issues that are involved in things such as the kinship care order, throughcare and aftercare, to see what they might start to look like in practice, not least as part of the development of secondary legislation.

The Convener: I thank the bill team for their robust responses to our questions, and I thank colleagues round the table for their questions.

At the start of the meeting, the committee agreed to take the next item in private. I therefore close the public part of the meeting.

12:47

Meeting continued in private until 12:50.
WRITTEN SUBMISSIONS TO THE FINANCE COMMITTEE

City of Edinburgh Council
Coalition of Care and Support Providers in Scotland
COSLA
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Renfrewshire Council
Falkirk Council
Fife Council
Getting it Right for Every Midlothian Child Partnership
National Day Nurseries Association
NHS Ayrshire and Arran
NHS Lothian
North Ayrshire Council
Perth and Kinross Council
Presiding Officer
Royal College of Nursing Scotland
Scotland’s Commissioner for Children and Young People
Scottish Borders Council
Scottish Council of Independent Schools
South Ayrshire Council
South Lanarkshire Council
West Dunbartonshire Council
West Lothian Council

Letter from Aileen Campbell, Minister for Children and Young People to Convener of Finance Committee
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. The Council took part in the consultation exercises and provided estimates of the possible financial impacts on the Council using the information provided. The Council subsequently provided comments on the assumptions being made by the Scottish Government for the estimated client numbers, costs and savings and the overall financial impacts of these assumptions.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. The Council does not believe that its comments have resulted in any change to the original assumptions made by the Scottish Government, particularly in relation to kinship carers.

3. There was a significant difference in opinion in potential additional costs due to the Council believing that the number of informal kinship carers taking advantage of the new legislation would be significantly higher than the Government estimates.

4. There was also a significant difference in the assumptions of value of savings, or avoided costs that would be delivered to the Council as a result of the new legislation. The difference was due to a view, by the Council, that the stated aim of the legislation itself would not lead to the reduction of Looked After Children entering kinship care and therefore the level of savings is significantly over estimated.

5. The FM does, however, acknowledge ‘that there have been methodological challenges in estimating the costs of some provisions, particularly with respect to the duties relating to……kinship carers…… These challenges in large part relate to estimating how the preventative approach set out here will result in future avoided costs….’

6. In relation to throughcare and aftercare the estimates of the numbers taking advantage of the legislation and the number that would cease to receive support as their age increased also differed, with the Council believing the numbers taking advantage to be higher and the number ceased to be lower.

7. See answer to question 4 below for further details.

Did you have sufficient time to contribute to the consultation exercise?

8. The Council had sufficient time to contribute to the consultation exercise.
Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details.

9. The Council believes that the costs for Children’s Rights, GIRFEC, Early Learning / Childcare and Other Proposals are accurately reflected based on our understanding of the requirements of the legislation.

10. However, we do not believe the financial implications of Looked After Children are accurately reflected:

11. Throughcare and Aftercare
We estimate that for Edinburgh the numbers becoming eligible for support would be approximately double the number estimated in the FM based on known care leavers that would become eligible for further years of support. We also do not believe there will be a significant reduction in numbers eligible from 2018-19 as estimated in the FM.

12. The Council’s estimate of additional funding required was £763K per year for 2015/16 and 2016/17 which is approximately £500K greater than the amount we believe Edinburgh would receive. This would increase to approximately £600K per year from 2017/18 as we do not believe the numbers eligible for support will reduce as assumed in the FM.

13. Kinship care
In terms of costs the major difference between the Council’s assumptions and those in the FM are around the number of potential informal kinship carers that will come forward to be assessed. The FM estimates between 1.5% and 3.5% will come forward, whereas, the Council believes this will be significantly higher.

14. The Council estimates there to be approximately 800 informal kinship arrangements in place in Edinburgh and is of the view that significantly more carers than 3.5% will come forward for an assessment. The number ultimately ‘successful’ in receiving support will be less than the number that come forward for assessment but as it costs £1,500 for every assessment should the number be 10% not 3.5% there would be an additional cost of £78K a year in assessments. The Council feels the number coming forward will be significantly greater than 10% however.

15. In terms of savings the Council does not believe the number of Looked After Children entering kinship placements will reduce by the levels estimated, and therefore, does not generate the level of savings to cover the increased costs. The FM estimates the number would increase by 29% from 2015/16 to 2019/20 using the national increase from 2007 to 2011 of 87% as the basis for arriving at this estimate.

16. However, for Edinburgh the rate of growth for this period was significantly lower at 28%, and therefore, we are not anticipating the rate of future growth and by implication the level of potential savings the FM assumes can be delivered.
17. The Council also believes that the informal kinship arrangements deemed to be ‘at risk’, and eligible for support, will be greater than the number that would ever become ‘Looked After’ from the breakdown of such arrangements and therefore costs will be incurred supporting informal kinship placements that would never have become costs as a Looked After child. Therefore, there is not a direct link between the costs incurred and the costs saved/avoided.

18. In summary:
the costs will be greater due to the number requiring an assessment being significantly greater than 1.5% - 3.5%, the value of potential savings / avoided costs being significantly lower due to the size of forecast growth forecast in the FM being too high for Edinburgh and the link between all ‘at risk’ placements that will receive support and the savings from breakdown in informal kinship care placements not becoming LAC is not valid.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

19. The Council believes that the costs and any savings for Children’s Rights, GIRFEC, Early Learning / Childcare and Other Proposals are accurately reflected based on our understanding of the requirements of the legislation.

20. As described in question 4 above we do not believe the costs and savings / avoided costs in relation to throughcare and aftercare and kinship care are reasonable and accurate as they under estimate the potential costs and over estimate the potential savings.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

21. With the funding made available for Children’s Rights, GIRFEC, Early Learning / Childcare and Other Proposals the Council is confident it can meet the financial costs of implementation.

22. In the case of Looked After Children the funding the Council would receive through the FM is insufficient. It would have to divert resources from other early intervention and preventative measures, such as those funded through the Early Years Change Fund, to match increased costs or lower than forecast savings.

23. Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise? The Council believes that the margins of uncertainty are accurately reflected for Children’s Rights, GIRFEC, Early Learning / Childcare and Other Proposals.

24. However, as previously described we do not believe the margins of uncertainty in relation to throughcare and aftercare and kinship care accurately reflect what we believe will be the impact on Edinburgh.
Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

25. The Council believes it can meet the requirements of the GIRFEC legislation, however, the costs are based purely on teachers requiring training and the costs of back filling them. We would expect staff other than teachers to also require training which will incur additional costs.

26. Other than the issues around throughcare and aftercare and kinship care already stated we believe the FM reasonably captures costs associated with the Bill.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

27. Should there be any subordinate legislation in relation to the rate of allowances paid to foster carers or kinship carers, which was originally suggested in the consultation, this would incur additional costs to the Council. Also, case management of throughcare and aftercare to age 25 and support to kinship carers from any subordinate legislation would generate additional costs. Any estimate of additional cost could only be provided once the details of the proposed legislation were provided.
1. CCPS is pleased to provide a brief submission to the Committee in connection with its scrutiny of the financial memorandum accompanying the Children and Young People (Scotland) Bill. We welcome the Government’s policy objectives of enhancing children’s rights and improving services, among others, and support the general principles in the Bill.

2. This brief submission focuses on Part 3 of the Bill which introduces new arrangements for the planning of children’s services. These arrangements are of particular interest to our members in their capacity as providers of children’s services. In that regard, we would like to highlight the scope of provision of children’s services by the voluntary sector. Approximately 27% of all registered children’s services (excluding childminding; 11% including childminding) are provided by the voluntary sector. The voluntary sector makes a particularly significant contribution, proportionally, in respect of day care, and of residential child care, fostering and adoption (in other words, care and support for looked after children). In addition, the voluntary sector is a leading provider of care and support to disabled children and their families in their own homes.

3. Part 3 of the Bill places new duties on local authorities and health boards to jointly plan children’s services in their area. This includes a duty to consult with voluntary sector service providers, among others (s. 10(1)). In addition, it appears to place duties on third sector providers to participate in the preparation of children’s services plans (s.10(6)) upon reasonable request, as well as to provide information, advice or assistance in relation to services planning (s.14). While we have questions about whether it is appropriate or even possible to place duties on non-statutory bodies, we obviously support the policy intention of wide participation in the planning process. We have expanded on this point in our evidence to the Education Committee which is available on our website.

4. However, for the purposes of the Finance Committee scrutiny, the point we want to raise is that the financial memorandum anticipates no extra costs as a result of these planning proposals. This is based on the assumption that local authorities already have a statutory duty to produce integrated children’s services plans. Unfortunately, there is no consideration given to the costs that might come with wider participation in the planning process by voluntary sector service providers and other non-statutory partners, as anticipated in the ‘duty to meet reasonable requests to

1 http://www.ccpscotland.org/assets/files/ccps/policy/CCPS%20Evidence%20to%20Committee%20on%20CHYP%20Bill%20July%202013.pdf
participate’ laid out in s.10(6), or in the ‘duty to provide information, advice or assistance in connection with the planning functions of Part 3’ contained in s.14. We think this is a worrying gap in the analysis of the financial implications of the Bill and believe that some additional resource will be required in order for the participation of non-statutory partners to be effective and sustainable.

5. CCPS members have also raised concerns about the scope of the information sharing provisions in s.26, and in particular s.26(3) and (4), which appear to propose very wide ranging duties that extend beyond the functions of the named person, and that would, by virtue of s.26(7), apply to voluntary sector providers. We have asked the Scottish Government and the Education Committee for clarification of the policy intention behind these provisions and raise it here because we believe there may be resource implications for voluntary sector providers should the provisions be interpreted and applied in their broadest sense. The financial memorandum is silent on this. While further clarification of these duties, either by amending the bill or through guidance and regulation may allay fears about resources, we suggest that, in the meantime, there should be some consideration of these potential costs as part of the overall financial impact analysis.

6. It is worth noting that the financial memorandum in connection with the Public Bodies (Joint Working) (Scotland) Bill provisions on joint strategic planning contains no consideration of the resource implications for engagement of voluntary sector providers in the integration planning process, despite indicating that ‘the full involvement of the third and independent sectors, service users and carers, will be embedded as a mandatory feature of the commissioning and planning process.’ We raise this here not because we disagree with the principle of engagement - on the contrary, we support it and are advocating for it to be strengthened. But it will take some resource, and doubly so, given the proliferation of planning processes being developed across a range of proposed and existing legislation (e.g. community planning partnerships) and the expectation (and indeed hope) that community engagement in planning (including service providers) will contribute to the transformational change that public service reform needs to achieve.

This evidence is submitted by CCPS for and on behalf of its children’s services members:
Aberlour Child Care Trust; Action for Children; Barnardo’s Scotland; Camphill Scotland; Capability Scotland; Children 1st; Cornerstone; Crossreach; Includem; Kibble; NSPCC Scotland; Penumbra; Quarriers; Royal Blind; Sense Scotland; The Mungo Foundation; Who Cares? Scotland; VSA.
About CCPS
CCPS is the coalition of care and support providers in Scotland. Its membership comprises more than 70 of the most substantial care and support organisations in the voluntary sector, including the leading sector providers of services for children, young people and their families. Collectively, CCPS children’s services members:
• support more than 150,000 children, young people and families in Scotland
• employ 5,800 staff
• manage a combined total income in Scotland of over £160 million, of which more than 80% relates to publicly-funded service provision.

Services provided cover the range of services to children, young people and families including early years provision; family and parenting support; residential child care and other support for looked after children; support for children and young people who have experienced abuse and neglect; support for disabled children and young people and their families; young people with mental health problems; and services for young offenders.
FINANCE COMMITTEE CALL FOR EVIDENCE
CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM COSLA

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
COSLA, which is the representative voice for all 32 Scottish local authorities, responded to the consultation that preceded the Bill, including commenting on the financial assumptions. COSLA supports the policy intent of the Bill and has also worked with Scottish Government officers over a prolonged period to try and understand the financial implications for local authorities from the requirements of the Bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
COSLA is of the view that not all the issues raised as concerns have been addressed by the Financial Memorandum (FM).

Did you have sufficient time to contribute to the consultation exercise?
COSLA needed to collate responses from 32 local authorities and therefore the time allowed was challenging. This was exacerbated by the lack of detail in the Bill requiring much of the data to be indicative and underpinned by a number of assumptions. There is still a lack of detail in many areas.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
COSLA is of the view that there are several areas covered by the Bill for which the financial assumptions made are not robust enough and therefore the financial implications for local authorities may not be accurately reflected. Examples of these areas as set out below.

GIRFEC – Named Person
The duties placed on councils will have a financial impact, primarily the cost of training teaching staff and undertaking the new duties as Named Person. Although transitional funding is included in the FM, there is also anticipated to be on-going costs which have not been built into the FM and which cannot be met from within existing resources.

Training
The costs for the initial 2 days training seems reasonable, however the suggestion that the on-going training can be absorbed into CPD is unrealistic. Such on-going
training will displace other training on CPD days and actually require additional time on a regular basis. In order to complete the training it will require a degree of backfilling and this will be substantial given numbers of staff involved, particularly in education services. In primary schools it is likely that the best placed person to be the Named Person will be the head teacher, but the class teacher will certainly require to have a role in the process and be involved with the Named Person in delivering that role. This will have training costs and as noted above it is viewed that this will displace other training on CPD days and will therefore require an element of backfilling. There should also be an additional allowance for each authority to cover other related costs incurred e.g. venue costs, travel and subsistence.

**Staff Costs**
The calculation of the first year's additional costs at 3.5 hours for 10% of all children appears to be reasonable, although the complex nature of the role needs to be recognised and this assumption tested against experience. However the assumption at paragraph 52 that some form of system change will accommodate these costs for years 2 onwards is speculative and basically assumes that £7.8m can be saved from elsewhere in the system to accommodate this. COSLA is of the view that the £7.8m cost identified for staff time should be funded on a recurring basis. By not passing the funding on to local government, the Government are affectively taking the savings which this policy may deliver centrally. This stops local government from reinvesting the savings in other service areas, which in our view actively works against the policy initiative around Early Years and Preventative work as supported and encouraged by the early years Collaborative.

In relation to paragraph 52, it is equally likely that the early intervention approach of the Named Person will increase awareness of more children who will require additional support. It is not the experience of some local authorities that implementing GIRFEC is reducing the number of meetings or administration.

**Administrative Costs**
For the same reasons identified above the costs identified of £1.95m should be funded on a recurring basis.

The FM assumptions regarding the lack of on-going additional funding for staff and administrative costs for local authorities is inconsistent with the assumptions identified at paragraphs 60 and 61 of the FM which sees on-going recurring costs for the NHS. Whilst we understand that NHS and local government are different and will have different financial pressures, we question why the NHS is being funded on an on-going basis while, as we have identified, local government is not.

**Early Learning and Childcare**
COSLA supports the expansion of early learning and childcare as proposed in the Bill. Whilst COSLA is more comfortable with the robustness of the cost estimates for the extension of the early learning and childcare, as local authorities have indicated they are broadly happy that they are an accurate assessment of implementation costs, the data has been provided on the assumption that the 600 hours is delivered in as practical a way as possible and without the additional requirement of more flexibility for parents. COSLA has worked closely with Scottish Government in trying
to identify the appropriate costs for the expansion of early learning and childcare provisions of the Act. COSLA sought costs from each local authority and these identified the least cost option and the most cost option for the implementation of the 600 hours by one of the five suggested models identified in the consultation document on the Bill i.e. without offering flexibility to parents. This therefore provided a range of costs for each local authority to implement the extension to the early learning and childcare provisions by the method best suited locally. There is more difficulty in estimating costs in relation to offering greater choice and a range of options, particularly if that range of options is prescriptive. This is an area where the robustness of the assumptions on costs needs monitoring as the policy is implemented. Flexibility can be introduced gradually in future years, although it is important for Scottish Government to understand that local authorities can only introduce this increased flexibility within the overall resources made available by Scottish Government.

With regard capital costs, the FM highlights the very limited basis of the assumptions, and costs to individual local authorities will depend on local circumstances and current pre-school estate. This is an area where close monitoring of the actual costs against the costs identified in the FM is recommended.

Corporate Parenting
COSLA has long been an advocate of corporate parenting and has been an enthusiastic supporter of publications such as ‘These are our Bairns’. This section of the Bill is important as for the first time it will set out a legal definition of what it means to be a corporate parent.

It is, however, important to note that any formalised definition of corporate parenting will have practical resource challenges in terms of on-going training/briefing sessions to ensure organisational wide commitment for councils and other community planning partners.

Extending Throughcare and Aftercare Support
COSLA is supportive of the policy intent of the extension of aftercare provision to young people that have previously been looked after, although the full extent of the impacts of this policy and any potential funding gap as a result will not be known until the secondary regulations are in force.

COSLA has less certainty over the accuracy of the costings of this aspect of the Bill due to the difficulties for local authorities in estimating the financial impact. In particular, we are not convinced that the Scottish Government have accurately assessed the average annual cost of support, estimated at £3142 per young person in the FM. This figure includes an estimate that the average cost for travel would be £400 per year; that emergency payments up to £200 per year could be payable and that payments to outside agencies (such as for third sector support) would be around £1500. It also includes an estimate of staffing costs required to support the young person. From discussions with local authorities we believe that these costs underestimate the actual cost of supporting a young person who has left care; it is important for the Committee to realise that there is variation in the opinion as to the
costs involved, which will depend on the assumptions made, but from experience a figure nearer £6,000 per person is considered more realistic by some local authorities. In particular we are aware that some local authorities have indicated a concern that travel costs are not realistic and do not factor in cost of travel particularly in rural areas.

Another key concern that COSLA has on this issue is that we have no way of knowing what the impact of the extensive welfare reform programme currently underway will be on this group of young people, so there is every possibility that the numbers seeking assistance may not fall as much as expected. Early indications of the impact of welfare reform show significant increases of presentations in many local authorities for this service.

**Counselling Services**

The move towards early intervention is welcomed by COSLA, provided it does not represent a duplication of other provisions within the Bill. However, the key point which we have made in our submission to the Education Committee is that this section should not specify counselling service over and above other support that could be provided to families. Counselling is a specific form of support, and would not be appropriate in all situations. We have argued that this section should be amended to remove its specific reference to counselling and replace it with a more general reference to support service.

In terms of the financial memorandum, COSLA has concerns that the potential estimated cost for provision of counselling is underestimated. Current experience is that commissioning parenting capacity assessments from third sector organisations is an average of £2,500 per assessment. There appears to be no substance behind the estimated avoided costs and the margin for error would be significant. In addition, there is no provision in the FM to invest new funding in this key service area that currently has limited extent and availability.

**Kinship Care**

COSLA would welcome a mechanism that provides families with a better alternative to formal care and it is our hope that kinship care orders are a success and provide an alternative for some families. It has also been well discussed over the last few years that the growth in kinship care and the corresponding increase in kinship care allowances have put pressure on local government finance. By transferring parental rights to carers, the orders should allow families to better access other financial benefits from the DWP.

In the end how successful orders prove to be at reducing payment of kinship care allowances will depend on how attractive the orders are to families. At this point of time it is difficult to project accurately how many families will take out a kinship care order. Uptake will depend on a number of factors such as impact of welfare reform, the support provided by local authorities and the detail of how orders will operate (including eligibility and length and type of support), all of which will only be known when set out in secondary legislation. The interplay of these variables makes it difficult to know for certain whether the financial assumptions made by Government are accurate.
When COSLA discussed with local authorities the financial implications of this aspect of the Bill no national picture emerged, and it is clear that local authorities have found it difficult to evaluate the future impact of the policies. The assumptions relating to estimating the take-up and level of costs per order made by Scottish Government that underpin the figures for this complex area are numerous, increasing considerably the potential for the actual costs to differ from the estimated costs. There is a concern from within Council that this new order will not be embraced by families and therefore not free up monies as assumed. The potential loss of income to families during this period of economic pressure may well play a significant part in decision making by families considering this option. If only a small number of formal and informal kinship carers apply for a kinship care order then it is unlikely that any savings would be achieved in the first few years as the cost of the various elements of support would outweigh any savings. We would reiterate that local authorities will only be able to implement what they are funded to deliver.

With considerable uncertainty over how many families will take up an order, the financial risk facing local government is potentially significant. The exact size of this risk depends on how accurately Scottish Government has modelled the take up of kinship care orders. We therefore believe it is necessary that both COSLA and Scottish Government jointly scrutinise and monitor the spend on this legislation to ensure that local government is, and continues to be, sufficiently resourced to carry out the new duties that will be enacted.

Examples of uncertainty in the assumptions include:

In tables 24 and 25 in the FM there are a range of percentage assumptions as to eligibility and uptake, but it is not clear that these assumptions are robust. At paragraph 125 there is an assumption that of the estimated 15,668 children in informal kinship care only between 1.5% and 3.5% per year would apply for a kinship care order, but there is no rationale for using these figures and, of course, there is a risk that the uptake could be significantly higher than this.

The projected avoided costs shown at table 28 suggest that by 2019/20 a minimum of £10.347m can be saved by reducing the number of formal kinship care arrangements. Of this sum around £4.2m is based on reduced demand on social workers but it is debatable as to whether this would free up transferrable resources. The underlying assumption in relation to the potential for avoided social worker costs is that demand for formal Kinship Care orders continues to rise at recently experienced rates and therefore local authorities would need to spend an additional £4.2m (lower end cost) on additional Social Worker time. This is a very broad assumption as to future demand and also that local authorities would actually be able to afford the projected increased numbers of social workers. An alternative scenario is that existing social workers are diverted from other work.
Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
The Children and Young People Bill is a complex piece of legislation with significant financial implications for local authorities. The accuracy of the Scottish Government’s analysis and therefore the funding that would be made available depends on a large number of assumptions that will not be fully tested until the Bill is implemented. Councils have concerns over the future financial impact of the policies and that for this reason the financial implications to local authorities require in-depth scrutiny.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
COSLA has gained a confirmation from the Scottish Government that it is the intention to fully fund the requirements of the Bill, but with the implementation stretching beyond both the current spending review period and the end of this current parliament in 2016 then future budgetary decisions would be dependent on the result of several spending reviews. The commitment made by this administration to fully fund the Bill must be honoured in future years by whatever Government is in power and kept under on-going review. We also believe that it will be necessary for both COSLA and Scottish Government to jointly scrutinise and monitor the spending on this legislation, to ensure that local government is and continues to be sufficiently resourced to carry out the new duties that will be enacted.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
In some areas the FM would appear to reflect the margins of uncertainty but others, for example, kinship care, seem more optimistic that savings will cover the costs, particularly in the shorter term.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
The main issue in overall terms is the financial commitment this Bill brings at a time of declining resources generally and increasing demand for other local authority services. The Committee will want to be confident that the potential benefits of the Bill can be afforded over the long term despite the challenging financial circumstances.
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
This cannot be quantified until work commences on implementing the various parts of the Bill and more is known on the level of flexibility being afforded to the local authority.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes. Our comments on the financial assumptions were more comprehensive at the earlier stages of the bill consultation.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. The Financial Memorandum does not appear to reflect the additional costs associated with the implementation of GIRFEC and the named person. There is a turnover of teachers each year and there will be a requirement to raise their awareness of their statutory responsibilities in terms of the named person element.

3. There will also be costs associated with establishing the named person responsible for those young people who are aged between 16-18 who have left school but not progressed to college or university. Dundee City Council will need to commission voluntary sector services to undertake this statutory duty which will result in additional costs that do not appear to be reflected in the Financial Memorandum.

Did you have sufficient time to contribute to the consultation exercise?

4. Whilst we did respond to the consultation exercise by the deadline, more time would have been appreciated to provide a more comprehensive response within the timescales allowed. In addition, more clarity around the implications of the changes would have been useful particularly in relation to kinship care.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

5. GIRFEC – as stated in question 2, there will be an on-going responsibility for training in terms of staff statutory responsibility for named person. There will also be a requirement to commission additional services from the voluntary sector for those young people who have left school and are not in Education aged 16-18.

6. Early Learning and childcare – there is now an obligation for LA’s to offer flexibility in terms of how the Early Learning and Childcare is to be delivered. This is difficult to quantify until the consultation has been undertaken. Our estimates based on the range of patterns of service delivery in October 2012 highlight a potential
funding shortfall compared to the notional additional funding allocations included in the Financial Memorandum.

7. Early Learning and childcare capital costs – there potentially will be a requirement to expand the number of places on offer in certain of our nurseries but not sure what the financial implications will be of this at this stage.

8. In relation to the proposed Kinship Care arrangements the Financial Memorandum assumes that the “avoided costs” will more than offset the additional costs associated with the introduction of additional duties to local authorities in supporting kinship carers resulting in a zero direct recurring cost arising from the Bill. However the FM does not take cognisance of the various and distinct Kinship Care and Residence arrangements in place across Scotland and it is argued that the avoided costs have been overestimated. At paragraph 130 of the Financial Memorandum it states “because the kinship care order acts to prevent a child becoming looked after unnecessarily, this would give rise to future avoided costs compared with the expenditure local authorities would need to make otherwise”. It is difficult to determine how this will arise – for example Dundee City Council currently makes weekly allowance payments to both kinship carers and those subject to residence orders and would continue to do so under the new arrangements. Therefore the assumption that further Social Work interventions and expenditure would no longer be required as a result of these arrangements is unrealistic. We have concerns that a number of informal kinship care arrangements not currently known to Social Work will become eligible for enhanced support resulting in additional costs to the authority.

9. It is difficult to know exactly what the potential additional costs will be for the additional duties associated with the new arrangements for Kinship care and family therapy given the types of assistance are yet to be prescribed by Scottish Ministers in secondary legislation.

10. The additional costs associated with extending through care and aftercare support appear to be based on reasonable assumptions.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

11. For all areas please see comments as stated in question 4. We assume this question relates to 5 years rather than 15.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

12. As stated in question 4 there are elements of the Bill which are difficult to quantify at this stage. In the current financial situation being experienced by local authorities, all costs associated with the implementation of the Bill should be met by the Scottish Government.
Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

13. Early Learning and Childcare – it is not possible at this stage to determine whether the increase in staff costs associated with offering flexibility is reasonable or not. The Financial Memorandum indicated that they took account of different flexible options set out in the consultation document and assumed this would be the range of options from 2018-19. Three of these options were estimated to be in-excess of Dundee City Council’s GAE share from the Financial Memorandum.

14. Kinship Care – as in 4 above, it is difficult to comment on the reasonableness of the assumptions when not all additional responsibilities have yet been defined. There are concerns regarding the projected level of “avoidable costs” reflected in the Financial Memorandum. This leads to the assumption that the new arrangements will result in substantial longer term “savings” and can therefore be delivered at no additional cost to local authorities.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

15. Questions 2, 4, 6 and 7 reflect Dundee City Council's position.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

16. Again this is difficult to answer until more details emerge.
CONSULTATION

Did you take part in either of the Scottish Government consultation exercises which proceeded the Bill and, if so, did you comment on the financial assumptions made?

1. The local authority and the Community Health Partnership Officer Locality Group for Children and Young People took part in the consultation exercises which proceeded the Bill. Reference was made in the Council’s response to potential financial implications, at that stage not quantified.

Do you believe your comments on the financial assumptions have been accurately reflected in the ESM?

2. In relation to the 600 hrs of early learning and childcare for three and four year olds and vulnerable two year olds, the financial assumptions sit somewhere in the middle of the local authority costings based on the potential models of delivery. Comments made in relation to Kinship Care are less well reflected given the complexity of trying to put accurate financial planning assumptions in place based on the information available.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

COSTS

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM, if not, please provide details?

4. The costs in relation to the establishment of the development of 600 hrs of early learning and care will allow the local authority to develop models of provision but will not meet the government’s aspiration of a fully flexible service. Local authorities have different provision and therefore it is difficult to start from a common baseline.

5. It is difficult to be fully confident in relation to funding for early learning and care for 2 year old children on kinship care orders as uptake is unknown.

6. The costs set out in the financial memorandum in respect of the named person are clear in their financial assumptions which are made. However, there is concern that there is not a recognised ongoing cost to local authorities in the same way that there is an ongoing cost recognised for the NHS.

7. It has been very difficult for local authorities to accurately estimate what the costs will be in relation to Kinship Care and support for young people leaving care.
8. This has been an issue across local authorities and recognised in COSLA’s discussions with Scottish Government representatives. It particularly relates to being able to accurately estimate the number of kinship care orders.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

9. Similar comments to 4 above. The added dimension is the potential impact of welfare reform and the recession on an additional range of families who might otherwise not require assistance.

10. Although it is believed a genuine attempt has been made by the Scottish Government to assess costs/benefits, the financial risk to local authorities is the accuracy of the financial model.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

11. The overall policy direction in respect of the Bill is commendable and there are many aspects of the legislation which are to be welcomed. However, the Bill is being presented to Parliament at a time of significant reduction in public resources coupled with additional pressures demographically, economically and socially.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

12. The fact that the FM notes that the incremental increase in flexibility is more complex to estimate than just additional hours, as well as the fact that there is recognition that models developed by individual authorities will vary due to local need suggests that allowance is included for these margins of uncertainty.

WIDER ISSUES
Do you believe that the FM reasonably captures costs associated with the Bill? If not, what other costs might be incurred and by whom?

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

13. Not possible to comment without further clarification.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. Financial assumptions have been included in the FM, although it is not possible to assess the opinion of every Council’s individual comment. Whilst there is recognition that a number of areas within the Bill will lead to the requirement of additional funding, it is not possible to quantify the accuracy of the assumptions on the actual costs of implementation and delivery.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

4. We are concerned about the apparent lack of clarity regarding the expected costs of Kinship Care and Family Therapy, particularly in light of the inclusion of “avoided future costs”. There does not appear to be inclusion of costs associated with Kinship Care Orders, National Foster Care Rates or Minimum Qualifications for Foster Carers.

5. In relation to GIRFEC, the document states that all authorities are at different stages in implementation. Accordingly, it is difficult to apply a rationale that provides an accurate outcome of costs. One area that is not considered is the ongoing operational costs, particularly for named persons. If trade unions take a view that the introduction of the named person will have workload implications, there may be further pressure on services sustaining delivery within current job sized remits.

6. Additionally, there is still great uncertainty around the provision of 600 hours, particularly with regard to current Early Years staff and teachers conditions of service. This area of uncertainty will have financial implications that are currently not known.
Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

7. We are not sure that our concerns as stated at 4 above have been accurately reflected.

If relevant, are you content that your organization can meet the financial costs associated with the Bill which your organization will incur? If not, how do you think these costs should be met?

8. I think it will be exceptionally challenging for our local authority to meet the financial challenges of the Bill unless there is significant support from central Government. This will apply, not to the whole proposal, but to individual component aspects.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

9. See 4 above.

Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

10. I do not think the FM can reasonably capture the costs associated with the Bill, due to the uncertainties previously mentioned. In addition, see 4 above.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

11. Yes, I believe there will be future costs associated with the Bill through subordinate legislation. Principally, this will arise, as through ASN experience, from particular groups as they apply their rights to services that have not been legislated for previously.

12. In addition some examples:

Kinship Care Orders: £284,000
National Foster Care Rate: £60,000
Minimum Qualifications for Foster Carers: £40,000
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes and comment was made regarding additional expenditure.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. It is difficult to tell, given the necessarily summarised national picture as described in the FM. Where authorities may have atypical issues, such as a greater need to establish new provision to accommodate flexibility as required for providing 600 hours of early education and childcare, it is not possible to ascertain how this has been captured and ultimately will be addressed when allocating resources.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details.
4. Please see response to 2 above. In addition it is unclear which 5 models as noted in paragraph 76 were used for costing the 600 hours of early education and childcare, and so whether these would be relevant/meet the needs of our education authority. The original consultation exercise undertaken via COSLA referenced more than 5 models and councils were invited to provide alternatives.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
5. Difficult to ascertain given reasons noted above. However there are a few particular points we wish to note as follows: We suggest that it is better to use the number of pupils (school roll) as the basis of the calculation rather than the number of schools when determining the extent of additional administrative resources required (paragraph 55 with regards named person). There are many primary schools with larger rolls than secondary schools and needs should be better reflected.

6. In costing the 600 hours of early education and childcare the LFR returns have been used. It is noted that this will be based on the varying current position across authorities. It is not clear how the staff and other revenue additional costs noted in table 17 paragraph 70 have been determined other than as noted in
paragraph 71 that a range of exemplar models have been used for an increase of 125 hours.

7. Given the range of models, it would have been thought that a range of costs per year would also have been determined, but there is only one estimate per year provided. Has for example the average or maximum been used?

8. An assumption has been made that by local authorities secure around 40% of provision through independent, private and third sector partners. Again this will vary locally and for example is much lower in our authority.

9. There is not yet any information on proposed models of distribution of additional funding ultimately agreed, which councils would then be better able to assess if this meets their local needs in taking matters forward.

10. There is not much detail on how the total capital of £30m per year for 2014-2017 has been determined. Paragraph 83 notes some base metrics, but the starting point for each authority will be different based on existing capacity, potential development, availability of partnership provider places and model of delivery to implement the flexible 600 hours of provision agreed with stakeholders. It is therefore difficult to ascertain at a local level if the allocation of this will be sufficient to meet local needs.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

11. As noted above, until the allocation of resources is made to councils it is difficult to comment.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

12. Please refer to above comments.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

13. It is acknowledged that it was inevitably going to be a difficult exercise to cost. In general it captures the main headline costs. It is the agreement of the distribution of additional resources that will require finer detail.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

14. This is difficult to comment until the nature and details of any subordinate legislation is known.
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes, we took part and commented on the financial assumptions.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. Partly. The financial implications of providing additional childcare hours appear to have been taken into account but there are still a number of concerns regarding the other elements of the Bill.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details.

4. Partly. There are still some concerns:

   - Whilst the overall funding for additional childcare hours appears to have taken account of national estimates, there doesn’t appear to be a common approach to models of implementation across Scotland. If a prescriptive approach is adopted then the costs for some Councils might be different from their original assumptions.

   - The estimates for relating to back filling posts for GIRFEC training would seem reasonable but we would contend there should also be an additional allowance to cover costs in year 1 whilst Councils embed this in to their CPD programmes e.g. venue costs, travel and subsistence.

   - The allocation of 3.5 hours mentioned in paragraph 51 underestimates the potential complexity of the role. There is also the potential problem of non-availability of teachers during school holidays and other periods when they are contractually unavailable.

   - In relation to extending through care and aftercare support, the estimate of £2,000 for furnishing is unrealistic and our experience is that this is closer to £3,000. Our experience also suggests that emergency payments are more likely to be £1,000 per annum as opposed to £200.
The estimate of £2,100 per annum for support costs is also less than we are experiencing and again the figure is closer to £3,000.

**Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?**

5. Estimating the potential costs and savings is clearly a difficult task and we have the following concerns:

- See comments in the answer to question 4.
- There is no substance behind the estimated avoided costs shown in table 28 and the margin for error is significant.
- For Kinship Care, there is a concern that some aspects of the Bill may generate a demand that is difficult to quantify until guidance is produced and the cost of supporting carers to apply for the new order is known.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**

6. Not entirely. Given all of the uncertainties above, we have concerns about how some of the potential costs associated with the Bill would be met.

7. In the current climate of limited resources and increasing demand, it is important that any costs arising from implementing new requirements are met by the Scottish Government.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

8. There are concerns about the estimated avoided costs in table 28 and the margin for error is considerable. In relation to paragraph 52, it is equally likely that the early intervention approach of the Named Person will increase awareness of more children who will require additional support. Please also see the responses to earlier questions regarding our concerns. Under the circumstances, it would give greater comfort if there was an undertaking to review costs in the light of experience and that any increase would be funded by the Scottish Government.

**Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?**

9. Please see the answers to previous questions. The costs identified are wide ranging but there are significant concerns regarding some of the estimates which have been provided.

10. Future costs could be significantly affected by the outcome of the National Foster Care Review and they could also be affected by anything included in the guidance which we don't know about as the guidance has still to be produced. Concerns also remain regarding the potential costs for provision of counselling as
our current experience is that commissioning parenting capacity assessments from third sector organisations costs an average of £2,500 per assessment.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

11. See comments in the answer to question 8.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. The Council provided cost estimates as part of the CoSLA response to the Scottish Government consultation exercise in October 2012.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. Some but not all.

Did you have sufficient time to contribute to the consultation exercise?

3. No - We did not have enough details and it would have been beneficial to have specific details at the outset. eg the percentage of grant each Local Authority will receive. This would have given us ample time to make constructive comments based on facts rather than making assumptions eg whether or not the costs are top up or will substitute current payments. Parental consultation around provision of 600 hours of early learning and childcare has not yet been undertaken and potential models to afford parental choice and flexibility has not been developed in sufficient detail. The main issue around the provision of cost information was not having sufficient time to contribute to the consultation exercise, but that parental consultation around provision of 600 hours of early learning and childcare had not yet been undertaken and potential models to afford parental choice and flexibility had not been developed in sufficient detail.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

4. No – please refer to attached workings and comments. The additional £71 per week will definitely have a negative impact on our overspend budgets. There are a number of models which could be put in place to deliver on the Government’s commitment of 600 hours of early learning and childcare. The estimated amount of funding allocated to Fife Council would not fund all of the models for which cost estimates were provided as part of the consultation exercise.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

5. No, the costs do not give a reasonable and accurate projection. 15 years is a long time period and a lot could change. There are a number of assumptions made regarding the proportion of marginal operational and support costs which are difficult
to confirm conclusively, but overall the additional costs of early learning and childcare from 2014-15 to 2019-20 look to be broadly in line with the indicative costs prepared for the consultation exercise. As above, one of the models for which indicative costs were provided for the consultation exercise would not be viable based on the estimated additional funding available to Fife Council.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**

6. **No** - The Social Work budget is already overspent and over stretched due to various factors eg growth in Looked after Children (LAC) and savings required. Any additional expenditure which if not fully funded by the SG will have detrimental effects on our services. The financial costs associated with provision of 600 hours of flexible early learning and childcare can be met only if fully funded.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

7. **No** - Uncertainty is usually around numbers of LAC. There is no reflection for rising costs and the increased number of Children going into care. With regard to the provision of 600 hours of early learning and childcare, the requirement to carry out consultation with local populations of parents every 2 years will result in a certain amount of uncertainty. Models of service delivery may require to be altered to reflect the results of these consultations. However, the amount of funding will inform how much flexibility can be offered to parents.

**Wider Issues**

**Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?**

8. **No** – please refer to attached workings and comments. It is possible that legal costs could arise from parents who are not able to obtain the flexibility they prefer in their local nursery and use legal routes to challenge these decisions.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

9. **Yes** – please refer to attached workings and comments for each strata.
<table>
<thead>
<tr>
<th>Description</th>
<th>Proportion Eligible</th>
<th>Upper Unit Cost</th>
<th>Recurring (R) / Non Recurring (NR)</th>
<th>Fife Council - Our Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start Up Grant</td>
<td>50%</td>
<td>£500</td>
<td>NR</td>
<td>Fife Council already pays for the Start Up Costs eg bedroom furniture. This appears to be a reasonable estimate. The proportion seems reasonable.</td>
</tr>
<tr>
<td>Petition Support</td>
<td>66%</td>
<td>£1,500</td>
<td>NR</td>
<td>The proportion and the unit cost has been increased as per our previous comment</td>
</tr>
<tr>
<td>Information etc</td>
<td>100%</td>
<td>£180</td>
<td>R</td>
<td>The proportion is fine but as previously and the unit cost has been increased by £77.</td>
</tr>
<tr>
<td>Transitional Support</td>
<td>75%</td>
<td>£4,500</td>
<td>R</td>
<td>The FM now provides details of what transitional costs relate to. Page 69 paragraphs 122 to 123. The classification of transitional support will cover a diverse range of support and it is difficult to assess the financial impact. In addition the period of time and cost of each individual support will be varied.</td>
</tr>
<tr>
<td>Transport</td>
<td>10%</td>
<td>£1,550</td>
<td>R</td>
<td>The amount seems reasonable but as we previously suggested, it would be helpful to receive an explanation of what the transport covers.</td>
</tr>
</tbody>
</table>
# Informal Kinship Care Costs

<table>
<thead>
<tr>
<th>Description</th>
<th>Proportion Eligible</th>
<th>Upper Unit Cost</th>
<th>Recurring (R) / Non Recurring (NR)</th>
<th>Fife Council - Our Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting capacity assessment</td>
<td>100%</td>
<td>£1,500</td>
<td>NR</td>
<td><em>Quite a reasonable estimate - A social worker costs us £25/hr (incl oncost) and the amount will give us 60 hours of work.</em></td>
</tr>
<tr>
<td>Start Up Grant</td>
<td>50%</td>
<td>£500</td>
<td>NR</td>
<td>Fife Council already pays for the Start Up Costs eg bedroom furniture. This appears to be a reasonable estimate. The proportion seems reasonable.</td>
</tr>
<tr>
<td>Petition Support</td>
<td>66%</td>
<td>£1,500</td>
<td>NR</td>
<td>The proportion and the unit cost has been increased as per our previous comment.</td>
</tr>
<tr>
<td>Information etc</td>
<td>100%</td>
<td>£180</td>
<td>R</td>
<td>The proportion is fine but as previously and the unit cost has been increased by £77.</td>
</tr>
<tr>
<td>Transport</td>
<td>10%</td>
<td>£1,550</td>
<td>R</td>
<td>The amount seems reasonable but as we previously suggested, it would be helpful to receive an explanation of what the transport covers.</td>
</tr>
</tbody>
</table>
## Cost of proving support to families at risk of becoming looked after

<table>
<thead>
<tr>
<th>Description</th>
<th>Proportion Eligible</th>
<th>Upper Unit Cost</th>
<th>Recurring (R) / Non Recurring (NR)</th>
<th>Fife Council - Our Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parenting capacity assessment</td>
<td>100%</td>
<td>£1,500</td>
<td>NR</td>
<td>*Quite a reasonable estimate - A social worker costs us £30/hr (incl concost) and the amount will give us 50 hours of work .</td>
</tr>
<tr>
<td>Information etc</td>
<td>100%</td>
<td>£103</td>
<td>NR</td>
<td>The proportion is fine but as previously stated, the unit cost has remained at £103 which is not sufficient.</td>
</tr>
<tr>
<td>Intensive Family Therapy</td>
<td>80%</td>
<td>£1,625</td>
<td>NR</td>
<td>As previously stated we still feel that the amount is insufficient and should have been around £2,000.</td>
</tr>
</tbody>
</table>
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes, the Getting it Right for Every Midlothian Child Partnership responded to the September 2012 consultation. We asked how the extension of the responsibility for care leavers would be funded and also requested clarification of where the resources would come from to fulfil the new order for kinship carers.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. These have not been addressed in the FM, although clarifying the source of funding for implementing the Bill’s measures was perhaps not in the remit of the FM.

Did you have sufficient time to contribute to the consultation exercise?

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

3. Nil or minimal additional costs are included for planning and reporting under the various provisions of the bill and this may be the case, provided that the requirements are satisfied by the current plans and reports that are prepared. If planning and reporting is required to be carried out in a particular way or using particular templates or in line with specific guidance then, especially if they must be done in addition to existing arrangements, the costs could be greater than those estimated.

4. The arrangements that will need to be made to fulfil the Named Person role will be complex and will require reorganisation of duties and/or recruitment of staff within Local Authorities in order to put in place a robust referral and response system that works both during term time and also during school holidays, in order to ensure that referrals are dealt with throughout the year, not just during school term time. The FM looks at the costs of training teaching and school support staff and for backfilling posts, but not at this wider perspective.

5. There is a task to be carried out to set up secure arrangements for transferring children’s records between the NHS and Councils (and thence to schools) when the Named Person responsibility moves as the child starts school. This will require staff time from the NHS and all local authorities to agree protocols,
devise and test procedures, train staff etc. It is not clear from the FM whether this will be done centrally or be the responsibility of the regional NHS Boards and Local Authorities.

6. It is also not clear from the FM whether it takes account of the need to recruit trained staff and the likelihood of having to recruit untrained staff and train them as there will not be a pool of unemployed people with the necessary specialised training, qualifications and experience. It refers to staff costs provided by a local authority but does not clarify whether this is ongoing staff or reflects the additional cost of recruiting new staff. The Bill will require more midwives, health visitors, teachers and school administration staff, childcare staff, family counsellors etc. In some cases it may take years before staff are fully trained but in the mean time quality of services must be maintained and deadlines met, otherwise there is the risk of poor inspection reports or judicial review, or even Scottish Ministers exercising their enforcement powers – which includes the power to transfer assets and staff.

7. Potentially more support will be required from local authorities to childcare and early learning providers to assist them in expanding to meet the additional provision and the complexities that result, such as additional staff, more hours for staff, compliance with employment, health and safety regulations, building work to expand premises.

**Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?**

8. Midlothian Council is in the process of carrying out an options appraisal, including costing, for the increase in early learning and childcare hours and these estimates come in significantly below the figures in the FM (once they have been extrapolated using the population aged under five in Midlothian as a proportion of the Scottish population).

9. Local characteristics such as high proportion of care leavers/kinship carers etc could lead to disproportionate costs (rather than savings), particularly for small local authorities and those where kinship care is promoted rather than residential care. It is noted that the FM has an extremely wide range of estimates, with the savings in the upper estimate coming in at up to nine times that of the lower estimate. The extension of the support provided to care leavers in practice could be very costly to local authorities.

10. The references to case studies and the work of local authorities in the costings is useful, however there is no guarantee that the savings that are estimated in the FM will be applicable in each local authority’s local context and if the expected savings as a result of the shift to prevention and early intervention do not materialise or are less than expected organisations could be left with unsustainable services. In some cases the FM offsets these savings in the short term, where in fact it may be many years, and in some case a generation or longer, before the provision of, and funding for, some services can be reduced. This transitional period where existing services must be continued and new, preventative, services put in place will be extremely tough to fund unless there is provision from central government.
If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

11. Many of the organisations in the Getting it Right for Every Midlothian Child Partnership, and in particular Midlothian Council, are already under financial pressure and it will be very difficult to find funds and resources to meet the additional duties of the Bill. This may be most severe regarding the additional hours of childcare/early learning which, based on the figures in FM, are estimated at up to £1.8 million per year for Midlothian Council.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

12. The notes and details of the methodology used to calculate the estimates in the FM are welcomed and have been very useful in considering the implications of the Bill and the risks that come from it.

13. It has been noted, however, that some costs are likely to accrue earlier, for example the Children Affected by Parental Substance Misuse guidance has been adopted from June 2013 in the Lothians, far earlier than the dates in the Bill. This will result in the planning, restructuring, changes to procedures and practices and staff training taking place years in advance of the timescales in the FM.

14. There is also a necessarily wide range in figures provided for certain provisions, reflecting the uncertainty in the projections but this does make it difficult for organisations and the partnership to plan for the Bill.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

15. The FM takes account of various costs, for example the costs of training and backfilling posts in Education as a result of the Named Person, however systems must be devised and put into place and additional people trained in order to provide the Named Person service over the holiday periods. This may require quite a lot of resource and reorganisation within local authorities.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

16. The final costs will not be apparent until after all the legislation has been finalised and passed. There could yet be changes in many things, such as the definition of support to be provided to care leavers, kinship carers etc that could have a significant impact on the limited monies available.
FINANCE COMMITTEE CALL FOR EVIDENCE

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM NATIONAL DAY NURSERIES ASSOCIATION

About us
1. National Day Nurseries Association (NDNA) is the charity and membership association promoting quality care and early learning for children in nurseries across the UK.

2. NDNA supports its members to develop their quality of care and to run a healthy sustainable business by providing members with information, training and support. NDNA works closely with its members to represent the sector to government, local authorities and the media. NDNA Scotland has a thriving membership base representing over a third of private day nurseries, with active provider networks in local authority areas across the country and an office in Edinburgh.

3. Our member nurseries are independent, private and third sector organisations who deliver early learning and childcare in partnership with local authorities. Some 60,000 children, approximately half of all children taking up nursery places, do so in the independent, private or third sector. For under-threes this rises to 60% of children, with nearly 40,000 under-threes in care and early learning in private nurseries alone.

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
4. Yes. NDNA submitted formal responses to the September 2012 consultation on the Children and Young People Bill and to the 2011 consultation on the Rights of Children and Young People. We attended government consultation events and, with a delegation of nursery members, met with government officials to inform the Business and Regulatory Impact Assessment. We have also met with Ministers Aileen Campbell MSP and Angela Constance MSP and discussed issues around the Bill and policy direction.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
5. Not fully. The comments we have made verbally in meetings and formally in our written response to the September 2012 consultation have not been fully reflected. In particular the level of funding shortfalls for early learning and childcare partner providers is not fully taken account of and has not been fully addressed in the FM – see comments in response to questions 4 and 5.
Did you have sufficient time to contribute to the consultation exercise?
6. Yes. The consultation exercise was well publicised, allowed a reasonable timescale and the investment in consultation events and meetings was particularly welcome.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
7. NDNA is the representative body for children’s nurseries. The comments we have made here, and in response to the consultations, relate to the implications of the Bill for our nursery members, rather than the charity itself. The primary impact on our members is in relation to the Bill’s content on early learning and childcare.

8. The FM states that the commitments on early learning and childcare are the most significant costs within the Bill. The FM goes on to consider in detail the implications for local authorities, and notes that ‘local authorities secure around 40% of provision through independent, private or third sector partners’, and briefly (paragraph 82) acknowledges implications for these partners where it includes the following:

‘National Day Nurseries Association’ and some partner providers have raised the issue of unsustainable funding levels for the majority of partner provider placements.’

9. The FM (paragraph 82) uses an inflationary linked estimate of costs of funding partner providers based on the ‘advisory floor’ hourly rate that was in place until 2007. The advisory floor was issued by Scottish Executive until 2007 as a minimum rate that local authorities should not go below when funding providers. There is an uncertain history of how the advisory floor’s original level was decided, but we do not believe it was calculated on a basis of the real costs of delivery for partner providers. It was also intended as a ‘floor’ rate, below which funding should not fall, rather than a recommended rate for all partner providers which seems to be the assumption of the FM. We therefore believe that uprating this figure is inappropriate and forms a weak basis for estimating future costs.

10. The uprated estimate used by the FM is £4.09 per hour. In our most recent survey www.ndna.org.uk/scotland-nursery-report nurseries reported average funding rates of £3.28, giving them an average shortfall of £1.23 per child per hour. Therefore, even if rates were increased to a £4.09, this would still incur an average shortfall of £0.42 per child per hour, equivalent to £252 per child per year for 600 hours of provision. Shortfalls will be significantly greater than this in higher cost areas.

11. If funding went ahead on the basis outlined by the FM, then partner providers would still be experiencing funding shortfalls and the implications for them have not been considered – paragraph 84 Costs on other bodies, individuals and businesses states ‘There are no further costs anticipated for others’.
12. The FM notes the impact on staffing costs of the increase to 600 hours and more flexible delivery as staff ratios increase from 1:10 to 1:8 when children attend for more than 4 hours (paragraph 72). In practice, full day care nurseries must always operate at a 1:8 ratio, due to the extended, flexible hours they offer parents. Extension to 600 hours also means that children taking up places are also more likely to be in nursery for lunches which will incur additional costs. However, the FM does not fully take account of the impact of requirements to invest in and develop the skills and qualifications of the early years workforce to meet the wider agenda of the Children and Young People Bill around GIRFEC and integrated working and the level of funding that will be needed to support partner providers properly to reward this workforce.

13. Relevant sections of the evidence we submitted in our September 2012 response are copied below for reference – appendix 1.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

14. As discussed above, we believe the assumptions made around early learning and childcare are flawed and therefore the projections will also need reconsideration.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

15. No. We are not confident that partner providers of early learning and childcare can meet the costs associated with the Bill unless measures are taken by government to ensure sufficient funding is allocated to local authorities and actually reaches providers in the form of a viable hourly rate for high-quality provision for children. As suggested in our response to the consultation, one option might be to reintroduce an advisory floor minimum level of funding that properly reflects real costs of delivery and review this annually. Survey evidence to NDNA shows that 45% of nurseries expect to make a loss or only break even; this is not a sustainable position and continued underfunding of the provision of a public service is a threat to the flexibility and availability of high-quality early learning and childcare. Funding needs to reflect the additional costs faced by partner providers outside the maintained sector, such as business rates, in which nurseries have suffered significant increases in recent years.

16. In addition, to ensure that there is sufficient capacity to meet demand for increase numbers of places and increased hours, local authorities’ capital funding should be available for investment, subject to appropriate terms and conditions, by partner providers. Historically this approach has been successful in some local authority areas. The assumption of the Bill and FM appears to be that capital will be used solely for maintained provision, but there is an opportunity for cost-effective development in private and third sector partner provision that can provide value for money, meet parents’ needs for flexible childcare and avoid duplication of existing services.
Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Wider issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

17. There is presently an inequity in the number of hours of preschool education to which a child is entitled, depending on their birthdate. NDNA input to the report by Reform, ‘An Equal Start’ which highlighted that this can mean funding gap to families of £1,000 per child, depending on their birthdate
If action is taken by government in future to address this birthday discrimination, then additional costs would be incurred.
Appendix 1

Extracts from NDNA response to consultation on Children and Young People Bill, September 2012

We wholeheartedly welcome the recognition by the Scottish Government of the impact of high quality early learning and childcare and the commitment to extend this to a minimum of 600 hours per child per year.

Feedback to us from nursery members is that access to funded early learning and childcare varies locally, with children and families benefitting from different amounts of provision according to the policy of their local authority. We believe that as hours are extended, legislation should set out a clear right to 600 hours for every three and four year old with a duty on local authorities to ensure that these hours are available and accessible to families through a mix of provision, with true parental choice. This should be widely publicised to parents so that they are aware of their child’s right to these hours and can hold their local authority to account.

Feedback from our most recent survey of nurseries in Scotland published in our NDNA Insight Report August 2012 ‘The Nursery Sector in Scotland’ www.ndna.org.uk/scotland-nursery-report suggested that a majority of nurseries are underfunded for free early learning and childcare places. Ninety-two percent of respondents reported making losses on the places, with an average loss of over £500 per child per year. This is a financially unsustainable position for nurseries and must be addressed if they are to be able to offer 600 hours. Funding levels also work against the objectives of a high quality professional workforce, as nurseries are unable to provide salaries commensurate with a profession.

Local authorities must direct sufficient funding to nurseries so that they are funded at a viable level that enables them to deliver the high-quality provision that makes a difference to children. The Scottish Government should assess the level of funding needed centrally and explore mechanisms to protect that investment at local level so that the significant financial commitment that will be made by government achieves the impact intended by the Bill. One option might be to reintroduce an advisory floor minimum level of funding and review this annually – in some local authorities funding to private nurseries has remained static since the advisory floor was removed several years ago. There is also a need for greater transparency on how local authorities direct funding and what funding is retained by the local authority and measures should be taken to make this information available to their local communities. NDNA would be happy to be involved in further discussions on solutions to funding issues.

NDNA and its members welcome plans to extend funded early learning and childcare and the recognition by government of the positive impact it has on children’s outcomes. The Business and Regulatory Impact Assessment notes that private sector nurseries may be impacted by the Bill’s proposals. The opportunity to provide for additional hours may be seen as a benefit for nurseries, however, if funded hours are delivered at a loss, and replace what would have formerly been
paid for hours, then the extension will become a threat and make businesses less sustainable, potentially reducing availability of flexible places.

In our recent survey, respondents delivering free hours were losing on average £584 per child per year. If hours are extended to 600 per year, this loss would become £738. With nurseries operating on low margins, and the sector already feeling the impact of recession, then increased losses could risk overall business sustainability and potentially lead to nursery closures.

There is capacity in the private and voluntary sector, with a vacancy rate of around 25% according to our survey, and so there is opportunity for local authorities to work with partner providers rapidly and cost effectively to scale up provision that is flexible and meets parents’ needs. The duty on local authorities should focus on securing places, rather than using government funds to duplicate existing provision in the private and voluntary sector.

The Bill’s ambitions for an integrated approach to working with children will require effective involvement of private and voluntary sector partners by public agencies, for example in the child’s plan. To promote the best outcomes for children, the workforce in nurseries will need to have the right skills and knowledge and nurseries will need to be able to resource the support needed for individual children. One of the greatest challenges highlighted by nurseries in our survey was the cost of staff wages, with feedback on the difficulty of appropriately rewarding staff at all levels. Nurseries also fed back that they are seeing reductions in local authority support, with 50% seeing reductions in support for training and 40% seeing reductions in support for quality. Local authorities must have clear duties to provide accessible and meaningful support to all settings in their area. To ensure we have the right workforce to deliver this vision for children, greater investment is needed, otherwise we will see upward pressure on fees for parents.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes, a number of managers attended stakeholder events, however any discussion around the financial assumptions were general, not detailed at the events attended. General concerns were raised as the limited discussion seemed to be based on current culture systems and practice and did not take in to account changes that will have to be implemented.

2. An example given was the additional time midwives would have to allocate pre-birth in considering the broader social issues. Within current practice for example, the question of alcohol consumption is not holistically discussed with parents at this stage, but if we are to prevent fetal alcohol harm and looking forward, support the implementation of the fetal alcohol care pathway, thereby preventing harm and reducing costs to mainstream services - later in the life course (studies for which suggest that the number of children who are currently accommodated or adults who are incarcerated, indicate that this is both an issue and a contributory factor, and affects between 40 and 60% of these populations) then additional time (we would estimate five hours per pregnancy) and significant additional investment will be require if we are to reduced costs later in the life course.

3. A second example offered was that the additional time which would be required to be allocated to Health Visiting given the increase in expectation of role of Named Person on the Health Visitor, there will be greater emphasis on sharing information with Named Person and as such an increased level of co-ordination, assessment and analysis of this information in relation to impact on child health and well being.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

4. Respondents felt that they could not comment with accuracy as the financial implications were not well represented or discussed at the events they attended.

Did you have sufficient time to contribute to the consultation exercise?

5. Yes, but it would have been more helpful if the financial assumptions had been made more explicit and core to the discussion.
Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

6. In general respondents would agree with the issues raised in the financial memorandum; however we they did not agree that the full breadth of the costs required to fully implement the bill had been considered specifically around prevention and effective interagency communication.

7. The financial implications to NHS Boards in supporting the Named Person, as Lead Professional, with the requirements under the Bill for children and young people with additional, complex/exceptional health needs are not represented or adequately reflected in the FM. There are some assumptions made regarding cost neutral activities for example:

8. In the light of the Integrated Health and Social Care Partnerships (IHSCPs), there will be an expectation that information systems which provide for all partners and information sharing will become core. This will most certainly not be cost neutral! The discussion that has been taking place around a common data set for children arising from the Bill really sets the scene for the problems that will arise - a lack of a common system across Scotland, little 'hole in the wall' systems developed to address specific problems rather than considering an integration agenda and massive issues over data definitions and common language.

9. Interagency training, development of joint information systems under the IHSCP(s), the complexity and additional costs to Health Boards that have two or more Local Authority Partners are not well considered and may result in an inequitable process/ allocation.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

10. Respondents consider that this is difficult for the FM to accurately predict due to the inconsistent and unpredictable nature of the Health and Social Care landscape. There are some assumptions made regarding cost neutral activities, we would not agree that these costs are cost neutral. To fully implement the Bill and achieve the anticipated savings later in the life course more consideration needs to be given to the prevention agenda.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

11. The expressed views suggest that NHS Boards will not be able to meet the financial costs incurred by the Bill.
Scoping the extent of the impact of the Bill to meet the needs of children and young people with additional, complex/exceptional needs should be undertaken.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

12. The FM reflects the issues that would be expected to arise. Respondents did not feel that they have the expertise to assess if the margins stated would be accurate. It is suggested that a robust cost benefit analysis is considered and that the financial memorandum is reviewed on this basis.

**Wider Issues**

*Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

13. I reiterate the points made above about the costs of Health Visiting Staff with current workloads ability to support all pre 5 children as the Named Person, in addition to Health Staff supporting the role as Lead Professional, to meet the needs of children and young people with additional, complex/exceptional health needs.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

14. I believe there may be through as yet unidentified, unintentional consequences. To deliver better interagency planning, support and corporate parenting?

**Additional comments?**

15. Robust models of professional supervision of practice is required to be funded and implemented across Health Visitors (like Family Nurse Partnership and Social Workers) as given the increased level of accountability and decision making this is essential and not currently built into workforce in terms of capacity to release for supervision or funding for a supervisor model. Family Nurse Partnership evidence base should be looked at.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, Sally Egan, Child Health Commissioner/Associate Director was a member of the GIRFEC (CEL 29) Health Group that informed the Financial Memorandum.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. The views of the NHS Lothian Child Health Commissioner have been accurately reflected in the FM.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. We do not believe that the financial implications for Lothian NHS Board have been fully reflected in the Financial Memorandum on three broad grounds:

5. Table 5 on Page 41 presents a global estimate of costs to the NHS. This is not broken down by each NHS Board to acknowledge the size of the Board or the nature of the population it serves.

6. Table 5 only identifies costs associated with GIRFEC, and does not indicate any further costs to the NHS arising from other parts of the Bill.

7. We estimate that the actual costs of the Named Person service is greater than is stated in the FM.

Part 2 Rights of Children
8. Section 2 of the Bill requires public authorities to report what they have done with respect to the UNCRC every 3 years. Paragraphs 22 – 26 of the FM indicate that the costs are marginal. However, it does not take into account the costs to public authorities of actually taking the steps to further these rights. Given the Duty on Scottish Ministers (Section 1), and that Health Boards are accountable to Scottish Ministers, it is foreseeable that the costs of this section goes beyond producing a report.
9. The responsibility falls to the Health Board itself, and consequently the whole process will require the usual level of governance and scrutiny with the Board needing to approve the report.

10. The Bill extends the powers of the Commissioner to undertake investigations. Clearly all service providers will need to support the conduct of any such investigations, and will be required to respond to any recommendations. It is difficult to estimate what the resource implications for the service providers will be, but it is another source of external scrutiny.

Part 3 Children’s Service Planning
11. The Financial Memorandum assumes that Boards will work through their existing structures and resources to do this, so there will be no additional cost.

12. Part 3 includes a range of matters that the Board must address with the local authority – it is not simply about producing a plan every 3 years. Section 13 requires the Board and the local authority to produce an annual report on the delivery of the plans and what has been achieved.

Part 5 – Child’s Plan
13. The Health Board is the “responsible authority” under Part 5 for pre-school children (Section 34 of the Bill). The Board will therefore have to have a process to ensure that a Child’s Plan is prepared for any pre-school child who has a “wellbeing need” (Section 31).

14. The Board may also be the “relevant authority” under this Part, responsible for delivering a “targeted intervention”.

15. In addition to the various cost estimates that are set out in the Financial Memorandum, Health Boards and their management will need to establish governance and managerial systems to oversee and be assured on all of this.

Part 7 – Corporate Parenting
16. The Bill makes Health Boards “corporate parents”. As such the Health Board must discharge certain responsibilities (Section 52), prepare and publish its plan to do so (Section 53), and report how it has discharged those responsibilities (Section 55). The Health Board will also be required to observe any directions the Scottish Ministers issue.

17. The Financial Memorandum estimates that the costs are very small, as corporate parents are encouraged to use existing planning and reporting processes. However if the Bill confers responsibilities, then it is likely that any board of governance will require assurance that they are in fact being discharged.
18. For all of the above Parts, there are clearly defined corporate governance responsibilities assigned to Health Boards. It is difficult at this point to specifically identify what the marginal financial costs will be of discharging them, in comparison to what Health Boards do now. However, it should not be assumed that the cost will be zero. In any case the impact needs to be considered against the context of:

19. A general reduction in the resources available to the public sector;
   - A reduction in the number of managers, and consequently management capacity; and
   - The opportunity cost of diverting existing resources to attend to these new responsibilities.

**GIRFEC and Named Person Service**

20. The Financial Memorandum acknowledges the difficulties in preparing a definitive costing for the implementation of these duties.

21. Section 19 (3) (b) identifies a condition of an identified individual for the “named person service” is:
   “the individual meets such requirements as to training, qualifications, experience or position as may be specified by the Scottish Ministers by order.”

22. Paragraph 68 of the Policy Memorandum describes the role as follows:

   “68. The Named Person will usually be a practitioner from a health board or an education authority, and someone whose job will mean they are already working with the child. They can monitor what children and young people need, within the context of their professional responsibilities, link with the relevant services that can help them, and be a single point of contact for services that children and families can use, if they wish. The Named Person is in a position to intervene early to prevent difficulties escalating. The role offers a way for children and young people to make sense of a complicated service environment as well as a way to prevent any problems or challenges they are facing in their lives remaining unaddressed due to professional service boundaries. Their job is to understand what children and young people need and quickly make the connection to those services that can help when extra help is needed.”

23. The costing model in the Financial Memorandum has referred to midwives, health visitors, and public health nurses in order to arrive at a financial impact.

24. In our view, Health Boards will need to be innovative in order to implement a robust and sustainable Named Person service. The key reasons for this are:

25. In Lothian, an individual health visitor’s case load will range from 250-350 children. The additional responsibilities associated with Named Person and Child Plans cannot entirely be allocated to health visitors.

26. It is generally recognised that it is difficult to recruit and retain health visitors. Even if health boards wish to increase the numbers to manage the increased workload, it does not follow that the staff are actually there to employ.
Additional responsibilities do increase the workload of individual members of staff, and can impact on the quality of service/care given to each person. If the introduction of the Named Person service is not carefully managed it could increase stress, sickness absence levels and staff turnover. This will simply exacerbate the problem and magnify the cost of implementation.

**Do you consider that the estimated costs and savings set out in the FM and projected over 5 years for each service are reasonable and accurate?**

27. We do not think that the estimated costs of implementing the Bill are fully accurate.

**Estimated Resource Implications of Introducing the Named Person to routine Midwifery and Health Visiting Services.**

**NHS Lothian Calculations**

28. The following table outlines the expected additional costs to NHS Lothian of implementing the Named Person duties. Para 61 of the FM explains that the hourly rate used to calculate the costs for Midwives and Health Visitors is £19.04. NHS Lothian believes that the actual hourly rate would be more in the region of £21 per hour.

<table>
<thead>
<tr>
<th>NHS Lothian</th>
<th>Universal Services (all children)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>Additional Midwifery Hours (pre-birth)</td>
</tr>
<tr>
<td>Total</td>
<td>2</td>
</tr>
<tr>
<td>Vulnerable Children (20%)</td>
<td>5</td>
</tr>
<tr>
<td>Total costs</td>
<td></td>
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</tbody>
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*If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?*

**Maternity and Health Visitors**

29. We do not think we can meet these costs within our current financial allocation. Nor do we think there is the capacity within the Health Visiting workforce in Scotland to respond within the timeline as there is currently a shortage of Health Visitors in Scotland.

30. NHS Lothian estimate, based on live births (9,794) and numbers of 0-5 year old children (48,980) in the 2011 census, that an additional 20 Midwives and 49 Health Visitors would be required in Lothian to undertake the additional duties as outlined in the Bill. NHS Lothian has invested in the region of £300,000 to train an additional six Health Visitors during 2013 – 14. The additional costs of training Health Visitors has not been considered within the FM and has significant impact on NHS
Lothian’s ability to recruit the staff required to undertake the duties outlined in the Bill. This equates to a total cost of over £2.8 million. This appears to be more than what would be NHS Lothian’s share of the overall costs to NHS Scotland as a whole.

31. Recognising the increasing population locally, NHS Lothian has been reviewing the Midwifery and Health Visiting workforce. The increase in vulnerable babies born will ultimately increase the length of stay in maternity services, as Mothers/Babies will not be able to be discharged until robust care plans are in place.

**Looked After Children**

32. Table 18 in the FM supplies numbers of Looked After Children in Scotland eligible for throughcare and aftercare. We are surprised that Table 5 in the FM pays no consideration to the impact on health in terms of implementing the requirements outlined in CEL16. NHS Lothian have already invested additional monies, in excess of £500,000 into the Health Assessment. We raised the issue during the consultation period, given the significant additional healthcare resources required to fulfil this duty. We would recommend that a Single National Responsible Commissioning Guidance for Health and Social Work and Education is required to ensure synergy across the services in relation to cross boundary placements. A more child centred approach would be if the funding followed the child.

33. We would therefore suggest that there are more creative ways of ensuring that the requirements of the Bill are met, for example thinking about skill mix and (for e.g.) delegating some of the administrative functions to other staff, freeing up health visitors and midwives to undertake the necessary face-to-face /care plan work. This would also be a more cost-effective model to implement.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

34. There is considerable uncertainty in the figures, which is acknowledged in the Financial Memorandum. Further detailed work is required to fully comprehend the resource implications of this Bill.

**Wider Issues**

*Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

**Financial Memorandum pg 44**

**Section 2 – Duty on public bodies to report on steps taken to further UNCRC**

35. NHS Lothian recognises that undertaking more robust assessments will result in unidentified needs having to be met. While NHS Lothian staff agree with this in principle, it is expected that additional resources will be required to implement the plans. Lothian has a diverse population with around 19% of the population from ethnic minority backgrounds, and in Edinburgh it is much higher at around 26%. Although not all of these children and young people will have additional needs, there will be a number who will require interpreters (consultations take much longer), who may be socially isolated and have increased mental health needs. Therefore additional resources will be needed to ensure that these children and young people’s
needs are identified and met that have not been outlined in the current Financial Memorandum.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
36. No comment.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes, North Ayrshire submitted a response to CoSLA, modelling a number of options around the increase to child care hours and made general comments on the uncertainties around the wider financial implications of the Bill.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. A degree of clarity has been provided in certain aspects, in particular the additional child care hours; however uncertainty remains in respect of other aspects of the Bill and other elements of proposed change only became clear on publication of the current Financial Memorandum.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

4. There continues to be a level of uncertainty around the sufficiency of funding for the increase in childcare hours. Delivery of the anticipated outcomes can be achieved if sufficient local flexibility is permitted on the service model.

5. The FM concludes there will be no overall additional direct costs to LAs arising from the support associated with Getting it Right for Looked After Children. The Bill assumes that any additional costs in some aspects of the Bill will be offset by savings in other areas. The FM provides details for the first time around additional potential costs which had not been previously considered – i.e. extension of provisions around kinship care orders to “informal carers”; potential requirement to provide up to three years transitional support to “formal carers” and potential costs of family therapy.

6. Given the demographic profile in North Ayrshire it is anticipated that the elements of the Bill, outlined below, will result in an overall additional cost;

   • North Ayrshire does not anticipate the switch to kinship care orders; as the assumption that any immediate savings associated with the move of a small number
of formal carers to a kinship care order (i.e. reduced kinship payments) will offset the cost of transitional support for up to three years at £70 per week is not realistic.

• The costs associated with the requirement to provide assistance to “informal carers” in respect of the kinship care order.
• The costs associated with the provision of family therapy to both formal and informal care.
• The costs associated with family group conferencing.
• The extension of throughcare from either 19 or 21 to 25.

7. Funding is also required to support the promotion of the Bill and training.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

8. The range of assumptions in respect of kinship care is too broad; as such it is difficult to make an accurate assessment of the anticipated financial impact of the Bill.

9. The assumptions in respect of additional child care hours appear reasonable for the 6 years outlined in the Bill – significant uncertainty exists beyond this.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

10. No. There are significant financial implications emerging from the Bill, in particular the extension to child, care hours and the additional costs associated with the activity identified in section 4. It is North Ayrshire’s expectation that additional costs as a result of the Bill will be met through additional Scottish Government funding.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

11. As noted at the response in section 5 – a wide range of options has been outlined in the Financial Memorandum; as such high degrees of uncertainty remain around the anticipated actual cost.

Wider Issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

12. The FM captures the breadth of costs associated with the Bill, however high levels of uncertainty on the financial implications remain.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes and commented on the financial assumptions.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. No it is felt that areas highlighted as concerns have not been built into the financial assumptions.

Did you have sufficient time to contribute to the consultation exercise?
3. Yes although the lack of detail in the bill has made estimating very difficult.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. No; again lack of detail and not sufficient allowance for infrastructure/administration costs for example – Children’s Rights for systems to record monitoring and evidence, or direct costs for example ongoing training costs for staff taking on the Named Person role due to staff turnover, providing a range of options for delivery of 600 hours flexible early learning & childcare etc.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?
5. No we have estimated PKC share as 2.5% (Based on GAE) and we estimate there could be shortfalls in funding however it has been difficult to predict costs due to the lack of detail in the bill. Also only see figures for the next 5 years not 15 in the FM?

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
6. No not content; Scottish Government should fully fund all aspects of the Bill, otherwise the Council will have to implement further savings at a very challenging financial time.
Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

7. No again due to lack of detailed guidance it is unclear what the actual affect will be once implemented at a local level.

**Wider Issues**

*Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

8. No again the actual implementation of various sections of the Bill for example Named Person and Corporate Parent may put additional responsibilities on to individual staff. This increased workload will have an effect on their ability to carry out other duties within their remit. This may affect other staff in the organisation who may have to take on more duties to compensate, this could have a financial cost or opportunity cost for PKC.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

9. Yes; unable to quantify them at this time but an example would be 21 – 25 year olds former Looked After Children and Kinship Carers
1. As your Committee is aware the Commissioner for Children and Young People in Scotland (CCYPS) is an SPCB supported body. Under the Commissioner for Children and Young People (Scotland) Act 2003 (2003 Act), as amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (2010 Act) the SPCB has a number of powers relating to the governance of the CCYPS. This includes the power to provide and approve the Commissioner’s budget for each financial year. The SPCB therefore has a direct interest in any financial implications for the Commissioner as it is the SPCB that will have to fund any additional costs.

2. In respect of the Children and Young People (Scotland) Bill, we note that additional costs are expected to arise as a result of the extension of the powers of the Commissioner to investigate the extent to which service providers have had regard to the rights, views and interests of individual children and young people. We note that the Scottish Government has stated that the costs included in the Financial Memorandum are speculative at this stage, but are estimated to increase the Commissioner’s annual budget by about £162K per annum, with an additional £62K start-up costs in 2015-16. This would have a considerable impact on the SPCB’s budget.

3. In the call for evidence, the Committee has asked a number of questions. In respect of the role of the SPCB we are limiting our answers to the questions on costs (questions 4-7).

If the bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?

4. The SPCB funds the CCYPS and therefore any additional costs would have to be met out of the SPCB’s budget. We note that additional costs will arise in extending the Commissioner’s powers to investigate issues relating to individual children and young people.

5. It is difficult to say if the estimated additional costs are accurate. We note that the Scottish Government has said that the costs are speculative as it is difficult, at this stage, to say with any assurance how many investigations will be undertaken in each financial year. We also note that the Commissioner considers the costs to have been underestimated. We therefore consider that the Government has had to balance a number of issues without any certainty of the future position. The SPCB sees the estimated figures as the maximum which would be appropriate in the current financial climate.
Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

6. The SPCB is limiting its comments to the extension of the Commissioner’s powers to investigate.

7. The SPCB is sceptical that undertaking an estimated 4 investigations over the year will require 3 additional staff and cost an extra £162,109. We note from the accompanying documents that the government has consulted other key complaints handling bodies which have indicated the existence of robust processes for handling complaints in a wide range of circumstances. The Commissioner’s powers to investigate may therefore only be required in a few instances.

8. We therefore see the additional costs as the maximum for the number of investigations that are estimated and we would expect to see from the Commissioner a sound business case when putting forward the budget submission for 2016-17 to support the additional funding. We consider that there might be merit in starting off with fewer staff and making a case for contingency funding if circumstances dictate that there are insufficient funds for the Commissioner for the first year.

9. We are concerned that if the estimated number of investigations does not materialise there will be no role for the additional staff. We would not expect to see the Commissioner’s staffing compliment increase from its present rate if no investigations were undertaken.

10. In other areas, it is likely that we will be able to reduce the accommodation costs. The SPCB is aware that there is a break clause in the lease arrangements of the Commissioner’s existing accommodation. The SPCB is actively looking to collocate as many of its supported bodies as it can in the future to make savings on the current accommodation expenditure. As part of this, the Commissioner may be moving office in 2014, possibly to accommodation which should be cheaper than the current costs. We would ensure that any additional staff would be included in any negotiations on future accommodation costs.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

11. The costs will be met out of the SPCB’s budget which is scrutinised on an annual basis by the Finance Committee and is included in the Budget Bill each year.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

12. We accept that in preparing the FM, the Scottish Government has had to strike a balance between differing views on what the costs of any investigations could be.

13. Finally, the SPCB also considers that it has a duty to ensure that, in the present economic climate, the budgets of all the SPCB supported bodies are in line
with public sector spending in Scotland, and we consider that there would need to be a robust case made for any additional funding.
1. The Royal College of Nursing welcomes the Children and Young People (Scotland) Bill and the opportunities it presents to make a positive difference to children’s rights and children’s services in Scotland. The Bill presents the Scottish Government with an opportunity to invest in the lives of children in the early years; to support all families; and to target additional support in a way which could make a step change for a whole generation. Paragraphs 7-11 of the financial memorandum set out a powerful economic case for early intervention and is an opportunity for Scottish Government, to show its commitment to a preventative approach by investing in a universal health visiting service which is greatly appreciated by parents. Yet the RCN is concerned that the level of investment set out in the section on ‘costs to the NHS’ significantly underestimates what is required to realise the benefits of the preventative approach set out.

2. Our evidence therefore centres on the role of the health visitor as Named Person for children under five, which corresponds to Bill sections 19-41, and Financial Memorandum paragraph numbers 40-65.

Assumptions made within Financial Memorandum

3. The implementation of the Named Person and the Child’s Plan, as set out in the Bill, requires funding which enables the Named Person to form meaningful relationships with families and their children. That requires time. And while we recognise the challenges in estimating the time required and acknowledge the advice taken in preparing the figures set out in the Financial Memorandum, we are concerned at some of the assumptions made. In this section of our evidence we question the following six assumptions in the Financial Memorandum on which the costs set out are based:

- Training costs within the NHS only apply to health visitors and midwives;
- There are no implementation costs to the NHS until 2016-17;
- All professional time is calculated on an hourly basis, ignoring all associated employment costs;
- Costs will decrease significantly year-on-year, as the GIRFEC approach beds in;
- No additional administrative support will be required in the NHS;
- Any salary uplifts will be absorbed by health boards.

Training costs within the NHS only apply to health visitors and midwives

4. The amount of money allocated for Named Person training to take on new duties is allocated as backfill costs for midwives and health visitors only. Whilst the Named Person role only applies to qualified health visitors, there are training issues for the wider team who also deliver the Getting it Right for Every Child (GIRFEC)
approach. The figures must reflect the needs of the wider team of staff nurses, nursery nurses, health care support workers and administrative staff who will also require protected time for training.

5. The costs allocated for training need to be linked to a robust education plan from NHS Education for Scotland. The training budget, which is to develop materials, is only for 2016. There is no training budget to deliver the training which NES has developed. It is important that within a costed education plan there is consideration of ongoing induction for new staff and ongoing development and refresher training for all those involved in GIRFEC.

There are no implementation costs to the NHS until 2016-17

6. The Getting it Right for Every Child (GIRFEC) approach has been well tested and now needs to become embedded across Scotland. The Financial Memorandum points out that there is currently a range of different stages of implementation of GIRFEC but the money which is identified for implementation does not become available to service providers until 2016-17. The money is needed now as implementation has started without adequate resource. If implementation continues without adequate funding, the approach will be diluted and inconsistent within and between areas, and children and families will not see the benefits of this child centred way of working across agencies.

All professional time is calculated on an hourly basis, ignoring all associated employment costs

7. The Financial Memorandum sets out the number of additional hours of professional time required to deliver the Named Person service. In 2016-17 the Financial Memorandum estimates 691,223 hours of additional health visiting time will be required. On the basis that a full time health visitor works 1950 hours per year we have calculated that this equates to 355 whole time equivalent posts.

8. For health visitors across Scotland to be able to take up their role as Named Person, there must be more health visitors to provide this additional time. The Financial Memorandum has taken into account the standard employer costs of Employer Superannuation and National Insurance but there are other associated costs which must also considered i.e. office space, travel expenses, administrative support and consumables.

9. In addition, when calculating posts for workforce planning purposes, significant allowances are made for predicted absence to cover maternity leave, annual leave, sickness, continuing professional development. This is currently accepted by Scottish Government to be 22.5% . This must be taken into account within the discussion between the Finance Committee and Scottish Government.

10. As the GIRFEC approach beds in, costs will decrease significantly year-on-year The RCN is concerned at the assumption that the additional hours required to address the needs of children with emerging or significant concerns are expected to reduce rapidly over the period set out in the Financial Memorandum. If the approach is effective there may be a small reduction over time, but currently health visitors
have no capacity to engage effectively with families and communities in a way that models the preventative approach.

11. The development of a Child’s Plan requires significant time and coordination. At its heart is the relationship with a family and a reasonable estimate for this is an average of ten hours per health visitor per child per year for a family where there are significant concerns. Meetings must also be arranged, minutes written up and circulated. There are no short cuts and it will be many years before less time is spent dealing with families in crisis. Whilst we accept that by 2018-19 there may be some children being born to families with whom the Named Person is familiar, leading to some efficiencies (FM Para 60), we believe the Financial Memorandum considerably overstates the level of efficiencies that will be achieved in this way.

12. As the new 27-30 month check is introduced there will be many children being identified as toddlers who need additional support. We consider that to reflect this, the figure for three year olds should remain at 10 hours each year until the cohort who are 0-1 in 2016-17 reach the age of 3 (i.e. until 2019-20).

No additional administrative support will be required in the NHS

13. Paragraph 55 of the Financial Memorandum makes the case for administrative support in schools. The same administrative support for the Named Person approach and developing and implementing a Child’s Plan are required in the NHS. Currently health visitors have minimal administrative support. This means that, for example, health visitors are taking minutes at meetings around a Child’s Plan and typing them up (usually in their own time) sometimes to hand deliver to partners in other agencies as secure email is not possible across agency boundaries. To maximise the expertise of health visitors, adequate administrative support to the NHS must be funded.

Any salary uplifts will be absorbed by health boards

14. The RCN understands that HMT economic appraisal guidance requires that calculations do not factor in forward inflation when calculating costs and benefits of policies. However, the Finance Committee is asked to note that the calculations to date were undertaken using 2012 salary figures. There has since been 1% NHS pay increase and even if there were no cost of living increases between now and 2019-20 there would be incremental ‘drift’ as individual practitioners progress up a pay scale. If new posts are established to support the implementation of the Bill it is important to recognize that any salary uplift would have to be met by health boards from within existing budgets if no allowance is made.

The wider context of the health visitor workforce

15. The Financial Memorandum sets out its estimate of the additional costs to the NHS of implementing Named Person including additional hours of health visiting. This needs to be seen in the context of a wider review of the health visitor workforce across Scotland. Health visiting is an aging workforce. Nearly half (45%) of the NHS Scotland health visiting workforce is aged 50 or above. This compares with a third (33%) of the total NHS nursing and midwifery workforce. An additional 41% of the health visiting workforce is aged 40-49 compared with 36% of the wider NHS
nursing and midwifery workforce. There are insufficient health visitors in training to replace those who will be retiring in the next few years.

16. Given that the implementation of the Named Person requires significant additional health visitors this must be planned for and money made available for new health visitor training as a matter of urgency. Currently health boards across Scotland have different policies as to how health visitor training is offered to registered nurses. Some offer secondment opportunities where staff are enabled to undertake training on full salary and their university fees are covered. Other health boards expect registered nurses to undertake their postgraduate health visitor education on a bursary which is non-pensionable. This excludes many excellent candidates from training. There must be equitable, funded access to postgraduate health visitor education across Scotland.

17. The combination of the number of health visitors coming up to retirement, the current workload pressures on health visitors and the requirements of the additional capacity needed to implement the Named Person service mean that the health visitor workforce across Scotland is reaching crisis point.

18. In our joint briefing to MSPs in January 2013, the RCN set out key messages to be taken into account when planning health visiting for Scotland. These issues must be taken into consideration in financial planning:

19. The Scottish Government must fund NHS Education for Scotland to commission health visiting education programmes and provide backfill costs to the health boards so that staff can be released for training.

20. The Scottish Government must commit to the development of a process for determining optimal caseload numbers for health visiting teams with regular processes for review and adjustment, taking into account clinical weighting, continuity of care, the effective implementation of Getting It Right For Every Child (GIRFEC)/Named Person, deprivation, geography and skill mix, and must hold health boards to account for delivering this.

21. The Scottish Government must embed health visiting within its 2020 workforce vision and work with health boards and local authorities to ensure that workforce capability and capacity is based on population needs, and includes workforce projections, succession planning and career development.

22. Workforce planning must be based on national workload and workforce planning tools.

23. To deliver a universal health visiting service requires a team of qualified health visitors and other appropriately skilled staff, working within integrated teams, with robust supervision arrangements.

24. Health visiting teams must be supported by IT infrastructure which is fit for purpose.
Scotland's families deserve health visitors.

25. The RCN is not alone in calling for a review of the health visiting workforce. This is why the RCN has joined together with partners to campaign for the Scottish Government to commit to health visiting for all families in Scotland. Our partner organisations include Scotland’s Commissioner for Children and Young People, Children in Scotland, Parenting across Scotland, the Royal College of General Practitioners, the Community Practitioners and Health Visitors Association, the Queens Nursing Institute Scotland and the Institute of Health Visiting. As demonstrated by the range partners within our campaign alliance, the nursing profession is not alone in the view that investment in health visiting services is key to the Scottish Government’s approach to primary prevention.
1. I am writing to express my views relating to the Financial Memorandum accompanying the Children and Young People (Scotland) Bill, and I would be grateful if this letter could be admitted as a late submission of written evidence on that document.

2. My comments are restricted to Part 2 of the Bill, whose provisions would extend my office’s powers under the Commissioner for Children and Young People (Scotland) Act 2003 to include the handling and investigation of complaints concerning individual children. I understand this provision was included in the Bill as a result of calls made by organisations working with children and young people in response to the Scottish Government’s consultation on proposals for a Rights of Children and Young People (Scotland) Bill in 2011. It was subsequently consulted upon in *A Scotland for Children: Consultation on a Children and Young People (Scotland) Bill*.

3. I supported that proposal in principle then, and I support Part 2 of the Bill now, subject to it being sufficiently resourced. This is a view shared widely across the children’s sector.

4. It is important in this context to consider the purpose of the extension of the Commissioner’s s. 7 power. The Scottish Government’s documentation suggests that Part 2 would amend the 2003 Act so as to provide a mechanism for ‘redress’ for children. Since the Scottish Government has (for now) rejected the continuing calls for full incorporation of the UNCRC into Scots Law, which among other things would provide redress for rights violations through the courts, it appears that the extended power in Part 2 is envisaged to be the principal means of redress for such complaints.

5. Against that background, the Scottish Government’s financial estimates relating to Part 2 are based on a number of assumptions. One central assumption is

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1 Such investigations are currently specifically excluded from the Commissioner’s powers by s. 7 (3)(b) of the 2003 Act.
2 Paras 58-60.
3 *A Scotland for Children*, para 59; Children and Young People (Scotland) Bill, *Policy Memorandum*, para 49.
4 The other key mechanism of redress would be litigation. However, this is inaccessible to most children and hindered by at least the following factors: the limitations of the current legal framework, including the non-enforceability of UNCRC rights; the impenetrable processes involved; the potentially serious cost implications and the diminishing availability of legal aid, especially for children and *Judicial Review*. 

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that the Commissioner would undertake between 1 and 4 investigations per year\(^5\). Another key assumption relates to an aspect of the new power that would provide a mechanism by which the Commissioner may take any appropriate steps to secure a resolution to a child’s complaint without resorting to an investigation, if the matter is capable of being so resolved\(^6\).

6. I will comment on these two crucial assumptions in turn.

7. Firstly, it is not clear what the Scottish Government’s estimate that there will be between 1 and 4 investigations per year is based on. I have consistently queried its provenance and accuracy in my discussions with the Scottish Government. In addition, I have expressed concern about the apparent mismatch between these estimates and the notion that the purpose of the proposed extension of investigatory powers is to provide a mechanism of ‘redress’ for children.

8. Secondly, the nature, scope and volume of ‘complaints casework’ are important dimensions of the discussion about the appropriate level of resources for the effective implementation of Part 2 of the Bill. Despite the implicit recognition of its existence in the provision in news. 7 (5), there is no reference to this work in the Financial Memorandum.

9. I am strongly of the view that in practice the effectiveness of the new powers would depend on this aspect of Part 2 and its adequate setup and resourcing. Whatever the correct number of investigations per year will be, it requires an effective mechanism to receive complaints, gather sufficient information, and assess the information obtained with a view to determining the appropriate route for resolution, and carrying out the disposal of the complaint accordingly.

10. This ‘triaging’ work can be complex and time-consuming, not least in light of the very wide range of issues currently brought to the office as enquiries. As you are aware, I currently have no power to investigate such enquiries as complaints. However, my office was involved, as far as permissible under current powers, in over 100 enquiries, which under Part 2 powers would have been treated as individual complaints in 2011-12\(^7\). It is my assessment that this ‘complaints casework’ will significantly increase and is likely to form the majority of work carried out under the proposed power in Part 2. I understand this to be in line with the experience of other bodies, such as Children’s Commissioners with powers similar to that envisaged in this Bill, and other complaints-handling bodies with a broader remit.

11. The Financial Memorandum does not fully take account of this significant element of the increased workload. The cost estimates relating particularly to areas which would be affected by the ‘complaints casework’ discussed above, include staffing and IT. At the time of writing, I am still in discussion with Scottish Government about these matters. I believe the resources must take proper account of the likely nature, scope and volume of this work, and it is this which needs to be

\(^5\) Children and Young People (Scotland) Bill, Financial Memorandum, para 31.
\(^6\) New s. 7 (5), introduced by s. 5 (2) of the Bill, p. 4, lines 35-38.
\(^7\) This is out of a total of 423 enquiries in that year, many others of which involved some degree of engagement with the matter raised in order to facilitate effective signposting, etc.
understood to assess the actual impact on the workload of the office. All of this matters to children and young people and those advocating for them, as it goes to the heart of the effectiveness of the means of redress promised to them by Part 2.

12. I note the written evidence submitted by the Presiding Officer on behalf of the Scottish Parliamentary Corporate Body, which as you are aware is the Commissioner’s ‘sponsor body’. I was not privy to any discussions between the SPCB and the Scottish Government, although it appears that the SPCB evidence relies on the same assumptions as Scottish Government discussed above.

13. I understand the need for financial constraint at this time and this has already impacted on the resources of the Commissioner’s office. However, I do believe that the additional resources required to deliver Part 2 of this Bill have to be based upon a realistic appraisal of the work it will actually involve, and the likely impact on the office’s existing statutory functions.

14. I trust this submission is of interest to the Committee and I would be happy to provide any further information that the Committee would find useful in its deliberations.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

1. Yes, Scottish Borders Council submitted estimated costs of implementing the 5 options regarding the 600 hours early education and childcare proposals and confirmed at that time they believed the estimated budget allocation to be sufficient. Scottish Borders Council, along with community planning partners, submitted a detailed response to the draft bill at consultation stage.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

2. The FM recognises that the final models of delivery cannot be fully anticipated. We await confirmation that the full funding will be allocated to local authorities on the basis of the proportionate share for the national GAE.

Did you have sufficient time to contribute to the consultation exercise?

3. Yes, we were able to respond within the deadlines set.

Costs

If the Bill has any financial implications for your organisation, do you believe these have been accurately reflected in the FM? If not, please provide details.

4. In respect of the financial implications for 600 hours of early education and childcare, it is anticipated that the figures quoted in the FM (based on this council’s proportionate share of the national GAE) will be sufficient to cover additional costs. However, Scottish Borders Council have not agreed their delivery model so it is difficult to give a definitive response at this stage.

On the issue of capital funding to support the 600 hours we are assuming that this would be allocated to local authorities on the basis of the proportionate share of GAE giving Scottish Borders £700,000 over the three year period 2014/15 – 2016/17. If this capital fund were to be allocated in any other ways e.g. through a challenge fund, this council would have some concerns.

5. With regard to the Named Person we have some concerns around the financial profile as contained within the FM. Assuming the additional funding is allocated on the proportionate share of the national GSE, we estimate that £219,928 has been allocated to Scottish Borders in 2016/17.

6. Scottish Borders Council, along with its community planning partners, is already committed to the concept of the Named Person and plans to roll out this model during 2013/14. The council requests that the financial profile to support local...
authorities implement the Named Person be amended to makes resources available from 2014/15. This council notes that funding to support the introduction of the Named Person is being made available to NHS Boards from 2014/15.

7. Scottish Borders Council also believes that additional funding to support the Named Person needs to be available for more than one fiscal year. The Highland Pathfinder showed it took several years to implement the cultural changes required within and across organisations in order to implement GIRFEC. Scottish Borders Council believes funding requires to be available over three consecutive years starting in 2014/15 to ensure the successful establishment of the Named Person role.

8. Kinship Care – The FM appears to assume that if carers successfully apply for a kinship care order, they would no longer require financial support. In relation to current s11 processes, we do not find this to be the case and if financial support was not available, it is believed that carers would not progress to a kinship care order under the new arrangements. Alternatively, if the Council on a discretionary basis was to continue to provide the required financial support to carers (carers’ allowance) then this would put an additional financial burden on the Council of up to an estimated £150k p.a. Additionally, current Welfare Benefits arrangements do not support kinship carers or carers on low income.

9. Counselling – It is unclear from the language and terminology used in the Bill and FM as to what type of intervention is being referred to with various terms such as “Counselling”, “Mediation”, “Family Therapy” and “Family Group Conferencing” being used relative to the current Social Work role. As a result, quantification of the level of savings that will be accrued from implementation of this provision of the bill is not possible.

10. If it is anticipated that the above are purchased services in addition to core then this will come at a significant additional cost to the Council. The types of services provided or described can clearly be one-off, short-term or long-term therapeutic and as a result, their individual financial implications are difficult to identify, but clearly they will vary. The Bill appears to imply that the above provisions would reduce future need and the costs of meeting this need, but there is no direct evidence to support this and the fact that ongoing support (and not a single intervention) would be required.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

11. Scottish Borders Council, as detailed above, has a concern that the estimated costs of establishing the Named Person role within the local authority is not sufficient to ensure this part of the Bill is effectively implemented. Funding requires to be available for more than one fiscal year and the profile needs to be amended to allow finances to be available in 2014/15.

12. With regard to the evidence of the benefits of GIRFEC (paragraph 53 of the FM), Scottish Borders Council and its partners have been designing and delivering services to children, young people and families around the principles of GIRFEC for
some time. This includes the establishment of locality early intervention programmes, locality multi-agency teams, a single plan with a common assessment framework etc. As a consequence some of the tangible benefits described in this section of the FM have already been recorded and efficiencies have been made within service providers to reflect this. Whilst totally supporting the concept of the Named Person role, this council is cautious about projecting what additional cost savings will result through its implementation.

13. From the provisions in the bill and FM, it remains unclear as to whether the forecast additional costs, savings and future saved costs will in turn be used as a basis for reducing funding to the Council. Given the high-level approach to identifying these factors on a macro national basis, we are concerned that this will only have a detrimental effect on the Council’s ability to continue to provide and fund services.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

14. Notwithstanding the comments made previously Scottish Borders Council is aware that other aspects of the Bill may put some resource pressure on the council. For example to extension of powers to the Children’s Commissioner so that office will be able to undertake investigations in relation to individual children and young people will inevitably require time and resource, if that investigation is centres in or around the local authority.

15. Scottish Border Council’s comments regarding the financial costs are based on the assumption that the additional funding will be distributed based on this council’s proportionate share of the national GAE. If this was not to be the case, the council may require to reconsider its views on the financial implications.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

16. The main areas of uncertainty/risk identified by this council were around staff ratios, supporting local needs and flexibility requirements around the early learning and childcare. These are now reflected in the FM. The one-off nature of the financial support for the Named Person may result in budget pressures for this authority.

Wider issues

Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

17. As previously described, Scottish Borders Council believes that financial support for the implementation of the Named Person needs to be available earlier than 2016/17 and that support needs to be allocated over at least a three-year period to allow the successful implementation.

18. The council has some concerns around the projected avoided costs arising from diverting children from formal kinship care. Does this mean that GAE allocations would be reduced proportionately from 2015/16 based on these financial assumptions?
Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

19. It is not possible to quantify at this time
FINANCE COMMITTEE CALL FOR EVIDENCE

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL: FINANCIAL MEMORANDUM

SUBMISSION FROM SCOTTISH COUNCIL OF INDEPENDENT SCHOOLS

Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. SCIS responded to the Scottish Government’s consultation on the Bill, however we did not comment on the financial assumptions made as, we felt more detail was required before we were able to do this.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. N/A

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. SCIS is responding on behalf of the independent school sector, rather than commenting on direct costs associated with the organisation SCIS.

5. The following points reflect the financial implications for the independent sector:

6. The Named Person
The FM identifies at paragraph 62 that “training is currently provided by the Scottish Council of Independent Schools, at a cost of £95 per person, per day, and is, therefore, estimated to be £41,800 for Head Teachers and Depute Head Teachers.”

7. We would question this assumption, which has not been the subject of consultation with SCIS or with our member schools. Although SCIS does offer Continued Professional Development (CPD) courses, that Named Person training could be incorporated into, we have not assumed this role. In addition, we have not previously provided training relating to the Child’s Plan, as it has not been relevant to the teachers who attend our courses, and therefore this could not be easily subsumed into existing training.

8. Our preferred method of training Named Persons in the independent sector is cited in the Business Regulatory Impact Assessment (BRIA) which states, “Staff from these (independent schools) are already attending training that is being delivered by
local authority partners”. SCIS believes that, to ensure that Scotland is getting it right for every child – irrespective of educational institution - training of Named Persons should be inclusive of independent schools. Children who attend these schools live within Local Authorities where they are entitled to use support services paid for through their parent’s contribution to income and council tax. This method of training, with the exception of Edinburgh, would only entail an additional few from independent schools attending each local authority training event.

9. Where independent schools develop separate training events, a budget, similar to that of the NHS’ contained in Table 13, should be included in the FM to account for any training materials that will not be provided for by the Scottish Government and the backfilling of staff. We would like to take this opportunity to state that if this were the case it, SCIS believes that it would contradict a desirable outcome of the GIRFEC approach: to encourage multi-agency working. Training of Named Persons by a third party could not satisfy the policy of ‘getting it right for every child’ effectively.

10. The costs of £398,097 (summarised in Table 8) has been calculated for backfilling staff for training days in regards to local authority schools, however, the same has not been considered in the FM for independent schools. Allocated Named Persons from independent schools may also require backfilling staff for training days as, some Head Teachers and Deputy Heads do teach; therefore this cost should be included in the FM.

11. The population of children aged 5-18 in independent schools appears to have been underestimated as, there are 29,626 pupils in primary and secondary education in SCIS’s 72 member schools alone. Conversely, the Scottish Government’s census states that the number of independent school pupils in Scotland totalled 30,427 in the same year (2012). This figure covers an additional 28 schools and, therefore seems unrealistic. If the number of pupils attending independent schools was higher, this could increase the additional cost in teacher staffing time per year significantly.

12. In Table 15 of the FM, private organisations are described as having 38 working weeks to a year, however all 18 of our additional support needs schools offer more than 38 placement weeks. In addition, boarding school pupils require supervision outwith school hours in addition to the regular ‘working week’, increasing the possible admin support hours required of a Named Person per week. Furthermore, if Named Persons in independent schools are to continue their role throughout school holidays these additional hours of work would need to be included in the FM.

13. Early learning and childcare
The assessment that there will be no cost to other bodies, individuals or businesses in relation to provisions regarding early learning and childcare should be questioned. The BIRA report states that there could be a negative impact on partnership providers if “current levels of funding from local authorities to deliver the entitlement are not increased”. Although the FM assigns £1,226,365 for ‘partner provider
uprating’, local authorities are only advised to set a minimum payment level for preschool education, which poses a cause for concern.

**Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?**

14. No, the FM itself does not appear to project that far in advance. For the 7 years that it does appear to project for, SCIS believes that:

15. In regards to early learning and childcare, the cost for partner provider uprating should continue to increase in line with inflation rather than only increasing in line with inflation when the Bill’s provisions are first implemented. This is shown in Table 17 by the figure for partner provider uprating remaining the same between 2014 and 2020.

16. The Summary of Additional Costs should include a budget for the expected increase in demand for partner providers (due to an increase in the number of families utilising free childcare and the extension of childcare hours). It would be useful to include information detailing how the figure of £1,226,365 has been reached for partner providers and, if it has been calculated for the existing number of partner providers with no inclusion of an increase in demand.

17. That the veracity of the statement regarding on-going Named Person training being absorbed into existing CPD courses depends on how specific Named Person training is/how long it will take, and therefore whether it can be subsumed into existing structures. If SCIS were unable to include this in existing training it would add further costs to independent schools and should be budgeted for in the FM.

**If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?**

18. Again, SCIS is responding on behalf of the independent school sector, rather than commenting on direct costs associated with the organisation SCIS.

19. As previously stated, we think that the cost of training should be met centrally. Furthermore, early learning and childcare costs should continue to be met by local authorities and realistically budgeted for (to include inflation and increases in demand).

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**

20. SCIS does not believe that margins of uncertainty have been accurately reflected in the FM as; budgets are not shown to increase in line with inflation; expected increases in demand are not included; and continued training of Named Persons is not thought to be required. There could be a further cause for concern if the models of flexibility that have been used “in advance of consultation with local populations”, in relation to the Bill’s childcare provisions, are not representative and accurate. This would affect the indicative additional staff costs considerably.
Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill?
If not, which other costs might be incurred and by whom?
21. N/A

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
22. N/A
Consultation
1. Yes

2. It is difficult to judge as there still some unknowns. It is also difficult to see how one submission fits into the national perspective. If every Council did not reply then it is hard to quantify the total impact accurately.

3. Yes

Costs
4. There are some areas won’t be known until further work is done. E.g. 600 hours of early learning and childcare. This depends on the model of provision adopted.

5. Given the margins of uncertainty the costs and savings are reasonable. However, avoided future costs should not be netted off against future additional costs as the avoided costs are not currently budgeted for. i.e. there is no real saving against current budgets. They are assuming savings against budgets which do not exist at present.

6. Any new duties prescribed by legislation should be 100% funded by the Scottish Government.

7. Yes.

Wider Issues
8. I am not aware of other costs.

9. There could be potential future costs but they are not possible to quantify.
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. A number of departments across the Council participated in the Consultation and commented on the financial assumptions being made.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Based on the analysis of the different areas of the Bill, it appears that reasonable assumptions have been made in terms of costing the implications of the Bill, and therefore reasonable levels of funding have been allocated for Duties Relating to the Named Person and Child’s Plan and Corporate Parenting. However, the Council has concerns in relation to the costs identified for Early Learning and Childcare (including a need to clarify the allocation method for capital monies), Throughcare and Aftercare, Kinship Care and Counselling (including Cost Avoidance monies for the latter 2 areas).

Did you have sufficient time to contribute to the consultation exercise?
3. Yes.

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
4. As noted in the response to question 2 above, it appears that the financial implications of Duties Relating to the Named Person and Child’s Plan and Corporate Parenting are captured by the FM. However, the figures for Early Learning and Childcare (in the first 3 years), Throughcare and Aftercare, Kinship Care, and Counselling (inc. Cost Avoidance for Kinship Care and Counselling) do not reflect the financial implications for the Council.

5. Specifically, in terms of the funding made available for Early Learning and Childcare, the monies noted by the Government do not appear adequate in the first 3 years. Moving forward, the principle of the additional funding to allow for the expectation of incremental increased flexibility within Early Learning and Childcare provision in future years is welcomed. In terms of the Capital Spend, the Council has not confirmed its requirements yet however, it does acknowledge the allocation made. In relation to capital, the Council feels it would be appropriate to ask Councils what they require to spend on capital works in order to inform the allocation process.
6. With regard to the allocation for Throughcare and Aftercare, current costings appear sufficient up to 2017/18 but show a shortfall thereafter.

7. In the areas of Kinship Care and Counselling Services, whilst “cost avoidance” is not quantifiable nor guaranteed, the Council does expect costs will be incurred. These do not appear to have been taken into account. This is an area of significant concern for the Council.

8. The Council will only be able to provide services and flexibility to the level of new funding provided.

*Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?*

9. As noted in the response to question 4 above, the additional funding to allow for the expectation of incremental increased flexibility within early learning and childcare provision in future years is welcomed. However, local authorities will have to ensure that the level of flexibility offered to enhance service delivery does not exceed the level of affordability provided from the additional funding.

10. The allocation for Throughcare and Aftercare is sufficient up to 2017/18 but insufficient thereafter.

11. In the areas of Kinship Care and Counselling Services, whilst “cost avoidance” is not quantifiable, costs are expected. These do not appear to have been taken into account.

*If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?*

12. The shortfalls in allocation are noted in previous responses above (questions 2, 4 and 5). Given these shortfalls, it is suggested that the Scottish Government could re-visit these areas.

13. The Council will only be able to provide services and flexibility to the level of new funding provided.

*Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

14. As above.

**Wider Issues**

*Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

15. In addition to the shortfalls noted above, there are also costs associated with training for the Minimum Qualification for Foster Carers (which for the Council amounts to £0.070m).
16. There are likely to be additional costs associated with counselling services. The extent and accessibility of local authority and NHS counselling services for Children and Young People is currently limited. A key aspect of the preventative approach is meeting the emotional, psychological and mental health needs of Children and Young People through counselling and family therapy. There is currently no provision in the FM to invest new funding in this key service area.

**Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?**

17. The Council would expect that their ongoing monitoring of implementing the Bill would identify any secondary issues.

**Other Comments**

18. n/a
Consultation
Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?
1. Yes, via COSLA’s submission.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
2. Not in all parts in particular in relation to rationale for only one year of additional funding in respect of Kinship Care.
3. See comments in relation to questions 4 to 7

Did you have sufficient time to contribute to the consultation exercise?
4. Yes

Costs
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details?
5. No. A number of issues as follows:

a) GIRFEC – Named Persons – Training: the costs for the initial 2 days training seems reasonable, however there will be a need for ongoing training. It is anticipated that this ongoing training will displace other training on CPD days and actually require additional time for training on a regular basis. In order to complete the training it will require a degree of backfilling and this will be substantial given numbers of staff involved, particularly in Education services where, in primary schools it is likely that the best placed person to be the Named Person may actually be the class teacher, or if not the class teacher, then the class teacher will require to have a role in the process and be involved with the Named Person in delivering that role. This will have training costs and as noted above it is viewed that this will displace other training on CPD days and will therefore require an element of backfilling.

b) GIRFEC – Named Persons – Staff Costs: The calculation of the first year’s additional costs at 3.5 hours for 10% of all children is reasonable, however the assumption at paragraph 52 that some form of system change will accommodate these costs for years 2 onwards is speculative and basically assumes that £7.8m can be saved from elsewhere in the system to accommodate this. This is, however contradicted in some of the examples provided in paragraph 53 e.g. that Social
Workers will have less referrals and therefore “freeing up time to focus on more serious concerns” – this does not generate a saving that can be used to fund the cost of time for the Named Persons. The example regarding savings of time from fewer meetings – again this is speculative as it is quoted as 75% of time saving for meetings – to be meaningful would assume that the people who will be Named Persons currently spend 75% of their time in meetings – this has not been measured. The savings identified for the Children’s Reporter will not result in funds being made available to local authorities to fund the Named Persons time. The potential for a reduction in numbers of children on the CP register will not necessarily result in savings, though this may be possible; however there is a lack of evidence for this assumption. Therefore the £7.8m cost identified for staff time should be funded on a recurring basis. In addition the assumption that Social Workers will ‘free up more time for more serious concerns’ actively works against the policy initiative around Early Years and Preventative work as supported and encouraged by the Early years Collaborative.

c) GIRFEC – Named Persons – Administrative Costs: For the same reasons identified at answer 4b) above the costs identified of £1.95m should be funded on a recurring basis.

d) GIRFEC – Named Persons – Staff Costs and Administrative Costs: In relation to the FM assumptions regarding local authorities this is inconsistent with the assumptions identified at paragraphs 60 and 61 of the FM which sees ongoing recurring costs for the NHS. There is a lack of detail as to why the proposed difference in assumptions for local authorities to the NHS.

e) Early Learning and Childcare – noted that costs are estimated at 2011/12 prices – these should be uprated to 2014/15 costs.

f) Early Learning and Childcare – While at paragraph 75 the FM states that the costs were derived in discussion with COSLA and some local authorities, it is not clear that the funding identified in table 17 are those which COSLA identified. The issue regarding flexibility of service provision is an issue that is not clearly costed in the FM and the discussion between COSLA and local authorities at the time of the Scottish Government consultation identified significant variations in cost depending on the model used to deliver the 600 hours. It is not fully clear as to how the FM stated costs are calculated and how the costs around flexibility are dealt with. Current models of delivery are simple and highly efficient - 2.5 hours in the morning and 2.5 hours in the afternoon, with time for a lunch break for staff in between. More flexible models could be much more expensive in terms of staffing and other resources. It would therefore appear that the costs of implementation are more than just “indicative” and are more “speculative” in nature. It would appear that this is simply placing the cost risk on local authorities.

g) Early Learning and Childcare – Capital costs: it is unclear how the £90m total cost has been calculated.

h) Getting It Right For Looked After Children – Extending Throughcare and Aftercare: the assumptions used in table 18 are speculative and generate an
indicative demand that reduces by 1,000 cases by 2019/20. There is clearly a risk that this reduction in demand won’t occur and therefore the costs to local authorities are under-costed. In addition the assumption that the increase in successful applicants will increase to 65% is not evidenced and there is a risk that the success rate could be higher than this – again resulting in costs to local authorities. The value used for the cost of ongoing care at £3,142 is lower than the value of care for such clients which was done during the consultation process, where at that point the average cost was over £6,000 per client.

An additional concern here is that due to changes to benefits system brought in by Welfare Reform there may be more people aged up to 25 who will have difficulty in paying rent etc therefore this demand may need to be met by Local Authorities if they were previously looked after.

i) Getting It Right For Looked After – Kinship Care:
For tables 24 and 25 in the FM there are a range of percentage assumptions as to eligibility and uptake – it is not clear that these assumptions are robust. At paragraph 125 there is an assumption that of the estimated 15,668 children in informal kinship care only between 1.5% and 3.5% per year apply for a kinship care order – there is no rationale for using these figures and, of course, there is a risk that the uptake could be significantly higher than this. The projected avoided costs shown at table 28 suggest that by 2019/20 a minimum of £10.347m can be saved by reducing the number of formal kinship care arrangements. Of this sum around £4.2m is based on reduced demand on Social Workers which is debatable as to whether these are “cashable” savings with no cost of achievement e.g. redundancy costs. The underlying assumption in relation to the potential for avoided Social Worker costs is that demand for formal Kinship Care orders continues to rise at recently experienced rates and therefore local authorities would need to spend an additional £4.2m (lower end cost) on additional Social Worker time. This is a very broad assumption as to future demand and that local authorities would actually be able to afford the projected increased numbers of Social Workers – rather than diverting existing Social Worker time from other work. The assumptions around potential future costs avoided are therefore very speculative, whereas the costs of implementing the Bill may be lower than what would be required. The assumption that section 11 orders would reduce the amount and cost of support to continue to keep these children out of more formal care arrangements is based on a significant assumption – that the higher levels of intervention may well still be required and be comparable with the cost of maintaining a formal kinship care order, due to complex needs, etc. In relation to families “at risk” there is again the assumption that costs can be avoided relating to avoided formal kinship care arrangements – these assumptions may be flawed on the same grounds as noted above.

Table 32 summarises the position per year and shows that the total cost of implementing (at lower end estimates) by 2019/20 will be £7.5m (or £16.1m at higher end cost assumptions). The build-up of these costs is less clear, and it would appear that the total avoided cost identified in the table is wrong each year. For lower estimate costs in year 1 the total should be £3,824,150 (total of £476,894 from table 31 and £3,347,256 from table 28)? Nevertheless as has been stated above many of the stated avoided costs are based on projections around ongoing growth in demand for formal kinship care placements (which may not happen) which
generates additional care/support costs and Social Worker costs. Both of these assumptions suggest that the section 11 order proposed in the Bill will allow such children’s care to be provided on a lower cost basis than is provided to those on formal kinship care orders. There is no guarantee that such costs will reduce – as the support needs of these children will still be the same no matter the form of care order in place as the same desire will be there to keep such children out of more formal care arrangements.

Additionally from a practice point of view it has consistently been the practice of social workers (certainly in West Dunbartonshire) to always seek out any extended family members who could take the child/ren on a kinship basis in order to avoid accommodating the child into formal placements. This has consistently been on the basis that this is often in the child’s best interests – keeps them within their community, near friends and attending the same nursery or school, and not on the basis of cost. However obviously it has avoided for some children the need to bring them into costly placements. The effort for the children who are placed within kinship placements has also been to secure their future care arrangements for the foreseeable future, therefore our social workers have consistently encouraged kinship carers to apply for residence Orders (also section 11). Our experience has been however that carers are less motivated to do so when they know that their weekly support costs will cease, even when we have offered to pay for associated legal costs should they not be in a position to do so. It is on this basis, and from long years of experience that we are not convinced that the assumptions about the number of carers applying for the new Section 11 Kinship Order are miscalculated and will not therefore reduce costs over time or demand.

Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?

6. Cannot see 15 year projections in the FM. In the above response to question 4 it can be seen that there must be serious doubts over the assumptions made in a number of areas of the FM and the real risk that the real cost of implementation will be significantly higher than estimated in the FM.

7. An assumption in the FM cost/benefit analysis regarding Kinship Care is that there will be a significant number of carers who seek to apply for the new kinship care order. This is not guaranteed as even at present kinship carers (probably identified as informal in the FM) do not seek to gain a more formal style of order, as the support already provided by Councils is seen as sufficient. If this basic assumption is problematic then the assumption around the costs of the new order will not be incurred and more importantly the assumptions around avoided future care costs will not be realised (even though, as per above, this assumption is viewed as unlikely to be achievable in any case (per comments at question 4)). West Dunbartonshire always seeks, where the need for care arises, to place children with family members as being the referred route, rather than more formal approaches to care.
If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

8. No – the costs of implementation cannot be funded by this local authority and it is expected that the Scottish Government should provide local authorities with funding through normal distribution means to fund the full financial impact of the Bill. As stated at answer to question 4 – there is a significant risk that costs in relation to kinship care proposals will not be met by local authorities being able to reduce future costs and therefore the Scottish Government should fund the costs of kinship care changes per the Bill. There is also an underlying concern around the assumptions around future cost avoidance arising from the Kinship Care proposals, that the Scottish Government see this as a means of Councils funding future service cost demands – when in reality the view expressed above is that the potential to avoid costs/generate efficiencies around these proposals won’t actually materialise. The further risk is that the Scottish Government decides on the back of the FM that local authorities need less funding and reduce levels of RSG.

Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

9. No – there are a number of areas of significant uncertainty over the estimates – see comments at question 4. The identified timescales are thought to be reasonable.

Wider Issues
Do you believe that the FM reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

10. No – per responses above.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

11. Not aware of any.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial implications made?

1. Yes, West Lothian Council took part in the consultation and included comment on the financial implications.

2. This response has been prepared by the Head of Finance and Estates as it relates to the financial memorandum.

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?

3. Yes with regards to Early Learning and Childcare.

4. No with regards to Looked After Children and GIRFEC.

5. Looked After Children - Kinship Care

Kinship care is integral to West Lothian Council’s looked after children service. The council currently pays full allowances to all kinship carers and any move to change this would seriously impact on the council’s ability to provide suitable placements for children who need this service. The additional costs which are anticipated reflect the requirement to provide financial support to carers seeking legal guardianship of the children they look after. It is anticipated there would be an ongoing requirement in the region of £20,000 per annum, and as such additional funding should be provided on a recurring basis.

6. Looked After Children - Through care and Aftercare

Currently West Lothian Council has a number of high cost packages in place to support former looked after children up to age 21. It is estimated that an expansion of this up to age 25 could cost West Lothian Council in the region of £192,000 per annum. Based on new recurring costs additional funding should be provided on a recurring basis.

7. GIRFEC – duties relating to the named person and child’s plan

In order to implement the transformational change required in effective practice to meet the legislative duty regarding Named Person and Single Plan, the council would need ongoing funding to maintain, review and reinforce service delivery. The projected recurring costs of £324,000 reflect the additional administration and ongoing training required.
**Did you have sufficient time to contribute to the consultation exercise?**
8. Yes, on the basis that this is an officer response relating to financial issues.

**Costs**

*If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details.*
9. The financial implications for West Lothian Council have not been accurately reflected in the FM in relation to Looked After Children and GIRFEC as outlined above in the response provided to question 2.

**Do you consider that the estimated costs and savings set out in the FM and projected over 15 years for each service are reasonable and accurate?**
10. Funding proposals are provided for a six year period rather than a 15 year period. Based on the information provided, the costs appear reasonable with regards to Early Learning and Childcare but not with regards to Looked After Children and GIRFEC, as per the response provided to question 2.

*If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?*
11. As specified in the response to question 2 the recurring financial costs in relation to Kinship care, through care and aftercare and named person/child’s plan are not reflected in the FM. In line with previous practice the cost of legislative changes should be fully funded.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**
12. Yes with regards to Early Learning and Childcare. However, not for Looked After Children (Kinship Care Orders and Through care and Aftercare) and GIRFEC as no recurring funding has been provided, as outlined in response to question 2 above.

**Wider Issues**

*Do you believe that the FM reasonably captures costs associated with the Bill? If not, how do you think these costs should be met?*
13. This question is answered in the response to question 6 provided above.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*
14. Future costs that might arise from subordinate legislation associated with the current Bill will need to be assessed when the draft regulations and guidance are available for comment. It is not possible to quantify these costs at this time. As previously noted, the expectation in line with previous practice would be that the Scottish Government would fund any further costs associated with legislation.
12 September 2013

Dear Kenny,

Children and Young People (Scotland) Bill – Revised Funding

I am writing to draw your attention to a change in the funding for the Children and Young People (Scotland) Bill in light of the Budget this week. This letter should therefore be read alongside the Financial Memorandum.

The Financial Memorandum includes an estimate of £1.1 million for extending funded early learning and childcare to two year olds who are looked after or subject to a kinship care order. Following helpful discussions with COSLA we have decided to increase the amount allocated to local government for this priority area by £3.4 million to a total of £4.5 million. This is to reflect the importance we place on the early learning and childcare agenda and to integrate monies previously provided to support looked after 2 year olds via the Early Years Change Fund.

The Financial Memorandum also includes an estimate of £1.2 million for uprating partner provider payments in line with inflation from 2007. This is in recognition of the fact that local authorities have not increased partner provider payments consistently since Scottish Government advice on payment levels stopped in 2007. We now think this figure should be in the region of £2 million to more accurately reflect the financial pressures on local authorities and partner providers, and this too has been reflected in the Budget.

The early learning and childcare provisions in the Children and Young People (Scotland) Bill represent a significant step towards the Scottish Government’s vision for transformational change in early learning and childcare. I firmly believe that this positive shift in the resourcing of these provisions clearly underlines my commitment to this agenda and to supporting the delivery of this flagship policy.
This letter is copied to the Convener of the Education and Culture Committee.

AILEEN CAMPBELL

c.c. Stewart Maxwell, MSP
Convener, Education and Culture Committee
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 50 Session 4

Meeting of the Parliament

Thursday 21 November 2013

Note: (DT) signifies a decision taken at Decision Time.

Children and Young People (Scotland) Bill: The Minister for Children and Young People (Aileen Campbell) moved S4M-08326—That the Parliament agrees to the general principles of the Children and Young People (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 104, Against 0, Abstentions 14).

Children and Young People (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney) moved S4M-08192—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Children and Young People (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.

The motion was agreed to (DT).
The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-08326, in the name of Aileen Campbell, on the Children and Young People (Scotland) Bill.

The Minister for Children and Young People (Aileen Campbell): I am grateful for the opportunity to open the debate on the general principles of the Children and Young People (Scotland) Bill.

I welcome Forrester high school and St Augustine’s high school, who have a beautiful photographic display in the Parliament to mark yesterday’s universal children’s day. It is apt to note that, given the topic of the debate.

I thank everyone who commented on the bill, especially the 2,400 children and young people and the 1,500 parents who provided their views. A range of opinions have been expressed. Many have been constructive and probing. That can only ensure that such a landmark bill will be examined, be improved and, ultimately, have the profound positive impact on children and young people that we all want it to have.

Today is an opportunity to take an overview of what the Parliament wishes the bill to achieve. I will start by discussing the principles that lie at the heart of not only the bill but our approach to improving the lives of children and young people.

The bill rests on five simple principles. First, it declares our collective commitment to making Scotland the best place in the world in which to grow up. It will establish in statute our shared responsibility for ensuring that our children have the best start in life and access to what they need to succeed as they grow and develop. Through its focus on what has been tried and on what we know works in our getting it right for every child approach, the bill builds on our renowned Scottish tradition of putting children at the centre of services and ensuring that their rights are upheld.

Next year is the 50th anniversary of the Kilbrandon report, which set the foundation for our children’s hearings system. I can think of no more fitting way of commemorating that than by passing a bill that so thoroughly embodies the principles of Kilbrandon.

The second principle is that shared responsibility should be achieved by working with parents and carers to provide the caring and supportive environments that our children should have. The bill aims to make public services more responsive to needs and sensitive to working with families. Our children deserve nothing less.

That will require a change in culture, systems and practice. The framework for that change is GIRFEC, which has been repeatedly endorsed by the Parliament, most recently in September. GIRFEC has been tested; it works. As the committee found in its evidence, the benefits to children and families are clear in those parts of Scotland that are furthest along with its implementation. As Barnardo’s Scotland said in its submission to the committee:

“We ... welcome the proposals to put elements of GIRFEC into law. GIRFEC has been a great success where it has been fully implemented and it is right that the Bill should seek to secure its wider adoption.”

The third principle in the bill is acknowledgement that we must continue to improve how we support our most vulnerable children and young people. The challenge that the Education and Culture Committee’s report of its inquiry into taking children into care has set is one that none of us takes lightly. The bill rises to that challenge by making it easier for children who need to be looked after to stay in their families through the kinship care order; by extending the support that is available to care leavers; and by ensuring that the wider public sector understands our shared corporate duty in relation to those who have been in care.

Moreover, the bill recognises that, for some children, we need to respond more quickly to the terrible risk of abuse and neglect. We are all familiar with the tragic stories in the media of children who were below the radar, the signals on whom were not picked up or acted on, and in relation to whom the need to act would have been apparent only to someone who had access to all the relevant information, which was spread among a number of different organisations. As I said on 25 September, the recent tragic case of Daniel Pelka highlights the importance of professionals putting the child’s interests at the heart of what they do and communicating their concerns. We can never prevent every case of abuse and neglect, but our bill will ensure that our services are better placed to identify and act on any concerns before those cases, too, become tragedies.

The fourth principle is the very simple idea that services to support our children and young people
are better when they are planned jointly. That idea underpins our proposals for joint planning of services by local authorities and health boards, and it is equally well planted in the planning that we expect to be done for individual children who need additional support from services. We do not need scores of unco-ordinated plans across different services and professionals. Children need services that work together with one another and with their families.

Liam McArthur (Orkney Islands) (LD): I am grateful to the minister for giving way.

In linking her first and fourth principles, will she give an undertaking that she will ensure that children and their families are as closely involved as they can be in the process of developing those children’s plans?

Aileen Campbell: Absolutely. They need to be fully involved in the planning. That is the underlying ethos of GIRFEC—it is about ensuring that children and families are respected.

Lastly, the bill is watermarked with the principle of early intervention. Early intervention has been a mantra for years. We all know about the benefits to children and families of providing support as soon as problems arise, and to services whose resources are increasingly stretched. The bill will make real that recognition of the value of early intervention to our aspirations for early learning and childcare.

The benefits of investing in the early years are known when quality services are provided. We must ensure that those services meet the needs and wishes of families. With the resources and powers that we have now, we have made a start on transforming childcare. We want to match the very best in Europe and, as a step towards that, the bill will give three and four-year-olds 600 hours of free nursery education. That represents an increase of almost half on the figure of 412.5 hours that we inherited, and we are extending that provision to the most vulnerable two-year-olds. In total, around 120,000 children will receive more childcare, more nursery education and a better start in life. Families will be saved the equivalent of £707 per year per child.

Liz Smith (Mid Scotland and Fife) (Con): I am grateful to the minister for giving way and for the additional spending on that front.

How will the Scottish Government respond to the criticisms that Reform Scotland has levelled about the difficulties to do with when a child’s birthday falls?

Aileen Campbell: I will touch on that later in my remarks, but the increase in free nursery education that I have set out represents a huge step forward for children and families. In delivering a tangible increase in the number of hours of early learning and childcare, we will benefit families by protecting their budgets, as they will be able to save the equivalent of £707 per year per child. That first step should be recognised. We can look at what Reform Scotland has said, which will contribute to the wider debate that we must have in this country about how we transform childcare.

Those are the principles that steer our proposals. I am pleased that in its report the committee agreed that the bill’s principles are sound, and I am pleased that the bill will set our country on a path towards becoming the best place in the world in which to grow up—a Scotland that takes active and shared responsibility for the wellbeing of our children and young people and that recognises the continuing challenges and is never complacent. That is an ambition that I think members share.

We have listened carefully to everything that has been said during the bill process, taking full account of all interests in and perspectives on how to improve the delivery of services for all children and young people and ensure that their rights are respected across the public sector. Of course, there has not been agreement about all the detail of the bill. Throughout the process, we have welcomed constructive discussion, and in that spirit of positive debate I will address some of the issues that have been raised.

On the children’s rights provisions, I note the committee’s view that incorporation of the United Nations Convention on the Rights of the Child into Scots law does not represent the best way to progress the rights agenda at this time. That is our view. The whole premise of the bill is to make a practical difference in children’s lives, and we think that the balance that we have struck in the bill achieves that. We agree with Ken Norrie, who said:

“to incorporate the convention into the domestic legal system of Scotland would be bad policy, bad practice and bad law.”—[Official Report, Education and Culture Committee, 3 September 2013; c 2682.]

We recognise that the committee feels that there is scope for the current ministerial duties to be strengthened. Our view is that the proposed package of legal measures represents a major and significant step forward, but we remain open to suggestions on strengthening the provisions.

On the new powers available to Scotland’s Commissioner for Children and Young People, we welcome the committee’s comments on the proposed changes. We recognise that the new investigatory function will undoubtedly have resource implications for the commissioner. The financial memorandum suggests a staffing structure to support the new functions. However, staffing and governance issues are entirely a
matter for the Parliament. Indeed, the commissioner’s ability to operate entirely independently of Government is a key strength. Nevertheless, we remain willing to support the commissioner and the Parliament in considering some of the practicalities associated with the proposed changes.

On the role of the named person, I am pleased that the committee endorsed the value of the role and shares my determination that GIRFEC should be implemented consistently and effectively throughout Scotland. I note the committee’s comments about areas in which the practical implementation of GIRFEC needs further clarification and support from the Scottish Government. We will seek to clarify, through guidance in many cases, many of the issues that are raised in the report. On resources, we have set out our estimate of costs in the financial memorandum, but we recognise that costs will need to be monitored as implementation goes forward. We will reflect further on how best such monitoring can take place.

Neil Bibby (West Scotland) (Lab): The Royal College of Nursing Scotland said that the Scottish Government must recognise the Education and Culture Committee’s concerns about the capacity of the health visiting workforce to deliver on its existing duties, let alone the duties that are associated with the named person role. The people on the ground think that 450 additional health visitors will be required. Does the minister recognise those concerns? Will she give a commitment to increase the number of health visitors?

Aileen Campbell: We recognise very strongly the important role that health visitors have in the early years of a child’s life. Our ratio of health visitors to the people with whom they work is healthy compared with that in other parts of the United Kingdom. I have given a commitment to monitor implementation.

We note what the committee and some stakeholders said about information sharing. I think that all members understand why information sharing is such a critical and difficult area. Every inquiry into a child’s death in the UK over past decades has echoed the same crucial finding: that effective sharing of information within and between agencies is fundamental to improving the protection of children and young people. We have seen that too often to risk the same happening again. Proportionate, appropriate and timely information sharing is essential to ensuring that our children are kept safe from harm.

On our early learning and childcare proposals, we are delighted that many of the organisations that were invited to the Education and Culture Committee welcomed our focus on quality alongside the increased hours and flexibility. This is the first time that flexibility and choice have been put on a statutory footing and the first time that local authorities will be required to consult local parents to identify their needs.

The bill also introduces a new concept of early learning and childcare to replace the traditional concept of pre-school education. It recognises that the learning journey begins from birth, and sets the stage for our longer-term aim to develop high-quality and flexible early learning and childcare that is accessible and affordable for all children, parents and families.

We know that a number of organisations would like us to go further, especially in relation to additional vulnerable two-year-olds. Research shows that high-quality provision makes a difference to those children. We will not compromise on quality in ensuring that we improve the outcomes for our children.

I have, of course, dealt with some of the issues that Liz Smith raised in relation to Reform Scotland’s publication today. I look forward to continuing the debate with it.

The Deputy Presiding Officer: In 15 seconds, please. Regrettably, we are extraordinarily tight for time.

Aileen Campbell: The kinship care order recognises that the extended family has a responsibility to help when children are at risk and ensures that when kinship carers step into a parenting role, they will receive the support that they need. That is a huge step forward. Previously, any support that was provided to that group of carers was provided by local authorities on a discretionary basis only. The kinship care order will empower families to provide each child with a safe, stable, loving and nurturing home and will help some children to avoid formal care, if that is not in their best interests.

We also have strong commitments to ensure that we get things right for our looked-after children who are moving on to independent living. Our engagement on that with Who Cares? Scotland and others can ensure that we get things right in the final draft of the bill and that the bill works for our looked-after children.

I have set out the principles of the bill. Those principles represent the highest level of ambition for our children and young people, so it is not surprising that the bill covers a lot of ground.

I sincerely look forward to hearing the views of other members and the rest of the committee as we work together to ensure that the bill works for Scotland’s children.
I move,

That the Parliament agrees to the general principles of the Children and Young People (Scotland) Bill.

The Deputy Presiding Officer: We are extraordinarily tight for time. I invite members to speak for their allocated time or for less than that in order to allow as many members into the debate as possible.

15:22
Stewart Maxwell (West Scotland) (SNP): I am, of course, speaking today as the convener of the Education and Culture Committee.

As the minister said, the bill contains a wide range of proposals across its 13 parts. Consequently, we took a large amount of oral evidence and considered more than 180 written submissions. The input of all the organisations and individuals who submitted views to us has been essential, and we thank everyone who contributed. I also thank the committee clerks for all their hard work, my committee colleagues for their efforts in scrutinising the bill, and our Scottish Parliament information centre researcher for assisting us.

The Education and Culture Committee has spent significant time in this session examining issues that are linked to child welfare—specifically, the educational attainment of looked-after children and decision making on whether to take children into care. It is clear from our inquiries that much more is needed to improve outcomes for disadvantaged and looked-after children. That work has helped to inform our scrutiny of the bill. We support the bill’s central aim of promoting early intervention and preventative action to give children the best possible start in life.

A number of areas received particular comment in the evidence, which is reflected in our report. I cannot cover everything in the time that is available, so I will focus on five areas: children’s rights; named persons; information sharing; the extension of early learning and childcare; and aftercare for young care leavers.

Part 1 of the bill relates to the rights of children. Many children’s organisations supported the full incorporation of the UN Convention on the Rights of the Child into Scots law. They considered that that was the best way to embed children’s rights into the culture of our society, enhance respect for our children and send a clear message about how we value them.

Those are laudable outcomes, but the committee was unanimous in its view that the case had not been made for full incorporation of the convention. Our main difficulty was that it was not always clear what practical improvements such a move would bring for children and their families.

Our view is that, although the outcomes arising from incorporation are important, it does not necessarily follow that incorporation is the best or the only way in which to achieve them. In addition, the convention is already implemented in Scotland in a number of ways, such as under our obligations in the Scotland Act 1998.

Although we are not persuaded by the argument for full incorporation, we agree that the duties on the Scottish ministers and public authorities should be strengthened. Ministers must report every three years on what they have done to further the convention, for example. We want the bill to go further, so we have called on ministers to set out their vision on what they will do for each three-year period. We have also asked the Government to explain why it has chosen to require public authorities to report on “what steps they have taken ... to secure better or further effect” of the convention and not to require them to act on those findings.

The second area that I want to focus on is the introduction of a named person for every child and young person up to the age of 18. I should of course acknowledge that one committee member, Liz Smith, did not agree with the inclusion of that proposal in the bill. However, it was supported by the rest of the committee. The named person proposal forms part of the wider policy of getting it right for every child, or GIRFEC.

As members will be aware, the proposal to introduce named persons has received considerable comment. Some of the most compelling evidence that we received was from Highland Council, which is seen very much as a trailblazer for GIRFEC. The council told us that the named person role was developed through practice and experience, and that it was based on what families and professionals wanted. The initiative has been fully implemented since 2010 and the results are encouraging. Families like having contact with someone whom they know and who knows the child, and they do not have to deal with bureaucratic systems to get some extra support. Professionals, too, have welcomed the initiative. Teachers, health visitors and midwives feel that the named person role has not changed what they do but has made them feel empowered.

We also heard evidence from health and teaching professionals that the named person role could lead to a reduction in neglect. According to Highland Council, the introduction of named persons meant that children were more likely to get the help that they need when they need it, and fewer children were referred to the children’s reporter. However, the committee is mindful that some of that improvement is due in part to the
culture of integration and collaborative working across front-line services in Highland.

As we have said in our report, we want the Scottish Government to give details of the range of support that it will provide to ensure that local authorities and health boards can replicate the successes that have been experienced in Highland, recognising the different circumstances that will prevail in different parts of the country. We also highlighted a number of practical issues that need to be resolved, such as the types of intervention that a named person will be expected to make and how the role will operate during school holidays. We believe that the success of the named person role will depend on the Government’s ability to work with its local partners to clarify those and other issues.

The Scottish Government must also be prepared to ensure that health boards, but particularly health visitors, can cope with the demands placed on them. The Finance Committee raised that point with us, and we have asked the Government to explain how capacity issues will be managed to ensure that the bill’s good intentions can be put in place.

Linked to the introduction of named persons is the proposal to lower the threshold for sharing information about individual children or young people without consent. The bill will allow professionals to share information where there is “concern about the wellbeing” of a child rather than only where, as the current test requires, there is “risk of significant harm”. It is crucial that all those who share information are properly trained. Training and guidance must cover all relevant service providers, including the private and third sectors, and must engender a common understanding of what constitutes proportionate, necessary information sharing.

We also refer in our report to the concerns that were raised by witnesses about the drafting of the information sharing provisions in the bill. For example, Professor Norrie described the provisions as “contradictory” and the Information Commissioner’s Office felt that the scope of section 27 was too wide and wanted it to be redrawn. We therefore welcome the minister’s commitment to look again at the drafting of those important provisions. I know that the Government will carefully consider the comments of the committee and others before we approach stage 2.

The bill will also extend the number of free hours of pre-school early learning and childcare to which children are entitled from 475 to 600 hours per year. That is indeed a positive step and it reflects the crucial importance of early years intervention in children’s development. We also very much welcome the plan to introduce increased flexibility in the provision of the new entitlement, which will make it easier for parents to take up employment opportunities. However, we urge the Scottish Government and the Convention of Scottish Local Authorities to work to ensure that flexible arrangements are made available as quickly as possible to enable families to take advantage of the new provision.

Finally, I want to touch on the important proposals to extend support for young care leavers up to the age of 26. Currently, local authorities must provide support up to the age of 18 and have discretion for those up to the age of 21. As we heard during our previous inquiries, young care leavers are particularly vulnerable. We must do all that we can to ensure that they receive adequate and appropriate support so that they can enjoy exactly the same outcomes in life as many of us take for granted. We recognise the difficulty of that and we recognise that the transition from being in care to independent living can often be an extremely difficult time in a young person’s life. We therefore support the bill’s proposals but invite the Government to respond to the three questions that are asked in paragraph 178 of our report. The minister referred to that earlier in her comments about the campaign led by Who Cares? Scotland.

I should mention that the committee will take evidence on school closures before stage 2. The Government intends to lodge amendments on that, and we want to hear from stakeholders, which will inform our scrutiny of those amendments.

The committee supports the bill’s aims of putting children and young people at the heart of the planning and delivery of services and of ensuring that their rights are respected throughout society. We welcome the Government’s aim of improving outcomes for children and young people and particularly those who are disadvantaged.

Other than on the named person provisions, the whole committee agreed with the bill’s general principles and we hope that our suggestions for improvement will help to make the bill stronger still.

15:30

Jayne Baxter (Mid Scotland and Fife) (Lab): I am pleased that we have finally reached the stage 1 debate on the bill. As we are all aware, it is a substantial piece of legislation, which is not surprising, given its origins as two separate bills. With that in mind, I will not explore in detail all the points that we hope to cover in the bill’s later stages.

Labour will support the Government and vote for the bill at decision time. We will go into stage 2 in a constructive and positive frame of mind. We will
test the elements of the bill that concern us and look to enhance and improve other areas of it, where we feel that it is not ambitious enough for Scotland’s children. When considering our proposed amendments, we will focus on early learning and childcare, which my colleague Neil Bibby will address in his closing speech, and on issues that relate to care leavers, which my colleague Kezia Dugdale will focus on.

The potential for the bill to have a real impact on Scotland’s children should not be underestimated. Everyone in the Parliament is ambitious for Scotland, and that can be realised through improving our young people’s life chances. That is why I am pleased that Labour’s newest MSP, Cara Hilton, will make her maiden speech in the debate. I hope that the Parliament will join me in welcoming her.

Too many children’s life chances are determined by the circumstances in which they are born and grow up and not by their own unique potential to achieve, develop and thrive. For too many children and young people, access to opportunities is bound up in a tangled web of poverty-related issues that impact on their health, their home life, their interaction with their peers and their educational attainment. The key to the bill achieving its potential will be our making inroads into those issues, many of which are deeply rooted in our communities.

There are some headline-grabbing figures in the bill. Scottish Labour welcomes the increase in the statutory provision of free early learning and childcare, although it has been a long time coming, as it was a Scottish National Party manifesto commitment back in 2007. However, the danger is that introducing the bill places too much focus on the headlines, at the expense of working through the details of how the measures will be achieved. An increase in free early learning and childcare sounds excellent, but unless those hours are resulting in that.

Aileen Campbell: I reiterate that the bill will put flexibility on a statutory footing, to ensure that the provision works for the parents and carers whom Jayne Baxter refers to.

Jayne Baxter: I will touch on that as I proceed with my speech.

Earlier in the year, I was privileged to speak at the launch of a report by Fife Gingerbread and the Poverty Alliance on the impact of lone parenthood on families in rural areas. That report and the feedback from many conversations with parents supported by Save the Children have highlighted how important flexibility of childcare provision is to many parents who are in work or trying their hardest to get work.

I remain concerned that the proposals do not address that point in the short term. I look forward to hearing from the minister whether increased flexibility in early learning and childcare provision and in out-of-school childcare could be incorporated in the bill.

The point has been made at committee that we need to have a clearer understanding of how the bill fits in with other legislation that is aimed at planning services for children and young people. I referred to the value of framing the measures in the bill in the context of how poverty can be tackled. We will examine the extent to which the bill fits with or supports the Scottish child poverty strategy. One example would be to extend early years provision to include two-year-olds who are in poverty, as many children’s charities have recommended. We will also seek an amendment so that all three-year-olds receive the same entitlement regardless of where their birthday falls in the school year. For many parents, those few months could make an enormous difference, as Reform Scotland has said today.

Much of the controversy about the bill has concerned the named person provisions. If we cast our minds back to the Conservative Party debate on that a few weeks ago, we will be aware of the many concerns that have been raised. However, we are minded to support the principle of the named person, just as we support in principle the entire bill.

I return, however, to comments that I have made previously: this is the nugget of a good idea, but we need to ensure that it can work well and be effective. I want the positive outcomes that have been experienced in Highland to be replicated across the country, but the devil will be in the detail.

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The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The member makes a wise point about ensuring that the bill is implemented well. I am sure that she will wish to do this anyway, but I recommend that she visits Angus, for example, or goes to see some of the excellent work that is being done in my constituency, in Argyll and Bute, to find out how policy is being converted into practice in a most impressive way. I think that it will set her mind at rest to know that people’s imagination, hard work and resources are resulting in that.

Jayne Baxter: I agree that resources will be fundamental to making the bill work. I reiterate that everywhere is different. What works in Highland might not work in other places. We need to take time to consider individual circumstances in different communities, and we need to work out...
what works for each place. It is not as simple as saying that things will happen in a certain way. It will take a bit of time, imagination and commitment to make the policy work in every area.

The training and support that are necessary for effective implementation of the role of the named person must be appropriately resourced, and I hope that the roll call of concerns in the committee report is considered carefully. In their evidence, both the Royal College of Nursing Scotland and the Educational Institute of Scotland highlighted concerns in relation to funding and support. Further clarification of the role of the named person needs to be provided by the Scottish Government. Although we support the principle of what the minister is trying to achieve, we will continue to push to ensure that the proposals are fit for purpose. The volume of comment and debate surrounding that point is an indicator of Scotland’s wish to do better for vulnerable children and our desire to get this right. We have a golden opportunity to do so, and we must be able to say with confidence to parents, children and practitioners that the wholesale adoption of the named person model will promote a step change in how services are delivered to children and their families.

With that in mind, the Government must also address the concerns of kinship carers. My Labour colleague on the Education and Culture Committee and I have offered cautious support for the proposals at stage 1, but we will consider the matter carefully, with a view to lodging an amendment to provide greater clarity in the bill, rather than waiting for the detail on kinship care orders to emerge in secondary legislation.

I am pleased to have heard the minister reflecting on the publication of Together’s report on the “State of Children’s Rights in Scotland”. I was keen to read the assessment of where we are now on the implementation of the UNCRC. The report makes a fairly brutal judgement on the bill, stating that it “lacks a coherent child rights framework through which the Scottish Government’s policy intention to ‘make rights real’ can be achieved.”

Clearly, improvements can be made in that area of the bill, and I support looking towards having a duty on ministers to “have due regard to” the UNCRC when making policy decisions, as has been adopted in Wales. Our Welsh colleagues also require ministers to produce reports, and I hope that the minister will reflect on the committee’s recommendations in that regard.

In supporting the bill in principle, we will aim to be as constructive as possible in our comments and to reflect the huge amount of evidence and information that has been shared with us from the children and young people and care sectors throughout the country.

We are lucky to be able to work with such a range of organisations, which have such knowledge, skills and a genuine commitment to improving young Scots’ lives, and I thank them all for their hard work. I look forward to listening to the rest of the debate and to working with colleagues to improve the bill.

15:38

Liz Smith (Mid Scotland and Fife) (Con): The Scottish Government has made it clear in its introduction to the bill that its primary function is to ensure that there is a much more collaborative and integrated approach to the provision of children’s services, so that all young people can access the opportunities and support that they need. Given the better outcomes for young people that have been achieved by those service providers that have engaged in that greater collaboration and integrated approach, that is a reasoned approach for the bill, and it is an approach for which there is clear cross-party support.

Too many young people are losing out—whether they are children with foster families or kinship families, young carers, children with long-term illnesses who are unable to go to school, or children who cannot access the full entitlement for nursery provision.

On that last subject, I welcome the opening that the Minister for Children and Young People gave us to discuss the matter further. The issue about when the child’s birthday falls is different from the issue about the monetary provision. We will wish to pursue that matter at stage 2.

The Parliament knows that we have serious concerns about certain parts of the bill. In some cases, those concerns are substantive. In others, they are administrative and resourcing issues. Sometimes, it is a matter of drafting.

The legal profession rightly asks politicians to be mindful of what constitutes good law: whether proposals are clear, coherent, effective and accessible and therefore easily understood. Throughout the bill’s early progress, we have examined the proposals against those criteria and questioned whether new legislation or a change in culture and attitude is required, or perhaps a mixture of both.

For the most part, the Scottish Government has decided on a legislative route, so I will deal first with some substantive concerns in that respect. First, there has been a move to legislate with primary regard to the child’s “wellbeing” rather than to their “welfare”, which is a term that
underpins most of the existing legislation. I well understand why there is a certain attraction in that, as it is generally assumed that wellbeing has a deeper and much more holistic meaning that might bring some added qualitative value. However, it has exposed the tension between the theory and the practice. Although I think we can all agree that wellbeing is a good thing, it is exceedingly difficult to define, notwithstanding the SHANARRI—safe, healthy, achieving, nurtured, active, respected, responsible and included—indicators and their subdivisions, which have been operating in some local authorities. The bill is not entirely clear about the definition of wellbeing and it is too often conflated with welfare. The more the Scottish Government has tried to make legislative provision for improved children’s services, the more it has encountered difficulties with those definitions.

Aileen Campbell: In evidence to the committee, Barnardo’s Scotland spoke about how the SHANARRI indicators that go along with wellbeing give professionals who work with children a much greater understanding of what they are all talking about and enable them to work more purposefully with the child to ensure that their wellbeing needs are met and they achieve positive outcomes in later life.

Liz Smith: They do, but the point is that the terms “wellbeing” and “welfare” are sometimes conflated in the bill, which causes difficulties in how the rest of the bill hangs together. We have to consider that carefully.

Secondly, there is the issue of inconclusive legal advice, foremost with regard to whether to incorporate the UNCRC into Scots law. There is a wide divergence of opinion on that, as the minister indicated in her speech. Opinions include the one that the minister quoted, which suggests that incorporation would be bad policy, bad practice and bad law.”—[Official Report, Education and Culture Committee, 3 September 2013; c 2682.]

However, Scotland’s Commissioner for Children and Young People and some of the children’s charities say that incorporation is essential if we are to embed clear and robust means of accountability. The divergence in legal opinion is nothing new, but what has made life difficult for the committee is the relative lack of detailed evidence to support the contrary views, and the fact that the evidence that we took on this crucial issue is rather incomplete.

The Parliament already knows that the Scottish Conservatives oppose the section of the bill that includes the universal provision of a named person for all young people up to age 18. We have done so for several reasons, and I will not go over them again, as we have already held a debate on the issue.

We have been very persuaded by some of the evidence that was presented to the committee by the Scottish Parent Teacher Council, the Faculty of Advocates, the Law Society of Scotland, the Govan Law Centre, churches and experienced practitioners such as Maggie Mellon. They have all made the point that a universal provision for a named person clearly undermines the role of some parents, and the family and communities, and instead places professionals in the front line of responsibility for the child.

When that is taken together with the proposed extent of data sharing and the extension of powers to the children’s commissioner—and, in some cases, to Scottish Government ministers—in a way that Kenneth Norrie described as “open ended”, it makes the bill a bit too statist in its approach for our liking. We will abstain from the vote this afternoon because we are not yet satisfied that the bill is dealing with those issues in a way that would suit.

I have heard SNP ministers and back benchers claim that local authorities are facing incredibly difficult—and differing—challenges in their respective areas. That is absolutely true, and we must be careful to acknowledge that in the bill and ensure that we are not putting on large structures that take that away.

We have been very careful and we have thought about the bill and the vast number of submissions that have come in. The rights of children do not stand in isolation; they should be seen in the context of the rights of parents and families and all the communities that they represent. We are looking to develop the area when the bill reaches stage 2. We have a lot of sympathy with many of the bill’s principles, but there are still some fundamental issues that we want to tease out at stage 2, so we will abstain in the vote at decision time.

The Deputy Presiding Officer: We move to the open debate, with speeches of up to six minutes.

15:45

Clare Adamson (Central Scotland) (SNP): It has been enjoyable and a great honour to be involved in the work of the Education and Culture Committee on the Children and Young People (Scotland) Bill. We took a significant amount of written and oral evidence. Unfortunately, we could not see everybody who wanted to appear at the committee, but we took on board the written evidence that the committee received. The care and attention that had been given to the briefings on the bill that members received are a testament to how much the people and agencies that are involved want the bill to work and to improve outcomes for young people.
The policy memorandum sets out that the fundamental reforms of children’s services are in line with the Christie commission report, which highlighted “the importance of early years, prevention and personalised service delivery”.

We should remember that the Christie report received significant cross-party support on its publication. It is to be commended that we are moving towards that.

We need to take stock of what is happening in Scotland, because we are not starting from zero in respect of children’s services. Colleagues in the national health service, local authorities and education services have all been working hard to take on board the recommendations of the Christie report. They are moving towards more collaborative working practices, not only in the early years and children’s services but in services for elderly people. A great deal of change is already happening in the sector.

I want to highlight some of the work that is being done in the area. The committee is on record as commending NHS staff, local authority workers and education staff for their dedication and commitment to their roles. I want to highlight the Roots of Empathy programme pilot that happened in North Lanarkshire. From the research that underpins the bill, we all know about the importance of early intervention. We know that a child’s emotional development can be badly damaged by poor parenting in the early years and in early schooling. The Roots of Empathy programme was piloted in the Berryhill primary area in North Lanarkshire. It is a Canadian programme, founded by Mary Gordon, that is designed to improve the emotional capacity of young children and their capacity to empathise with other people. It involves a young baby being brought into a primary classroom, with a structured series of questions and engagement with the baby, such as game playing and song singing. I shall spare members my rendition of the song for baby Ruben that I heard in Berryhill primary, but it was a delight to see the reaction of the young baby on hearing the children in the class welcoming him with that song.

The programme is well documented and the research has shown how much it improves the capacity for empathy in young people. Of course, for many young people, that will not be necessary because they are growing up in warm and nurturing homes with good responsible parenting and the opportunity to engage with other people. However, for children who have been denied that upbringing, the results are impressive in relation to anger management issues and reducing the behavioural problems that sometimes result from the complex issues that Jayne Baxter so eloquently described in talking about the damage that poverty can do to young people.

Far from starting from new on the issue, there is much good work going on in Scotland. We should acknowledge that and recognise the dedication and commitment of the people who are involved in that work. As the minister said at the launch of the roll-out, the Roots of Empathy programme shows “our commitment to early intervention and the importance of positive relationships as the cornerstone of a better Scotland.”

She continued:

“This is an investment in the future; by encouraging empathy and respect in children we are giving them the foundations to be positive, successful adults who will pass those skills onto their own children.”

In its support for the principles of the bill, the committee is showing how important that is for moving forward. Putting that in statute will create a marker that sets Scotland out as one of the foremost countries in its support for young people and their development.

The Deputy Presiding Officer (Elaine Smith): The member is in her final minute; I mention that because we are tight for time.

Clare Adamson: Thank you.

The report was based mainly on consensus and I do not need to repeat its recommendations or conclusions. The one issue on which committee members differed was the named person. We should therefore consider some of the support for the named person role. The Royal College of Nursing said that the named person role was working well in areas where GIRFEC is being implemented. Children 1st said that it supported the idea of the named person, as we believe it could offer a way to avoid children ‘slipping through the net’ when they are at their most vulnerable, and a useful point of contact for families so they can access advice and services without having to deal with excessive delay or red tape.”

In addition, we should take on the success of Highland Council and North Ayrshire Council and other authorities that are working on and rolling out GIRFEC successfully and implementing the named person role.

15:51

Kezia Dugdale (Lothian) (Lab): I welcome the opportunity to contribute to the debate. I do so from the pack and in recognition of the hard graft that my colleagues Neil Bibby and Jayne Baxter have done in working through the detail in committee.

I want to use my time to talk specifically about looked-after children and, in particular, parts 7 and 8 of the bill. Why? From everything that I have
read and learned, every story that I have heard and every person whom I have met, nothing has angered me more than the experiences and life stories of looked-after children.

Let us go through some of the key statistics. There are 16,200 looked-after children today, which is up 25 per cent from 2006. Thirty per cent of them have experienced homelessness and up to 80 per cent of our young offender institutions’ population have been in care at some point; that figure was as high as 88 per cent of Polmont’s population when Barnardo’s published its plan B report. A person is far more likely to go to jail than to university if they have been in care—and that is before we even look at the difference in educational attainment between those in care and those beyond it. Such wasted potential somehow now feels inevitable.

While I was reading ahead of the debate, I followed the footnotes through to the 2007 report in the name of the then education minister, Hugh Henry, titled “Looked After Children and Young People: We Can and Must Do Better.” It is a fantastic report, brimming with statistics and action points to make things better. I was struck by just how little has changed in the six years since the report was published. When I put that to Who Cares? Scotland today, I was told that 17 different reports have been written on looked-after children since the dawn of the Parliament. One care leaver told me that each one somehow reads like an apology. Perhaps that is an apology for inaction, but it is more likely an apology for what feels like the inevitability of poorer life chances for looked-after children, which is a problem that somehow seems too big to fix.

I am not interested in a blame game of how we got here, because that care leaver could not care less about that. She wants to know what will happen now, and she is looking to the bill as a huge opportunity that must not be missed. That is why I am committed to lodging a number of amendments at stage 2, in conjunction with Barnardo’s, the Aberlour Child Care Trust and Who Cares? Scotland.

The legislation alone is not enough; we need a cultural shift in the public’s attitude towards looked-after children. I have two reflections on that issue. First, the public are largely ignorant about care leavers—how many there are, what being looked after at home is and means, and how poor their life chances are. Too many people think that those are bad kids worthy of little sympathy from anyone other than the biggest softies, rather than them being fundamentally good kids who find themselves where they are because of a life that has been free from care and full of neglect, and kids who have more experience of violence than affection and more experience of physical contact defined by restraint rather than by love. We need to put those children at the front and centre of our public discourse. We can start to do that with the bill.

**Aileen Campbell:** I agree entirely that we must change the myths that surround looked-after children and ensure that they are given the support and nurture that they need. Does the member welcome our support for Who Cares? Scotland’s time to listen campaign? Has she signed that pledge? If not, how can we work together so that more people sign the pledge? We need to listen to looked-after children. They are our responsibility and we must ensure, in our corporate parenting duties, that they have no less fulfilling a life than their non-looked-after peers.

**Kezia Dugdale:** I would be delighted to support the minister with that ambition and I speak for all my colleagues when I say that we are willing to work with the Government to improve the life chances of looked-after children. The minister can count on that not just throughout the bill process, but throughout this parliamentary session. I will speak more about that in a second.

We need to talk more about looked-after children and we need to challenge the media to do the same. We need to unite as a Parliament and agree that nothing should be inevitable about looked-after children’s life chances except the fulfilling of those children’s potential. They are our children and we should demand that their lives are full of love and expectation. In this Parliament we should create the rules by which that might happen.

My second reflection is on care leavers. It was put to me that the stigma associated with being in care is so strong that when a young person turns 16 they want to rid themselves of that label and everything to do with it. In so doing, they lose their rights to expect support as they transition into adult life. I can understand that, but I would like to get to a place where young care leavers can wear their label with pride and demand support to enhance their lives. In many ways it should be a liberation issue: care leavers should have more rights to support into their adult life exactly because of where they have come from and who they are. That will require a cultural shift in our attitudes to looked-after children, but it also requires care leavers themselves to make demands and exercise their rights.

Every care leaver whom I have met can name the date on which they left care. I cannot imagine that many people around the room can remember the date on which they left their family home. Why is that? The reason is that leaving home is a process, not an event. I want to see the bill greatly enhanced in that respect.
I hope that the Government will engage constructively on the bill. I appreciate that we cannot change society’s attitudes to looked-after children overnight, but I hope that by the end of the bill’s passage we will have a clear vision of our ambition for care leavers and a clear route map for how to get there.

Let me make it absolutely clear: I will do everything that I can to work with the Government to improve the lives of looked-after children, not just on this bill but throughout this parliamentary session. I have a strong and clear ambition for where we might be in 10 years’ time.

15:57

George Adam (Paisley) (SNP): We often talk about wanting Scotland to be the best place in the world to grow up in. I believe that the bill will help us get to that ambition. It will build foundations for us to ensure that we can do something. Whether we need one bill, two bills or whatever, this bill is very ambitious and deals with Scotland’s most important commodity: our children and young people. What we do here will make a massive difference to young people’s lives.

Clare MacFarlane is quite right when she says that various charities are still involved in the bill and want it to do extremely well. That is how important the bill is and we appreciate that. Charities have engaged with the committee and various other groups throughout the process.

It is interesting to see how the committee got to this stage. Before we started considering the bill, the committee had looked at length into looked-after children and their educational attainment. We heard some of the stories about what happened to young people, which made a big difference for every one of us on the committee, because it brought the issue into the real world. We were discussing not just a bill—a piece of paper—but real people’s lives. Every one of us took that forward into this process.

Not so long ago, I visited HM Young Offenders Institution Polmont, where Barnardo’s is running a project. I met a lot of young people who were in that secure unit because of various things that had happened in their life. Barnardo’s had a programme to help educate younger people in the system. We talked about the Children and Young People (Scotland) Bill and when the young people explained some of the things that had happened in their lives, they started to come round to the idea that the provisions in the bill might have been a way—although not in every case—to help them not get into the position of being in a secure unit.

That is the most important thing that we have to take from this. We live in challenging times and young people have challenging lives. We have to look at that and do what we can for those people.

When I was on that visit, I had instant credibility. One of my constituents was there and when I told him that I came from Seedhill in Paisley, he said to one of his colleagues, “George is one of us, so we can listen to him.”

The whole point of the bill is to put children and young people at the centre of decision making, empower them and give them opportunities.

Much has been said about the UNCRC but my view is that its principles actually inform GIRFEC. Indeed, the great work that has been done in Highland Council has clearly made a difference. When we took evidence on that project, we heard that, in many cases, problems arose when parents did not have a named person; once they understood what the named person did, they wanted to engage with them. With my constituency in mind, I certainly see how that approach can work in areas of deprivation and areas where there are various challenges.

We are here to get something that deals with the various issues. We can of course discuss at stages 2 and 3 how we might further develop the legislation, and I am glad that the Labour Party has decided to work with us and move things forward. As the Cabinet Secretary for Education and Lifelong Learning made clear at question time, this Parliament is at its best when, as in last night’s debate, it looks at how problems might be dealt with and solved and when members do not simply play the political game. The exciting thing about this bill is that it gives us an opportunity to make a difference in every young person’s life. That is not hyperbole or exaggeration; if we get this right, we can ensure that young men and women do not end up in places such as Polmont or in care.

I know from my time as a councillor in Renfrewshire that issues can arise when young people in care become adults and move out into adult life. Of course, going out into the big bad world is challenging for those of us with the best of lives—after all, the world is not an easy place to live in—but while I was at Renfrewshire Council we worked with one of the local housing associations to provide housing to these young people and support them in that respect. However, as a social housing provider, the council found that within two or so years of giving a young person the keys to their new home it was trying to evict them from it. We have to find a way of looking after these young people, and there are other ways of doing that than through legislation. We can, for example, work with other partners and organisations to offer support.
Today is about the vision; it is about the idea that we can make Scotland the best place for young people to grow up in. As long as we all work together and stay focused, we can make that difference.

16:02

Liam McArthur (Orkney Islands) (LD): Like other members, I thank the very many people and organisations that submitted oral and written evidence on the bill and those responsible for the veritable snowstorm of briefings that we have received over the past few days. I also thank the clerks and committee colleagues for their contributions to what I think is a very reasonable report on a very wide-ranging bill.

Let me be clear: the Scottish Liberal Democrats support the bill’s principles and believe that it actually delivers on them, which perhaps distinguishes it from the Post-16 Education (Scotland) Bill. Like any bill, it needs to be improved in many areas—indeed, the Finance Committee’s report on the financial memorandum was particularly critical—but I welcome the minister’s willingness to address areas of concern pretty much across the board.

I am not sure, for example, that the bill properly reflects children’s rights at this stage and do not think that the committee was convinced that the case for full incorporation of the UNCRC had been adequately made. However, we were seized of the importance of looking again at incorporating specific rights, and the Law Society of Scotland’s description of the duty placed on members as a “diluted version of the existing obligations” and the Faculty of Advocates’ view that the bill does not further develop the rights of children and young people in Scotland to a significant extent suggest that more work needs to be done, particularly in relation to putting children’s rights impact assessments at the heart of the legislative process.

One of the most controversial areas was the named person provision, which the Parliament has already debated. Although I again make clear my support for the principle, I, like all committee members, must acknowledge the inherent practical and resource issues, some of which arise from uncertainty about roles and responsibilities, the interaction with lead professionals and some of the training requirements.

That, in turn, has consequences for resources—a point that was picked up by the Finance Committee, the education unions and the RCN, which in its briefing suggests that “concerns regarding the capacity of the health visiting workforce to deliver existing duties let alone those associated with the Named Person role” need to be borne in mind.

The practicalities stem from the lowering of the threshold to one of wellbeing, which has implications for information sharing and, indeed, where the consent of the individual is sought. Professor Kenneth Norrie, the Information Commissioner’s Office and others have highlighted their concerns in relation to sections 26 and 27. I am grateful to the minister for acknowledging that and for agreeing to take that issue away. There are practical and resource issues and we need to maintain a ruthless focus on welfare. I hope that the Government will ensure that there is a presumption in favour of consent in relation to information sharing.

The political heart of the bill is to be found in part 6, on early learning and childcare. It is a vehicle by which the Government can deliver on its commitment to provide 600 hours of early learning and childcare for three and four-year-olds. I restate my welcome for that policy, which I believe will deliver real benefits. The concerns that have been raised by Liz Smith, Jayne Baxter and others about the points that were made by Reform Scotland have been taken on board by the minister. However, there is scope for more ambition, particularly in relation to two-year-olds. The minister will argue that the bill represents a first step. I acknowledge that, but I do not think that it shows sufficient ambition. The Scottish Liberal Democrats have put forward reasonable and costed proposals for extending that provision to two-year-olds from the poorest backgrounds. In its briefing for the debate, Save the Children says that “to be effective at meeting its aims, we believe there is a strong case to also include two year olds growing up in poverty”.

It goes on to say: “Evidence shows that every month of pre-school provision after age 2 is linked to improved outcomes including increased educational performance at age 14”. That is picked up by Children in Scotland, which points to the provision for 40 per cent of two-year-olds that is delivering to 92,000 two-year-olds south of the border.

Aileen Campbell: Will the member give way?

Liam McArthur: I do not have time. I know that the minister will pick that up in her winding-up speech.

That is achievable and the bill offers a vehicle for delivering it. It can be done without impacting on quality, allowing the flexibility that the committee pointed to in ensuring that two-year-
olds from the poorest backgrounds in Scotland do not fall behind those south of the border.

In relation to part 8, which strengthens the support for care leavers, I associate myself very much with the comments that Kezia Dugdale made in her excellent speech. The area has been a focus for the committee in at least two inquiries, and the bill represents a real step in the right direction in aftercare up to the age of 26. However, as our inquiries show, we need a renewed focus. There is no magic bullet because the reasons why those who go through the care system struggle with outcomes are many and varied. In last night’s excellent debate, the emphasis was on the need for strong, stable, loving relationships. That is very much the message that we got back time and again in our inquiries. More can be done on aftercare, building on the good provisions in the bill to deliver what Aberlour Child Care Trust, Who Cares? Scotland and Barnardo’s have talked about:

“transforming aftercare into a much stronger form of continuing care, which combines the continuation of support and the continuation of the strong relationships that young people in care have come to rely on.”

There are many issues that I have missed, which I will turn to at stages 2 and 3. We would all subscribe to the ambition for Scotland to be the best place to grow up in. We might disagree on how far we are from achieving that, but it is the right vision. The bill can play a part in delivering that, but it needs further clarity and ambition—clarity around resources and practical implications and ambitions around early learning for two-year-olds, aftercare and children’s rights. At stage 2, there will be an opportunity to provide that opportunity and ambition, building on an excellent start.

The Deputy Presiding Officer: There is no extra time in the debate.

16:09

Bob Doris (Glasgow) (SNP): It is a privilege to speak in the debate. I will deal almost exclusively with kinship care and the development of the new kinship care order. I reiterate my belief that kinship carers should be given the same support as is given to foster carers. I made a promise to campaigners at a national kinship care hustings in Possilpark in 2007, and I have continued to champion the cause ever since.

The views that I express are heavily influenced by constituents of mine, such as Jessie Harvey and Ruby Grant who are members of the kinship care group in the north of the city that I represent, and by several other groups that I work with within the city. Put simply, kinship carers step in and take on a caring role for loved ones, for children, when mum and dad are unwilling or unable to do so. If kinship carers were not there to pick up the pieces, the life chances and life outcomes for such children would be far worse. That would also cost Scotland’s councils a small fortune, as they would instead need to use foster carers or residential care for those vulnerable children.

I pay tribute to our former children’s minister Adam Ingram for advancing the cause of kinship care under the SNP Government that was elected in 2007. Putting a kinship care outcome into the Scottish Government’s concordat with councils was vital. That sought to move to parity the financial support given to kinship carers and that given to foster carers. Clearly, although that aspiration was not fully met, that has made a real difference. I agree with the Child Poverty Action Group, which told the Education and Culture Committee:

“The initial agreement, which was to pay kinship carers of looked-after children at a rate equivalent to that for foster carers, has not become a reality, but all local authorities have shifted to a position where they are making payments of some sort to kinship carers of looked-after children. Quite a few local authorities are also making payments at some level to kinship carers of non-looked-after children.”—[Official Report, Education and Culture Committee, 24 September 2013; c 2821.]

That is not enough, but we have driven a real change and it is important to put that on record.

Some kinship carers have asked me why the financial memorandum includes projected cost savings from kinship care. They ask how improvements can be made in the support for kinship carers while cost savings are also expected. However, the financial memorandum states that one reason for developing the kinship care order is

“to reduce unchecked growth in formal kinship care”.

In other words, as children in kinship care come to the attention of social work or are placed in kinship care by social work—a vital distinction that, if I have time, I will return to later—they are less likely to become formally looked after. Kinship care orders will still provide support, but a crucial point is that the level of direct social work involvement will necessarily be less than if the child was deemed to be formally looked after.

I understand that the bill will lead to a projected saving in social work time, and that is the saving referred to in the financial memorandum. Fundamentally, those savings do not signal a reduction in direct cash support to kinship carers, but I would welcome some clarity and reassurance from the minister on that when she sums up the debate.

I also ask for some certainty that the bill does not put up any barriers to providing financial support to kinship carers. Can the minister confirm
that the bill contains nothing that would instruct councils to pay less or, indeed, hinder them from paying more?

Aileen Campbell: I just want to put on record—

The Deputy Presiding Officer: Minister, I am afraid that you must face your microphone.

Aileen Campbell: The kinship care order—

The Deputy Presiding Officer: Sorry, minister, we cannot hear you unless you face into the microphone.

Aileen Campbell: The kinship care order will enhance support for kinship carers by giving more kinship carers the help and support that they need. Whether financially or otherwise, support will be provided to them to ensure that they are the best possible family for the child to have a long and lasting and nurturing life.

Bob Doris: I thank the minister for that intervention.

I will move on to the financial working group that the Scottish Government has set up, which will report shortly. My understanding is that the financial package of support to kinship carers is not contained within the bill—that is not what the bill seeks to do—but is the job of the financial working group. Can the minister provide more information on when the working group might report and how long it will take the Scottish Government to consider the group’s recommendations? If she can tease out how that will be taken forward, that would be very helpful.

Another issue that I want to mention is the postcode lottery or lack of consistency in how local authorities deal with kinship care. In Glasgow—I single out Glasgow City Council only because that is the local authority that I know best—the council provides payments of £50 a week for voluntary kinship care arrangements. Those payments are not enough, but I welcome them. However, the council makes a distinction between situations in which granny and granddad have decided to look after the vulnerable child, because they know that the child is at risk, and situations in which the local authority has turned up on the doorstep and placed the child with granny and granddad. In one case, the local authority has stepped in, whereas in the other case there is a voluntary arrangement, but I do not think that distinctions should be drawn when providing financial support for those families. I ask the Government to consider that.

The final thing that I would like to mention is the need for consistency in social work assessments of kinship carers across the country. Kinship carers in Glasgow believe that they are already going through an assessment process pretty similar to that for foster carers and they are asked for some deeply personal information and access to their personal medical records. Better guidance, better training and more consistency in social work assessments would also be welcome.

The Deputy Presiding Officer: I am now very pleased to invite Cara Hilton to make her maiden speech in the chamber.

16:15

Cara Hilton (Dunfermline) (Lab): I am pleased to be making my maiden speech in this important debate on the Children and Young People (Scotland) Bill. It may be the tradition for members to pay tribute to their predecessors in such speeches, but on this occasion I think that the less said about my predecessor, the better.

I am extremely proud to have been elected as member of the Scottish Parliament for Dunfermline. Dunfermline is the community in which I live, it is where my children go to school and nursery and there is no greater honour for me than the opportunity to serve the people of Dunfermline at Holyrood. In my election campaign, I promised my constituents that I would always put Dunfermline first and that I would focus on the issues that matter to people in their everyday lives.

Anyone who took part in the by-election campaign will know that Dunfermline is a growing area. We certainly have a large proportion of young families, and the number 1 challenge facing many of the young families that I represent is childcare. They face the constant challenge of juggling work, childcare, school pick-up times and family finances. Politicians in all parties say that they want to address that challenge, but for too long they have failed to do so. That is why I welcome the Children and Young People (Scotland) Bill and support its general principles.

However, for the constituents that I represent, the bill is a missed opportunity and I think that it lacks ambition. The 600 hours of free childcare is extremely welcome, but it is long overdue. When the SNP originally pledged 600 hours, my oldest son was almost three years old and was just about to start pre-school. Like all my friends, I was looking forward to the extra provision that was promised back in 2007. My son and his friends are now aged nine and they are in primary 5, yet the 600 hours of provision still has not been delivered. There are few better examples of Scotland being on pause than the seven years for which the SNP has made parents in Dunfermline and across Scotland wait for extra free childcare.

The reality is that we are still playing catch-up with England and Wales where, despite the coalition Government’s best efforts to dismantle the good work that was done by Labour, families continue to benefit from better provision than exists here in Scotland. At the UK level, Ed
Miliband has pledged to deliver 25 hours a week of free childcare to working parents of three and four-year-olds if Labour wins in 2015, and to guarantee wraparound childcare for families of schoolchildren.

Why does the bill that we are discussing not include childcare provision for school-age children? Why does it do nothing to address the unfairness of birthday discrimination, which means that a child who is born after 31 August has to wait an extra six months—often until the end of January the next year—for a free pre-school place? Why is the SNP Government happy for Scotland to be lagging behind the rest of the UK when it comes to providing care for some of our most vulnerable two-year-olds? To quote a phrase from the Dunfermline by-election, Scotland "deserves better" than that.

The bill as it stands does little to tackle the number 1 issue facing families, which is the lack of flexible, affordable childcare. As the mum of three children, I was delighted when my five-year-old started school in August, not just because she was so looking forward to it, but because for the first time in years I was no longer paying every single penny that I earned in childcare. Up until then, with two pre-school children in childcare, even with juggling my working hours to finish at 3 o'clock and pick up my eldest from school and my daughter from pre-school, I was paying £1,200 a month in childcare, and that was for a four-day working week. Even now, with my oldest two at school and my youngest at pre-school, like families across Scotland, I pay more for childcare than for my mortgage.

Without the support of friends and family, I could not be standing here. I could not have stood for election to Holyrood, because getting home in time to pick up three children from different locations by 6 pm is simply impossible. I could never have afforded to return to work at all after having children if it was not for the support that a Labour Government at Westminster put in place with child tax credits to make work pay. That support has been cut by the coalition Government, which means that so many mums and dads now do not have the option of returning to work after having children.

As every parent knows, childcare costs do not stop when children start school. In fact, it is when children start school that some of the problems start. Parents face the challenge of juggling working hours around the school day, and let us not even get started on the 12 weeks a year of school holidays.

Many schools do not offer wraparound provision at all, and when they do the hours are restrictive. The only way that most parents I know manage is by working different hours and taking different holidays. That cuts childcare costs, but it means that families rarely spend time together. The chance of a family meal at teatime is a rare event. The reality is that, for many mums and dads, just finding, organising and paying for childcare at all is like a full-time job in itself. Is it any wonder that a recent survey of mums by Asda found that seven out of 10 stay-at-home mums said that they would actually be worse off in work than they are at home?

Although I support the bill, I believe that it needs to go further. Childcare is a vital service for families and every family in Dunfermline and in Scotland should have the right to high-quality, affordable, flexible childcare. Childcare should not be a luxury that only the better-off can afford, but for many families that I represent in Dunfermline, work is simply not an option because of the high cost of childcare. A family at Pitcorthie told me during the by-election that they can never hope for their two-year-old daughter to have a little brother or sister, because even with both of them working they would never be able to afford the cost of childcare. A family in Duloch, where I live, told me that they have resorted to putting the childcare costs on credit cards, because rising food bills, energy costs and train fares mean that they simply have no other option. How many other families are in that position in the run-up to Christmas? A mum in Abbeyview told me that she loved being a working mum, but that because of cuts in tax credits she had to give up the job that she loved.

Parents in Dunfermline and across Scotland deserve better than a Government that talks about delivering a better deal on childcare but in reality lacks ambition. The Scottish Government has the power now to revolutionise childcare in Scotland. We can do it now and parents are fed up waiting, so although I will support the bill today, I hope that we can work together across the political divide to deliver the better deal on childcare that families across Scotland deserve.

16:21

Joan McAlpine (South Scotland) (SNP): I welcome the bill as a significant advance for the position of children and young people in Scotland. As my fellow Education and Culture Committee members have said, the committee has, in two other inquiries, examined outcomes for looked-after children. We agreed in both those inquiries that we need to tackle the problems of underachievement, neglect and poor parenting before families reach crisis point. We need a fundamental shift in philosophy and approach towards a focus on prevention. I believe that the bill will help to do that, and it is the reason why so many child welfare organisations also support its broad principles.
In Scotland last year, there were more than 16,000 looked-after children. Although recent years have seen the number of new referrals fall, Scotland still has a higher proportion of looked-after children than other parts of the UK. The Government estimates that between 10,000 and 20,000 children live with drug-abusing parents, and that between 36,000 and 51,000 children in Scotland live with parents who have alcohol problems, so there is a crisis that we need to tackle.

I mentioned the bill’s important emphasis on early intervention to prevent serious problems before they occur. An important means of delivering that step change is construction of a system in which it is easy for professionals to share information that could prevent a vulnerable child from coming to harm. As the minister has said, we are all familiar with the tragic cases that are covered in the news of children who die at the hands of their parents and carers. The common theme of the subsequent inquiries tends to be the same; someone had a vital piece of information that could have saved the child in question, but that information was not shared.

That is why I want to concentrate today on how the bill seeks to improve information sharing between relevant public authorities where there are concerns about the wellbeing of individual children and young people. Key to that is the introduction of the named person, which was supported by 72 per cent of respondents to the bill consultation. It is supported by the Royal College of Nursing, by Tam Baillie—Scotland’s Commissioner for Children and Young People—and by the wonderful John Carnochan, who is the inspiring co-founder of Strathclyde’s violence reduction unit.

There has been considerable misunderstanding about the role of the named person, which already exists and works well in the Highlands, and we have heard colleagues talking about the evidence from that region. The role of named person must be universal, because if it is not some children will slip through the net, which is exactly what we are trying to prevent. To some extent, we already have universal provision. For example, everyone who has a baby has a health visitor allocated to them. When I had my children, which is quite some time ago now, the health visitor made one visit, saw that I had lots of support and was then able to go away and concentrate on people who needed support. In that sense, the measure is an extension of what we are already doing.

The evidence from Bill Alexander of Highland Council showed how important the named person is as a means of ensuring that GIRFEC does what it is supposed to do. GIRFEC is rooted in cooperation between services, with the child being at the centre, and it ensures that children and families receive holistic services that are underpinned by collaboration.

The committee’s convener has outlined some of the operational concerns about how the named person would work in particular circumstances, and I would like to endorse his comments about the definition of “wellbeing” and the lowering of the threshold for information sharing. In Scotland, under GIRFEC, the wellbeing indicators are known by the acronym SHANARRI—members of the Education and Culture Committee are very used to acronyms—which stands for safe, healthy, achieving, nurtured, active, respected, responsible and included. Those are all extremely positive things, which I think we would all want for our children, but how will different professionals apply SHANARRI when it comes to lowering the threshold for information sharing? I am sure that although most professionals will act responsibly, it is not unreasonable to raise concerns about overzealous individuals applying subjective views.

I will give an example of what I mean. My children did not travel to primary school by themselves. Some people might think that I was an overprotective mother. That was my way of keeping them safe but, equally, it could be argued that I was breaching other SHANARRI indicators, because my children were not as active as they could have been, they did not get as much fresh air as they could have done and they were not included. People have different forms of parenting, so I would welcome reassurance that the use of the wellbeing indicators—which I know are already established—to lower the threshold for information sharing will be monitored by the Government, so that we can ensure that there are not cases in which it is abused and that interference does not go too far.

That said, I support the bill and I support the principle of information sharing as a way of protecting the most vulnerable children.

16:27

Gavin Brown (Lothian) (Con): I congratulate Cara Hilton on her maiden speech, which I thought was pretty thoughtful. I predict that if she makes a similar speech at stage 3, she might get a couple of interventions from members on the Government benches and perhaps elsewhere, but we will see what happens.

I want to focus the bulk of my remarks on the named person and, specifically, on what the financial memorandum says, which was the subject of Conservative business just a few weeks ago. It is something that I and other members of the Finance Committee looked into in some detail. Our difficulty with the financial memorandum
centred on the costs that it puts forward. The prediction is that the named person will cost local authorities just shy of £8 million in the first year of implementation and that it will cost them nothing—zero pounds and zero pence—in year 2. When I first read the financial memorandum, I did not think that that was realistic or credible. When I read the evidence that was submitted to the committee by various councils and others, it became even less credible, and when the committee took oral evidence from various councils, it became still less credible, to the extent that the committee felt that that was not something that was likely to happen in practice.

I listened carefully to what the minister said and her response appeared to be—I hope that I have written it down correctly—that “costs will need to be monitored as implementation goes forward.”

I do not take huge comfort from that because, in my opinion, any policy that the Government implements must be monitored as it goes forward. That should happen regardless of whether the policy is controversial or whether questions are asked about it. Every policy ought to be monitored as it is implemented.

Aileen Campbell: Gavin Brown said that he had read the submissions to the committee. I wonder whether he read the one from City of Edinburgh Council, which said:

“The Council believes that the costs and any savings for Children’s Rights, GIRFEC, Early Learning/Childcare and Other Proposals are accurately reflected based on our understanding of the requirements of the legislation.”

Given what he has just said, how does he respond to that? Did he read the submission?

The Deputy Presiding Officer: We are very tight for time now.

Gavin Brown: Presiding Officer, I think that the minister’s tone is a little uncalled for. Of course I read that submission; I read every submission to the Finance Committee, and I have read every report to which the minister has referred the committee since her response. She will know that City of Edinburgh Council had already implemented the approach, so the financial costs on the council will not be the same as they will be for other councils. The minister has cherry-picked the submission of one council, which had already implemented most of the approach.

Let me quote another council. Scottish Borders Council said that it “believes that additional funding to support the Named Person needs to be available for more than one fiscal year. The Highland Pathfinder”—on which the Government rests almost everything—showed it took several years to implement the cultural changes required within and across organisations in order to implement GIRFEC. Scottish Borders Council believes funding requires to be available over three consecutive years starting in 2014/15 to ensure the successful establishment of the Named Person role.”

That could not be clearer. It took a number of years—

Stewart Maxwell: Will Gavin Brown give way?

Gavin Brown: Give me a moment.

The process took a number of years in Highland Council. I read in detail the Highland Council report to which the minister referred me—I will return to that, but first I will take an intervention from the convener of the Education and Culture Committee.

The Deputy Presiding Officer: Please be as brief as possible.

Stewart Maxwell: I am grateful to Gavin Brown and I am interested in what he has to say. Surely he accepts that a pathfinder project will always take longer to achieve change, because it is designing the system that others will follow. The time and money that it takes to do something will always be greater in a pathfinder project than in those that come after.

Gavin Brown: That is probably true, but I do not accept that implementation can cost £8 million in year 1 and zero by year 2. No doubt we learn lessons from pathfinder projects and change can happen faster than it happened in Highland Council, but no council with any credibility has suggested that the cost will be zero in year 2. If anyone has evidence that the cost will be zero in year 2, I will be very happy to take an intervention from them, whether they are a minister, a committee convener or anyone else.

The Deputy Presiding Officer: You are in your final minute, Mr Brown.

Gavin Brown: The same argument can be made about the NHS costs in the financial memorandum. The Government says that year 1 costs will be £10 million and that by year 3 they will be only £5 million—half the amount in year 1. Health boards that gave evidence to the Finance Committee described that as being not credible, as did the Royal College of Nursing Scotland. The experts who gave evidence to the Finance Committee made it clear that the costings are not credible, which is why the committee—en bloc, without division—expressed concern about the matter. In my view, the answers that we have received are not good enough.

The reason why all that is important is that by creating the bureaucracy that will result from giving everyone a named person, whether or not
they need or want one, the Government will be taking money away from those who need it most.

**The Deputy Presiding Officer:** I am afraid that you must finish, please. I have already cut the next speaker’s time.

**Gavin Brown:** Thank you. I will leave it there.

**The Deputy Presiding Officer:** Thank you. I call Colin Beattie. I am afraid that I can give you only five minutes.

16:33

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I am delighted to speak about the bill. I am a member of the Education and Culture Committee, so I have been very much involved with the bill.

As Stewart Maxwell said, the committee agreed on the basic principles of the bill, and it is evident that there is widespread support from children’s charities and public bodies. Barnardo’s Scotland, in its written submission to the committee, said:

“This Bill has the potential to be one of the most far-reaching and influential bills considered in this session of the Parliament. At the heart of the Bill is a vision that Barnardo’s strongly shares—making Scotland the best place in the world for children to grow up.”

I think that we can all subscribe to that. We must ensure that we do not lose sight of the fact that the bill is about protecting vulnerable children. We must put that at the heart of all our arguments.

I have been struck by the level of support that the named person approach received in the Government’s consultation. I note that 72 per cent of respondents supported the idea of providing a named person for all children and young people under the age of 18. It is also worth looking at the evidence from a survey that Children 1st carried out, which received 117 responses from kinship carers and support groups. Children 1st found that 90 per cent of respondents thought that every child in Scotland should have a named person, and that some 78 per cent thought that having a named person would have been beneficial to them and their families.

In this instance, we have a ready-made example to look at. In 2010, Highland Council successfully put the named person approach into practice as part of its getting it right for every child approach. In its evidence to the Education and Culture Committee, that council highlighted the fact that the named person approach has led to a clear process for ensuring that relevant information is passed to the correct person, in contrast to what happened under the previous system, in which information was bounced around various agencies in the hope that it would get to the relevant organisation at some stage. The consequence has been earlier support to, and more effective intervention for, children. Getting that support to a child usually means that a successful outcome is more likely. We therefore have irrefutable proof that the named person approach can be successful if it is done right. It has the evidence to back up its success and it has widespread support, and it is an important element of the bill.

On childcare, I fully support an increase in free nursery provision from 475 hours to 600 hours for three and four-year-olds and looked-after two-year-olds. That will benefit 120,000 children throughout Scotland and will mean an increase of 45 per cent in free nursery hours provision since the SNP came to power in 2007. Perhaps Cara Hilton should reflect on that fact.

I feel that there is more to be done on that issue, but the Government has, with the powers that it has, acted and provided more support for families than any Government here to date has. I cannot help but consider the countless other things that could be done with the powers of independence. With those powers, we could work to ensure that there is further support for parents and their children. Scottish Government estimates suggest that Westminster welfare reform will put 50,000 children in poverty by 2020. It is time that we took control of our own affairs in order to protect our young people from Westminster.

I particularly welcome the First Minister’s statement at the SNP conference. He said:

“I believe a transformational shift towards childcare should be one of the first tasks of an independent Scotland.”

I also noted with interest his announcement that the Council of Economic Advisers has been asked to analyse the social and economic implications of raising levels of childcare in an independent Scotland.

I want to highlight the issue of kinship carers. The kinship care order, which is included in the bill, will provide great support for kinship carers. I am pleased to note that the Scottish Government is currently reviewing the financial support for kinship carers in order to address inconsistencies across the country.

**The Deputy Presiding Officer:** You are in your final minute.

**Colin Beattie:** Again, I refer to the Children 1st survey, which shows that 60 per cent of kinship carers thought that a kinship care order would be a good thing. A further 27 per cent wanted more information. It was no surprise that 60 per cent said that they would apply for a kinship care order. We must remember that, before the SNP’s election victory in 2007, there was no support for kinship carers in Scotland and that, since 1997, successive Governments at Westminster have
failed to consider the needs of children in kinship care through the benefits system.

I am proud that, in the previous parliamentary session, the Government launched the Looked After Children (Scotland) Regulations 2009, which allowed local authorities to give vital financial support to kinship carers, but I am deeply concerned that the Westminster Government is threatening to undermine the support that the Scottish Government provides.

I am running short of time, so I will go quickly to the end of my speech.

It seems to be self-evident that being proactive is always better than being reactive. Preventative spending will help us to ensure that our children get a better start in life right from the beginning, and it provides added benefit in that it helps to ensure greater value for the public purse. Spending now should always reduce spending later.

The bill is an important milestone in achieving better outcomes for our children. I commend the Scottish Government and my colleagues in the Education and Culture Committee for the huge amount of work that has been done and for bringing the bill before Parliament.

The Deputy Presiding Officer: We turn to the closing speeches. I am disappointed to note that two members who participated in the debate are missing from the chamber.

16:38

Mary Scanlon (Highlands and Islands) (Con):
I, too, congratulate Cara Hilton on her maiden speech. She certainly made the most of our policy of not intervening in maiden speeches; I say well done to her. I am sure that she will continue with the same passion and commitment in future debates.

I remind Colin Beattie, who is a colleague on the Public Audit Committee, that we do not have independence in the Highlands. However, I think that every member in the chamber has commented on how well GIRFEC and other measures are working there. We can certainly do an awful lot without independence.

I congratulate the Education and Culture Committee on its excellent scrutiny of the bill. I am not a member of that committee, but I recognise the complexities of the bill, which, obviously, I am new to. Given my experience of many bills since 1999, I can acknowledge the measured and constructive speech given by the committee convener, Stewart Maxwell, which I thought was commendable.

As Liz Smith said, the Scottish Conservatives agree with many of the bill’s proposals. In particular, we agree that we should do more to develop the collaborative approach to ensuring that children’s services are delivered more effectively. Like other members, we very much agree with the plans to extend childcare, enhance nursery provision and better train nursery staff. In 1999, conditions such as autism and dyslexia—Margaret McDougall referred to dyslexia in a question earlier today—were not picked up in nurseries. I therefore commend the training that our nursery staff now receive, as well as the additional support for kinship carers, to which Bob Doris and others have referred.

Neil Bibby made a critical point about health visitors. Some years ago, Dr Phil Wilson said in evidence to the Health and Sport Committee that there was overwhelming evidence to support the retention of health visitors. However, over the past decade, we have seen the demise of health visiting in this country, which is not something that we have supported. Last week, I met Bill Alexander, the director of social work in Highland Council, and I was pleased to learn that Highland is now employing more health visitors. We very much support that and hope that it will be replicated throughout Scotland.

We have several concerns about the bill, one of which is that, as Professor Kenneth Norrie stated, the bill will give ministers more powers that are open ended and not sufficiently well defined. In some key written submissions to the committee, concerns were expressed about the proposed extent of data sharing and about the extension of the powers of Scotland’s Commissioner for Children and Young People; the concern that parental and family responsibilities will be diluted was also expressed. I support COSLA’s point that the children’s commissioner should be the last resort after all local avenues of complaint have been exhausted. We will obviously keep a watching eye on that provision. Whether the additional £160,000 of funding for the children’s commissioner’s office is value for money, only time will tell. I say that with my Scottish Parliamentary Corporate Body hat on, because members of the corporate body must decide on such additional moneys.

We are concerned that having a named person for all children in the terms stated by the bill might take resources away from the most vulnerable children. John Stevenson of Unison said that the bill’s provisions would mean that children’s services would have to deal with far more children than they deal with currently. Like the EIS, Unison also had concerns about the implications for resources and training in an already well-stretched budget.
Stewart Maxwell: Will the member take an intervention?

Mary Scanlon: No, if the member does not mind. I have less than two minutes left for my speech and I still have quite a bit to cover.

I was a lecturer for 20 years before I became a member of the Scottish Parliament. However, if I was the named person for any 16 to 18-year-olds entering further education now, I would not know where to start or what I had to look for. It is a bit naive to assume that no training would be required.

We also have practical concerns about the named-person role. What will happen if relations break down between the named person and the family? What will the relationship be between the named person and the lead professional? Will there be a single point of contact? Stewart Maxwell raised a good question about what will happen with regard to the named person during the school summer holidays. It is reasonable to raise such important questions at stage 1. I have no doubt that we will get more clarity on those issues at stage 2.

Unison stated that the named-person proposals were not clear and it felt that what it regarded as a rather woolly approach would mean that, to cover their backs, named persons would end up sharing information that strictly speaking they did not have to share. Joan McAlpine made some very good, constructive points about that.

When I visited Inverness College two weeks ago, I came across two Gypsy Traveller girls and wondered what their families would think about their having a named person. I wonder whether any thought has been given to the Gypsy Traveller community in that regard.

16:44

Neil Bibby (West Scotland) (Lab): I congratulate Cara Hilton on her maiden speech, in which she showed passion and commitment—the sort of passion and commitment that helped her to win the Dunfermline by-election.

As Cara Hilton and my colleague Jayne Baxter said, Labour supports the principles behind the bill. Labour wants to make Scotland a better place for children to grow up in. Labour believes that we need to get it right for every child and supports the aspiration of improving life chances for children and young people in Scotland.

However, as some of the evidence says and as has been said this afternoon, we believe that the bill lacks ambition and we have concerns about practical issues, wording, details and financial and resource issues, which will be difficult to sum up in a seven-minute speech. Put simply, getting it right for every child means getting the bill right. We cannot let it be a missed opportunity.

The committee heard about a considerable number of issues from organisations and individuals and a significant number of them have been raised today. We have also received many briefings this week, which have contained specific concerns. I will raise a number of the issues that have been presented to us. I thank Children in Scotland and all the other children’s and youth organisations for their helpful briefings in advance of the debate.

A while back, the bill was described to me as four bills in one. It is clear that we need a joined-up bill and a joined-up approach. We should be concerned when NSPCC Scotland says:

“there appears to have been little strategic thinking about the position of children’s services in the raft of legislation currently underway in Scotland. We are concerned that the disparate nature of the various pieces of legislation which affect children’s services indicates a lack of coherent vision for how the whole range of services meet the needs of children.”

The NSPCC is not alone in raising concerns. There have been concerns that the Government’s proposals on children’s rights will not extend those rights or make a practical difference to children’s lives. The Law Society of Scotland described the duty on ministers as

“a diluted version of the existing obligations”

and it noted that the duty requires ministers only to consider the UNCRC and not to act on or explain those considerations. Children in Scotland noted that the proposals fall short of those that the National Assembly for Wales has embraced. A number of suggestions have also come from UNICEF and others about the use of child rights impact assessments and the duties on public bodies. We will have to look at that again at stage 2.

We have heard a great deal of concern about the controversial named person proposals. As I have said, the Royal College of Nursing has said clearly that

“The Scottish Government must recognise the Education Committee’s concerns regarding the capacity of the health visiting workforce to deliver existing duties let alone those associated with the Named Person role.”

Health visitors—the people on the ground—tell us that an additional 450 health visitors are needed. I say gently to the minister that that needs to be not monitored but acted on.

In its briefing, the RCN makes the shocking statement that

“It is not currently known how many health visitors there are in Scotland.”
I am sure that I am not the only one who is extremely concerned by that comment. If the minister does not know how many health visitors there are, how can the figure be monitored and how can they be expected to take on the additional role?

Other concerns have been raised. Children 1st said:

“We remain concerned about the potential for confusion, which we already have experience of directly in practice—between the role of the named person and lead professional.”

YouthLink Scotland has called for clarity on the practicalities of a named person for a young person who is under 18 and who has left school. Questions have also been asked about inadequate funding for training and about who will take on the duty during school holidays.

Those issues are not going to go away. The minister and the Government need to take them seriously and address them accordingly if they want the provisions to be supported and to work.

We have been lobbied by Who Cares? Scotland and a number of our constituents about care leavers and we have been asked to speak up for them in the debate. I will speak up for them, just as Kezia Dugdale and others did. We should extend support for care leavers, and I hope that the Government will consider that request and look favourably on stage 2 amendments about that.

Jayne Baxter made a good contribution on kinship carers. The Government has more work to do to convince them of the merits of what it proposes.

I said that the bill should not be a missed opportunity. However, I feel that it will be a missed opportunity and that it lacks ambition on nursery education and childcare. I welcome again the Government’s flagship policy of an increase to 600 hours of provision for three and four-year-olds but, as we know, that was in the SNP’s manifesto in 2007. I have said it before and I will say it again: the Scottish Government will not solve the childcare problems of 2013 with a policy from 2007.

John Swinney was on television the other night, rightly saying that, if we increased childcare and female employment, that would be a good thing and it could create jobs. My message to the Government is this: do it, then! Actions speak louder than words. It has the powers right now to introduce more childcare than it is doing.

Labour in government acted to support and massively expand universal nursery education and childcare. The SNP in government has done very little in comparison. Instead, it has offered empty and vague referendum bribes. Members should not just take my word for it that that is unambitious. As Children in Scotland and Save the Children point out, the bill does not go nearly far enough in providing support for two-year-olds. Only about 1 or 2 per cent of two-year-olds are to be guaranteed nursery in Scotland, whereas 40 per cent of those in England are going to be offered it. You have a stated aim of making Scotland the best place to grow up in the world, but you cannot even offer the best nursery package in the UK.

The Deputy Presiding Officer: You are in your final minute. Speak through the chair, please.

Neil Bibby: The SNP actually cut nursery funding for vulnerable two-year-olds when it first came to power.

Other concerns have been raised about the proposals’ impact on quality, about the definition and split of early learning and care, about flexibility issues and about the need to consider the fact that some children are missing out on months of early years education.

As Children in Scotland notes, the bill says absolutely nothing about out-of-school care for primary school-aged children. It is shocking that the Scottish Government rejected Labour’s call for a cross-party childcare commission to consider the issue back in May. That is deeply regrettable.

The challenge for the Government is to act on the suggestions that have been made and to deliver a better bill. We support the principles of the bill, but it is only good as far as it goes. At present, sadly, it will not be a “landmark bill”, as the minister called it, but a landmark opportunity missed.

16:51

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): This has been, by and large—with the exception of the last few minutes—a positive and useful debate. The purpose of the Children and Young People (Scotland) Bill was defined by Aileen Campbell at the outset, and I will repeat what she said: the whole purpose of the bill is to improve children’s lives, and everything we do or say about it should be judged in that way. That is absolutely correct. By and large, members have responded to the challenge.

It is right to say that the bill is not a single bill, but the coming together of two bills into one bill. We thought about and consulted on how to improve lives, doing just what Aileen Campbell asked us to do. I pay tribute to Aileen Campbell’s leadership on the issue—her leadership on the bill and her leadership within the ministerial team. She
has a strong commitment, as have I, to continue to work with members across the chamber to improve the bill and put it on the statute book. That is what we should be doing.

I thank everyone concerned with that process, particularly the Education and Culture Committee. The convener restated, cogently and eloquently, the constructive points that arose at committee—and they are constructive points, which are being considered by the Scottish Government. As with all proposed legislation, we are keen to improve the bill as it goes into detailed legislative scrutiny.

The bill will have material added to it. As the committee convener indicated, I will be lodging amendments at stage 2 regarding school closure proposals. I look forward to giving evidence to the committee on 3 December and to discussing proposals on the subject that have—by and large, albeit not completely—been well received.

I thank Jayne Baxter for her opening speech, and I welcome the support that she indicated in it. I am certain that, working together, we will be able to make the bill the best that it can be to ensure that Scotland is the best country to grow up in. I am positive that we can find ways to go forward together in that regard.

Liz Smith’s speech was measured and positive, and I am grateful to her. It is wise that we acknowledge the concern within the Conservative Party about the named person provision. I think that the named person is a positive provision. I have taken some time to be persuaded of that, because I wanted to see the work that was going on and the actions that were being taken across Scotland, but the named person provision is immensely impressive to see in operation. It is wrong to define it as more work; it is about smarter work and how professionals change and develop what they do to meet the challenges that exist.

Liz Smith: I thank the cabinet secretary for his remarks just now. Our concern—as Gavin Brown mentioned in his speech—is that, if we are to develop those resources, we might detract from the issues that are facing some of our most vulnerable children. We have a lot of evidence before us from a variety of stakeholders who say that we will indeed have to spend a lot more on the named person provision.

Michael Russell: I understand that concern, and I think that Liz Smith—if I might say so without embarrassing her—put it much better than did Gavin Brown, who got trapped by his ideological views. However, there is contrary evidence from a variety of places, in particular from those who are doing the job, to say that the provision is not about increased activity or primarily about increased resource, but about different methods of operation.

In giving evidence to the Education and Culture Committee, Bill Alexander stated in respect of the named person provision that

"It is much easier to understand what is going on".

He went on to say that:

“Teachers ... and midwives tell me that it does not change what they do but it changes how they are regarded”

and that

"they feel that it has empowered them."—[Official Report, Education and Culture Committee, 24 September 2013; c 2861-62.]

Bill Alexander knows more about the subject than almost anybody else, and I have found what he says to be true when I have spoken to the people who are involved. I want that to be demonstrated to the committee and to the chamber, and if there are ways in which it can be demonstrated, it should be.

The named person provision is about enabling, not enforcing. It is about not interference or approved parenting, nor substituting professionals for parents, but helping and assisting. It is a very important innovation.

Liam McArthur: There have been some concerns about the lack of consent for information sharing. Can something be done in the bill to lay down a presumption of seeking consent except in those exceptional circumstances in which welfare issues are at stake?

Michael Russell: It is possible to envisage that being included in the guidance, but I—and the minister, I think—would welcome a discussion with Liam McArthur and other members on the matter, because there are ways forward. I am grateful for that contribution.

I will deal quickly with one or two other points. I share Kezia Dugdale’s anger about looked-after children; I expressed it in an article that I wrote in 2006 about the fact that the Parliament had, until that stage, talked about the issue a lot with genuine feeling but had not brought about change.

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

I say to Bob Doris that there is nothing in the bill at all that will interfere with the opportunities or rights of local authorities in relation to kinship carers—it is quite the reverse, in fact.

I pay tribute to Cara Hilton for her maiden speech. She was quite right to drop the convention
of paying tribute to her predecessor at the beginning. To be fair to her, she dropped quite a number of other conventions too, including the convention of making a maiden speech of a consensual nature.

There was no harm in that at all—she has her mother’s passion for those whom she represents. I will be unconventional too, and pay tribute not just to the member but to her mum. Cathy Peattie is a loss to the chamber. We worked closely together in the first session of Parliament on the Education, Culture and Sport Committee; I regard her as a friend and I always will. She was a doughty fighter for her constituency, for education and schools, and for Scottish culture.

Cara Hilton asked a number of questions of the Scottish Government, and the answer to most of them lies in the need for this chamber to have full powers. Her election literature—[Interruption.] If questions are asked, they should be answered. Her election literature asked why the SNP Government would not match Labour’s commitment to 600 hours of free childcare. With the greatest respect, I suggest that the question was put in the wrong way. Why did Labour not deliver those hours when it was in power? Indeed, it did not even deliver the 475 hours that we have now—it was delivering only 412.5 hours. We are delivering, and we could deliver much more with the full powers of a normal Parliament.

Cara Hilton’s election slogan said that, “Dunfermline deserves better.” I agree, but I would go further and say that Scotland deserves better than the limit that her party has placed—and continues to place—on progress for her constituents. Let us have even more ambition for those powers.

The centrepiece of the bill is the 600 hours of free childcare. It is there on offer and it needs to be supported. In supporting it, we will make a difference and make this country the best country in which to grow up.

The bill is a major step forward, and the fact that members on all sides of the chamber wish to support it is incredibly welcome, but the task with all legislation is to make it as good as it can be. With the work that Jayne Baxter and Liam McArthur have offered to do, and perhaps with the consent and the work of the Scottish Tories—except on one issue, although I hope that we will be able to draw them into supporting that provision—we will have a bill to be proud of. We will have a country to be proud of in terms of how we look after and lead forward our children, and then, with independence, we can do even more.

Children and Young People (Scotland) Bill: Financial Resolution

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-08192, in the name of John Swinney, on the financial resolution for the Children and Young People (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Children and Young People (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.—[John Swinney.]

The Presiding Officer: The question on the motion will be put at decision time.
Decision Time

The Presiding Officer: The next question is, that motion S4M-08326, in the name of Aileen Campbell, on the Children and Young People (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame North) (SNP)
Campbell, Alleen (Clydesdale) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)

Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
MacIntosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahan, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Peterson, Gill (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Swinney, John (Perthshire North) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 104, Against 0, Abstentions 14.

Motion agreed to,

That the Parliament agrees to the general principles of the Children and Young People (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-08192, in the name of John Swinney, on the financial resolution for the Children and Young People (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Children and Young People (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.

Meeting closed at 17:02.
Background

1. The Committee reported on the delegated powers in the Children and Young People (Scotland) Bill on 1 October in its 50th Report of 2013.

2. The response from the Scottish Government to the report is reproduced at the annex.

Scottish Government response

Section 28(1) – Guidance in relation to named person service
Section 29(1) – Directions in relation to named person service

3. The Bill makes provision for a “named person service” which creates a single point of contact around every child or young person. The named person will have responsibilities in relation to the child or young person’s wellbeing. Sections 28(1) and 29(1) confer power on the Scottish Ministers to issue guidance and directions to service providers about the exercise of named person service functions.

4. In its stage 1 report the Committee recommended that, given the potential impact of the named person service on children or young people and their families, publication of the guidance and directions should be made a requirement.

5. In response to this recommendation, the Scottish Government has agreed to bring forward amendments at stage 2 which would impose a duty on Scottish Ministers to publish guidance and directions under sections 28(1) and 29(1).
Section 39(1) – Guidance on child’s plans
Section 40(1) – Directions in relation to child’s plans

6. Part 5 of the Bill provides for a child’s plan to be created for every child with a wellbeing need which is considered to require targeted intervention. Section 39(1) enables the Scottish Ministers to issue guidance to any person in connection with that person’s functions under Part 5. Section 40(1) enables Ministers to issue directions to local authorities, health boards and directing authorities.

7. The Committee again considered that, given the potential impact of the exercise of functions relating to child’s plans on children and their families, the publication of the guidance and directions should be made a requirement.

8. Following this recommendation, the Government has agreed to bring forward amendments at stage 2 which would impose a duty on the Scottish Ministers to publish guidance and directions under sections 39(1) and 40(1).

Section 43(2)(c)(ii) – Duty to secure provision of early learning and childcare

9. Section 43(2)(c)(ii) enables Scottish Ministers, by order, to prescribe additional categories of children who are eligible for the mandatory amount of early learning and childcare.

10. The Committee considered that the power, in specifying categories of children who are entitled to early learning and childcare, is significant in nature and should therefore be subject to the higher level of parliamentary scrutiny afforded by the affirmative procedure.

11. In its response, the Government agreed that the affirmative procedure would be appropriate in this case and committed to bringing forward an amendment at stage 2 which would provide for this.

Section 61(3) – Provision of counselling services to parents and others

12. Section 61(2) provides that the parents of, or persons with parental rights and responsibilities in relation to, an eligible child will be eligible for counselling services. Section 61(3) enables the Scottish Ministers, by order, to specify the description of “eligible child” for the purposes of section 61(2).

13. Given its potential effect on the individuals it relates to, the Committee considered the power at section 61(3) to be of some significance and therefore recommended that it should be subject to the affirmative procedure.

14. Responding to the Committee, the Scottish Government re-iterated its intention that the power would be used to set and potentially extend, rather than narrow, eligibility. The Government acknowledged, however, that consideration should be given to the potential future use of the power and therefore agreed to bring forward an amendment at stage 2 which would make the power subject to the affirmative procedure.
Section 64(4) – Assistance in relation to kinship care orders

15. Section 64(4) enables the Scottish Ministers, by order, to specify the description of an “eligible child” for the purposes of kinship care assistance provisions.

16. The Committee took the view that the issue of eligibility for kinship care assistance is a substantive matter which Parliament should have the opportunity to debate and that the affirmative procedure would therefore be appropriate.

17. Similarly to the previously discussed power at section 61(3) in relation to eligibility criteria for counselling, the Scottish Government stated its intention that the intended use of the power was to set and potentially extend eligibility in relation to kinship care assistance provisions. The Government was content, however, to bring forward an amendment at stage 2 which would make the power subject to the affirmative procedure.

Section 68 – Scotland’s Adoption Register
Inserting section 13A(1) into the Adoption and Children (Scotland) Act 2007

18. Section 68 of the Bill inserts section 13A(1) into the Adoption and Children (Scotland) Act 2007. It requires the Scottish Ministers to make arrangements for the establishment and maintenance of Scotland’s Adoption Register (“the Register”). Section 13B(1) provides that such arrangements may in particular authorise an organisation (a “registration organisation”) to perform the Scottish Ministers’ functions in respect of the Register, and provide for payments to be made to that organisation.

19. In its report, the Committee noted that the power could enable arrangements to be made requiring payments to the registration organisation by third parties as well as by the Scottish Ministers.

20. Furthermore, the Committee noted that any arrangements made under the power will potentially authorise the registration organisation to perform all of the Scottish Ministers’ statutory functions relating to the Register (other than making subordinate legislation).

21. The Committee therefore concluded that, as the arrangements regarding the Register could potentially significantly affect the individuals concerned, they should be made as clear and accessible as possible. The Committee therefore recommended that any such arrangements should be published by Scottish Ministers. The Committee also drew the lead committee’s attention to the power to make arrangements.

22. The Government has taken account of the Committee’s recommendation and has accordingly agreed to bring forward an amendment at stage 2 which will require Scottish Ministers to publish any arrangements they make which impose liability for payment.
Section 68 – Scotland’s Adoption Register
Inserting section 13A(2) into the Adoption and Children (Scotland) Act 2007

23. Section 13A(2) (newly inserted into the Adoption and Children (Scotland) Act 2007) provides that Scottish Ministers may, by regulations, prescribe information or types of information to be included in the Register under section 13A(1). The Scottish Ministers may also provide for how information is to be retained in the Register and make such further provision about the Register as they consider appropriate.

24. Whilst the Committee accepted the power in principle, it recommended that, further provision should be made in the Bill to set out the intended purpose and use of the Register. Such provision would inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain. Furthermore, the Committee considered that the power could be drawn more narrowly in order to better reflect the Government’s policy intention. The Committee therefore asked the Government to consider amending the power accordingly at stage 2.

25. In response, the Government informed the Committee that it was considering giving the Scottish Ministers flexibility to extend the Register in future to allow it to cover other forms of permanence care planning for children, in addition to adoption. Therefore, although the Government agreed to take the Committee’s recommendations on this matter into account when considering possible amendments to the Bill, they do not currently intend to narrow the powers in section 13A.

Section 74(3) – Assessment of wellbeing

26. Section 74(2) contains a list of indicators which a person required by the Bill to assess the wellbeing of a child or young person must take into account when carrying out such an assessment. Section 74(3) requires the Scottish Ministers to issue guidance on how those indicators are to be used to assess wellbeing.

27. The Committee considered that, given the potential impact of the assessment of wellbeing on children or young people and their families, the publication of the guidance and directions should be made a requirement.

28. The Government has agreed to bring forward amendments at stage 2 which would impose a duty on the Scottish Ministers to publish guidance and directions under section 74(3).

Conclusion

29. Members are invited to make any comments they wish on the Bill at this stage. Given the Scottish Government’s commitment to bring forward amendments, it is probable that the Committee will have a further opportunity to consider the Bill after stage 2.

Recommendation

30. Members are invited to note the Scottish Government’s response on the Bill and to make any comments they wish at this stage.
Correspondence from the Scottish Government, dated 11 November 2013:

Section 28(1) – Guidance in relation to named person service
Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Section 29(1) – Directions in relation to named person service
Power conferred on: The Scottish Ministers
Power exercisable by: Direction
Parliamentary procedure: None

The Committee asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 28(1) and 29(1).

The Committee asks for further comment on this in the Scottish Government’s response to this report.

It has always been the Scottish Government’s intention to publish any directions or guidance issued under this Part of the Bill, however we understand the Committee’s concern about how those powers might be exercised from time to time by future administrations. Therefore, the Scottish Government is content to bring forward amendments to the Bill at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in section 28(1) and 29(1).

Section 39(1) – Guidance on child’s plans
Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

Section 40(1) – Directions in relation to child’s plans
Power conferred on: The Scottish Ministers
Power exercisable by: Direction
Parliamentary procedure: None

The Committee asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 39(1) and 40(1).
The Committee asks for further comment on this in the Scottish Government’s response to this report.

It has always been the Scottish Government’s intention to publish any directions or guidance issued under this Part of the Bill, however we understand the Committee’s concern about how those powers might be exercised from time to time by future administrations. Therefore, the Scottish Government is content to bring forward amendments to the Bill at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in section 39(1) and 40(1).

Section 43(2)(c)(ii) – Duty to secure provision of early learning and childcare

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

The Committee asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.

The Committee asks for further comment on this in the Scottish Government’s response to this report.

The Scottish Government has taken on board the concerns and comments from the Committee on this matter. The current policy intention is that the power will be used to specify 3 and 4 year olds, however, the Committee is correct that it could be used to make different provision in the future. Given that this might be a matter which Parliament may wish to have the ability to debate in full, the Scottish Government is content that an affirmative procedure offers a more suitable level of Parliamentary scrutiny and we will therefore bring forward an amendment at Stage 2 to make this change.

Section 61(3) – Provision of counselling services to parents and others

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

The Committee asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.

The Committee asks for further comment on this in the Scottish Government’s response to this report.
The current policy intention is to use this power to set and then potentially extend eligibility, rather than narrow it, however the Scottish Government takes on board the Committee’s view that consideration ought to be given to the potential use of the power in the future. Therefore, the Scottish Government feels that, given these concerns and comments, the affirmative procedure may be more appropriate and we will therefore bring forward an amendment at Stage 2 to make this change.

**Section 64(4) – Assistance in relation to kinship care orders**

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary Procedure: Negative

The Committee asks the Scottish Government to consider in advance of Stage 2 of the Bill whether the significance of setting eligibility criteria by order under this power is such that the affirmative procedure is a more suitable level of Parliamentary scrutiny of the exercise of this power than the negative procedure.

The Committee asks for further comment on this in the Scottish Government’s response to this report.

The current policy intention is to use the power to set and then potentially extend eligibility, rather than narrow it, however the Scottish Government takes on board the Committee’s view that consideration ought to be given to the potential use of the power in the future, and the impact which eligibility, or lack of eligibility, for certain assistance would have on those affected. Therefore, on that basis the Scottish Government is content to proceed with an affirmative procedure for this power and we will therefore bring forward an amendment at Stage 2 to make this change.

**Section 68 – Scotland’s Adoption Register**

Inserting section 13A(1) into the Adoption and Children (Scotland) Act 2007

Power conferred on: The Scottish Ministers
Power exercisable by: Arrangement
Parliamentary procedure: None

The Committee accordingly draws the attention of the lead committee to the power in section 13A(1) as read with section 13B. This power proposes to enable the Scottish Ministers, by arrangements, to delegate their functions in respect of the Register (other than their function of making subordinate legislation) to a registration organisation. It also proposes to enable the Ministers, by arrangements, to provide for payments to be made to such an organisation, which may include payments by persons other than the Scottish Ministers. The Committee considers that any arrangements which impose liability for payment should be clear and accessible to those affected by them.
The proposal is that this delegation of functions and the making of provision about payments to the organisation be achieved without the need for subordinate legislation or parliamentary procedure, and without any requirement for publication of the arrangements entered into.

The Scottish Government has taken on board the Committee’s comments about this Part of the Bill and agrees that any arrangements which impose liability for payment should be clear and accessible to those affected by them. We will therefore bring forward an amendment at Stage 2 to place a requirement on the Scottish Ministers to publish any such arrangements.

Section 68 – Scotland’s Adoption Register

Inserting section 13A(2) into the Adoption and Children (Scotland) Act 2007

Power conferred on:  The Scottish Ministers
Power exercisable by:  Regulations
Parliamentary Procedure:  Affirmative

The Committee accepts in principle the power under section 13A(2), as supplemented by sections 13C and 13D, to make regulations in relation to Scotland’s Adoption Register. It is also content with the choice of the affirmative procedure for those regulations. However, it asks the Scottish Government to consider bringing forward amendments to section 13A at Stage 2 to make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain.

The Committee also asks the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(a) to reflect the stated intention in taking the power, which is to enable information or types of information relating to children considered suitable for adoption, or to prospective adopters, to be prescribed for inclusion in the Register.

The Committee also asks the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(c) to reflect the stated intention in taking the power, which is to enable provision to be made about other administrative matters associated with the operation of the Register.

The Committee asks for further comment on these matters in the Scottish Government’s response to this report.

Further to our previous response, the Scottish Government has had an opportunity to reflect on the current provisions for Scotland’s Adoption Register. We are considering whether in future it may be desirable to allow the Scottish Ministers flexibility to extend the use of the Register to other forms of permanence (not just adoption). We are considering whether this could increase the efficiency of permanence care planning. While we are considering whether any further amendments should be made to the Bill
to achieve this, we consider it would be prudent to retain the broad powers in section 13A, 13A(2)(a) and 13A(2)(c) pending the conclusion of this work. We will reflect on the Committee’s suggestions in relation to these powers when considering any future amendments to the Bill.

Section 74(3) – Assessment of wellbeing

Power conferred on: The Scottish Ministers
Power exercisable by: Guidance
Parliamentary procedure: None

The Committee therefore asks the Scottish Government to consider bringing forward amendments at Stage 2 to require publication of any guidance issued by the Scottish Ministers under the power contained in section 74(3).

The Committee asks for further comment on this in the Scottish Government’s response to this report.

It has always been the Scottish Government’s intention to publish any directions or guidance issued under this Part of the Bill, however we understand the Committee’s concern about how those powers might be exercised from time to time by future administrations. Therefore, the Scottish Government is content to bring forward amendments to the Bill at Stage 2 to require publication of any guidance or directions issued by the Scottish Ministers under the powers contained in section 74(3).
Children and Young People (Scotland) Bill: The Committee considered the Scottish Government’s response to its Stage 1 Report and agreed to write to the Minister for Children and Young People for further information.
The Deputy Convener: Agenda item 9 is consideration of the Scottish Government's response to the committee's stage 1 report on the Children and Young People (Scotland) Bill. Members have seen the briefing paper and the response from the Scottish Government. Do members have any comments?

Members: No.

The Deputy Convener: The committee will note from the Scottish Government's response that it is considering giving the Scottish ministers the flexibility to extend Scotland's adoption register in future to allow it to cover other forms of permanence care planning for children, in addition to adoption. If, however, the Scottish Government concludes that the register should be restricted to adoption, the committee may consider that amendments should be lodged at stage 2 to narrow the breadth of the power.

Does the committee therefore agree to write to the Minister for Children and Young People to ask her to inform the committee of what the Scottish Government proposes once its consideration of the issue is complete, in order to allow the committee to form a view on whether its concerns in relation to the power have been addressed?

Members indicated agreement.

John Scott: I think that that is the appropriate thing to do.

The Deputy Convener: Thank you.

That brings us to the end of the meeting. The date of our next meeting will be Tuesday 3 December.

Meeting closed at 11:17.
Dear Aileen

At its meeting on 26 November 2013, the Delegated Powers and Law Reform Committee considered the Scottish Government’s response to its stage 1 report on the Children and Young People (Scotland) Bill. The Committee agreed to write to you regarding Section 68 of the Bill (inserting section 13A(2) into the Adoption and Children (Scotland) Act 2007) which relates to Scotland’s Adoption Register.

In its report, the Committee asked the Government to consider setting out the intended purpose and use of the Register on the face of Bill in order to inform the broad power in section 13A(2). The Committee also considered that the power could be drawn more narrowly in order to reflect the stated policy intention of enabling information or types of information relating to children considered suitable for adoption, or to prospective adopters, to be prescribed for inclusion in the Register.

The response to the report states that consideration is being given to extending the use of the Register to allow it to cover other forms of permanence care planning for
children, in addition to adoption and that the Government therefore considers it appropriate that the power remains broadly drawn for the time being.

If the Government concludes, however, that the Register should be restricted to adoption, the Committee may consider that amendments should be brought forward to narrow the breadth of the power.

The Committee therefore seeks confirmation as to whether a final decision on extending the use of the Register will be taken prior to stage 3 in order to allow amendments to be brought forward if deemed appropriate.

Separate to this clarification, the Committee asks that, once the Government’s consideration of the issue is complete, the Committee is informed of the Government's intentions in relation to the use of the Register. This will allow the Committee to form a view on whether its concerns in relation to the power have been addressed.

Nigel Don MSP
Convener
Dear Stewart,

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL – STAGE 1 REPORT

I wrote to you on 20 November 2013 to confirm receipt of the Stage 1 report from the Education and Culture Committee on the Children and Young People (Scotland) Bill. As I said in that letter, I welcome the Committee’s consideration of the Bill during Stage 1 and support for its general principles.

I have considered the points raised in the report and reflected on the views expressed during the Stage 1 debate last week. I attach the Scottish Government Response to the report.

I look forward to continued working with the Committee as the Bill continues its Parliamentary scrutiny.

[Signature]

AILEEN CAMPBELL
Children and Young People (Scotland) Bill

Scottish Government Response
Stage 1 Report

November 2013
INTRODUCTION

I would like to thank the Education and Culture Committee, Local Government and Regeneration Committee, Finance Committee and Delegated Powers and Law Reform Committee for their consideration of this legislation at Stage 1. I welcome the report and the Education and Culture Committee’s support of the Children and Young People (Scotland) Bill which reflects the many positive responses you received about it.

The Bill is central to the Scottish Government’s aim of making Scotland the best place in the world to grow up. We believe that its proposals: to place new emphasis on the importance of promoting children’s rights; to provide a framework nationwide to ensure services are designed around the needs of each child and young person, and that they are supported whenever they are in need; to extend the availability of Early Learning and Childcare; and to provide more support for looked after children will improve the life chances of children in Scotland, and make for a happier, more successful country.

During my evidence I made clear my position that we will continue to consider all views and I note the Committee’s desire for further information on some areas. I am keen to clarify as many of these issues as I can and responses to all of key points raised in the Stage 1 report are set out below. For ease of reference I have used the paragraph numbering from your report.

I welcomed last week’s debate and look forward to continuing work with the Committee, stakeholders, partners and colleagues as the Bill progresses through the Parliamentary process.

RESPONSE TO STAGE 1 REPORT KEY POINTS

Part 1 - The Rights of Children and Young People

40. We recommend that the Scottish Government provides an explanation of the practical actions it intends to take to increase awareness of children’s rights, including details of the tool that will be developed.

Strong awareness and understanding of the United Nations Convention on the Rights of the Child (UNCRC) is absolutely essential in order for the other rights duties in the Bill to work. Ministers can only identify how best to further rights if they have a clear knowledge and understanding of what the Convention requires. The Children’s Rights Impact Assessment tool, detailed on Page 5, will help to increase awareness and understanding of children’s rights within the Scottish Government, ensuring that policies are properly informed at a national level.

The Scottish Government already takes forward a significant amount of work to increase awareness and understanding of children’s rights. Examples of recent activity include:
• Establishment of a charitable partnership with UNICEF linked to the 2014 Commonwealth Games. As part of that partnership, Scottish Ministers will support UNICEF to deliver work throughout Scotland and across the Commonwealth to promote the importance of children’s rights and the realisation of the UNCRC between now and 2018. In addition the Scottish Government has agreed funding of £50,000 in 2013/14 for UNICEF to undertake specific activities supporting raising awareness and understanding of children’s rights among children, young people and their families;
• The development and delivery of the learning resources – Recognising and Realising Children’s Rights - designed to increase awareness and understanding of children’s rights amongst learning professionals across Scotland. As well as increasing knowledge, the resources (launched by Education Scotland at this year’s Scottish Learning Festival) will support teachers and others to assess how they might improve the realisation of children’s rights in their establishments. Roll-out of the resources is now underway, with an evaluation planned for 2014/15. This is in addition to, and complements, UNICEF’s work on Rights Respecting Schools;
• Core funding of ‘Together’, a national alliance of third sector children’s organisations tasked with promoting children’s rights and scrutinising implementation of the UNCRC in Scotland; and
• Publication and dissemination of information materials for individuals of all ages, providing information on children’s rights and the Scottish Government’s approach to implementation of the UNCRC.

Moving forward, we will continue to identify further opportunities, like these, to strengthen awareness of children’s rights, working in partnership with Scotland’s Commissioner for Children and Young People, Together and other key stakeholders. As certain programmes of work conclude, it will be necessary for the Government to identify how best to target future resources in order to maximise impact with our awareness raising activity. The Bill will ensure that future Governments adopt a similar approach.

40. We also recommend that, in addition to reporting on the steps they have taken to fulfil their duties under Part 1, Ministers should be required to report on the activities they intend to undertake to further children’s rights in each three year period.

This Government is already committed to the production of regular plans describing how they intend to give effect to the principles of the UNCRC, the last of which was published in May 2012. We recognise the important role that these documents play, allowing organisations and the public to hold the Scottish Government to account around the progress being made in this important area. We can see some potential benefit in formalising this arrangement and are happy to work with the Committee to explore how this might be delivered through the Bill.

41. In relation to the duties placed on public authorities, we recognise there are different views on the wording of the Bill. We seek further clarification from the Scottish Government on why it has chosen not to include duties to
'keep under consideration' and thereafter, to ‘take steps identified by that consideration'.

The public sector reporting duty will increase transparency around UNCRC compliance, supporting the Scottish Government, the Parliament and Scotland’s Commissioner for Children and Young People to hold to account those who play a key role in making rights real for children at a local level. We feel that the duty as currently drafted strikes the right balance. It is not overly onerous at a time when service providers are facing considerable pressure. It also reflects the fact that public bodies already have a host of existing legal obligations which support the aims of the UNCRC. Those legal requirements will be increased through, for instance, the Getting it Right for Every Child (GIRFEC) provisions in the Bill.

The reporting duty will ensure that all relevant public bodies deliver their work with a clear focus on children’s rights, helping to provide a comprehensive picture of how their activity contributes to compliance with the UNCRC’s principles across Scotland.

42. We welcome the intention to allow public authorities to report under this Part in their annual reports. We note that there are a number of new reporting and planning duties in the Bill, which often fall to the same organisations. We therefore ask whether some of these duties could be better integrated.

We will be actively encouraging public bodies to satisfy their reporting obligations in a streamlined and co-ordinated way. For example, we will be suggesting that certain public bodies satisfy their duty to report on children’s rights through the children’s services planning process in the Bill.

There are some practical challenges associated with reflecting this approach on the face of the Bill and that is why our preference is to pursue better integration through guidance which will be developed in partnership with stakeholders. Nevertheless, we remain open to suggestions regarding how the Bill might be strengthened to support these aims.

43. We note that Article 42 is incorporated in the Bill and request the Scottish Government’s response to the Children’s Commissioner’s suggestion that Articles 3 and 12 also be included.

The Scottish Government is of the view that implementation of the Convention is best achieved through targeted, meaningful and effective laws and policies. The Articles which are set out in the Convention vary significantly in terms of their scope and focus. Some are targeted and specific whilst others are broader and more aspirational.

Our view is that the principle underpinning Article 42 can be easily translated into a meaningful duty which will make a practical difference to children’s lives. However, this is not necessarily the case for other aspects of the UNCRC. For this reason, we have some reservations about the Commissioner’s suggestion regarding incorporation of Articles 3 and 12. That being said, we continue to discuss with the
Commissioner how the provisions in Part 1 may be strengthened and would not want to pre-judge the outcome of that work.

44. A number of organisations expressed disappointment that the Scottish Government did not undertake a Child Rights Impact Assessment (CRIA) on the Bill. We wrote to the Scottish Government on this matter. We accept the Scottish Government’s reason for not undertaking a CRIA in this case, which was due to the extensive engagement activities carried out during the Bill’s development. However, the Scottish Government should commit to undertaking CRIAs in relation to relevant future legislation.

The Scottish Government agrees with the Committee about the importance of measuring the impact on children’s rights, not only in relation to legislation but also in policy development and delivery more generally. That is why we have committed to develop a Children’s Rights Impact Assessment tool, and work on this is already underway. As with other Government impact assessment tools, such as the Equality Impact Assessment and the Business and Regulatory Impact Assessment, the requirement to undertake a Children’s Rights Impact Assessment can be achieved through non-legislative means. Accordingly, we do not feel there is any need to explicitly reference Child Rights Impact Assessments on the face of the Bill. That being said, details of any such process could perhaps be included in 3 yearly plans focussing on the Government’s approach to children’s rights which have been suggested by the Committee and referenced in our response to paragraph 40 above.

Part 2 – Commissioner for Children and Young People In Scotland

58. We expect all parties to be clear about the interpretation of the Commissioner’s new powers and suggest that, if necessary, the Bill should be amended to ensure this.

The Bill, as currently drafted, provides a clear framework within which the Commissioner’s investigatory powers can be exercised and we see no immediate need to amend the provisions at Stage 2. Nevertheless, we are happy to consider any suggestions put forward prior to Stage 2.

In the meantime, the Commissioner continues to liaise with other complaints handling bodies in order to establish suitable processes for handling cases which come forward, negating the potential for duplication and ensuring that issues are resolved at the lowest possible level. The Scottish Government will continue to offer support as that work progresses.

59. The issue of resources is closely linked to the interpretation of the Commissioner’s new powers. If the resources are primarily aimed at funding staff to handle more enquiries, we question whether the proposed level of staffing is necessary. We are mindful of evidence indicating that the estimated £160,000 p.a could be better spent on, for example, greater access to mediation for children and young people, and are keen to ensure that any costs are fully justified. We recommend that the Scottish Government gives
further consideration to the volume and type of work that any extra enquiries will require.

The cost estimates in the Financial Memorandum relating to the extension of the Commissioner’s powers have been influenced and developed in conjunction with a number of relevant stakeholders who have experience of enquiries handling and investigation. We have also consulted the Scottish Parliamentary Corporate Body who fund the Commissioner’s office.

We feel that the estimates in the Financial Memorandum are fair. They take into account the need for increased capacity within the Commissioner’s office to deal with the likely increase in general enquiries as well as any full investigations. We continue to engage with the Commissioner and Parliamentary officials regarding the resource requirements linked to the provisions and will be mindful of those discussions as the Bill progresses. We will also keep these issues under review in light of experience following the implementation of these provisions.

Part 3 - Children’s Services Planning

75. The Scottish Government should clearly illustrate how children’s service plans fit within the wider Government strategy to integrate service planning across for example, the Public Bodies (Joint Working) (Scotland) Bill, the proposed Community Empowerment (Scotland) Bill and with Single Outcome Agreements and Community Planning Partnerships.

The Committee has asked about the relationship between the planning provisions in the Children and Young People and the Public Bodies (Joint Working) (Scotland) Bills, as well as the ongoing work on community planning. The range of proposed changes shows the Scottish Government’s determination to take forward the principles of the Christie Commission, ensuring that there is more effective, more joined-up planning between bodies at local level. They all share the same core principles and aims with respect to future planning.

With respect to Community Planning Partnerships (CPPs), the children’s services plans set out in the Children and Young People (Scotland) Bill will feed into the wider community planning processes. As with other public sector bodies, there is a mutual relationship between CPPs and the children’s services plans. On the one hand, CPPs and their constituent partners will take account of the needs of children and young people in local communities, as set out in the children’s services plans. On the other, Single Outcome Agreements (SOA) will set the framework for planning in children’s services through the local, high-level priorities agreed by each CPP.

With respect to the Public Bodies (Joint Working) (Scotland) Bill, while the Children and Young People Bill (Scotland) requires planning for children’s services across the whole range of public bodies, the Public Bodies (Joint Working) (Scotland) Bill focuses on the planning and delivery of health and social care specifically. The children’s services planning proposals of the Children and Young People (Scotland) Bill build on the existing good practice in planning that Local Authorities have been taking forward as part of the responsibilities under the Children (Scotland) Act 1995.
The new proposals will put in place an overarching framework and a mechanism for strategic coordination of planning of all key services affecting the wellbeing of children and young people. The planning requirements of the Public Bodies (Joint Working) (Scotland) Bill, should Local Authorities and Health Boards decide to include children’s services, will feed into developing the plans required of the Children and Young People (Scotland) Bill. Full alignment will be ensured through the parallel development of guidance for the duties in both Bills.

**Part 4 – Provision of Named Persons**

113. We invite the Scottish Government to provide details of the range of support it will make available to ensure that local authorities and health boards are able to replicate the successes experienced in Highland, recognising the different circumstances that will prevail in different parts of the country.

The Scottish Government realises that every local area in Scotland is not the same and faces its own challenges in the implementation of GIRFEC. However, recent work carried out on behalf of the GIRFEC Programme Board has indicated that most areas of Scotland have already begun implementing GIRFEC and are seeing results.

A number of implementation advisers have been seconded into the GIRFEC team within the Scottish Government. They have been working to support local areas with GIRFEC implementation. These individuals have come from posts within Local Authorities, a Health Board, Police Scotland and the Third Sector in different parts of Scotland. They work alongside local managers and planning groups. Their expertise from many years’ experience of children’s services in these agencies is helping to ensure that good practice is shared across the country and characteristics that are unique to specific areas are considered during implementation.

Since 2008 the Scottish Government has provided grant funding (around £600k per annum) to support implementation at local level in CPPs. This has been either through funding Learning Partnerships (Edinburgh/Lanarkshires) or supporting CPPs to come together in groupings to progress local implementation and to mainstream changes in systems, practice and culture. The lessons from CPPs have been shared and have formed the basis for much of the progress now being reported across the country. The Scottish Government team will continue to facilitate implementation in CPPs, many of whom are already making good progress, building on the investment we and they have made to date.

The Scottish Government team, as part of this process, has also been in discussion with partners over the content and format of the statutory guidance which will support practice. Detailed draft guidance will be shared next year to seek views and input from the people who will be asked to implement GIRFEC or who will be affected by its implementation. This guidance will seek to ensure the consistency of approach that has been lacking up till now, based on the legislative framework proposed by the Bill.

In terms of leadership the GIRFEC Programme Board has put in place an Implementation Sub Group, chaired by a Chief Executive of a Local Authority, to
develop and oversee implementation at a strategic level. CPPs will report progress with implementation to this group periodically. This group has been established to provide national leadership to ensure that training resources and good practice are disseminated and that any barriers to implementation are noted and responded to as appropriate.

In March 2013, the Scottish Government launched the National Third Sector GIRFEC Project, to support CPPs to recognise and embed the role of the Third Sector in implementing GIRFEC. This work will run until March 2016. It will promote good practice and share learning from intensive work in at least four CPP areas.

114. We believe the success of the named person role will depend on the Scottish Government’s ability to work with its local partners to clarify a number of practical issues, which we bring to the attention of the Parliament.

i) The issues a named person would be expected to handle outwith their core professional area:

The Named Person will always carry out their functions within the bounds of their professional expertise. They will, however, be supported in doing so by the management framework within their own service and a range of other professionals who form part of the network of support for children and families at a local level. This builds on current good practice where, for example, a Health Visitor can ask for advice from other more specialist practitioners within health, or other services, and a Head Teacher can consult with an educational psychologist, or social work colleague to address concerns related to individual children or families.

Although in many cases the Named Person will be able to provide advice and support from within their own resources, they will not always be the source of support. The Named Person will be in a position to call on other services to provide such support to the child or family or to direct families to other kinds of supports.

Where assessment and planning indicate that concerns about wellbeing will require a range of coordinated interventions for a child, then arrangements will be in place, supported by guidance, for a Lead Professional to manage the Child’s Plan. The Named Person will work with the Lead Professional and will do so in line with locally agreed procedures.

ii) The types of intervention a named person would be expected to make:

The role of the Named Person will be varied. Providing support to parents, children and young people might be as simple as taking the time to meet with them to talk through the difficulties they are facing. The Named Person role incorporates and builds on the role of key staff in universal services who offer children and parents valuable, easily accessible practical support in line with best practice.

The Named Person may provide support from within the resources available in the universal services, or help a family negotiate their way through systems and services. For example, where a school-age child is struggling with homework due to
their parent’s difficulties with literacy, the Named Person might arrange for them to attend a homework club in school, and provide the parent with advice about adult learning opportunities available in the community. Importantly, they will have a greater awareness of the context of the child’s life, and will be able to take this into consideration as they routinely support the child – e.g. making sure that they communicate appropriately with the parent.

In the early years the existence of the Named Person Service will mean that when parents need advice or help they know who to turn to (normally the Health Visitor). Children in need due to particular circumstances will utilise the service more than the majority of families. However many families may well use the service for support with issues such as: relationship difficulties; separation, loss or bereavement; play; advice on moving home; nurturing particular gifts or areas of development; nutrition, etc. as well as core NHS Health Visiting responsibilities.

Transition from primary to secondary school is a key point in a child’s development where the Named Person’s role can be particularly important. If, for example a young person is struggling to settle in to school, the Named Person may arrange for them to have an older pupil to act as their buddy to help them find their way around school. They might also encourage them to join in with social activities around school to help them form new friendship groups. Review by the Named Person may indicate that this support alone cannot address the settling in issues, and further information which comes to the Named Person may indicate that other factors related to the child’s health or activity within the community are impacting on wellbeing. If this happens, then the Named Person is well placed to review the support plan in discussion with the child and family, and with the other professionals who may have a role in providing the right support. A Child’s Plan may then be developed to reflect a range of targeted interventions, both within education services and from other agencies, or community services.

iii) The point at which a named person would be expected to pass a case to a lead professional, and in what circumstances would it be appropriate for a named person to take on the role of lead professional:

The Named Person role will be in place for every child and will be undertaken by an individual in universal services, i.e. health or education. Their role will be to act as the point of contact for children/young people and families, and for others. They should be in a position to provide or access information, advice and support for children and young people from within their own service; and, when necessary, to request support from other services or agencies. In practice we expect the Named Person to initiate and manage single agency Child’s Plans within their own service.

Where concerns about wellbeing require coordinated intervention from more than one service or agency, then a Lead Professional will be identified to take on that coordinating role. The Named Person will either take on the role of Lead Professional themselves, or will agree with the partners involved in supporting the child/young person, who else should most appropriately take on the role of Lead Professional to manage the multi-agency Child’s Plan. The Lead Professional may
be drawn from any of the services or agencies who are partners to the Child’s Plan. Detailed guidance will set out examples to aid practitioners.

The choice of Lead Professional will be dependent on the needs of the child and the interventions and outcomes identified within the Child’s Plan. For example, where there are a range of concerns about the wellbeing of a teenager, but no significant concerns in relation to one particular area, then the Named Person in the school who knows the pupil well and has regular contact, may be the most appropriate person to take on the role of Lead Professional. In other cases, where the wellbeing concerns focus on family life and safety, it may be clear that a social worker should take on the lead role. If the partners to the plan cannot agree who is best placed to take on the role of Lead Professional, the Local Authority and Health Board will have a dispute resolution procedure in place to provide a resolution. Further details of when it would be appropriate for a Named Person to take on the role of a Lead Professional will be included in the statutory guidance for the Bill.

iv) The ability of children and young people to have input into who is assigned as their named person:

A key principle of the GIRFEC approach and the role of the Named Person is the fostering and maintenance of good working relationships with children and families. A child or young person will initially be allocated a Named Person. As with current procedures governing professional client relationships, where the relationship between a child or family and the Named Person becomes an obstacle to supporting the child’s wellbeing, other arrangements can be put in place. This may involve identifying a key member of staff within the school who will work directly with the child or family, and support the Named Person, or it may be agreed that another appropriate member of the staff team should take on the Named Person role. These decisions will be made with the wellbeing of the child as the main consideration.

Most children and families value the support they receive from universal services, including the Health Visitor and school. However some children and/or families choose not to seek support, or do not engage with the support on offer. Decisions regarding the support needed by a child will be based on an assessment of their wellbeing and will include the views of the child and parents.

v) The extent to which the Named Person would be expected to be involved with children and young persons for whom no support or intervention is required:

The majority of children and young people will not require any additional support from their Named Person. The majority of children receive the support they need from their families, and from the routine involvement of universal services through engagement with health services and attendance at school. Where there are no concerns about wellbeing, support will continue to be offered through the usual universal services. That means that the Named Person, in the role of Health Visitor or Head teacher for example, will have no involvement beyond the routine provision of their health and education functions.
115. Concerns were expressed to us and the Finance Committee which cast doubt on the potential savings for health boards from the named person role. We note that this is, at least in part, due to a lack of real-world experience on which to base the financial assumptions. In view of this, we consider that further resource may be required for health boards to implement GIRFEC, and we recommend that the Scottish Government be prepared to make such support available where appropriate.

and

116. We also acknowledge the concerns about the capacity of health visitors and the numbers required to deliver the requirements in the Bill. This indicates to us that there are wider issues about health visitor numbers. The Scottish Government should therefore explain how it will ensure that the demands placed on health visitors across the entire policy landscape will be met.

There will be an impact on Midwife and Health Visitor resources as a result of the Bill. The Financial Memorandum sets out estimates in relation to training and capacity costs of this over and above what is already being done by these professionals.

In recognition of the impact of the Bill on the children’s nursing workforce and the need to focus on the early years the Scottish Government is undertaking work to refocus and clarify the role of Health Visitor. This will contribute to evidence-based guidance to support consistency of service delivery. There is also work underway to review caseload size for Health Visitors and develop a caseload weighting tool. This work is expected to be complete by 2014. It will also explore core training and development needs for new Health Visitors along with competencies required by the current workforce to deliver on the provisions of the Bill and the GIRFEC policy.

The Scottish Government is working with Health Boards to support them to develop the workforce through national guidance and training to be ready for commencement of the GIRFEC provisions in the Bill. We are already aware that some Health Boards are investing in additional Health Visiting teams to support GIRFEC implementation. Health Visitor numbers have increased from 1139 in 2009 to 1316 in 2013. As of 30th June this year, Scotland compared favourably to England: with 4.1 whole time equivalent Health Visitors per 1000 population of children aged 0 to 4 compared to 2.6 whole time equivalent Health Visitors per 1000 children aged 0 to 4 in England.

117. We are concerned about the operation of the named person role during school holidays. This is an area that requires further consideration by the Scottish Government and its local partners.

All children in Scotland up to 18 years of age, or later if they are still in school, will have a Named Person (except for a small number in the regular forces where the Ministry of Defence has a duty of care). Otherwise, the Named Person service will be provided by the Health Board for children up to school age and by the Local
Authority after that. In cases where a child attends a grant-aided or independent school, the directing authority of the school is to make arrangements to provide the service.

During school holidays, the Local Authority will make arrangements for the provision of the Named Person service. The detailed arrangements are being left to Local Authorities to determine in the light of their local practices and procedures. The aim is for them to build on their current practices during the school holidays. For many, at the moment, someone is based centrally in the education service to be the point of contact. Emergency or child safety issues which arise will be dealt with immediately through local child protection procedures as at present with more routine enquiries routed to existing help lines, or call centres.

For children who have a Child’s Plan, there will be planning for holiday periods when the support of the school is not available. This will be done in advance and appropriate mechanisms put in place to provide the necessary level of support. The Scottish Government does not intend to require specific procedures to be adopted across the country preferring to leave this to local decision making. The same will be true of independent or grant-aided schools. The Local Authority’s duty to provide the Named Person service applies until a child is 18 even if they leave school.

118. Given Highland’s experience of implementing GIRFEC, the Scottish Government should explain how the proposal to assign a named person for young people who have left school and are under the age of 18 will work.

Those young people who have left school will typically have the skills and knowledge to express their views and reach decisions. Some will still require help and support – especially those with complex needs – and the Bill will ensure that appropriate arrangements are in place at Local Authority level for children who have left school before the age of 18. It will be the role of the Named Person in these circumstances to advise the young person and, where appropriate, link the young person into resources and support networks which currently exist for young people who have left school but need further assistance. The Named Person arrangements would form part of the ‘Opportunities for All’ support arrangements in place locally across Scotland.

119. Finally, we note some views that the role of lead professional could usefully be included in the Bill. Whilst we understand the difficulties in legislating for the role, given that lead professionals may be employed from outside the public sector, we are concerned about the potential for confusion and lack of consistency in the way it will operate alongside the named person. We therefore recommend that the Scottish Government monitors the situation as these roles develop with a view to legislating for the lead professional in future, if necessary.

The role of Lead Professional is not included in the Bill because we are looking to public bodies to establish the arrangements that best suit the needs of individual children. The Named Person role flows from the function of the universal services of health or education. The Lead Professional will be the person who is best placed
to support the child's needs and address any risk in a multi-agency context. This will not clearly fall to any one agency and they will not necessarily be located within health or education. What is important is that public bodies agree the arrangements and governance and make sure they work well. This is an area where guidance is more appropriate. The duty to cooperate provides a statutory backing to sort out protocols across agencies in a CPP to ensure local arrangements are agreed.

Part 4 - Information Sharing

132. We recognise the concerns raised by witnesses and welcome the Minister's commitment to give further consideration to the information-sharing provisions in the Bill and, in particular, to “fully consider all views on sections 26 and 27”. We expect any necessary safeguards to be introduced at Stage 2. We suggest that, in considering what revisions to bring forward, the Scottish Government engages with those who have raised concerns about the drafting with us.

Proportionate, appropriate and timely information sharing is essential to ensuring our children are protected and kept safe from harm. The Bill aims to create the framework which is fair and proportionate.

Section 26, with its triple test, encourages practitioners to consider carefully what relevant information must be shared, when and with whom. If a practitioner, on the basis of the information known to them, and in light of their professional judgment, decides to share information and does so in a way that is considered fair and proportionate, then it is unlikely they will have action taken against them or their organisation even if it later transpires that such sharing was not appropriate because the information at the time was either incomplete or wrong. However, that may still not remove the anxiety of having action taken for breach of confidentiality.

Section 27, therefore, provides the reassurance that action will not be taken for breach of confidentiality if the requirements of Section 26 are met.

The Scottish Government is of the view that Sections 26 and 27 of the Bill do not breach the Data Protection Act 1998 (DPA) or the European Convention on Human Rights (ECHR). We are however aware of concerns raised, both in written and oral evidence, to the Committee and have been working closely with stakeholders to further understand and appreciate any anxieties they may have. Most concerns are based around the wording of Section 26 and the lack of appreciation that, while the Bill does not replicate the wording of the Data Protection Act 1998 DPA, all information shared will still fall within the DPA tests of proportionality, relevance and appropriateness. In addition, some witnesses expressed a concern that the duty of confidentiality will, in many cases, be overridden without any regard to the views of children. This is not the intention and this will be made clear in the statutory guidance.

To further explore and alleviate concerns a workshop specifically about confidentiality was held on 16th October 2013 with many of the concerned parties. We have also invited all of those concerned to work with us on the preparation of
statutory guidance. This has been welcomed, particularly during our discussions with LGBT Youth who relayed a number of scenarios that highlighted issues about current practice. They have agreed to work closely with us in producing specific guidance on LGBT issues and the appropriate and proportionate response by practitioners. They now see the Bill as providing an opportunity to set out clear statutory guidance, which will address many of the practice issues children with LGBT issues experience.

Our engagement process and listening to the views of stakeholders is continuing and will inform our approach to Stage 2 of the Bill process.

133. We agree that training and guidance for professionals will be absolutely crucial in determining the effectiveness of the proposals. All relevant service providers, including from the private and third sectors, must receive training and guidance in order to ensure there is a consistent approach to information-sharing. It is vital that the training and guidance engenders a common understanding of what constitutes proportionate, necessary information sharing.

We agree awareness raising and training across all sectors will be crucial in relation to all aspects of the Bill, the GIRFEC approach, the application of UNCRC principles, and the need to ensure fair, proportionate and justified information sharing that is relevant to the wellbeing concerns for the child or young person.

The delivery of such training is primarily the responsibility of organisations within the CPPs. There is evidence that improved multi-agency working and joint awareness raising and training in implementation of the GIRFEC approach creates added benefits and understanding. We have been and are continuing to encourage such multi-agency training ensuring a consistency of approach across boundaries. Elements of the financial and advisory support for CPPs by the Scottish Government team have been focused on developing such an approach.

Nationally within the NHS, the Scottish Government is supporting initiatives in Lothian, Borders and Tayside to embed GIRFEC core components in maternity services through practice development and a revised governance framework. NHS Education for Scotland and Health Scotland ensure that the GIRFEC approach is fully integrated into new and reviewed guidance that impacts on children to ensure that there is practice development across the health service.

With support from the Scottish Government, Police Scotland has designed a training package for all officers which is currently being rolled out across the country and will be delivered to all front line staff by the end of March 2014. The purpose of this training is to increase awareness and improve the police response to concerns about children and vulnerable adults. We believe this training will support operational officers and supervisors to have a good understanding of the potential vulnerabilities of children and how best to safeguard and support their wellbeing.

Once CPPs have agreed their systems and practice changes to reflect their local priorities and procedures, these packages can be adapted for delivery. A good
example of this is the e-learning module developed by the Lothian and Borders CPP Grouping, which is being accessed by other CPP areas.

The Scottish Government and the Information Commissioner’s Office (ICO) are undertaking presentations across the country to inform practitioners and managers of the impact of the ICO statement in the context of existing and emerging legislation. The Scottish Government team also reviews local guidance and practices when requested to ensure a consistency of approach is promoted. In particular, in collaboration with the ICO they have been working with Perth and Kinross CPP in producing information sharing guidance for all staff in relation to risks to wellbeing. The guidance is expected to be published later this month and will be hosted on the GIRFEC website as an exemplar. Other areas, including Fife and Lothian and Borders, have already expressed an interest in it and the aim is that all areas will be able to adopt it or adapt it for their own use. The Scottish Government continues to encourage all training of children’s workforce staff to embrace the values and components of the Common Core Competencies, published in 2012 – (http://www.scotland.gov.uk/Publications/2012/06/5565), which have been founded on the UNCRC and GIRFEC. Use of the Common Core is supported and promoted by the Scottish Social Services Council. We also continue to work with Stirling University as part of their annual conference programme to enhance practitioners’ understanding, most recently 11–12 November 2013, and to support the on-going development of their CPD module on GIRFEC. The Scottish Government team is also available to advise other institutions in developing programmes.

135. The Scottish Government is working with various groups to update the Privacy Impact Assessment (PIA) that accompanies the Bill. Given its significance, we request the Scottish Government makes it available to us at the earliest opportunity.

The updated Privacy Impact Assessment has been sent to the Education and Culture Committee and was published on the Scottish Government website on 20 November: http://www.scotland.gov.uk/Resource/0043/00438388.pdf

137. We note the evidence we received in relation to electronic information sharing. Concerns about the ability of organisations to share information electronically were also raised with us during our inquiries this Session. We therefore urge the Scottish Government to consider what further support it can provide to public services to improve their ability to share information in relation to the Bill.

The Scottish Government is developing a new health and care information sharing strategy in partnership with delivery agencies across Health, Local Authorities and the Third Sector. This will cover both services for adults and children and will be available for consultation in early 2014.

The Information Sharing Board (ISB) is leading on this and aims to enable improved information sharing and collaborative working, ensuring that there is minimum unnecessary duplication of effort. The ISB will fund local information sharing initiatives with a budget in excess of £1.5m in 2013-14 and £2m in 2014-15. It has just concluded a process associated with the release of this funding, with proposals
received from all 14 areas. To date, funding from the ISB has already seen successful projects such as AYRshare develop and be implemented, as well as portal pilot developments in Lothian and Greater Glasgow and Clyde. Established initiatives in Lanarkshire and West Lothian have been assisted to develop a ‘proof of concept’ enabling child alerts to be shared across boundaries.

What has become increasingly important to the further sharing of information is that data such as a child concern, a chronology or a Child’s Plan is recorded and stored in a consistent manner and to that end national minimum data sets are being agreed. To support this the Scottish Government GIRFEC Team and eHealth are working with the Lothian and Borders area to test these data sets, explore all options to share information electronically to support GIRFEC and to produce a detailed generic ‘check list’ to be considered by all areas considering ICT support for GIRFEC implementation. The project will further expand the ‘GIRFEC Business Requirements for Electronic Information Sharing’ produced in partnership with stakeholders in 2012 and will provide valuable national learning.

**Part 5 - Child’s Plan**

143. **We recommend that the Scottish Government ensures the child’s plan can be produced in such a way as to allow the easy incorporation of other statutory requirements.**

The intention is not to alter the specific statutory duties to prepare a Coordinated Support Plan (CSP) or a plan for a Looked After Child. These other plans should be considered as contributing to a broader framework of support for the wellbeing of the individual child or young person.

Much of the detail of what should be included in the Child’s Plan will be set out in subordinate legislation and in statutory guidance. These will also make clear the relationship between the Child’s Plan and the other statutory planning mechanisms. The Code of Practice which supports the legislation governing Additional Support for Learning allows for the CSP to be incorporated within a Child’s Plan, and this is already practice within Highland CPP.

144. **We also recommend the Scottish Government considers the suggestions made in evidence to us calling for the inclusion in the Bill of a mechanism to resolve disputes in relation to a child’s plans, and for children and young people’s views to be taken into account in developing child’s plans.**

The child’s and/or parents’ views should be considered and valued throughout the process of development of the child’s plan. However, at times it may prove difficult to achieve consensus.

Disputes between professionals should be resolved locally whenever possible using existing Health Board and Local Authority dispute resolution procedures. Guidance will set out the need to have these in place and the requirement that they are visible and accessible to children and parents.
If disputes cannot be resolved locally, we want redress for children/young people and families to be accessible, clear and quick. We are considering whether there is a need for further bespoke redress, which may or may not require legislation. However, it is important to consider existing complaints mechanisms, such as provided by the Scottish Public Services Ombudsman, and those of Local Authorities which are being considered under the Scottish Government’s review of social work complaints procedures, so that we do not add unnecessary complexity to the public complaints landscape. Work is therefore on-going on this matter.

Part 6 - Early Learning and Childcare

158. We note that early years intervention is generally regarded as being of crucial importance to a child’s development and we support its proposed expansion. We also support the general desirability of continuing to expand this to two year olds as quickly as possible.

and

159. We welcome the Bill as a first step in the expansion of early learning and childcare, although a minority of us would like the Bill to go further.

The Scottish Government is aware that a number of organisations would like to see the Early Learning and Childcare provisions extended more widely to 2 year olds, particularly those living in poverty or disadvantage.

The Scottish Government is clear that we want significant changes which are achievable, manageable and sustainable, and we will not compromise on quality in order to ensure we actually improve outcomes for our children, especially our most vulnerable 2 year olds. All the research shows that what makes a difference to those children who are more disadvantaged is that the provision needs to be high quality. Research shows that while all social groups benefit from high quality pre-school provision, children from the poorest families gain most from universal provision of Early Learning and Childcare. Open to all, mixed provision can have the biggest impact and protects against early segregation, and that needs to be the way we go forward more broadly in the longer term. Our priority at this stage is therefore to build additional hours and flexibility into our high quality universal provision.

Where we do extend to 2 year olds, we want to make a difference. We know that looked after children have the poorest outcomes of any group of children; and the priority is that the guarantee of provision for this group, and for those under a kinship care order where this can be an alternative to a child being looked after, will make a difference for those children. That is why the Bill allows for individualised or alternative arrangements for looked after 2 year olds based on assessment and family circumstances; and, can include work with parents and carers in a range of settings including the home, with the aim of ensuring we really do make a difference.

We have also been clear that our aim is to develop a wider system of high quality Early Learning and Childcare that meets the needs of all children, parents and families, focusing initially on those most in need. The Bill is designed to allow for
changes to eligibility and number of hours through secondary legislation. The Bill also introduces a new concept of Early Learning and Childcare in order to remove an artificial divide between pre-school education and childcare. This will enable more holistic and integrated provision which supports learning and development in caring and nurturing environments for all young children which can encompass any further expansion.

We are aware that the Department of Education in England has embarked on extending its provision to 20% of disadvantaged 2 year olds this year, increasing to 40% in 2014; but, we are also aware of consistent and sustained concerns expressed by key stakeholders about the resources and capacity to implement this commitment and ensure the necessary quality that will have a positive impact on outcomes for young children.

Our absolute priority is to ensure that the provision we are offering is high quality and sustainable. The Committee heard on 17 September from COSLA, the National Day Nurseries Association (NDNA) and the University of Strathclyde that quality is paramount, particularly for the most vulnerable two year olds who need provision which is flexible and appropriate to their needs, and the importance of getting it right before rolling out provision and increasing numbers further.

160. Whilst we accept local authorities will need some time to ascertain the level of need locally, we urge the Scottish Government and COSLA to work to ensure that flexible arrangements are made available as quickly as possible to enable families to take advantage of the new provision.

Moving to a more flexible model of Early Learning and Childcare, whilst maintaining quality, is a priority for the Scottish Government.

Flexibility means moving away from what has been a default model of provision of 2.5 hours per day, to providing models of provision that support a range of needs for parents including to support parents who are employed, training or studying. Those models will be defined by Local Authorities in consultation with local populations of parents; and, consultation will enable Local Authorities to access a range of views, from different areas to groups of parents with different needs.

The Bill requires consultation every 2 years, with published plans in response to identified needs. This is intended to build momentum into the changes that will be required over the next few years. The Financial Memorandum estimates the budget increasing incrementally year on year to enable Local Authorities to build in new patterns and choice, including models that may be more expensive. Therefore we would expect to see year on year incremental changes to early learning and childcare. We believe this provides the necessary pace and resources, without requiring the introduction of a range of choices from day one which would be necessarily limited and not necessarily what parents want.
161. We note the suggestion some nurseries are underfunded. We emphasise that the increase in supported hours of early learning and childcare must not have a detrimental effect on the quality of the service that is provided, or the sustainability of provision in the voluntary and private sectors.

The contribution of high quality and sustainable partner providers is a crucial element of funded Early Learning and Childcare provision. The duty to secure Early Learning and Childcare will remain with Local Authorities; and, it will remain their responsibility to agree with their partner providers, fair settlements locally for delivery of Early Learning and Childcare places.

The Financial Memorandum estimates the full costs of the additional 125 hours for 3 and 4 year olds and the costs for the most vulnerable 2 year olds. The draft budget for 2014/15 and 2015/16 has included those costs in full. There is therefore no reason for Local Authorities to underfund partner providers on the basis of this increase in hours or additional funding.

We will continue to work with local authorities and NDNA to promote good local working relationships and transparency of funding arrangements. Both the Association of Directors of Education in Scotland (ADES) and NDNA are members of the Early Years Policy Delivery Group which is developing draft statutory guidance to support implementation of the Early Learning and Childcare legislative proposals, which will cover this issue. More immediately, we will encourage further discussion of this issue through a Scottish Government and ADES national implementation conference this November.

162. On a related point, we heard calls for the Bill to revise the point at which children's entitlement to supported childcare would begin. Currently, children are entitled to use the service from the start of the school term following their third birthday. It has been suggested this system is unfair in that the amount of childcare to which children are entitled depends on when their birthday falls. We wrote to the Scottish Government asking it to respond to those concerns and asking whether it intended to take any further action on the matter. The Government confirmed its policy intention was for the current entitlement to continue. It also stated that it encouraged local authorities to commence early learning and childcare closer to the child’s third birthday where they have capacity to do so. We invite the Scottish Government to provide further explanation of why it is not appropriate for the Bill to include measures on this matter.

The priority for the Scottish Government at this stage is to build additional hours and flexibility into our high quality universal provision, increasing the entitlement to around 16 hours a week, and building flexibility into the system. This is a significant change and reconfiguring the system of Early Learning and Childcare must be achievable, manageable and sustainable. Secondary legislation will also allow for future flexibility should Ministers decide to make further changes to commencement and eligibility.
Local Authorities can and do deliver provision beyond the minimum number of hours and minimum eligible children. A number of Local Authorities therefore already start children from their 3rd birthday, or the month after their 3rd birthday. We welcome and encourage those arrangements to start closer to the child’s 3rd birthday where Local Authorities have the capacity to do so as this supports longer term aims to increase and expand Early Learning and Childcare for all children, parents and families.

The commencement dates for eligibility will be set through secondary legislation, and it is the intention to continue commencement for 3 year olds from the first term after their third birthday. There is also an intention to continue the entitlement for the youngest children who may receive only one term in their first year of Early Learning and Childcare (usually those born in January or February who start in the Spring term just before Summer) to an additional year of Early Learning and Childcare where their parents chose. This would allow parents to defer entry to school for an additional year, enabling the child to start school when they are closer to 5½ years old. Some slight variation will always remain whether children commence from their birthday or the first term after their birthday, but this system currently makes the best use of the entitlement in relation to the child’s age and needs.

Part 7 - Corporate Parenting

169. We note the evidence received indicating that several organisations do not agree with their inclusion on the list of corporate parents. This risks diluting the concept of corporate parenting. In the absence of specific criteria, we seek further clarification from the Scottish Government about the reasoning underpinning the decisions to identify those with corporate parenting responsibilities.

The organisations listed in Schedule 3 as Corporate Parents includes the wide range of public sector bodies that are in any way involved in delivering services, providing support or in making decisions about the lives of children and young people in care and their families. This list inevitably captures a broad list of organisations; some of which are involved in the day to day aspects of planning and delivering key services while some are less frontline. Much of what we are asking new Corporate Parents to do is within the range of activities and reporting obligations they have already. Many bodies already commit themselves to supporting children and young people in care and care leavers. As such, I am satisfied that the organisations listed in schedule 3 will be more than capable of meeting their responsibilities as Corporate Parents.

The Scottish Government has maintained a dialogue throughout the development of the Bill with organisations across the sector as part of our consideration of the list of corporate parents. We will continue that dialogue, keep the list under review and will consider making changes to it if necessary. The Committee will also be aware that there is a power in Section 50(2) of the Bill for Scottish Ministers to, by order subject to affirmative procedure, modify Schedule 3 by adding, removing or varying entries listed in it if it is thought appropriate to amend the list in light of experience after the Bill provisions come into effect.
Part 8 - Aftercare

178. We acknowledge the evidence that we heard from Who Cares? Scotland and others and invite the Government to respond to their suggestions that the Bill should include a right for care-leavers to return to care up to the age of 26; allow young people who have spent time in care, but are not in care at school-leaving age, to be eligible for aftercare; and include a mechanism enabling care leavers to appeal against decisions taken about the level of care they receive.

The Children (Scotland) Act 1995 sets out the responsibilities for Local Authorities in respect of young people leaving care. There is a statutory duty on each Local Authority to carry out an assessment of the needs of young people over school age leaving their care, whether they be persons to whom they owe a duty under Section 29(1) of the 1995 Act or persons who make an application to them to request advice, guidance and assistance under Section 29(2).

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

The Looked After Children Strategic Implementation Group – Throughcare and Aftercare hub, recently published ‘Staying Put - Scotland’, to support practitioners in extending the transition to independent living, maintaining relationships between young people leaving care and their carers and supporting staying in a care placement as long as possible and until a time when the young person is prepared and ready to sustain independent living. Work with stakeholders will continue over the coming year to engage them with the guidance and offer support to build on existing good practice.

In relation to a mechanism for appeals, regulations 16 to 20 of the Supporting Young People Leaving Care (Scotland) Regulations, 2003 set out existing rights of appeal for persons mentioned in Section 29(1) or (2) of the 1995 Act against decisions of the Local Authority either not to provide advice, guidance and assistance under Section 29(2) or in relation to the level or nature of advice, guidance and assistance to be provided under Section 29(1) or (2). A young person also has a right to make a complaint to the Local Authority about the service they have received or how an appeal has been handled. A complaint of this nature should currently be made
under the Social Work (Scotland) Act 1968 or any other appropriate complaints procedure.

Section 60 of the Bill amends Section 29(6) of the 1995 Act to ensure that Local Authorities need to establish procedures for considering representations (including complaints) by persons in mentioned in Section 29(1) or (2) about the discharge of their functions under the provisions of subsection (1) up to and including their functions in new subsections (5A) and (5B) of Section 29. As such, the Scottish Government will, following the Bill’s passage, be considering these existing appeal rights to assess whether any amendments need to be made to them by way of secondary legislation in consequence of the provision in Section 60 of the Bill.

**Part 9 – Counselling Services**

185. We note the calls for further information on the measures to be provided and request that the Scottish Government provides such information as early as possible.

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

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

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

Therefore, this provision could cover a very wide and evolving range of services which will require to be amended and updated to meet practice over time, which would not be possible to do if the services were specified on the face of the Bill.
186. We agree with the recommendation of the Delegated Powers and Law Reform Committee that, due to the significance of eligibility for these matters, the affirmative procedure should apply rather than the negative procedure.

As detailed in our response to the Delegated Powers and Law Reform Committee on 11 November 2013, the Scottish Government agrees that this would be a sensible approach and intends putting forward an amendment at Stage 2 to change the order making power to affirmative.

Part 10 - Kinship Care

211. We therefore welcome the Scottish Government’s work in engaging with stakeholders, including local authorities and groups representing kinship carers, on the contents of the regulations and ask the Government to reassure kinship carers about the level of support they can expect to receive under the new arrangements.

The Scottish Government has conducted comprehensive consultation and engagement with kinship carers and key stakeholders throughout the Bill process. This consultation will continue as we develop secondary legislation under the Kinship Care Order Bill provisions to ensure that both kinship carers and the children in their care, where they are eligible, will be fully supported under a Kinship Care Order.

The level of support or assistance which will be provided by Local Authorities will vary on a case by case basis, depending on the individual circumstances of the family and the child/children concerned. It is anticipated that support will include:

- A start-up grant (for example where the child moves to live with the family following a kinship care order being obtained);
- Transitional support for 3 years, where a child moves from formal kinship care arrangements (or from being looked after) to informal kinship care, where a qualifying person has obtained a kinship care order. This will ensure that families will not be any worse off financially or otherwise at the point of transition (e.g. a carer would seek financial support from the UK benefits system and the Local Authority would then provide a top-up allowance to the level received under the previous formal arrangements). After the 3 year transitional period the level of support and or assistance provided will be dependent on the individual needs of the family; and
- Access to Early Learning and Childcare for all 2 year olds that are subject to a kinship care order (although this will not be dependent on individual family circumstances).

212. The Scottish Government Financial Review of kinship care expects to report by the end of 2013. We will consider its findings in due course. The Government should ensure the findings can be easily integrated into the regulations being developed under the Bill.

The Kinship Care financial review is being conducted independently of the Children and Young People (Scotland) Bill. The review aims to reduce the complexity and
inconsistencies in the system of kinship allowances. We agree that any changes to the system of allowances should be complementary to the Kinship Care Order proposals and reflect past learning about how allowances interact with the benefits system. Any legislative change required as a result of the findings from the review group will be dealt with through secondary legislation, most likely by amendment to the Looked After Children (Scotland) Regulations 2009. We will ensure the Committee is kept informed of progress.

213. We invite the Scottish Government to provide details of the action it is taking to ensure that payments under the kinship care order will be disregarded as income in terms of the benefits system. We would be concerned if such support was not disregarded in this way and urge the Scottish Government to work closely with the relevant UK Government departments on the development of the regulations under this Part, to ensure clarity about what kinship carers can and cannot expect to receive.

The Scottish Government has pursued the UK Government for some time to financially support kinship carers through the UK welfare system and to recognise them for their parenting role. In pursuit of this we have had on-going dialogue with the Department for Work and Pensions and HM Revenue and Customs for some time with the result of securing concessions ‘benefit disregards’ for kinship carers.

It is however necessary that our secondary legislation is defined before UK Government departments can confirm how they will treat any entitlements. In designing the Kinship Care Order therefore, we have considered past learning on this policy area and will ensure we continue to work closely with the UK Government.

The interaction between kinship carers and the benefits system is very complex. To assist discussions with UK Government, the Scottish Government has, and will continue to, work with organisations such as Citizens Advice Scotland and the Child Poverty Action Group to gain a better understanding of the complexities kinship carers face. We are committed to supporting kinship carers to maximise take-up of their entitlements.

Part 11 - Adoption Register

219. We support the aim of enabling more children, particularly those who are looked after, to be matched with suitable adopted families without having to experience delays. We consider the compulsory nature of the Register will mean the remainder of local authorities and adoption agencies will join the Register, thereby increasing the chances of a suitable match.

220. However, we note the concerns raised in evidence by, for example, the British Association for Adoption and Fostering and invite the Scottish Government to respond to these points.

The Scottish Government is clear that the National Adoption Register must be designed and built to help find the maximum number of opportunities for every child for whom adoption is in their best interest. If a child cannot be matched locally, it is important to ensure that there is no unnecessary drift and delay in a child being
potentially matched to adopters outside the Local Authority. This means every adoption agency must refer both children and approved adopters in a timely way to ensure that the Register can operate as effectively as possible.

The Scottish Government has been liaising with the British Association for Adoption and Fostering (BAAF) about their concerns on the Adoption Register provisions, in particular those relating to the insertion of the new Section 13C(2)(a)(i) and (ii) of the Adoption and Children (Scotland) Act 2007. These provide that an adoption agency is not to disclose for inclusion in the Register information about a child without the consent of either the birth parent or any person who has parental responsibilities or parental rights for the child, or such other person as may be prescribed in regulations.

We note BAAF’s concerns regarding circumstances where the consent of parents or persons with parental rights and responsibilities is not forthcoming. We are actively considering this issue and exploring ways in which this matter could be addressed in the Bill.

We also note the concerns raised by BAAF in relation to the access of prospective adopters to the information held by the Register, including the Scottish Children in Waiting publication. Whilst Section 13A(3) provides that the Register should not be open to public inspection or search, the regulation making power in Section 13D(2)(b) allows Regulations to be made which authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register to any person specified in the Regulations for any purpose relating to adoption, amongst other things and this power may be used to ensure that the information from the Register can be shared with prospective adopters to increase the effectiveness of the Register.

I hope the Committee finds this response to their Stage 1 report helpful. I look forward to continued working with the Committee as the Bill progresses through the Parliamentary Process.

_Aileen Campbell_
EDUCATION AND CULTURE COMMITTEE

EXTRACT FROM THE MINUTES

31st Meeting, 2013 (Session 4)

Tuesday 3 December 2013

Present:

George Adam    Clare Adamson
Jayne Baxter    Colin Beattie
Neil Bibby (Deputy Convener)  Stewart Maxwell (Convener)
Joan McAlpine    Liam McArthur
Liz Smith

Children and Young People (Scotland) Bill: The Committee took evidence on school closures to inform its forthcoming consideration of Stage 2 amendments from—

Cleland Sneddon, Executive Director of Community Services, Argyll and Bute Council;
Leslie Manson, Executive Director of Education, Leisure and Housing, Orkney Islands Council, representing Association of Directors of Education in Scotland;
Malcolm Burr, Chief Executive, Comhairle nan Eilean Siar/Western Isles Council;
Eileen Prior, Executive Director, Scottish Parent Teacher Council;
Sandy Longmuir, Chairman, Scottish Rural Schools Network;
Michael Russell, Cabinet Secretary for Education and Lifelong Learning, Clare Morley, Team Leader, School Infrastructure Unit, and Lorraine Stirling, Principal Legal Officer, Scottish Government.
The Convener (Stewart Maxwell): Good morning. I welcome everybody to the 31st meeting in 2013 of the Education and Culture Committee, and I remind all those present that electronic devices should be switched off at all times while the committee is in session.

Our first item of business is to take evidence on the Scottish Government’s proposals to amend the Children and Young People (Scotland) Bill in relation to school closures. The Cabinet Secretary for Education and Lifelong Learning wrote to us in September to tell us that he intended to lodge amendments on a number of issues to do with school closures.

In order to inform our scrutiny of the amendments when they are lodged, we will hear first from stakeholders and then from the cabinet secretary.

I welcome to the committee Cleland Sneddon from Argyll and Bute Council; Leslie Manson from the Association of Directors of Education in Scotland; Malcolm Burr from Western Isles Council; Eileen Prior from the Scottish Parent Teacher Council; and Sandy Longmuir from the Scottish rural schools network.

We will move immediately to questions from members.

Liz Smith (Mid Scotland and Fife) (Con): Good morning. I think that all of us who were involved would hold up our hands and say that we did not get the legislation correct with the Schools (Consultation) (Scotland) Act 2010, particularly when it comes to presumption. Given the evidence that you have presented to us, I still think that there is a considerable difference of opinion on the matter. Do you believe that it will clarify matters if we include the phrase “presumption against closure” in the bill, or do you still think that that will be open to considerable question?

The Convener: Who wants to start? I will just pick someone if no one volunteers.

Sandy Longmuir (Scottish Rural Schools Network): Whether the presumption helps will depend a lot on what policy backs it. The recent decisions in the Court of Session have found that the matters of regard have been left hanging in respect of who decides whether the matters of regard have been properly addressed, whether the community factors have been properly addressed, and whether attempts have been made to remedy any foreseen problems before the schools come to a consultation.

We have seen representations that say that the presumption will go too far and that it will make communities somehow mistakenly believe that no school will ever close, but that is not what a legal presumption means at all. The simplest legal presumption is the presumption of innocence. The general public do not believe that nobody will ever be found guilty because there is a presumption of innocence, but there must be a considerable body of proof that outweighs the presumption of innocence.

That is exactly what we are looking for in this context. A body of proof should have to be put forward to show that the matters of regard have been assessed and dealt with, and any attempt at remedial action has failed or would never succeed. As long as that can be demonstrated, the presumption will fall, as the presumption does in any other legal aspect.

I think that the Scottish Government is currently consulting on a sustainable development presumption to catch up with the presumption that exists and operates in England and Wales. I cannot see any problem with introducing the words “presumption against closure” into legislation.

Eileen Prior (Scottish Parent Teacher Council): We have somewhat sidestepped the question in our response because our key issue is how to define what a rural school is. We need to know what makes a rural school a rural school. For example, in South Lanarkshire you may be only 2 miles away from another village and yet be in a rural school. That does not make any sense. However, if you are in Knoydart and are 50 or 100 miles away from your nearest school, that is pretty rural.

The starting point must be to define what we are calling rural. I do not know how that should be done and I am not going to set up myself as an expert to do that. However, we must have clarity on what we define as a rural school and then perhaps look at—to use the Knoydart example again—whether there is a presumption against closing schools that are absolutely isolated and so different from my South Lanarkshire example.

As I say, we have somewhat sidestepped the question on presumption because another question behind it must be answered first.
Malcolm Burr (Comhairle nan Eilean Siar): The word “presumption” is somewhat unhelpful because it creates an expectation in the minds of many that a very high bar is set, which is simply not the case. As Mr Longmuir said, any presumption can be rebutted. The presumption of innocence argument is there but we are not talking about liberty; we are talking about policy choices.

The Schools (Consultation) (Scotland) Act 2010 provides some very good tests. If those are applied correctly, the necessary safeguards are given, and I am not clear what the sense of presumption adds to what is an objective process. It should be an objectively arguable process in procedural terms and in the sense of merits, by which I mean whether a council or the Scottish ministers have gone about their jobs correctly. I am not clear what introducing a term such as presumption adds to the process for anyone.

Liz Smith: If we set a very high bar, it raises all parties’ attempts to ensure that we are doing things absolutely correctly. Two previous panels have made a strong point about the fact that, because presumption has not been clarified in the existing legislation, it is open to misinterpretation. You referred to an objective process, but facts have not been correctly assimilated and, indeed, in some cases they have been plain wrong.

That has been very much to the detriment of the 2010 act and we are trying to move forward on that. What I am driving at is whether there needs to be a clear definition in legislation—a legal definition, if you like—or whether we must do a bit more than that. That is the nub of the question.

Malcolm Burr: The fact that the act provides for special regard for rural schools and factors says it all. That is how the Parliament should leave it because, by doing so, it would be saying that the intention is that rural schools have a separate set of criteria that councils must address properly. That is sufficient because the issue is about evidence, going about the process correctly and giving consideration to what the 2010 act requires. The presumption is there, if you like, in the rural factors.

Liz Smith: There is a difference between the intention to have special regard and including something in the act. The point that some people are trying to make is that, in order to raise the bar and ensure that we do things absolutely accurately, we need to have extra confidence in the terminology. As I say, we are all guilty of not getting the act right the first time round, and we have all found that the matter is open to misinterpretation, which is why we have seen lengthy legal disputes and difficulties for local councils and the Scottish Government.

Malcolm Burr: As the committee will know, my own council is involved in that legal action. The court found that there was no statutory presumption. I do not think that that affected the council’s consideration of our school closure programme—we looked at the special factors. I cannot go beyond that: there is an objective process of assessment, and it seems a little illogical to put statements of intent into that when the argument should be made on process and merit.

Liz Smith: What do you mean by illogical?

Malcolm Burr: Presumption is more of a political statement than is strictly consistent with a process such as this.

Liz Smith: I might be being very stupid here but I did not quite follow that. Could you just explain what you mean?

Malcolm Burr: I am saying that the act rightly defines the process that councils have to follow. The court clarified that there is a consideration of merit in any subsequent review of the process. Those are objective factors. A council either properly considers the rural factors or it does not.

The way in which a statement such as “presumption against closure” is fed into that objective process could be unhelpful. For example, at what stage is that considered? Is it considered at all stages? How then does the minister consider it? If the minister thinks that the council has gone about the process procedurally correctly and the case has merit, does the presumption against closure come in then? I do not think that it adds to the process.

I appreciate that there is a political intention behind the presumption against closure, but I am not sure that it helps anyone much.

Liz Smith: Convener, may I have one more question?

The Convener: I will first bring in Leslie Manson and Cleland Sneddon because we have not had a chance to hear from them yet.

Leslie Manson (Association of Directors of Education in Scotland): I am not sure that the word “presumption” helps.

The semantics are important here and the term is frequently misunderstood. For many parents and members of the community, it means that there is no possibility that there will ever be a consideration of their school closing or that, if the local council has the temerity to consider closure, it is likely that a higher authority will veto it. It gives people an inappropriate sense of protection.

If the fact of a presumption can be enshrined in law, it would be useful. As has already been said, it would suggest that the consideration is such that
the closure of a rural school would be a rare event and the special rural factors would be taken into consideration.

It is also important that the status quo is always considered as an option and I am not sure that that has always been the case. More than that, the amended status quo—including the ideas, suggestions and contributions that parents and members of the community might bring to the table—could move a school from being regarded as not feasible to being feasible. If we could capture the presumption in the terms of the act, that would be useful, but I am not sure that the word itself is helpful.

**The Convener:** Is your position that, as long as the word “presumption” is clearly defined, you do not have a particular problem with it? Is the definition the issue?

**Leslie Manson:** No. As we say in our submission, it is for the Government to presume as it chooses; that is the role of Government. More than that, living and working in a rural community I also presume that rural schools are not to be closed. If your starting point is that rural school closures are going to be rare, that is acceptable.

**Cleland Sneddon (Argyll and Bute Council):** As the last to speak, I will try not to repeat comments that have already been made, but a couple of interesting points have come up.

Our written submission started from the premise that a proposal will be brought forward to clarify the presumption, and we welcome the clarification of that presumption. That might take the argument on from some of the earlier contributions.

The key aspect is how presumption is articulated. There was a misinterpretation of the presumption as it was presented in the 2010 act. It implied to some people that it was an immovable barrier to the closure of a school.

I was encouraged by the Scottish Government’s statement that it would ensure that it would articulate the presumption in such a way as to stifle “legitimate changes to schools which become necessary over time.”

If a presumption is to be retained within the 2010 act, it is incumbent on us to ensure that it is articulated clearly enough so that there is an understanding among all parties of what it means. I hope that that is a helpful contribution; it echoes some of the previous comments.

10:15

**Liz Smith:** I will pick up on that very issue, Mr Sneddon. Broadly speaking, do the recommendations of the commission on the delivery of rural education strike the right balance between safeguarding our schools and allowing councils to reform and ensure that the right schools are in the right areas?

**Cleland Sneddon:** In the wider sense, the commission’s recommendations are welcomed. Eileen Prior made the interesting point that the presumption takes up an awful lot of our attention, but there are a series of underpinning questions and arguments about amendments to the legislation that are arguably more important. Without jumping forward in the agenda, we have set out in our submission some of the key considerations for our authority—I am sure that they are in common with those of other authorities—about how the legislation is implemented.

Leslie Manson is correct that none of us entered into local government service to be the person closing rural schools, but we have a responsibility for how we use finite resources. Given that the fortunes of communities wax and wane, we must ensure that we have the right provision for our communities and that we adjust resources accordingly. That sometimes means that difficult decisions have to be made.

**The Convener:** Mr Burr, the cabinet secretary’s letter to the committee states that

“The presumption against closure should not mean that no rural school can ever close, but that very careful consideration should be given before making such a proposal, given the significant impact it could have on the community involved.”

Does that give you any comfort?

**Malcolm Burr:** Yes, it does. That point is picked up in the Government’s response, which states that

“the education authority must give very careful consideration to the matters ‘of special regard’ before bringing forward a closure proposal.”

I think that any competent council would do that before any closure proposal was even thought about. That is as it is. If all that adding the words “presumption against closure” means is to have “special regard” before a proposal is brought forward, it does not add very much to the 2010 act.

**The Convener:** Does it do any harm?

**Malcolm Burr:** Arguably not. If that is how the presumption against closure is defined and if it is clearly stated in those terms, it adds very little and hence does not do any harm. I think that the issue is more about parents and communities who might feel that the presumption against closure is an almost irreversible ban. I appreciate that that is not what the Government is saying—

**The Convener:** That is not what it says.
Malcolm Burr: I appreciate that. I question what the presumption adds, but if it is clearly defined in those terms, that would be helpful.

Sandy Longmuir: I think, and we hope, that the presumption adds something.

Currently, the matters to regard can be a procedural matter. In terms of the law, it is currently up to the council to say “We have had regard to these three matters.” It is for the council to decide the weight that is given to those matters.

If the presumption is put in place and operates in the way that we think and hope that it will, the matters to regard will have greater prominence as it will have to be demonstrated that they have been met. The presumption will add weight to that. All that we are asking for is that there is a weight of evidence. We are asking not that, as is being said, no school should ever close but that the weight of evidence has to be substantial.

Liam McArthur (Orkney Islands) (LD): I will pick up on whether the presumption adds anything or is potentially counter-productive.

Is one of the issues with the 2010 act that it is interpreted differently by different people? There is a risk that the expectations—not necessarily of those who live and breathe the act but of those who have the misfortune to engage with it at the point at which they have to—are raised unduly. For example, it has been suggested that, with regard to the 2010 act in particular, financial considerations should not come into play in any decision on a school closure. However, as anyone who has been involved in such matters will know, that is simply nonsensical. Why would a council go into a process of even considering such a move if it were not weighing up financial considerations to some extent?

You might say that, although you would really rather not put the term “presumption” into the bill, doing so will not do any harm. However, is it fair to say that the potential of harm in such a move might be significant as it will lead to our simply continuing to raise expectations about what the legislation will actually do at the end of the day?

Malcolm Burr: That is a risk. However, as I said to the convener, if the bill makes it clear that careful consideration should be given to matters of special regard before the proposals are brought, that is what any competent authority will do. If such a provision is to be in the bill, it must be very carefully defined; if not, the risks that you have referred to will arise.

Eileen Prior: What does the term “presumption” mean to the layman? It means that we presume that this or that school will not close. It is the same with the presumption with regard to mainstreaming, in that we presume that children with additional needs will be taught in mainstream schools. People have a certain understanding of the word.

I, too, share Mr McArthur’s concern that this might lead to an unrealistic raising of expectations. Indeed, as Mr McArthur has also pointed out, unlike the local authority officers and others who deal with the issue day in, day out, the families and communities involved will engage with this process only when their school is being considered for closure. It is a very tough notion to explain to people. The whole process is emotionally charged for communities and we have to guard against giving people false expectations.

Sandy Longmuir: I can assure you that any policy memorandum will be read avidly by any parent who comes up against the act. In general, rural parents are not simple by nature; they are very quick at picking up and understanding even the most complex documents. We sell the public short in saying that if we set out in clear wording in a policy memorandum something that backs up the presumption they will not be able to understand it. Actually, I think that that is insulting.

The Convener: My understanding is that, if I presume that something will not happen, that does not mean that I believe that it will not happen. I believe that it is unlikely to happen but, at the same time, I realise that there are reasons why it might happen. I do not take the view that, just because I presume something, that something is an absolute.

Sandy Longmuir: If you presume something—

The Convener: Hang on a second—I wanted to ask Eileen Prior about this.

You seem to be suggesting that because the bill contains the term “presume” or “presumption” people will take that as an absolute position.

Eileen Prior: People are optimistic by nature and, when they see that something is a presumption, they become optimistic that it will be sustained.

I absolutely agree with Sandy Longmuir; I would never suggest that the layperson is ignorant or stupid. There are folk out there who will crawl all over the legislation; indeed, I have done it myself as a parent. You do it when you need to, but the problem is that you do it only when you absolutely have to and when you are perhaps not as familiar with the background and the legal position as you might otherwise have been.

It is great that Sandy Longmuir’s group is there to support parents who want to do that work, but I am simply saying that because all of us—or, at least, most of us—are by nature optimistic we take a presumption as being a very positive thing and will travel optimistically.
Jayne Baxter (Mid Scotland and Fife) (Lab): The Court of Session found that the 2010 act requires the Scottish ministers to consider the merits of a school closure proposal as well as the process that has been undertaken. Although all those who responded to the consultation on amendments to the 2010 act supported consideration of merits by the Scottish ministers, SPTC suggested that

“the primacy of the local authority as the locally elected body must be respected”.

and Western Isles Council said that

“It should not be for Scottish Ministers to substitute their decision for that of a Council, solely on the basis of policy preference.”

With that in mind, I would be interested to hear witnesses’ views on what level of merit consideration it would be appropriate for ministers to pursue.

Malcolm Burr: The Court of Session said that it is impossible to assess process without having some regard to the merits, which I think is absolutely correct. However, as Jayne Baxter has noted, the court was clear that matters of education provision are primarily for councils and that

“The circumstances in which central government may step in and deprive the local authority of its power to decide to close a school are, accordingly, very limited.”

However, in terms of the merits, what was clearly meant was that, given that there is a call-in procedure, it is logical that ministers should look at how reasonable a council has been. By that, I mean it should be considered whether the council has taken into account relevant or irrelevant considerations, whether it has been fair, and whether it has addressed properly the matters that parents and others in communities have put to the council, including those who oppose the proposals.

The Court of Session assessed those issues. In the case that involved the Western Isles Council, vast amounts of documents were assessed, which is what is expected of ministers. No one should be able to say that a council did not look at or answer people’s arguments—provided that they were legally relevant, of course—or to suggest that it took into account factors that were not relevant or, to get back to the financial point, that it gave undue weight to factors that were not education related. That is an important point, and I welcome the clarity that the proposed amendments seek to give on that matter. Councils look at such things primarily in terms of terms of educational benefit and for educational purposes; that is what is meant by “merits”. It is not an absolute rehearing of the case; that is clear. However, it is a check that the merits have been properly addressed.

Jayne Baxter: What we want from local authorities is that they use the process properly. We hear from parents—not frequently, but fairly regularly—that the process has not been operated properly, so we think that the process must be robust and that local authorities must stick to the rules and do what the legislation says. That is the first thing.

The second point is that people in our communities elect their local authorities to make such decisions. Sometimes they agree with them and sometimes they do not, but it is their job and I do not think that we should deprive folk of their jobs. It is a fairly simple argument; do it properly, well and thoroughly, and take into account the views of all those who have a stake in the matter. Parents who have exercised their choice to take their children out of a school and move them to another school are not currently having their voices heard in the process, and we think that that is wrong, because they have voted with their feet and their opinion is important. Asking why they have done that can offer a qualitative perspective that we are missing at the moment.

Those are decisions for local government, not national Government. They should be made at local level, and local politicians are accountable for those decisions. That is how we operate and that is how it should be.

The Convener: I agree. That is why we have local democracy and that is what it is for, but surely Eileen Prior will accept that there has been a groundswell of views among lots of communities—I dealt with a school closure proposal in my area—that local authorities were not dealing with matters correctly, reasonably or, in some cases, even legally. Clearly there was a problem, which we all recognised at the time. Therefore, much as it would be fantastic always to leave the situation in the hands of local councils, which are absolutely responsible for it, there was a view among the public, which came through Parliament, that a set of rules had to be put in place to manage the process.

Eileen Prior: Absolutely.

The Convener: So, it is not entirely the case that local councils should make the decision and the Scottish Parliament should not be involved.

10:30

Eileen Prior: Our utopian perspective is that it should be done properly at local authority level. If it is, there should be no role for Government other than as a last resort.

The Convener: If we ever manage to achieve Utopia, we can discuss it then.

Eileen Prior: You can come back to me.
Sandy Longmuir: As the Scottish Parliament information centre briefing says, in the development of the 2010 act we were one of the organisations that were confused into believing that the “material consideration” element of the act meant the merits of a case. The SPICe briefing says that some people thought that call-in would apply only to procedure, but others believed that it would also refer to any material consideration. We were pleased that the law lords also came to the conclusion that the two could not be separated and that, if there is a matter of substantial concern, the minister should have to take cognisance of it.

We have seen many cases and can give example after example, especially in the financial sphere, of information that was simply wrong having been presented to elected members. In some cases, the information in proposal papers is simply wrong; it is not elected members’ fault that they vote on wrong information. In such cases, there must be an appeals mechanism whereby people can say that the process was followed—the meetings were held on the right date and the proposal papers were issued on the right date to the right people—but the information was completely wrong, therefore the merits of the case do not stack up. We are content that the merits of a case must be considered.

Cleland Sneddon: I will reflect on our experience of the process. I am encouraged by the indications that, back in 2010, everyone thought that call-in would be exceptional and seldom used. I am also encouraged by the advice that we are now receiving that the focus will be on ensuring that there is support for the local authority throughout the process in order to minimise further the use of call-in. However, some of the submissions or commentary around the proposed amendments to the 2010 act make it clear that there are some people who will look at the retained call-in as a means to try to have every proposal called in.

The emphasis is very much on ensuring that, as we go through the process, all the matters to which due regard should be given are considered, that the proposal documents are as comprehensive, accurate and robust as possible, and that engagement with communities is as proactive as possible—notwithstanding the emotiveness of issues. Within the proposals there is discussion around the role of Education Scotland and the role of an independent referral mechanism. We will wait to see what that looks like. It will be extremely important for us to put the emphasis at the front end of the process rather than look at the retained call-in as something that communities will continue to use in every case because they view it as an opportunity to get a local authority decision overturned.

That is a fairly blunt way of presenting the proposal, but that type of opinion of the call-in is still present. Potentially, it goes back to the discussion that we have had about presumption. A clear articulation in the revised legislation could clarify the position for communities.

Jayne Baxter: I presume that our witnesses agree with the proposal to remit closure decisions back to local authorities.

Cleland Sneddon indicated agreement.

Malcolm Burr indicated agreement.

Sandy Longmuir indicated agreement.

Eileen Prior indicated agreement.

Leslie Manson indicated agreement.

The Convener: That is a welcome clarification of everybody’s agreement. Let us move on.

Neil Bibby (West Scotland) (Lab): I want to get your thoughts on the independent referral mechanism. Given what has been said, why do you believe that people would wish decisions about their schools and communities to be taken by people whom they have no role in appointing and by a body that is not answerable to local communities?

Cleland Sneddon: I will start, because that follows on from what I said previously.

Decisions on school closures should and will be made by local government. This is about ensuring that where there is concern about a decision that has been made, there will be an opportunity to review it.

There was a view that the existing process was open to being political; since 2010 there has been a consistent call for such proceedings to be independent.

We talk about Education Scotland’s role at an earlier stage in the process—we are quite clear about that in our submission. Some of the assessments around merit are inevitably subjective in nature, so we look for people with the appropriate credibility and professional background to make them.

Similarly, whatever the independent referral mechanism is, we look for it to be seen to be independent and transparent, and we look for a fairly quick turnaround on decisions. We do not want to create a new bureaucracy or to have a very expensive process. If all those aspects are delivered through amendments, I would view the mechanism as being a positive development.

Leslie Manson: There is a well tried and tested system. In the General Teaching Council and Education Scotland, those who make the rules, so to speak, are not those who adjudicate on whether
those rules have been adhered to; there is a separation between policy making and adjudication as to adherence to policy. I think that that is well understood. I believe that you are less liable to legal challenge if you separate the roles in that way.

The idea that people can exercise considerable influence without being directly appointed is accepted right across the land; for example, our health boards are not locally appointed. There is a system for public appointments to influential and responsible bodies and individual positions that have nothing to do with local democracy through MSPs or councillors.

The ADES view is that just as councils can be deemed to have got things wrong, Parliament might, for political reasons, get it wrong in specific areas. It is probably best to remit that to an independent body, whose job is not to determine the merits of the case but to determine whether the politicians and policy makers have done their jobs properly—in other words, whether they have considered fairly the merits of the case and followed the process rigorously. That is what is being adjudicated on. The separation between the call-in process and the final adjudication should be clear for all to see.

Malcolm Burr: I think there is an issue of principle about why this particular aspect of service provision—schools—is subject to further procedure. One could talk about whether that reflects the parity of esteem between central and local government that the Scotland Act 1998 spoke of, but I appreciate that that is not a view that is shared; it was not shared by the commission of which I was a member. There is a clear consensus that there should be a further review of councils’ decisions on school closures. The independent referral mechanism is one way of doing that.

From my perspective, it does not really matter, as long as there is clarity about what either ministers or the referral body are doing—which is reviewing the procedural competence of councils’ decisions in the sense of whether there was adequate evidence and whether that evidence was properly weighed. Whether that is done by an independent body is not so important, provided that there is clarity and that, because of that clarity, everybody who is involved in the process is confident that decisions have been taken properly.

Eileen Prior: I simply echo what Mr Burr has said. There is in various aspects of our civil society a well-established system of independent bodies reviewing processes and reviewing whether everything has been done as it should have been done. I do not see any problem with that.

I return to the point that the decision should be a local authority decision and, if the process needs to be reviewed, it should be reviewed independently. It should not be a political decision.

Sandy Longmuir: I think that we are all pretty much in agreement.

The Convener: You do not have to add anything, Sandy; it is not absolutely necessary.

Sandy Longmuir: I would just like to say the same thing. There are so many aspects in public life. Even when a simple freedom of information request is refused by a council, the person who submitted it has the right to go to appeal. With a planning application, people have the right to access to a reporter. The approach is accepted in public life, and it is all about transparency. It is not about who is appointed, but about how they act when they are appointed. It is all about their taking the information that is presented to them.

We accept that some parents who are trying to hang on until the last minute will ask for call-ins on quite spurious matters, but they can quite easily be disregarded. There is a sifting mechanism to find out the cases that should be brought to an appeals process.

Neil Bibby: You said that a right of appeal is quite normal. Do the panel, in particular the local authorities, believe that the decision of an independent review mechanism should be final, or should local authorities be able to appeal what the independent review body has decided?

Sandy Longmuir: I am not a lawyer, but I think that it would be difficult to create a mechanism whereby there could not be an appeal to the Court of Session. It would be full and final in that the local authority could not go to ministers or whoever, but I think that there would always be access under the Wednesbury rules. If somebody had acted unreasonably, a local authority could appeal even an appeal panel decision.

Malcolm Burr: In the interests of all, there is that right of appeal to the Court of Session, but such appeals should be only on points of law, in order that the process can be concluded in a reasonable time.

Sandy Longmuir: Yes—absolutely.

Neil Bibby: If an independent review is introduced and it reviews decisions, why will the Scottish ministers need to be involved in the process at all?

The Convener: I think that the answer is quite clear, but would anyone like to respond to that? Cleland Sneddon?

Neil Bibby: You mentioned earlier the difficulty that decisions could be seen as political.
Cleland Sneddon: I do not want to repeat myself ad nauseum, but I am clear that the issue is how this is articulated. Mr Longmuir mentioned that certain spurious grounds for appeal can be disregarded. It is important to set a reasonably high bar, and that comes from the earlier part of the process, where there will be a closer relationship between Education Scotland and the local authority to ensure that what goes into the public domain as part of the proposal is as robust as possible, that the consultation is carried out as robustly as possible and that, ultimately, the decision that the council makes is as well informed as possible.

If that is achieved, there will need to be a significant step up to occasion a referral to ministers. Very few cases should reach the far stage at which ministers accept that a call-in is due—rather than reverting the case back to the local authority to address matters that ministers believe to be outstanding—and the case goes to an independent referral mechanism. I might have the figures wrong, but I think that, so far, only nine out of 85 call-ins have been refused. The greater emphasis on the diligence around the earlier part of the process should reduce that figure further. I would expect only a handful to go on to an independent referral mechanism; not all potential requests for appeal will go straight to the independent referral mechanism.

10:45

The Convener: With all due respect, Mr Bibby’s question was: if there is an independent review panel, why do ministers have to be involved at all? You have explained the process and how it would be used rarely, but what is the point of ministerial involvement if there is an independent review panel?

Cleland Sneddon: Again, to go back to what I understand is being proposed, the ability to return a proposal to the local authority so that it can try to address the situation before a formal appeal is referred to an independent review mechanism means that very few proposals would get to that point in the process. I therefore think that there is a role for Scottish Government officials to work with local authorities to ensure that outstanding matters that can be cleared up relatively straightforwardly are not referred further on to use up time in an independent review mechanism.

Leslie Manson: The public always view a sequence of sifts or considerations as a more rigorous and thorough way of considering cases. Parents and communities will inevitably go to their national politician anyway. After all, you are the lawmakers, so cases are going to come your way one way or another. It therefore makes sense to introduce the additional sift.

I cannot remember the actual numbers but I think that, of the 85 closure proposals, 20 or 30 or so were called in—that is one sift—and a further nine were turned down. A series of sifts is a good thing, and cases will come to the national politicians anyway, so they should be part of the sift.

The Convener: To contradict the question that I just asked, if there was no Government involvement and decisions were all left to the independent review panel, someone would have to decide what got called in, and the people who called in a proposal would also have to review it. Is that not the problem? Is that not why ministers have to be involved? If ministers call in a proposal and then a separate independent review body makes the decision, I presume that that separates out the decision-making process.

Cleland Sneddon indicated agreement.

Malcolm Burr indicated agreement.

Sandy Longmuir indicated agreement.

Eileen Prior indicated agreement.

Leslie Manson indicated agreement.

The Convener: Let us move on. I am concerned about time and we have a few more areas to cover.

Liam McArthur: I will tee up Malcolm Burr to answer this question. The ADES evidence says specifically about call-ins that

“It is important that ministers’ thinking is as transparent and well documented as that of councils as this avoids perceptions of political prejudice.”

Notwithstanding what has been said about providing up-front support to ensure that the process operates as transparently and smoothly as possible, is there not a risk that there is no downside to a minister calling in a case because the minister does not have to adjudicate it? If we have an independent panel that has the expertise to adjudicate, would it not be in a position to determine whether there was a prima facie case and to call in that case once all the sifts, which we all agree are a sensible way of progressing, had been completed?

Malcolm Burr: That is an interesting point. Paragraph 38 of the Government’s response to the consultation says:

“However, the cases which have been called-in, which would be expected to be the most difficult cases, will continue to require to be called-in”,

and paragraph 44 says that the review body would look at cases once they had been called in by ministers. Liam McArthur’s point is important. Just as there must be clarity about what the review body is to do, there must also be clarity around the
decision-making process that ministers follow when calling in proposals in the first place. If that process is not sufficiently clear, there will be a risk of dispute and even legal action.

I suppose that there is an argument that the review body could consider the whole call-in process, but that would probably take us down an unhelpful route. There are two stages to the process, and I think that all that councils would ask is that the criteria for decisions to call in and what the review body would do are absolutely clear.

Clare Adamson (Central Scotland) (SNP): I will ask about the proposal to expand Education Scotland’s role in the process. Given that Education Scotland already has a statutory duty to advise ministers, why is a specific duty to advise on school closures required?

Cleland Sneddon: I have mentioned that a couple of times. By its nature, the process of evaluating a case’s merits, and particularly its educational benefits, is largely subjective. Someone said to me recently that it is not like measuring the length of a piece of wood. We are looking to people with the appropriate credentials and the right professional knowledge and background to make an assessment and judgment.

Unfortunately, in the emotion that comes out when a proposal is being consulted on, our communities quite often spend literally thousands of hours trying to gather evidence to present on why a proposal does not demonstrate education benefit, while, on the authority side, education professionals present the case that it does. Ultimately, neither side will batter the other down by weight of opinion or rational logic. Communities look for someone independent to make an assessment on their behalf and give them confidence that what is said or proposed will deliver the benefits that are expected to be realised, or to say that, unfortunately, the proposal does not stack up.

Education Scotland appears to be uniquely placed to provide that role, but the proposal still comes with a series of caveats. Staff in Education Scotland who would be involved in the process would still apply their subjective and professional opinion, which would still be subject to challenge. The opinions of Education Scotland cannot in themselves be the subject of further appeal, otherwise there would be appeal on appeal on appeal.

I am quite encouraged by what I heard last Monday from an Education Scotland colleague, who was talking about their early thoughts on how they would deliver that role. Education Scotland has capacity issues and there may be a cost implication, but it is uniquely placed to provide an independent and individual assessment that would reassure communities, feed back to local authorities and provide guidance to ministers in considering the merits of a case.

Leslie Manson: There should be the sharp focus on educational benefit that there currently is. I am not sure whether I am pre-empting a subsequent question—by the silence, apparently I am not.

The Convener: It is not for me to say what members might or might not ask about, but if you want to answer a question in a specific way, you should go ahead.

Leslie Manson: When there is the sharp focus on educational benefit, which most professional educators would agree carries a level of subjectivity, it will be vital that Education Scotland plays a role in the process. The professionals in what was formerly known as Her Majesty’s Inspectorate of Education are held in high regard by people across the educational community of Scotland and, I believe, by parents as well. Their role will be critical in evaluating educational benefit. We are talking about one school being better or poorer than another school.

However, the role of those professionals does not come without problems. Members of the committee may be aware that, in these post-Crerar review times of reduced scrutiny, the evaluations by inspectors and the reports that are issued for schools are less detailed than they were, and it has become quite difficult to compare one school against another just from the inspection reports, as we are talking about quite broad bands of quality that are described.

A potential problem with deploying Education Scotland expertise is that you still do not have an instrument that can objectively compare the quality of one school with that of another as accurately as the legislation seems to demand. One could also argue that, if Education Scotland’s role is also to support the production of a council’s educational benefits statement, this is another instance of a body being asked to help to produce a policy statement, or at least an evaluation statement, and then subsequently advising ministers on its merit.

Although Education Scotland’s involvement is inevitable and would be welcome, it has to be treated carefully. Indeed, I think that there will have to be some Chinese walls in the organisation to ensure that the individuals who are engaged in support roles are not those who subsequently advise ministers on the merits of a case.

Malcolm Burr: I echo those comments. Procedural safeguards will have to be put in place to protect Education Scotland’s independence in its multiple roles.
Clare Adamson's quite subtle question was about whether Education Scotland's assistance is actually required. I do not think that it is required, but it is probably helpful. Of course, ministers need to be confident in their decision making and will therefore need advice. I am not qualified to say whether that advice is best taken from their civil servants or Education Scotland, but if a community or an objector says that a council has gone wrong educationally ministers will certainly need help and advice to evaluate the arguments. As Mr Manson has said, Education Scotland's presence is inevitable and probably to be welcomed but there must be procedural safeguards around its involvement.

Eileen Prior: Parents' view of Education Scotland's role is very positive, with the health warning that we are a bit concerned about the slightly cut-and-paste nature of reports. However, as we have said in our submission, it is not independent. We might like to talk about it as being independent, but we have to be absolutely clear that it is not and there must be some clear dividing lines with regard to roles and functions. How that might be organised, I do not know, although I acknowledge Mr Manson's point about Chinese walls.

Given that the network of current and former folk in what was the inspectorate and what is now Education Scotland is wide and to be found almost everywhere you go in Scottish education, I have a wee bit of a reservation and hope that folk do not assume an independence that is not there.

Sandy Longmuir: Although parents with whom we communicate generally have great respect for Education Scotland and indeed will recognise their school in most of its inspection reports, we would say that it has not lived up to what was expected of it in the 2010 act. I am not sure what the exact reasons for that might be; in addition to a certain cut-and-paste element to the individual school reports produced under the act, Education Scotland seems reluctant to engage after the fact and after it has done its report. The fact is that proposals tend to develop throughout a consultation process and the ones that end up being voted on will not necessarily be exactly the same as those in relation to which Education Scotland inspected the schools. As I have said, it seems reluctant to come back into the process and it would be helpful if the bill could give it a role at that end of things.

Clare Adamson: In his submission, Mr Sneddon says that it is “critical” that the commission’s recommendation 20 is accepted. However, the Scottish Government has rejected that proposal, saying that

“If implemented, this recommendation would weaken the central principle of the 2010 Act, that a local authority must be able to demonstrate educational benefits to children affected by a school closure.”

Why is it critical for recommendation 20 to be accepted?

11:00

Cleland Sneddon: That is probably the question to which Mr Manson alluded. Setting aside the argument that the Convention of Scottish Local Authorities will put forward about a perceived joint agreement to enter into the commission process and abide by its findings, that issue is core. It goes back to the reasons for considering educational benefit. I saw in the papers the suggestion that considering how an authority uses its resources and the impact on all the children would be an argument that would be used to justify removing resources from rural communities generally. I do not hold with that at all.

I will give an example. I recently met a secondary school parent council that was concerned about the level of teaching resources available to the school and the impact on its subject choices. I was asked why the authority was unable to provide the expected level of staffing resources in the school, given that other authorities were able to do so. My straightforward answer was that, for an equivalent population, an urban authority reasonably close to me runs 20 primary schools while I run 78, some of which have only three, four, six or eight pupils.

As others have mentioned, it is extremely difficult to compare schools directly, particularly when we are looking at Education Scotland reports that might be five or six years old. The quality of the relationship and quality of the teaching staff are the biggest determinants of the quality of a child's education. However, in schools with only one or two teachers, if one staff member leaves—if they move to another area, for example—the quality of education can change significantly.

To magnify small-scale educational benefits falsely, as the existing legislation has often prompted authorities to do, is not helpful; it is divisive and means that communities and authorities are more often in confrontation. A much more holistic view of how we use our resources to benefit all children is needed. Authorities such as mine have very few schools that are not rural, so it is not a case of robbing Peter to pay Paul.

Clare Adamson: Given the proposals to expand Education Scotland’s role, what interaction, if any, do you foresee that body having with the school closure review body?

Eileen Prior: I do not see it having any role other than simply providing documentation. Any
review body must operate independently, so it would have no advisory role. Its role would be simply to provide required documents and evidence.

Malcolm Burr: Procedurally, the review body will first look at whether the process has been correctly followed and whether there is sufficient evidence to show that the merits of the case have been made, in the sense that questions have been answered, that the considerations are relevant and so on. I cannot imagine the review body needing further specialist advice on educational matters.

Neil Bibby: If Education Scotland is preparing a statement but is also advising the review body, surely that would be a conflict of interest.

Malcolm Burr: Potentially, yes. We covered that issue in an earlier answer. Some thought must be given to the procedures, in order to protect Education Scotland and everyone else involved.

Liam McArthur: I was interested in Sandy Longmuir’s comment about Education Scotland’s unwillingness to come back in later on in the process. Leslie Manson mentioned that a council always needs to have the status quo as an option in its considerations and also referred to a status quo-plus option. In order to deliver a status quo-plus option, will Education Scotland’s support and advice on that not be critical?

Leslie Manson: In my view, the likelihood of the status quo being retained is more to do with the place of a school in the wider community and its role as a community asset that brings people together by virtue of the activities that take place there and the accommodation that is to be found there. It is those community arguments that are most likely to prevail in retaining the status quo, rather than the notion that every other potential receiving school is a poor school.

It is not my experience that a single authority has a huge variation across its schools. As Graham Donaldson loves to say, the variation in educational provision is greater within schools than across schools. I would issue one caveat to that, to reiterate the point that Cleland Sneddon made. In very small schools—rural schools are predominantly small schools—the teaching workforce is the single key determinant of quality. With only two or three teachers, each teacher sees young children for two or three years, and if you have a poor teacher for two or three years—I believe me, there are some poor teachers—you will get poor-quality education and any of the neighbouring receiving schools would probably be an improvement.

I cannot stress enough how significant the consideration of recommendation 20 is for educational professionals. If you take five parents from the same school catchment area and ask them what they value about their school, you will get five different answers. One will say that it is attainment in English and maths, the next will say that it is the expertise of the school sports teams and the Christmas concert, and others will talk about class sizes, or about how their child with additional support needs is wonderfully integrated. There will be so many different descriptions of quality that it will be virtually impossible to form an objective comparison of the quality of that school with the quality of neighbouring schools.

Liam McArthur: I should have declared an interest as the parent of a child at a school under threat of closure—it was two children, but now it is just one child. For the avoidance of doubt, I put that on the record, and I echo Leslie Manson’s comments about the importance of the quality of teaching and the wider community function of schools.

In relation to recommendation 20, is there any way, in your view, that financial considerations can be separated from the process of arriving at a decision on educational benefit?

Malcolm Burr: The commission of which I was a member debated that long and hard. It was one of our more difficult decisions. On the financial point, we took into account the fact that councils have to strike a balance and that they are elected politically to make difficult decisions about the allocation of resources, and schools legitimately form part of that consideration. However, the commission was clear that the primary reason for considering school closures must be about educational quality—not benefit, but quality.

That that should be the primary factor is more than just a subtlety. As has been eloquently said, demonstrating educational benefit can be hard. In an area such as mine in Orkney, pupils are usually transferring from a good or very good school to another good or very good school, and in inspection terms one is looking at such things as peer group interaction and supported learning among pupils, simply because numbers are so small. Is that a better educational environment? I am certainly not qualified to say, but it is a better educational social environment, and an authority should have to show that it has primarily considered those factors.

To return to your question, finance has to be a factor in today’s climate, but it should not be the primary factor.

Sandy Longmuir: No matter what anybody says, finance has always been considered. Of all the proposals that I have been involved in, and there have been well over 100, I cannot think of one in which finance was not critical to the proposal paper. To say that it is not involved,
never has been or would not be in the future is simply wrong.

On educational benefit, the figures that are out today show that Scotland and the United Kingdom are generally falling further and further behind, or at least not keeping up with, other countries in Europe and Asia in how we develop education. The Standards in Scotland’s Schools etc Act 2000 introduced the requirement that any action that the Scottish ministers and local authorities take should improve education. I take on board the point that, for some schools and some proposals, the benefit may be marginal, whether it is the development of education or the provision of a very similar standard of education. In a lot of instances that may be the case. However, we have seen proposals in which financial savings have been made predominantly by paying off teachers.

Seventy per cent of a primary school’s staff are teaching staff. Even considering additional transport costs, the loss of revenue grant and so on, the financial savings generally come from the removal of staff, predominantly teachers. Are we saying that the removal of teachers produces an educational benefit? If so, surely, losing even more teachers would produce a greater educational benefit. Educational benefit has always been part of the consideration, and the Standards in Scotland’s Schools etc Act 2000 would have to be repealed to change that.

Joan McAlpine (South Scotland) (SNP): My question follows on from Sandy Longmuir’s point and concerns financial information on school closures. A lot of stakeholders supported the proposal to amend the 2010 act to make it clear that relevant financial information should be included in a school closure consultation, but some submissions from local authorities have suggested that they should not have to submit all the financial details because some of those could be, for example, commercially confidential. What is your view about the perceived difficulties in ensuring consistent treatment of financial information across different local authorities? How might those difficulties be resolved?

Cleland Sneddon: For the committee’s purposes, I will give a quick illustration. There is a short answer to your question. A piece of work is being undertaken by the Scottish Government, COSLA and ADES to produce a standard financial template and guidance. I cannot think of a circumstance in which a local authority would not want to present full and accurate information. If there is commercial confidentiality, the information can still be included but it needs to be grouped in such a way that no confidence is breached. That work is well advanced and, once it is concluded, it will remove any arguments because there will be consistency and every local authority will present its financial information in the same way. There is also an argument that, to avoid further disputes in other areas, a standard template for proposal documents in the wider sense could assist.

Malcolm Burr: I think that the way forward is a template that local authorities and everyone can agree presents the financial information as well and as consistently as possible. I cannot envisage circumstances in which commercial contracts would override the provision to parents and communities of information on the true cost of a school.

The area is complicated—I will not take up the committee’s time with the detail—and it is different for each local authority. My local authority is a beneficiary of the floor mechanism. If we were to lose grant-aided expenditure for a rural school, that would affect my council differently from how it would affect a council that is not a beneficiary of the floor mechanism, and that has to be factored in. There will always be comments on the template, but the way forward is an agreed and consistent mechanism and there is a means for producing that.

Sandy Longmuir: We have not seen the template, but the comments that we have read about it suggest that it seems to be a good attempt at getting something that we would agree to. Among the comments from people who have seen the template, one of the comments in response to the consultation was that things such as redundancy costs should not be included because they come from a central pool. That typifies the mindset that we come up against all the time. That comment came from the same authority that said that the receiving school would require two extra teachers but they would not cost anything because they came from a central pool. Because the authority had free teachers, it did not include them in the cost of the closure. That is the kind of thing that we come up against all the time. We need a standard template that removes that kind of nonsense from the process.

11:15

Joan McAlpine: I take it from what you are saying that a lot of the financial information that was provided in the past was inadequate.

Sandy Longmuir: Absolutely. The single biggest failing that we have come across is in the financial arguments that have been made.

It is interesting that local authorities have been saying in the past few weeks that they have had to embellish the education argument—I am not sure if that phrase was used—because the onus is on them to show an educational benefit that they cannot really show. Therefore, they have had to go further, which has brought in contention.
There is also an element of that in the financial arguments. Councils have to show a saving. Sometimes there has been a lack of care and basic mistakes have been made. In one case in Roy Bridge in Highland, a column of figures had not been added up correctly. It took us six months to get the council to agree that the figures did not add up. Any nine-year-old kid with a pocket calculator could have added up the numbers and seen that the figure was wrong, but the council simply would not admit it. We see more errors in that area than in anything else.

**Liam McArthur:** Cleland Sneddon talked about COSLA, ADES and the Scottish Government agreeing the template. I assume that the network will be invited to comment before the template is concluded and agreed. Is that a fair assumption?

**Cleland Sneddon:** I am not part of that piece of work. I would assume that appropriate stakeholders, which might include the network, would be consulted—it would be subject to wider consultation. I know that a piece of work was done, which had limited circulation, and some comments came in from various authorities. It is in all our interests to have the most robust template. As I said earlier, it might be a good blueprint to have a wider template that includes the full presentation of information, not just financial information.

**The Convener:** Can you confirm that, Leslie, given that you represent ADES?

**Leslie Manson:** Yes—although like Cleland Sneddon, I do not know what COSLA’s intentions are. I have seen the famous template; it is starting to assume some spy connotations. It is just a series of headings that would require each council to separate out the known cost of any proposal and set them out in a matrix. That way, people would be familiar with the context and would see that there was comparability from one school to another and from one authority to another. It is just to regularise things.

I have a background in maths, so I can count, but when it comes to some of the byzantine calculations on grant-aided expenditure in particular and how they relate to the provision of rural schools, I think that there are only two people on the planet who understand them and one of them is sitting on my right.

From discussions that I have had across ADES, I do not believe that education authorities have acted in anything other than good faith. The whole process has led to a wider and deeper understanding. It is not complete by any means; we still have some way to go to understand GAE.

No one would want to try to fox or mislead the public about something as objective as numbers. However, all councils present their accounts in different ways, so they are not always clear to the educationists who are leading on these proposals. We do not always understand or get the information from our finance departments. They do not always know that there is a problem that we need the solution to.

Only good will come out of standardisation. I believe that there will be more transparency and better understanding in future.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** One area in which there does not seem to be unanimity is the question of the five-year moratorium, whereby a council would not be able to revisit for five years any decision on a closure. I would be interested to hear the panel’s comments on that.

**Leslie Manson:** I have the pleasure of living and working in the community where I was born. I have direct experience of closing and amalgamating schools. I have seen what it feels like, because I have done it over a number of years. Even before the moratorium I was engaged in some similar proposals, one of which relates to Liam McArthur’s personal circumstances.

I assure you that the angst, fear and upset caused to communities by a proposal are well known to me and—I dare say—most of my professional colleagues. It is not something that we would wish to visit lightly on any community, any parent group or, for that matter, any school; it is very much a matter of last resort. It destabilises a community; ironically, it also brings a community together. If you want to bring together a disparate community, all you have to do is threaten their school and they will gel very quickly. All the same, you cannot impose on your neighbours and members of the community a constant merry-go-round of closure proposals, because that would be inhumane.

I understand that the intention behind the moratorium was to ensure that no single council made the same proposal about the same school during its lifetime and that only a fresh council could reconsider any proposal on a specific school. Nevertheless, five years is a long time for a small school. We could be talking about a school with three children from two families. What happens if the family with two children leave? The situation might be completely unsustainable and in no one’s best interests. The family that is left in the area might insist that the school be kept open for the one child, even though they might get a much better educational experience 3 miles or 5 miles down the road. To saddle a child, a family or indeed an education authority with that as an untouchable scenario—

**The Convener:** I am sorry but I must interrupt, because I am slightly puzzled by the latter parts of
your response. The Scottish Government proposal makes it quite clear that, in exceptional circumstances, the position can be reviewed earlier than the five years. If the exceptional circumstances that you have suggested can be dealt with, I do not see the problem that you are painting.

Leslie Manson: In that case, I will refer the question to one of my colleagues.

Sandy Longmuir: I absolutely agree. The provision allows for such exceptional circumstances. However, schools have been threatened repeatedly—indeed, some have been threatened three or four times in 10 years—and Leslie Manson is right to say that the situation is inhumane and destabilising. Eventually, people who are passionate about their community and school get battle-weary and simply give up.

Again, we do not want to be overly prescriptive and say that a school that everyone has left must be kept open. Cabrach, for example, was repeatedly threatened with closure; because of a radon gas issue, the roll had dropped to a remarkably low level. As we would have considered such circumstances to be exceptional, we would not have stood in the way of the council’s closing the school. Nevertheless, from our experience of schools that have been repeatedly threatened with closure, schools need to be left with some kind of stability and assurance. For example, the five-year moratorium on Inveravon in Moray has just ended, and the whole community continually feels that it will always be first in line and next on the list. Despite the fact that the school is fantastic and that HMIE report after HMIE report has been exceptional, a number of parents in the catchment area simply refuse to send their children to it, regardless of how exceptional it is, because of the perception that it will be closed at the next possible opportunity.

Eileen Prior: For exactly that reason, such threats become a self-fulfilling prophecy. Parents say, “Well, I’m not going to send my kids there because it’s going to close in three, four or five years and their education will be disrupted. I’ll just make the decision now”; as a result, the school loses not only one child but the whole family and ends up with no kids at all. A five-year moratorium is a sound plan.

Malcolm Burr: I feel that five years is simply too long. My council’s submission recommends three years, because there can be substantial changes to a school in that length of time. A competent council would look at that point in time and at the number of zero to five-year-olds in the population. In my area one school was left with four pupils, all of whom were placing requests, and there was no one from the catchment area and no one coming up. The question could be asked whether that is truly a local school. A five-year moratorium is a little bit too long, given the current financial circumstances and the radical changes that can happen with rolls in very small schools. However, I appreciate that there should be some provision for exceptional circumstances.

The Convener: Colin Beattie has a supplementary question; it will be the final one, Colin, if you do not mind.

Colin Beattie: We have talked about significant changes. Would changes in financial circumstances be valid? Some say yes and some say no. If they would be valid, would a reduction in public sector funding be considered to be a significant reason to revisit?

Cleland Sneddon: Yes. If local authorities in Scotland experience the reductions in grant that our colleagues down south have experienced, and there is very little run-in time, the entire local government budget will inevitably come under scrutiny. To tie a bow around approximately half of a local authority’s expenditure and say that it cannot be touched impacts disproportionately on care for our elderly people, our children and family services, our roads infrastructure, and so on. It is simply an unacceptable level of disproportionate pressure on part of the council’s budget.

We need to be clear about what we mean by exceptional circumstances. If the wording is left as broad and woolly as “in exceptional circumstances”, that will give rise to the potential manipulation of, or challenge to, those words. We should be quite clear about what the exceptional circumstances are, so that we do not get into a broad argument about whether they apply.

I have one quick point to add to the comments about the exceptional circumstances that would have to be in place. Our communities cannot be exposed to being battered down by repetitive consultations to such an extent that they are always ready and ripe for a school closure. Equally, we must recognise that most of the schools that are being considered for a school merger or closure, whatever term we want to use, are being considered because of their current roll and roll projections. The presence of a school is not necessarily enough to prevent a community’s decline or changes in its make-up, but many communities that do not have a school are expanding and thriving. We need to come to a much broader understanding of what makes a community and where a school sits within it as one of a number of community assets. We also need clarity around what exceptional circumstances are.

The Convener: I should really move on, unless Sandy Longmuir can be extremely brief.
Sandy Longmuir: What are we talking about here? The question about the financial aspect sounded like it is make or break for Scotland’s financial future. We have already agreed that only a small number of schools will go to call-in; we are talking about one, two or three schools a year, or perhaps even fewer, that could be reprieved from closure. We are not talking about a make-or-break situation for council finances.

The Convener: Thank you. A number of questions are left; I will try to squeeze them in in two minutes.

Liam McArthur: In Orkney, as Leslie Manson will know, a secondary department has been mothballed, as has another school on another island. Is the panel satisfied that the rules around mothballing and where we would mothball as opposed to closing a school are satisfactorily understood, not least in terms of what it would take to trigger a de-mothballing? Is mothballing considered as a soft option compared to closure?

Leslie Manson: As Liam McArthur said, we have two schools that are mothballed. Parents would much rather have a school open, but they prefer mothballing to the school definitively being closed. It is relatively easy for the authority to reopen a mothballed school if pupil numbers demand it, and it also offers the community hope in that, if pupils move in, the school is there for the future.

11:30

The Convener: Is that a genuine view? It seems odd. I take Liam McArthur’s point. Is that an option that councils could use to get round the purpose of the 2010 act?

Leslie Manson: I dare say that the option could be taken cynically, but our council has articulated the conditions under which the school would reopen, and it has done so in numerical terms. It is a logistical combination of a number of pupils coming from a number of families who think that it would be viable and preferable to reopen the school, so there is an objective benchmark that the community is aware of and professes itself to be happy with.

Sandy Longmuir: It has happened. The school at Altnaharra in Highland reopened after a period of mothballing. That was due to economic development; I think that a logging plant was opened in the area. The nearest school was about 27 miles away. One of the island schools in Shetland was also mothballed and it reopened when people moved to the island.

The option should be there. It might depend on who uses it. There is a perception that, in some cases, it might be used to get round the 2010 act, but we are reassured by people such as Leslie Manson, who are using it in an open and honest way.

Cleland Sneddon: I will be very brief—

The Convener: Please be even quicker than that, if you can manage it.

Cleland Sneddon: Okay. I had a school that was mothballed for two years because it had no pupils. Two sets of parents approached me as they wanted to enrol four children, and the request met the criteria. I had some serious discussions about the benefits for their children of our reopening the school, but they were adamant that we were going to do that. We eventually reopened it, so I now have another school with four pupils in it. I do not think that the option is a way round the 2010 act. It is a reality. That was part way through the moratorium, which shows the impact.

The Convener: Thank you. The final question comes from Neil Bibby.

Neil Bibby: Are there likely to be any cost implications for your organisations associated with the Scottish Government’s proposed amendments to the 2010 act?

The Convener: I ask each of the panellists to respond.

Cleland Sneddon: There are no obvious implications.

Leslie Manson: Not at the moment.

Malcolm Burr: There are none that are immediately obvious.

Eileen Prior: No.

Sandy Longmuir: No.

The Convener: That was painless.

Thank you all very much for coming along today. The area that we have discussed is an important aspect of the Children and Young People (Scotland) Bill, which will eventually become an act, and we were keen to hear your views. Thank you for both the written submissions that we received and your time today.

11:32

Meeting suspended.
On resuming—

The Convener: I welcome to the meeting the Cabinet Secretary for Education and Lifelong Learning, Michael Russell, and the Scottish Government officials Clare Morley and Lorraine Stirling. I invite the cabinet secretary to make some opening remarks before we move to questions.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Thank you very much, convener.

I will start with an obvious statement: closing any school is a difficult decision and communities deserve—and, indeed, demand—clarity on how the process will operate and to have a voice in decision making. The whole purpose of the original legislation—and of our proposed amendments to it—was to create a level playing field so that, even if they did not agree, both sides felt that they had been fairly treated.

This is the second time in recent years that we have looked at the legislation on the issue in detail. The Schools (Consultation) (Scotland) Act 2010, which was passed unanimously by the Parliament, updated and strengthened consultation procedures for school closures and other significant proposals that affect schools. It was preceded by Murdo Fraser’s proposed member’s bill.

However, there were early concerns about how the act operated in rural areas and the commission on the delivery of rural education was set up jointly by the Scottish Government and the Convention of Scottish Local Authorities in 2011 to address those issues. The commission reported in April 2013 and the Government has accepted 37 of the commission’s 38 recommendations. We intend to bring forward amendments at stage 2 to implement recommendations of the commission. In my view, those amendments will improve the consultation and determination process for school closures.

Although the commission concentrated on rural education, the majority of amendments will apply to the process for all school closure proposals. I am committed to continuous improvement in education in Scotland, and I am sure that that is the committee’s position, too. I believe that a school estate that fits the needs of communities in the 21st century has a key part to play in that, but a school closure has a significant disruptive effect on pupils and communities, so I could not support a proposal going ahead without an expectation that that difficult process would lead to educational benefit. It is important to recognise that other factors, such as the impact that a school closure would have on a rural community, are also in play.

As the committee knows, over the summer the Government consulted on making amendments to the act in six policy areas: the presumption against closure of a rural school; the provision of financial information on closure proposals; the clarification and expansion of Education Scotland’s role; the basis for determining school closure proposals; the establishment of an independent referral mechanism; and a five-year moratorium between closure proposals for the same school. The consultation received 226 responses. Respondents supported most aspects of the Government’s proposals. Our response to the consultation, which was published on 18 November—and supplied to the convener and, I think, to committee members—confirmed that we planned to take all the proposals forward. I will be happy to talk about how we intend to do so.

I should stress that the amendments will be lodged in plenty of time for the committee’s stage 2 consideration and that I am open to discussion about suggested improvements to amendments, as I always believe that that is a useful part of the parliamentary process.

The Convener: Thank you very much, cabinet secretary. We will move straight to questions, if you do not mind. We begin with Liz Smith.

Liz Smith: There has been a difference of opinion in the written submissions that we have received and in the evidence that we took earlier this morning about the use of the term “presumption”. I think that we all agreed in 2010 that it was not necessary to put it into the legislation, but we have come across a situation that suggests that we might have got that wrong. Can you put on record exactly why you believe that clarity on that would improve the whole set-up?

Michael Russell: Yes. I think that there are two parts to that. The first is the opinion of the courts. We are here today for a variety of reasons, one of which is the court action that Comhairle nan Eilean Siar brought regarding closures in its area. The testing of legislation in court is a normal enough process—it is not frequent, but it happens. One thing that has arisen as a result of that court action is the belief of the courts that the presumption is not present in the legislation. All of us who voted on the Schools (Consultation) (Scotland) Bill believed that the presumption against closure was in it. It was not an issue that received significant attention during the debate on the bill, because it was believed that that presumption was in there. It is not in there, so we must make the position clearer, if that was the legislative intention of Parliament. First, we need to do that because it is the view of the courts that the presumption is not present in the legislation.
Secondly, the way in which closures happen and the idea behind them should be quite clear. What should happen is that local authorities should tell themselves, when considering rural school closures, that there are special, defined issues to be considered and they must ask themselves whether those issues have been properly considered before the closure process kicks in. We need to be clear about what those special issues are. I am entirely open to improving that process and we will bring forward our ideas about how that should happen. If the committee or other people have other ideas about how to improve the process, let us debate them.

Liz Smith: It has been put to us that there is a difference of opinion. On the one hand, it is argued that raising the bar will ensure that there is greater confidence in the system and will make people provide much more accurate information. The other opinion, which was put to us this morning, is that it is only possibly useful to have the presumption against closure in the legislation; in other words, it will not give any added value, or it would be difficult to distinguish what that added value is. So the committee has two very different opinions to consider. Is it correct that the Scottish Government believes that by putting a presumption against closure in the act with such clarity we will be able to be certain of more information that is directly relevant to any situation of potential closure?

Michael Russell: That may be an outcome, but I am not sure that it is the intention. I am long enough in the tooth to have marched for the right to have a presumption against rural school closures. That wording came not from the Scottish debate but from the debates about school closures in England in the 1990s. When there was an early round of school closures in Argyll—some of which I was involved in as a member of the education committee in 1999 to 2000, although I was not a member for Argyll then—one of the issues was about finding a way in which a presumption against closure could be made available in Scotland to prevent the closure of schools in those special circumstances.

Stating that we wanted to achieve that in the bill is one thing. How you achieve it is the second thing. What we thought we were doing was ensuring that local authorities must consider—I use the words “must consider” deliberately—a viable alternative to closure, the likely community impact, and the likely impact of changes in travelling arrangements. Those were seen as particularly important in rural school closures. That is the bit of the change that applies only to rural schools.

From the opinion of the courts, it does not look as if that is yet firmly enough within the bill, so we are putting it in place and that is what will be there. The effect of that amendment may also be what Liz Smith has mentioned in relation to improved information, although that is dealt with in further amendments, particularly on financial information and on the issue of templates for financial information, where there has been a need to standardise that information.

I am probably teasing out two different things. One concerns the special circumstances that need to be considered before the process kicks in: the alternatives, the likely community impact, and the likely impact on travelling. Perhaps, further down the road, if a closure is to go ahead—presumably, it will be decided in some cases, having considered those circumstances, that a closure will not go ahead—improvements can be made to that information, particularly on those issues.

Liz Smith: Have you have changed your mind, as we have, since 2010—when we did not want that word in the act, although now we do—because there has been too much misinterpretation of the existing legislation?

Michael Russell: I am not sure. I was not the minister who took the bill through, so I am not entirely sure what happened at that stage. I do not think that minds have been changed. What was intended has not been achieved, so we want to make that change, assuming that the Parliament agrees. I am open to the issue of the words themselves. There were legal reasons why it seemed undesirable to have specific wording last time, and I have asked that the issue continue to be considered. It is quite difficult, because the interpretation of the words “presumption against closure” might be even more difficult, but I am open to that. Indeed, if those words are not in our amendment when we lodge it, I will be quite willing to say at that stage why they are not in there.

The Convener: Can I clarify an issue that was raised this morning? It was suggested that including a presumption against closure would raise an unrealistic expectation among members of the public. What is your view on that?

11:45

Michael Russell: I do not think that that is true. The presumption against closure says that the existence of rural schools is important and special because of what they provide educationally and to the community. Before a decision is taken to close a rural school, there should be a moment at which people say, “Stop. This is important and special. Are we to proceed?” That helps local authorities to make a decision, but nothing in the legislation says that schools do not close. As somebody who has been deeply involved in this issue for a long time, I have never said that every school is
sacrosanct. I believe that schools close themselves and that we get to a stage at which a community is too small. There have been occasions when communities have said, “The closure of the school that serves us is a necessary step for us to get better educational services.” I can think of a couple of occasions on which that has happened.

What should not happen is that we subscribe to the fallacy that closing schools automatically leads to educational progress. To me, that seems axiomatic, though some people seem to believe it. In addition, we should be enormously sceptical about some of the figures that have been bandied around during school closure processes because they almost invariably turn out not to be true.

**Liam McArthur:** You have been fairly candid on the thinking that has been going on in Government around putting the presumption word into legislation. What we heard this morning is that, although the Parliament holds that presumption—it was clearly stated during a previous debate—it is expressed by the achievement of particular criteria in the process. Some on the earlier panel said that looking again at those criteria and ensuring that they give effect to that presumption may be a better way of achieving it than sticking the word in the legislation.

**Michael Russell:** That is distinctly possible. I do not want to rule out either of those approaches or even a hybrid approach. The drafting is not finished.

Equally, were we to come with a draft that the committee wished to see improved, I would be open—as I always am between stages 2 and 3—to discussing that further.

The Government’s intention would be to be true to the Parliament’s unanimous intention, were it to say that there should be expressed in legislation in some way a presumption against closure. That would in effect mean that rural schools have a special and important nature that requires them to be considered in a special way.

**The Convener:** Just for absolute clarity, what is the fundamental difference between having special regard to certain factors and having a presumption against closure?

**Michael Russell:** I would call a presumption a stronger measure, which underlies policy. Although I am happy to have that conversation with you, convener, my immediate reaction would be to say that presumption is a stronger thing, which expresses a policy intent. We would regard—and I would hope that Scotland regards—the provision of rural education as important, not just for educational reasons, though that is good enough, but in terms of the way in which we sustain and support often fragile rural communities.

**Jayne Baxter:** The Court of Session found that the 2010 act requires the Scottish ministers to consider the merits of a school closure proposal as well as the process undertaken. All those responding to the consultation on amendments supported the consideration of merits by the Scottish ministers. What level of merit consideration would it be appropriate for ministers to pursue?

**Michael Russell:** Thank you for the question. This is an interesting and important part of the change. As the original 2010 act was negotiated and discussed with the various stakeholders, there was a strong view that it should not second-guess local authorities and their decision-making process. I hesitate to suggest that local authorities would have been anything but happy and would not have agreed to that. The idea was that they should not be second-guessed.

What the courts have said goes somewhat further than anybody had anticipated. I understand the concept of merit to be one that expresses what one would expect a reasonable decision to be—reasonable decision-making. A reasonable decision based upon the evidence in front of you would seem to be the limit of the merit argument. In other words, in addition to observing the process that has taken place, there should be some judgment as to whether reasonable people within a local authority would make that decision based upon the evidence that they have. I think that is where the merit argument extends to. I do not see it extending any further than that. It is absolutely not the role of Government to retake that decision. In those circumstances, it would be the wrong thing to happen.

**Jayne Baxter:** Are you happy with the proposal to remit closure decisions back to the local authorities?

**Michael Russell:** Remitting a closure decision back to the local authority could be an effective tool that adds to the number of tools that are available, which are closure, no closure, and closure or no closure with conditions. It might therefore be a reasonable and useful thing to do, and I think that the commission is right in that regard.

You have given me an opportunity to stress that I am grateful to David Sutherland and the entire commission, which has done a very good job. We have accepted 37 out of 38 of their recommendations—virtually everything that was said—which is a high average. Some years ago, I served as a member of the Arbuthnott commission, from which probably only one or two of our recommendations were accepted.
Neil Bibby: I am looking for some information on the independent referral mechanism proposals, cabinet secretary. Who will appoint members of the independent review body? To whom will they be accountable? How will you ensure political independence?

Michael Russell: I think that that issue will be much clearer for everybody when the amendments are published. We are still working on that idea.

There are a number of possibilities. We want the process to be simple, not expensive, transparent and open. Those are the principles that we are applying.

Broadly speaking, there are three choices. I will not commit myself to any of those choices now, because we still want to be absolutely confident that we have made the right choice. It will then be up to Mr Bibby or anybody else to propose amendments to suggest other choices. We can have a useful discussion about that.

In essence, we could put in place our own tribunal system, go for arbitration with the Scottish arbitration service, or perhaps find a cheaper and more effective hybrid of the two.

On accountability, I would expect the minister to appoint the key individual chair or whatever and to have a process for appointing anybody else who is involved. The process should be able to operate entirely independently and very simply; I do not see it involving vast numbers of lawyers or vast expense. Things should be reviewable, but only on points of law. That would require a review by the sheriff on a point of law, which is much simpler. I would like to avoid a rerun of the recent court case that left some schools sitting with insecurity for a very long time.

It would be helpful if two things happened at the final stage of the process: it was seen to be impartial, independent and non-political; and it was approachable on at least one occasion by schools or communities that are involved. To wrap all that up, I want a simple, transparent and clear process that does not take too long, is at arm’s length from the Government, and gives the public confidence. That will be encapsulated in the final amendment that is lodged.

Neil Bibby: You mentioned cost. Will the body be paid? If so, by whom?

Michael Russell: I do not know that yet, but that is an option. If the labourer is worthy of his hire, you would not want me not to pay him for his work. If the body is paid, it will be paid in exactly the same way that people who sit on any independent body or tribunal are paid, but the people involved will not be accountable to ministers because of that payment.

Neil Bibby: If local authorities wished to appeal against the independent referral mechanism's decision would there be any opportunity for them to do that?

Michael Russell: As I have indicated, we should have a simple and clear process that does not run on for ever, so the intention at present is to have appeals on points of law only to the sheriff court.

Liam McArthur: Cabinet secretary, we heard quite a bit of support from across the first panel for a phased filtering process in the front-end support and advice to councils on issues that they may have in any closure programme, and I think that we can all understand that. At the back end of the process, the ability to appeal to an independent referral mechanism also commanded support. However, I am not sure that I entirely understand the rationale for ministers having a call-in power to refer a closure to the independent referral panel.

Why do we need that intervention from the minister, rather than the referral panel looking at the prima facie evidence and suggesting that the closure is one on which it requires to take a view? I say that not least because ADES emphasised in its submission the importance of ministers' thinking about call-in being transparent and well documented to avoid perceptions of political prejudice. Having gone to the trouble of setting up an independent referral panel, why would you still seek to have a call-in process to ministers, who will not ultimately make the decision?

Michael Russell: There are three parts to this. If you will allow me, I will work my way through them. First, one of the failures of the current legislation—I am sure that ADES and local authorities will have reflected on this—is that more proposals have been called in than anybody thought would be the case. Why is that? I do not think that it is a result of political interference, although that accusation has been made; I think that there are a number of reasons for it. The first step is to give Education Scotland a clearer role at that stage to advise both ministers and local authorities and to build communities' confidence in its impartiality. Proposed amendments deal with that part of the process, and I think that it is broadly agreed that we should do that.

Let us assume that that works. If it does, the number of call-ins will fall quite substantially. At the other end of the process, the number of call-ins that result in a closure decision that can be appealed will be commensurately smaller. We hope that those circumstances arise in only a very small number of cases.

Sitting in the middle is democratic accountability for the process of the legislation. The Parliament has passed the legislation and it wants to ensure,
through the duly elected Scottish Government, that priority is given to rural schools and that the school closure process is fair and takes place on a level playing field. Provided that there is clear enough guidance on the reasons for a call-in—we are now back to the process and merit issues—there is a democratic place for the minister, or for the Scottish ministers collectively.

Remember that the idea of the tribunal was not in the commission’s report. I felt that to inject even further confidence in the process—and to remove the possibility of the accusation being made that the final decision was a political one—we should have the tribunal in place. If you were to take the minister out of that three-part process entirely, the democratic accountability would be missing and the way in which the balance is struck would be damaged.

It is open to Liam McArthur to lodge amendments to the Children and Young People (Scotland) Bill to amend the 2010 act. I will seriously think about Mr McArthur’s suggestions—as I always do—because I can see where you are coming from. I still think that there is a place for such accountability and I want to preserve its place, but I am not saying that I will not think about the point that you have made, which is one that I have heard from one or two individuals.

Liam McArthur: I appreciate that response. The concern would be that, notwithstanding the assistance that is provided earlier in the process, which I hope will result in fewer cases progressing to the point of requiring to be considered for call-in, there is no disincentive on whoever is in the role of cabinet secretary to call in the proposed closure, knowing that the decision will then be taken by an independent referral panel. I cannot see that the process would necessarily satisfy the criterion of democratic legitimacy, because it would become a bit of a postbox exercise, which ultimately will inevitably lead to the independent referral panel having to sit and consider the closure decision.

Michael Russell: If you look at it in another way—it is perhaps important to remember this—the first decision to close is made by elected politicians and the second decision on the call-in will be made by an elected politician. We remove elected politicians from the process only at the end, when the final choice is being made. That is not an illogical way of looking at the process.

There are legal tests for a call-in decision. One of the issues that Comhairle nan Eilean Siar was involved in was the challenge to the decision to call in, as well as other decisions. Legal tests seem appropriate for a minister; we might not have those legal tests for an independent tribunal. I am willing to consider Liam McArthur’s point, but I think that there are arguments for our proposal.

Clare Adamson: I would like to ask about the proposals to expand the role of Education Scotland. Given that Education Scotland already has a statutory duty to advise ministers, why is a specific duty to advise on school closures required?

Michael Russell: A specific duty is required because we are dealing with a range of issues to build confidence in the legislation and the process. COSLA has told me that local authorities wish to see a strengthening and clarification of the Education Scotland process. I want to see more confidence in all parties—there are a number of parties to decisions in the Education Scotland process. We want legislation that is even more transparent and appropriate, and advice is crucial to that, so in a sense I want to shine a spotlight on Education Scotland’s role, so that it is able to provide advice to the best of its ability.

The number of cases coming through is not enormous, so this is not a huge additional burden, although obviously we will discuss with Education Scotland what resource is required. Education Scotland will be in a better position to be fair to everybody if we clarify it in the bill. Local authorities believe—and I think that they may be right—that if the time and effort spent by Education Scotland is increased and there is clarity, we will have fewer call-ins.

Clare Adamson: How will Education Scotland’s independence and objectivity be maintained, given that it may have been given help to develop a case for a school closure and will then be in the position of writing a report on that to advise you? Witnesses this morning talked about Chinese walls in Education Scotland to keep that advice independent. Is that how you envisage the process?

Michael Russell: Education Scotland will not be involved in writing any individual educational benefit statements. That is not what it does. It will give advice about what a good educational benefit statement is; in other words, how clear it should be and the information that is required to be in it. It is not a player in each individual local authority decision, nor should it be.

If Chinese walls were necessary, they would be there, but there are two different roles, and Education Scotland does not fulfil the role that you asked about.

Clare Adamson: You have mentioned that you do not see the resource implications as being a significant burden at this stage, which is welcome. Do you envisage that there would be any interaction between Education Scotland and the school closures review body?
Michael Russell: I would expect there to be. I would expect the review body or the assessment body to have access to Education Scotland information. A question for the review body is what additional information it would wish, seek or could have. By the time a position is reached, a lot of information has been gone through. There are a lot of things involved that are thought through very carefully. The Scottish ministers will have had advice from Education Scotland and the local authority will know the education advice. If there are circumstances in which it is appropriate for that to continue, I see no bar to that.

I want the review body to be very transparent, so they should say what information they are seeking and what information they have had. Nothing in that process should be secret—not at that stage.

The Convener: You mentioned that you are trying to keep costs to an absolute minimum. Are there any resource implications for Education Scotland in taking on the additional duties?

Michael Russell: There will be small resource implications for Education Scotland, but I do not think that they are significant. I think that we are talking about one person or one and a half people, but we will discuss that with Education Scotland. It is not a significant matter.

Joan McAlpine: Good afternoon, cabinet secretary. I will ask about financial information in school closure proposals. Your amendments insist that local authorities give full information when making such decisions. In the consultation responses, some local authorities were unhappy about that. East Dunbartonshire Council said:

“There are a number of considerations that may not be appropriate to publish in the financial information. These include teachers’ pay information and land valuations, which are commercially sensitive.”

Will you respond to that?

Michael Russell: They would say that, wouldn’t they? The reality is that information about teachers’ pay can be seen on the national pay scales. It is not exactly a secret how much teachers are paid; in fact, it is published.

As for land valuations, I would expect that the local authority would want to be transparent. Obviously, if a public body owns an asset, it must be prepared to say how much it is worth. I therefore do not believe that what has been said is true.

What we need to get—and what the original act was intended to achieve—is absolute clarity and a level playing field. With this amendment, which has been unanimously accepted by COSLA and us, we are trying to ensure that there is a clear understanding of the finances. Knowing that he is sitting behind me, I am absolutely certain that Sandy Longmuir will have told you something of the intricacies of financing rural schools. It is a complex area—the educational equivalent of the Schleswig-Holstein question, if you remember that—but some people understand it and it is important that it is set out simply so that a community can understand it. There has been what I would term spectacular bad practice in that regard as well as some unfortunate mistakes, and we need to ensure that things are made clear and simple and that local authorities and communities agree on them.

I also believe that the assumption that there is, in a sense, a pot of gold at the end of every school closure rainbow turns out to be untrue far more often than it turns out to be true. It is very important that people are told that, that they understand it and that we publish figures that reflect that reality. Most school closures do not save significant sums of money for local authorities; indeed, when set against the damage, particularly the intangible damage, that they can do in rural communities, they are, to be honest, simply not worth it.

On occasion, closures are necessary. To take a recent example, a building can be so badly damaged that it would be impossible to envisage its remaining open and the costs of keeping it open would be impossibly high to meet. In most cases, however, keeping a rural school open as well as endeavouring to rebuild a rural community—after all, they are two sides of the same coin—is the right strategy, particularly in areas where the population is falling. Indeed, I represent an area that has the worst performance in that regard. It is crucial that we keep people in rural Scotland and the fact is that closing services does not keep people in communities. We need to understand that complexity and the figures and projections that local authorities are working to and make all that information available, including the effect of GAE.

Joan McAlpine: Thank you very much for that answer—and you are quite right. When I asked the previous panel the same question, Mr Longmuir echoed some of the points that you have just made. Someone also mentioned that a template was being introduced to make financial information consistent. How is that work progressing and what are your aspirations in that respect?

Michael Russell: It is progressing well; the negotiations have been good. I am sure that when the template, which is largely for ourselves and local authorities, goes through we will be happy to make it widely available and the committee can judge it. The discussions have been positive. After
all, it is in everyone’s interest to sort this matter out.

In a sense, this legislation has taught me, local authorities, those campaigning for schools and lots of other people lots of things, including the need for a clear way of expressing information about which we need no longer have endless disputes. Things are going well and I see no difficulty in letting the committee see the template at the appropriate time.

Colin Beattie: On the proposed moratorium before decisions on school closures can be revisited, the previous panel had diverse opinions on whether the moratorium should be three or five years, as proposed. Will it encourage stability or does it constitute interference with the local council?

Michael Russell: No—and I realise that that constitutes a difference of opinion with others.

A five-year period has been chosen deliberately because it means that, in political terms, a different council will come back to the matter. Of course, that might not be the case—everyone might get re-elected—but the fact is that a council will change over that period. As a result, there is a political dimension to the proposal.

In addition, there is a practical issue. I know of schools that have had more than one closure proposal, and it is a debilitating experience. It must be an educational disbenefit for those schools. Having got through a set of school closure proposals and been reprieved, to discover in only a year or 18 months that the issue is back on the agenda is simply not good educationally. It is entirely fair, therefore, to put a five-year moratorium in place, with the caveat that, in special circumstances—which it would be unwise to define too closely—the decision can be revisited. I give the example of a building that has a problem. If in two years it was discovered that the building had a fault that meant that it required to be replaced, that would be a legitimate special circumstance, and there will be many others.

The guarantee is therefore fair, and the timing is also right.

Colin Beattie: We also heard from the panel of witnesses the allegation that a major driving force behind some of the closures is financial. Would a significant change in financial circumstances, such as a reduction in public sector funding, be a valid reason to revisit a closure decision?

Michael Russell: The closure of a rural school must be decided on by considering the circumstances of that rural school first and foremost. In that reckoning, educational benefit is the key indicator for the pupils at the school. There will be a range of others, and the cost of keeping the school open in certain special circumstances, and I have indicated one of them, will be part of the equation. At the overwhelming heart of the decision must be the interests of the children who attend the school and the community in which the school is set.

I go back to the issue of financial information. The concept that there is a pot of gold that can be released and applied elsewhere by closing one or 20 rural schools is usually a chimera.

Liam McArthur: I declared an interest in front of the previous panel of witnesses as the parent of a child who is at a school that was subject to a closure proposal. I certainly understand the effect that it has on the wider community and I recognise the purpose behind the five-year moratorium and how it relates to the transition between one council and another.

Any closure proposal will take account of the pipeline of children coming up through nurseries and pre-schools when the authority seeks to make a decision. When the child is five years old, parents might feel that they have a guarantee that there will be a school until their child gets into primary 3, 4 or 5, but there is a risk that at that point—which might be a pretty critical stage in their education—another closure proposal could be made. From experience, I understand the impact of that on staff, the wider community, and the children themselves, who somehow see it as being a failing on their part that their school is subject to a closure proposal.

I understand the difficulties in arriving at any number, but perhaps that five-year moratorium will not necessarily get the community or school out of the woods much more than it would if it were set at three or seven years.

Michael Russell: I would be happy to entertain a suggestion from Mr McArthur that the moratorium should be seven years; it is up to you. I thought that we were being moderately reasonable, but I am not joking about this: there is a logical argument that the extension of a school roll to a full school cohort, for example, might be the right way to go.

The other thing to say is that, if a community found itself with a catastrophic drop in numbers, that would strike me as a special circumstance. However, there is a grey area, and Mr McArthur points it out well. In some communities, the prospect of a closure can lead parents to think that they had better move their kids to another school. Local authorities sometimes factor that into their consideration. There will be attrition; some parents will simply take their children elsewhere.

Patterns change. If we look at commuting patterns—not in Mr McArthur’s constituency, although I know that it happens in Shetland—we
can see that commuting from a rural area to a town every day is sometimes easier than having the children in a school in a rural community in which there might not be support structures. That is a material circumstance that a parent would want to consider.

12:15

I hope that a school’s being able to provide stability by saying, “We’re not going to close and we’ll be open for five years” would create confidence among the community to endeavour to save the school. I have seen that happen—quite dramatically—in some circumstances. Parents of children who have been to rural schools have said that it acts as a wake-up call. People say, “Gosh! We think this is a great wee school, but we need to do more as a community to protect and support it, and to ensure that more children go to it”, so there is an increase in numbers.

It would be interesting to do a piece of work on a sample of schools that have been threatened with closure in the past 10 years but have stayed open, in order to see whether rolls have risen or fallen. I suspect that, in many cases, rolls will have risen because there has been renewed interest in the school.

Finally—I know that I am imposing on you, convener—there is another issue with rural school closures. Some small accessible rural schools cater for special types of children, so there will be a high level of placing requests for those schools. Some parents find that a smaller school with smaller classes and better wraparound care is better for their children.

If we close accessible rural schools, we diminish choice in communities, and that choice is sometimes very important. For example, if individual children with support needs are finding it difficult to have their needs met in larger schools, having the choice in rural communities is the difference between success and failure for their families.

There is a complexity to the issue that needs to be understood.

Liam McArthur: On that point, I am not—for the avoidance of doubt—suggesting an extension of the moratorium from five to seven years. However, given the proposed five-year period, would you expect that it would need to be demonstrated that circumstances had changed materially from five years previously? If there had simply been a predictable trend and we revisited the proposal on the basis of circumstances that were all well understood five years ago, we would just go through the same process again.

Michael Russell: A local authority would be entitled to make a closure proposal without reference to previous proposals, but I am sure that the community would very quickly look at what it had done previously and say, “The council predicted this then, and that is what has happened.”

I know of some rural schools that have survived for which one can look at the predictions that were made and think, “Thank goodness they survived”, because the predictions were utterly wrong in terms of the community demography and the number of children. That has happened either because the community has woken up and done something about it, or because the projections simply did not add up even when they were made.

The Convener: I see that Liam McArthur has another question.

Liam McArthur: I am my own warm-up act.

The cabinet secretary mentioned earlier that the one recommendation from the commission that he is not prepared to accept is recommendation 20, and he hinted at the rationale behind that.

We heard from the first panel a concern about distinguishing between educational quality and educational benefit. In a sense, the latitude for trying to take proposals forward on the basis of safeguarding the quality of educational provision for children should be—and is—very much at the forefront of the thinking of officials and elected members at local level. However, without the bar being set that bit higher in terms of securing positive educational benefit, there is a risk that debates on closure proposals will continue to be very polarised, and it will therefore be very difficult to build a consensus around a way forward.

Michael Russell: We are leaving the bar where it is rather than raising or lowering it. Of course, I thought long and hard about the matter; recommendation 20 is the only one that I could not accept. It is the only recommendation on which the commission was split—it was not unanimous on the recommendation, which is interesting in itself.

I have seen a lot of school closure proposals over the years; members will know that I have a particular interest in and concern for this policy area, as do many rural members and those who have lived in rural communities for a long time. I have seen some pretty contentious debates, but most alarmingly I have seen highly questionable assertions about educational outcomes—for example, that curriculum for excellence cannot be delivered below a certain number of pupils. Such assertions have no educational validity at all. Equally, I have seen fears among some people that with a class of six, 10 or 12 there will be a strong educational disbenefit for children in smaller schools.
One of my key objectives is to cut through that type of information and to make it absolutely clear and without doubt that what is taking place will benefit the individual child. If that benefit cannot be proved, the decision will disadvantage that individual child and, by extension, the family and the entire community and so it should not be made.

That approach is absolutely central to how we see delivery of education. We should strive to ensure that benefit is always at the centre of our decision making. The discussion on this was difficult in the commission because, obviously, there were many differing opinions; I have come down clearly on the side of the minority report because I believe that it is right.

**Liam McArthur:** Someone referred to the chair of the commission’s comment that there is often as much divergence of quality within a school as there is between schools and that, in securing the benefit that you mentioned, proposals to merge schools are often not necessarily the threat that they are perceived to be. Indeed, there are examples of mergers that have clearly delivered benefits, but there was a recognition that expressing such benefits ahead of time is not straightforward and, in fact, would be a challenge. You clearly believe that we should stick to our guns in this area.

**Michael Russell:** We assess a school’s quality and educational advantage through inspections, and there is a set of indicators for a whole school. I accept that quality can differ between various parts of a school; indeed, we have seen attainment gaps affecting individual schools, never mind there being gaps between schools, although I am sure that members will be happy to note the programme for international student assessment—or PISA—results, which have been released this morning and show that we have further closed the attainment gap in Scotland.

You need a definition that works somewhere, and ours covers the whole school. If you assess the whole school and its contribution, you will clearly see any disbenefit to individual pupils in closing that school. Education Scotland will play a role in that. The argument that is made by the local authority will address that specific issue and people can then make a judgment on the matter. However, at the end of all this, parents and communities themselves will look at the decision. We need to help them with the right definitions, but they will be the judge of whether the decision brings benefit or disbenefit. After all, they will know what they are looking at.

**Liam McArthur:** In its evidence, ADES suggests that educational quality is at all times the prime motive in consideration of the school estate. What role do financial criteria play in decisions to propose closure?

**Michael Russell:** I think that I made that clear in a previous answer. Educational benefit is the touchstone of the decision. Although financial considerations run below that, they should be specific to the school and should not be overwhelming.

The local authority will have financial views that will be relevant but, again, I counsel local authorities not to think that this is a way of solving a lot of problems. The real outcome of school closure processes is that they hardly ever produce the expected sums or savings.

**Liam McArthur:** Do you believe that financial criteria have a role to play?

**Michael Russell:** They are a subordinate standard; they are not the standard. Of course, a local authority is entitled to argue that financial criteria should be considered, but the reason for closing a school has to be educational benefit.

**Liz Smith:** People are concerned about the emphasis on educational benefit not because they are against it but because it is so hard to define. Apart from an inspection report, which is the main way of giving feedback to parents, what other criteria do you think parents would want in order to make a judgment about educational benefit and, therefore, to be able to define it?

**Michael Russell:** That is an interesting question. The local authority must say why an educational benefit will arise and must define it—I cannot define it for every school, and it would be wrong of me to do so. The local authority must say what the benefit is and must prove that that is the case because parents will want to look at that critically.

I will give you an example drawn at random from the school closures that I know about. If a small school had been absolutely outstanding in previous inspection reports and was one of the best schools in its local authority area or in Scotland, and if the proposal was that the benefit from that quality education could be increased by merging the school with a larger school whose inspection reports were not as good, that would raise a strong question in the minds of the parents and the committee about whether there would be educational benefit in doing that. If there were holes in the roof or some other enormous problem with the building, there could be an argument that we could improve the overall educational experience and benefit to every child by merging the schools. However, when such arguments do not exist, that will be a tough one for local authorities to sell, and they are the ones who must sell it because it is their proposal.
Liz Smith: The onus is on the local authorities.

Michael Russell: Absolutely.

Neil Bibby: In the previous evidence session, Eileen Prior called for clarity about what is defined as a rural school. Should there be a reclassification of rural schools? For example, I attended Kilbarchan primary school in Renfrewshire, and Kilbarchan is not necessarily seen as a rural area. That is perhaps down to historical reasons rather than post-war demographic changes. What is your response to Eileen Prior’s suggestion?

Michael Russell: I have always thought of Kilbarchan as a rural place, and I am sure that you do, too.

There are anomalies, but the commission did not recommend a redefinition. The definition is complex and is applied according to a wider Scottish Government definition. Recommendation 37, which the Government has accepted, states:

“The current definition of a rural school should not be altered.”

COSLA has accepted that, too. Recommendation 37 continues:

“The Scottish Government should carry out a narrow and restricted review in conjunction with local authorities to address any anomalies that arise from the current definition.”

If you propose adding Kilbarchan primary school to that review, we will consider it. There are a number of anomalies that we could address, but the commission’s unanimous view was that the definition should not be revisited.

Neil Bibby: Can you provide information on additional costs that are associated with implementation of the proposed amendments to the 2010 act?

Michael Russell: The financial memorandum will give you that information. We do not regard those costs as significant, but we will, of course, bring forward information on the proposed amendments.

The Convener: I will finish this session with a general question. Do you agree that school closures are just one of those things that are inherently controversial and that no legislation will ever remove that controversy?

Michael Russell: If I say yes to that, convener, the past hour and a half will have been in vain. I do not agree that that is true. As I said in the first sentence of my opening statement, school closures are always going to be difficult and contentious. However, I am an optimist and believe that it is possible for agreement to be reached. We have had some agreements and can get more of them, but if the legislation is not working it is our job as legislators to make it work. We have advice from the courts on how that should be done, and the discussion that we have had today has been very positive and will lead to improvement. I am sure that Lorraine Stirling will take away the points that have been raised and that they will be considered in drafting the amendments. I make a commitment—as I have throughout the process—to be open to ideas from the committee as we do that. We are not here in vain and will keep working at it.

The Convener: I thank the cabinet secretary for coming along this morning and providing evidence on the proposed amendments to the Children and Young People (Scotland) Bill. I also thank his officials.
WRITTEN SUBMISSIONS TO THE EDUCATION AND CULTURE COMMITTEE
(SCHOOL CLOSURES)

Letter from Michael Russell, Cabinet Secretary for Education and Lifelong Learning, 26 June 2013
Letter from Michael Russell, Cabinet Secretary for Education and Lifelong Learning, 28 September 2013

Argyll and Bute Council
Association of Directors of Education in Scotland
Comhairle nan Eilean Siar
Scottish Rural Schools Network

Argyll and Bute Council (supplementary)
COSLA (supplementary)
Thank you for your letter of 25 June 2013 about the Government’s intention to use the Children and Young People (Scotland) Bill to take forward recommendations from the Commission on the Delivery of Rural Education.

As I indicated to Parliament in my statement on 13 June, the Government has accepted the vast majority of the Commission’s recommendations. While many of these can be taken forward administratively, a number of the recommendations require legislation and we are keen to bring this forward as soon as possible. There is also a public interest in providing clarity in the light of the judgement in a recent court case which is relevant to the application of the Schools (Consultation) (Scotland) Act 2010. It is very helpful that an opportunity exists to use the Children and Young People (Scotland) Bill, and I will make every effort to ensure the proposed amendments are made clear to the Committee as soon as possible.

In order to do that, we are moving as quickly as we can to carry out a short public consultation on the legislative proposals. The Commission on the Delivery of Rural Education gathered evidence from a wide range of sources before making its recommendations and we do not want to duplicate that. However, nor do we wish to neglect the normal expectation that the Government will consult on legislative proposals and in particular those aspects which build on the Commission’s thinking. As officials noted to the Committee, this consultation will take place during July and August.

Officials also indicated that details of our proposed amendments would be available ahead of the start of Stage 2. However, I appreciate the Committee’s requirement to take evidence on these during Stage 1 and wish to provide as much information as possible to support that consideration. I will confirm the Government’s plans as soon as possible following the consultation and would hope to do this during September. I will write to you in September confirming our plans and outlining as much detail as I can, and would be happy to discuss these with the Committee during Stage 1 if that would be helpful. I would also hope that our consultation paper, which will clearly outline the areas for proposed amendments, will
provide a useful basis for identifying stakeholder interest and planning invitations to your October meeting.

I hope that this is helpful.

MICHAEL RUSSELL
Following the commitment I made when I wrote to you on 26 June 2013, I am pleased to be able to confirm the Government’s proposals to bring forward amendments to the Schools (Consultation) (Scotland) Act 2010 through the Children and Young People (Scotland) Bill.

The purpose of these amendments, as you are aware, is to implement recommendations from the Commission on the Delivery of Rural Education at the earliest opportunity. Following the extended consideration by the Commission, I believe it to be strongly in the public interest to move quickly to provide clarity and ensure the highest possible standards of consultation for all involved in school closure proposals.

The Commission, under Sheriff David Sutherland’s able leadership, gathered evidence from a wide range of sources before making its recommendations and these were very well received. Nevertheless, as is appropriate before proposing legislation, I was pleased to be able to hold a short public consultation on our specific proposals for legislation during the summer. We received a strong response, from around 220 groups and individuals, and these have been very helpful in refining policy and confirming the strong support for our proposals. These written responses were supplemented by meetings my officials carried out with parent groups and other stakeholders, and officials continue to engage with interested parties and take account of views they receive as the detail of our policy is refined.

The consultation sought views on six particular issues, and I address each of these below. Each proposal was supported by a clear majority of consultation respondents. I regret that the full consultation report is not ready yet, given that the consultation only closed on 2 September. This will be published during October and I will ensure copies are sent to the Committee.
The Presumption Against Closure
I will bring forward amendments which make it clear in the Schools (Consultation) (Scotland) Act 2010 (the 2010 Act) that there is to be a presumption against the closure of rural schools. As you will recall, this was the Government’s policy intention, supported by Parliament during the passage of the 2010 Act. However, the approach that was taken to delivering this presumption was flawed, given the recent judgement of the Inner House of the Court of Session which found that there was no such presumption in the 2010 Act. The Commission also commented on the lack of clarity that the current approach gave to both communities and education authorities. Our consultation confirmed support from stakeholders of all types for this to be addressed, and we are determined to do so.

The amendment will deliver the policy intention set out during the passage of the 2010 Act. The presumption against closure should not mean that no rural school can ever close, but that very careful consideration should be given before making such a proposal, given the significant impact it could have on the community involved.

Providing Financial Information in Closure Proposals
The Commission strongly recommended that it was in the interests of all parties for it to be a requirement that school closure proposals provide transparent, accurate and consistent financial information. Our proposal to make this a requirement for all school closure proposals (rural and urban) received overwhelming support. We will bring forward a minor amendment to the 2010 Act to make this requirement, and will work with stakeholders on the guidance on what financial information should be provided.

Clarifying and Expanding Education Scotland’s Role
The Commission recommended that Education Scotland should have a wider role in providing a detailed response to the educational benefits set out in a school closure proposal and a more sustained involvement in the proposal. We accepted this recommendation, and see benefit in Education Scotland having a greater role in raising the quality of the analysis of educational benefits arising from a school closure proposal analysis and in advising Ministers on cases. Respondents supported this change, and considered it appropriate to clarify this aspect of Education Scotland’s role in legislation, so we will seek to bring forward a minor amendment to the 2010 Act to achieve this. We had considered whether the change could be delivered through a Memorandum of Understanding between Ministers and Education Scotland and will continue to consider whether that might also be helpful to set out further detail.

In drafting the amendment, we will consult carefully with Education Scotland, to ensure that the requirement respects their independence (of great importance to parents) while still providing the assistance and clarity that local authorities and Ministers seek to improve the quality and understanding of school closure proposals.

The Basis for Determining School Closure Proposals
During the passage of the 2010 Act, Ministers proposed, and Parliament agreed, that their role in relation to school closure proposals which were called in for Ministerial determination, should be to determine whether the correct process had been followed by the education authority. However, the recent ruling by the Inner House of the Court of Session concluded that the 2010 Act did require Ministers to consider both the process followed and the merits of the decision taken. The Commission supported this approach, and the Government has accepted its recommendation. The consultation responses overwhelmingly supported clarifying the Act to make it clear, in line with the Court of Session judgement, that Ministers’ role in determining school closure proposals is to consider both process and merits. We shall bring forward amendments to deliver this clarity.
Establishing an Independent Referral Mechanism

I have indicated to Parliament that I want to accept the Commission’s recommendation that there should be an additional option as well as consenting or refusing to a school closure proposal of remitting such a proposal back to the education authority to allow issues to be addressed. I also indicated that I thought it important to build on its recommendations and move without further hesitation to establish an independent review body to determine school closure proposals that have been called in by Scottish Ministers. I believe this is the way to ensure that these most difficult of decisions are taken in a transparent and objective manner which both communities and education authorities can have confidence in.

We consulted on this proposal, proposing that it should meet particular criteria: it should be a low cost, accessible process for communities; it should be time-limited, taking decisions efficiently; it should have authority and certainty so that its decision is final; and it should be fair and objective, determining whether the decision to implement a closure proposal is one that a reasonable education authority could have reached. The consultation responses supported the creation of an independent review body, and we are continuing to work on the detail of how this should work and responding to the suggestions made by respondents.

I will bring forward amendments to the 2010 Act to propose this change.

A Five Year Moratorium on Repeating a School Closure Proposal

Finally, we consulted on the Commission’s recommendation that there should be a five year moratorium on repeating a school closure proposal for the same school. There was strong support from consultation respondents for this provision, that once a school and its community have gone through a full school closure consultation and either the education authority has decided not to proceed or the proposal has been refused by Scottish Ministers, it should not be possible to make a further closure proposal for the same school for a five year period unless there has been a significant relevant change. This recognises the destructive impact of repeated closure proposals and the need for a period of stability for communities.

I noted the range of views from respondents on a longer or shorter period for the moratorium, and a strong majority in favour of making this provision through an amendment to the 2010 Act rather than simply in the guidance that accompanies the Act. I have concluded that to deliver this recommendation requires legislation, and will bring forward an amendment to achieve it. This will include the possibility of exceptions being justified where there has been a significant relevant change as I recognise that each situation is different and that in exceptional circumstances it will be appropriate to repeat a closure proposal after a shorter interval.

I hope that this is helpful, and I would be happy to provide further information to the Committee if required.

MICHAEL RUSSELL
1. Introduction

1.1 Argyll and Bute Council welcomes the opportunity to submit evidence to the Education and Culture Parliamentary Committee on the topic of school closures. It is the intention of this submission to be constructive rather than focusing solely on our experience of the implementation of the Act prior to the establishment of the Commission for Rural Education. Suffice to say, in common with many other authorities, the process of consideration and consultation on school closures was not a positive one. The process produced a very adversarial context which was stressful for communities, elected members and officers charged with taking forward policy decisions. At times the focus on process as a means to effectively block proposals generated a concentration on minor detail and some relationships became strained and at times unpleasant.

1.2 The Council welcomed the establishment of the Commission on the terms reported by COSLA as negotiated with the Scottish Government. The Council further welcomes the 38 recommendations made by the Commission under the chairmanship of Sheriff David Sutherland. As recently indicated by COSLA the understanding of the Council was that local government and the Scottish Government had entered a joint agreement to accept in full the recommendations of the Commission and urges the Cabinet Secretary to provide this confirmation, specifically in relation to recommendation 20 (educational benefit).

2. Background Context

2.1 In 2010 Argyll and Bute Council undertook a consultation exercise around each of its four administrative areas on the future of education services and sought feedback on priorities and proposals for the investment of resources. A consistent theme from the feedback received in each area was a view that resources were being stretched unsustainably across too many school establishments to the detriment of the quality of education of all pupils. At that time the Council was operating 80 primary schools, 10 secondary school and 1 learning centre for children with additional support needs (in 4 locations the primary and secondary schools are combined in joint campus arrangements). From that feedback the Council undertook a review of its school estate and identified an initial long leet of 26 primary schools it wished to conduct an informal consultation on with communities to explore school mergers.
2.2 Following a further review of the proposals this long list was reduced to a short list of 12 proposed school mergers on which the Council proposed to conduct a statutory consultation in terms of the Schools Consultation (Scotland) Act 2010. The consultation commenced on 3rd May 2011 with an intended end date of 30th June 2011 and the programme of public meetings for each school commenced in May 2011. The programme was ceased following the Council’s consideration of the request from the Cabinet Secretary for Education and Lifelong Learning for a moratorium on school closures and the establishment of the Commission for Rural Education.

2.3 In 1975 the primary population was 8,093 pupils which had reduced to 7,809 by 1996 before dropping to 6,048 pupils by 2010. This represents a consistent decline over 35 years of around 25%. The population was projected to decrease by a further 14% by 2020. During the period from 1975 - 1990, the number of primary schools reduced from 94 to 80. By 2010, the Council had 20 primary schools with less than 20 pupils, 9 of which had less than 10 pupils enrolled.

2.4 The cost per pupil figures (based on 2010/11 budget establishment – calculated by simple division by the number of pupils) ranged widely from around £3,000 per pupil to over £30,000 per pupil in certain locations.

2.5 The Council assessed each property using the criteria identified in the CIPFA “A Guide to Asset Management and Capital Planning in Local Authorities” (Cost per pupil; Occupancy levels; Sufficiency; Condition; Energy Use per pupil) to produce building efficiency scores. This information helped inform the consideration of the school estate and supported more local assessment such as the education case for proposals, the proximity of neighbouring schools, capacity calculations, road conditions/ transport times, roll projections, placing request patterns, collaborative working opportunities, financial impact, impact on communities, population projections/ birth rates etc. In relation to capacity calculations, the Council used an inherited model from Strathclyde Regional which combined a square meterage allowance per pupil and a ratio of classroom to non classroom teaching spaces. Research indicated that around two thirds of authorities applied a capacity model that was a variation on these core elements.

2.6 The Council and the wider Argyll and Bute Community Planning Partnership’s focus is on growing the population of the authority area and is clearly founded on the development of the local economy to achieve the key outcomes in the area’s Single Outcome Agreement. The recognition of the importance of sustaining and growing our rural communities is a key element of the Economic Development Action Plan. Equally however we are aware of long term demographic changes (population size and composition) in a number of our
communities and that a re-alignment of services including education services may be necessary.

2.7 For Argyll and Bute communities the importance of schools as key assets in their economic wellbeing was a controversial issue. During the pre-consultation phase it was asserted that remote and island communities depended on a selection of community assets for them to remain attractive places to live and the loss of these assets can contribute to a spiral of decline. Argyll and Bute Council has recognised within its Economic Development Action Plan that the reversal of depopulation across the Council area is a priority and the provision of schools in rural communities will contribute to the economic case for repopulation.

3. **Observations on the Commission’s Recommendations**

3.1 **Presumption Against Closure**

Clarity in respect of the presumption against closure is helpful as its terms were unclear in the existing legislation and will help manage expectations. It is of note however that some respondents to the Scottish Government’s recent consultation on amendments to the legislation chose to view this clarification as a means to appeal any such decisions. The legislation should facilitate a level playing field to consider all factors associated with a merger proposal but should in itself not be seen primarily as the means to challenge proposals. Specifically the legislation should not enable every proposal to be called in as a matter of routine – in such case the process would be equally flawed as it will amount to a Scottish Government determination on local issues and render Council decisions irrelevant.

We note the Scottish Government’s intention to amend the legislation to clarify the presumption against closure. We welcome the intent to ensure an appropriate consideration of the “matters of special regard” whilst not articulating the presumption in such a way as to “stifle legitimate changes to schools that become necessary over time”.

3.2 **Education Benefit**

As highlighted earlier, the Commission’s recommendation 20 is a key consideration of its overall findings and we would urge the Scottish Government to accept this point. The assessment of a proposal should be to ensure no overall detriment to the education of pupils is realised – the current requirement to demonstrate additional benefit has been divisive as authorities seek to magnify relatively small impacts which attracts challenge from opponents. Often the assessment of benefit is based on professional opinion and therefore to some measure subjective – in our case this led to an exchange of background research reports and opinion that was neither conclusive nor productive in
moving forward. Ultimately it boiled down to professional opinion not accepted by opponents on one hand and counter evidence not accepted by the authority’s education professionals as relevant on another. The process is time consuming and adversarial and has the potential to worsen relationships with local communities. The subjective nature, albeit professionally based, of the assessment applies equally to the role of Education Scotland.

3.3 Education Scotland Role

Following on from the issue highlighted above, an enhanced role for Education Scotland is to be welcomed. There are benefits for both local authorities and also for communities in the earlier and continuous engagement of Education Scotland. The guidance and input at an early stage should ensure that local authorities frame well presented, accurate and robust proposals, that the process of engaging with communities is carried out to best effect and ultimately should lead to a lower call in rate. Equally the independence of Education Scotland should provide reassurance to communities that proposals are scrutinised and their assessment takes into account all relevant factors. The role of Education Scotland and their assessment in terms of education benefit should not be subject to challenge in itself however, as the process does not need a further appeal stage.

The capacity of Education Scotland to adopt an enhanced role would need to be carefully assessed. We understand that there is a significant volume of closure proposals which are in the process of consideration by local authorities following the expiry of the moratorium which will put a strain on Education Scotland’s core functions. Similarly an expansion of Education Scotland staff to support this role will have an added cost implication.

3.4 Involvement of Young People

The Council took cognisance of the “Participants not Pawns” guidance issued by the Children’s Commissioner and appointed an external consultant to engage pupils in this exercise. It was a point of note that many parents reacted angrily to the proposal to involve their children and expressed concern at the stress that engaging them in a discussion around the closure of their school would cause. Further consideration of the guidance around this requirement would be beneficial to avoid this further area of potential conflict.

Further consideration of the relationship with children’s rights arising from the new Children and Young Persons Act should be reflected in updated guidance on school closure consultation.

3.5 Consistency of Information

The Council developed a template for the statutory consultation proposal document following a review of those used by other authorities that had
conducted successful consultation proposals. The focus on process as a means of challenge gave rise to criticism about the format of information provided. The format of information also varied from authority to authority and it is understood that similar criticisms were levelled at other authorities. A standardised template for the proposal document as noted for the presentation of financial information (below) would also remove a further area of contention for communities.

The recommendations by the Commission to present full financial implications through the development of a standard template for the presentation of financial information along with guidelines to ensure consistency is strongly welcomed. This work is already well progressed in conjunction with COSLA. Equally, similar challenges regarding school capacity modelling and capacity assessments will benefit from a consistent methodology. Although this work has commenced, we appreciate the potential difficulties in arriving at a single consistent model but would highlight the importance of this work for asset management planning as well as its application for school merger proposals.

It is further helpful to have recognition that the financial consequences of a proposal have an impact on the education services provided to all pupils in an authority area. To consider an individual school and its costs in isolation, fails to recognise the impact of supporting and staffing a significantly larger than required school estate. There is a direct impact on the resources available to support the delivery of education to all pupils in the authority’s area.

The Scottish Government’s published response to the consultation responses it received on amendments to the Act is ambiguous and fails to acknowledge the comments of the Commission (paragraph 89 of the Commission report) which notes “the Commission agreed that it is unrealistic to suggest that closure proposals are only made for solely educational reasons and recommends that there should be a place for setting out transparent financial information in a closure proposal”. Further clarity on the legislative content would be helpful to reflect the Commission’s findings on this point.

3.6 Additional Option for Ministers/ Independent Referral Body to Determine a Call In

Recommendation 33 which proposed a third disposal available to Ministers/ Independent Referral Body to determine the outcome of a called in proposal is a welcome proposal and will contribute to the update of section 5 of the Act which deals with errors or amendments in proposals. The proposal to remit a proposal back to an authority for reconsideration will allow for issues to be highlighted to authorities to address without the cost, expense and timeline associated with re-running consultation programmes. Helpfully, it does not enable proposals to be the subject of a moratorium as a result of minor
administrative errors and will help move the focus towards consideration of the overall impact of a proposal and away from divisive arguments about points of minor and non-material detail.

3.7 Evaluation of Called in Proposals

We would note the Scottish Government’s intention to deviate from recommendation 34 of the Commission and establish an independent referral body to evaluate called in proposals. Whilst we fully support the position of COSLA in pursuing the acceptance of all 38 of the Commission’s recommendations, given the Scottish Government’s published intent to establish an independent referral body, it is appropriate to make some reference to that proposal. The intent to remove the evaluation of individual proposals from direct ministerial influence and the reasons behind the intent is understood. Any such mechanisms would need to have the confidence of all parties and therefore be fully independent. Regard should be given to the costs of such an arrangement, the additional time this stage in the process may take and the additional work to service this body and provide information. Additionally the decision of the body should not in itself be the subject of a further appeal and this position should be set in the legislation.

3.8 Five Year Moratorium

The proposed introduction of a 5 year moratorium on reconsidering schools for closure should not be an absolute position and we welcome the acknowledgement in the Scottish Government’s statement that circumstances can change substantially in relation to rural schools. Whilst acknowledging the reasons behind the 5 year moratorium, the intent to establish in the legislation a set of exceptions that may apply is equally welcome. It would be helpful if the Scottish Government would commit to further consultation with COSLA on the definition of these exceptions.

3.9 The Use of Former Rural School Buildings

The Commission makes an important point regarding the use of school properties following closure. Legislative vehicles such as the Land (Reform) Act 2003 and the current Community Empowerment and Renewal Bill provide mechanisms for communities to secure former public assets and associated grant programmes from distributors such as the Big Lottery Fund provide practical support. Local authorities however must not simply transfer liabilities to community organisations that are ill-prepared to sustain ownership arrangements and should ensure a robust business plan is in place. Care should also be taken that displacement does not occur that threatens the viability of other rural community owned assets such as local village halls that may survive on a financial knife edge. Carried out correctly however the sale or transfer of former school properties can add to the local economy – recently the
sale of the former St Kieran’s Primary School in Campbeltown enabled the development of a large bed and breakfast business that supports tourism in the town and generates economic benefit.

3.10 Transport Implications

In assessing the travel impacts of proposed school mergers on pupils, the travel time data was the subject of significant challenge by opponents of the proposals. In response, when the consultation documents were published the travel durations were backed up by satellite tracker reports which recorded the start and finish times of the test runs, the speed of the vehicle and the drop off/pick up stops which were undertaken. Whilst there was some further challenge to the times quoted the availability of this supporting data was helpful in providing reassurance to elected members faced with the decisions on whether to commence formal closure consultations.

4. Other Issues Relating to Rural Education

4.1 Funding of Small Rural Schools

In its initial submission to the Commission the Council highlighted a number of issues in relation to the funding of rural education that are worthwhile re-emphasising. Whilst the Commission acknowledged at paragraphs 95-98 in its report the costs associated with funding very small schools and the impact of the small schools element of GAE, more could have been noted around that funding mechanism. There are significant differences in costs per pupil associated with running primary schools with between 60 and 70 pupils and those with single figure rolls. Particularly where the schools are island based or in very remote locations and no alternative options are available. One size does not fit all rural schools and it would have been helpful to see a more sophisticated look at how the enhanced funding support for rural schools could be tiered to reflect the costs of education in those contexts.

Similarly it appears incongruous that an authority would receive the enhanced support of around £2,500 (annually variable) per pupil for each pupil up to 69 and then have support reduced to zero (a reduction of over £170,000) when a 70th pupil enrolls. Setting aside the obvious disincentive that is at odds with growing our rural communities, the trajectory is away from where the costs are highest (in the very small schools) at one end of the spectrum and there is a financial cliff edge at the other.

4.2 Audit Bodies and Best Value

There is a need for some clarity and reconciliation between the findings of the Commission and the approach of Audit Scotland in relation to Best Value. Councils have an obligation to deliver Best Value: education is not exempt from this. Any decision which does not increase the efficiency of the school estate,
impacts upon the education of all children and young people by creating a situation where the financial resource must be spread more thinly. Authorities will strategically plan for the size and use of its education estate and how it deploys its resources. However compliance with the Commission’s findings and the ability of authorities to meet the requirements of the amended Act, may result in sub optimal decisions being taken. Authorities seeking to embrace the spirit of the Commission’s report and specifically the “presumption against closure” which is likely to be clarified in future legislation should not feel the tension of negative audit findings in this regard. For example the Assurance and Improvement Plan 2010, noted the shared risk assessment had highlighted the need to consider school estate given “school occupancy levels amongst the lowest in Scotland and the significant backlog of maintenance in primary schools”.

4.3 **Proportionality**

Due regard should be given to the proportionality of the expectations on local government to consult on proposals. In our experience in the case of a merger proposal whose consequences would generate a recurring £28,000 per annum saving, the authority was being encouraged to commission very expensive unique research on the full gamut of community impacts. We are aware of another island authority who commissioned this level of research for one of its communities at a cost nearing £30,000. To expend considerable resources at this level in the context of the proposal is questionable. The burden on authorities should be proportionate and balanced.

4.4 **Role of Local Elected Members**

Opening a dialogue regarding changes to school provision is a difficult process without raising risks of communities entering into “campaign mode”. The suspicion with which such discussions are regarded and the highly emotive attachment to local community assets add to that difficulty. In an ideal world the difficult balance between strategic authority level needs and local community needs would be achieved without confrontation. However there are often barriers with senior officers or political leads arriving in a community where they are unknown to engage on such delicate topics. Equally it is unlikely to be appropriate to request local head teachers or other staff to lead these discussions when their own positions may be directly affected by the outcome.

In such circumstances the role of local elected members become a critical factor and requires significant political leadership to engage with communities on such sensitive yet important issues. Multi member ward arrangements may also add to the complexity as local members may take opposing positions on the issue or members may be exposed to political risk from the position they
take. Nonetheless the most productive dialogues with communities as referenced by the Commission are politically led at a local level.

5. Conclusion

Argyll and Bute Council appreciates the opportunity to share some observations on the issue of school closures. The focus of these comments has been to deliberately look forward on how the process of school estate planning and, if appropriate, school closure consultations could be improved. The experience during 2010 and 2011 for communities, pupils, parents, elected members and staff was stressful, divisive and at times personally unpleasant. The Council is working hard to ensure that any future discussions regarding the education services in Argyll and Bute have a more positive and productive basis. The Council has no current plans to bring forward any proposals for school closures and would hope that the highlighted issues in relation to the funding of rural education are given further reflection by the Scottish Government.

Councillor Dick Walsh
Council Leader
20 November 2013

For Further Information, Please contact Cleland Sneddon, Executive Director of Community Services, tel 01546 604112 or e mail Cleland.sneddon@argyll-bute.gov.uk
Association of Directors of Education in Scotland (ADES)  
written submission on  
Amending the Schools (Consultation) (Scotland) Act 2010

General
ADES fully supports the findings of the Commission and believes that the recommendations arise from a thorough and comprehensive consideration of an emotive and polarised issue. ADES endorses the Cosla view that the package of recommendations should be adopted in full by the Scottish Government as they represent the holistic and considered result of an extensive and objective evaluation.

Presumption Against Closure of Rural Schools
ADES fully understands and supports the enhanced place schools have in rural communities and in particular the concept that Scotland’s rural schools merit support and protection given their contribution to Scottish cultural, social and political life. While accepting the right of Government to hold any presumption, two points are made:-

- Given that local authorities have the financial responsibility for school provision, ADES would assume that any national political presumption which had a resource implication would be accompanied by added resource provision.
- Proposals to close schools should be decided on their own merits. Once a formal consultation is begun, it is difficult to see that a presumption against closure can form a formal logical part of the proposal.

Relevant Financial Information should be included in a School Closure Consultation?
ADES welcomes the revised financial template and hopes that this will add transparency and consistency, and that this will lead to greater public confidence in the financial implications of any consideration. There are two points to note:-

- The vexed matter of how GAE is calculated for education provision for pupils in schools with rolls fewer than 70 remains as an illogical and unfair funding mechanism. It does not address the particularly high costs of providing education to sparsely populated areas whose schools have rolls of 20 or less.
- The very different ways in which Councils code funds may still lead to different interpretations of spend despite the common template.

Giving Education Scotland a More Sustained Role
ADES believes that Education Scotland can play an important evaluative and independent role in the school closure considerations. It will be important that Education Scotland are aware of all the factors involved in a school closure proposal and sets aside any political influence or opinion.

**Ministers’ Role in Considering Both the Process and Merits of the Closure Proposal**

ADES welcomes the recent improved articulations of justifications from ministers for closure calls. It is important that ministers’ thinking is as transparent and well documented as that of councils as this avoids perceptions of political prejudice.

ADES welcomes also the clarification of ministers’ role following the findings of the Commission.

**Independent Referral Mechanism**

ADES strongly supports this proposal and believes that it is the best means of removing politics from the matter.

**Five year Moratorium Between Closure Proposals**

ADES fully understands the community pressures during consideration of school closure. However, ADES would endorse the Government’s own acknowledgement that circumstances can change very rapidly, particularly regarding very small schools, and would therefore suggest a moratorium range of 3-5 years depending on the circumstances of the case.

**Educational Benefits Statement**

ADES is disappointed that the Commission's recommendation 20 has not been agreed by Government. ADES fully concurs with the view that educational quality has to be a prime motive in any consideration of the school estate. However, a sharp focus on educational benefit *per se*, a subjective indicator, will continue to polarise opinion, with the result that views and justifications on both sides will be attacked and discredited. Educational benefit implies that the proposed move is from a school to another where the educational provision is of a higher standard. This is extremely difficult to demonstrate as quality tends to fall into ‘bands of equivalent quality’, even using Education Scotland evaluations, and therefore it is much more pragmatic and transparent to show that a proposed move leads to no demonstrable detriment. Rural schools are predominantly small, and quality is most affected by the expertise of the teaching workforce, a criterion that can change overnight in 1-, 2- and 3-teacher schools.

*John Stodter, ADES*

*Leslie Manson, ADES*

*25 November 2013*
Section 1: The presumption against closure

The Commission on the Delivery of Rural Education recommended that a new, clearer understanding of the term “presumption against closure” should be set out by Scottish Government in the Statutory Guidance accompanying the 2010 Act, to reduce conflict and to provide clarity and protection for communities and Councils.

The question asked in the Consultation paper is:

Do you support clarifying the presumption against closure of rural schools by stating it in legislation by means of an amendment to the 2010 Act?

Answer:

No; the Court of Session, in the recent judgement Comhairle nan Eilean Siar v The Scottish Ministers, correctly found that while there was no legislative presumption against the closure of rural schools, the Act provided the necessary safeguards for all parties, provided that it was interpreted and applied correctly. It is submitted that to impose a statutory presumption (which can, of necessity, be rebutted) would not provide any greater clarity or protection for either communities or Councils.

All proposals for school closures should be supported by credible evidence, sound reasoning and following extensive consultation with affected communities. If the correct statutory tests, and these are already present within the 2010 Act, are interpreted and applied competently and fairly, both communities and Councils and, indeed, Scottish Ministers can have confidence that their decisions are sustainable on both legal, procedural, educational and social grounds.

It is at least possible that use of the term “presumption” would create in the minds of communities that there is in fact a veto, or an almost irreversible ban, on closure of rural schools, and that would not be consistent with the terms of the 2010 Act.

Section 2: Providing financial information on closure proposals

Question: Do you support amending the 2010 Act to make it clear that relevant financial information should be included in a school closure consultation?

Answer:

Yes; the Commission on the Delivery of Rural Education addressed this matter in some detail, and it was clear that there were differing methods throughout Scotland in calculating the financial aspects of proposals for changes to the school estate. The Commission recommended that school closure proposals be accompanied by transparent, accurate and consistent financial information and that clear guidance and a template for such information should be developed to assist clarity and consistency.
Comhairle nan Eilean Siar has contributed to the work of the Commission in suggesting improvements in this area, and would support the recommendation.

Section 3: Clarifying and expanding Education Scotland’s role

Question: Do you support giving Education Scotland a more sustained role in a school closure proposal? If so, would you prefer Education Scotland’s role to be clarified through legislation or a memorandum of understanding?

Answer:

Comhairle nan Eilean Siar would be largely supportive of this proposal, and would refer to the findings of the report by the Commission which noted that there is currently no statutory role for Education Scotland to play in the school closure process once it has submitted its report to the Council, although Ministers may seek further advice on a case-by-case basis. It would be logical for Education Scotland, having given a professional contribution to a Council’s proposals up to statutory consultation stage, also to give a professional view on how that Council has responded to the factors set out in Education Scotland’s report, and which Education Scotland feel should be addressed before the Council makes its final decision. Equally, it would be logical for Scottish Ministers to be advised whether, in Education Scotland’s opinion, a Council had addressed such concerns in the final consultation report.

It should not, however, be held against a Council that it, for reasons which it should be required to explain, disagrees with points or comments made by Education Scotland; the Court of Session, in the recent case Comhairle nan Eilean Siar v The Scottish Ministers, has made it abundantly clear that decisions "as to where....educational provision is to be delivered are, primarily, for the education authority" and that "The circumstances in which central government may step in and deprive the local authority of its power to decide to close a school are, accordingly, very limited." The Court has confirmed that the opinions of other parties, including professional bodies, must be read in this context.

Section 4: The basis for determining school closure proposals

Question: Do you support amending the 2010 Act to provide clarity regarding Ministers’ role in considering both the process and merits of the closure proposal?

Answer:

Yes, to the extent that the Comhairle nan Eilean Siar case has made it clear that Ministers must consider not only process, but also merits, of school closure proposals. This should be read, however, in the context of the views expressed by the Commission that Scottish Ministers’ role should be by way of a “light touch”, and confined to ensuring that Councils have properly considered all material before them, have reached conclusions which were justifiable in terms of the relevant arguments, and have not either ignored relevant considerations, including responses to the various consultations, or taken into account irrelevant matters. It should not be for Scottish Ministers to substitute their decision for that of a Council, solely on the basis of policy preference; the Comhairle believes that, properly applied, this process should result in only legally and procedurally incompetent decisions of
Councils being overturned and that, accordingly, these would be few in number. Both communities and Councils could then have confidence in the consultation processes, and not be then looking to Scottish Ministers as a Court of Appeal on all the merits of their case. As noted above, the Court of Session has clearly affirmed the primacy of the Council as the body identified in the 2010 Act as being best placed to consider such matters.

The proposal to include an additional statutory option to remit a proposal back to a Council for reconsideration, for example, to address a minor flaw in the consultation process, or to provide additional reasoning, is welcomed.

**Section 5: Establishing and independent referral mechanism**

Questions: Do you agree that the criteria specified (in paragraph 5.6) are appropriate as a dispute resolution process under the 2010 Act?

Do you support replacing the current Ministerial determination of school closure proposals that have been called in with an independent referral mechanism such as arbitration?

Answer:

Comhairle nan Eilean Siar continues to take the view that decisions on the provision of schools should, like all other decisions on service provision and priorities within their statutory competence, be left with Councils which are politically, electorally and legally accountable for the manner in which such decisions are taken. The Comhairle remains of the view that the provision of a referral mechanism to Scottish Ministers is accordingly inconsistent with principles of “parity of esteem” between central and local government, and with principles of subsidiarity, local democracy and administrative efficiency.

It is recognised, however, that both the Commission and Scottish Government do not share this view and, while referring to the principles set out above, the Comhairle believes that the guidance given by the Court of Session in *Comhairle nan Eilean Siar* and the subsequent implementation of the proposals set out in Section 4 above, should ensure that Scottish Ministers are better placed to deal with school closure proposals which are properly called-in in terms of the amended 2010 Act.

**Section 6: A five year moratorium between school closure proposals**

Question: Do you support a five year moratorium between closure proposals for the same school? If so, would you prefer this provision to be made in guidance or legislation?

Answer:

While the Comhairle understands the wish to give communities some “peace of mind” and eliminate ongoing uncertainty in a community as to where its local school will be, it is suggested that it is highly unlikely that Councils would, without there being exceptional reasons, seek to bring forward closure proposals for the same school and for the same reasons which had just been deemed insufficient to allow the proposal to be approved. It is also
suggested that a five year period gives neither communities nor Councils any security: from a Council’s perspective, school rolls and other relevant factors, such as supporting pre-school provision, can change radically within a two or three year period, thus necessitating consideration within a period shorter than five years; and from a school community’s perspective, a community is unlikely to feel much more or less secure knowing that its school provision is liable to be reviewed within so comparatively short a period. In short, the suggested five year moratorium could have the result that it benefits no-one. At a time of reducing financial resources and capital spending ability, it is not inconceivable that a Council might, for sound policy reasons, have to re-examine its school estate in a way in which it would not ideally wish to do; a statutory prohibition would prevent any such examination, and it is suggested that it would be again inconsistent with principles of local democracy and subsidiarity for a Council to be deprived of the right to consider an application in such circumstances.

If Government is committed to the introduction of a moratorium, however, the Comhairle would prefer to see its time limit being set at three rather than five years, and, for the reasons set out above, it is suggested that such a provision be made in guidance rather than in legislation.
Written Submission of the Scottish Rural Schools Network to the Education and Culture
Committee of the Scottish Parliament

Children and Young People (Scotland) Bill scrutiny – December 2013

Comment on Scottish Government proposals for amendments to the Schools (Consultation) (Scotland) Act 2010.

Background

The Scottish Rural Schools Network [SRSN] has been involved in the progress towards legislative protection for rural schools since 2005, when a petition was lodged with the Scottish Parliament requesting a legislative presumption against closure of rural schools. This was in response to an unprecedented level of closure threats with over 75 schools coming under scrutiny for closure in 2005 alone. The network worked with the Education Committee members, the Scottish Government and the national press in highlighting procedural faults in the existing system in order to develop what is now the current legislation. While some degree of compromise was required in order to achieve an unopposed approval by Parliament of the Schools (Consultation) (Scotland) Act 2010 [the Act], it was hoped that we had jointly achieved improvements which would at least ensure that the worst excesses of the case studies we had presented to Committee and Parliament would now be avoided.

It is with great disappointment we have to report to Committee that, while consultation proposals in the main have improved, we are still seeing consultations where the standards are falling drastically short of what communities should be entitled to expect.

Proposed changes

1) Presumption Against Closure

During the original drafting of the 2010 Act SRSN was talked into a compromise position of having the “presumption” only mentioned in the statutory guidance and not on the face of the Act. It was proposed that the “matters to have regard”, which were included in the Act, would have the impact in law of ensuring that the crucial factors of community, distance and environment, together with viable alternatives, would HAVE TO BE considered and remedial action attempted BEFORE a closure proposal was even brought forward.

The hopes for the Act have fallen well short of expectations. It would appear that several local authorities are still operating a “presumption to close”, bringing forward many proposals where scant or no attention has been given to the “matters to have regard”.

The scene for this was set in the first case of a rural school closure to come under the auspices of the Act. In this case the local authority simply stated that the school served a rural area and because there was no large scale built up area within the catchment, there
was no community to have regard to. This, despite this being one of the best known farming communities in the country, did not merit even as much a call in to examine whether or not the community’s multiple claims of its own existence could be verified. This along with many other factors in the case, left many of us who had worked so hard on the Act at a complete loss. The same did not apply to other local authorities, who looked at a successful process and decided that all they had to do was to copy the model, and that this should give them the same result. To this extent, it is little wonder that those who followed in these footsteps should be rather disgruntled at the furore which enveloped them.

The best local authorities meanwhile have continued to adjust their school estate in association with rural communities, working in line with the original intentions of the “matters to have regard”.

The Court of Session ruling in the case of Scottish Ministers v Eilean Siar has clarified that relying only on the matters to have regard in the respect of special protection for rural schools was a mistake. They have ruled that the inclusion of the “presumption” in the guidance was creating a position which the legislation did not support, and was not legally enforceable. This is something we feared in the original drafting of the Act, but accepted in error. We had hoped that all local authorities would meet the intended requirements of giving due importance to community, distance and environmental factors and genuinely explore viable alternatives.

Committee may be told that the word “presumption” is legally very strong and will impose a high hurdle. It is clear that such a high hurdle is essential in the light of the conduct of a few authorities. As far as SRSN is concerned the normal English meaning of the word is not such that it would mean that no school should ever close, simply that every case will have to be made, and made after it has been clearly proven that any remedial actions to identified problems have not been (or could not possibly be) successful.

2) Requirement to Publish Accurate Financial Information on a School Closure

On the face of it this should simply go without saying, as an essential aspect of any proposal paper, but unfortunately experience shows otherwise. During the original development of the Act, Parliament was provided with several case studies such as that in Roy Bridge in Highland or Channelkirk in Scottish Borders, where the financial information provided was found to be both inadequate and in serious error. What was key in both of these cases was the reaction to this information being challenged. In the former case the original error was compounded by presenting the same individual who made the original error as an independent second opinion. In the second case a valid contention about the overall financial impact, made by highly qualified individuals, was simply dismissed by the Council. Both of these cases are well documented and can be supported by many similar cases from across Scotland. It was hoped again that the attention the progress of the Act created would
have improved the situation, but again this has fallen woefully short of the expectations generated by Parliament’s intervention.

Along with a whole raft of inadequate proposals in this respect, there is an outstanding example from 2010 which proposed the closure of a small denominational school which was already mothballed (was already closed). It was claimed that a school with no pupils had a per pupil cost of £125,908 and even more bizarre, that staff savings alone would save £161,873 – some £35K more than the school cost when it was open. Further investigation and Freedom of Information requests showed that the bulk of the savings were coming from staff reductions at the receiving school, resulting from a falling roll and had absolutely nothing to do with the proposed (already enacted) closure. The savings shown formed a considerable proportion of the savings claimed in a wider school reorganisation, and were being used to reinforce a wider message that major savings could be made.

In a current consultation, a significant local authority has decided to completely ignore a Commission on the Delivery of Rural Education [the Commission] recommendation that Revenue Grant implications be outlined in a proposal paper. It appears that without legislation many of the Commission’s most important recommendations will be selectively utilised.

The Commission itself fell foul of the difficulty in obtaining accurate financial information. SRSN were asked by the Commission secretariat to comment on tables of cost per pupil analysis prepared especially for the Commission by two local authorities. Accompanying documentation assured us that the figures were most “robust” and had been thoroughly checked. On examination we recognised the pattern and amounts produced by one LA to be in line with what we expected to see from our own research. The other showed trends and amounts which were inconsistent. Again we investigated and with the help of the local finance officer were able to demonstrate that the costs of the schools from 2011 had been divided by the pupil numbers in 2012. This was during a period of major reorganisation and led to several serious anomalies in the figures which rendered some of the conclusions drawn for the Commission to be inaccurate. In commenting to the local press, the Council concerned denied inaccuracy and put the discrepancies down to a “different approach”.

This complete denial of errors in financial information is a recurring theme and as in the above cases can be quite preposterous. In responses to the consultation about changes to the Act one local authority writes “Including redundancy / severance costs as a result of the closure is also inconsistent. In XXXXX, these costs are not met by Education but are instead charged to general balances.” This is the same local authority who stated in a consultation that additional teachers required at the receiving school would have no cost as they would come from a central pool of teachers. These became known as the “free teachers”. It is quite ridiculous that any local authority can think that redundancy costs, or the costs of additional teachers, or Revenue Grant implications should not be included in the impact of closure proposals. It is ridiculous that one year’s costs can be analysed using a different
year’s rolls. It is ridiculous that an authority can claim nearly £200K in savings from a school that is already closed. It is ridiculous that a local authority can seek a “independent financial opinion” from the same employee who gave the original opinion yet all of these things have happened in consultations under the 2010 Act, are well documented and continue to happen on a scale which is impracticable to communicate in this document.

3) Involvement of Education Scotland

Education Scotland [ES] is well respected for their individual school assessments, which are generally accepted as a fair reflection of school performance. SRSN believe ES has had some difficulty in adapting to the role assigned to it under the 2010 Act. It appears to us that there has been a reluctance to comment on proposals once they have evolved, as they inevitably do during a consultation. We have seen cases where the reduction in teaching staff voted through has been considerably higher than in the proposals commented on by ES. It is to be welcomed if Education Scotland can be asked by Ministers to comment on proposals once they have been finalised and voted upon.

We would not support the involvement of ES in assisting local authorities in drafting educational Benefit statements, as we believe that this would compromise ES and its opinion later in the process.

4) Basis for determination

The recent Court of Session ruling has made it clear that Ministers should be obliged to look at the merits of the case as well as process. This is something that SRSN has always believed to be the case and was surprised when “call in” failed to act or even acknowledge some of the case studies referred to above in the “financial information” section. Several cases have not been called in where there was a had a strong “merit” issue, with parent groups simply receiving a half page letter in response to many pages and many hundreds of hours of work in preparing those cases. These letters typically say that the authority has complied with the terms of the act and no further information is given as to why the points raised by the school community have simply been ignored. Communities and indeed any party making such an effort deserve at the very least to have an explanation of why the points raised are not valid.

SRSN recognises that efforts have already been made in this regard, and that replies to call in requests are now more detailed and cognizant of the effort that has been expended.

5) Independent Referral Mechanism

During the drafting of the original Act SRSN actively campaigned for an adjudication panel or a referral mechanism. The call in system was accepted as a compromise at the time, which we hoped would work but we accept that for several reasons it has not been as effective as anticipated.
There is absolutely no doubt that a serious error was made in the first ever case of a rural school requesting call in. This was a case which involved the “free teachers” referred to previously, where other financial information had been called into question along with many other aspects to the consultation. Several detailed call in requests were met with a very short response saying that the authority had met the requirements of the Act.

Subsequent to this we saw several cases where the methodology of the Council concerned had been copied by other authorities who now saw this as approved methodology. In some cases sections of the original proposal were simply copied and pasted, and thus the call in system got off to the worst possible start. Immediately there were claims of political bias or influences from bodies such as COSLA, who have repeatedly made it clear that they want to see no appeals process available to communities.

It is often stated that local authorities are democratically accountable for their actions and that this should be the only safeguard for rural communities. This never applied in the case of rural schools and now does so even less under the multi-member ward system. A typical small school rural community will have around 500 voters. A multi-member ward will have many thousands on the electoral roll. For a small rural school community to influence their local representatives, never mind the control of a local authority is almost impossible. Relying on the wider electorate to protect vulnerable minority groups over a single issue is simply not realistic, in our experience.

We would support the type of appeals process suggested in the Government documentation but above all it must be accessible, independent and transparent. It must give reasons why it finds for or against the case put forward by the parties involved.

Scotland is in desperate need of a body willing to investigate such cases fully. Even Audit Scotland has been found repeatedly wanting when requested to investigate faulty consultation procedures. In one case an informal consultation process received over 1000 responses from a single computer – all in favour of the council position. Despite being aware of the anomaly, the authority published an analysis of the responses and sent it to elected members saying they were “encouraged” by the level of response and indicating that they had public support for their proposals. An analysis of the true, non-anonymous responses, showed exactly the opposite result. The ensuing investigation by Audit Scotland was anything but adequate.

More recently Audit Scotland issued a highly critical report on a local authority and part of the analysis involved the operation of a school estate reorganisation proposal. In this Audit Scotland accepted without question that SRSN had lied in a report and a presentation:

“A report was also provided to councillors refuting allegations by the Scottish Rural Schools Network that officers misrepresented information. The council accepted the
allegations were untrue and agreed to proceed to the statutory consultation phase.”
(Audit Scotland October 2013)

Audit Scotland were contacted by SRSN pointing out that we can supply documentation to support all of the points raised in our report and presentation, the Accounts Commission has so far refused a meeting with us and has replied...

“Your e-mail highlighted your concern that the text in exhibit 6 relating to events in April 2011 could be interpreted as a critical judgement about the Scottish Rural Schools Network. I am sorry if you feel this to be the case. The Controller of Audit has assured me that this particular interpretation was never his intention and that all of the exhibits are designed to be descriptive only, and do not offer audit judgements”. John Baillie 7/11/12

This failure to investigate, or even meet to establish fact, is typical of what we have faced over the last 8 years whenever we have asked for an objective examination of an issue. Any new appeals body MUST have the ability and the inclination to investigate thoroughly. Without such an action, this subject will simply keep returning to Parliament time and time again.

We strongly believe that a robust and effective appeals system will improve consultation practices and bring the worst performing up to the level of the best. It must be transparent and preferably judicially based, with the panel members being analytical in nature as a prime factor in selection. We firmly believe that it is the lack of such a robust system, along with a very poor test case, which has led to many of the problems with the current Act.

Any panel which is less than transparent in its dealings, will simply fail to have public confidence and we will all be back to square one within a very short time.

6) 5 Year Moratorium

SRSN supports this recommendation of the Commission and its intention to give an element of stability to rural schools threatened with closure. Too often we see the decline in a school because parents see a continued threat of closure after a school closure consultation. Many view the potential disruption of a closure as significant in their children’s future education (quite rightly from evidenced research) and are unwilling to take what they perceive as a “risk” at a school which may suffer further disruption.

Further to the moratorium we would expect any authority to have mind of the “matters to have regard” and would expect them to take remedial action to rectify any problems they had identified during the proposal period. This would be in line with the conditions of the Act and any “presumption”.

Scottish Rural Schools Network
Too often we have seen schools repeatedly targeted over a short time frame, where the communities have virtually been battered into submission or have become tired of what feels like a continual defence.

Other Matters

Accuracy of information

Although not stipulated in the Government proposals, we have repeatedly seen a problem with how the legislation deals with an alleged inaccuracy in proposal documents. In the interests allowing the Act to work and consultations to proceed without malicious hindrance, the current legislation leaves the authority as the sole adjudicator of whether or not an inaccuracy is serious enough to warrant any action during the consultation. Section 5 (3)(C) allows for the authority to “take no action”. It was explained to us that this was to allow for people who would complain about spelling mistakes or other minor errors in order to delay a consultation. We agreed with this on that basis, but have subsequently seen this clause being used to sweep quite serious errors under the carpet. Committee may wish to seek an amendment or at least assurances that any appeals body will deal with such actions in an appropriate manner.

Scottish Rural Schools Network - November 2013
7 December 2013

Dear Mr Callum

I refer to the meeting of the Education and Culture Parliamentary Committee held on Tuesday 3rd December 2013 at which I was able to offer evidence on the topic of school closures.

As you will be aware, Argyll and Bute Council agreed the submission of written evidence to the Committee which specifically focussed on constructive comments that would assist the Committee’s consideration of legislative amendments rather than reflecting in detail on the events during the Council school estate review during 2010 and 2011. A short summary was provided on background context as part of the introduction to the submission rather than a detailed chronology of events.

I am aware however for the sake of clarity that a bit further detail on the sequence of events may be helpful to the Committee’s understanding of that context.


8 - 17 June 2010 Informal consultation evenings held in each of the 4 administrative areas in Argyll and Bute chaired independently on behalf of the Council by Mr Keir Bloomer, Education Consultant. The focus was on future priorities for Education Services and the use of resources.
2 November 2010  Council meeting gave initial consideration to the Education Estate Review papers and agreed to defer consideration to the meeting of the 25th November 2010.

25 November 2010 Council considered the findings from the informal consultation, the analysis of the school estate and recommendations to take forward 26 primary schools for formal consultation on proposals to close and merge with other schools. The Council agreed to accept the recommendation from the Executive Director of Community Services to remove one school from the list of proposed consultations and agreed to take the remaining 25 schools to formal consultation (see Council papers: http://www.argyll-bute.gov.uk/moderngov/documents/g4336/Printed%20minutes%20Thursday%2025-Nov-2010%2009.30%20Argyll%20and%20Bute%20Council.pdf?T=1).

5 January 2011 Special Council meeting considered the schools consultation proposals and agreed a series of recommendations from a political motion (see: http://www.argyll-bute.gov.uk/moderngov/documents/g4462/Printed%20minutes%20Wednesday%2005-Jan-2011%2009.30%20Argyll%20and%20Bute%20Council.pdf?T=1). Of key relevance within the decision was the agreement to halt the current consultation process and the authority given to the Spokesperson for Education to bring forward a new set of consultation proposals to reflect on the consultation feedback already submitted and the knowledge acquired by the Spokesperson on her visits to schools across Argyll & Bute.

3 March 2011 The Council noted the findings of the Education spokesperson on her visit programme to schools and her review of the asset information considered in the review. The report on 3 March 2011 noted options which reduced the original long list of closure proposals on which formal consultation had commenced previously down to a short list involving the potential closure of 12 schools. The Council agreed the recommendations which included undertaking a “pre consultation” engagement with the affected communities (see http://www.argyll-bute.gov.uk/moderngov/documents/g4547/Printed%20minutes%20Thursday%2003-Mar-2011%2010.30%20Argyll%20and%20Bute%20Council.pdf?T=1)


I trust the above summary chronology and associated weblinks (for evidence) are helpful in clarifying the sequence of events. It is not intended to be an exhaustive list of all aspects during this time – such a report would be considerably larger and unlikely to add to the Education and Culture Committee’s consideration of amendments to be made in the relevant legislation. I would be pleased however to offer any additional detail to the Committee that may be helpful.

Yours sincerely

Cleland Sneddon
Executive Director of Community Services
17 January 2014

Mr Stewart Maxwell MSP
Convener of the Education and Culture Committee
Scottish Parliament
Parliamentary Headquarters
EDINBURGH
EH99 1SP

CC Members of the Education and Culture Committee

Dear Stewart,

Amendments to the Schools (Consultation) 2010 Act

As we look ahead to the Committee’s stage 2 consideration of Government amendments to the Schools (Consultation) 2010 Act, I felt it important to make clear COSLA’s position on the issue of school closure. I was asked by our Convention to write to you following its meeting in December. There are few issues as uniquely divisive as school closure and I am the first to acknowledge that strong views are held by many who have taken part in the debate. However, I feel it important that local government’s view is registered as it will be councils that will have the task of implementing the amended legislation once it comes into force.

Having considered Government’s response to their own consultation we feel there are two issues that must be drawn to the attention of the Committee. The first will no doubt be familiar to the Committee which is COSLA’s concern over the rejection of recommendation 20 from the Commission on the Delivery of Rural Education’s final report. At the request of our Convention I have recently written to the Cabinet Secretary on this subject, to point out that local authorities are neither the enemy of educational improvement nor the economic or social wellbeing of rural communities. Quite the reverse in fact. It is our view that it is possible to be both firm supporters of improving standards within education, while at the same time wanting to present communities with an honest, balanced and realistic appraisal of what is possible within existing resources. That is in essence what recommendation 20 is about.

COSLA has been an active participant in the debate on school closure for many years. We helped develop the 2010 Act and recognised that it was a pragmatic attempt to balance the Government’s desire to have a presumption against rural school closure with the reality of service planning and delivery at the local level. The 2010 Act has been proved not to be a lasting success, not because a lack of careful crafting but because it failed to provide the framework that allowed for an honest, balanced and realistic appraisal of how educational improvement is delivered within existing resources.
Our concern is that by failing to implement recommendation 20 from the Commission’s report we will make the same mistake as happened in 2010. We want local authorities to be able to say to communities, at the earliest possible opportunity, that there are a number of competing educational, financial and community factors which influence the viability of the school estate across a local authority’s area. The Commission recognised that in the real world educational benefit is not a clear cut concept, but one where educational differences between schools are often “more marginal than decisive”.

Local authorities do not consult on closing a school lightly, and are not in the business of closing schools where to do so would clearly harm the education of children. The Commission’s report certainly did not give a green light to closing schools on the whim of the authority, but set out the need for balanced decision making that properly weighed up all the relevant factors.

The Commission has produced a balanced report which COSLA welcomed and accepted in full. We have made clear that there are recommendations within the report which are not consistent with some of our long held views, but our members were initially able to put aside natural reservations about some of Commission’s findings in the belief that the entire report represented a package which could help lessen the division which I referred to at the start of this letter.

By not implementing recommendation 20 the Government has altered the balance brought in by the Commission, and we are now concerned it will be actually far harder for local authorities to take necessary decisions on the school estate. One area that now particularly concerns our members is the proposal for a five year moratorium following a decision not to close a school, or the decision being reversed by the proposed review panel. It could be argued that Commission had two broad aims - one to get to the bottom of why school closures had become so divisive, and two to improve the consultation and decision making process in a way that helped resolve this problem. The moratorium clearly fits within this second aim, but it has now been separated from the corresponding measures to solve the root causes of communities concerns. As a result we are worried that councils facing the need to review the school estate will still be forced as a result of the law to overplay the importance of educational benefit statements (even though real differences between schools affected are marginal as has been discussed) and downplay the financial and community factors. Communities will rightly see through this, which will result in more over turned decision or proposals called in, which will then in turn mean no further proposals can be considered in ordinary circumstances for five years. In the meantime the challenge of maintaining a high quality education service within a fixed budged remains with the local authority.

COSLA’s members understand that the five year moratorium was a recommendation of the Commission, but with the whole report no longer being taken forward as a package, there is view that this is now too long a period, and a more realistic timeframe would be something like three years.

This takes me on to the second point which I would like to make about the Government’s proposed response, which I have also stressed to the Cabinet Secretary in writing. This is the impact that amended legislation could have on improving educational outcomes. Like all my fellow elected members I share a strong desire to see improvement in outcomes for all children, but especially those whose opportunities for success are blighted by social and family circumstances. However, we have a growing concern that local government’s ability to deliver on this goal will be constrained the tightening of legislation around school closure consultations. The quality of education is determined by much more than simply the number of schools maintained in any one area, yet with so much resource locked up in infrastructure there is a genuine worry from our members that we are at risk of putting the protection of school buildings before pupils’ education.
The Commission’s report was far from being a pro-local government document. However, it was a report that we could work with. The concern of our members is that the proposals to amend the 2010 Act do not have embrace all that the Commission was trying to achieve and because of this local government’s job will be made all the harder.

The report from the Commission was our best opportunity in many years to resolve the division that has developed around school closure consultations. The opportunity has still not been completely lost but it is now the responsibility of Parliament to consider whether the balance sought by the Commission in its report can be restored.

Yours sincerely

Cllr Douglas Chapman
COSLA Education, Children and Young People Spokesperson
Children and Young People (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 3 Schedule 1
- Sections 4 to 30 Schedule 2
- Sections 31 to 50 Schedule 3
- Sections 51 to 76 Schedule 4
- Sections 77 to 80 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

Liam McArthur

119 In section 1, page 1, line 9, at end insert—

(A1) The Scottish Ministers must, when exercising any of their functions, have due regard to the UNCRC requirements.

Liam McArthur

190 In section 1, page 1, line 9, at end insert—

(A2) The Scottish Ministers must, when exercising any function—

(a) treat the best interests of any children likely to be affected by the exercise of the function as a key consideration, and

(b) give such children an opportunity to express any views freely and give any such views due weight in accordance with the age and maturity of the child.

(A3) Subsection (A2) does not apply to the extent that Scottish Ministers are required by any enactment to consider the best interests of a child as the paramount or a primary consideration.

Siobhan McMahon

191 In section 1, page 1, line 13, after <requirements> insert <and the UNCRPD requirements>

Liam McArthur

120 In section 1, page 1, line 19, at end insert—

(A) how they have complied with the duty under subsection (A1),

Siobhan McMahon

192 In section 1, page 1, line 21, after <requirements> insert <and the UNCRPD requirements>
In section 1, page 1, line 22, after <done> insert <in that period>.

In section 1, page 1, line 22, at end insert <, and

(c) their plans until the end of the next 3 year period—
   (i) to take steps to secure better or further effect in Scotland of the UNCRC requirements, and
   (ii) to do things in pursuance of subsection (2).

In preparing such a report the Scottish Ministers must take such steps as they consider appropriate to obtain the views of children on what their plans for the purposes of subsection (3)(c) should be.

In preparing a report under subsection (3), the Scottish Ministers must consult—

(a) the persons listed, or within a description listed, in schedule 1,
(b) voluntary organisations whose activities include the provision of services to children,
(c) such other persons as they consider appropriate.

In section 1, page 2, line 2, after <it> insert <, and

(a) a child friendly version of it,

The Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the findings and any recommendations contained in the report laid before the Scottish Parliament under subsection (3).

After section 1

After section 1, insert—

<Children’s rights impact assessment

(1) The Scottish Ministers must prepare and publish an assessment of the impact on the rights of children (“a children’s rights impact assessment”) in relation to every Bill introduced in the Scottish Parliament by a member of the Scottish Government.
(2) A children’s rights impact assessment under subsection (1) must be laid in the Scottish Parliament before the introduction of the Bill to which it relates.

(3) The Scottish Ministers may prepare and publish a children’s rights impact assessment in relation to—
   (a) any subordinate legislation laid by virtue of an enactment introduced prior to the commencement of this section,
   (b) any other subordinate legislation where the Scottish Ministers or the Scottish Parliament consider that the children’s rights impact assessment of the Bill under subsection (1) by virtue of which the subordinate legislation is laid was unsatisfactory.

(4) A children’s rights impact assessment under subsection (3) must be laid in the Parliament before the laying of the subordinate legislation to which it relates.

(5) In preparing a children’s rights impact assessment under subsection (1) or (3) the Scottish Ministers must consult—
   (a) children,
   (b) such other persons as they consider appropriate.

(6) A children’s rights impact assessment under subsection (1) or (3) must contain—
   (a) information on the impact of the legislation or subordinate legislation on children,
   (b) information on how the legislation or subordinate legislation might secure better or further effect in Scotland of the UNCRC requirements,
   (c) the views of children on the legislation or subordinate legislation,
   (d) such other information as the Scottish Ministers consider appropriate.

(7) The Scottish Ministers may by order specify further documents in relation to which a children’s rights impact assessment must or may be required.

Neil Bibby

195 After section 1, insert—

< Duties of Scottish Ministers: implementation scheme

(1) The Scottish Ministers must establish a scheme (“the implementation scheme”) setting out the arrangements they have made, and any arrangements they propose to make, for the purposes of—
   (a) complying with their duties under section 1,
   (b) ensuring that UNCRC requirements are implemented in Scotland.

(2) The implementation scheme may—
   (a) specify the matters that must be included in reports made under section 1(3),
   (b) include such other matters as the Scottish Ministers consider appropriate.

(3) The Scottish Ministers—
   (a) must, within six months of the United Nations Committee on the Rights of the Child (“the Committee”) making a recommendation under Article 45(d) of the UNCRC based on a United Kingdom report, consider whether to revise or remake the implementation scheme in light of such recommendation,
(b) must, at the end of each 3 year period after it first establishes the implementation scheme, remake the scheme, and
(c) may, at any other time, revise or remake the implementation scheme.

(4) In establishing, revising or remaking the implementation scheme, the Scottish Ministers must have regard to—
   (a) any report of the Committee under Article 44(5) or study recommended by the Committee under Article 45(c),
   (b) any other reports or documents, suggestions or general recommendations relating to the implementation of UNCRC requirements by the United Kingdom, and
   (c) such other matters as they consider appropriate.

(5) Before establishing, remaking or revising the implementation scheme, the Scottish Ministers must consult—
   (a) children,
   (b) the Commissioner for Children and Young People in Scotland,
   (c) such other person or bodies they consider appropriate.

(6) The Scottish Ministers must lay the implementation strategy before Parliament as soon as practicable after it is—
   (a) first established,
   (b) revised, or
   (c) remade.

(7) The Scottish Ministers must publish the implementation scheme (in such manner as they consider appropriate) as soon as practicable after it is—
   (a) first established,
   (b) revised, or
   (c) remade.

Section 2

Liam McArthur

123 In section 2, page 2, line 4, at end insert—
   <(A1) An authority to which this section applies must, when exercising any of the authority’s functions, have due regard to the UNCRC requirements.>

Liam McArthur

196 In section 2, page 2, line 4, at end insert—
   <(A2) An authority to which this section applies must, when exercising any function—
      (a) treat the best interests of any children likely to be affected by the exercise of the function as a key consideration, and
      (b) give such children an opportunity to express any views freely and give any such views due weight in accordance with the age and maturity of the child.>
(A3) Subsection (A2) does not apply to the extent that an authority to which this section applies is required by any enactment to consider the best interests of a child as the paramount or a primary consideration.

Liam McArthur

124 In section 2, page 2, line 6, after <appropriate)> insert—
   <(  )>

Liam McArthur

125 In section 2, page 2, line 7, after <of> insert—
   <( ) how it has complied with the duty under subsection (A1), and
   ( )>

Siobhan McMahon

197 In section 2, page 2, line 8, at end insert <and the UNCRPD requirements>

Liam McArthur

126 In section 2, page 2, line 8, at end insert <, and
   ( ) a child friendly version of that report.>

Mary Fee

198 In section 2, page 2, line 8, at end insert—
   <( ) A report published under subsection (1) must include information about the steps taken by the authority to address the wellbeing needs of children affected by parental imprisonment.>

Section 3

Aileen Campbell

89 In section 3, page 2, line 21, leave out <modifying> and insert <varying>

Section 4

Siobhan McMahon

199 In section 4, page 3, line 13, at end insert <, and
   ( ) Article 7 of the UNCRPD,>

Siobhan McMahon

200 In section 4, page 3, line 25, at end insert <,
“the UNC
RP

“the UNCRPD requirements” means the rights and obligations set out in Article 7 of the UNCRPD.>

Siobhan McMahon
201* In section 4, page 3, line 26, after <document> insert <or to Article 7 of the UNCRPD>

Siobhan McMahon
202 In section 4, page 3, line 27, after <document> insert <or Article>

Section 5

Liz Smith
1 In section 5, page 4, line 26, at end insert <, and

( ) that the investigation would not duplicate work that is properly the function of another person.>

Liz Smith
2 In section 5, page 4, line 27, after <an> insert <individual>

Liz Smith
3* In section 5, page 4, line 27, after second <Commissioner> insert—

( ) having taken reasonable steps to establish what processes exist for making complaints about, or appeals against, the decision or action in question to the service provider or any other body whose functions include dealing with such complaints or appeals, is satisfied on reasonable grounds that any such processes have been exhausted, and

( )>

Liz Smith
4 In section 5, page 4, line 30, after <not> insert <otherwise>

Liz Smith
5 In section 5, page 4, line 38, at end insert—

<( ) The steps authorised by subsection (5) do not include the Commissioner acting as a mediator.”.>
Section 7

Jayne Baxter

165 In section 7, page 6, line 13, at end insert—

<“Child Poverty Strategy for Scotland” means the Scottish strategy which the Scottish Ministers are required to publish and lay before the Scottish Parliament under section 11 of the Child Poverty Act 2010,> 

Liam McArthur
Supported by: Jayne Baxter

166 In section 7, page 6, line 17, after <generally> insert <(including infants and children aged under 3),>

Liam McArthur
Supported by: Jayne Baxter

167 In section 7, page 6, line 19, after second <a> insert <suspected or confirmed>

Siobhan McMahon

203 In section 7, page 6, line 19, at end insert <, or

( ) families of children mentioned in paragraph (b).>

Aileen Campbell

90 In section 7, page 6, leave out line 26

Mary Fee

204 In section 7, page 6, line 26, at end insert—

<( ) the Scottish Prison Service,>

Siobhan McMahon

205 In section 7, page 6, line 28, after <service> insert <or a young persons’ service>

Liz Smith

52 In section 7, page 6, line 29, leave out <wellbeing> and insert <welfare>

Siobhan McMahon

206 In section 7, page 6, line 29, at end insert <or young persons>

Siobhan McMahon

207 In section 7, page 6, line 31, at end insert <.

“young person” means a person who has attained the age of 18 years but who has not attained the age of 25 years and—
(a) has needs of a particular type (such as needs arising from having been a
looked after child, needs arising from a disability or a need for additional
support in learning), or
(b) is of a description specified by order by the Scottish Ministers,

“young persons’ service” means any service provided in the area of a local
authority by a person mentioned in subsection (2) to young persons, whether or
not the service is also provided to persons other than young persons.

Siobhan McMahon
208 In section 7, page 6, line 32, after first <service”> insert <, “young persons’ service”>

Aileen Campbell
91 In section 7, page 6, line 36, at end insert—

<(  ) the Scottish Ministers (but only in relation to a service provided by them in
exercise of their functions under the Prisons (Scotland) Act 1989).>

Siobhan McMahon
209 In section 7, page 6, line 39, after first <service”> insert <, “young persons’ service”>

Siobhan McMahon
210 In section 7, page 7, line 1, leave out <either> and insert <any>

Section 8

Mary Fee
211 In section 8, page 7, line 17, at end insert—

<(  ) A children’s services plan prepared under subsection (1) must give details of the support
services provided by the local authority and each relevant health board to children
affected by parental imprisonment. >

Siobhan McMahon
212* In section 8, page 7, line 25, after <services,> insert—

<(  ) young persons’ services to young persons,>

Section 9

Siobhan McMahon
213 In section 9, page 7, line 31, after <services> insert <and young persons’ services>

Liam McArthur
Supported by: Jayne Baxter
168 In section 9, page 7, line 31, at end insert—
<( ) prevents harm to children occurring in the first place.>

**Liz Smith**

53 In section 9, page 7, line 32, leave out <wellbeing> and insert <welfare>

**Siobhan McMahon**

214 In section 9, page 7, line 32, after <children> insert <and young persons>

**Mary Fee**

215 In section 9, page 7, line 33, at end insert <including children affected by parental imprisonment,>

**Neil Bibby**

169 In section 9, page 7, line 33, at end insert—

<( ) secures better or further effect in the area concerned of the UN CRC requirements.>

**Jayne Baxter**

170 In section 9, page 7, line 33, at end insert—

<( ) best supports, promotes and delivers the aims and targets of the Child Poverty Strategy for Scotland.>

**Joan McAlpine**

171 In section 9, page 7, line 33, at end insert—

<( ) ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising.>

**Mark McDonald**

216 In section 9, page 7, line 33, at end insert—

<( ) optimises the speech, language and communication development of children in the area concerned.>

**Jayne Baxter**

217 In section 9, page 7, line 34, leave out <recipients> and insert <children and their parents or carers>

**Siobhan McMahon**

218 In section 9, page 7, line 35, at end insert—

<( ) that young persons’ transitions, on attaining the age of 18, from children’s services to young persons’ services are planned sufficiently well in advance,>
Neil Bibby

172 In section 9, page 8, line 2, after <concerned> insert—

< ( ) >

Liam McArthur  
Supported by: Jayne Baxter

173 In section 9, page 8, line 2, after <concerned> insert—

< ( ) prevents harm to children occurring in the first place, and

( ) >

Mark McDonald

219 In section 9, page 8, line 2, after <concerned> insert—

< ( ) best optimises the speech, language and communication development of every child in the area concerned,

( ) >

Liz Smith

54 In section 9, page 8, line 3, leave out <wellbeing> and insert <welfare>

Siobhan McMahon

220 In section 9, page 8, line 3, after <children> insert <and young persons>

Neil Bibby

174 In section 9, page 8, line 4, at end insert <, and

( ) secures better or further effect in the area concerned of the UNCRC requirements.>

Neil Bibby

175 In section 9, page 8, line 4, at end insert—

< ( ) In this section, “the UNCRC requirements” has the meaning given by section 4(1).>

Section 10

Aileen Campbell

92 In section 10, page 8, line 8, after <providers> insert <and the Scottish Ministers>

Liam McArthur

176 In section 10, page 8, line 10, after second <plan> insert—

< ( ) take such steps as they consider appropriate to obtain the views of children,>
Mary Fee
221 In section 10, page 8, line 12, at end insert—

<( ) children, including children affected by parental imprisonment.>

Jayne Baxter
222 In section 10, page 8, line 12, at end insert—

<( ) such persons as provide services to support the speech, language and communication needs of children in the area of the local authority.>

Jayne Baxter
223 In section 10, page 8, line 14, after <authority,> insert—

<( ) children and young people, and parents and carers of children, in the area of the local authority.>

Siobhan McMahon
224 In section 10, page 8, line 19, after first <service> insert <, young persons’ service>

Aileen Campbell
93 In section 10, page 8, line 21, leave out <or>

Aileen Campbell
94 In section 10, page 8, line 21, after <providers> insert <or the Scottish Ministers>

Siobhan McMahon
225 In section 10, page 8, line 22, after first <service> insert <, a young persons’ service>

Aileen Campbell
95 In section 10, page 8, leave out line 26

Aileen Campbell
96 In section 10, page 8, line 28, after <is> insert <and the Scottish Ministers are>

Aileen Campbell
97 In section 10, page 8, line 35, leave out subsections (7) and (8) and insert—

<(7) As soon as reasonably practicable after a children’s services plan has been prepared, the local authority and each relevant health board must—

(a) send a copy to—

(i) the Scottish Ministers, and

(ii) each of the other service providers, and>
(b) publish it (in such manner as the local authority and each relevant health board consider appropriate).

(8) Where the Scottish Ministers or any of the other service providers disagrees with the plan in relation to any matter concerning the provision of a service by them, they must prepare and publish (in such manner as they consider appropriate)—
(a) a notice of the matters in relation to which they disagree, and
(b) a statement of their reasons for disagreeing.

Section 12

Siobhan McMahon

226 In section 12, page 9, line 14, after first <services> insert <, young persons’ services>

Liz Smith

55 In section 12, page 9, line 17, leave out <wellbeing> and insert <welfare>

Siobhan McMahon

227 In section 12, page 9, line 17, at end insert <or young person>

Aileen Campbell

98 Leave out section 12 and insert—

<Implementation of children’s services plan>

(1) During the period to which a children’s services plan relates, the persons mentioned in subsection (2) must, so far as reasonably practicable, provide children’s services and relevant services in the area of the local authority in accordance with the plan.

(2) Those persons are—
(a) the local authority,
(b) each relevant health board,
(c) the Scottish Ministers,
(d) the other service providers.

(3) The duty in subsection (1) to provide services in accordance with the plan—
(a) does not apply to the extent that the person providing the service considers that to comply with it would adversely affect the wellbeing of a child,
(b) does not apply in relation to the Scottish Ministers or the other service providers to the extent of any matter within a notice published by them under section 10(8) in relation to the plan.

Section 13

Siobhan McMahon

228 In section 13, page 9, line 22, after first <services> insert <, young persons’ services>
Mary Fee
229 In section 13, page 9, line 23, after <plan,> insert <including services to support children affected by parental imprisonment,>

Liz Smith
56 In section 13, page 9, line 26, leave out <wellbeing> and insert <welfare>

Siobhan McMahon
230 In section 13, page 9, line 26, after <children> insert <and young persons>

Jayne Baxter
231 In section 13, page 9, line 27, at end insert—

<(  ) the level, quality, improvement and integration of services in line with the reasonable expectations of children and young people, and their parents and carers, in the area of the local authority, demonstrated through consultation.>

Section 14

Aileen Campbell
99 In section 14, page 10, line 1, after <providers> insert <or the Scottish Ministers>

Siobhan McMahon
232 In section 14, page 10, line 2, after first <service> insert <, a young persons’ service>

Aileen Campbell
100 In section 14, page 10, line 3, leave out <other service provider> and insert <person>

Liz Smith
127 In section 14, page 10, line 4, leave out <10(1)(b)> and insert <10(1)(b)(ii) or (iii)>

Section 15

Aileen Campbell
101 In section 15, page 10, line 10, at beginning insert <A person or>

Aileen Campbell
102 In section 15, page 10, line 11, leave out second <the>

Aileen Campbell
103 In section 15, page 10, line 11, leave out <on them>
Mary Fee

233 In section 15, page 10, line 15, at end insert—

<(  ) Guidance may be issued on how the persons mentioned in subsection (2) are to exercise their functions in relation to children affected by parental imprisonment.> 

Mark McDonald

234 In section 15, page 10, line 15, at end insert—

<(  ) Guidance issued under subsection (1) must include guidance on—

(a) how the persons mentioned in subsection (2) can optimise the speech, language and communication development of children and young people,

(b) the use of inclusive communication standards by the persons mentioned in subsection (2) in exercising their functions under this Act.> 

Aileen Campbell

104 In section 15, page 10, line 16, leave out subsections (3) and (4) 

Liz Smith

128 In section 15, page 10, line 20, at end insert <, 

(  ) such organisations as appear to fall within section 10(2) and which may have an interest in the guidance, and

(  ) such other persons as they consider appropriate.> 

Section 16

Aileen Campbell

105 In section 16, page 10, line 22, at beginning insert <A person or> 

Aileen Campbell

106 In section 16, page 10, line 23, leave out second <the> 

Mary Fee

235 In section 16, page 10, line 27, at end insert—

<(  ) Directions may be issued on the need for persons mentioned in subsection (2) to improve outcomes for children affected by parental imprisonment.> 

Mark McDonald

236 In section 16, page 10, line 27, at end insert—

<(  ) Directions issued under subsection (1) must in particular include directions on the strategic action the persons mentioned in subsection (2) are to take to optimise the speech, language and communication development of children and young people.>
Aileen Campbell
107 In section 16, page 10, line 28, leave out subsections (3) and (4)

Section 17

Aileen Campbell
108 In section 17, page 10, line 36, after <Part> insert <(other than the function of complying with section 12)>

Aileen Campbell
109 In section 17, page 11, leave out lines 5 and 6 and insert—

<(  ) the local authority,
(  ) any relevant health board,
(  ) another local authority or health board.>

Aileen Campbell
110 In section 17, page 11, line 16, leave out subsections (6) to (9) and insert—

<(  ) The persons to whom a direction under subsection (2) is addressed must comply with the direction.>

After section 18

Liam McArthur
237 After section 18, insert—

<PART>

TRANSITION FROM CHILDREN’S SERVICES TO OTHER SERVICES AT AGE 18

Duty to plan for transition from children’s services to other services at age 18

(1) This section applies where—

(a) a child is provided with a children’s service or a related service by virtue of the child having a disability or a need for additional support in learning, and
(b) that disability or need is likely to mean that the child would benefit from the continued provision of services relating to the disability or need after the child attains the age of 18.

(2) The local authority for the area in which the child resides must prepare and, no later than 6 months before the child’s eighteenth birthday, finalise a transition plan for the child which identifies—

(a) services the provision of which would benefit the child after the child attains the age of 18, and
(b) the persons who are to provide such services to the child.

(3) In preparing a transition plan under subsection (2) a local authority must—

(a) ascertain and have regard to the views of the child, and
(b) consult the persons mentioned in subsection (2)(b).

(4) In this section, “children’s service” and “related service” have the same meanings as in Part 3.

Section 19

Liz Smith
6 In section 19, page 12, line 7, leave out <or young person>

Jayne Baxter
177 In section 19, page 12, line 13, leave out from <or> to <provider,> in line 15

Liz Smith
7 In section 19, page 12, line 15, leave out <and> and insert—
    <( ) in the case of a named person service of the type mentioned in section 20(1), the
    individual—
    (i) is a registered midwife, or
    (ii) is a registered nurse who is a health visitor,
    and meets such other requirements as to training, qualifications, experience or
    position as may be specified by the Scottish Ministers by order, and
    ( ) in any other case,>

Liz Smith
8 In section 19, page 12, line 19, leave out <or young person>

Aileen Campbell
129 In section 19, page 12, line 21, at beginning insert <subject to subsection (5A),>

Jayne Baxter
178 In section 19, page 12, line 22, after <to> insert <prevent harm to and>

Liz Smith
57 In section 19, page 12, line 22, leave out <wellbeing> and insert <welfare>

Liz Smith
9 In section 19, page 12, line 22, leave out <or young person>

Liz Smith
10 In section 19, page 12, line 24, leave out <or young person>
In section 19, page 12, line 25, leave out <or young person>.

In section 19, page 12, line 26, leave out from first <or> to second <person> and insert <, or a parent of the child>.

In section 19, page 12, line 27, after <service> insert <(including services to support the speech, language and communication needs of the child or young person)>.

In section 19, page 12, line 28, leave out <or young person>.

In section 19, page 12, line 31, leave out <or young person>.

In section 19, page 12, line 31, at end insert—

<(5A) The function in subsection (5)(a) does not apply in relation to a matter arising at a time when the child or young person is, as a member of any of the reserve forces, subject to service law.>

In section 21, page 13, line 14, after <each> insert <vulnerable>.

In section 21, page 13, line 15, after <child,> insert—

<(  ) an opted-out child,>

In section 21, page 13, line 16, leave out <or (3)>.

In section 21, page 13, line 16, at end insert—

<(  ) A “vulnerable child” is a child—

(a) who is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of care and support services,
(b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of care or support services,

(c) who has a physical impairment or mental disorder,

(d) who is looked after by a local authority in terms of section 17(6) of the 1995 Act.

Liz Smith

18 In section 21, page 13, line 17, after <A> insert <vulnerable>

Aileen Campbell

131 In section 21, page 13, line 22, at end insert <, or

   (d) in legal custody or subject to temporary release from such custody.

(2A) For the purposes of subsection (2)(d), a child is in legal custody—

   (a) while confined in or being taken to or from any penal institution in which the child may be lawfully confined,

   (b) while working, or for any other reason, outside the penal institution in the custody or under the control of an officer of the institution, a constable or a police custody and security officer,

   (c) while being taken to any place to which the child is required or authorised to be taken by virtue of the Prisons (Scotland) Act 1989, or

   (d) while kept in custody in pursuance of such a requirement or authorisation.

Liz Smith

19 In section 21, page 13, line 23, leave out subsection (3)

Liz Smith

20 In section 21, page 13, line 24, after <a> insert <vulnerable>

Liz Smith

59 In section 21, page 13, line 24, after <(2)(a)> insert <and is not an opted-out child,>

Liz Smith

21 In section 21, page 13, line 27, after <a> insert <vulnerable>

Liz Smith

60 In section 21, page 13, line 27, after <(c)> insert <and is not an opted-out child,>

Aileen Campbell

132 In section 21, page 13, line 29, at end insert—
( ) During any period when a child falls within subsection (2)(d), the Scottish Ministers are to make arrangements for the provision of a named person service in relation to the child.

Jayne Baxter

179 In section 21, page 13, line 29, at end insert—

( ) A local authority is to make arrangements for the provision of a named person service in relation to each child residing in its area including a pupil who is expelled or, for the time being, excluded from school.

Section 22

Aileen Campbell

133 In section 22, page 13, line 33, leave out from <falls> to end of line 34

Aileen Campbell

134 In section 22, page 13, line 37, leave out subsection (4)

Aileen Campbell

135 In section 22, page 14, line 5, leave out <in any other case> and insert <where the young person is a pupil at a grant-aided school or an independent school>

Liz Smith

22 Leave out section 22

After section 22

Liz Smith

61 After section 22, insert—

Request that named person service is not provided

(1) A parent of a child other than a pre-school child may request that a named person service is not provided in relation to the child.

(2) A request under subsection (1)—

(a) must be made to the service provider in relation to the child, and

(b) may be made at any time until the child attains the age of 16 years.

(3) In considering whether to approve or refuse a request made under subsection (1), the service provider must—

(a) so far as reasonably practicable, ascertain and have regard to the views of the child,

(b) take into account any factors set out in an order under subsection (9)(a), and

(c) comply with any provision made under subsection (9)(b).
(4) In having regard to the views of the child, the service provider is to take account of the child’s age and maturity.

(5) If a request under subsection (1) is approved, no person has the function of providing a named person service in relation to the child during the period for which the request has effect and the child has no named person during that period.

(6) A request under subsection (1) has effect—
   (a) from the time the request is approved until whichever of the following occurs first—
      (i) the request is cancelled under subsection (8), or
      (ii) the child attains the age of 16 years, and
   (b) regardless of any change in the opted-out service provider in relation to the child.

(7) A child in respect of whom a request under subsection (1) has effect is referred to in this Part as an “opted-out child”.

(8) A request under subsection (1) which has effect—
   (a) may be cancelled at any time by—
      (i) the parent of the opted-out child,
      (ii) in a case where the opted-out service provider in relation to the child is satisfied that the child is of sufficient maturity to request a cancellation, the opted-out child,
   (b) must be cancelled by the opted-out service provider in relation to the child in circumstances set out in an order under subsection (9)(c).

(9) The Scottish Ministers may by order make provision about—
   (a) factors to be taken into account by service providers in considering requests under subsection (1),
   (b) circumstances in which such requests must or must not be granted by service providers,
   (c) circumstances in which a request under subsection (1) which has effect must be cancelled by the opted-out service provider in relation to a child,
   (d) how a request under subsection (1) or a request for cancellation of such a request which has effect may be made,
   (e) how and to whom the approval or refusal of a request under subsection (1) or the cancellation of such a request which has effect may be notified,
   (f) how a refusal of a request under subsection (1) or a cancellation of such a request which has effect under subsection (8)(b) may be appealed against,
   (g) such other matters relating to requests under subsection (1) as the Scottish Ministers consider appropriate.

(10) The fact that a child is an opted-out child does not affect any power or duty of any person to provide any service (other than a named person service) or take any action in relation to the child.

(11) In subsections (6)(b), (8) and (9)(c), the “opted-out service provider” means the person which would, but for the fact that the child is an opted-out child, have the function of providing a named person service in relation to the child.
Section 23

**Liz Smith**
23 In section 23, page 14, line 8, leave out <or young person>

**Liz Smith**
24 In section 23, page 14, line 12, leave out <or young person>

**Liz Smith**
25 In section 23, page 14, line 14, leave out <or young person>

**Liz Smith**
26 In section 23, page 14, line 16, leave out <or young person>

**Liz Smith**
27 In section 23, page 14, line 17, leave out <or young person>

**Aileen Campbell**
136 In section 23, page 14, line 22, leave out <might> and insert <is likely to>

**Liz Smith**
28 In section 23, page 14, line 25, leave out <or young person>

**Aileen Campbell**
137 In section 23, page 14, line 29, at end insert—

<\(4\) In considering for the purpose of subsection (3)(b) whether information ought to be provided, the outgoing service provider is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(5) In having regard to the views of a child under subsection (4), an outgoing service provider is to take account of the child’s age and maturity.

(6) The outgoing service provider may decide for the purpose of subsection (3)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.

(7) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.>

**Liz Smith**
62 In section 23, page 14, line 29, at end insert—

<\(4\) This section also applies where a person ceases to be the opted-out service provider in relation to a child.
The person ("the outgoing opted-out service provider") must as soon as is reasonably practicable—

(a) inform any other person which has become or which it considers may be the person who would, but for the fact that the child is an opted-out child, be the service provider in relation to the child ("the incoming opted-out service provider") that the outgoing opted-out service provider has ceased to be opted-out service provider in relation to the child, and

(b) comply with subsection (2)(b).

Where subsections (2)(b) and (3) apply by virtue of subsections (4) and (5)—

(a) the references in subsections (2)(b) and (3) to the outgoing service provider and the incoming service provider are to be read as references to the outgoing opted-out service provider and the incoming opted-out service provider respectively, and

(b) the reference in subsection (3)(a)(i) to the functions of a service provider under this Part includes reference to the functions of an opted-out service provider under section (Request that named person service is not provided).>
Section 25

Liz Smith
32 In section 25, page 15, line 8, leave out <or young person>

Liz Smith
33 In section 25, page 15, line 10, leave out <or young person>

Section 26

Liz Smith
34 In section 26, page 15, line 22, leave out <or young person>

Aileen Campbell
139 In section 26, page 15, line 25, leave out <might> and insert <is likely to>

Liz Smith
35 In section 26, page 15, line 26, leave out <or young person>

Liz Smith
36 In section 26, page 15, line 28, leave out <or young person>

Liz Smith
37 In section 26, page 15, line 31, leave out <or young person>

Aileen Campbell
140 In section 26, page 15, line 35, leave out <might> and insert <is likely to>

Liz Smith
64 In section 26, page 15, line 36, leave out <wellbeing> and insert <welfare>

Liz Smith
38 In section 26, page 15, line 36, leave out <or young person>

Aileen Campbell
141 In section 26, page 15, line 40, at end insert—

<(4A) In considering for the purpose of subsection (2)(b) or (4)(b) whether information ought to be provided, the information holder is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(4B) In having regard to the views of a child under subsection (4A), an information holder is to take account of the child’s age and maturity.>
(4C) The information holder may decide for the purpose of subsection (2)(b) or (4)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.

Liz Smith
39 In section 26, page 16, line 1, leave out <or young person>

Aileen Campbell
142 In section 26, page 16, line 8, at end insert—

<( ) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.>

Liz Smith
180 Leave out section 26

Section 27

Aileen Campbell
143 In section 27, page 16, line 10, leave out subsection (1)

Aileen Campbell
144 In section 27, page 16, line 12, leave out <Subsection (3)> and insert <This section>

Aileen Campbell
145 In section 27, page 16, line 13, leave out <subsection (1)> and insert <this Part>

Liz Smith
181 Leave out section 27

Section 28

Aileen Campbell
146 In section 28, page 16, line 21, leave out <Service providers> and insert <A person mentioned in subsection (1A)>

Aileen Campbell
147 In section 28, page 16, line 22, leave out <exercising functions under this Part> and insert <the exercise of functions conferred by this Part.>

(1A) Those persons are—

(a) a local authority,
(b) a health board,
(c) a directing authority,
(d) a relevant authority.

Jayne Baxter

182 In section 28, page 16, line 22, at end insert—

<(  ) Guidance may be issued on—
   (a) the role of the named person,
   (b) the role of the lead professional for children’s services in each local authority area, and
   (c) the interface between these roles.>

Mary Fee

239 In section 28, page 16, line 22, at end insert—

<(  ) Guidance may be issued on how the persons mentioned in subsection (1A) should exercise their functions in relation to children affected by parental imprisonment.>

Jayne Baxter

240 In section 28, page 16, line 22, at end insert—

<(  ) Guidance issued under subsection (1) must include guidance on—
   (a) how service providers and named persons are to implement inclusive language communication standards, and
   (b) the taking (or supporting) by service providers and named persons of action to optimise the speech, language and communication development of children and young people.>

Aileen Campbell

111 In section 28, page 16, line 23, leave out subsections (2) and (3)

Section 29

Aileen Campbell

148 In section 29, page 16, line 36, at end insert—

<(  ) a relevant authority.>

Mary Fee

241 In section 29, page 16, line 36, at end insert—

<(  ) Directions may be issued on how the persons mentioned in subsections (2)(a) and (b) are to exercise their functions in relation to children affected by parental imprisonment.>
Aileen Campbell

112 In section 29, page 16, line 37, leave out subsections (3) and (4)

Jayne Baxter

242 In section 29, page 16, line 37, at end insert—

Directions issued under subsection (1) must in particular include directions on—

(a) how service providers and named persons are to implement inclusive language communication standards, and

(b) the taking (or supporting) by service providers and named persons of action to optimise the speech, language and communication development of children and young people.

Section 30

Liz Smith

40 In section 30, page 17, line 6, at end insert—

“child” means a person who has not attained the age of 16 years,

Aileen Campbell

149 In section 30, page 17, line 6, at end insert—

“constable” has the same meaning as in section 13(b) of the Prisons (Scotland) Act 1989,

Aileen Campbell

150 In section 30, page 17, line 8, at end insert, each of the following

Liz Smith

65 In section 30, page 17, line 21, at end insert—

“opted-out child” has the meaning given by section (Request that named person service is not provided)(7),

“opted-out service provider” has the meaning given by section (Request that named person service is not provided)(11),

Aileen Campbell

151 In section 30, page 17, line 22, at end insert—

“penal institution” means any—

(a) prison (other than a naval, military or air force prison),

(b) remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or

(c) young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),
Liz Smith

41 In section 30, page 17, leave out lines 24 and 25

Aileen Campbell

152 In section 30, page 17, line 27, at end insert—

<“reserve forces” has the meaning given by section 374 of the Armed Forces Act 2006,>

Aileen Campbell

153 In section 30, page 17, line 33, at end insert <, each of the following>

Aileen Campbell

154 In section 30, page 17, line 36, at end insert <, and

( ) the Scottish Ministers,>

Liz Smith

42 In section 30, page 17, line 37, leave out <or young person>

Aileen Campbell

155 In section 30, page 17, line 37, leave out from <health> to <providing> in line 38 and insert <person which has the function of making arrangements for the provision of>

Liz Smith

43 In section 30, page 17, line 39, leave out <or young person>

Aileen Campbell

156 In section 30, page 17, line 39, at end insert—

<“subject to service law” has the meaning given by section 374 of the Armed Forces Act 2006,>

Aileen Campbell

157 In section 30, page 17, line 39, at end insert—

<“temporary release” means release by virtue of rules made under section 39(6) of the Prisons (Scotland) Act 1989,>

Liz Smith

44 In section 30, page 18, leave out line 1
Schedule 2

Aileen Campbell

158 In schedule 2, page 42, line 27, leave out paragraph 1

Aileen Campbell

159 In schedule 2, page 42, line 31, at end insert—
   <The National Waiting Times Centre Board>

Aileen Campbell

160 In schedule 2, page 43, line 3, leave out paragraph 12

Aileen Campbell

161 In schedule 2, page 43, line 5, leave out paragraphs 14 and 15

Aileen Campbell

162 In schedule 2, page 43, line 7, leave out <or a “regional strategic body”>

Section 31

Liz Smith

66 In section 31, page 18, line 11, leave out <wellbeing> and insert <welfare>

Liz Smith

67 In section 31, page 18, line 13, leave out first <wellbeing> and insert <welfare>

Liz Smith

68 In section 31, page 18, line 13, leave out second <wellbeing> and insert <welfare>

Mark McDonald

243 In section 31, page 18, line 14, at end insert—
   <( ) A matter affecting a child’s wellbeing under subsection (2) includes matters in relation
   to a child’s speech, language and communication.>

Liz Smith

69 In section 31, page 18, line 15, leave out <wellbeing> and insert <welfare>

Liam McArthur

183 In section 31, page 18, line 24, leave out from first <to> to end of line 28 and insert—
   <( ) and taking account of the child’s age and maturity, to—>
(i) give the child an opportunity to indicate whether the child wishes to express the child’s views,

(ii) if the child wishes to do so, give the child an opportunity to express them, and

(iii) have regard to any views expressed by the child, and

( ) to ascertain and have regard to the views of the child’s parents.>

Jayne Baxter

244 In section 31, page 18, line 28, at end insert <and the child’s speech, language and communication needs>

Liz Smith

45 In section 31, page 18, line 28, at end insert—

<( ) The Scottish Ministers may by order make provision for the process for the resolution of disputes between the responsible authority and the child’s parents as regards the requirement for a child’s plan.>

Section 32

Liz Smith

70 In section 32, page 18, line 36, leave out <wellbeing> and insert <welfare>

Liz Smith

71 In section 32, page 19, line 3, leave out <wellbeing> and insert <welfare>

Section 33

Liz Smith

46 In section 33, page 19, line 25, at end insert—

<( ) The Scottish Ministers may by order make provision for a process for the resolution of disputes—

(a) between the responsible authority and the relevant authority as to—

(i) who is to take responsibility for preparing the child’s plan, and

(ii) the content of the child’s plan,

(b) between the authority preparing the child’s plan and the child’s parents on the content of the child’s plan, and

(c) on any other matters relating to the preparation of the child’s plan.>
Section 36

Liz Smith
72 In section 36, page 20, line 27, leave out <wellbeing> and insert <welfare>

Section 37

Liz Smith
73 In section 37, page 20, line 30, leave out <wellbeing> and insert <welfare>

Jayne Baxter
245 In section 37, page 20, line 31, at end insert—
   <( ) the speech, language and communication needs of the child have been addressed,
   and whether the child is receiving ongoing support to address those needs.>

Jayne Baxter
246 In section 37, page 21, line 5, at end insert <and the child’s speech, language and communication needs>

Liz Smith
74 In section 37, page 21, line 8, leave out <wellbeing> and insert <welfare>

Liz Smith
47 In section 37, page 21, line 20, at end insert—
   <( ) the process for resolving disputes as regards the management of a child’s plan.>

Section 38

Aileen Campbell
163 In section 38, page 21, line 37, leave out subsection (3) and insert—
   <( ) Other than in relation to a duty of confidentiality, subsection (1) does not permit or
   require the provision of information in breach of a prohibition or restriction on the
   disclosure of information arising by virtue of an enactment or rule of law.>

Aileen Campbell
164 In section 38, page 22, line 1, leave out <(3)> and insert <(1)>

Section 39

Mary Fee
247 In section 39, page 22, line 11, at end insert—
Guidance may be issued on how a child’s plan is to support a child affected by parental imprisonment.

Jayne Baxter

248 In section 39, page 22, line 11, at end insert—

<( ) Guidance issued under subsection (1) must include guidance on—

(a) how persons exercising a function under this Part (other than the function of complying with section 36) are to implement inclusive language standards, and

(b) the inclusion within a child’s plan by persons exercising a function under this Part (other than the function of complying with section 36) of action to optimise the speech, language and communication development of children and young people.>

Aileen Campbell

113 In section 39, page 22, line 12, leave out subsections (2) and (3)

Section 40

Mary Fee

249 In section 40, page 22, line 26, at end insert—

<( ) Directions may be issued on how a child’s plan is to support a child affected by parental imprisonment.>

Mark McDonald

250 In section 40, page 22, line 26, at end insert—

<( ) Directions issued under subsection (1) must in particular include directions on the strategic action the persons mentioned in subsection (2) are to take to optimise the speech, language and communication development of children and young people.>

Aileen Campbell

114 In section 40, page 22, line 27, leave out subsections (3) and (4)

Section 42

Mark McDonald

251 In section 42, page 23, line 19, after <development> insert <, including speech, language and communication development,>
Section 43

Liz Smith

48 In section 43, page 23, line 25, leave out from <under> to end of line 31 and insert <of pre-school age and has not commenced attendance at a primary school (other than at a nursery class in such a school),

( ) is under pre-school age but falls within subsection (3).

(2A) A child is of pre-school age from the school commencement date in the year in which, on the last day of February, the child was aged (or turned) 2 until the school commencement date two years later.

(2B) The Scottish Ministers may by order specify that a child—

(a) who—

(i) is under school age on the second school commencement date mentioned in subsection (2A),

(ii) is not commencing attendance at a primary school on that date (other than commencing or continuing attendance at a nursery class in such a school), and

(iii) meets such other criteria as may be specified in the order,

is, until the next school commencement date, to be regarded as an eligible pre-school child, or

(b) who is within such age range below pre-school age, or is of such other description, as may be specified in the order is to be regarded as an eligible pre-school child.

Neil Bibby

84 In section 43, page 23, line 32, after <and> insert—

<( ) the child>

Neil Bibby

85 In section 43, page 23, line 35, at end insert <,

( ) the child’s parent is or has been at any time since the child’s second birthday in receipt of a tax credit within the meaning of the Tax Credits Act 2002 (or any successor benefit or allowance).>

Neil Bibby

86 In section 43, page 23, line 35, at end insert <,

( ) the child—

(i) would, if the child was a pupil, qualify under or by virtue of section 53(3)(a) of the 1980 Act for the provision of free school lunches, or

(ii) the child has at any time since the child’s second birthday fallen within sub-paragraph (i).>
Liz Smith

49 In section 43, page 24, line 1, leave out <(2)(c)(ii) may provide that a child is to be> and insert <(2B) may provide that a child is to be regarded as>

Liz Smith

50 In section 43, page 24, line 3, at end insert—

<( ) In subsection (2A), “school commencement date” means the date fixed under section 32(1) of the 1980 Act by the local authority for the area in which the child resides.>

Section 45

Liz Smith

75 In section 45, page 24, line 20, leave out <wellbeing> and insert <welfare>

Liz Smith

76 In section 45, page 24, line 25, leave out <wellbeing> and insert <welfare>

Section 52

Liz Smith

77 In section 52, page 26, line 14, leave out <wellbeing> and insert <welfare>

Jayne Baxter

252 In section 52, page 26, line 16, after <needs> insert <, including any speech, language and communication development needs,>

Liz Smith

78 In section 52, page 26, line 20, leave out <wellbeing> and insert <welfare>

Jayne Baxter

253 In section 52, page 26, line 20, at end insert—

<( ) to optimise the speech, language and communication development of those children and young people to whom this Part applies,>

Section 54

Liz Smith

79 In section 54, page 27, line 4, leave out <wellbeing> and insert <welfare>
Section 57

Aileen Campbell

115 In section 57, page 28, line 9, leave out subsections (3) and (4)

Section 58

Aileen Campbell

116 In section 58, page 28, line 21, leave out subsections (2) and (3)

Section 61

Liam McArthur

184 In section 61, page 29, line 34, leave out <counselling> and insert <early intervention>

Liam McArthur

185 In section 61, page 29, line 36, at end insert—

<( ) Services which may be specified as early intervention services under subsection (1) include counselling and other forms of talking therapy.>

Liam McArthur

186 In section 61, page 30, line 10, leave out <counselling> and insert <early intervention>

Section 62

Liam McArthur

187 In section 62, page 30, line 18, leave out <counselling> and insert <early intervention>

Liam McArthur

188 In section 62, page 30, line 24, leave out <counselling> and insert <early intervention>

Liam McArthur

189 In section 62, page 30, line 27, leave out <counselling> and insert <early intervention>

Section 73

Liz Smith

80 Leave out section 73
After section 73

Jayne Baxter

254 After section 73, insert—

<National speech, language and communication strategy for children and young people

(1) The Scottish Ministers must, no later than one year after this section comes into force, lay a national speech, language and communication strategy for children and young people before the Scottish Parliament.

(2) The strategy must, in particular, set out—

(a) the Scottish Ministers objectives for speech, language and communication for children and young people,

(b) their proposals for meeting those objectives,

(c) the timescales over which those proposals and policies are expected to take effect.

(3) Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with—

(a) children and young people, including children and young people with speech, language and communication needs,

(b) the parents of children and young people with speech, language and communication needs,

(c) persons working for, and on behalf of, children and young people, including children and young people with speech, language and communication needs,

(d) the providers of services to children with speech, language and communication services in relation to those needs,

(e) such others persons as they consider appropriate.

(4) The strategy must be accompanied by a report setting out—

(a) the consultation process undertaken in order to comply with subsection (3), and

(b) the ways in which the views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).

(5) The Scottish Ministers must, no later than—

(a) 5 years after laying a strategy before the Scottish Parliament under subsection (1), and

(b) the end of every subsequent period of 5 years,

lay a revised strategy before the Scottish Parliament; and subsections (2) to (4) apply to a revised strategy as they apply to a strategy laid under subsection (1).>

Jayne Baxter

255 After section 73, insert—
Duty of public authorities to use inclusive communication standards

A public authority with functions under this Act must use inclusive communication standards in exercising those functions.

Section 74

Liz Smith

81 Leave out section 74

After section 74

Liz Smith

82 After section 74, insert—

Guidance for voluntary organisations

(1) The Scottish Ministers may issue guidance on the application of this Act as regards voluntary organisations.

(2) Guidance may be issued generally or for particular purposes.

(3) Before issuing or revising guidance, the Scottish Ministers must consult the persons to whom it relates.

Section 75

Liz Smith

51 In section 75, page 39, line 18, after <means> insert <(except in Part 4)>

Jayne Baxter

256 In section 75, page 39, line 20, at end insert—

( ) In this Act “inclusive communication”—

(a) means sharing information in a way that everybody can understand,

(b) relates to all modes of communication, and

(c) requires that service providers—

(i) recognise that people understand and express themselves in different ways, and

(ii) provide information to people in ways which meet their needs.

Section 77

Aileen Campbell

117 In section 77, page 40, leave out line 14
Liz Smith

83 In section 77, page 40, line 14, at end insert—

<section (Request that named person service is not provided)>

After section 77

Aileen Campbell

118 After section 77, insert—

<Guidance and directions

(1) Any power of the Scottish Ministers to issue guidance or directions under this Act may be exercised—

(a) to issue guidance or directions generally or for particular purposes,

(b) to issue different guidance or directions to different persons or otherwise for different purposes.

(2) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under this Act.

(3) In subsection (2)—

(a) the reference to guidance includes revision of guidance,

(b) the reference to directions includes revision and revocation of directions.>
Children and Young People (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Duties in relation to UN Convention on the Rights of the Child etc.**  
119, 190, 120, 194, 195, 123, 196, 125, 89, 169, 172, 174, 175

**Duties in relation to Article 7 of UN Convention on the Rights of Persons with Disabilities**  
191, 192, 197, 199, 200, 201, 202

**Reports relating to children’s rights: matters to be covered, consultation, publication etc.**  
87, 88, 193, 121, 122, 124, 126

**Children affected by parental imprisonment**  
198, 204, 211, 215, 221, 229, 233, 235, 239, 241, 247, 249

**Powers of Commissioner for Children and Young People in Scotland**  
1, 2, 3, 4, 5

**Aims of children’s services planning: general**  
165, 168, 170, 171, 217, 173

**Service users covered by definition of children’s services**  
166, 167, 203

**Children’s services planning: role of Scottish Ministers and duty to implement plans**  
90, 91, 92, 93, 94, 96, 97, 98, 99, 100
Services provided to certain young people: inclusion in children’s services planning and transition from children’s services

Introduction of concept of “wellbeing”
52, 53, 54, 55, 56, 57, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

Speech, language and communication
216, 219, 222, 234, 236, 238, 240, 242, 243, 244, 245, 246, 248, 250, 251, 252, 253, 254, 255, 256

Notes on amendments in this group
Amendment 244 in this group is pre-empted by amendment 183 in the group “Views of child in relation to child’s plan”

Children’s services planning: consultation etc. in relation to plans, reports and guidance
176, 223, 231, 128

Guidance and directions
95, 101, 102, 103, 104, 105, 106, 107, 111, 112, 113, 114, 115, 116, 118

Persons under duty to provide information etc. in relation to children’s services planning
127

Default powers in relation to children’s services planning
108, 109, 110, 117

Provision of named person service: persons to whom service is to be provided and ability to opt-out
6, 8, 9, 10, 11, 12, 13, 14, 15, 58, 16, 17, 18, 19, 20, 59, 21, 60, 133, 134, 135, 22, 61, 23, 24, 25, 26, 27, 28, 62, 63, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 65, 41, 42, 43, 44, 51, 83

Persons who may be a named person
177, 7

Functions of named persons in relation to children and young persons in reserve forces
129, 130, 152, 156

Functions of named persons: prevention of harm
178

Persons with function of providing certain named person services
131, 132, 179, 138, 149, 150, 151, 153, 154, 155, 157, 158

Information sharing
136, 137, 139, 140, 141, 142, 180, 143, 144, 145, 181, 163, 164
Guidance in relation to named person service
146, 147, 182

Relevant authorities in context of named person service: power to issue directions and definition
148, 159, 160, 161, 162

Views of child in relation to child’s plan
183

Notes on amendments in this group
Amendment 183 pre-empts amendment 244 in the group “Speech, language and communication”

Child’s plans: dispute resolution
45, 46, 47

Provision of early learning and childcare
48, 84, 85, 86, 49, 50

Type of services to be provided under Part 9
184, 185, 186, 187, 188, 189

Guidance for voluntary organisations
82
Present:

George Adam         Clare Adamson
Jayne Baxter        Colin Beattie
Neil Bibby (Deputy Convener)  Stewart Maxwell (Convener)
Joan McAlpine
Liz Smith

Also present: Mary Fee, Mark McDonald, Siobhan McMahon

**Children and Young People (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 87, 88, 89, 90, 91, 171, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110.

The following amendments were disagreed to (by division)--

119 (For 4, Against 5, Abstentions 0)
190 (For 4, Against 5, Abstentions 0)
191 (For 3, Against 6, Abstentions 0)
120 (For 4, Against 5, Abstentions 0)
192 (For 3, Against 6, Abstentions 0)
121 (For 3, Against 5, Abstentions 1)
194 (For 3, Against 5, Abstentions 1)
195 (For 3, Against 5, Abstentions 1)
123 (For 4, Against 5, Abstentions 0)
196 (For 3, Against 5, Abstentions 1)
124 (For 4, Against 5, Abstentions 0)
125 (For 4, Against 5, Abstentions 0)
197 (For 3, Against 6, Abstentions 0)
198 (For 2, Against 7, Abstentions 0)
199 (For 3, Against 6, Abstentions 0)
200 (For 3, Against 6, Abstentions 0)
201 (For 3, Against 6, Abstentions 0)
202 (For 3, Against 6, Abstentions 0)
1 (For 2, Against 7, Abstentions 0)
2 (For 2, Against 7, Abstentions 0)
3 (For 2, Against 7, Abstentions 0)
4 (For 2, Against 7, Abstentions 0)
5 (For 2, Against 7, Abstentions 0)
165 (For 3, Against 5, Abstentions 1)
Amendment 216 was moved and, no member having objected, withdrawn.

The following amendments were not moved: 193, 122, 126, 210, 168, 53, 173, 219, 54, 55, 56, 234 and 236.

The following provisions were agreed to without amendment: section 2, schedule 1 and sections 4, 5, 6, 8, 11, 13 and 18.
The following provisions were agreed to as amended: sections 1, 3, 7, 9, 10, 12, 14, 15, 16 and 17.

The Committee ended consideration of the Bill for the day amendment 237 having been disposed of.
Scottish Parliament
Education and Culture Committee

Tuesday 17 December 2013

[The Convener opened the meeting at 10:02]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning and welcome to the 33rd meeting in 2013 of the Education and Culture Committee. I ask everyone to switch off their mobile phones and any other electronic devices they might happen to have, as they affect the broadcasting system.

Today we begin stage 2 consideration of the Children and Young People (Scotland) Bill. I welcome to the meeting Aileen Campbell, Minister for Children and Young People, and her officials. The officials are, of course, not permitted to participate in the formal proceedings.

I also welcome a number of non-committee members who will be participating in today's proceedings. Mary Fee and Siobhan McMahon have joined us for the start of the meeting, and Mark McDonald will join us later when we reach his amendments.

Everyone should have a copy of the bill as introduced; the first marshalled list of amendments, which was published on Friday; and the first groupings of amendments, which set out the amendments in the order in which they will be debated. We will not go beyond part 4 of the bill today, and there will be one debate on each group of amendments. Depending on the progress that we make, I will conclude proceedings at a suitable point. Any amendments that we do not reach today will be dealt with at our next meeting on 7 January.

For each debate, I will call the member who lodged the lead amendment in the group to speak to and move the amendment and to speak to all other amendments in the group. All other members with amendments in the group, including the minister, if relevant, will then be asked to speak to their amendments, and members who have not lodged any amendments in the group but who wish to speak should indicate as much by catching my eye or the clerks' attention. If the minister has not already spoken on a group, I will invite her to contribute to the debate just before we move to the winding-up speech.

The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. After the debate, I will check whether the member who moved the lead amendment in the group wishes to press it to a vote or to withdraw it. If they wish to press it, I will put the question on the amendment. If a member wishes to withdraw their amendment after it has been moved they must seek approval to do so and, if any member objects, the committee will immediately move to the vote on the amendment.

If any member does not want to move their amendment when it is called, they should say “not moved”. Please note, however, that any other MSP can choose to move that amendment if they so wish. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Only committee members are allowed to vote. Voting is done by division through a show of hands. It is important that members keep their hands raised clearly so that the clerks can record the vote.

The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will put a question on each section at the appropriate point.

With all those rules, guidelines and comments in mind, we begin day 1 of stage 2.

Section 1—Duties of Scottish Ministers in relation to the rights of children

The Convener: Amendment 119, in the name of Liam McArthur, is grouped with amendments 190, 120, 194, 195, 123, 196, 125, 89, 169, 172, 174 and 175.

Liam McArthur (Orkney Islands) (LD): I am conscious of how much ground we have to cover this morning, so I will try to be brief, although that might be slightly tricky, given how many amendments I have in this group.

The purpose of amendment 119 is to allow the bill to do what it originally said on the tin, by underscoring the central importance of children’s rights within our society and ensuring that children’s views and interests are taken into account by decision makers across the public sector.

During stage 1, we heard from a number of organisations that argued strongly for full incorporation into the bill of the United Nations Convention on the Rights of the Child. Although, like others, I was not persuaded of their case, I certainly recognised the need to strengthen the provisions as they stand.

The evidence from the Law Society of Scotland and the Faculty of Advocates was that the bill “appears to be diluted” in terms of children’s rights
and adds little to what is already in place. Similarly, the committee observed that the duty on ministers represented

“little more than a restatement of existing obligations.”

Therefore, there is a real risk that the bill represents a missed opportunity, unless the changes that I am proposing are agreed to.

Amendment 119 would strengthen the duty on ministers to

“have due regard to the UNCRC requirements”

rather than simply keep those requirements under consideration. That reflects ministers’ initial intention, the expectations of those in the sector about what the bill would deliver and what similar legislation in Wales is beginning to achieve.

Amendment 190 recognises that while full incorporation of the UNCRC into the bill did not find support among committee members, there was a feeling that ways should be found to incorporate, or at least better reflect, the key articles 3 and 12, on upholding the best interests of the child and ensuring that the child’s voice is heard.

In a similar vein, amendment 120 seeks to beef up the requirement for ministers to report on the action that they have taken, detailing

“how they have complied with the duty”

that would be placed on them. That does not seem an unreasonable request or requirement to place on ministers.

Those three amendments are mirrored by amendments 123, 196 and 125, which seek to ensure that a consistent approach is taken across public authorities. Many will argue, with no little justification, that that approach is already a feature of their decision-making processes, but it is difficult to understand how that differs from what ministers themselves might argue. If we are to achieve a cultural shift and practical benefits from properly respecting and reflecting children’s rights, consistency across the public sector would be essential, particularly when one considers that much of the decision making that directly affects children takes place at the local level.

Amendment 194 picks up another recommendation that the committee made at stage 1, which is that there should be a requirement on ministers to undertake a children’s rights impact assessment in relation to bills that are introduced in Parliament. There is now an established method of carrying out such assessments, and I think such a requirement would ensure confidence that the principles of the bill are being delivered across the board.

In response to the committee’s recommendation, the minister indicated that she felt that the requirement to undertake children’s rights impact assessments could be delivered through “non-legislative means”. As Together points out in its briefing for today’s meeting, the Government committed to trialling CRIAs in its UNCRC action plan “Do the Right Thing” back in 2008. Since then, not a single CRIA has been undertaken.

The other amendments in the group offer additional improvements to the bill. I might have the opportunity to respond in more detail once I have heard what the minister and Neil Bibby have to say in addressing their amendments. In the meantime, I hope that those relatively brief comments are helpful to the committee.

I move amendment 119.

Neil Bibby (West Scotland) (Lab): I will also try to be as brief as possible. I will speak to all the amendments in my name. Amendment 195 is on the introduction of a children’s rights implementation scheme, through which ministers would have to outline the arrangements that they have made and the steps that they will take to safeguard and promote children’s rights. Amendments 169, 172, 174 and 175 aim to ensure that children’s services plans are prepared, and related services are provided, with a view to securing the UNCRC requirements to better effect.

Members will be aware of the committee’s call for the Scottish Government to provide an explanation of the practical actions that it intends to take to increase awareness of children’s rights. My amendments address that point directly and involve a model that is similar to that being used in Wales, where the children’s rights scheme sets out the arrangements that Welsh ministers will have to put in place to make sure that they and Welsh Government staff comply with the duties that are placed on them to report on compliance arrangements every five years. Although the Welsh measure has been in place for a relatively short period, the positive impact of an implementation scheme in Wales is beginning to become clear. More children and young people are involved in influencing legislation, there have been more child-friendly Government publications, and ministers have been accountable in their consideration of children’s rights when developing policy and legislation. I know that the Scottish Government often talks about its desire to make Scotland the best place to grow up in the world, so I am sure that it will be keen to adopt best practice from elsewhere in the United Kingdom when it comes to implementing children’s rights.

On amendments 169, 172, 174 and 175, there is a concern that there is a disconnect between the provision in part 1 of the bill on reporting on
children’s rights, and those in part 3, around children’s services planning. The amendments would specifically embed children’s rights in children’s services planning to provide a framework through which public bodies can safeguard, support and promote the rights and wellbeing of children in their area.

I know that the Scottish Government has said that it remains open to suggestions about how the bill might be strengthened to support those aims. I therefore urge the minister, the Government and members to join organisations such as Children 1st, Barnardo’s Scotland and the Commissioner for Children and Young People in Scotland in supporting my amendments 195, 169, 172, 174 and 175. The amendments will help to provide ministers with a strategic and comprehensive approach to executing their duties, improve their accountability in doing so, and improve children’s services plans.

I also state my support for the amendments in the name of Liam McArthur. In relation to amendment 190, on articles 3 and 12 of the UNCRC, the need to act in the best interests of the child, which was raised by the UNCRC in 1959, has been integral to the practice of law, social work and education for many years. Indeed, the idea has been present in Scots child law since the Guardianship of Infants Act 1925. In more recent times, there have been moves towards the greater involvement of children, particularly since the Children (Scotland) Act 1995. To place such a duty on ministers would put in law what tends to happen already and should be supported.

Article 12, on listening to children’s voices in decision making, has been embraced by those who work with children, and I support it, too. The Scottish Government has consistently said that it is committed to listening to the views of children and young people, so I expect it to support Liam McArthur’s amendments 190, 120, 123, 196 and 125. However, we should guard against tokenistic consultation. If the Government is not willing to support Liam McArthur’s amendments, I would welcome clarification of and details about the measures that the Government will take to ensure that consultation is not tokenistic.

I also support Liam McArthur’s amendment 194, on children’s rights impact assessments, which are an important tool for ensuring children’s rights, and amendment 119, which is the due regard amendment.

I urge members to support all the amendments in the group, which will allow us to ensure that the bill is suitably ambitious and avoids becoming, as Liam McArthur said, a missed opportunity.

The Minister for Children and Young People (Aileen Campbell): Amendment 89, in my name, is a minor amendment that intended to ensure consistency with language used elsewhere in the bill, for example in sections 30(2) and 50(2).

Amendments 119, 120, 123 and 125 seek to place duties on Scottish ministers and other relevant public authorities to “have due regard to” the rights set out in the UNCRC, and to report on how they are satisfying those duties. I am clear that having such duties would not guarantee the type of nuanced approach that is likely to best serve the interests of children.

I understand that people will look to the experience of the Welsh Government, which has introduced duties that are broadly similar to those that Liam McArthur proposes. In response, I note that we are happy to draw on the experience of others, but, ultimately, we need an approach that is fit for purpose in Scotland—one that reflects our constitutional arrangements, our distinct legal system and the range of other factors that make us unique. The notion of a duty to have due regard to a piece of international law is untested in Scotland. We have no way of knowing how the courts would interpret and enforce such a duty. The bill should not place squarely at the door of the courts the responsibility for testing and directing our approach to a treaty whose wording does not always easily translate into clear, enforceable law. However, that is what a due regard duty could do.

10:15

On the extension of a due regard duty to other public bodies, the Convention of Scottish Local Authorities has made it clear that it would not wish such a duty to be placed on its members at this time. The bill already places on public bodies a host of duties that will result in better protection and promotion of children’s rights, and the changes that the bill proposes are deliverable.

Amendment 194 would result in a duty being placed on the Scottish ministers to undertake a children’s rights impact assessment for all future Scottish Government bills. As indicated to the committee at stage 1, ministers recognise the importance of assessing the impact of our policies on our children and their rights. That is why we are taking steps to produce non-legislative guidance on the issue for use by civil servants and ministers. However, it is not necessary or desirable for the bill to prescribe exactly how impact assessments should be undertaken. Our experience in relation to equalities legislation supports that view.

We must also address proportionality. I recognise the value of submitting robust impact assessments on pieces of legislation that are likely to impact on children, but not all bills require that
step to be taken. We should focus our activity on the issues that are most important to our children and young people.

Amendments 190 and 196 would have the effect of placing a new duty on the Scottish ministers and other relevant public bodies to have children’s best interests as “a key consideration” where those children are likely to be affected by a decision. We have some concerns about the introduction of such a concept. The UNCRC clearly recognises that the best interests of a child should be a primary consideration in all matters affecting them. We are supportive of that principle, but it does not make sense to pursue the aim through blanket duties on ministers and public bodies, particularly when that might lead to an increased emphasis on the courts and on unnecessary and unhelpful litigation. Instead, we should make targeted and enforceable changes to the law that will guarantee the changes that we want without the accompanying risks that I have just described. That is exactly what we are doing through, for example, the Criminal Justice (Scotland) Bill, which the Parliament is considering.

On amendment 195, we recognise the benefit of having clear and robust plans in place to support further recognition of the UNCRC and we intend to provide for that in the bill through our own amendment—amendment 88—which will be discussed in a separate group. Again, there is an issue of proportionality to be addressed in respect of amendment 195. It could result in a fairly onerous obligation to publish fairly frequent reports, and I am concerned that we run the risk of report overload. It also prescribes fairly broad-ranging consultation arrangements that, although they are well intentioned, do not need to appear in primary legislation.

Amendments 169, 172, 174 and 175 seek to ensure that children’s services planning aims to support further recognition of the UNCRC. We have been clear about wanting public bodies to report on what they are doing to further the UNCRC, and that is why we have placed duties on them in part 1. It is not appropriate to impose a further duty in part 3. Moreover, by focusing on how services are safeguarding, supporting and promoting the wellbeing of children, planning will give practical effect to the UNCRC.

For all the reasons that I have stated, I do not support amendments 119, 190, 120, 194, 195, 123, 196, 125, 169, 172, 174 and 175. I support my own amendment 89.

Joan McAlpine (South Scotland) (SNP): I am concerned that amendments 119, 190, 120, 123, 196 and 125, in the name of Liam McArthur, would introduce a lack of flexibility and, perhaps, be a bit too heavy handed.

As the minister said, a due regard duty is untested; we do not know the risks involved. Only 15 per cent of the consultation respondents said that the duties in section 1 did not go far enough.

The UNCRC is an aspirational document and does not easily translate into legislation—we took evidence from Professor Norrie on that at stage 1. It is clear that the best interests of the child should be the primary consideration, but Liam McArthur’s amendments do not seem to put those as the primary consideration, only a key one. That seems to be an alternative legal concept and not consistent with the UNCRC.

I welcome the fact that the Government is undertaking CRIAs in a non-legislative way. As the minister said, that will give us more flexibility should circumstances change in future.

Turning to the amendments in Neil Bibby’s name, I feel that including an implementation scheme in the bill would be too inflexible, disproportionate and onerous, and much of what is proposed will already be given effect through section 1, which is more proportionate.

Liz Smith (Mid Scotland and Fife) (Con): During stage 1 and in preparing for this meeting I have listened carefully to the debates on what is probably one of the most challenging and interesting parts of the bill. I have found that the legal advice that we received on several aspects of the bill, both from the Scottish Government and from many other groups that have been talking about the UNCRC—particularly those who favour incorporation—has been difficult to work through, because that advice has not been particularly clear.

I fully recognise that the Government is not in a position to publish all its guidance—I understand that. However, a slightly more detailed response to the arguments would have been helpful, particularly for those who argue that full incorporation is a legitimate way forward; I understand some of the points that they have raised.

I have listened carefully to Mr McArthur, and I have a great deal of sympathy with his amendments, because he is trying to ensure that there is a balance between not incorporating the UNCRC into Scots law and ensuring that there is more of a level playing field and that we think more carefully about some of the duties that should fall on ministers and on other public bodies such as local authorities. Having said that, we are in a difficult area when it comes to the phrase “due regard”. I am not entirely comfortable with its interpretation; maybe Mr McArthur can say a little more about that when he sums up. I certainly have
difficulty with amendment 194, on the children’s rights impact assessment. I worry about how far that would take some of the issues, but I would be interested to hear Mr McArthur’s view on that.

I have some sympathy with Mr Bibby’s amendments, but I am not entirely confident that he has thought through the bureaucratic and, in some cases, financial burden that might be put on local authorities as a result. His intentions are absolutely clear, and they are good, but I am not sure that they actually match the amendments.

The Convener: I call Liam McArthur to wind up and to indicate whether he wishes to press or withdraw amendment 119.

Liam McArthur: I thank all members who have contributed. I have listened carefully to what has been said. I obviously have no difficulty with Government amendment 89. Neil Bibby’s clarification of the purpose and intent of his amendments reassures me and I am happy to support them.

The bill is fundamentally about extending children’s rights, and the evidence that we received at stage 1 was fairly clear that, as things stand, the bill does not do anything to progress children’s rights in key areas. Therefore, as I said, if this is not to be a missed opportunity, we need to stiffen up the provisions in part 1 of the bill. I respect what the minister said about providing something that is tailored to Scotland’s needs and Scotland’s legal structure and which allows an appropriate level of flexibility. Nevertheless, the evidence that we received from a wide range of bodies operating in the area—Children 1st, Barnardo’s and the UNICEF UK, to name but a few—indicates their concerns that the bill does not go far enough in doing what it said it would do on the tin.

It was particularly disappointing to hear the Government’s response on CRIAs. The committee recommended that we needed to go further in relation to CRIAs—if not in every bill, then certainly in all bills that touch on the interests of children and young people, so when the time comes I intend to press amendment 194. For the time being, I press amendment 119.

The Convener: The question is, that amendment 119 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 119 disagreed to.

Amendment 190 moved—[Liam McArthur].

The Convener: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 190 disagreed to.

Amendment 191, in the name of Siobhan McMahon, is grouped with amendments 192, 197 and 202.

Siobhan McMahon (Central Scotland) (Lab):
We require reference to the United Nations Convention on the Rights of Persons with Disabilities in the bill to give an additional assurance that disabled people’s views are embedded in the bill and will be given due regard and consideration in all aspects of policy development.

I understand that the Government is satisfied that the UNCRC requirements are sufficient to provide for that. However, recent publications—including a report that was commissioned by the Scottish Commissioner for Children and Young People entitled “It Always Comes Down to Money: Recent changes in service provision to disabled children, young people and their families in Scotland”—have demonstrated a great and urgent need for disabled children’s voices to be heard. I believe that my amendments will provide that voice and give greater assurance than the UNCRC requirements could ever provide. The Scottish Government does not wish to highlight specific groups of children. However, given that the bill specifically mentions looked-after children, I would argue that the precedent has already been set and that it would be remiss of the bill not to
mention disabled children in the way that I propose.

Article 7 of the UNCRPD places a duty on member states to take adequate account of children’s views. Although the UNCRC includes article 22, which references the rights of disabled children to enjoy the rights of others, having specific regard to the UNCRPD would entrench the belief that disabled children are valued agents in Scottish society. More emphasis should be placed on ensuring that the Children and Young People (Scotland) Bill makes adequate provision for the rights of disabled children to be realised. Embedding the UNCRPD into primary legislation would build a strong foundation for public authorities around Scotland to adjust their practice and procedures to reflect the national intention to uphold disabled children’s rights.

Integrating article 7 of the UNCRPD into the bill at this stage will require few additional resources to those that are already accounted for by establishing steps to consider the UNCRC. If that is postponed until a later stage, however—it is likely the UNCRPD will be legislated for at some point—the process of repeating and revising the legislation to account for that will incur further costs.

I move amendment 191.

Neil Bibby: I welcome the amendments in the name of Siobhan McMahon, as they raise important issues about the need for greater focus on and consideration of the rights of disabled children. We have a stated policy aim of getting it right for every child and, in order to get it right for every child, we must close, not widen, the equalities gap between disabled and non-disabled children. Later amendments will deal with the need for a specific focus on children who live in poverty. Here, we must ensure that the bill makes adequate provision for the rights of disabled children to be realised.

As Siobhan McMahon said, putting the UNCRPD in primary legislation will provide a strong foundation for public authorities to adjust their practices to reflect the national intention to uphold disabled children’s rights. Health and Social Care Alliance Scotland has said that integrating article 7 of the UNCRPD into the legislation would require few additional resources, and I understand that there are precedents for integrating the UNCRPD principles into legislation in both the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Social Care (Self-directed Support) (Scotland) Act 2013.

Disabled children can be some of the most disadvantaged and vulnerable children in Scotland. The amendments are needed to ensure that the bill is not a missed opportunity and that it makes a substantial difference to the lives of disabled children. I therefore support the amendments in Siobhan McMahon’s name.

10:30

Clare Adamson (Central Scotland) (SNP): I have listened carefully to my colleagues and understand their intention in lodging the amendments. However, my concern is that the principle of the bill is getting it right for every child, which includes children with special needs. If, at this stage, we tried to compartmentalise specific groups, there is a danger that we would make special provision for some children. The unintended consequence of that would be to disadvantage other groups, specifically in the area of protected characteristics. I do not think that the amendment is necessary. The UNCRC covers all children up to 18, including those with a disability.

Liz Smith: Although I have every sympathy with the intention of the amendments, there are unintended consequences that could make it quite difficult in the rest of the bill. We perhaps need to think that through a bit more carefully.

Aileen Campbell: All the amendments in this group seek to place requirements on Scottish ministers and public bodies to take steps with the aim of furthering the rights set out under article 7 of the UNCRPD. While we are strong supporters of the UNCRPD, we do not feel that amendment 191 is necessary. As Clare Adamson pointed out, the rights set out under the UNCRC apply equally to all children, including disabled children.

I recognise the importance of ensuring that ministers and public bodies do all that they can to support disabled children in enjoying their rights, and I thank Siobhan McMahon for raising the points that she did. However, reflecting this particular issue on the face of the bill has some risks attached.

In part 1 of the bill, we are seeking to promote a notion of universality—the notion that, no matter what a child’s background is and what their needs are, Scottish ministers and public bodies will work to promote their rights. To recognise explicitly some groups of children and not others could begin to dilute that message and would therefore go against the grain of what we are trying to achieve. The fact that we are not making explicit reference to disabled children absolutely does not detract from the commitment we are making to them.

While I support the intention behind the amendments in this group, I cannot support them.

Siobhan McMahon: I have listened to members’ comments. I argued for universality when we mentioned other children, so it is not a
huge leap to mention disabled children. It would be an additional assurance to mention the UNCRPD requirements in the bill and therefore I press amendment 191.

The Convener: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 191 disagreed to.

Amendment 120 moved—[Liam MacArthur].

The Convener: The question is, that amendment 120 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 120 disagreed to.

Amendment 192—[Siobhan McMahon].

The Convener: The question is, that amendment 192 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McaAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 192 disagreed to.

Amendment 87, in the name of the minister, is grouped with amendments 88, 193, 121, 122, 124 and 126.

Aileen Campbell: As members know, the Scottish Government is generally satisfied that the ministerial duties that are included in section 1 strike the right balance. They offer a degree of protection in domestic law and ensure that the UNCRC influences the decisions that the Scottish ministers take. However, they also recognise that the courts are generally not the best place to adjudicate on issues of social policy. That said, I previously made it clear that we would be happy to consider how the provisions might be strengthened by building on the approach that I have just described.

Amendments 87 and 88 are a direct response to the evidence that we heard in the committee's stage 1 scrutiny of the bill. If they are agreed to, they will place an additional requirement on ministers to prepare a plan that sets out how they intend to satisfy the duties that are included in section 1(1). The amendments also recognise the important role that children must play in developing that plan.

We accept that such plans are useful in holding the Government to account for the approach to children's rights. That is why, as a matter of good practice, we have previously taken steps to prepare and publish documents of a similar nature. I can understand why both the committee and stakeholders would like to ensure that future Governments do likewise, and I trust that the amendments represent a satisfactory response to the recommendation that is included in the committee's stage 1 report that such plans be provided for in the bill.

I am not convinced that amendment 193 would offer any material benefit. Section 1(3) requires ministers to prepare a report that sets out the steps that they have taken to further the rights that are set out in the UNCRC. Ministers are best placed to identify the steps that they have taken with that aim in mind. I am therefore unsure about what benefits would be offered by a consultation with stakeholders. Imposing a requirement to consult all the bodies that are referred to in the amendment is excessive. Furthermore, I do not take the view that primary legislation is generally the best place to describe when and how Government should engage civic society in its
work. We should and we do engage with organisations as a matter of course. For that reason, I am not able to support amendment 193.

Amendments 121 and 126 propose that reports be published in a child-friendly format. We recognise the importance of delivering activity that helps children to understand how their rights are being promoted and protected, but that activity must meet the needs of its target audience. It might not always be the case that a child-friendly report—whatever that would mean in practice—is the best way to get information across to children. In those instances, it would not seem sensible to require the publication of such a report. Again, I am not convinced that primary legislation is the best place to describe how children should be involved in the work of Government. Primary legislation often does not recognise the need for flexibility, which is important in working with our young people. For that reason, I am not minded to support amendments 121, 126 or 122, which has a broadly similar aim.

Amendment 124 is a technical amendment that should be read in conjunction with amendment 125 in group 1 and amendment 126 in group 3.

In summary, I support amendments 87 and 88 and do not support amendments 193, 121, 122, 124 and 126.

I move amendment 87.

Liam McArthur: I welcome the provisions under section 2(1) on producing a report every three years on the steps that have been taken, and I certainly welcome the minister’s amendments, which respond to concerns that the committee raised at stage 1.

My amendments try to ensure that the information that ministers and other public bodies prepare is as accessible as possible.

Amendment 193 would broaden out the requirements for who is to be consulted on reports, although I acknowledge that, in referring specifically to voluntary organisations, it may run the risk of being seen to actively exclude others. I was slightly concerned by the minister’s apparent suggestion that stakeholders would not be involved in the process of preparing reports, but perhaps I picked that up wrongly. Perhaps she can clarify that in her concluding remarks.

Amendment 122 would place an onus on ministers to “promote public awareness and understanding” of the key findings and recommendations of their children’s rights reports. Amendments 121 and 126 seek to ensure that the reports are produced in such a way as to make them accessible to those whose interests they endeavour to further.

The minister expressed concern about the reference to the need for child-friendly language to be used, but it mirrors similar provisions in earlier legislation, notably that which established the children’s commissioner. It recognises that accessibility and awareness raising among children and young people will require creative use of, for example, internet social media, television and other methods of communication. There seems to be little point in committing to the production of such reports if every effort is not made to ensure that they are as accessible as possible to all those who may have an interest.

Neil Bibby: I support amendments 193, 121, 122, 124 and 126, in the name of Liam McArthur, and I am happy to support amendment 88, in the name of Aileen Campbell. As I have said previously, it is important that children’s views are considered in the Scottish ministers’ plans. I warn against the possibility that the legislation will be tokenistic. We do not want that. If the Government does not support amendment 193, it would be helpful for the committee to get more information and detail on what practical steps ministers and the Government will take to ensure that meaningful consultation is carried out with children.

Liam McArthur’s other amendments are eminently sensible as they promote awareness and understanding of the UNCRC. It is desirable to create child-friendly and accessible reports. I am happy to support those amendments.

The Convener: I will add a comment. I welcome Government amendments 87 and 88, which respond to the recommendations in the committee’s stage 1 report. I am grateful to the Government for supporting our views on the measure.

I share some of the concerns that the minister expressed about amendment 193. I am not sure what its purpose would be. It is about a report that covers issues that have already been dealt with, and I am not sure what the purpose of consultation would be in that case. I also have some concerns about exactly what child-friendly language would entail. I am not sure what the practical definition of that would be. Although we should, of course, make all our publications as open and transparent as possible to as many people as possible, I am not sure that, in all cases, that requires them to be child friendly.

Liam McArthur: May I respond, convener?

The Convener: Briefly.

Liam McArthur: I hear what you say. Initially, I had similar questions about child-friendly language and how that might be defined, but we have already established that there is a precedent, not least in the legislation that established the
children’s commissioner, so I presume that there is a recognised definition and understanding of what it means. All that we would be doing is providing consistency between the bill and other pieces of legislation that the Parliament has passed.

**The Convener:** I heard the member make that comment earlier. It is interesting, but it does not necessarily mean that we should follow that example in this case. However, I understand the point that he is trying to make, and I will be interested to hear what the minister has to say in response to it. I call on her to wind up on the current group of amendments.

**Aileen Campbell:** I thank members for their comments. As I said in my opening remarks on the group, I am not convinced that amendment 193 would serve a useful purpose. In response to the points that Liam McArthur made, I clarify that, under part 1, ministers are required to prepare a report that sets out the steps that they have taken to further the rights that are set out in the UNCRC. I am not sure what value consultation on that would have, as the report will be a factual representation of the steps that have been taken.

For the reasons that I described earlier, I am not convinced that primary legislation is always the most appropriate vehicle for illustrating our commitment to consultation. We have well-established processes and a strong record of consulting stakeholders on these and other matters, and that has been achieved without the need for legislative duties. There is now an expectation that stakeholders will be involved in policy making. That is absolutely correct, and I see no reason for it to change.

On amendments 121 and 126, I remain unconvinced that a child-friendly report is always the best way in which to get information across to children. I also remain unconvinced that imposing duties through primary legislation necessarily represents the best mechanism for describing how we intend to engage with children and young people in our work. We undertake a lot of engagement with children and young people, and the bill is an example of that. We do that engagement in a number of ways, and it is essential to keep that flexible approach. Therefore, I am still not minded to support amendments 121 or 126, or indeed amendment 122, which has a broadly similar aim.

In summary, I support amendments 87 and 88 but not the other amendments in the group.

**Amendment 87 agreed to.**

**Amendment 88 moved—[Aileen Campbell]—and agreed to.**

**Amendment 193 not moved.**

**Amendment 121 moved—[Liam McArthur].**

10:45

**The Convener:** The question is, that amendment 121 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 1.

**Amendment 121 disagreed to.**

**Amendment 122 not moved.**

Section 1, as amended, agreed to.

**After section 1**

**Amendment 194 moved—[Liam McArthur].**

**The Convener:** The question is, that amendment 194 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions

Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 1.

**Amendment 194 disagreed to.**

**Amendment 195 moved—[Neil Bibby].**

**The Convener:** The question is, that amendment 195 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.
For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 195 disagreed to.

Section 2—Duties of public authorities in relation to the UNCRC

Amendment 123 moved—[Liam McArthur].

The Convener: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 124 disagreed to.

Amendment 125 moved—[Liam McArthur].

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 124 disagreed to.

Amendment 125 moved—[Liam McArthur].

The Convener: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 125 disagreed to.

Amendment 197 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 197 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
significant improvements to the access of children affected by parental imprisonment. The amendment would help to promote a more consistent approach across Scotland to the type and level of services that are put in place through children’s services planning to support children of imprisoned parents.

Amendment 239 highlights the need to ensure that guidance is introduced about how service providers and the named person service should exercise their function in relation to children and young people affected by parental imprisonment. Amendment 241 is vital if there are to be significant improvements in the level of support that is available to children affected by parental imprisonment. Amendment 241 would help to promote a more consistent approach across Scotland to the support that is provided by the named person service.

Amendment 247 highlights the need for guidance to be issued by the Scottish ministers regarding how a child’s plan should support a child who is affected by parental imprisonment. The amendment is designed to ensure that ministers give a commitment now, at stage 2, that the Scottish Government will introduce guidance on how that will operate.

Amendment 249 is vital to secure significant improvements in the level of support that is available to children who are affected by parental imprisonment. It would promote a consistent approach across Scotland to the support that is provided by the named person service.

I move amendment 198.

Neil Bibby: As my colleague Mary Fee said, her amendments are needed to improve the outcomes of children affected by parental imprisonment. An estimated 20,000 children are in families affected by parental imprisonment, which is a substantial number. As has been said, parental imprisonment can often have a negative impact on children’s mental health and other wellbeing indicators. Mary Fee’s amendments would help children’s services planning, child’s plans and the named person service to include a strong focus on ensuring that children affected by parental imprisonment are able to access and secure the vital support and services that they will require to fulfil their potential and make the most of their lives.

I support Mary Fee’s amendments 198, 211, 215, 221, 229, 233, 235, 239, 241, 247 and 249, and I hope that other members will do too, to ensure that the bill is not a missed opportunity.

Aileen Campbell: As has been indicated, the majority of amendments in the group highlight the needs of children affected by parental imprisonment, and I thank Mary Fee for raising the needs of that particular group. However, we do not believe that the amendments are necessary, as
the existing provisions across the relevant sections of the bill provide appropriate coverage.

By focusing on the needs of all children up to the age of 18, the bill will ensure that children’s services planning, as set out in part 3, and the named person service, as set out in part 4, will cover children affected by parental imprisonment, including any guidance and directions issued by Scottish ministers. Moreover, where children in that group have particular needs, the provisions of part 5 will ensure that child’s plans can address those needs. Similarly, the reporting on the UNCRC that is set out in part 1 should cover the needs of all children, not least those for whom unique issues may need to be highlighted.

What is crucial is that the provisions of the bill as drafted are made to work for children affected by parental imprisonment. We will ensure that guidance and, where needed, directions, as well as public body reporting under part 1, will cover the distinctive needs of that group as appropriate.

Amendment 204 is not necessary, as amendments 90 and 91 in my name seek to clarify that the Scottish Prison Service will be covered by part 3 as a provider of children’s and related services. Those amendments will remove Scottish ministers from the list of other service providers in section 7(1) and add them to the list of persons who provide children’s and related services in section 7(2), but only when providing services in exercise of their functions under the Prisons (Scotland) Act 1989. The SPS is an agency of the Scottish Government and therefore shares the same legal personality as Scottish ministers. Amendments 90 and 91 seek to describe the SPS in the correct way. For that reason, I do not support amendment 204.

In summary, I do not support any of the amendments in the group.

Mary Fee: I thank the minister for her comments and my colleague Neil Bibby for his supportive comments.

Children affected by parental imprisonment frequently fall through the safety net for accessing support services. My amendments could make a huge difference to the lives of children affected by parental imprisonment and the bill does not go far enough to offer support and protection for those children. It would be a missed opportunity if my amendments were not included in the bill and I wish to press amendment 198 and move the other amendments in the group.

The Convener: The question is, that amendment 198 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 198 disagreed to.

Section 2 agreed to.

Section 3—Authorities to which section 2 applies
Amendment 89 moved—[Aileen Campbell]—and agreed to.

Section 3, as amended, agreed to.

Schedule 1 agreed to.

Section 4—Interpretation of Part 1
Amendment 199 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 199 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 199 disagreed to.
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 200 disagreed to.

Amendment 201 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 201 disagreed to.

Amendment 202 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 202 disagreed to.

Section 4 agreed to.

Section 5—Investigations by the Commissioner

The Convener: Amendment 1, in the name of Liz Smith, is grouped with amendments 2 to 5.

Liz Smith: At stage 1, the committee asked for considerable clarification of the specific role of the SCCYP on account of the fact that there appeared to be different interpretations of the new powers set out in the bill. Amendments 1 to 5 are designed to clarify beyond doubt the powers to be conferred on the children’s commissioner.

I think that it is fairly plain to the committee that, given the bill’s general intent, there is scope to tighten up part 2 so that there is complete certainty regarding when it is right and proper for the children’s commissioner to intervene in a case. I have listened carefully to the Government’s perspective on that and looked at the children’s commissioner’s recent letter.

By adding the requirement that a general investigation must not duplicate what is properly the function of another individual, amendment 1 would clarify the role of the children’s commissioner in that respect. Likewise, by inserting the word “individual” into the bill, amendment 2 would introduce a clear distinction between proposed new section 7(2) of the Commissioner for Children and Young People (Scotland) Act 2003, which refers to a general investigation, and proposed new section 7(2A) of the 2003 act, which would concern individual cases. I think that there is currently a lack of clarity.

At first glance, the adjustment might appear to be minor, but amendment 2 would increase the clarity of the entire bill on this matter and would set down clear principles to be followed when the children’s commissioner comes to initiate both general and individual investigations. After hearing evidence from the children’s commissioner himself, it became clear that perhaps in some quarters part 2 of the bill was being interpreted rather more broadly than was first envisaged. Amendment 2, in tandem with amendment 1, would ease such apprehensions and make it clear that a general investigation is to be carried out only when all other avenues have been completely exhausted. In turn, that would address the concerns of bodies such as COSLA and the Scottish Public Services Ombudsman that, if not properly checked, the new powers could see the commissioner tread on the toes of organisations such as Education Scotland, the Care Inspectorate, et cetera.

As I said, this committee asked the Scottish Government to clarify its understanding of the commissioner’s new powers, and the Scottish Government responded that it did not foresee
there being a role for the commissioner to have extensive on-going involvement in a case prior to local processes being exhausted. That was a welcome explanation, but amendment 4, by inserting the word “otherwise” after the word “not”, would see proposed new section 7(2A) of the 2003 act carry forward that full intention.

Amendment 5 would prohibit the children’s commissioner from acting as a mediator when functioning under the new powers and ensure that the wishes of the Scottish Government are properly reflected in the bill. The children’s commissioner has stated that he does not intend to use the extension of powers for such a process, but there is a danger that successors might feel differently. Amendment 5 would ensure that that position is upheld in the short, medium and long terms.

I hope that these amendments represent the spirit of the bill, as the provisions need to be strengthened.

I move amendment 1.

Liam McArthur: The entire committee was slightly alarmed by what appeared to be quite a significant divergence in the views expressed by the minister on the one hand and the children’s commissioner on the other about the extent of the latter’s remit, and we also heard evidence from the SPSO about a potential overlap in their respective roles. The issue needs to be addressed and resolved before we proceed much further with the bill and certainly before we reach stage 3 and, in the absence of Government amendments to that effect, I am inclined to support Liz Smith’s amendments.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I will be interested to hear the minister’s comments but my take is that amendments 1, 2, 3 and 5 really have no practical effect. After all, the bill already makes it clear that the commissioner cannot pursue an investigation unless he is satisfied that it does not duplicate another body’s work.

The Convener: I will make a few remarks myself before calling the minister.

Mr McArthur is quite right that the committee received evidence that, to put it politely, rather confused matters. The committee was concerned about the difference in interpretation of the commissioner’s powers in this section of the bill and I would certainly be grateful, minister, if you could give committee members some comfort about the actual position and that there is a clear and shared view of the commissioner’s powers in the bill.

Aileen Campbell: I thank members for their comments.

As far as amendments 1 to 5 are concerned, we are clear that no investigation by the commissioner should take place until local processes have been exhausted and that the commissioner should not duplicate the work of other persons. Indeed, the bill recognises those points and makes it clear that the commissioner may not pursue an investigation that would duplicate work that is properly the function of another body, which would include any complaint resolution functions delivered by service providers.

With regard to mediation, we agree that the commissioner should not take on such a role before all other relevant complaints-handling processes have been exhausted. However, once those processes have been exhausted, we would not want to prevent the commissioner from mediating on an issue where such a course of action was likely to result in a matter being resolved more quickly and effectively than could perhaps be achieved with a full investigation. Ultimately, it is all about responding in a way that best meets the child’s needs.

I also understand that the commissioner has recently written to the committee, confirming that his view is consistent with our own on this issue. Accordingly, we see no need for changes to be made and do not support amendments 1 to 5.

Liz Smith: I thank the minister for clarifying the Scottish Government’s position. However, although I accept that the intentions are there, I am still not convinced that, as far as the semantics and wording are concerned, the issue has been made absolutely clear in section 5. Perhaps we can consider the matter again before stage 3. Given that the convener himself has intimated the very considerable concerns that were expressed about interpretation, I will press amendment 1.

The Convener: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (Lab)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 1 disagreed to.

Amendment 2 moved—[Liz Smith].
The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 2 disagreed to.

Amendment 3 moved—[Liz Smith].

The Convener: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 3 disagreed to.

Amendment 4 moved—[Liz Smith].

The Convener: The question is, that amendment 5 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 5 disagree to.

Sections 5 and 6 agreed to.

Section 7—Introductory

The Convener: Amendment 165, in the name of Jayne Baxter, is grouped with amendments 168, 170, 171, 217 and 173.

Jayne Baxter (Mid Scotland and Fife) (Lab): My amendments 165, 170 and 217 in this group are designed to ensure that the bill includes a strong focus on tackling child poverty. The amendments would also help to ensure that tackling child poverty is at the very centre of children’s services planning and that children’s services plans make a significant contribution to tackling child poverty. I believe that placing a duty on local authorities and health boards to ensure that the aims of children’s services plans include helping to tackle child poverty will also help to promote a more consistent approach to eradicating child poverty across Scotland.

Section 9 provides that one of the aims of children’s services plans is that “children’s services in the area concerned are provided in the way … which is most integrated from the point of view of recipients”.

It is reasonable to assume that “recipients” refers to children, young people, parents and carers. We should refer to them explicitly, as it is important to have language at the heart of the bill that reflects the people affected.

I move amendment 165.
Liam McArthur: My amendments 168 and 173, which are supported by Jayne Baxter—I very much welcome that support—reflect the findings of the report, "Putting the Baby in the Bath Water: Give priority to prevention and the first 1,001 days", which was put together by a number of organisations operating in this field and places particular emphasis on the need for a preventative approach in this area and a transition away from reactive, crisis-driven, costly services towards governmental plans and services that make primary prevention real. That was one of the key recommendations of the Christie commission report. The amendments would give local authorities that want to accord priority and major resources to primary prevention in early years a basis in Scots law for making that local choice. The amendments would put on a statutory footing the support that we have across the Parliament for the preventative spending agenda. I hope that that will attract support from the committee, although I am aware that amendment 171 in the name of Joan McAlpine seeks to do much the same thing. If my amendment 168 is not supported, I will certainly support amendment 171.

Joan McAlpine: Amendment 171 arose from discussions on the "Putting the Baby in the Bath Water" report with Barnardo's Scotland, the WAVE Trust and others. It recognises that children's services plans should show how children's services planning is achieving the aims of early intervention and preventative action, which are key principles underlying the bill as a whole.

The purpose of amendment 171 is to add text to section 9(2) to include among the aims of a children's services plan that it "ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising".

The effect of the amendment would be to require local authorities and health boards to set out in preparing their children's services plans how the services will work towards securing the achievement of the aims of early intervention and preventative action over the period covered by the plans. I welcome Mr McArthur’s supportive comments about my amendment.

11:15

Neil Bibby: I support amendments 165, 170 and 217, in the name of my colleague, Jayne Baxter. The purpose of the amendments is to ensure that local children's services planning contributes to the aims laid down in Scotland's child poverty strategy. I am sure that we all share the aspirations of making Scotland a better place for children to grow up in, and of eradicating child poverty. Although many children will grow up in Scotland with a great start in life, far too many grow up in poverty. We need to direct resources, but we need also to direct the focus of children's services plans, which, according to the Child Poverty Action Group, must play a vital part in developing and progressing the child poverty strategy for Scotland by ensuring that a consistent approach is taken to tackling child poverty across Scotland by local authorities, health boards and other key agencies.

At stage 1, we heard concerns about the lack of a joined-up vision from the Scottish Government in respect of the bill and other legislation and policies, and we have heard about the need to make rights real and to ensure that policies and law practically help children. The amendments seek to do that and would help to join up our approach to tackling child poverty, helping not only to provide a consistent approach but to strengthen links between the child poverty strategy for Scotland and children's services plans.

As the Child Poverty Action Group pointed out in its briefing, although local authorities in England and Wales have a legal duty to produce child poverty strategies, setting out their plans for reducing child poverty in their area, no such obligations exist in Scotland. I therefore urge members and the minister to agree to the amendments, which are also supported by Barnardo's Scotland, the Poverty Alliance, Children 1st, Children in Scotland, Save the Children, One Parent Families Scotland, and the church and society council of the Church of Scotland, so that the bill is not a missed opportunity.

I shall also support amendments 168 and 173, in the name of Liam McArthur, and I concur with Liam McArthur's comments on amendment 171, in the name of Joan McAlpine, and would be happy to support amendment 171 if amendment 168 is not agreed to.

Aileen Campbell: Amendment 165 seeks to insert a definition of the “Child Poverty Strategy for Scotland” into section 7(1) of the bill as a result of the related amendment 170, which seeks to extend the aims of the plans to include tackling child poverty. Amendment 170 aims to ensure that the child poverty strategy for Scotland is explicitly addressed by children's services plans, but we do not believe that either amendment is necessary.

The intention of the bill is for such plans to cover a wide range of activity related to children's services in each local area. Many of those services will focus on improving child poverty. Consequently, having such a provision in the bill might raise questions about why other key strategies have not been mentioned. Guidance on that part of the bill should ensure that those links are made, and we are extremely keen to work with relevant organisations to ensure that child poverty...
is properly addressed in guidance. Consequently, I do not support amendments 165 and 170.

Amendments 168 and 173 seek to ensure that the prevention of harm to children in the first place should be an explicit aim of children’s services planning. We believe that the existing aims set out in section 9—in particular the aim in section 9(2)(a)(i)—cover that. Children’s services plans that aim to best safeguard, support and promote the wellbeing of children and young people will also focus on the prevention of harm occurring in the first place. We are of the view that that existing aim, in combination with the additional aim set out in amendment 171, which we support, means that amendments 168 and 173 are not necessary, and we feel that those issues can be further clarified through guidance. Consequently, I do not support amendments 168 and 173.

I do support amendment 171 and I welcome the “Putting the Baby in the Bath Water” campaign for highlighting the importance of early intervention and primary prevention in children’s services planning. Those principles are the foundation of what we are all trying to achieve across children’s services, so we are happy to see the aim explicitly set out in the bill.

On amendment 217, I agree with the sentiment behind the amendment that parents and carers as well as children should be considered in children’s services planning. We believe that the primary focus of planning of children’s services should be the users of those services, which in many, but not all, cases will be parents and carers as well as children. The amendment suggests that all parents and carers should be part of the plans, and there will be some situations—for example, child protection—where that can be problematic. Guidance is the best place to make clear how parents and carers should be taken into account in planning. For those reasons, I do not support amendment 217.

In summary, I do not support amendments 165, 168, 170, 217 and 173, but I do support amendment 171.

Jayne Baxter: I welcome the comments from committee members and the minister. I am particularly heartened to hear about Joan McAlpine’s amendment, as it is the only SNP amendment that we are considering this morning. However, the aim of addressing poverty needs to be explicit in the bill, not implicit; therefore I will press amendment 165.

The Convener: The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 165 disagreed to.

The Convener: At this point, we will have a short suspension and will resume in a couple of minutes.

11:20
Meeting suspended.

11:26
On resuming—

The Convener: Amendment 166, in the name of Liam McArthur, is grouped with amendments 167 and 203.

Liam McArthur: As we heard in relation to the previous group of amendments, there is widespread cross-party support for the findings of the “Putting the Baby in the Bathwater” briefing. I welcome the fact that the committee will agree to amendment 171, which picks up some of the concerns that underlie amendment 167 in my name, which is supported by Jayne Baxter.

Amendment 166 reflects the findings of that briefing from Children 1st, the WAVE Trust, Barnardo’s and others. There is a desire for specific reference to younger children to be made in the bill. We all acknowledge that what underlies the support for a preventative approach is recognition of the fact that what happens in the earliest days of a child’s life can have a significant and lasting effect on outcomes thereafter.

Amendment 166 tries to give proper attention to the needs of children from birth in the first 1,000 or so days of their lives. Therefore, I hope that it will attract the committee’s support.

I move amendment 166.

Siobhan McMahon: The aim of amendment 203 is to ensure that family support services are reflected in children’s services planning to inform local commissioning strategies. It would serve as a clear guide to public authorities that family support
services should be reflected in such strategies. I hope that the committee will support that.

Clare Adamson: I thank the agencies behind “Putting the Baby in the Bathwater” for the work that they have done and the briefings that they have provided to the committee, which have been useful. However, I return to the universality of the bill. In the getting it right for every child approach, by definition we include those under the age of three. Therefore, amendment 166 is unnecessary.

The same applies to including the need for additional support in the definition of services. That is already covered by the universality of the bill.

The bill covers services that are for the benefit of all children with particular needs, so I really do not think that amendment 203 is necessary either, although I appreciate the member’s reasons for lodging it.

Liz Smith: I add my support for Liam McArthur and Siobhan McMahon. We have struggled for a long time with who is and is not covered by the definitions in the bill, particularly when it comes to service providers. From that angle alone, it is important that we tease the matter out before stage 3 so that we have a comprehensive decision on it. Therefore, I lend my support to all three amendments in the group.

11:30

Jayne Baxter: I am pleased to support the amendments, which would support the principle of ensuring that children’s services plans apply from birth and of recognising the importance of the earliest years of a child’s life when developing those plans.

Amendment 167 is especially important because we know that, for too many children, it can take a considerable time for a diagnosis to be made or for their additional support needs to be formally recognised. Without that, it could be crucial months or years before a child’s needs are taken into account.

The Convener: I very much support the principle behind the amendments, but I disagree with Liz Smith—it is pretty clear that the bill covers all children and it is unnecessary to single out groups of children in the bill.

Liz Smith: There are semantic issues about who is and is not classified in the bill. The meaning of “service provider” is different in different parts of the bill. Clarity is needed about that.

The Convener: That is an interesting point. Amendment 166 would add the words “including infants and children aged under 3”, but that is unnecessary, as they are covered. I do not support that amendment not because I do not support the principle but because I think that that group is covered and that the amendment would add nothing. The same is true of other amendments. I will not support the amendments in the group.

Aileen Campbell: Amendment 166 is unnecessary, as the existing definition covers services for children generally, including children who are under three. All the definitions are made clear in each definition section in the bill.

Amendment 166 echoes proposals that were made in the “Putting the Baby in the Bath Water” campaign. Like other members, we welcome that campaign and congratulate it on its work on the bill. We absolutely share the policy goals that lie behind that campaign, and we will ensure that guidance makes it clear that children’s services plans should cover services for children up to the age of three. Consequently, I do not support the amendment.

Amendment 167 aims to ensure that children’s services planning covers services for children with suspected as well as confirmed additional support for learning needs. The amendment is unnecessary, as the existing definition at section 7(1)(a) covers that. Moreover, we will want to ensure in guidance that planning covers services for children with suspected as well as confirmed needs. Consequently, we do not support the amendment.

Amendment 203 has a good policy intention—to ensure that children’s services planning covers support for the families of children with particular needs. Children’s services planning should include support for families in their caring roles for such children, and the bill already covers services that are for the benefit of children with such needs. Guidance can make that more explicit. The amendment does not make clear what services for families would be covered, which could undermine the focus of such planning in children’s services. Consequently, we do not support the amendment.

In summary, we do not support any of the amendments in the group.

Liam McArthur: Despite the minister’s concluding sentence, I welcome the contributions from colleagues and the minister, which have generally been consensual. The convener and Clare Adamson raised concerns about amendment 166, but I do not think that it would any way detract from or strike at the heart of the principle of universality. The amendment recognises the importance of the earliest years and would complement amendment 171, which we discussed under the previous group. I also support Siobhan McMahon’s amendment 203.
I confirm that I will press amendment 166.

The Convener: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 166 disagreed to.

Amendment 167 moved—[Liam McArthur].

The Convener: The question is, that amendment 167 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 167 disagreed to.

Amendment 203 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 203 disagreed to.

Amendment 90, in the name of the minister, is grouped with amendments 91 to 94 and 96 to 100.

Aileen Campbell: Amendments 90 to 94, 96, 99 and 100 clarify the reference to the Scottish ministers with respect to the role of the Scottish Prison Service. In particular, they remove the Scottish ministers from the definition of “other service provider” in section 7(1) and instead list them in section 7(2) as persons who may provide children’s or related services as the SPS.

The bill, as introduced, lists the Scottish ministers as an “other service provider”, which would have some unintended consequences. For example, by virtue of section 7(4), ministers would be obliged to consult themselves before bringing forward an order under section 7(3). The purpose of amendments 90 to 94, 96, 99 and 100 is to clarify how part 3 should apply to the Scottish ministers when they provide services as the SPS.

Amendments 97 and 98 address another set of unintended consequences. Section 10(7) requires the agreement of all the other service providers to the draft children’s services plan before it can be submitted to ministers and published. In some circumstances, that could mean that an “other service provider” withholding their agreement could prevent a plan from being published should the issue not be resolved.

I have lodged amendment 97 to avoid disagreements preventing a plan from being finalised by removing section 10(7). At the same time, a new subsection (8) would enable any disagreements with the plan to be publicly set out and would require the Scottish ministers—as the SPS—and other service providers to prepare and publish a notice setting out their reasons for disagreeing with a matter in the plan.

The combined effect of those changes is to remove the power of veto and require a public statement of any disagreement. The changes will not affect the existing requirement for service providers to be consulted and participate in the development of plans, which is provided for in section 10 as a whole.

Correspondingly, amendment 98 to section 12 is also needed. Its purpose is to prevent the Scottish ministers and other service providers from being bound to implement a matter in a plan with which they might disagree, which is in line with the notice set out in section 10(8). The effect of the amendment will be that the Scottish ministers and
other service providers would not be compelled to provide relevant services in line with the plan, but only to the extent of the matter with which they disagree.

I urge the committee to support all the amendments in the group, and I move amendment 90.

The Convener: No members have indicated that they wish to speak. Minister, do you wish to wind up?

Aileen Campbell: I waive my right to do so.

Amendment 90 agreed to.

Amendment 204 moved—[Mary Fee].

The Convener: The question is, that amendment 204 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Baxter, Jayne (Mid Scotland and Fife) (Lab) Bibby, Neil (West Scotland) (Lab)

Against Adam, George (Paisley) (SNP) Adamson, Clare (Central Scotland) (SNP) Beattie, Colin (Midlothian North and Musselburgh) (SNP) Maxwell, Stewart (West Scotland) (SNP) McAlpine, Joan (South Scotland) (SNP) McArthur, Liam (Orkney Islands) (LD) Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 204 disagreed to.

The Convener: Amendment 205, in the name of Siobhan McMahon, is grouped with amendments 206 to 210, 212 to 214, 218, 220, 224 to 228, 230, 232 and 237.

Siobhan McMahon: The bill introduces a new right for young people who are leaving care to request assistance and support from a local authority up to the age of 25. Although that is to be welcomed, as it will support some of Scotland’s most vulnerable young people, it falls short of supporting all vulnerable young people.

My amendment 205 aims to support young disabled people who are transitioning into adult life. It specifically requires a children’s services plan to be prepared with a view to ensuring that transitions are planned well in advance. That would support the transitions process and would be of particular benefit to young disabled people who have less complex support needs, and for whom the adult social care assessment frameworks might mean that they fall short of being assessed for a formal care plan as they move into adulthood and independent living.

On amendment 207, although the Education (Additional Support for Learning) (Scotland) Acts 2004 and 2009 make provision for transitions planning, it is only applicable to disabled young people who have been assessed as having an additional support for learning need via a co-ordinated support plan or individualised education plan, and the powers of the ASL acts do not extend beyond the responsibility of the education authority to develop a plan. The acts cannot place duties on other public bodies to comply beyond school leaver age.

I move amendment 205.

Liam McArthur: I echo Siobhan McMahon’s sentiments, which are very much the same as those that underlie amendment 237 in my name.

Notwithstanding the safeguards that are currently in place, from casework in my constituency—I suspect that colleagues have also experienced the same—I am aware of children who are progressing through the system feeling as if they will fall off a cliff edge when they reach adulthood. I do not think that we have got transition planning right yet. Those people are often the most vulnerable and the transition stage is absolutely critical to them.

Amendment 237 seeks to ensure that transition planning is well embedded for all those who need it and that young people are kept fully informed and involved in the process. I therefore hope that amendment 237 will command support across the committee and from the Government.

George Adam (Paisley) (SNP): I agree in principle with much of what has been said, but amendments 218 and 210 could cause some confusion at a local level where adult services and children’s services are working together and trying to cross over at one point. Some children’s services might end up suffering from that.

Although I agree in principle with what has been said, there might be problems with the idea as it has been proposed and it would be less than practical to try to make it work out there in the real world.

Aileen Campbell: Our provisions on children’s services planning in part 3 of the bill recognise that children deserve dedicated and integrated planning that makes clear how services are responding to their needs. The bill is based on the idea that children require co-ordinated and targeted support across all the range of services that can support their wellbeing, at strategic level as well as in planning for each individual child.

To widen such planning to include young persons up to the age of 25 risks diluting the focus of children’s services planning. The services that children require are not always the same as those
that young adults require, and to combine both into the same set of plans runs the risk of overcomplicating planning, potentially resulting in plans that do not address the needs of children and young adults in the detail that they deserve.

Nevertheless, we believe that good transition planning is essential for those children whose needs will require continuing support into adulthood. Planning for that should be covered by children’s services plans. The existing provisions of the bill allow for that and it is hard to see how the absence of good transition planning would best safeguard, support and promote the wellbeing of children who are approaching 18 and are being left in uncertainty about how they will continue to be assisted.

**Liam McArthur:** Will the minister take an intervention on that point?

**Aileen Campbell:** Yes.

**Liam McArthur:** The minister talks about the current provisions allowing for such planning to be done, and we are all aware of where good practice exists. Thankfully, it is not the case that every vulnerable child who is moving into adulthood finds themselves falling off a cliff edge. Nevertheless, despite the existing provisions, that does still happen. Rather than simply allow for it, does the bill not provide an opportunity to require that transition planning to happen as a matter of course?

**Aileen Campbell:** I acknowledge the member’s point that good practice exists across Scotland—we should draw on that—but this issue is best addressed in guidance. I see that as the opportunity in the bill to ensure that transition planning is done in the most appropriate way to support young people who need additional support as they move into adulthood.

I am always happy to engage with the wider range of stakeholders who have been pushing for these particular amendments to ensure that the guidance is robust as it can be. However, given our belief that this matter is best approached through guidance, we do not support Siobhan McMahon and Liam McArthur’s amendments in this group, although I acknowledge the spirit in which they have been lodged.

11:45

**Siobhan McMahon:** I thank the minister for her comments. Although I disagree with her conclusion, I acknowledge that progress has been made in this area.

That said, as has been pointed out by Liam McArthur—I appreciate his support on this matter—the problem for many third sector organisations and for the parents and children in this situation is that children are falling through a hole. The services are just not there and there is already confusion, and the amendments seek to address that matter in law rather than through guidance. As a result, I will press amendment 205.

**The Convener:** The question is, that amendment 205 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

**The Convener:** The result of the division is: For 4, Against 5, Abstentions 0.

**Amendment 205 disagreed to.**

**The Convener:** Amendment 52, in the name of Liz Smith, is grouped with amendments 53 to 57, 64 and 66 to 81.

**Liz Smith:** One of the bill’s complexities relates to the use of the terms “wellbeing” and “welfare”. We know in our hearts that wellbeing sounds a little bit better and a bit more holistic than welfare and is a term that is perhaps missing from various pieces of legislation. However, the more we go into the issue, the more difficult it becomes to define wellbeing and I think that in practical terms the law will simply come back to the term “welfare”. That is irrespective of the safe, healthy, achieving, nurtured, active, respected, responsible and included—or SHANARRI—indicators, which have been successful up to a point; indeed, I know that certain subdivisions of SHANARRI in local authorities have also been helpful, again up to a point. However, I think that the term “wellbeing” is fraught with many practical difficulties. It might be more holistic, but it is also a little more vague and is therefore not helpful as far as the bill is concerned. The conflation of the two terms could give rise to complications and confusion in the duties of certain service providers.

Amendment 52 seeks to define a related service as that provided in a local authority which, although not a children’s service, is still capable of having a significant effect on a child’s welfare. Amendment 53 seeks to ensure that children’s services are provided in a way that best safeguards, supports and promotes the welfare of the child in the area concerned, while amendment 54 seeks to introduce a similar duty for related
services by again ensuring that, in the area concerned, such services are provided in a way that safeguards, support and promotes the welfare of children.

Amendment 55 relates to the implementation of the children’s services plan and seeks to ensure that section 12(2) does not apply to the extent that the person providing the service considers that to comply with it would adversely affect the welfare of a child. Amendment 56 seeks to guarantee that the annual report published by either a local authority or a health board would take into account the extent to which the provision has achieved outcomes in relation to the welfare of children in the areas prescribed by Scottish ministers.

Amendment 57, which relates to part 4, seeks to define as one of a named person’s functions promoting, supporting or safeguarding, where appropriate, the welfare of that child. Again, by substituting the term “wellbeing” with “welfare”, I hope that the bill will result in a better service and provide greater clarity with regard to a named person’s duties.

Finally, amendment 64 relates to information sharing and seeks to ensure that service providers do not divulge information in certain circumstances where it might be relevant—of course, it will depend on how we vote on that particular terminology later—to the exercise of any function that affects or might affect the welfare of the child or young person in question.

Unless the term “wellbeing” is much more tightly defined, problems could arise with children’s services having to carry out a whole range of complex, even slightly esoteric tasks. If we make welfare the standard term throughout the bill, not only will a greater degree of clarity emerge, but the bill will come into line with major pieces of existing legislation, which rarely refer to wellbeing.

I move amendment 52.

Colin Beattie: In seeking to replace the term “wellbeing” with “welfare”, the amendments in the group hit at an essential element of the bill. A core concept of the bill is the change from the more restricted term “welfare” to a term that is wider and more holistic, as Liz Smith mentioned, namely “wellbeing”. In the consultation on the bill, 90 per cent of respondents agreed that “a wider understanding of ... wellbeing should underpin our proposals”.

I would therefore be concerned if the proposed terminological change took place.

Jayne Baxter: I do not support the amendments in the group. Much of the work that we do for young people, especially under GIRFEC, is based on the concept of wellbeing. I support that wider, more holistic approach and I would be worried about us moving away from that. I would like to ensure that the concept of wellbeing is as embedded in the bill as it can be, so I do not support the amendments.

Liam McArthur: At stage 1, there was concern about the broadening out of the scope beyond welfare to wellbeing, principally in relation to the effect that it would have on the targeting of resources. A number of witnesses raised that with us, and there was also concern that there might be a redirection of focus in some areas that would not be helpful. Nevertheless, like others, I am concerned that the amendments would undermine the status of the GIRFEC process, so I cannot support them.

The Convener: I agree with Colin Beattie, Liam McArthur and Jayne Baxter. To remove the term “wellbeing” and replace it with “welfare” would be a step in the wrong direction. As Colin Beattie said, it would rather strike at the heart of what the bill is trying to do. Like other members, I will not support the amendments.

Aileen Campbell: Part of what we are seeking to achieve with the bill is the promotion of early intervention and prevention. Adopting the concept of wellbeing and taking that more holistic approach should encourage people to identify concerns at an earlier stage, as Colin Beattie and the convener mentioned. Rather than using the concept of welfare, which has been interpreted variously by services across a number of different pieces of legislation, we want to establish a clear, common definition of wellbeing that captures our early intervention principles and the advice of professionals who work across children’s services.

The concept of wellbeing that we have set out in the bill is already widely used and is well understood by practitioners. Wellbeing is therefore already embedded in practice, and to dispense with it would seriously impact on practitioners’ ability to take forward early intervention and remove a concept that is already accepted and widely implemented across Scotland. As the convener, Liam McArthur and Jayne Baxter acknowledged, wellbeing is the foundation of the GIRFEC approach and it has provided a common language for practitioners in taking forward GIRFEC across Scotland.

The concept was clearly endorsed in our consultation on the bill, as 90 per cent of respondents agreed that “a wider understanding of a child or young person’s wellbeing should underpin our proposals.”

Those views were echoed in the evidence that the committee received. For example, Professor Norrie supported the use of the term “wellbeing” as opposed to “welfare” in his written evidence to the committee, stating:
“the Bill, and especially the ‘wellbeing’ provisions, is not about compulsory intervention but about seeking to avoid the need for compulsory intervention.”

A number of children’s charities also spoke to the committee about the importance of setting out wellbeing in the bill. For the reasons that I have outlined, I do not support the amendments in the group.

The Convener: I call on Liz Smith to wind up and say whether she wishes to press or withdraw amendment 52.

Liz Smith: I thank members for their comments. I entirely accept that we all like the concept of wellbeing. However, the use of the word “concept” in defence of the term “wellbeing” is interesting. Wellbeing is a concept, and my concern is that it is difficult to define that concept in law. If we are confident that it is already being well used in guidance, I do not see why it has to go into the bill, especially as it is extremely difficult to define.

I press amendment 52.

The Convener: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McAlpine, Joan (South Scotland) (SNP)
Maxwell, Stewart (West Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 206 disagreed to.

Amendment 207 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 207 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 207 disagreed to.

Amendment 208 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 208 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 208 disagreed to.

Amendment 91 moved—[Aileen Campbell]—and agreed to.

Amendment 209 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 209 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Section 8—Requirement to prepare children’s services plan

Amendment 211 moved—[Mary Fee].

The Convener: The question is, that amendment 211 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McCarron, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 211 disagreed to.

Amendment 212 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 212 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McCarron, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 212 disagreed to.

Amendment 213 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 213 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McCarron, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 213 disagreed to.

Amendment 214 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 214 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McCarron, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 214 disagreed to.

Amendment 215 moved—[Mary Fee].

The Convener: The question is, that amendment 215 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 169 disagreed to.

The Convener: The question is, that amendment 169 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 5, Abstentions 1.

Amendment 170 disagreed to.

Amendment 171 moved—[Joan McAlpine]—and agreed to.

The Convener: I welcome Mark McDonald to the committee. Amendment 216, in the name of Mark McDonald, is grouped with amendments 219, 222, 234, 236, 240, 242 to 246, 248 and 250 to 256. If amendment 244 is agreed to, I cannot call amendment 183, in the group "Views of child in relation to child’s plan", because of pre-emption.

Mark McDonald (Aberdeen Donside) (SNP): I thank the Royal College of Speech and Language Therapists, which I met on a number of occasions to discuss my amendments. They are intended to be probing amendments, to look at whether the issues that they raise can be put on the Government’s agenda when it drafts the guidance relating to the bill.

It is worth putting in context, in relation to speech, language and communication needs, that around half of children and young people in deprived communities have speech, language and communication difficulties. Such difficulties are the most common experienced by children and young people, affecting about two children in every classroom. The majority of young people in crisis have speech, language and communication difficulties. More than 60 per cent of children referred to psychiatric services, 88 per cent of young unemployed men and a significant percentage of young men in young offenders institutions are found to have speech, language and communication difficulties.

Issues relating to speech, language and communication are critical, which is why it is important to consider how they can be encapsulated. For example, amendments 216 and 219 look at how those issues can be encapsulated in children’s service plans. Amendment 234 is about guidance for local authorities, health boards and other service providers to optimise speech, language and communication development for children and young people.

The intention of amendment 243 is to ensure that directions could also be issued about the type of strategic action that could optimise that speech, language and communication development. I heard the committee debate issues of wellbeing and welfare. The amendment looks at issues relating to a child’s wellbeing and how speech, language and communication needs would factor into that. Section 31 might take cognisance of that but, again, that could perhaps be reflected in the guidance.
Amendment 250 deals with what strategic action could be taken, following on from the child’s plan, to optimise speech, language and communication development.

Amendment 251 gets to the nub of the matter. Section 42 includes the phrase “regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.”

As such interactions will include speech, language and communication, it would be interesting to hear from the minister whether they are factors in the Government’s considerations on section 42. I would also be interested to know whether the minister would be willing to invite the Royal College of Speech and Language Therapists to be involved when it comes to the drafting and formulation of guidance in this area.

A number of Jayne Baxter’s amendments are extremely similar in nature to the ones that I lodged, except for amendment 254, which relates to the establishment of a speech, language and communication strategy. I have some sympathy for that, given the success that the Scottish Government’s autism and dementia strategies have had, but I do not think that the bill is necessarily the place to provide for such a strategy. Perhaps the lodging of the amendment could lead to further discussions and, I hope, some positive moves in that direction.

I move amendment 216.

Jayne Baxter: With the benefit of hindsight, it is clear that the issues of speech, language and communication are ones that we could have explored more fully in our earlier consideration of the bill. Children and young people need to be enabled to express themselves and to communicate to the best of their ability to understand their rights and to enjoy them fully. It seems like a niche area to focus on, but I believe that, when we look at the figures, the need for my amendments speaks for itself. Around half of the children and young people from deprived communities have speech, language and communication difficulties, which are the most common difficulties that are experienced by children and young people—two pupils in every classroom experience them, as Mark McDonald said.

To elicit a child’s views, the child must have the optimum opportunity and, where necessary, effective support to understand information and to express their views. To provide such support effectively, public authorities must take into account the child’s speech, language and communication needs, and the child’s optimum capacity to understand the process and to express their views.

Amendment 254 is rather lengthy. It relates to the creation of a national speech, language and communication strategy for children and young people. Significantly, Scotland—unlike other parts of the UK—currently has no comprehensive unified strategic focus on optimising all children and young people’s speech, language and communication development. A national strategy could deliver a major step change in such development. In the event that amendment 254 is not agreed to, I would be keen to hear from the minister what steps the Scottish Government intends to take to progress the measures that are outlined in it so that we do not miss the opportunity that the bill presents.

Liam McArthur: I listened with interest to Jayne Baxter’s comment that this was an area to which we did not necessarily pay sufficient attention at stage 1. A similar claim could be made in relation to any number of areas. Even if we had doubled the amount of time that we spent on the bill at stage 1, we would probably still have only scratched the surface on a range of key issues that are relevant to the bill.

As Mark McDonald indicated, this group of amendments reflects the value of having the ability to lodge probing amendments. I do not think that there is a feeling that it would be appropriate to put the provisions in question on the face of the bill, but I hope that the fact that the amendments have been lodged and considered at stage 2 will ensure that the issues that underlie them can be addressed in guidance in due course.

The Convener: Before I invite the minister to respond, I would like to make some comments of my own.

I very much support the nature of Mark McDonald’s amendments, but I agree with Liam McArthur that—as Mark McDonald himself said—they are probing amendments. It is extremely important that we get the opportunity at this stage to hear the Government’s view on speech and language therapy and on the specific issue of a strategy, which Jayne Baxter raised. Therefore, we would be grateful if the minister could explain the Government’s position on the amendments in this group and the general area that has been opened up as a result of Mark McDonald’s helpful lodging of his amendments.

Aileen Campbell: I thank Mark McDonald and Jayne Baxter for raising the needs of that group of children. The Government absolutely supports the intent behind their amendments, as that group of children should and must benefit from the provisions of the bill. However, we believe that the existing provisions already enable their needs to be addressed.
The bill is founded on a holistic approach to the wellbeing of children and young people in all circumstances and with all conditions, as we have already said in debate. The bill has been drafted to ensure that the needs of any particular group of children will be supported by the different provisions, whether at a strategic level, as in the children’s services plans in part 3, or at individual level, as in the support for individual children through parts 4, 5, 6 and 7. That includes speech, language and communication needs.

Moreover, we believe that guidance is the best place to address those children’s specific needs under the different parts of the bill, and indeed, the needs of all groups of children with particular issues. To provide reassurance to Mark McDonald and Jayne Baxter, we will commit to ensuring that the distinctive needs of children with speech, language and communication issues will be addressed by guidance as appropriate and that we will work with appropriate organisations to do so. We appreciate the work of the Royal College of Speech and Language Therapists in raising those important issues.

The Convener: I call Mark McDonald to wind up and to indicate whether he wishes to press or withdraw amendment 216.

Mark McDonald: I realise that the committee has had a marathon session so I shall keep my remarks brief. I am satisfied that the minister has taken on board the points that have been raised through the amendments, so I seek to withdraw amendment 216.

Amendment 216, by agreement, withdrawn.

Amendment 217 moved—[Jayne Baxter].

The Convener: The question is, that amendment 217 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 217 disagreed to.

Amendment 172 moved—[Neil Bibby].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 172 disagreed to.

The Convener: Amendment 173, in the name of Liam McArthur, has already been debated with amendment 165.

Liam McArthur: I realise that I might have been a bit premature in not moving amendment 168, but now that we have actually agreed to amendment 171, I will not move amendment 173.

The Convener: I thought that at the time, but it is up to you.

Amendments 173, 219 and 54 not moved.

Amendment 220 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 220 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 220 disagreed to.

Amendment 174 moved—[Neil Bibby].

The Convener: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 174 disagreed to.

Amendment 175 moved—[Neil Bibby].

The Convener: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.

Amendment 175 disagreed to.

Section 9, as amended, agreed to.

Section 10—Children’s services plan: process

Amendment 92 moved—[Aileen Campbell]—and agreed to.

12:15

The Convener: Amendment 176, in the name of Liam McArthur, is grouped with amendments 223, 231 and 128.

Liam McArthur: As Mark McDonald said, this has been a marathon session, so I will try to keep my comments relatively brief. I put on record my gratitude to Barnardo’s Scotland and Aberlour Child Care Trust for their assistance with amendment 176.

Section 8 provides for local authorities and health boards to introduce children’s services plans. Those plans will help with the co-ordination, design and delivery of services, which will, in turn, improve outcomes for children and young people.

Although the bill provides for local authorities and health boards to consult a variety of organisations and agencies, thereby giving them an opportunity to contribute to the preparation of the plans, there is not sufficient provision to include the views of children and young people. Amendment 176 seeks to address that. It very much speaks to the fundamental principles of the bill, which are about the centrality of children’s rights and ensuring that their voice is heard at every stage where that is appropriate.

The other amendments in the group follow a similar pattern and seek to achieve the objectives of having the widest possible consultation and having children’s voices heard throughout the process. Therefore, I will support those other amendments.

I move amendment 176.

Jayne Baxter: In preparing children’s services plans, bodies should include direct consultation with children and families, as the recipients of services, as well as with service providers. There should also be reports on how that has been achieved. Therefore, I will move amendments 223 and 231.

Liz Smith: I agree with Mr McArthur and Mrs Baxter. I thank the groups that have helpful us on the issue. Amendment 128 would require the Scottish ministers to consult the organisations that fall within section 10(2) and that might have an interest in the guidance, and such other persons as the ministers consider appropriate. I hope that that will ensure that the Scottish ministers consult voluntary organisations on guidance in which those organisations have an interest, prior to the
issue or revision of that guidance. Many voluntary organisations provide services for children on behalf of local authorities and other agencies, including health boards. As such, it is only right and proper that the consultation provisions are broadened to reflect that.

Joan McAlpine: Although I am sympathetic to the sentiments behind the amendments in the group, I am not sure that the amendments are necessary. Amendment 176 is unnecessary, as there is already a requirement in the bill to consult organisations that represent the interests of children as well as children themselves. Amendment 223 suggests that young people over 18 should be consulted. My concern is that that would dilute the focus of children’s services. The amendment does not set a proportionate limit as to how much consultation would be required. The requirement in amendment 231 would be difficult to undertake and enforce. For example, how would we measure service users’ expectations of the level and quality of service?

I accept that the intention of Liz Smith’s amendment 128 is to ensure that Barnardo’s and other such organisations are consulted before guidance is issued. I do not have a problem with that but, as a matter of course, the Government consults a wide range of organisations and children and families and it is inconceivable that it would not do so in the future. Therefore, the amendment need not be included in the bill.

Aileen Campbell: Amendment 176 adds a duty to consult children and young people in children’s services planning. The amendment may have practical complexities that are best addressed through guidance that sets out how the views of children and young people are best represented in the planning process. A requirement exists in sections 10(1)(b)(i) and 10(2)(a) for those preparing a plan to consult such organisations that “represent the interests of persons who use or are likely to use any children’s service or related service”, and those persons would, of course, include children themselves.

Amendments 223 and 231 remind us that children’s services plans must focus on the needs of children and their families. However, the amendments are problematic. For a start, they refer to “young people”, which, given the definition of children in the bill as those up to the age of 18, suggests that children’s services planning should extend to include services to support a much wider age group, which, we believe, would hugely dilute the focus of planning on children.

The amendments also lack the proportionality that is essential for how local authorities and health boards respond to the needs and views of people in their area. Proportionality is crucial here if planning is not to become a burden rather than a boon for public bodies, and that is best addressed in guidance, which should make clear our collective expectations over how user views should inform planning. For those reasons, we do not support amendments 223 and 231.

Amendment 128 seeks to ensure that guidance on children’s services planning is issued or revised by the Scottish ministers only after consulting organisations falling within section 10(2) and such other persons as they consider appropriate in addition to the existing duty on ministers to consult the persons to whom the guidance relates. While we understand the intention behind the amendment, discussions on how that will work in practice will form part of the process of developing guidance around the duties in part 3, where consultation with relevant organisations will be ensured. It is not appropriate to legislate for that on the face of the bill; consequently, we do not support amendment 128.

In summary, we do not support the amendments in this group.

Liam McArthur: I thank colleagues and the minister for their comments on all the amendments in the group. I have listened carefully to what has been said. On amendment 176, I do not understand the concern about the aspiration to consult children and young people on the development of the plans on the basis that we do not set a limit on that consultation or the quality of it. Presumably, if that were a concern, a number of aspects of the bill would fall. If we are serious about putting children’s rights at the centre and ensuring that the voice of children is heard as a result of the bill, changes need to be made, one of which is encapsulated in amendment 176.

Jayne Baxter set out the justification for her amendments. I have nothing to add to that. On amendment 128, in the name of Liz Smith, we are very conscious that a large amount of detail is to be taken forward through guidance, which is entirely right and appropriate, but that serves only to underscore the importance of ensuring that, as the guidance is developed and subsequently amended, the widest possible input from stakeholders with the relevant expertise is brought to bear. On that basis, amendment 128 is sensible.

The Convener: The question is, that amendment 176 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 176 disagreed to.
Amendment 221 moved—[Mary Fee].

The Convener: The question is, that amendment 221 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.
Amendment 222 disagreed to.
Amendment 222 moved—[Jayne Baxter].

The Convener: The question is, that amendment 222 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 223 disagreed to.
Amendments 93 and 94 moved—[Aileen Campbell]—and agreed to.
Amendment 225 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 225 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.
Amendment 222 disagreed to.
Amendment 223 moved—[Jayne Baxter].

The Convener: The question is, that amendment 223 be agreed to. Are we agreed?

Members: No.
The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 225 disagreed to.

The Convener: Amendment 95, in the name of the minister, is grouped with amendments 101 to 107, 111 to 116 and 118.

Aileen Campbell: Amendments 101 to 103, 105 and 106 are minor drafting amendments to tidy up direction-making and guidance powers in sections 15 and 16 to ensure drafting consistency with other similar powers elsewhere in the bill. On amendments 95, 104, 107, 111 to 116 and 188, the Delegated Powers and Law Reform Committee in its report on the bill recommended that, where guidance or directions are issued by ministers under the named persons, child’s plan and wellbeing provisions in the bill, there should also be a duty for that guidance or those directions to be published. Our intention has always been to publish all bill guidance or directions. However, the bill does not currently specify that and therefore we were happy to accept the committee’s recommendation to do so.

To ensure consistency of approach, this group of amendments also moves disparate guidance and direction provisions from throughout the bill and inserts them into a new catch-all section that places a duty on ministers to publish all bill-related guidance and directions and provides that those can be issued generally or for particular purposes and to different persons for different purposes.

I urge you to support my amendments 95, 101 to 107, 111 to 116 and 118.

I move amendment 95.

Amendment 95 agreed to.

Amendments 96 and 97 moved—[Aileen Campbell]—and agreed to.

Section 10, as amended, agreed to.

Section 11 agreed to.

Section 12—Implementation of children’s services plan

Amendment 226 moved—[Siobhan McMahon].

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 226 disagreed to.

Amendment 55 not moved.

Amendment 227 moved—[Siobhan McMahon].

12:30

The Convener: The question is, that amendment 227 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The question is, that amendment 227 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 228 disagreed to.
Amendment 229 moved—[Mary Fee].

The Convener: The question is, that amendment 229 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 229 disagreed to.

Amendment 56 not moved.

Amendment 230 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 230 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 230 disagreed to.

Amendment 231 moved—[Jayne Baxter].

The Convener: The question is, that amendment 231 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 231 disagreed to.

Section 13 agreed to.

Section 14—Assistance in relation to children’s services planning

Amendment 99 moved—[Aileen Campbell]—and agreed to.

Amendment 232 moved—[Siobhan McMahon].

The Convener: The question is, that amendment 232 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: Amendment 127, in the name of Liz Smith, is in a group on its own.

Liz Smith: Amendment 127 would remove the ability of local authorities and health boards to compel private and voluntary bodies, whether or not they have received state funding, to comply with demands for information, advice or assistance.

Section 14 states:
“A person mentioned in subsection (2) must comply with any reasonable request made of them to provide a local authority and each relevant health board with information, advice or assistance for the purposes of exercising their functions under this Part.”

The bodies that are mentioned in subsection (2) include the private and voluntary organisations that were previously described in section 10(1)(b)(i), which provide a service in the area that, if it were provided by the local authority, any relevant health board or other service providers, would be in a children’s service or a related service. As well as the bodies that deliver services
Amendment 127 tries to remove a burden from non-statutory bodies to assist local authorities and health boards in the preparation of children's services plans by removing them from the scope of the duty in section 14(1). However, we think that it is important that those bodies are able to assist in that way, as they have a key role in developing those plans. Local authorities and health boards, while accounting for a large share of the services that should go into the plans, will need information and commentary from a wider group of service providers to ensure that the plans have the maximum strategic impact. Allowing an opt-out from a duty to assist would undermine the intention of creating collective responsibility for planning services around the wellbeing of all children in an area.

It is important to recognise that the duty in section 14(1) is for those persons mentioned in section 14(2) to comply only with “reasonable requests”. Also, by virtue of section 14(3), the duty does not apply when the person considers that providing the information, advice or assistance that has been requested would be incompatible with any duty of the person or would unduly prejudice the exercise of any of their functions. Those considerations provide safety checks on local authorities and health boards to ensure that they cannot abuse the provision in section 14 to compel persons to act in a way that would undermine their functions or be unduly onerous on them.

I hope that that has been helpful in clarifying our position. I do not support amendment 127.

Liz Smith: I will first pick up the important point that the minister made about collective responsibility. This is about having the widest impact on the children and taking into account their best interests. We have come across circumstances in which certain organisations have not been very clear about where their responsibility lies. Sometimes, children have missed out because they have not been able to access some of the services that they need. On that basis, I wish to press amendment 127.

The Convener: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Amendment 127 disagreed to.

Section 14, as amended, agreed to.

Section 15—Guidance in relation to children’s services planning

Amendments 101 to 103 moved—[Aileen Campbell]—and agreed to.

Amendment 233 moved—[Mary Fee].

The Convener: The question is, that amendment 233 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 233 disagreed to.

Amendment 234 not moved.

Amendment 104 moved—[Aileen Campbell]—and agreed to.

Amendment 128 moved—[Liz Smith].

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Aileen Campbell: Amendment 108, which relates to section 17(1), seeks to replace wording that was inadvertently left out of the bill when it was introduced and to ensure that the local authority, health board and other service providers’ duty to comply with section 12 is excluded from the direction-making power in section 17.

In effect, the amendment ensures that directions focus on issues of planning and not the implementation of plans and the delivery of services set out in section 12. It is all about consistency; the new wording mirrors the wording already in place in sections 15(1) and 16(1) in respect of guidance and other direction-making powers.

Amendment 109 is a minor amendment that seeks to improve the drafting of section 17(3) to clarify the persons whom the Scottish ministers...
may direct to exercise planning functions, using their power in section 17(2)(b).

The purpose of amendments 110 and 117 is to remove the joint boards enforcement mechanism provided for in section 17(6) to (9). After discussion with COSLA, it was agreed that joint boards might result in the unnecessary transfer of powers from local authorities and heath boards and that the existing direction-making powers in sections 16 and 17 are sufficient for enforcement.

I hope that the committee will be able to support amendments 108, 109, 110 and 117.

I move amendment 108.

Amendment 108 agreed to.

Amendments 109 and 110 moved—[Aileen Campbell]—and agreed to.

Section 17, as amended, agreed to.

Section 18 agreed to.

After section 18

The Convener: I call Liam McArthur to indicate whether he wishes to move amendment 237.

Liam McArthur: Given what has gone before, convener, I move in hope rather than expectation.

The Convener: But you are moving all the same.

Liam McArthur: Indeed.

Amendment 237 moved—[Liam McArthur].

The Convener: The question is, that amendment 237 be agreed to. Are we agreed? [Interruption.] Are we not all agreed?

Members: No.

Liam McArthur: Close.

The Convener: You need only one to say no, Liam. There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 237 disagreed to.

The Convener: Given the time and the fact that we have reached the end of part 3 of the bill, I
6th January 2014

Dear Stewart,

**Children and Young People (Scotland) Bill – Government announcement of Stage 2 amendments**

I would like to inform you that I intend to announce on 6 January the Scottish Government’s intention to submit Stage 2 amendments on 7 January to make changes to the Bill relating to the provision of aftercare and continuing care to young people.

As you are aware, during Stage 1 we have been engaged in detailed discussions with the sector, in particular with Who Cares? Scotland, Aberlour and Barnardo’s regarding the provision of aftercare and the desire to provide a package of continuing care for young people to enable them to maintain relationships with their carers and ease the transition to independent living.

Scottish Ministers accept the arguments and evidence for further support to this group of young people and are mindful of the Education and Culture Committee’s work in this area. The Scottish Government will therefore go as far as possible to meet the principles set out by the sector. Making the necessary changes will require significant effort on all sides, resourcing and a shift in the way we think about care on the ground. Necessarily, this will also take time.

The Committee will wish to be aware that I intend to announce our commitment to deliver a set of measures to support care leavers over the next 10 to 12 years. The amendments in this group form part of a wider package, some of which relate to Corporate Parenting and are scheduled for discussion on 7 January and the others will be considered at a future Stage 2 Committee session. Starting in April 2015, we will end a loophole that currently sees up to 40% of care leavers miss out on legal entitlements to aftercare support by virtue of the current eligibility criteria. We will move from a definition around school leaving age to a
fixed age of 16 for all young people. Over the 3 years to 2018, we expect over 800 young people a year to become eligible for aftercare than now.

I am also announcing that from April 2015, each new cohort of 16 year olds (under the above definition) will be entitled to remain in their care placement – whether kinship, foster or residential care – until the age of 21. This measure empowers young people to own their care experience and will help them in time to see care as a positive, nurturing place to be.

The Scottish Government will commit to bringing forward a right to return to care to all former care leavers until the age of 21 and we are announcing the formation of an expert group in the next few weeks to establish how and over what timescales this can be achieved safely and practically. The group will also look at how we can expand the eligibility criteria for continuing care and aftercare to a larger group. The very significant complexity of this work requires we take the necessary time to write a ‘blueprint’ that works, is affordable and is acceptable to the sector.

This is a worthwhile and positive package of support for some of our most vulnerable young people and it is evidence that we are doing what is necessary to get it right for children and young people in care and for care leavers.

I look forward to saying more about these measures with the Committee shortly.

AILEEN CAMPBELL
Dear Nigel,

Thank you for your letter of 28 November regarding Section 68 of the Children and Young People (Scotland) Bill (inserting Chapter 1A into the Adoption and Children (Scotland) Act 2007) which relates to Scotland’s Adoption Register.

The Scottish Government highlighted in its response to the Delegated Powers and Law Reform Committee’s Stage 1 report on the Bill that consideration was being given to the possibility of extending the Register to other forms of permanence and whether this could increase the efficiency of permanence care planning.

I can now inform the Committee that the Scottish Government has concluded that the purpose of the Register should be restricted to facilitating adoption only. In light of this, the Government is today lodging amendments at Stage 2 to narrow the breadth of the power in section 13A(2).

The Committee has asked the Government to bring forward amendments to section 13A at Stage 2 to make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A (2) to make regulations about the Register and the information which it is to contain. The Scottish Government has taken on board the Committee’s suggestions and we are lodging an appropriate amendment.

The Committee also asked the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(a) to reflect the stated intention in taking the power, which is to enable information or types of information relating to children considered suitable for adoption, or to prospective adopters, to be prescribed for inclusion in the Register. The Scottish Government appreciates the
Committee’s concerns in this respect and we are lodging amendments for Stage 2 to this effect.

The Committee also asked the Scottish Government to consider bringing forward amendments at Stage 2 to restrict the terms of the power in section 13A(2)(c) to reflect the stated intention in taking the power, which is to enable provision to be made about other administrative matters associated with the operation of the Register. After consideration of the Committee’s suggestion and the evidence from a range of stakeholders in Stage 1 of the Bill, the Scottish Government wishes to retain this power as drafted. Given that the non-statutory Register has only been in operation since 2011 and the Bill provisions will make its use by adoption agencies mandatory, the volume of referrals of both children and prospective adopters is likely to increase and we would like to respond to any potential issues emerging from practice as swiftly as we can to ensure that the Register can operate effectively. This is why retaining the broad power to make further provision in respect of the Register would be desirable. We recognise that the Parliament may wish to have the ability to debate in full any further provision that may be made by regulations and given that the regulations are subject to the affirmative procedure, we consider that retaining the broad power is appropriate in this instance.

In addition, the Committee highlighted in its Stage 1 report on the Bill the power in section 13A(1) as read with section 13B. The Committee was concerned that any arrangements which delegate the Scottish Ministers’ functions in respect of the Register (other than their function of making subordinate legislation) to a registration organisation and provide for payments to be made to such an organisation should be clear and accessible to those affected by them. The Scottish Government agreed in its response to the Committee’s report that an amendment would be brought forward at Stage 2 to place a requirement on the Scottish Ministers to publish any such arrangements. On further consideration of the Committee’s concerns, the Scottish Government is now lodging further amendments at Stage 2 which will clarify the provisions around payments in respect of the Register including making provision for regulations to prescribe fees or payments to be made by adoption agencies in relation to the Register.

I hope the Committee find this response helpful.

Yours sincerely

AILEEN CAMPBELL
Children and Young People (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 3
- Schedule 1
- Sections 4 to 30
- Schedule 2
- Sections 31 to 50
- Schedule 3
- Sections 51 to 76
- Schedule 4
- Sections 77 to 80
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 19

**Liz Smith**

6 In section 19, page 12, line 7, leave out <or young person>

**Jayne Baxter**

177 In section 19, page 12, line 13, leave out from <or> to <provider,> in line 15

**Liz Smith**

7 In section 19, page 12, line 15, leave out <and> and insert—

<(. ) in the case of a named person service of the type mentioned in section 20(1), the individual—

(i) is a registered midwife, or

(ii) is a registered nurse who is a health visitor,

and meets such other requirements as to training, qualifications, experience or position as may be specified by the Scottish Ministers by order, and

( ) in any other case,>

**Liz Smith**

8 In section 19, page 12, line 19, leave out <or young person>

**Aileen Campbell**

129 In section 19, page 12, line 21, at beginning insert <subject to subsection (5A),>

**Jayne Baxter**

178 In section 19, page 12, line 22, after <to> insert <prevent harm to and>
Liz Smith
9 In section 19, page 12, line 22, leave out <or young person>

Liz Smith
10 In section 19, page 12, line 24, leave out <or young person>

Liz Smith
11 In section 19, page 12, line 25, leave out <or young person>

Liz Smith
12 In section 19, page 12, line 26, leave out from first <or> to second <person> and insert <, or a parent of the child>

Jayne Baxter
238 In section 19, page 12, line 27, after <service> insert <(including services to support the speech, language and communication needs of the child or young person)>

Liz Smith
13 In section 19, page 12, line 28, leave out <or young person>

Liz Smith
14 In section 19, page 12, line 31, leave out <or young person>

Aileen Campbell
130 In section 19, page 12, line 31, at end insert—

<(5A) The function in subsection (5)(a) does not apply in relation to a matter arising at a time when the child or young person is, as a member of any of the reserve forces, subject to service law.>

Section 21

Liz Smith
15 In section 21, page 13, line 14, after <each> insert <vulnerable>

Liz Smith
58 In section 21, page 13, line 15, after <child,> insert—

<( ) an opted-out child,>

Liz Smith
16 In section 21, page 13, line 16, leave out <or (3)>
In section 21, page 13, line 16, at end insert—

(A) A “vulnerable child” is a child—

(a) who is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of care and support services,

(b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of care or support services,

(c) who has a physical impairment or mental disorder,

(d) who is looked after by a local authority in terms of section 17(6) of the 1995 Act.>

In section 21, page 13, line 17, after <A> insert <vulnerable>

In section 21, page 13, line 22, at end insert <, or

(d) in legal custody or subject to temporary release from such custody.

(2A) For the purposes of subsection (2)(d), a child is in legal custody—

(a) while confined in or being taken to or from any penal institution in which the child may be lawfully confined,

(b) while working, or for any other reason, outside the penal institution in the custody or under the control of an officer of the institution, a constable or a police custody and security officer,

(c) while being taken to any place to which the child is required or authorised to be taken by virtue of the Prisons (Scotland) Act 1989, or

(d) while kept in custody in pursuance of such a requirement or authorisation.>

In section 21, page 13, line 23, leave out subsection (3)

In section 21, page 13, line 24, after <a> insert <vulnerable>

In section 21, page 13, line 24, after <(2)(a)> insert <and is not an opted-out child,>

In section 21, page 13, line 27, after <a> insert <vulnerable>
Liz Smith
60 In section 21, page 13, line 27, after <(c)> insert <and is not an opted-out child,>

Aileen Campbell
132 In section 21, page 13, line 29, at end insert—
<(  ) During any period when a child falls within subsection (2)(d), the Scottish Ministers are to make arrangements for the provision of a named person service in relation to the child.>

Jayne Baxter
179 In section 21, page 13, line 29, at end insert—
<(  ) A local authority is to make arrangements for the provision of a named person service in relation to each child residing in its area including a pupil who is expelled or, for the time being, excluded from school.>

Section 22

Aileen Campbell
133 In section 22, page 13, line 33, leave out from <falls> to end of line 34

Aileen Campbell
134 In section 22, page 13, line 37, leave out subsection (4)

Aileen Campbell
135 In section 22, page 14, line 5, leave out <in any other case> and insert <where the young person is a pupil at a grant-aided school or an independent school>

Liz Smith
22 Leave out section 22

After section 22

Liz Smith
61 After section 22, insert—
<Request that named person service is not provided

(1) A parent of a child other than a pre-school child may request that a named person service is not provided in relation to the child.

(2) A request under subsection (1)—

(a) must be made to the service provider in relation to the child, and

(b) may be made at any time until the child attains the age of 16 years.
In considering whether to approve or refuse a request made under subsection (1), the service provider must—

(a) so far as reasonably practicable, ascertain and have regard to the views of the child,
(b) take into account any factors set out in an order under subsection (9)(a), and
(c) comply with any provision made under subsection (9)(b).

In having regard to the views of the child, the service provider is to take account of the child’s age and maturity.

If a request under subsection (1) is approved, no person has the function of providing a named person service in relation to the child during the period for which the request has effect and the child has no named person during that period.

A request under subsection (1) has effect—

(a) from the time the request is approved until whichever of the following occurs first—
   (i) the request is cancelled under subsection (8), or
   (ii) the child attains the age of 16 years, and
(b) regardless of any change in the opted-out service provider in relation to the child.

A child in respect of whom a request under subsection (1) has effect is referred to in this Part as an “opted-out child”.

A request under subsection (1) which has effect—

(a) may be cancelled at any time by—
   (i) the parent of the opted-out child,
   (ii) in a case where the opted-out service provider in relation to the child is satisfied that the child is of sufficient maturity to request a cancellation, the opted-out child,
(b) must be cancelled by the opted-out service provider in relation to the child in circumstances set out in an order under subsection (9)(c).

The Scottish Ministers may by order make provision about—

(a) factors to be taken into account by service providers in considering requests under subsection (1),
(b) circumstances in which such requests must or must not be granted by service providers,
(c) circumstances in which a request under subsection (1) which has effect must be cancelled by the opted-out service provider in relation to a child,
(d) how a request under subsection (1) or a request for cancellation of such a request which has effect may be made,
(e) how and to whom the approval or refusal of a request under subsection (1) or the cancellation of such a request which has effect may be notified,
(f) how a refusal of a request under subsection (1) or a cancellation of such a request which has effect under subsection (8)(b) may be appealed against,
(g) such other matters relating to requests under subsection (1) as the Scottish Ministers consider appropriate.

(10) The fact that a child is an opted-out child does not affect any power or duty of any person to provide any service (other than a named person service) or take any action in relation to the child.

(11) In subsections (6)(b), (8) and (9)(c), the “opted-out service provider” means the person which would, but for the fact that the child is an opted-out child, have the function of providing a named person service in relation to the child.

Section 23

Liz Smith
23 In section 23, page 14, line 8, leave out <or young person>

Liz Smith
24 In section 23, page 14, line 12, leave out <or young person>

Liz Smith
25 In section 23, page 14, line 14, leave out <or young person>

Liz Smith
26 In section 23, page 14, line 16, leave out <or young person>

Liz Smith
27 In section 23, page 14, line 17, leave out <or young person>

Aileen Campbell
136 In section 23, page 14, line 22, leave out <might> and insert <is likely to>

Liz Smith
28 In section 23, page 14, line 25, leave out <or young person>

Aileen Campbell
137 In section 23, page 14, line 29, at end insert—

<(4) In considering for the purpose of subsection (3)(b) whether information ought to be provided, the outgoing service provider is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(5) In having regard to the views of a child under subsection (4), an outgoing service provider is to take account of the child’s age and maturity.

(6) The outgoing service provider may decide for the purpose of subsection (3)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.
(7) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

Liz Smith

62 In section 23, page 14, line 29, at end insert—

<(4) This section also applies where a person ceases to be the opted-out service provider in relation to a child.

(5) The person (“the outgoing opted-out service provider”) must as soon as is reasonably practicable—

(a) inform any other person which has become or which it considers may be the person who would, but for the fact that the child is an opted-out child, be the service provider in relation to the child (“the incoming opted-out service provider”) that the outgoing opted-out service provider has ceased to be opted-out service provider in relation to the child, and

(b) comply with subsection (2)(b).

(6) Where subsections (2)(b) and (3) apply by virtue of subsections (4) and (5)—

(a) the references in subsections (2)(b) and (3) to the outgoing service provider and the incoming service provider are to be read as references to the outgoing opted-out service provider and the incoming opted-out service provider respectively, and

(b) the reference in subsection (3)(a)(i) to the functions of a service provider under this Part includes reference to the functions of an opted-out service provider under section (Request that named person service is not provided).

Section 24

Aileen Campbell

138 In section 24, page 14, leave out lines 33 to 37 and insert—

<( ) the operation of the named person service provided in pursuance of the arrangements made by it, including in particular—

(i) how the named person functions are, generally, exercised, and

(ii) the arrangements, generally, for contacting named persons,>

Liz Smith

63 In section 24, page 14, line 37, at end insert—

<( ) the ability to request that a named person service is not provided in relation to a child under section (Request that named person service is not provided),>

Liz Smith

29 In section 24, page 15, line 1, leave out from first <or> to second <person> in line 2 and insert <must provide the child and the parents of the child>
In section 24, page 15, line 3, leave out <or young person>

In section 24, page 15, line 5, leave out <or young person>

In section 25, page 15, line 8, leave out <or young person>

In section 25, page 15, line 10, leave out <or young person>

In section 26, page 15, line 22, leave out <or young person>

In section 26, page 15, line 25, leave out <might> and insert <is likely to>

In section 26, page 15, line 26, leave out <or young person>

In section 26, page 15, line 28, leave out <or young person>

In section 26, page 15, line 31, leave out <or young person>

In section 26, page 15, line 35, leave out <might> and insert <is likely to>

In section 26, page 15, line 36, leave out <or young person>

In section 26, page 15, line 40, at end insert —
(4A) In considering for the purpose of subsection (2)(b) or (4)(b) whether information ought to be provided, the information holder is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(4B) In having regard to the views of a child under subsection (4A), an information holder is to take account of the child’s age and maturity.

(4C) The information holder may decide for the purpose of subsection (2)(b) or (4)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.>

Liz Smith

39  In section 26, page 16, line 1, leave out <or young person>

Aileen Campbell

142  In section 26, page 16, line 8, at end insert—

< ( ) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.>

Liz Smith

180  Leave out section 26

Section 27

Aileen Campbell

143  In section 27, page 16, line 10, leave out subsection (1)

Aileen Campbell

144  In section 27, page 16, line 12, leave out <Subsection (3)> and insert <This section>

Aileen Campbell

145  In section 27, page 16, line 13, leave out <subsection (1)> and insert <this Part>

Liz Smith

181  Leave out section 27

Section 28

Aileen Campbell

146  In section 28, page 16, line 21, leave out <Service providers> and insert <A person mentioned in subsection (1A)>
Aileen Campbell

147 In section 28, page 16, line 22, leave out <exercising functions under this Part> and insert <the exercise of functions conferred by this Part.>

(1A) Those persons are—

(a) a local authority,
(b) a health board,
(c) a directing authority,
(d) a relevant authority.>

Jayne Baxter

182 In section 28, page 16, line 22, at end insert—

<( ) Guidance may be issued on—

(a) the role of the named person,
(b) the role of the lead professional for children’s services in each local authority area, and
(c) the interface between these roles.>

Mary Fee

239 In section 28, page 16, line 22, at end insert—

<( ) Guidance may be issued on how the persons mentioned in subsection (1A) should exercise their functions in relation to children affected by parental imprisonment.>

Jayne Baxter

240 In section 28, page 16, line 22, at end insert—

<( ) Guidance issued under subsection (1) must include guidance on—

(a) how service providers and named persons are to implement inclusive language communication standards, and
(b) the taking (or supporting) by service providers and named persons of action to optimise the speech, language and communication development of children and young people.>

Aileen Campbell

111 In section 28, page 16, line 23, leave out subsections (2) and (3)

Section 29

Aileen Campbell

148 In section 29, page 16, line 36, at end insert—

<( ) a relevant authority.>
Mary Fee

241 In section 29, page 16, line 36, at end insert—

<( ) Directions may be issued on how the persons mentioned in subsections (2)(a) and (b) are to exercise their functions in relation to children affected by parental imprisonment.>

Jayne Baxter

242* In section 29, page 16, line 36, at end insert—

<( ) Directions issued under subsection (1) must in particular include directions on—

(a) how service providers and named persons are to implement inclusive language communication standards, and

(b) the taking (or supporting) by service providers and named persons of action to optimise the speech, language and communication development of children and young people.>

Aileen Campbell

112 In section 29, page 16, line 37, leave out subsections (3) and (4)

Section 30

Liz Smith

40 In section 30, page 17, line 6, at end insert—

<“child” means a person who has not attained the age of 16 years.>

Aileen Campbell

149 In section 30, page 17, line 6, at end insert—

<“constable” has the same meaning as in section 13(b) of the Prisons (Scotland) Act 1989.>

Aileen Campbell

150 In section 30, page 17, line 8, at end insert <, each of the following>

Liz Smith

65 In section 30, page 17, line 21, at end insert—

<“opted-out child” has the meaning given by section (Request that named person service is not provided)(7),

“opted-out service provider” has the meaning given by section (Request that named person service is not provided)(11).>

Aileen Campbell

151 In section 30, page 17, line 22, at end insert—

<“penal institution” means any—
(a) prison (other than a naval, military or air force prison),
(b) remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or
(c) young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

Liz Smith
41 In section 30, page 17, leave out lines 24 and 25

Aileen Campbell
152 In section 30, page 17, line 27, at end insert—
<“reserve forces” has the meaning given by section 374 of the Armed Forces Act 2006,>

Aileen Campbell
153 In section 30, page 17, line 33, at end insert <, each of the following>

Aileen Campbell
154 In section 30, page 17, line 36, at end insert <, and
( ) the Scottish Ministers,>

Liz Smith
42 In section 30, page 17, line 37, leave out <or young person>

Aileen Campbell
155 In section 30, page 17, line 37, leave out from <health> to <providing> in line 38 and insert <person which has the function of making arrangements for the provision of>

Liz Smith
43 In section 30, page 17, line 39, leave out <or young person>

Aileen Campbell
156 In section 30, page 17, line 39, at end insert—
<“subject to service law” has the meaning given by section 374 of the Armed Forces Act 2006,>

Aileen Campbell
157 In section 30, page 17, line 39, at end insert—
<“temporary release” means release by virtue of rules made under section 39(6) of the Prisons (Scotland) Act 1989,>
Liz Smith
44 In section 30, page 18, leave out line 1

Schedule 2

Aileen Campbell
158 In schedule 2, page 42, line 27, leave out paragraph 1

Aileen Campbell
159 In schedule 2, page 42, line 31, at end insert—
   <The National Waiting Times Centre Board>

Aileen Campbell
160 In schedule 2, page 43, line 3, leave out paragraph 12

Aileen Campbell
161 In schedule 2, page 43, line 5, leave out paragraphs 14 and 15

Aileen Campbell
162 In schedule 2, page 43, line 7, leave out <or a “regional strategic body”>

Section 31

Mark McDonald
243 In section 31, page 18, line 14, at end insert—
   <( ) A matter affecting a child’s wellbeing under subsection (2) includes matters in relation to a child’s speech, language and communication.>

Liam McArthur
316 In section 31, page 18, line 16, leave out <capable of>

Aileen Campbell
257 In section 31, page 18, line 19, leave out <a targeted intervention> and insert <one or more targeted interventions>

Aileen Campbell
258 In section 31, page 18, line 20, leave out <the provision of>

Aileen Campbell
259 In section 31, page 18, line 20, leave out <by a relevant authority>
Aileen Campbell
260 In section 31, page 18, line 20, after <which> insert—

<( ) is provided by a relevant authority in pursuance of any of its functions, and>

Liam McArthur
336 In section 31, page 18, line 21, after <the> insert <physical, social, emotional, intellectual and other developmental>

Liam McArthur
317 In section 31, page 18, line 21, leave out <whose> and insert <or directed at preventing additional, or greater, wellbeing needs from arising when these>

Aileen Campbell
261 In section 31, page 18, line 22, at end insert—

<( ) The references in subsection (4) to services being provided by a relevant authority include references to services provided by a third person under arrangements made by the relevant authority.>

Aileen Campbell
262 In section 31, page 18, line 23, after <authority> insert—

<( ) is, where the child’s named person is not an employee of the responsible authority, to consult the child’s named person, and

( )>

Liam McArthur
183 In section 31, page 18, line 24, leave out from first <to> to end of line 28 and insert—

<( ) and taking account of the child’s age and maturity, to—

(i) give the child an opportunity to indicate whether the child wishes to express the child’s views,

(ii) if the child wishes to do so, give the child an opportunity to express them, and

(iii) have regard to any views expressed by the child, and

( ) to ascertain and have regard to the views of the child’s parents.>

Aileen Campbell
263 In section 31, page 18, line 26, at end insert—

<( ) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

( ) such other persons as the responsible authority considers appropriate.>
In section 31, page 18, line 28, at end insert <and the child’s speech, language and communication needs>.

In deciding whether a child requires a child’s plan, the responsible authority is so far as reasonably practicable to ascertain—

(a) as early as practicable, whether there is a suspicion of, or concern about, an existing or arising child wellbeing need,

(b) any wellbeing needs, including through such periodic screening of a child’s physical, social and emotional development from birth as is reasonably practicable and appropriate.

A responsible authority must have regard to any guidance issued by the Scottish Ministers about the undertaking of periodic screenings.

The Scottish Ministers may by order make provision for the process for the resolution of disputes between the responsible authority and the child’s parents as regards the requirement for a child’s plan.

In section 32, page 18, line 37, after <provided> insert <, or the targeted interventions which require to be provided.>

In relation to each such targeted intervention—

( )> the manner in which the child’s parents will be included and supported.

And the measurements and methods by which it will be determined to what extent that outcome has been achieved.
<(1A) A child’s plan may contain a targeted intervention only where the relevant authority which would provide it, or under whose arrangements it would be provided, agrees.

(1B) If that relevant authority is not to prepare the plan, it must provide to the person who is to prepare the plan a statement of its reasons for not agreeing.>

Aileen Campbell

267 In section 32, page 19, line 7, leave out <a>

Section 33

Aileen Campbell

268 In section 33, page 19, line 10, leave out <subsection (3)> and insert <subsections (3) and (5A)>

Aileen Campbell

269 In section 33, page 19, line 15, leave out subsection (4)

Aileen Campbell

270 In section 33, page 19, line 19, leave out <or (4)>

Aileen Campbell

271 In section 33, page 19, line 19, at end insert—

<(5A) Subsection (2) does not apply where, by virtue of section 32(1A), there are no targeted interventions which may be contained in a child’s plan.>

Aileen Campbell

272 In section 33, page 19, line 20, after <authority> insert—

<( ) is, where the child’s named person is not an employee of the authority, to consult the child’s named person, and

( )>

Aileen Campbell

273 In section 33, page 19, line 23, at end insert—

<( ) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

( ) such other persons as the authority considers appropriate.>

Liam McArthur

321* In section 33, page 19, line 23, at end insert—

<( ) In preparing a child’s plan, an authority must take account of any wellbeing needs identified in the course of a periodic screening under section 31(6A)(b).>
Liz Smith

46 In section 33, page 19, line 25, at end insert—

<( ) The Scottish Ministers may by order make provision for a process for the resolution of disputes—

(a) between the responsible authority and the relevant authority as to—

(i) who is to take responsibility for preparing the child’s plan, and

(ii) the content of the child’s plan,

(b) between the authority preparing the child’s plan and the child’s parents on the content of the child’s plan, and

(c) on any other matters relating to the preparation of the child’s plan.>

Aileen Campbell

274 In section 33, page 19, line 27, at end insert—

<(b) make provision requiring or permitting the authority which prepared a child’s plan to provide a copy of it to a particular person or to the persons within a particular description.

( ) An order under subsection (8)(b) may include provision to the effect that a copy of a child’s plan is to be provided to a person, or to persons within a particular description, only—

(a) in circumstances described in the order, or

(b) where the authority considers it appropriate.>

Section 34

Aileen Campbell

275 In section 34, page 19, line 32, leave out second <a> and insert <the>

Section 35

Aileen Campbell

276 In section 35, page 20, line 19, leave out <the local authority for the area in which the child resides> and insert <a local authority.

(4A) Where—

(a) the child falls within subsection (4B), and

(b) in consequence the child resides in the area of a local authority which is different to that in which the child would otherwise reside,

the local authority for the area in which the child would otherwise reside is the responsible authority in relation to the child.

(4B) A child falls within this subsection if—

(a) in pursuance of the duties of a local authority under the 1980 Act the child—

(i) is a pupil at a grant-aided school or an independent school, and
(ii) resides in accommodation provided for the purpose of attending that school by its managers,

(b) by virtue of Chapter 1 of Part 2 of the 1995 Act, the child is placed in a residential establishment (within the meaning of section 93 of that Act),

(c) by virtue of an order under the Children’s Hearing (Scotland) Act 2011, the child resides at a residential establishment (within the meaning of section 202 of that Act), or

(d) in pursuance of an order under the Criminal Procedure (Scotland) Act 1995, the child is detained in residential accommodation provided under Part 2 of the 1995 Act.

Section 36

Aileen Campbell

277 In section 36, page 20, line 24, leave out subsection (1) and insert—

<

(1) A relevant authority is so far as reasonably practicable—

(a) to provide any targeted intervention contained in a child’s plan which is to be provided by it in accordance with the plan,

(b) to secure that any targeted intervention contained in a child’s plan which is to be provided by a third person under arrangements made by the authority is provided in accordance with the plan.

Section 37

Liam McArthur

322 In section 37, page 20, line 30, at end insert <including whether the child’s wellbeing needs have increased, decreased, remained the same or have been eliminated.>

Aileen Campbell

278* In section 37, page 20, line 31, leave out <the targeted intervention> and insert <in relation to each targeted intervention, it>

Jayne Baxter

245 In section 37, page 20, line 31, at end insert—

<( ) the speech, language and communication needs of the child have been addressed, and whether the child is receiving ongoing support to address those needs.>

Liam McArthur

323 In section 37, page 20, line 31, at end insert—

<( ) as far as reasonably practicable, new wellbeing needs are being prevented from arising.>
Aileen Campbell

279 In section 37, page 20, line 36, leave out <which is providing a targeted intervention contained in the plan> and insert <to which subsection (2A) applies>.

Aileen Campbell

280* In section 37, page 20, line 39, at end insert—

<(  ) where the child’s named person is not an employee of the managing authority, the child’s named person, and>

Aileen Campbell

281 In section 37, page 21, line 3, at end insert—

<(  ) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

(  ) such other persons as the managing authority considers appropriate.>

Liam McArthur

324* In section 37, page 21, line 3, at end insert—

<(  ) is to take account of any wellbeing needs identified in the course of a periodic screening under section 31(6A)(b).>

Aileen Campbell

282 In section 37, page 21, line 3, at end insert—

<(2A) This subsection applies to a relevant authority if—

(a) it is providing a targeted intervention contained in the plan, or

(b) a targeted intervention contained in the plan is being provided by a third person under arrangements made by the authority.>

Aileen Campbell

283 In section 37, page 21, line 4, after <child> insert <as mentioned in subsection (2)(b)(i)>

Jayne Baxter

246 In section 37, page 21, line 5, at end insert <and the child’s speech, language and communication needs>.

Aileen Campbell

284 In section 37, page 21, line 9, leave out <the> and insert <a>

Liam McArthur

325 In section 37, page 21, line 9, at end insert <to decrease or eliminate existing child wellbeing needs and prevent new child wellbeing needs from arising, as far as reasonably practicable>.
Aileen Campbell

285* In section 37, page 21, line 10, leave out second <the> and insert <a>

Liam McArthur

326 In section 37, page 21, line 11, at end insert <and the measurements and methods by which it will be determined to what extent that outcome has been achieved>

Liz Smith

47 In section 37, page 21, line 20, at end insert—

<( ) the process for resolving disputes as regards the management of a child’s plan.>

Section 38

Aileen Campbell

286 In section 38, page 21, line 30, leave out <relevant authority> and insert <person mentioned in subsection (1A)>

Aileen Campbell

287 In section 38, page 21, line 30, leave out <it> and insert <the person>

Aileen Campbell

288* In section 38, page 21, line 32, at end insert—

<(1A) Those persons are—

(a) a relevant authority,

(b) a person listed, or within a description listed, in schedule (Persons listed for the purposes of section 38).>

Aileen Campbell

289 In section 38, page 21, line 33, leave out <authority> and insert <person to whom the request is made>

Aileen Campbell

290 In section 38, page 21, line 35, leave out <authority> and insert <person>

Aileen Campbell

291 In section 38, page 21, line 36, leave out <authority> and insert <person>

Aileen Campbell

163 In section 38, page 21, line 37, leave out subsection (3) and insert—
Other than in relation to a duty of confidentiality, subsection (1) does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

Aileen Campbell

164 In section 38, page 22, line 1, leave out <(3)> and insert <(1)>

Aileen Campbell

292* In section 38, page 22, line 7, at end insert—

<(6) The Scottish Ministers may by order modify schedule (Persons listed for the purposes of section 38) by—

(a) adding a person or description of persons,
(b) removing an entry listed in it, or
(c) varying an entry listed in it.>

After schedule 2

Aileen Campbell

293 After schedule 2, insert—

<SCHEDULE
(introduced by section 38)

PERSONS LISTED FOR THE PURPOSES OF SECTION 38

1 The Scottish Ministers
2 NHS 24
3 NHS National Services Scotland
4 Scottish Ambulance Service Board
5 State Hospitals Board for Scotland
6 The National Waiting Times Centre Board
7 Skills Development Scotland Co. Ltd (registered number SC 202659)
8 Social Care and Social Work Improvement Scotland
9 The Scottish Sports Council
10 The chief constable of the Police Service of Scotland
11 The Scottish Police Authority
12 The Scottish Fire and Rescue Service
13 The Commissioner for Children and Young People in Scotland
14 A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005>
After section 38

Liam McArthur

300 After section 38, insert—

<Independent advocacy services in relation to child’s plan

(1) Where there is a dispute between the responsible authority or relevant authority and the child and child’s parents in relation to the—

(a) requirement for a child’s plan under section 31,
(b) content of a child’s plan under section 32,
(c) preparation of a child’s plan under section 33,
(d) delivery of a child’s plan under section 36,
(e) management of a child’s plan under section 37,

the responsible authority or relevant authority must advise the child and the child’s parents of any independent advocacy services which are available to assist them and take appropriate steps to ensure that the child and child’s parents have the opportunity of making use of those services.

(2) The Scottish Ministers may by order make provision for the regulation, operation and administration of independent advocacy services for children in relation to this Part.

(3) In this section “independent advocacy services” has the meaning given by section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003.>

Section 39

Aileen Campbell

294* In section 39, page 22, line 9, leave out subsection (1) and insert—

<(1) A person mentioned in subsection (1A) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 36).

(1A) Those persons are—

(a) a relevant authority,
(b) a person (other than the Scottish Ministers) listed, or within a description listed, in schedule (Persons listed for the purposes of section 38).>

Mary Fee

247 In section 39, page 22, line 11, at end insert—

<( ) Guidance may be issued on how a child’s plan is to support a child affected by parental imprisonment.>

Jayne Baxter

248 In section 39, page 22, line 11, at end insert—

<( ) Guidance issued under subsection (1) must include guidance on—
(a) how persons exercising a function under this Part (other than the function of complying with section 36) are to implement inclusive language standards, and
(b) the inclusion within a child’s plan by persons exercising a function under this Part (other than the function of complying with section 36) of action to optimise the speech, language and communication development of children and young people.>

Aileen Campbell
113  In section 39, page 22, line 12, leave out subsections (2) and (3)

Section 40

Aileen Campbell
295  In section 40, page 22, line 21, after <by> insert <or under>

Aileen Campbell
296*  In section 40, page 22, leave out lines 24 to 26 and insert—

<(  ) a relevant authority,
 (  ) a person (other than the Scottish Ministers) listed, or within a description listed, in schedule (Persons listed for the purposes of section 38).>

Mary Fee
249  In section 40, page 22, line 26, at end insert—

<(  ) Directions may be issued on how a child’s plan is to support a child affected by parental imprisonment.>

Mark McDonald
250  In section 40, page 22, line 26, at end insert—

<(  ) Directions issued under subsection (1) must in particular include directions on the strategic action the persons mentioned in subsection (2) are to take to optimise the speech, language and communication development of children and young people.>

Aileen Campbell
114  In section 40, page 22, line 27, leave out subsections (3) and (4)

Section 41

Aileen Campbell
297  In section 41, page 22, line 33, at end insert—

<“child’s named person” means the individual who is the child’s named person by virtue of Part 4,>
Aileen Campbell

298 In section 41, page 23, line 9, leave out <means any service or> and insert <includes>.

Aileen Campbell

299 In section 41, page 23, leave out lines 10 and 11.

Section 42

Mark McDonald

251 In section 42, page 23, line 19, after <development> insert <, including speech, language and communication development,>.

Liam McArthur

337 In section 42, page 23, line 19, at end insert—

<(... The aims of early learning and childcare include—

(a) improving outcomes for children (in particular those from disadvantaged backgrounds), and

(b) supporting parents to work and study.>.

Section 43

Liz Smith

48 In section 43, page 23, line 25, leave out from <under> to end of line 31 and insert <of pre-school age and has not commenced attendance at a primary school (other than at a nursery class in such a school),

( ) is under pre-school age but falls within subsection (3).

(2A) A child is of pre-school age from the school commencement date in the year in which, on the last day of February, the child was aged (or turned) 2 until the school commencement date two years later.

(2B) The Scottish Ministers may by order specify that a child—

(a) who—

(i) is under school age on the second school commencement date mentioned in subsection (2A),

(ii) is not commencing attendance at a primary school on that date (other than commencing or continuing attendance at a nursery class in such a school), and

(iii) meets such other criteria as may be specified in the order,

is, until the next school commencement date, to be regarded as an eligible pre-school child, or

(b) who is within such age range below pre-school age, or is of such other description, as may be specified in the order is to be regarded as an eligible pre-school child.>
In section 43, page 23, line 32, after <and> insert—
  
  *( ) the child*>

In section 43, page 23, line 35, at end insert <, or
  
  *( ) in receipt of disability living allowance (within the meaning of section 71 of the Social Security Contributions and Benefits Act 2002).*>

In section 43, page 23, line 35, at end insert <,
  
  *( ) the child’s parent is or has been at any time since the child’s second birthday in receipt of a tax credit within the meaning of the Tax Credits Act 2002 (or any successor benefit or allowance).*>

In section 43, page 23, line 35, at end insert <, or
  
  *( ) the child’s parent is or has been at any time since the child’s second birthday in receipt of state pension credit (within the meaning of the State Pension Credit Act 2002).*>

In section 43, page 24, line 1, leave out <(2)(c)(ii) may provide that a child is to be> and insert <(2B) may provide that a child is to be regarded as>
Neil Bibby

327 In section 43, page 24, line 3, at end insert—

<( ) The provision of early learning and childcare under this section should not be provided to the detriment of care—

(a) outside school hours, or
(b) during school holidays,
to children who are in attendance at school as provided under section 27 of the 1995 Act.>

Liz Smith

50 In section 43, page 24, line 3, at end insert—

<( ) In subsection (2A), “school commencement date” means the date fixed under section 32(1) of the 1980 Act by the local authority for the area in which the child resides.>

After section 43

Jayne Baxter

341 After section 43, insert—

<Procedure

(1) An order under section 43 must be made by statutory instrument.
(2) The Scottish Ministers may not make an order under section 43 unless they have laid a draft order before the Scottish Parliament.
(3) Before making a draft order under subsection (2), the Scottish Ministers must consult—

(a) organisations working for, or on behalf of, children requiring and accessing early learning and childcare services,
(b) parents of children requiring and accessing early learning and childcare services,
(c) providers of early learning and childcare services, and
(d) such other persons as they consider appropriate.
(4) For the purposes of consultation under subsection (3), the Scottish Ministers must—

(a) lay a copy of the proposed draft order before the Parliament,
(b) publish the proposed draft order in such manner as they consider appropriate, and
(c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament under paragraph (a).
(5) In calculating any period of 60 days for the purposes of subsection (4)(b), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
(6) When laying a draft order before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (3),>
(b) any representations received as a result of the consultation, and
(c) the changes (if any) made to the proposed draft order as result of those representations.

Section 47

Liam McArthur

342 In section 47, page 25, line 17, at end insert—

<(  ) The Scottish Ministers may by order specify minimum standards that must be met by providers of early learning and childcare in relation to matters so specified.
(  ) An education authority must ensure that early learning and childcare provided in pursuance of this Part is available from any provider of early learning and childcare that meets the minimum standards specified under subsection (3) that a parent of an eligible pre-school child wishes to use.>

Section 48

Liam McArthur

343 In section 48, page 25, line 22, at end insert—

<(2) As soon as practicable after the end of each 3 year period, the Scottish Ministers must lay before the Scottish Parliament a report of what progress has been made by education authorities in ensuring that the level of flexibility described in subsection (1) is being achieved.
(3) In subsection (2), “3 year period” means—
   (a) the period of 3 years beginning with the day on which this section comes into force, and
   (b) each subsequent period of 3 years.
(4) As soon as practicable after a report has been laid before the Scottish Parliament under subsection (3), the Scottish Ministers must publish it (in such manner as they consider appropriate).>

After section 49

Clare Adamson

301 After section 49, insert—

<Part

Power to provide school education for pre-school children

Duty to consult and plan in relation to power to provide school education for pre-school children

In section 1 of the 1980 Act, after subsection (2A) insert—

“(2B) An education authority must, at least once every two years—
(a) consult such persons as appear to be representative of parents of pre-school children within their area about whether and if so how they should provide school education for such children under subsection (1C) above; and

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of such education for such children under that subsection.

(2C) The Scottish Ministers may by order modify subsection (2B) above so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

(2D) An order made under subsection (2C) above is subject to the negative procedure.”.

Clare Adamson

302 After section 49, insert—

PART

DAY CARE AND OUT OF SCHOOL CARE

Duty to consult and plan in relation to day care and out of school care

(1) Section 27 of the 1995 Act is amended as follows.

(2) After subsection (1) insert—

“(1A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and

(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.

(1B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection; and

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.”.

(3) After subsection (3) insert—

“(3A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and
(b) after having had regard to the views expressed, prepare and publish their
plans for how they intend to provide appropriate care for such children in
pursuance of that subsection.

(3B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children
within their area who are in attendance at a school but are not in need
about whether and if so how they should provide appropriate care for
such children under subsection (3) above; and
(b) after having had regard to the views expressed, prepare and publish plans
in relation to the provision of appropriate care for such children in their
area under that subsection.

(3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or
(3B) above so as to vary the regularity within which a local authority must
consult and plan in pursuance of that subsection.

(3D) An order made under subsection (3C) above is subject to the negative
procedure.”

Neil Bibby
344 After section 49, insert—

<PART

RIGHT TO CARE FOR PRE-SCHOOL AND OTHER CHILDREN

Right to care for pre-school and other children

(1) Section 27 of the 1995 Act is amended as follows.

(2) Before subsection (1) insert—

“(A1) Every child aged 5 or under and who has not yet commenced attendance at
school has a right to day care.”.

(3) In subsection (1)—

(a) omit “in need” where it first occurs,

(b) the words from second “and” to the end of the subsection are repealed.

(4) After subsection (2) insert—

“(2A) Every child aged 14 or under and who is in attendance at school has a right to
care—

(a) outside school hours, and

(b) during school holidays.”.

Neil Bibby
345 After section 49, insert—

<PART

PROVISION OF DAY CARE

Duty to assess need for day care for working parents

(1) Section 27 of the 1995 Act is amended as follows.
(2) After subsection (1) insert—

“(1A) Each local authority in providing day care for children under subsection (1), must secure, so far as reasonably practicable, that the provision of such care is sufficient to meet the requirements of parents in their area who require day care for children in order to enable them—

(a) to take up, or remain in work, or
(b) to undertake education or training which could reasonably be expected to assist them to obtain work.

(1B) Each local authority must have regard to any guidance issued by the Scottish Ministers about the factors to consider in assessing the sufficiency of day care for children under subsection (1A).”

Neil Bibby

346 After section 49, insert—

<PART

OUT OF SCHOOL CARE

Duty to provide out of school care

(1) Section 27 of the 1995 Act is amended as follows.
(2) In subsection (3)—

(a) for first “provide” substitute “secure”,
(b) omit “in need” where it first occurs,
(c) for first “such” substitute “the mandatory amount”,
(d) the words from “as” to the end of the subsection are repealed.
(3) After subsection (3) insert—

“(3A) Each local authority in securing provision of care for children under subsection (3), must secure, so far as reasonably practicable, that the provision of childcare is sufficient to meet the requirements of parents in their area who require care for children in order to enable them—

(a) to take up, or remain in work, or
(b) to undertake education or training which could reasonably be expected to assist them to obtain work.

(3B) Each local authority must have regard to any guidance issued by the Scottish Ministers about the factors to consider in assessing the sufficiency of childcare under subsection (3A).

(3C) The “mandatory amount”, for the purposes of subsection (3), means such amount as may be prescribed by the Scottish Ministers by order.

(3D) Such an order may make different provision in relation to different types of children in attendance at school.

(3E) An order under subsection (3C) is subject to the affirmative procedure.

(3F) Before laying a draft order under subsection (3C) before the Scottish Parliament, the Scottish Ministers must consult—
(a) each local authority,
(b) such other persons as they consider appropriate.

(3G) For the purposes of such consultation, the Scottish Ministers must—
(a) lay a copy of the proposed draft order before the Parliament,
(b) publish the proposed draft order in such manner as they consider appropriate, and
(c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament under paragraph (a).

(3H) In calculating any period of 60 days for the purposes of subsection (3G)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(3I) When laying a draft order under subsection (3C) before the Parliament, the Scottish Ministers must also lay before the Scottish Parliament an explanatory document giving details of—
(a) the consultation carried out under subsection (3F),
(b) any representations received as a result of the consultation, and
(c) the changes (if any) made to the proposed draft order as a result of those representations.”.

Section 50

Aileen Campbell

303 In section 50, page 26, line 1, at end insert—

<(  ) The following persons are not corporate parents for the purposes of section 58—
(a) the Commissioner for Children and Young People in Scotland,
(b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

(  ) An order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a corporate parent, or the persons within the description are not corporate parents, for the purposes of section 58.>

Aileen Campbell

304 In section 50, page 26, line 2, leave out from “corporate” to end of line 3 and insert “references to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 52(1).”

Schedule 3

Aileen Campbell

305 In schedule 3, page 43, line 30, leave out paragraph 18
Aileen Campbell  
306 In schedule 3, page 44, line 2, leave out paragraph 25

Aileen Campbell  
307 In schedule 3, page 44, line 3, leave out <or a “regional strategic body”>

Section 51

Aileen Campbell  
308 In section 51, page 26, line 9, leave out <at the time when the person ceased to be of school age> and insert <on the person’s 16th birthday>

Aileen Campbell  
309 In section 51, page 26, line 10, at end insert—

<(2) This Part also applies to a young person who—
(a) is at least the age of 16 but under the age of 26, and
(b) is not of the description in subsection (1)(b)(ii) but is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.>

Section 52

Liam McArthur  
328 In section 52, page 26, line 16, after <the> insert <physical, social, emotional, intellectual and other developmental>

Jayne Baxter  
252 In section 52, page 26, line 16, after <needs> insert <, including any speech, language and communication development needs,>

Liam McArthur  
329 In section 52, page 26, line 18, after <of> insert <and prevent harm to>

Jayne Baxter  
253 In section 52, page 26, line 20, at end insert—

<( ) to optimise the speech, language and communication development of those children and young people to whom this Part applies,>

Jayne Baxter  
347 In section 52, page 26, line 27, at end insert—
<( ) to take such steps as appear to the corporate parent to be practicable and appropriate to promote and facilitate regular personal relations and direct contact between a child and any—

(i) person with parental responsibilities (within the meaning of the 1995 Act) for the child, and

(ii) siblings of the child.>

Aileen Campbell

310 In section 52, page 26, line 27, at end insert—

<(2) The Scottish Ministers may by order—
(a) modify subsection (1) so as to confer, remove or vary a duty on corporate parents,
(b) provide that subsection (1) is to be read, in relation to a particular corporate parent or corporate parents of a particular description, with a modification conferring, removing or varying a duty.>

Section 55

Liam McArthur

330 In section 55, page 27, line 20, at end insert—

<( ) the extent to which the wellbeing needs of children and young people have increased, decreased, remained the same or been eliminated,>

Liam McArthur

331* In section 55, page 27, line 20, at end insert—

<( ) the extent to which new wellbeing needs of children have been prevented or reduced,>

Section 57

Aileen Campbell

115 In section 57, page 28, line 9, leave out subsections (3) and (4)

Section 58

Aileen Campbell

116 In section 58, page 28, line 21, leave out subsections (2) and (3)

Section 60

Liam McArthur

332 In section 60, page 29, line 16, after <of> insert—

<( )>
In section 60, page 29, line 16, after <needs> insert—

-( ) where relevant, meeting—

(A) the person’s needs as a parent or prospective parent,
(B) the wellbeing needs of the child or children of the person,

Section 61

In section 61, page 29, line 34, leave out <counselling> and insert <early intervention>

In section 61, page 29, line 36, at end insert—

-( ) Services which may be specified as early intervention services under subsection (1) include counselling and other forms of talking therapy.

In section 61, page 29, line 38, after <parent> insert <or prospective parent>

In section 61, page 30, line 10, leave out <counselling> and insert <early intervention>

In section 61, page 30, line 10, after <services> insert <including antenatal counselling services>

Section 62

In section 62, page 30, line 18, leave out <counselling> and insert <early intervention>

In section 62, page 30, line 24, leave out <counselling> and insert <early intervention>

In section 62, page 30, line 27, leave out <counselling> and insert <early intervention>

After section 73

In section 73, insert—
National speech, language and communication strategy for children and young people

(1) The Scottish Ministers must, no later than one year after this section comes into force, lay a national speech, language and communication strategy for children and young people before the Scottish Parliament.

(2) The strategy must, in particular, set out—
(a) the Scottish Ministers objectives for speech, language and communication for children and young people,
(b) their proposals for meeting those objectives,
(c) the timescales over which those proposals and policies are expected to take effect.

(3) Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with—
(a) children and young people, including children and young people with speech, language and communication needs,
(b) the parents of children and young people with speech, language and communication needs,
(c) persons working for, and on behalf of, children and young people, including children and young people with speech, language and communication needs,
(d) the providers of services to children with speech, language and communication services in relation to those needs,
(e) such others persons as they consider appropriate.

(4) The strategy must be accompanied by a report setting out—
(a) the consultation process undertaken in order to comply with subsection (3), and
(b) the ways in which the views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).

(5) The Scottish Ministers must, no later than—
(a) 5 years after laying a strategy before the Scottish Parliament under subsection (1), and
(b) the end of every subsequent period of 5 years,
lay a revised strategy before the Scottish Parliament; and subsections (2) to (4) apply to a revised strategy as they apply to a strategy laid under subsection (1).

Jayne Baxter

255 After section 73, insert—

Duty of public authorities to use inclusive communication standards

A public authority with functions under this Act must use inclusive communication standards in exercising those functions.
After section 74

82 After section 74, insert—

<Guidance for voluntary organisations

(1) The Scottish Ministers may issue guidance on the application of this Act as regards voluntary organisations.

(2) Guidance may be issued generally or for particular purposes.

(3) Before issuing or revising guidance, the Scottish Ministers must consult the persons to whom it relates.>

Section 75

51 In section 75, page 39, line 18, after <means> insert <(except in Part 4)>

Jayne Baxter

256 In section 75, page 39, line 20, at end insert—

<( ) In this Act “inclusive communication”—

(a) means sharing information in a way that everybody can understand,

(b) relates to all modes of communication, and

(c) requires that service providers—

(i) recognise that people understand and express themselves in different ways, and

(ii) provide information to people in ways which meet their needs.>

Section 77

117 In section 77, page 40, leave out line 14

Liz Smith

83 In section 77, page 40, line 14, at end insert—

<section (Request that named person service is not provided)>

Aileen Campbell

311 In section 77, page 40, line 16, at end insert—

<section 38(6)>
Liam McArthur
312  In section 77, page 40, line 16, at end insert—
    <section (Independent advocacy services in relation to a child’s plan)(2)>

Aileen Campbell
313  In section 77, page 40, line 16, at end insert—
    <section 43(2)(c)(ii)>

Aileen Campbell
314* In section 77, page 40, line 19, at end insert—
    <section 51(2)(b)>

Aileen Campbell
315  In section 77, page 40, line 19, at end insert—
    <section 52(2)>

After section 77

Aileen Campbell
118  After section 77, insert—
    <Guidance and directions>
        (1)  Any power of the Scottish Ministers to issue guidance or directions under this Act may
            be exercised—
            (a)  to issue guidance or directions generally or for particular purposes,
            (b)  to issue different guidance or directions to different persons or otherwise for
                different purposes.
        (2)  The Scottish Ministers must publish (in such manner as they consider appropriate) any
            guidance or directions issued by them under this Act.
        (3)  In subsection (2)—
            (a)  the reference to guidance includes revision of guidance,
            (b)  the reference to directions includes revision and revocation of directions.>
Children and Young People (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.

Groupings of amendments

**Provision of named person service: persons to whom service is to be provided and ability to opt-out**
6, 8, 9, 10, 11, 12, 13, 14, 15, 58, 16, 17, 18, 19, 20, 59, 21, 60, 133, 134, 135, 22, 61, 23, 24, 25, 26, 27, 28, 62, 63, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 65, 41, 42, 43, 44, 51, 83

**Persons who may be a named person**
177, 7

**Functions of named persons in relation to children and young persons in reserve forces**
129, 130, 152, 156

**Functions of named persons and corporate parents: prevention of harm**
178, 329

**Persons with function of providing certain named person services**
131, 132, 179, 138, 149, 150, 151, 153, 154, 155, 157, 158

**Information sharing**
136, 137, 139, 140, 141, 142, 180, 143, 144, 145, 181, 163, 164

**Guidance in relation to named person service**
146, 147, 182

**Relevant authorities in context of named person service: power to issue directions and definition**
148, 159, 160, 161, 162
Consideration, assessment etc. of needs for child’s plan and corporate parenting purposes and monitoring of whether planned outcomes achieved etc.
316, 336, 317, 318, 320, 321, 322, 323, 324, 325, 326, 328, 330, 331

Targeted interventions: number that may be included in child’s plan and persons who provide service etc.
257, 258, 259, 260, 261, 264, 265, 277, 278, 279, 282, 284, 285, 298, 299

Persons to be involved in decisions about child’s plan etc.
262, 183, 263, 272, 273, 274, 280, 281, 283, 297

Notes on amendments in this group
Amendment 183 pre-empts amendment 263 in this group and amendment 244 in the group “Speech, language and communication” (already debated on Day 1)

Child’s plan: dispute resolution
45, 46, 47, 300, 312

Content and preparation of child’s plan
319, 266, 267, 268, 269, 270, 271

Responsible authority in relation to child’s plan
275, 276

Assistance etc. in relation to child’s plan
286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 311

Aims of early learning and childcare
337

Eligible pre-school children to receive at least two full years of early learning and childcare
48, 49, 50

Additional groups of 2 year olds to be included in definition of eligible pre-school child
84, 338, 85, 86, 339, 340

Duties to consult on and plan provision of certain forms of education and care and duties to provide day care and out of school care
327, 301, 302, 344, 345, 346

Order specifying eligible pre-school children: procedure
341, 313

Delivery of early learning and childcare: minimum standards and flexibility
342, 343

Corporate parents and their responsibilities
303, 304, 305, 306, 307, 347, 310, 315
Persons to whom Part 7 applies
308, 309, 314

Duties towards certain parents and prospective parents
332, 333, 334, 335,

Type of services to be provided under Part 9
184, 185, 186, 187, 188, 189

Guidance for voluntary organisations
82

Amendments already debated

Children affected by parental imprisonment
With 198 – 239, 241, 247, 249

Speech, language and communication
With 216 – 238, 240, 242, 243, 244, 245, 246, 248, 250, 251, 252, 253, 254, 255, 256

Notes on amendments in this group
Amendment 244 in this group (already debated on Day 1) is pre-empted by amendment 183 in the group “Persons to be involved in decisions about child’s plan etc.”

Guidance and directions
With 95 – 111, 112, 113, 114, 115, 116, 118

Default powers in relation to children’s services planning
With 108 – 117
Present:

George Adam  Clare Adamson
Jayne Baxter  Colin Beattie
Neil Bibby (Deputy Convener)  Stewart Maxwell (Convener)
Joan McAlpine  Liam McArthur
Liz Smith

Also present: Mary Fee, Mark McDonald

Children and Young People (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).


The following amendments were agreed to (by division)—
136 (For 8, Against 1, Abstentions 0)
137 (For 8, Against 1, Abstentions 0)
139 (For 8, Against 1, Abstentions 0)
140 (For 8, Against 1, Abstentions 0)
141 (For 8, Against 1, Abstentions 0)
142 (For 8, Against 1, Abstentions 0)
143, 144 and 145 en bloc (For 8, Against 1, Abstentions 0)

The following amendments were disagreed to (by division)—
6 (For 4, Against 5, Abstentions 0)
177 (For 4, Against 5, Abstentions 0)
7 (For 4, Against 5, Abstentions 0)
178 (For 4, Against 5, Abstentions 0)
238 (For 2, Against 7, Abstentions 0)
15 (For 1, Against 8, Abstentions 0)
58 (For 1, Against 8, Abstentions 0)
16 (For 1, Against 8, Abstentions 0)
19 (For 1, Against 8, Abstentions 0)
20 (For 1, Against 8, Abstentions 0)
21 (For 1, Against 8, Abstentions 0)
179 (For 3, Against 6, Abstentions 0)
22 (For 1, Against 8, Abstentions 0)
62 (For 1, Against 8, Abstentions 0)
180 (For 1, Against 8, Abstentions 0)
182 (For 2, Against 7, Abstentions 0)
239 (For 2, Against 7, Abstentions 0)
240 (For 2, Against 6, Abstentions 1)
241 (For 2, Against 7, Abstentions 0)
242 (For 2, Against 6, Abstentions 1)
65 (For 1, Against 8, Abstentions 0)
316 (For 4, Against 5, Abstentions 0)
336 (For 4, Against 5, Abstentions 0)
317 (For 4, Against 5, Abstentions 0)
183 (For 4, Against 5, Abstentions 0)
244 (For 2, Against 7, Abstentions 0)
318 (For 4, Against 5, Abstentions 0)
319 (For 4, Against 5, Abstentions 0)
320 (For 4, Against 5, Abstentions 0)
300 (For 4, Against 5, Abstentions 0)
247 (For 2, Against 7, Abstentions 0)
249 (For 2, Against 7, Abstentions 0)

Amendment 45 was moved, and, no member having objected, withdrawn.

The following amendments were not moved: 8, 9, 10, 11, 12, 13, 14, 17, 18, 59, 60, 61, 23, 24, 25, 26, 27, 28, 63, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 181, 40, 41, 42, 43, 44, 243, 321, 46, 322, 245, 323, 324, 246, 325, 326, 47, 248, 250 and 251.

The following provisions were agreed to without amendment: sections 20 and 25.

The following provisions were agreed to as amended: sections 19, 21, 22, 23, 24, 26, 27, 28, 29 and 30, schedule 2 and sections 31, 32, 33, 34, 35, 36, 37, 38, 39, 40 and 41.

The Committee ended consideration of the Bill for the day amendment 251 having been disposed of.
Scottish Parliament
Education and Culture Committee
Tuesday 7 January 2014

[The Convener opened the meeting at 10:01]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning. I wish everyone a happy new year. Welcome to the first meeting in 2014 of the Education and Culture Committee. I remind everyone who is present that they should switch off their mobile phones and any other electronic devices, as they may affect the broadcasting system.

Today, we will continue our consideration of the Children and Young People (Scotland) Bill at stage 2. I welcome to the committee the Minister for Children and Young People, Aileen Campbell, and her accompanying officials. Happy new year, minister.

The Minister for Children and Young People (Aileen Campbell): Happy new year.

The Convener: Officials are, of course, not permitted to participate in the formal proceedings of the committee. A number of non-committee members will participate in proceedings—I am sure that they will join us shortly.

We will not go beyond part 7 of the bill today. Depending on the progress that we make, I will conclude proceedings at a suitable point. Any amendments that we do not reach will be dealt with at our next meeting on 14 January.

Section 19—Named person service

The Convener: Amendment 6, in the name of Liz Smith, is grouped with amendments 8 to 15, 58, 16 to 20, 59, 21, 60, 133 to 135, 22, 61, 23 to 28, 62, 63, 29 to 40, 65, 41 to 44, 51 and 83.

Liz Smith (Mid Scotland and Fife) (Con): I apologise for the lengthy list of amendments in this group, but I know that members are well aware of the Conservatives’ long-standing concern about the bill’s named person provisions, which is both substantive and comes from an organisational and cost perspective.

After studying at length the evidence that was presented to the committee, we want to replace the Scottish Government’s policies with ones that we believe are more practical and which can command wider support among the public and professionals on the front line. In the first instance, we would prefer to see the provision of a universal health visitor system of the type proposed and argued for convincingly by the Royal College of Nursing and the Royal College of Midwives, which would attach all children from the immediate pre-birth stage up to the age of five to a qualified and registered health visitor.

Secondly, on account of the evidence that has been provided, which includes the unanimous findings of the Parliament’s Finance Committee, we believe that, beyond the age of five, named persons should be targeted at the most vulnerable children—the definition for which is provided by some of the amendments—to ensure that what are clearly limited resources are targeted at them instead of being spent on all children, the vast number of whom even the Scottish Government acknowledges have no compelling need for a named person.

Thirdly, we strongly believe that it is not practical nor, indeed, consistent with many other aspects of Scottish legislation to include 16 to 18-year-olds in the category of the child.

Finally, we believe that there should be some elements of opt-out, which is a principle that I note that the Scottish Government has accepted in some of its amendments.

My amendments in this group seek to alter the named person proposals in the bill to concentrate help on our most vulnerable children and to redress the balance between the state and parental responsibility, the latter of which we believe is likely to be seriously undermined by the Scottish Government’s policy.

Amendments 6, 8 to 14, 22 to 40, 42 to 44 and 51 relate to removing the term “young person” from the named person sections of the bill.

In defining a child as a person “who has not attained the age of 16”, amendment 40 seeks to limit the scope of the named person proposals to groups of children under the age of 16. Professor Kenneth Norrie told the committee:

“As the child increases in age, they increase in capacity...and have an increased right to make their own decisions and to determine how they will lead their own lives.”—[Official Report, Education and Culture Committee, 3 September 2013; c 2683.]

Traditionally, 16 has been the age beyond which Scots law recognises a young person to be free of adult supervision, and there is no reason for the bill to state differently. As things stand, the Scottish Government is seeking to place all 17 and 18-year-olds under the supervision of a state-appointed guardian. That is wholly unnecessary
and Highland Council pointed out that it might well be unworkable.

The idea that two 17-year-olds with an infant child would be under the supervision of not one or two but three named persons, each with a remit to become more involved in their family life is, to be frank, ridiculous and would bring about an inevitable dilution of resources for those who are most in need.

On the same principle, amendments 15 to 18, 20 and 21 would limit the named person service to vulnerable children once they reach school age. Designed specifically with the concerns of the Scottish Parent Teacher Council, the Faculty of Advocates and the Law Society of Scotland in mind, those amendments would ensure that the wishes of parents are better reflected in legislation and that the system is not swamped with children who do not need to be there.

Amendment 17 would introduce a definition of a “vulnerable child” based upon existing legislation. It seeks to bring additional clarity and to ensure that the legislation is better targeted towards those who require assistance.

Amendments 58 to 63, 65 and 83 introduce safeguards that would enable parents and children to opt out of the named person scheme. Such provisions would better reflect the wishes of parents and guardians throughout the country, many of whom have voiced considerable concern about the proposals.

On the specifics, amendment 61 makes it clear that, when a request to opt out is lodged, due regard would have to be given to the views of the child. Moreover, should a parent change their mind or should a child of sufficient maturity request that the opt-out be cancelled, that option would remain open. Amendment 62 considers the duties placed on what would be the outgoing opted-out-of service provider. Those would include informing other service providers that the child had opted out, which would ensure that the child’s wishes were properly reflected.

As the Parliament knows, the Conservatives feel strongly about this part of the bill. I ask committee members to consider carefully the four different reasons why we feel that the policy needs to be amended.

I move amendment 6.

Aileen Campbell: As a result of work undertaken by the Care Inspectorate and the Scottish Government, conditions of registration have been amended to ensure that services in secure accommodation are provided for young people only up to the age of 18 and that that is communicated to providers. Previously, on a limited number of occasions, young people have remained in secure care beyond the age of 18 in order to complete training or exams. Accordingly, amendments 133 to 135 in my name remove the duty on secure care providers to continue to provide the named person service for children aged 18 or over, as it is unnecessary.

Amendments 6, 8 to 14, 16, 19, 22 to 44 and 51 seek to remove support from children and their families, even where they have identified needs, at the time when they may face the challenge of transition to adult and post-school services. Many organisations and parents have stressed to us the importance of co-ordinated support from the school and other professionals as children with complex needs approach 17 and 18 years. Removal of the named person would simply heighten their concerns.

We all recognise that young people aged 16 or younger have varying degrees of concern, skill and maturity and the majority of them will be able to reach their own decisions on the issues that affect them either independently or with support and help from family, friends, advisers and other professionals.

Where concerns are already known, action should have been taken and support put in place, but no one knows what might happen in the next days, weeks or months. Children from all backgrounds and at any age may need help and support. They may look to family and friends for help but if they turn to public services, it makes sense for those who have been approached to be in the best place to offer advice.

The combined effect of amendments 15, 17, 18, 20 and 21 would be to negate the early intervention and preventative role of the named person. The named person provides the framework for intervening early, enabling parents to discuss their concerns and offering support. That is done before children might be considered vulnerable so that they do not become vulnerable. Practice teaches us that we cannot always identify which children are vulnerable until crises develop, by which time it may be too late. That is what the named person was designed to prevent happening.

In response to Liz Smith’s point that the named person approach might dilute support to the most vulnerable, evidence shows that that has not happened where the getting it right for every child approach is implemented effectively, as the focus on early intervention in the universal services helps to ensure that those who work with the most vulnerable children have the capacity to do so. Therefore, I cannot accept Liz Smith’s amendments 6, 8 to 44 and 51.

To turn to the named person opt-out, a fundamental purpose of the bill is to encourage
early intervention and prevention, working with children and their families to offer support earlier than has been the practice in the past when thresholds of vulnerability or need have operated.

That is why we wish to establish the named person service in universal services. It is a service that is made available to all children and which will provide them with support and advice. If a child or young person does not wish to engage, they do not need to—unless there is a more serious concern about the child which demands that services become involved.

The bill as drafted places the child at the centre, while recognising the real importance of parents and the family. The amendments would remove the central focus from the child and put the parent at the centre. Parents clearly have a role but, as children mature, they will have an increased ability to take decisions for themselves.

The aim of the named person provisions as drafted in the bill is to provide a seamless service for children and families, which can flow easily from the routine support that is available through the day-to-day activity of education staff to an enhanced level of support if required and then back to routine support, where possible. The amendments call for services to dissect the role in an artificial way. We want a greater consistency of approach throughout Scotland, but the amendments mean that services would have to develop a two-tier approach, with bureaucratic procedures for opting out and opting back in.

The amendments would have a major impact on professionals. Apart from the added bureaucracy and reinforcement of silos that they would generate, there would be significant confusion over practitioners’ roles in relation to children who are part of the named person service and, separately, those who have been opted out. All we would have from the amendments is additional bureaucracy, greater confusion among practitioners and barriers to early intervention. For those reasons, I cannot support amendments 58 to 63, 65 and 83.

In summary, convener, I support my amendments 133, 134 and 135 and I do not support the other amendments in the group.

Liam McArthur (Orkney Islands) (LD): As Liz Smith indicated, this was probably the area of most note and controversy—certainly in early consideration at stage 1.

Unlike Liz Smith and as I have made clear, I understand and support the principle underlying the named person provisions but—like a number of witnesses and, indeed, Liz Smith—I am concerned about the practical implications as regards how resources will be allocated and the circumstances in which information will be shared.

We will come to the latter issue in due course, but on the former, it is still not clear whether the focus on the wellbeing of a child as opposed to a narrower definition of welfare will have the effect, in some cases, of seeing resources and attention spread too thinly, with the risk that cases of genuine welfare concern are either not picked up or not picked up early enough.

We should also acknowledge the evidence that we heard at stage 1 suggesting that applying the named person provisions through the teenage years becomes increasingly problematic. Even Highland Council, an exemplar in many aspects, appears to have been unable to make that aspect of the named person approach work. That being the case, although I would not go as far as Liz Smith wishes to go in some of her amendments, I would question whether insisting on a named person up to the age of 18 is either necessary or achievable. If it is not, why run the risk of seeing scarce resources targeted at trying to do what even you, convener, from your personal experience, have acknowledged is a formidable task?

We also need to recognise the fear that some practitioners may be drawn into taking an unnecessarily interventionist approach—possibly with the best of intentions—which is neither in the interests of the child nor in keeping with the spirit of what we seek to achieve through the legislation. It may be difficult to guard against that eventuality entirely, but we need to be alive to it and the legislation and subsequent guidance need to be as robust as possible in that regard.

Liz Smith’s proposals for leaving open the possibility of opting out are interesting. On the face of it, they would seem pragmatic and likely to reduce any risk of legal challenge. My concern would be the basis on which such an opt-out was exercised and subsequently reviewed. However, the amendments are useful in at least flushing out that debate.

We will turn to my concerns about information sharing in discussion of a later grouping.

10:15

Neil Bibby (West Scotland) (Lab): As I have said previously, in principle I have no objection to putting the named person provisions in the bill. I want the best possible protection and support system for our children, as many other members do. However, the system has to work and it has to be properly resourced.

Amendments 6, 8 to 11, 13, 14, 23 to 28, 30 to 40, 42 and 43 in the name of Liz Smith, which seek to address a concern that the named person is not needed for young people over the age of 18, are worthy of support.
When Bill Alexander, the director of health and social care at Highland Council, gave evidence to the committee, I was concerned when he questioned why a named person would be needed for most children who have left school. He said:

“I do not understand how my daughter, who is 17 and doing performing arts in Manchester, could have a named person; she will not need or want one.”—[Official Report, Education and Culture Committee, 24 September 2013; c 2858.]

There is no doubt that some young people will require additional support after leaving school, and it is important to have proportionate ways of supporting such individuals in managing their situations. However, the vast majority of young people who leave school will neither need nor want a named person, so a named person for all young people who are over 16 is not a necessity.

Members will know that Highland Council was the national pathfinder for implementing GIRFEC. Therefore, we need to listen to people such as Bill Alexander when they raise such issues. The Scottish Government might have technical issues with the amendments, but there are technical issues with the bill. I am minded to support the amendments that I listed in the name of Liz Smith.

I am not minded to support Liz Smith’s amendments to provide for an opt-out. As I said, I support the principle of the named person, and those amendments could undermine what the Scottish Government is trying to achieve. However, like Liam McArthur, I think that it is useful to debate the issues.

I am not convinced by Liz Smith’s other amendments on targeting of the named person role. Jayne Baxter and I have made it clear that we have concerns about resource issues, given the number of health visitors and so on who are needed to fulfil existing duties, never mind the new named person role. We do not believe that the Scottish Government has addressed the resource issues properly. We do not support Liz Smith’s amendments at this stage, but the Scottish Government needs to do more to address the concerns about resourcing the named person provisions.

Joan McAlpine (South Scotland) (SNP): I understand some of the fears that have been expressed. It is important to recognise parents’ role, so I have thought hard about and looked at the issue carefully. I come down on the side of having a named person. Some of the debate has been misleading, using terms such as “state-appointed guardian”. I was convinced to support the proposal because it is about information sharing to support vulnerable children. All the tragedies in which children have died have occurred because information was not shared. The named person’s role is crucial in that.

For that reason, I question in the politest possible way the logic of amendments 58 to 63, 65 and 83 in the name of Liz Smith. The purpose of the named person is to protect vulnerable children, but the people who would be likely to opt out of such provision are those who might harm their children. We all know from reading about tragic cases that it is often observed that the parents were manipulative and in many ways intelligent in how they evaded the authorities’ scrutiny. For that reason, allowing people to opt out of the system would be completely wrong.

Clare Adamson (Central Scotland) (SNP): I do not agree with the amendments that would reduce from 18 to 16 the age limit for having a named person. I agree that, in some circumstances, the position will be more difficult and young people who are over 16 will not need a named person’s services, but the named person might still be important in some instances. For example, when such a child or young person is still at school, it is important that they still have access to a single point of contact for whatever services there might be.

Highland Council gave the example of a young person who is in further education. We know that good pastoral care is provided in higher education and colleges, but other young people in that age group might not have access to another point of contact for support. On that basis, it is important that the named person continues to be available until the young person is 18.

The Convener: Thank you very much. I will make one or two comments on the issue. The named person provisions have been widely debated. Like others, we came to that part of the bill with some scepticism because we wanted to ensure that what was proposed dealt with the questions that members of the public and the committee and some of those who gave evidence to the committee had about it. I am more than satisfied by the answers that have been provided and the evidence that has been given to the committee on the issue. I do not think that it is in any way helpful or accurate to describe a named person as a state-appointed guardian.

On Liz Smith’s amendments 58 to 63, 65 and 83, I genuinely believe that the opt-out would be unhelpful for a number of the reasons that have been mentioned, including increased bureaucracy and confusion. I also have concerns along the same lines as those raised by Joan McAlpine. While many parents would never access a named person and might decide to opt out on that basis, which would do no harm, there may well be individuals who would do harm to their children who would use an opt-out, leaving a question mark. Providing the option for those who wish to
evade the services and support that we are talking about is a concern.

On 16 to 18-year-olds, I, like others, listened carefully to Bill Alexander’s evidence. Although he has a point that some young people in that age group do not require such services, over the past two years, particularly as part of our inquiry, we have heard from many young people who have come and talked to us about their desire to have access to support services and the ability to go and speak to somebody. In many cases, they were above the age of 16.

Some young people will still be at school, some will be looked after and others will be looked after at home, but many young people are in a vulnerable position and they should be able to have a single individual whom they know—the named person—whom they can go to or others can access. In most cases, who that named person is will be obvious, and I would not like to lose that from the bill. For all those reasons, I do not support Liz Smith’s amendments.

I call Liz Smith to wind up and to press or withdraw her amendment.

Liz Smith: I fully recognise that the Conservatives have a different view on the entire policy, particularly from the substantive point of view. However, far too many doubts remain about the costing of the policy. Of all the committee sessions that I have ever seen in this Parliament, the one on the named person provided compelling evidence and, on all sides of the political spectrum, there was a strong feeling that the resourcing of the policy was totally inadequate. I ask the Scottish Government to reflect on that.

I am grateful to the members who have spoken in support of the amendments that deal with the 16 to 18 age group. I am convinced that that is an unworkable aspect of the policy, not only from the substantive point of view but because the mechanics make it extremely difficult. I acknowledge that we have a fundamental difference of opinion. We have tried to put forward our views without the rhetoric to which some of the newspapers have resorted. We have based our views on fact and a lot of the evidence that has been presented to the committee.

I press amendment 6.

The Convener: The question is, that amendment 6 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 6 disagreed to.

The Convener: Amendment 177, in the name of Jayne Baxter, is grouped with amendment 7.

Jayne Baxter (Mid Scotland and Fife) (Lab): At present, section 19 suggests that the named person could be someone, or another body, to whom the service provider has contracted out work. By deleting most of section 19(3)(a)(ii), amendment 177 seeks to prevent the service provider from contracting out the role of the named person. However, where the named person is employed directly by the service provider, we wish to ensure that, for the crucial early years of a child’s life, the named person is either a midwife or a health visitor. We hope that by specifying that in the bill we will ensure that appropriate resources are directed at the role of the health visitor. We also support amendment 7.

I move amendment 177.

Liz Smith: Amendment 7 explicitly states that the named person for nought to five years, following on from the midwife, should be a qualified registered health visitor. The Scottish Government believes that that does not take into account the flexibility of the family nurse partnership scheme, but I am not entirely persuaded by that argument.

I am much more persuaded by the concerns that have been expressed by the Royal College of Nursing and the Royal College of Midwives. They fear that in some situations health boards might allocate named person roles to professionals who are less appropriately skilled than health visitors. They feel that that would be particularly likely in tough economic times, when health boards face financial difficulties. That would be a highly regrettable situation and one that I think is contrary to the main principles of the bill.

For me, the most powerful policy that we could put in place to address many of the concerns about the care of our youngest children is provision of a universal general-practitioner-attached system of qualified and registered health visitors. That has been very much at the forefront of the campaigns from the professionals who are on the front line. Indeed, if the bill achieves nothing else, that policy would bring about the
greatest positive change. I hope that members will support amendment 7. I also support amendment 177.

Liam McArthur: I support amendment 7, which, as Liz Smith said, goes part of the way towards addressing the concerns that were raised by the RCN at stage 1. That still leaves the not inconsequential matter of adequate resources being made available. As Liz Smith said in relation to the first group of amendments, there has been a failure to provide a satisfactory response to concerns that the financial memorandum figures are calculated in such a way as to ignore the increased staffing requirements for midwives, and simply inflate the hours of those who are already in the sector. I hope that the minister can accept amendment 7.

As Jayne Baxter said, amendment 177 is an attempt to prevent the named person role from being contracted out wholesale, and to ensure that it is delivered by appropriately trained staff. That seems to be a sensible measure and it is worthy of support. I support amendment 177.

Aileen Campbell: On amendment 177, the named person service for children who are under school age will be provided by the health board, and for children of school age by the local authority. However, some flexibility is required to allow for situations in which the most appropriate named person is employed by another body. For example, Highland Council uses a lead commissioning model whereby the council provides children’s services and employs health visitors. Section 19(3)(a)(ii) will allow health visitors to be appointed as named persons in that situation, notwithstanding that they are not direct employees of the health board.

We agree that it is very important that a child’s named person is properly equipped to carry out their role. That is why we have included section 19(3)(b), which provides that ministers can, by order, specify what training and qualifications the named person must have. That will ensure that staff carrying out the role have the appropriate skills and experience.

The safeguard of having order-making powers in relation to the training, qualifications, experience and position of a named person will provide a specific description of who can perform the functions and ensure that that service is not contracted out to or commissioned from inappropriate organisations. For those reasons, I do not support amendment 177.

Amendment 7 would restrict the named person for pre-school age children to registered midwives or registered nurses who are health visitors. I am well aware of the well-intentioned petitioning in that regard. However, leaving no flexibility would not be in the best interests of the child. I agree that, in the vast majority of situations, those people would be the professionals who are best placed to fulfil that role. However, the amendment leaves no flexibility for health boards to agree the appointment of another professional in exceptional circumstances, even where that would be in the best interests of the child.

10:30

The development of the family nurse partnership programme over the past few years with family nurses from a wide variety of nursing backgrounds is a clear example of where having a statutory requirement for the named person to be a midwife or health visitor would not be in the best interests of the child or family. A growing number of vulnerable families have a family nurse providing intensive support while the child is under two years old. During that time, they are better placed to carry out the named person function for the child because they have the skills and they have frequent contact and an established relationship with the family. In addition, in exceptional circumstances the GP might be the one who undertakes the role of the named person. The bill provides the flexibility that will allow that to happen; amendment 177 would prevent it from happening at all.

In line with amendment 177, our statutory guidance will recommend that for the vast majority of children and families the named person role for the newborn will be the midwife and then a health visitor. Under section 19, we also have the capacity to make an order on the training qualifications and experience of those who can fulfil the named person function. As a result, I do not support amendment 7.

The Convener: Thank you. Jayne Baxter will wind up and tell us whether she wishes to press or to seek to withdraw amendment 177.

Jayne Baxter: Midwives and health visitors play central roles in family life, and I want to ensure that that is resourced and delivered by appropriately qualified staff. I think that that principle needs to be enshrined in the bill. I am not prepared to see it diluted or be subject to flexibility, so I will press amendment 177.

The Convener: The question is, that amendment 177 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 177 disagreed to.

Amendment 7—[Liz Smith]—moved.

The Convener: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 7 disagreed to.

Amendment 8 not moved.

The Convener: Amendment 129, in the name of the minister, is grouped with amendments 130, 152 and 156.

Aileen Campbell: Amendments 129, 130, 152 and 156 will amend the named person provision so that the named person functions will not apply while the young person is subject to service law as a member of any of the reserve forces. The local authority will continue to provide the named person function at all other times for those young people, which means that while the young person is at home and going about their life in the usual way, the named person service will be available to them and will cease to be available only when they are away with the reserve forces.

It would be logistically problematic for the local authority to provide the named person service to a young person when their duties with the armed forces were taking place on Ministry of Defence premises or outwith the local authority area. If the young person is on call out, duty or training with the reserve forces, the Ministry of Defence will have a duty of care for the young person.

We do not consider that that will diminish the level of support for wellbeing that young person will receive, because we expect the armed forces to exercise a comparable level of support for the young person’s wellbeing while the young person is on duty with them. We intend to negotiate a memorandum of understanding with the MOD to detail how that support for wellbeing will be maintained. Therefore, I urge the committee to support amendments 129, 130, 152 and 156.

I move amendment 129.

Amendment 129 agreed to.

The Convener: Amendment 178, in the name of Jayne Baxter, is grouped with amendment 329.

Jayne Baxter: Section 19 outlines the functions of the named person service and amendment 178 would expressly add preventing harm to the child or young person to the functions of a named person. The named person could play an important role in preventing harm to a child or young person; amendment 178 would further emphasise the importance of the named person in exercising their functions or preventing harm to the child or young person.

I move amendment 178.

Liam McArthur: My amendment 329 reflects the concerns that have been highlighted by the WAVE Trust and other experts who were involved in developing the “Putting the Baby in the Bath Water” report. As amendment 178 does, amendment 329 underscores the not unreasonable belief that the bill should contain proper emphasis on the need for prevention. I am bound to say that it is disappointing that the minister has, to date, not seen fit to accept a single amendment from any Opposition member, despite all our willingness to share with her and her officials the areas of concern that we have about a bill that enjoys cross-party support. Indeed, the sole exception to the Scottish Government’s apparently exclusive right to amend the bill is Joan McAlpine’s amendment on the theme of preventative action, which was agreed to at our previous meeting. I encourage Aileen Campbell to turn over a new leaf in the new year and to start showing some evidence of her commitment to the collaborative working that we talked about throughout stage 1.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am struggling to see what amendments 178 and 329 would add to the bill. On amendment 178, the functions of a named person already include promoting, supporting and safeguarding wellbeing. On amendment 329, under the bill corporate parents will already have to be alert to matters that might adversely affect the wellbeing of the child. What the amendments propose would not really add to that.

The concept of wellbeing was strongly supported during the bill consultation and the term
is widely understood among professionals. Amendments 178 and 329 would not strengthen the bill or add protection for the child. I would be interested to hear from the minister whether guidance might add to or strengthen the provisions. As they stand, I do not see what the amendments would add.

Aileen Campbell: With respect to amendment 178, I whole-heartedly agree that preventing harm to a child is a crucial objective for all services and the wider community. Public services have responsibilities to look out for and to protect children from harm, abuse, exploitation, trafficking, and neglect. That includes taking action when harm is discovered.

It also means taking preventative action when wellbeing might be compromised. That is a key aim of the bill and it is central to the functions of the named person. We are deliberately promoting the concept of wellbeing to encourage early intervention and prevention to avoid children ending up in harm, however it is described. The definition in section 74 includes key references such as “safe”, “nurtured”, and “healthy”, all of which embrace the necessary elements of preventing harm.

The bill seeks to shift culture and practice to ensure that practitioners initiate action to support wellbeing not just through the lens of harm or child protection. That is what promoting, supporting and safeguarding mean. The bill focuses on positive outcomes for children and young people. Preventing harm is a feature of a deficit approach which does not sit with the aims of the bill and could impact adversely on how practitioners engage with families and children. The bill already embraces the aim of amendment 178, so the amendment is not necessary. For those reasons, and although I agree absolutely with its aim, I oppose amendment 178.

On Liam McArthur’s amendment 329, and in the spirit in which he talked about it, when we feel that the bill can be improved, we have worked with stakeholders to draft our own amendments. If we felt that an Opposition amendment would improve the bill, we would support it, so I hope that we can—regardless of whether we have supported previous Opposition amendments—continue to work together to ensure that the guidance and subsequent legislation will do what we all want the bill to achieve in making life better for all children across Scotland.

On the specifics of amendment 329, to which Liam McArthur spoke, a key responsibility of corporate parents as set out in section 52(a) of the bill is their being alert to “matters which, or which might, adversely affect the wellbeing of children and young people”. Wellbeing is a widely understood definition and quite clearly includes safety from harm, as is the word “safe” in the SHANARRI—safe, healthy, active, nurtured, achieving, respected, responsible and included—framework. The committee debated the word “wellbeing” at its previous stage 2 meeting, and the majority of members felt that it is a useful holistic term. Consequently, there is no need to specify the prevention of harm as a specific duty because it is already encapsulated in the existing duty in section 52(a). We can, of course, elaborate on that further in the guidance that will be issued to corporate parents under section 57 of the bill, relating to the exercise of their corporate parenting responsibilities.

Unfortunately for Liam McArthur, therefore, I cannot support amendment 329.

In summary, I do not support either amendment.

Jayne Baxter: I welcome many of the minister’s comments, and I fully understand the concept of wellbeing. However, I am thinking back to some of Joan McAlpine’s earlier comments about some of the very distressing cases that have come to light. There is therefore nothing wrong in focusing on preventing harm and looking through that prism. I will press amendment 178.

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 178 disagreed to.

Amendments 9 to 12 not moved.

Amendment 238 moved—[Jayne Baxter].

The Convener: The question is, that amendment 238 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.
Amendment 238 disagreed to.
Amendments 13 and 14 not moved.
Amendment 130 moved—[Aileen Campbell]—
and agreed to.
Section 19, as amended, agreed to.
Section 20 agreed to.

Section 21—Named person service in relation to children not falling within section 20
Amendment 15 moved—[Liz Smith].

The Convener: The question is, that amendment 15 be agreed to. Are we agreed?
Members: No.
The Convener: There will be a division.
For
Smith, Liz (Mid Scotland and Fife) (Con)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.
Amendment 58 disagreed to.
Amendment 16 moved—[Liz Smith].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?
Members: No.
The Convener: There will be a division.
For
Smith, Liz (Mid Scotland and Fife) (Con)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.
Amendment 16 disagreed to.
Amendment 17 and 18 not moved.
leaving age, whichever is later, will have access to
a named person. The local authority will have to
make the service available to all schoolchildren
who reside in their area with only limited
exceptions, for example where the child attends a
school in another area or attends an independent
school and the duties transfer to other bodies.
Children who do not have a standard pattern of
school attendance and those who are temporarily
or permanently excluded from school will continue
to benefit from the named person service.

As a result, we believe that amendment 179 is
unnecessary. Statutory guidance will detail the
practical arrangements that are to be made for
different groups of children. I therefore ask the
member not to move amendment 179.

I move amendment 131.

Jayne Baxter: With amendment 179, I seek
clarification of the support available to children
who have been expelled or excluded from school.
As we have made clear throughout, although we
support the named person process in principle, we
need assurances that it will be adequately
resourced and appropriately supported and that no
child will fall through potential gaps in the system.

Joan McAlpine: I cannot see how amendment
179 is necessary, given that the legislation's
central purpose is to give all children, including
those who are temporarily or permanently out of
full-time education, access to a named person. I
am quite relaxed about and satisfied with the
approach that is being taken and feel that the
guidance will provide details of the named person
for children who are outwith mainstream
education.

Aileen Campbell: To echo Joan McAlpine’s
comments, I feel that amendment 179 is
unnecessary as the bill currently places a duty on
local authorities to make the named person service available to all children and young people living in their area. That means that even a child or
young person who is temporarily or permanently
excluded from school will be covered by the
named person provisions.

Given our belief that amendment 179 is already
covered in the bill and therefore not required, I
again ask Jayne Baxter not to move it.

Amendment 131 agreed to.

Amendment 19 moved—[Liz Smith].

The Convener: The question is, that
amendment 19 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For
1, Against 8, Abstentions 0.

Amendment 19 disagreed to.

Amendment 20 moved—[Liz Smith].

The Convener: The question is, that
amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For
1, Against 8, Abstentions 0.

Amendment 20 disagreed to.

Amendment 59 not moved.

Amendment 21 moved—[Liz Smith].

The Convener: The question is, that
amendment 21 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For
1, Against 8, Abstentions 0.

Amendment 21 disagreed to.

Amendment 60 not moved.
Amendment 132 moved—[Aileen Campbell]—
and agreed to.

Amendment 179 moved—[Jayne Baxter].

The Convener: The question is, that amendment 179 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 179 disagreed to.

Section 21, as amended, agreed to.

Section 22—Continuation of named person service in relation to certain young people

Amendments 133 to 135 moved—[Aileen Campbell]—and agreed to.

Amendment 22 moved—[Liz Smith].

The Convener: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 22 disagreed to.

Section 22, as amended, agreed to.

After section 22

Amendment 61 not moved.

Section 23—Communication in relation to movement of children and young people

Amendments 23 to 27 not moved.

The Convener: Amendment 136, in the name of the minister, is grouped with amendments 137, 139, 140 to 142, 180, 143 to 145, 181, 163 and 164.

Aileen Campbell: We listened to stakeholders’ concerns throughout stage 1 and, after careful consideration of the issues, I propose the amendments in my name in this group to tighten up the bill and clarify that information should be shared when it “is likely to be” relevant to a child’s wellbeing, rather than the current “might be” relevant. The amendments further elaborate on and give context to what was always meant to be a subjective professional decision. They ensure that, where appropriate, the views of the child will be taken into account.

The amendments ensure that the holder of the information must take account of any adverse effect on the child’s wellbeing if information is shared and balance that against the benefit to the child in sharing. If the adverse effect outweighs the benefit, they must not share. That should help to allay concerns that are held by some that the duties in the section are to be complied with in the absence of any consideration of the child’s views or how the child would be affected by the provision of information.

Amendment 142 will provide comfort to professionals who are bound by duties of confidentiality and can at times, as we are aware, find themselves in a dilemma between what should be shared in a child’s best interest and the codes that bind their profession. Duties of confidentiality may be overridden, but only where the tests in sections 23 and 26 are met. At times, difficult decisions need to be made by professionals, but those provisions, as amended, will ensure that all contributing factors are taken into account.

We have listened to the concerns about section 27 and understand that, as drafted, it could allow court orders to be breached. As a result, the amendments to sections 23, 26, 27 and 38 will tighten the provisions to ensure that that should not happen.

Section 27 provides reassurance for professionals in respect of breaches of duties of confidentiality only if they apply the tests under section 26 and comply with the Data Protection Act 1998. The amended provisions should ensure that appropriate information is identified and consideration is given to sharing. They achieve improved but not excessive information sharing, which has been the aim of our policy all along.

With the amendments to those sections, the test for sharing information and the factors to be taken into account in doing so will be more explicit. We...
will continue to liaise closely with stakeholders and listen to their views, in particular the Information Commissioner's Office. As he suggests, we will work in partnership with him in producing clear guidance, which will further enhance the application of those provisions in practice.

I hope that the changes to the bill will be welcomed and accepted. I know that the Law Society and the Information Commissioner's Office have already written to the committee to give broad support to my amendments.

On where the Law Society and the information commissioner have remaining concerns about the amendments, I offer a reassurance to the committee that our amended provisions permit the sharing of information in breach of a duty of confidentiality only in the circumstances in which sections 23 and 26 are complied with and where, in the interests of the child's wellbeing, it is necessary to do so. They do not permit or require the breach of any other restriction on information sharing, including the Data Protection Act 1998.

The effect of amendments 180 and 181 would be to remove sections 26 and 27 in their entirety, which would mean the duties on information holders to share relevant and appropriate information with the named person in a structured and targeted way. The amendments would hinder the ability of the named person service to promote early intervention and engage in preventative work, as there would be less clarity on when and with whom information should be shared, as well as on the criteria to be applied when considering whether to share information. Removal of those sections would remove a major policy aim of the bill.

The information-sharing provisions in the bill do not alter the application of the existing framework for information sharing under the Data Protection Act 1998. They do not constitute an interference with the European convention on human rights. Moreover, in written evidence, the Information Commissioner's Office said that advantages arise from the named person as a single point of contact, particularly in ensuring the consistency and accuracy of the information that is being shared about the child or young person. It said:

"Section 26 of the Bill also assists with compliance with Principle 1 of the Act by providing a lawful basis for the sharing of information by service providers and relevant authorities."

On section 27, practitioners have told us that they feel exposed when sharing information, and at times find it difficult to balance doing the right thing with breaching their duty of confidentiality. The section allows practitioners to act in the best interests of the child in the full knowledge that they are protected by law when they are doing the right thing.

In summary, I ask members to support my amendments and ask Liz Smith not to move amendments 180 and 181, which are unnecessary.

I move amendment 136.

Liz Smith: From day 1, the information-sharing issue has been hugely complex and controversial, and I think that it was generally agreed at the start that sections 26 and 27 did not help the safe passage of the bill. The Conservatives' view has been that those two sections are not necessary, as the Data Protection Act 1998 already covers the requirements for information sharing. Moreover, even with the proposed changes from "might be" relevant to "is likely to be" relevant, there is still confusion about the provisions and how that will be interpreted by the courts.

Fundamentally, the sections do not provide the same protection for personal data as the Data Protection Act 1998 does. There is therefore the implication that the act disappears or that the new measure takes precedence, which would be incompetent. The Data Protection Act 1998 already complies with the European Parliament and the Council of the European Union's directive 95/46/EC of October 1995. The sections contain no similar protections. We are strongly of the view that the provisions in question should be taken out of the bill altogether to clarify matters of law and to avoid the risk of later challenge.

I intend to move amendment 180.

11:00

Liam McArthur: As I said earlier, as well as the concerns that exist about the resource implications and the potential for focus on genuine issues of welfare to be diluted, I have another anxiety about the practical consequences of the named person proposals, which arises in the area of information sharing. It relates, in particular, to the safeguards surrounding what information will be shared, when, with whom and under what circumstances. Liz Smith has highlighted some of the serious concerns that we heard about at stage 1 in relation to sections 26 and 27.

I note that the minister's amendments 137, 141 and 142 go some way towards addressing the concerns that I expressed at stage 1, but the Law Society has raised concerns about the potential for amendment 142 to allow provisions of the Data Protection Act 1998 to be disregarded, while Clan Childlaw has drawn attention to the possibility of confidential information being shared without express consent being given. I raised that issue throughout stage 1, and I would welcome the minister responding not just to what the Law Society has said—I think that she has already done that—but to the concerns that Clan Childlaw
has raised. The objective that we had hoped to achieve by the end of stage 2 was that of reaching a situation in which obtaining the consent of the child or young person would be a requirement in all but exceptional circumstances. I am still hopeful that we can obviate the need to adopt the nuclear option that was advanced initially by Professor Norrie and latterly by Liz Smith, but it may well be that we need to return to the issue at stage 3 or in guidance to finally allay those concerns.

George Adam (Paisley) (SNP): The information-sharing provisions are among the most important in the bill. As my colleague Joan McAlpine mentioned, in many of the tragic cases that we have heard about over the years, some of the problems have been created by the lack of an ability to share information.

However, I do not believe that, therefore, information should be shared willy-nilly with everyone in such scenarios, but I believe that the Government’s amendments will tighten things up and make the situation a lot better, and that they make Liz Smith’s amendments 180 and 181 unnecessary. As the minister said, the Law Society has broadly welcomed the Government’s amendments, as has the Information Commissioner’s Office.

As the part of the bill that deals with information sharing is one of its most important parts, we need to ensure that it is framed in such a way that it can make a difference to young people’s lives.

The Convener: I would like to make a few comments before I invite the minister to respond.

We have certainly spent a lot of time looking at and discussing the bill’s provisions on information sharing. Initially, when we took evidence on sections 26 and 27, many members of the committee had concerns but, to be fair, I think that the minister has dealt with those very well. Many of the concerns were to do with the language that was used, much of which has been tightened up. I am strongly in favour of the Government’s amendments, as I think that they answer the questions that were posed and deal with the concerns that the committee had. Therefore, I feel that Liz Smith’s amendments are no longer necessary.

Aileen Campbell: I thank members for their comments.

My amendments are based on feedback that was received from a wide range of stakeholders, including the Law Society, the Information Commissioner’s Office and others. As George Adam said, they will tighten and clarify the information-sharing provisions. I understand that the National Society for the Prevention of Cruelty to Children has written to the committee to say that it is pleased that the Scottish Government has listened and acted on the concerns that were raised about the information-sharing provisions, and I will continue to work with any stakeholders that may continue to have concerns. I think that Liz Smith said that some stakeholders remain concerned, and the door is open to them if they want to engage with us further as the bill progresses so that we can allay their fears.

In response to what Liam McArthur said, we want to ensure that the child’s views are taken into account when the professional decides whether to share information. My amendments will ensure that the wellbeing of the child is balanced against any adverse effect on the child and that confidentiality may be breached only when the stricter tests apply. They should alleviate the concerns that were raised during evidence taking at stage 1.

Of course, we all want to get to a position in which no child is neglected or harmed and in which children can reach their full potential. That goal can be achieved only by acting earlier and preventing problems from escalating. The named person needs the information that others hold about a child’s wellbeing to be shared with them so that early signs can be picked up and acted on before a crisis is reached.

Therefore, I ask the committee to support my amendments and to oppose amendments 180 and 181.

The Convener: The question is, that amendment 136 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 136 agreed to.
Amendment 28 not moved.
Amendment 137 moved—[Aileen Campbell].

The Convener: The question is, that amendment 137 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 137 agreed to.

Amendment 62 moved—[Liz Smith].

The Convener: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 62 disagreed to.

Section 23, as amended, agreed to.

Section 24—Duty to communicate information about role of named persons
Amendment 138 moved—[Aileen Campbell]—and agreed to.

Amendments 63 and 29 to 31 not moved.

Section 24, as amended, agreed to.

Section 25—Duty to help named person
Amendments 32 and 33 not moved.

Section 25 agreed to.

Section 26—Information sharing
Amendment 34 not moved.

Amendment 139 moved—[Aileen Campbell].

The Convener: The question is, that amendment 139 be agreed to. Are we agreed?

Members: No.
The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 141 agreed to.

Amendment 39 not moved.

Amendment 142 moved—[Aileen Campbell].

The Convener: The question is, that amendment 142 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Against
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 8, Against 1, Abstentions 0.

Amendment 142 agreed to.

Amendment 180 moved—[Liz Smith].

The Convener: The question is, that amendment 180 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.

Amendment 180 disagreed to.

Section 26, as amended, agreed to.

Section 27—Disclosure of information

Amendments 143 to 145 moved—[Aileen Campbell].

The Convener: Does any member object to a single question being put on amendments 143 to 145?

Members: No.
amendments 146 and 147 and confirm that I do not support amendment 182.

I move amendment 146.

**Jayne Baxter:** Amendment 182 picks up on a key issue that has been raised in previous consideration of the named person proposal, namely the need for clarification of the roles of and interface between the named person and the lead professional.

A number of areas and issues require clarification, including the comparative remits of named person and the lead professional; their respective duties and responsibilities; the demarcation between their areas of decision making; identification of the areas in which they will operate and any limits in that respect; and whether there are likely to be any overlaps between their roles and, if so, how they will be managed. Given the need to clarify the relationship between the named person and the lead professional, I appreciate the minister’s comments about progressing the issue through guidance.

11:15

**Aileen Campbell:** I thank Jayne Baxter for lodging amendment 182. I absolutely recognise that the lead professional is a key element of GIRFEC, and I am committed to taking it forward in parallel with implementation of the bill’s provisions. However, given the greater variety of the individuals who take on the lead professional role and the difficulties in formulating a clear duty in statute, we are not persuaded that legislation is the best place for advancing the role. Given that flexibility is absolutely essential to its performance, clarification of who should perform the named person role should not be embedded in statute.

As I said in my opening remarks, we already plan to issue guidance on the named person service that will contain details on how the named person should interact with the lead professional. We believe that the best place for advancing the role is through guidance. Given the need to clarify the relationship between the named person and the lead professional, I appreciate the minister’s comments about progressing the issue through guidance.

**Amendment 146 agreed to.**

**Amendment 147 moved—[Aileen Campbell]—and agreed to.**

**Amendment 182 moved—[Jayne Baxter].**

**The Convener:** The question is, that amendment 182 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Baxter, Jayne (Mid Scotland and Fife) (Lab)
- Bibby, Neil (West Scotland) (Lab)

**Against**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- McArthur, Liam (Orkney Islands) (LD)
- Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 7, Abstentions 0.

**Amendment 182 disagreed to.**

**Amendment 239 moved—[Mary Fee].**

**The Convener:** The question is, that amendment 239 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Baxter, Jayne (Mid Scotland and Fife) (Lab)
- Bibby, Neil (West Scotland) (Lab)

**Against**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- McArthur, Liam (Orkney Islands) (LD)
- Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 7, Abstentions 0.

**Amendment 239 disagreed to.**

**Amendment 240 moved—[Jayne Baxter].**

**The Convener:** The question is, that amendment 240 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Baxter, Jayne (Mid Scotland and Fife) (Lab)
- Bibby, Neil (West Scotland) (Lab)

**Against**
- Adam, George (Paisley) (SNP)
- Adamson, Clare (Central Scotland) (SNP)
- Beattie, Colin (Midlothian North and Musselburgh) (SNP)
- Maxwell, Stewart (West Scotland) (SNP)
- McAlpine, Joan (South Scotland) (SNP)
- McArthur, Liam (Orkney Islands) (LD)
- Smith, Liz (Mid Scotland and Fife) (Con)

**Abstentions**
- Smith, Liz (Mid Scotland and Fife) (Con)

**The Convener:** The result of the division is: For 2, Against 6, Abstentions 1.
Amendment 240 disagreed to.
Amendment 111 moved—[Aileen Campbell]—and agreed to.
Section 28, as amended, agreed to.

Section 29—Directions in relation to named person service

The Convener: Amendment 148, in the name of the minister, is grouped with amendments 159 to 162.

Aileen Campbell: These amendments seek to change the list of appropriate bodies subject to a duty to assist and share information with the named person and to ensure that those bodies, which are defined in part 4 as “relevant authorities”, comply with any directions issued by the Scottish ministers in relation to the named person functions.

As the National Waiting Times Centre board provides a range of specialist services to children and young people, it holds relevant information about children’s wellbeing. However, as the Scottish Court Service, Mental Health Tribunal for Scotland and Mental Welfare Commission for Scotland are not primarily public-facing, they are not primary sources of information on children’s wellbeing. Because they generally obtain their information from other persons already listed in the schedule, they requested that they be removed from the schedule and, on review, we have agreed that they should not be on it.

As a regional strategic body is primarily a funding body, it does not, in that capacity, require to be listed in schedule 2. Where it provides education, it is covered under the reference to “post-16 education body” and, as a result, is already listed in the schedule in that capacity.

I therefore ask members to support all of the amendments in this group.

I move amendment 148.

Amendment 148 agreed to.

Amendment 241 moved—[Mary Fee].

The Convener: The question is, that amendment 241 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 242 disagreed to.

Amendment 112 moved—[Aileen Campbell]—and agreed to.

Section 29, as amended, agreed to.

Section 30—Interpretation of Part 4

Amendment 40 not moved.

Amendments 149 and 150 moved—[Aileen Campbell]—and agreed to.

Amendment 65 moved—[Liz Smith].

The Convener: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 1, Against 8, Abstentions 0.
Amendment 65 disagreed to.
Amendment 151 moved—[Aileen Campbell]—and agreed to.
Amendment 41 not moved.
Amendments 152 to 154 moved—[Aileen Campbell]—and agreed to.
Amendment 42 not moved.
Amendment 155 moved—[Aileen Campbell]—and agreed to.
Amendment 43 not moved.
Amendments 156 and 157 moved—[Aileen Campbell]—and agreed to.
Amendment 44 not moved.
Section 30, as amended, agreed to.

Schedule 2—Relevant authorities
Amendments 158 to 162 moved—[Aileen Campbell]—and agreed to.
Schedule 2, as amended, agreed to.

Section 31—Child’s plan: requirement
Amendment 243 not moved.

The Convener: Given the time and my previous indication to members that I would call a break during the proceedings, I will suspend briefly at this point.

11:25
Meeting suspended.

11:32
On resuming—

The Convener: Amendment 316, in the name of Liam McArthur, is grouped with amendments 336, 317, 318, 320 to 326, 328, 330 and 331.

Liam McArthur: The amendments in the group seek to address concerns about vagueness in the language that is used in the bill while more effectively linking the preventative approach that we wish to see through part 3, which is on children’s services planning, with effective delivery of those plans. Once again, I am indebted to the broad coalition of expert groups and individuals behind the “Putting the Baby in the Bath Water” report for their suggestions on how we might improve the bill in that regard.

Amendments 316 and 328 reflect a concern that the phrase “capable of” might be too theoretical and that we should seek to provide assurance that wellbeing needs will be met. Amendments 336, 317 and 320 reflect a desire to make the language less vague and would set out more explicitly, particularly in the context of young babies, the needs that are to be met, while ensuring that the bill does not simply sanction a passive or reactive approach. The evidence from the coalition is that many children with significant needs are among those least likely to come to the attention of public services, notably before the age of three.

Amendments 318 and 321 acknowledge that, unlike in many other countries, the great majority of children in Scotland are not meaningfully screened in terms of their overall development in the two years following the assessments that are done in the first days and weeks of their lives. That seems to limit the opportunities for early detection of problems and to lead to more costly and perhaps less effective remedial action being taken later on.

It is important that, as well as ensuring that plans capture in a transparent fashion the outcomes for a child’s wellbeing and life chances, account is taken of any new and emerging needs, again in the spirit of making the preventative approach a reality. That is the thrust of the remaining amendments in the group, which I hope will elicit support. I look forward to hearing the comments of colleagues and the minister.

I move amendment 316.

Liz Smith: I am broadly supportive of the amendments in Mr McArthur’s name. There has been a bit of vagueness surrounding some of the intention behind section 31 and one or two later sections. Mr McArthur’s amendments are helpful in focusing minds. I, too, am grateful to the stakeholders who have given us a lot of information and to some of the practitioners on the front line who have helped us to understand exactly where problems might arise.

Joan McAlpine: I, too, am sympathetic to the “Putting the Baby in the Bath Water” campaign—indeed, at the committee’s previous meeting, I moved an amendment on prevention. However, I am not sure that the amendments in this group are all strictly necessary, and I will be interested to hear what the minister has to say.

On amendment 316, I am concerned that a child’s plan would be required in every case in which a child’s needs are not being met, as that might not always be necessary and could divert resources away from where they are really needed. On amendment 317, the bill currently focuses on the desired outcome of wellbeing, I am not sure that the amendments are all absolutely necessary.

Aileen Campbell: I thank Liam McArthur for explaining the intent of his amendments and I echo his thanks to the “Putting the Baby in the Bath Water” coalition. However, like Joan
McAlpine, I do not consider that the amendments are necessary.

Amendment 316 seeks to require a relevant authority to develop a child’s plan in every case in which a child’s needs are not being met or are not fully met by existing supports. That might result in a move to statutory measures before full consideration has been given to the support that is available in universal services. The amendment would potentially lead to an increase in bureaucracy without any real gain in support to children. The requirement to consider the full range of universal services that are potentially available to meet the child’s wellbeing needs is necessary to ensure that there is no tendency to move too quickly to specialist services and statutory planning when they are not required.

The GIRFEC approach is an outcomes-focused approach that builds on strengths to promote resilience in addressing concerns about a child’s wellbeing. Amendment 317 would require any targeted intervention to focus on preventing the child’s wellbeing from being further compromised rather than on the desired outcome of improved wellbeing. That could result in missed opportunities to promote, support and safeguard wellbeing through early intervention.

The bill requires any concerns about wellbeing that are shared with the named person to be taken into consideration in a decision on whether the child requires a child’s plan. That would of course include any relevant and proportionate information that came to light in the course of routine screening. Amendments 318, 321 and 324 are therefore unnecessary.

Subordinate legislation that will be created under sections 32 and 37 will prescribe the information that is required in the child’s plan, and that will be supported by guidance. Amendments 320 and 326 are therefore unnecessary.

Amendments 322, 323, 330 and 331 aim to achieve similar things in relation to managing the child’s plan and reports by corporate parents, which are covered in parts 5 and 7 respectively. We feel that those amendments are also unnecessary, as they would not add to the assessment of or reporting on the child’s wellbeing, which is already covered fully by parts 5 and 7. The existing wording of section 37 covers all wellbeing needs of the child, the appropriateness of any intervention and an assessment as to whether the outcome has been achieved. The amendments are therefore unnecessary.

The level of detail in amendment 325 is also unnecessary, as the intention behind it is already addressed through the provisions on the review of the child’s plan in sections 37(1) and 37(4). Similarly, we feel that amendments 330 and 331 would introduce reporting duties that would be too specific to apply to all corporate parents. We fully expect corporate parents to take account of wellbeing needs and outcomes when preparing their reports as per section 55(2), which already provides that reports may, in particular, include information about standards of performance and outcomes that are being achieved.

The bill already addresses the aim of preventing wellbeing needs from arising, as reinforced by the committee’s agreement at its previous meeting to accept Joan McAlpine’s amendment 171 in respect of part 3. On amendments 336 and 328, although I absolutely share the desire to ensure that any assessment of needs is robust and comprehensive, I do not consider that the proposed definition of needs will achieve that. The definition and use of “wellbeing” in the bill provide a holistic framework.

Consequently, I do not support the amendments in the group.

Liam McArthur: I thank Joan McAlpine and Liz Smith for their comments, and I thank the minister for her detailed response and the spirit in which it was offered. I also thank the coalition behind the report “Putting the Baby in the Bath Water”, which has been incredibly useful and insightful in informing the discussion at stage 2. It has provided a useful opportunity to highlight some of the important issues that have been raised.

I do not suppose that the amendments will be passed, but I hope that they will go some way towards informing the way in which guidance is developed in due course. I therefore press amendment 316.

The Convener: The question is, that amendment 316 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 316 disagreed to.

The Convener: Amendment 257, in the name of the minister, is grouped with amendments 258
to 261, 264, 265, 277 to 279, 282, 284, 285, 298 and 299.

Aileen Campbell: Although the bill rightly places duties on public bodies to provide the right help to children to promote, support and safeguard wellbeing, the Scottish Government also recognises the important role that the third sector can play in local communities in supporting children and their families.

The amendments broaden the definition of targeted intervention to cover the provision of services by a third party—for example, a third sector provider not contracted by the health board or the local authority. Under the amendments, a relevant authority can arrange for a third sector organisation to provide such interventions.

This is absolutely not about privatising key services, as the responsibility for the child’s plan remains with the responsible managing authority. If we value the contribution of the third sector in supporting wellbeing, we need to ensure that there is a mechanism to co-ordinate that support within the statutory planning framework, where appropriate. The amendments ensure that the full range of interventions to support the child is captured in the child’s plan and that all the interventions that are provided are in accordance with the child’s plan and the child’s needs. Those who provide a targeted intervention would be a partner to the plan. The bill also requires that anyone who provides a targeted intervention under the plan must be consulted when the plan is reviewed.

The amendments will not place a duty on third sector organisations to provide a targeted intervention, but they recognise the important role of third sector services in their communities. The voluntary sector has asked for these amendments, and it will welcome them as they ensure that the valuable work that it does will continue to be included in the child’s plan. I therefore ask the committee to support the amendments.

I move amendment 257.

Amendment 257 agreed to.

Amendments 258 to 260 moved—[Aileen Campbell]—and agreed to.

Amendment 336 moved—[Liam McArthur].

The Convener: The question is, that amendment 336 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Baxter, Jayne (Mid Scotland and Fife) (Lab) Bibby, Neil (West Scotland) (Lab) McArthur, Liam (Orkney Islands) (LD) Smith, Liz (Mid Scotland and Fife) (Con)

Against Adam, George (Paisley) (SNP) Adamson, Clare (Central Scotland) (SNP) Beattie, Colin (Midlothian North and Musselburgh) (SNP) Maxwell, Stewart (West Scotland) (SNP) McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 336 disagreed to.

Amendment 317 moved—[Liam McArthur].

The Convener: The question is, that amendment 317 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For Baxter, Jayne (Mid Scotland and Fife) (Lab) Bibby, Neil (West Scotland) (Lab) McArthur, Liam (Orkney Islands) (LD) Smith, Liz (Mid Scotland and Fife) (Con)

Against Adam, George (Paisley) (SNP) Adamson, Clare (Central Scotland) (SNP) Beattie, Colin (Midlothian North and Musselburgh) (SNP) Maxwell, Stewart (West Scotland) (SNP) McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 317 disagreed to.

Amendment 261 moved—[Aileen Campbell]—and agreed to.

11:45

The Convener: Amendment 262, in the name of the minister, is grouped with amendments 183, 263, 272 to 274, 280, 281, 283 and 297. If amendment 183 is agreed to, I will be unable to call amendment 263, which is in this group, and amendment 244, which has already been debated on day 1, because of pre-emption.

Aileen Campbell: Amendments 262, 272, 280 and 297 ensure that there is a consistent link between the named person and the creation, management and review of a child’s plan where the named person does not work for the authority that is responsible for the plan. The amendments ensure that the named person is at the heart of the single planning process and that the plan is prepared using accurate and relevant information about the child’s wellbeing.

Where the named person is an employee of the responsible authority, they will lead on the preparation and review of the child’s plan as appropriate. However, it will not always be
appropriate for the named person to prepare the plan. For example, when a concern emerges about a child who requires urgent intervention by a specialist or targeted service provider such as child protection, it might be right for social work to lead on the plan. The amendments ensure that the named person will always be contacted to gain a full picture of the child’s wellbeing when decisions are made about the plan.

Amendments 263, 273, 274 and 281 widen the scope of whose views should be regarded in the preparation and management of a child’s plan. They enable ministers to specify who should be consulted and to direct or permit that a copy of the plan be given to a person or persons. That will allow the views of all relevant persons in the child’s life to be sought and considered throughout the child’s plan process.

Amendment 283 makes a minor drafting amendment to section 37 in the light of amendment 282, which has already been debated in group 25.

For those reasons, I ask the committee to support the amendments in my name in the group.

Liam McArthur’s amendment 183 adds an additional requirement for responsible authorities to consider the child’s age and maturity when obtaining their views on the need to have a child’s plan, and it requires responsible authorities to provide the child with an opportunity to indicate whether they wish to express a view when a decision is made on whether a child’s plan is required.

I agree with the principle of what Liam McArthur is trying to do, but I believe that the bill already achieves it. I am clear that responsible authorities should always seek to obtain the child’s views regardless of their situation, age, maturity, disability and communication or other needs, although we acknowledge that, in exceptional circumstances, that may not be reasonably practicable—for example, in the case of very young babies. The requirement to obtain views only so far as is reasonably practicable clearly also allows for the child to decline to give a view if they wish. The current provisions already allow for that.

The first part of amendment 183 could lead to a situation where responsible authorities could take a predetermined view that children were either too young or too immature to provide a view without testing that assumption with the child. Our preferred position is for authorities always to seek the child’s views whenever that is reasonably practicable and to take account of the child’s age and maturity when having regard to any view that is expressed. On the second part of Liam McArthur’s amendment, I believe that the bill provides sufficiently for children to choose whether to provide a view. I therefore believe that amendment 183 is unnecessary and suggest that it be withdrawn.

I move amendment 262.

Liam McArthur: As I made clear when I moved amendments to part 1 of the bill, I firmly believe that, if the bill is not to be seen as a missed opportunity, it must do more to ensure that the child’s voice is heard as part of the process of deciding how best to meet their needs and serve their interests. As I said, both the Faculty of Advocates and the Law Society of Scotland, among others, have questioned the extent to which the bill advances the rights of the child in any way. That is highly regrettable.

Amendment 183 attempts to redress that deficiency, making clear the right of the child to be heard and to have his or her views taken into account in the development of any plan. That might seem to be self-evident, but I do not think that it can be taken for granted. In the light of the comments from the Faculty of Advocates, the Law Society and others, it is clear that there is more work to be done if the legislation is to live up to its billing. It is also worth ensuring that steps are taken to seek and have regard to the views of the child’s parents as part of the process. That is reflected in the final part of amendment 183. On that basis, I hope that colleagues will see fit to support it.

The minister’s amendments in the group seem broadly helpful, but they would benefit from the addition of amendment 183, which I will move in due course.

Aileen Campbell: As I said in opening the group, authorities should always seek to obtain the child’s views. I agree with part of the principle that Liam McArthur talked about. However, if amendment 183 was agreed to, responsible authorities could take the view that a child was too young or immature to provide a view without testing that assumption with the child. That risk is real and I do not believe that anyone with an interest in the bill would wish that to happen.

As we have said, we have a degree of consensus on much of what we are trying to achieve in the bill. I sincerely believe that nobody wants what I suggested to happen. I also reiterate that the bill provides sufficiently for children to choose whether to provide a view.

I ask the committee to support the amendments in my name and not to support amendment 183, in Liam McArthur’s name.

Amendment 262 agreed to.
The Convener: I remind members that, if amendment 183 is agreed to, amendments 263 and 244 will be pre-empted.

Amendment 183 moved—[Liam McArthur].

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 183 disagreed to.

Amendment 263 moved—[Aileen Campbell]—and agreed to.

Amendment 244 moved—[Jayne Baxter].

The Convener: The question is, that amendment 244 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 244 disagreed to.

Amendment 318 moved—[Liam McArthur].

The Convener: The question is, that amendment 318 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: Amendment 45, in the name of Liz Smith, is grouped with amendments 46, 47, 300 and 312.

Liz Smith: Amendments 45 to 47 follow from extensive evidence that several groups of stakeholders have presented throughout the passage of the bill. They would introduce provisions to resolve disputes about the need for, the content of and the management of a child’s plan.

It is conceivable that parents could feel that a plan is unnecessary or inappropriately administered but, under the bill, the avenues for addressing such grievances are unclear. Amendment 45 would correct that by introducing a dispute resolution process for parents who disagree with a decision to initiate a plan. Amendment 46 relates to the preparation of a plan.

Section 33 says:

“Where the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare a child’s plan, the relevant authority is to proceed

“as soon as is … practicable.”

What will happen if the authorities do not agree? As it stands, only a reason for disagreement must be stated, which is not helpful in addressing the specific difficulties. The fact that there is a disagreement does not mean that a satisfactory discussion about the specific problems will occur.

A dispute resolution process would speed up the drafting of a plan and overcome any difficulties that might arise between responsible and relevant authorities. Amendment 46 would further strengthen the hands of parents who disagree with the content of a child’s plan. Amendment 47 relates to the management of a plan and provides for a process to resolve potential disputes as they emerge.

The same themes occur in amendments 300 and 312, in Liam McArthur’s name. They would introduce independent advocacy services and they cover similar ground.
My amendments are worth while as a way to clarify matters and I look forward to hearing the minister’s response.

I move amendment 45.

Liam McArthur: I spoke earlier of the need to ensure that the child and, indeed, the child’s parents or guardians have their voice heard during the development of the child’s plan. In many instances, it will be fairly straightforward to achieve that, but we are all aware, from cases in our constituencies and regions, that the involvement of advocacy support is critical to enabling some people—often, vulnerable individuals—to have their voice and views heard effectively.

Amendments 300 and 312 recognise that need, particularly where there may be disagreement and when emotions are already running high. They make modest but nonetheless important provision for advice on what advocacy support is available and assistance in accessing that support. They do not create any new rights to advocacy but are consistent with the existing legislation and leave considerable scope for ministers to determine how that may be delivered. Without such provision in the bill, we risk excluding many of those who might benefit most from the changes that are being made through both parts 5 and 3. As Liz Smith said, the amendments fit well with her amendments on dispute resolution, which seem both sensible and beneficial.

The Convener: As no other committee member wants to speak, I will make a brief comment before I bring the minister in. There is a question about dispute resolution that must be resolved. I am not convinced that these amendments are the answer, but evidence suggests that there is a question mark over the current status of the bill in this area and I am interested in hearing the minister’s assessment of where the bill stands and what possible remedies she may wish to bring forward.

Aileen Campbell: The Scottish Government is committed to clear, quick and accessible routes for redress for children and parents regarding the GIRFEC duties that are proposed in the bill. We are also committed to ensuring that a redress mechanism is in place in advance of the commencement of the GIRFEC duties, which is currently scheduled for 2016, as is set out in the financial memorandum. We do not, however, want to add unnecessary complexity to the complaints landscape, where there are existing mechanisms to enable people to challenge decisions or roles in public services. The Scottish Public Services Ombudsman, which is the independent body that handles complaints about devolved public services in Scotland, highlighted in evidence to the committee the difficulties that are sometimes caused by the complexity of complaints processes.

I agree with Liz Smith and our stakeholders that there has to be a clear route of redress for parents, families and children in relation to the proposed GIRFEC duties in part 5, and I have sympathy for the motivation behind amendments 45, 46 and 47. However, those amendments do not properly capture all the issues that need to be considered. Other issues that we need to consider include how children and young people—not just their parents—are able to challenge decisions that are taken about them if they feel that their needs are not being met, if appropriate. That is not covered in amendments 45, 46 and 47.

We also want to ensure that disputes concerning different duties relating to the GIRFEC planning process—for example, the need for a plan and the content of the plan—are properly linked so that we avoid overly complicated and time-consuming processes. We need to ensure that the right avenues are in place for pursuing a challenge, but we should not do that in isolation from the outcome of the wider consideration of dispute resolution in social work or the complaints processes that are already in place in local authorities, health boards and other public bodies.

We are open to considering the possibility of an order-making power, but not the one that is proposed here. We would be happy to discuss further with Liz Smith, the convener and others the issues around dispute resolution processes, including whether an enabling amendment might be required for stage 3 or, alternatively, what can be pursued more appropriately and effectively without the need for legislation through the bill.

On that basis, I cannot support amendments 45, 46 and 47.

Although I also sympathise with the motivation behind amendments 300 and 312, I am not able to support provision in the bill for an independent advocacy service such as has been outlined. The Government is committed to developing guidance to support all those who are involved in the provision of advocacy support to children and young people. That guidance will build on a set of principles and standards for independent advocacy that were published by the Scottish ministers in December. Although best practice should always be to inform children and families of where they might seek support in the event of a dispute about a child’s plan, a statutory obligation to signpost a child and his or her parents to independent advocacy in all cases when there is a dispute relating to a child’s plan is not proportionate.

Further, the definition of “independent advocacy services” in the Mental Health (Care and Treatment) (Scotland) Act 2003, which is focused on persons with mental disorder, is not necessarily
appropriate for child’s plans, which will cover a number of children with a wide range of needs.

Although I have sympathy for much of what Liam McArthur said, I do not support the amendments in this group.

The Convener: I call Liz Smith to wind up and indicate whether she wishes to press or withdraw.

Liz Smith: Thank you, convener, and thank you, minister, for what are very helpful comments. If I can, I will hold you to the commitment to discussions ahead of stage 3. As you raised in your speech, there is often complexity and a lack of understanding around this issue, part of which has been created by the problem that parents do not know what to do—they do not know where the process lies. There is a need to tackle that before stage 3.

On the basis that I will hold you to that commitment, I will not move amendment 45.

The Convener: You have moved it. Do you wish to withdraw it?

Liz Smith: I wish to withdraw it; sorry.

Amendment 45, by agreement, withdrawn.

Section 31, as amended, agreed to.

Section 32—Content of a child’s plan

Amendments 264 and 265 moved—[Aileen Campbell]—and agreed to.

The Convener: Amendment 319, in the name of Liam McArthur, is grouped with amendments 266 to 271.

Liam McArthur: Amendment 319 is very much in keeping with the thrust of what I have sought to achieve in previous groupings of amendments, namely the involvement of parents as well the child in the development of a child’s plan. The importance of that needs to be more explicitly stated in the bill, as does the fact that we do not just wish to see parental involvement but recognise that, at times, that might require support to be effective.

I would be interested in the minister’s comments on her amendments in this group, but I see no difficulty with them at all.

I move amendment 319.

Aileen Campbell: Amendments 266, 268, 269, 270 and 271 seek to ensure that a child’s plan can only contain a targeted intervention where the authority that is to provide it agrees to do so. They also will ensure that, where there are no targeted interventions that can be included in a child’s plan, the duty to prepare a plan is removed.

Amendment 266 will help to ensure that only those professionally qualified to determine the appropriateness of a targeted intervention can agree to have it included in a child’s plan. For example, where the relevant authority is a health board, it must agree to the health service support when requested to provide it by a local authority.

When such a service is asked to provide a targeted intervention and it believes in its professional opinion that the intervention is unnecessary or inappropriate, it can disagree with its provision. Such situations will not be commonplace and, when a service disagrees, it will have to provide a statement of reasons for doing so, which will provide some level of accountability.

Amendment 271 will ensure that, when there are no targeted interventions that could be contained in a child’s plan because a relevant authority does not agree to provide an intervention, the duty on the responsible authority to prepare the plan is removed. That will prevent a child’s plan being put in place when disagreements exist over what interventions can be provided and will ensure that unnecessary interventions that are not in the child’s best interest are avoided. Guidance will ensure that services are clear as to when such a situation may arise and the appropriate manner in which to deal with them.

Amendments 268, 269 and 270 are minor amendments that are being made in consequence of amendments 266 and 271. The amendments do not affect the general duty on a responsible authority to prepare a child’s plan if a child has a wellbeing need, so that, if there are other targeted interventions that could be provided to meet the wellbeing need, there will still be a requirement to prepare a plan.

Amendment 267 is a typographical amendment and removes a stray “a” in section 32.

Amendment 319, in the name of Liam McArthur proposes that all plans stipulate support arrangements for the child’s parents and how parents will be included in the plan. That is not necessary or appropriate in all cases. The child’s plan must focus on the needs of the child. If support is required to help the parent in order to improve the wellbeing needs of the child, that will be recorded in the plan, but to make the inclusion of such information a requirement in all cases is neither proportionate nor necessary.

I do not support amendment 319 but do support all the other amendments in this group in my name.

The Convener: I ask Liam McArthur to wind up and indicate whether he wishes to press amendment 319.
Liam McArthur: I confirm that the minister’s amendments in this grouping are indeed helpful in improving the bill, but I am not convinced that there is not a need for amendment 319 as well, so I press amendment 319.

The Convener: The question is, that amendment 319 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 319 disagreed to.

Amendment 320 moved—[Liam McArthur].

The Convener: The question is, that amendment 320 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 320 disagreed to.

Amendments 266 and 267 moved—[Aileen Campbell]—and agreed to.

Section 32, as amended, agreed to.

Section 34—Responsible authority: general

The Convener: Amendment 275, in the name of the minister, is grouped with amendment 276.

Aileen Campbell: Amendment 275 corrects another typographical error in the bill.

Amendment 276 is necessary to clarify that a local authority that places any child in an independent or grant-aided school outside that local authority area retains responsible authority status in respect of that child. That means that the local authority will be responsible for determining whether a child’s plan is required. Where appropriate, it will also prepare and manage that plan.

Amendment 276 also ensures that when a child is placed or detained in residential accommodation, including secure accommodation, in an area other than their home local authority area, the home local authority retains responsibility for the child’s plan. That reflects current good practice, whereby a child’s home local authority retains responsibility for looked-after children when they are accommodated outside that authority area.

The amendment seeks to ensure that the provisions of section 35 reflect current good practice, which is why I support it.

I ask the committee to support both my amendments in the group.

I move amendment 275.

Amendment 275 agreed to.

Section 34, as amended, agreed to.

Section 35—Responsible authority: special cases

Amendment 276 moved—[Aileen Campbell]—and agreed to.

Section 35, as amended, agreed to.

Section 36—Delivery of a child’s plan

Amendment 277 moved—[Aileen Campbell]—and agreed to.

Section 36, as amended, agreed to.

Section 37—Child’s plan: management

Amendment 322 not moved.

Amendment 278 moved—[Aileen Campbell]—and agreed to.

Amendments 245 and 323 not moved.
Amendments 279 to 281 moved—[Aileen Campbell]—and agreed to.
Amendment 284 not moved.
Amendments 282 and 283 moved—[Aileen Campbell]—and agreed to.
Amendment 285 moved—[Aileen Campbell]—and agreed to.
Amendment 286 not moved.
Amendment 325 not moved.
Amendment 287 moved—[Aileen Campbell]—and agreed to.
Amendment 326 and 47 not moved.
Section 37, as amended, agreed to.

Section 38—Assistance in relation to child’s plan

The Convener: Amendment 286, in the name of the minister, is grouped with amendments 287 to 296 and 311.

Aileen Campbell: Amendments 286 to 292 extend the duty to provide assistance, advice and information under section 38 to persons who are listed in the new schedule that amendment 293 inserts. That allows authorities that are exercising child’s plan functions to ask persons listed in the schedule for information and assistance with regard to the child’s plan, in the same way that a named person can, prior to the plan being initiated. That strengthens the bill in relation to children with high-level needs where co-ordinated input from a range of services may be necessary to promote, support and safeguard their wellbeing.

Amendments 292 and 311 add a power for the Scottish ministers to modify the new schedule by order and provide that such an order would be subject to affirmative parliamentary procedure.

Amendments 294 to 296 amend the provisions around guidance and directions in part 5 to achieve consistency in the bill as a whole and to take account of the fact that Scottish ministers will be listed in the new schedule in relation to part 5.

I move amendment 286.

Amendment 286 agreed to.

Amendments 287 to 291, 163, 164 and 292 moved—[Aileen Campbell]—and agreed to.

Section 38, as amended, agreed to.

After schedule 2

Amendment 293 moved—[Aileen Campbell]—and agreed to.

After section 38

Amendment 300 moved—[Liam McArthur].

The question is, that amendment 300 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 300 disagreed to.

Section 39—Guidance on child’s plans

Amendment 294 moved—[Aileen Campbell]—and agreed to.

Amendment 247 moved—[Mary Fee].

The question is, that amendment 247 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 247 disagreed to.

Amendment 113 moved—[Aileen Campbell]—and agreed to.

Section 39, as amended, agreed to.
Section 40—Directions in relation to child’s plans
Amendments 295 and 296 moved—[Aileen Campbell]—and agreed to.
Amendment 249 moved—[Mary Fee].
The Convener: The question is, that amendment 249 be agreed to. Are we agreed?
Members: No.
The Convener: There will be a division.
For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.
Amendment 249 disagreed to.
Amendment 250 not moved.
Amendment 114 moved—[Aileen Campbell]—and agreed to.
Section 40, as amended, agreed to.

Section 41—Interpretation of Part 5
Amendments 297 to 299 moved—[Aileen Campbell]—and agreed to.
Section 41, as amended, agreed to.

Section 42—Early learning and childcare
Amendment 251 not moved.
The Convener: We have reached the end of part 5. I will call a short suspension, if members do not mind. We will come back after that.

12:19
Meeting suspended.

12:24
On resuming—
The Convener: Given where we are with the bill, we will stop at this point and pick it up again next week. We did not get through as many of the amendments as we had hoped to, but we will start again with part 6 next week and get as far through the bill as we possibly can. The deadline for lodging amendments to parts 8 to 11 of the bill is this Thursday at noon. I thank the minister and her officials for attending today, and I suspend the meeting briefly to allow them to leave.

12:25
Meeting suspended.
Ur fadhle/Your ref: 
Ar fadhle/Our ref: 
8 January 2014

Dear Stewart,

Further to yesterday's announcement on expanding eligibility for early learning and childcare to 2 year olds from workless households in August 2014, estimated at around 15% (8,400) of 2 year olds, I wanted to clarify that the intention is to do this through secondary legislation.

The Children and Young People (Scotland) Bill was designed to allow expansion of early learning and childcare provision through secondary legislation; and, the intention was made clear that this would apply to 3 and 4 year olds in the first instance, with further expansion when it was affordable and sustainable. The confirmation of consequential funding in December has enabled us to make this initial additional expansion.

Eligibility for 600 hours of early learning and childcare for 2 year olds who are looked after or under a kinship care order are set out on the face of the Bill as we wanted to signal early our very clear intentions to cover those most vulnerable 2 year olds; and, to make alternative provisions for those looked after 2 year olds in terms of their wellbeing needs (as currently set out in section 45).

The flexibility of using secondary legislation means that the subsequent expansion to 27% of 2 year olds could also be carried out this way.

We will engage closely with stakeholders throughout this process.

best, 

Aileen

AILEEN CAMPBELL
CHILDREN & YOUNG PEOPLE (SCOTLAND) BILL: AMENDMENT TO REPEAL CHILD PERFORMANCE LICENSING RESTRICTIONS

I am writing to make you aware that I have lodged an amendment to the Children & Young People (Scotland) Bill which would repeal existing restrictions linked to the participation of children under 14 in performances.

As you will know, local authorities currently have responsibility for licensing those children under school leaving age who wish to take part in performances. The licensing arrangements are provided for under section 38 of the Children & Young Persons Act 1963.

In addition to the overarching safeguards delivered through the licensing regime, the 1963 Act also introduced additional restrictions focussing on performances by children aged under 14. Specifically, it prevents a licence being granted to a child under the age of 14 except where the child is acting or dancing (in a ballet) and the part can only be taken by a child of that age, or where the part is wholly or mainly musical or consists only of opera and ballet. These restrictions are commonly referred to as the ‘under 14 rule’.

The UK Government approached us in December notifying their intention to repeal the ‘under 14 rule’ in England and Wales and lodged an amendment to their Children & Families Bill on 17 December to deliver that change.

The ‘under 14 rule’ does seem rather arbitrary in nature and does not take account of the circumstances of individual children, their maturity or resilience. Furthermore, it does not properly take account of the wide range of performance opportunities that are now available to younger children, the majority of which result in extremely positive experiences which benefit their wellbeing. We are therefore minded to make a corresponding change to the law in Scotland.
It is also important to recognise that a lack of action on our part would result in Scotland being placed at a competitive disadvantage to other parts of the UK, both in terms of opportunities for children and for the creative industries.

We are confident that the change would not result in children’s wellbeing being negatively impacted. Whilst we are generally satisfied that the overarching licensing framework is sound, we have been working with stakeholders over a period of months to explore how we can improve the existing arrangements and hope to shortly be in a position to consult more broadly on our proposals.

Unfortunately, the timing of the UK Government’s decision has limited our ability to consult widely on the proposed removal of the ‘under 14 rule’ in Scotland. However, we have sought views from a number of key stakeholders including BBC, OFCOM, Scottish Youth Theatre, Barnardo’s and Glasgow City Council regarding the proposed change and the response has been favourable. We have also taken account of the fact that a previous UK Government consultation on this subject indicated strong support for such a change and many of the organisations (particularly those from the creative industries) who participated in that consultation operate on a UK-wide basis.

I recognise that it would have been preferable for the Committee to have had an opportunity to consider this proposed change before now. However, I trust that this letter is helpful in setting out the compelling reasons for pursuing an amendment even at this late stage. Of course, if you or any other member of the Committee would like to discuss the matter in more detail please do not hesitate to contact me.

AILEEN CAMPBELL
Children and Young People (Scotland) Bill

3rd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Sections 1 to 3 Schedule 1
- Sections 4 to 30 Schedule 2
- Sections 31 to 50 Schedule 3
- Sections 51 to 76 Schedule 4
- Sections 77 to 80 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 42

Liam McArthur

In section 42, page 23, line 19, at end insert—

<(  ) The aims of early learning and childcare include—
   (a) improving outcomes for children (in particular those from disadvantaged backgrounds), and
   (b) supporting parents to work and study.>

Section 43

Liz Smith

In section 43, page 23, line 25, leave out from <under> to end of line 31 and insert <of pre-school age and has not commenced attendance at a primary school (other than at a nursery class in such a school),

   (  ) is under pre-school age but falls within subsection (3).

(2A) A child is of pre-school age from the school commencement date in the year in which, on the last day of February, the child was aged (or turned) 2 until the school commencement date two years later.

(2B) The Scottish Ministers may by order specify that a child—
   (a) who—
      (i) is under school age on the second school commencement date mentioned in subsection (2A),
      (ii) is not commencing attendance at a primary school on that date (other than commencing or continuing attendance at a nursery class in such a school), and
      (iii) meets such other criteria as may be specified in the order,
is, until the next school commencement date, to be regarded as an eligible pre-school child, or

(b) who is within such age range below pre-school age, or is of such other description, as may be specified in the order is to be regarded as an eligible pre-school child.

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Neil Bibby  
**Supported by: Liam McArthur**

84 In section 43, page 23, line 32, after <and> insert—

< ( ) the child>

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Liam McArthur

338 In section 43, page 23, line 35, at end insert <, or

( ) in receipt of disability living allowance (within the meaning of section 71 of the Social Security Contributions and Benefits Act 2002).

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Neil Bibby

85 In section 43, page 23, line 35, at end insert <,

( ) the child’s parent is or has been at any time since the child’s second birthday in receipt of a tax credit within the meaning of the Tax Credits Act 2002 (or any successor benefit or allowance).

---

Neil Bibby  
**Supported by: Liam McArthur**

86 In section 43, page 23, line 35, at end insert <,

( ) the child—

(i) would, if the child was a pupil, qualify under or by virtue of section 53(3)(a) of the 1980 Act for the provision of free school lunches, or

(ii) the child has at any time since the child’s second birthday fallen within sub-paragraph (i).

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Liam McArthur

339 In section 43, page 23, line 35, at end insert <,

( ) the child has been identified, prior to the child’s second birthday or at any time since, as having additional support needs for the purposes of the Education (Additional Support for Learning) (Scotland) Act 2004.

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Liam McArthur

340 In section 43, page 23, line 35, at end insert <,

( ) the child’s parent is or has been at any time since the child’s second birthday in receipt of state pension credit (within the meaning of the State Pension Credit Act 2002).
In section 43, page 24, line 1, leave out <(2)(c)(ii) may provide that a child is to be> and insert <(2B) may provide that a child is to be regarded as>

In section 43, page 24, line 3, at end insert—

<( ) The provision of early learning and childcare under this section should not be provided to the detriment of care—
  
  (a) outside school hours, or
  
  (b) during school holidays,

  to children who are in attendance at school as provided under section 27 of the 1995 Act.>

In subsection (2A), “school commencement date” means the date fixed under section 32(1) of the 1980 Act by the local authority for the area in which the child resides.

After section 43

An order under section 43 must be made by statutory instrument.

The Scottish Ministers may not make an order under section 43 unless they have laid a draft order before the Scottish Parliament.

Before making a draft order under subsection (2), the Scottish Ministers must consult—

  (a) organisations working for, or on behalf of, children requiring and accessing early learning and childcare services,
  
  (b) parents of children requiring and accessing early learning and childcare services, 
  
  (c) providers of early learning and childcare services, and
  
  (d) such other persons as they consider appropriate.

For the purposes of consultation under subsection (3), the Scottish Ministers must—

  (a) lay a copy of the proposed draft order before the Parliament,
  
  (b) publish the proposed draft order in such manner as they consider appropriate, and
  
  (c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament under paragraph (a).

In calculating any period of 60 days for the purposes of subsection (4)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
(6) When laying a draft order before the Parliament under subsection (2), the Scottish Ministers must also lay before the Parliament an explanatory document giving details of—
   (a) the consultation carried out under subsection (3),
   (b) any representations received as a result of the consultation, and
   (c) the changes (if any) made to the proposed draft order as a result of those representations.

Section 47

Liam McArthur
342 In section 47, page 25, line 17, at end insert—
   <(3) The Scottish Ministers may by order specify minimum standards that must be met by providers of early learning and childcare in relation to matters so specified.

(4) An education authority must ensure that early learning and childcare provided in pursuance of this Part is available from any provider of early learning and childcare that meets the minimum standards specified under subsection (3) that a parent of an eligible pre-school child wishes to use.>

Section 48

Liam McArthur
343 In section 48, page 25, line 22, at end insert—
   <(2) As soon as practicable after the end of each 3 year period, the Scottish Ministers must lay before the Scottish Parliament a report of what progress has been made by education authorities in ensuring that the level of flexibility described in subsection (1) is being achieved.

(3) In subsection (2), “3 year period” means—
   (a) the period of 3 years beginning with the day on which this section comes into force, and
   (b) each subsequent period of 3 years.

(4) As soon as practicable after a report has been laid before the Scottish Parliament under subsection (3), the Scottish Ministers must publish it (in such manner as they consider appropriate).>

After section 49

Clare Adamson
301 After section 49, insert—
PART

POWER TO PROVIDE SCHOOL EDUCATION FOR PRE-SCHOOL CHILDREN

Duty to consult and plan in relation to power to provide school education for pre-school children

In section 1 of the 1980 Act, after subsection (2A) insert—

“(2B) An education authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of pre-school children within their area about whether and if so how they should provide school education for such children under subsection (1C) above; and

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of such education for such children under that subsection.

(2C) The Scottish Ministers may by order modify subsection (2B) above so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

(2D) An order made under subsection (2C) above is subject to the negative procedure.”.

Clare Adamson

302 After section 49, insert—

PART

DAY CARE AND OUT OF SCHOOL CARE

Duty to consult and plan in relation to day care and out of school care

(1) Section 27 of the 1995 Act is amended as follows.

(2) After subsection (1) insert—

“(1A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and

(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.

(1B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection; and

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.”.

5
(3) After subsection (3) insert—

“(3A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and

(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide appropriate care for such children in pursuance of that subsection.

(3B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children within their area who are in attendance at a school but are not in need about whether and if so how they should provide appropriate care for such children under subsection (3) above; and

(b) after having had regard to the views expressed, prepare and publish plans in relation to the provision of appropriate care for such children in their area under that subsection.

(3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or (3B) above so as to vary the regularity within which a local authority must consult and plan in pursuance of that subsection.

(3D) An order made under subsection (3C) above is subject to the negative procedure.”.

Neil Bibby

344 After section 49, insert—

<PART

RIGHT TO CARE FOR PRE-SCHOOL AND OTHER CHILDREN

Right to care for pre-school and other children

(1) Section 27 of the 1995 Act is amended as follows.

(2) Before subsection (1) insert—

“(A1) Every child aged 5 or under and who has not yet commenced attendance at school has a right to day care.”.

(3) In subsection (1)—

(a) omit “in need” where it first occurs,

(b) the words from second “and” to the end of the subsection are repealed.

(4) After subsection (2) insert—

“(2A) Every child aged 14 or under and who is in attendance at school has a right to care—

(a) outside school hours, and

(b) during school holidays.”.>
After section 49, insert—

**<PART**

**PROVISION OF DAY CARE**

**Duty to assess need for day care for working parents**

(1) Section 27 of the 1995 Act is amended as follows.

(2) After subsection (1) insert—

“(1A) Each local authority in providing day care for children under subsection (1), must secure, so far as reasonably practicable, that the provision of such care is sufficient to meet the requirements of parents in their area who require day care for children in order to enable them—

(a) to take up, or remain in work, or

(b) to undertake education or training which could reasonably be expected to assist them to obtain work.

(1B) Each local authority must have regard to any guidance issued by the Scottish Ministers about the factors to consider in assessing the sufficiency of day care for children under subsection (1A).”

**<PART**

**OUT OF SCHOOL CARE**

**Duty to provide out of school care**

(1) Section 27 of the 1995 Act is amended as follows.

(2) In subsection (3)—

(a) for first “provide” substitute “secure”,

(b) omit “in need” where it first occurs,

(c) for first “such” substitute “the mandatory amount”,

(d) the words from “as” to the end of the subsection are repealed.

(3) After subsection (3) insert—

“(3A) Each local authority in securing provision of care for children under subsection (3), must secure, so far as reasonably practicable, that the provision of childcare is sufficient to meet the requirements of parents in their area who require care for children in order to enable them—

(a) to take up, or remain in work, or

(b) to undertake education or training which could reasonably be expected to assist them to obtain work.

(3B) Each local authority must have regard to any guidance issued by the Scottish Ministers about the factors to consider in assessing the sufficiency of childcare under subsection (3A).
(3C) The “mandatory amount”, for the purposes of subsection (3), means such amount as may be prescribed by the Scottish Ministers by order.

(3D) Such an order may make different provision in relation to different types of children in attendance at school.

(3E) An order under subsection (3C) is subject to the affirmative procedure.

(3F) Before laying a draft order under subsection (3C) before the Scottish Parliament, the Scottish Ministers must consult—

(a) each local authority,

(b) such other persons as they consider appropriate.

(3G) For the purposes of such consultation, the Scottish Ministers must—

(a) lay a copy of the proposed draft order before the Parliament,

(b) publish the proposed draft order in such manner as they consider appropriate, and

(c) have regard to any representations about the proposed draft order that are made to them within 60 days of the date on which the copy of the proposed draft order is laid before the Parliament under paragraph (a).

(3H) In calculating any period of 60 days for the purposes of subsection (3G)(c), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

(3I) When laying a draft order under subsection (3C) before the Parliament, the Scottish Ministers must also lay before the Scottish Parliament an explanatory document giving details of—

(a) the consultation carried out under subsection (3F),

(b) any representations received as a result of the consultation, and

(c) the changes (if any) made to the proposed draft order as a result of those representations.”.

Section 50

Aileen Campbell

303 In section 50, page 26, line 1, at end insert—

<( ) The following persons are not corporate parents for the purposes of section 58—

(a) the Commissioner for Children and Young People in Scotland,

(b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

( ) An order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a corporate parent, or the persons within the description are not corporate parents, for the purposes of section 58.>
Aileen Campbell
304 In section 50, page 26, line 2, leave out from “corporate” to end of line 3 and insert “references to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 52(1).”

Schedule 3

Aileen Campbell
305 In schedule 3, page 43, line 30, leave out paragraph 18

Aileen Campbell
306 In schedule 3, page 44, line 2, leave out paragraph 25

Aileen Campbell
307 In schedule 3, page 44, line 3, leave out “or a “regional strategic body””

Section 51

Aileen Campbell
308 In section 51, page 26, line 9, leave out “at the time when the person ceased to be of school age” and insert “on the person’s 16th birthday”

Aileen Campbell
309 In section 51, page 26, line 10, at end insert—

<(2) This Part also applies to a young person who—

(a) is at least the age of 16 but under the age of 26, and

(b) is not of the description in subsection (1)(b)(ii) but is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.”

Section 52

Liam McArthur
328 In section 52, page 26, line 16, after “the” insert “physical, social, emotional, intellectual and other developmental”

Jayne Baxter
252 In section 52, page 26, line 16, after “needs” insert “, including any speech, language and communication development needs,”

Liam McArthur
329 In section 52, page 26, line 18, after “of” insert “and prevent harm to”
Jayne Baxter

253 In section 52, page 26, line 20, at end insert—

<(  ) to optimise the speech, language and communication development of those children and young people to whom this Part applies,>

Jayne Baxter

347 In section 52, page 26, line 27, at end insert—

<(  ) to take such steps as appear to the corporate parent to be practicable and appropriate to promote and facilitate regular personal relations and direct contact between a child and any—

(i) person with parental responsibilities (within the meaning of the 1995 Act) for the child, and

(ii) siblings of the child.>

Aileen Campbell

310 In section 52, page 26, line 27, at end insert—

<(2) The Scottish Ministers may by order—

(a) modify subsection (1) so as to confer, remove or vary a duty on corporate parents,

(b) provide that subsection (1) is to be read, in relation to a particular corporate parent or corporate parents of a particular description, with a modification conferring, removing or varying a duty.>

Section 55

Liam McArthur

330 In section 55, page 27, line 20, at end insert—

<(  ) the extent to which the wellbeing needs of children and young people have increased, decreased, remained the same or been eliminated,>

Liam McArthur

331 In section 55, page 27, line 20, at end insert—

<(  ) the extent to which new wellbeing needs of children have been prevented or reduced,>

Section 57

Aileen Campbell

115 In section 57, page 28, line 9, leave out subsections (3) and (4)
Section 58

Aileen Campbell

116 In section 58, page 28, line 21, leave out subsections (2) and (3)

Section 60

Aileen Campbell

348 In section 60, page 29, line 5, at end insert—

<(  ) in subsection (1)—
  (i) for “over school age” substitute “who is at least sixteen”,
  (ii) for the words from first “at” substitute “either—
    (a) was (on his sixteenth birthday or at any subsequent time) but is no longer
    looked after by a local authority; or
    (b) is of such other description of person formerly but no longer looked after
     by a local authority as the Scottish Ministers may specify by order.”,
  after subsection (1) insert—
   “(1A) An order made under subsection (1)(b) above is subject to the affirmative
   procedure.”;

Liam McArthur

394* In section 60, page 29, line 5, at end insert—

<(  ) in subsection (1), for “the time when he ceased” substitute “any time prior to
ceasing”;

Aileen Campbell

349 In section 60, page 29, line 9, at end insert—

<(  ) in subsection (4), for “over school” substitute “who is at least sixteen years of”;

Liam McArthur

332 In section 60, page 29, line 16, after <of> insert—

<(  )>

Liam McArthur

333 In section 60, page 29, line 16, after <needs> insert—

<(  ) where relevant, meeting—
  (A) the person’s needs as a parent or prospective parent,
  (B) the wellbeing needs of the child or children of the person,>
In section 60, page 29, line 22, after <(6)> insert <—
( ) after “complaints)” insert “and appeals”,
( )>

Aileen Campbell

In section 60, page 29, line 27, at end insert—
<(10) If a local authority becomes aware that a person who is being provided with
advice, guidance or assistance by them under this section has died, the local
authority must as soon as reasonably practicable notify—
(a) the Scottish Ministers, and
(b) Social Care and Social Work Improvement Scotland.”.>

Aileen Campbell

In section 60, page 29, line 29, leave out <(2)(a)> and insert <(2)—
( ) in paragraph (a)—
(A) for “over school” substitute “at least sixteen years of”,
(B)>}

Aileen Campbell

In section 60, page 29, line 29, at end insert—
<( ) for paragraph (b) substitute—
“(b) he either—
(i) was (on his sixteenth birthday or at any subsequent time) but is no
longer looked after by a local authority; or
(ii) is of such other description of person formerly but no longer
looked after by a local authority as the Scottish Ministers may
specify by order.
(2A) An order made under subsection (2)(b)(ii) above is subject to the affirmative
procedure.”.>

After section 60

Aileen Campbell

After section 60, insert—
<PART
CONTINUING CARE
Continuing care: looked after children
(1) After section 26 of the 1995 Act insert—
“26A Provision of continuing care: looked after children

(1) This section applies where an eligible person ceases to be looked after by a local authority.

(2) An “eligible person” is a person who—
   (a) is at least sixteen years of age, and
   (b) is not yet such higher age as may be specified.

(3) Subject to subsection (5) below, the local authority must provide the person with continuing care.

(4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.

(5) The duty to provide continuing care does not apply if—
   (a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,
   (b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or
   (c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.

(6) A local authority’s duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.

(7) The duty to provide continuing care ceases if—
   (a) the person leaves the accommodation of the person’s own volition,
   (b) the accommodation ceases to be available, or
   (c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.

(8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—
   (a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,
   (b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,
   (c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.

(9) The Scottish Ministers may by order—
   (a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,
   (b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,
   (c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.
(10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—

(a) the Scottish Ministers, and

(b) Social Care and Social Work Improvement Scotland.

(11) An order under this section—

(a) may make different provision for different purposes,

(b) is subject to the affirmative procedure.

(12) In this section—

“carer”, in relation to a care placement, means the family or persons with whom the placement is made,

“care placement” means a placement such as is mentioned in section 26(1)(a) of this Act,

“specified” means specified by order made the Scottish Ministers.”.

(2) In section 29 of the 1995 Act, after subsection (2) insert—

“(2A) Subsections (1) and (2) above do not apply to a person during any period when the person is being provided with continuing care under section 26A of this Act.”.

Section 61

Liam McArthur

184 In section 61, page 29, line 34, leave out <counselling> and insert <early intervention>

Colin Beattie

390 In section 61, page 29, line 34, leave out <counselling> and insert <relevant>

Aileen Campbell

354 In section 61, page 29, line 36, leave out from <persons> to the end of line 15 on page 30 and insert—

<(a) each eligible child residing in its area,

(b) a qualifying person in relation to such a child,

(c) each eligible pregnant woman residing in its area,

(d) a qualifying person in relation to such a woman.

(2) An “eligible child” is a child who the authority considers—

(a) to be at risk of becoming looked after, or

(b) to fall within such other description as the Scottish Ministers may by order specify.

(3) A “qualifying person” in relation to an eligible child is a person—

(a) who is related to the child,
(b) who has any parental rights or responsibilities in relation to the child, or
(c) with whom the child is, or has been, living.

15 (4) An “eligible pregnant woman” is a pregnant woman who the authority considers is going to give birth to a child who will be an eligible child.

(5) A “qualifying person” in relation to an eligible pregnant woman is a person—
   (a) who is the father of the child to whom the pregnant woman is to give birth,
   (b) who is married to, in a civil partnership with or otherwise related to the pregnant woman,
   (c) with whom the pregnant woman is living, or
   (d) who does not fall within any of paragraphs (a) to (c) but who the authority considers will, when the pregnant woman gives birth to the child, become a qualifying person in relation to the child.

20 (6) The references in this section to a person who is related to another person (“the other person”) includes a person who—
   (a) is married to or in a civil partnership with a person who is related to the other person,
   (b) is related to the other person by the half blood.

25 (7) This section is without prejudice to section 22 of the 1995 Act.

Colin Beattie

354A As an amendment to amendment 354, line 6, at end insert—
   A “relevant service” is a service comprising, or comprising any combination of—
   (a) providing information about a matter,
   (b) advising or counselling about a matter,
   (c) taking other action to facilitate the addressing of a matter by a person.

Liam McArthur

185 In section 61, page 29, line 36, at end insert—
   Services which may be specified as early intervention services under subsection (1) include counselling and other forms of talking therapy.

Liam McArthur

334 In section 61, page 29, line 38, after <parent> insert <or prospective parent>

Liam McArthur

186 In section 61, page 30, line 10, leave out <counselling> and insert <early intervention>

Liam McArthur

335 In section 61, page 30, line 10, after <services> insert <including antenatal counselling services>
Section 62

Liam McArthur
187 In section 62, page 30, line 18, leave out <counselling> and insert <early intervention>

Colin Beattie
391 In section 62, page 30, line 18, leave out <counselling> and insert <relevant>

Aileen Campbell
355 In section 62, page 30, line 20, leave out <an eligible child for the purpose of> and insert <within paragraph (a) or (b) of>

Aileen Campbell
356 In section 62, page 30, line 22, leave out <an eligible child for the purpose of> and insert <within paragraph (a) or (b) of>

Liam McArthur
188 In section 62, page 30, line 24, leave out <counselling> and insert <early intervention>

Colin Beattie
392 In section 62, page 30, line 24, leave out <counselling> and insert <relevant>

Liam McArthur
189 In section 62, page 30, line 27, leave out <counselling> and insert <early intervention>

Colin Beattie
393 In section 62, page 30, line 27, leave out <counselling> and insert <relevant>

Section 63

Aileen Campbell
357 In section 63, page 30, leave out line 34

Section 64

Jayne Baxter
396 In section 64, page 31, line 6, leave out <may> and insert <must>

Aileen Campbell
358 In section 64, page 31, line 10, at end insert <who has not attained the age of 16 years>
In section 64, page 31, line 11, after <child> insert <who has not attained the age of 16 years>

In section 64, page 31, line 12, after <child> insert <who has not attained the age of 16 years>

In section 64, page 31, line 15, leave out <fell within paragraph (b)> and insert <was the subject of a kinship care order>

In section 64, page 31, line 16, at end insert—

(e) a person who is a guardian by virtue of an appointment under section 7 of the 1995 Act of an eligible child who has not attained the age of 16 years (but this is subject to subsection (3A)),

(f) an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.

(3A) Subsection (3)(e) does not include a person who is also a parent of the child.

In section 64, page 31, line 17, leave out subsections (4) and (5) and insert—

(4) An “eligible child” is a child who the local authority considers—

(a) to be at risk of becoming looked after, or

(b) to fall within such other description as the Scottish Ministers may by order specify.

In section 64, page 31, line 18, leave out <may> and insert <must>

In section 64, page 31, line 31, at end insert —

( ) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.

In section 64, page 31, line 36, leave out <such other> and insert <a pre-existing>

In section 64, page 31, line 36, leave out <as the Scottish Ministers may by order specify>
Aileen Campbell

365 In section 65, page 31, line 38, leave out <or guardian>

Aileen Campbell

366 In section 65, page 32, line 3, after first <to> insert <or in a civil partnership with>

Section 66

Jayne Baxter

400 In section 66, page 32, line 6, leave out <which may be>

Jayne Baxter

401 In section 66, page 32, line 6, leave out <includes> and insert <must include>

Jayne Baxter

402 In section 66, page 32, line 7, at end insert <(including advice or information about how financial support may be obtained),>

Jayne Baxter

403 In section 66, page 32, line 13, leave out <may> and insert <must>

Aileen Campbell

367 In section 66, page 32, line 15, leave out <an eligible child for the purpose of section 64(3)> and insert <within paragraph (a) or (b) of section 64(4)>

Aileen Campbell

368 In section 66, page 32, line 17, leave out <an eligible child for the purpose of section 64(3)> and insert <within paragraph (a) or (b) of section 64(4)>

Jayne Baxter

404 In section 66, page 32, line 18, at end insert—

<( ) when or how a local authority is to review the kinship care assistance being made available to a person and when or how a person to whom kinship care assistance is being made available may request such a review,>

Section 67

Aileen Campbell

369 In section 67, page 32, line 28, at end insert <, “parent” has the same meaning as it has in Part 1 of the 1995 Act.>
Section 68

Aileen Campbell

370 In section 68, page 33, line 2, after <Register> insert <for the purposes of facilitating adoption>

Aileen Campbell

371 In section 68, page 33, line 5, after first <information> insert <relating to adoption>

Aileen Campbell

372 In section 68, page 33, line 5, after second <information> insert <relating to adoption>

Aileen Campbell

373 In section 68, page 33, line 27, after <made> insert <by the Scottish Ministers>

Aileen Campbell

374 In section 68, page 33, line 27, at end insert—

<( ) The Scottish Ministers must publish arrangements under section 13A(1) so far as they authorise an organisation as mentioned in subsection (1)(a).>

Aileen Campbell

375 In section 68, page 33, line 38, leave out from beginning to end of line 8 on page 34

Aileen Campbell

376 In section 68, page 34, leave out lines 14 and 15

Aileen Campbell

377 In section 68, page 34, leave out lines 16 and 17 and insert—

<( ) prescribe circumstances in which an adoption agency, despite subsection (1), is not to disclose information of the type prescribed for the purposes of that subsection.>

Aileen Campbell

378 In section 68, page 34, line 38, at end insert <or prospective adopters>

Aileen Campbell

379 In section 68, page 35, leave out lines 8 to 10

Aileen Campbell

380 In section 68, page 35, line 15, at end insert—

<13DA Fees and other payments

Regulations made under section 13A(2) may prescribe—>
(a) a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1),
(b) a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4),
(c) such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.

Section 73

Aileen Campbell

381 In section 73, page 38, line 6, leave out <or 22> and insert <, 22 or 26A>

Aileen Campbell

382 In section 73, page 38, line 8, after <children> insert <and young people>

Aileen Campbell

383 In section 73, page 38, line 11, after <child> insert <or young person>

Aileen Campbell

384 In section 73, page 38, line 13, at end insert <or young person>

Aileen Campbell

385 In section 73, page 38, line 14, after <child> insert <or young person>

After section 73

Jayne Baxter

254 After section 73, insert—

National speech, language and communication strategy for children and young people

(1) The Scottish Ministers must, no later than one year after this section comes into force, lay a national speech, language and communication strategy for children and young people before the Scottish Parliament.

(2) The strategy must, in particular, set out—

(a) the Scottish Ministers’ objectives for speech, language and communication for children and young people,
(b) their proposals for meeting those objectives,
(c) the timescales over which those proposals and policies are expected to take effect.

(3) Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with—
(a) children and young people, including children and young people with speech, language and communication needs,
(b) the parents of children and young people with speech, language and communication needs,
(c) persons working for, and on behalf of, children and young people, including children and young people with speech, language and communication needs,
(d) the providers of services to children with speech, language and communication services in relation to those needs,
(e) such others persons as they consider appropriate.

(4) The strategy must be accompanied by a report setting out—
(a) the consultation process undertaken in order to comply with subsection (3), and
(b) the ways in which the views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).

(5) The Scottish Ministers must, no later than—
(a) 5 years after laying a strategy before the Scottish Parliament under subsection (1), and
(b) the end of every subsequent period of 5 years,
lay a revised strategy before the Scottish Parliament; and subsections (2) to (4) apply to a revised strategy as they apply to a strategy laid under subsection (1).

Jayne Baxter
255 After section 73, insert—

<**Duty of public authorities to use inclusive communication standards**
A public authority with functions under this Act must use inclusive communication standards in exercising those functions.>

After section 74

Liz Smith
82 After section 74, insert—

<**Guidance for voluntary organisations**
(1) The Scottish Ministers may issue guidance on the application of this Act as regards voluntary organisations.
(2) Guidance may be issued generally or for particular purposes.
(3) Before issuing or revising guidance, the Scottish Ministers must consult the persons to whom it relates.>
Section 75

Jayne Baxter

256 In section 75, page 39, line 20, at end insert—

<(  ) In this Act “inclusive communication”—

(a) means sharing information in a way that everybody can understand,

(b) relates to all modes of communication, and

(c) requires that service providers—

(i) recognise that people understand and express themselves in different ways, and

(ii) provide information to people in ways which meet their needs.>

Aileen Campbell

386 In section 75, page 39, line 21, after <being> insert <or becoming>

Schedule 4

Aileen Campbell

387 In schedule 4, page 45, line 8, after <2011;> insert—

<(  ) Part 9 or 10 of the Children and Young People (Scotland) Act 2014;>

Section 77

Aileen Campbell

117 In section 77, page 40, leave out line 14

Aileen Campbell

311 In section 77, page 40, line 16, at end insert—

<section 38(6)>

Aileen Campbell

313 In section 77, page 40, line 16, at end insert—

<section 43(2)(c)(ii)>

Aileen Campbell

314 In section 77, page 40, line 19, at end insert—

<section 51(2)(b)>

Aileen Campbell

315 In section 77, page 40, line 19, at end insert—
Aileen Campbell

388 In section 77, page 40, line 19, at end insert—

Aileen Campbell

389 In section 77, page 40, line 19, at end insert—

After section 77

Aileen Campbell

118 After section 77, insert—

Guidance and directions

(1) Any power of the Scottish Ministers to issue guidance or directions under this Act may be exercised—

(a) to issue guidance or directions generally or for particular purposes,

(b) to issue different guidance or directions to different persons or otherwise for different purposes.

(2) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under this Act.

(3) In subsection (2)—

(a) the reference to guidance includes revision of guidance,

(b) the reference to directions includes revision and revocation of directions.
3rd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the third day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Aims of early learning and childcare**
337

**Eligible pre-school children to receive at least two full years of early learning and childcare**
48, 49, 50

**Additional groups of 2 year olds to be included in definition of eligible pre-school child**
84, 338, 85, 86, 339, 340

**Duties to consult on and plan provision of certain forms of education and care and duties to provide day care and out of school care**
327, 301, 302, 344, 345, 346

**Order specifying eligible pre-school children: procedure**
341, 313

**Delivery of early learning and childcare: minimum standards and flexibility**
342, 343

**Corporate parents and their responsibilities**
303, 304, 305, 306, 307, 347, 310, 315

**Looked after children: aftercare, continuing care and period for which corporate parenting duties apply etc.**
308, 309, 348, 349, 395, 350, 351, 352, 353, 381, 382, 383, 384, 385, 314
Counselling and other support for certain children, parents etc.
332, 333, 184, 390, 354, 354A, 185, 334, 186, 335, 187, 391, 355, 356, 188, 392, 189, 393, 357, 386, 388

Notes on amendments in this group
Amendment 354 pre-empts amendments 185, 334, 186 and 335
The following sets of amendments are direct alternatives to each other: 184 and 390, 187 and 391, 188 and 392, and 189 and 393

Kinship care assistance: duty to make, and content of, supporting subordinate legislation
396, 397, 400, 401, 402, 403, 404

Notes on amendments in this group
Amendment 397 in this group is pre-empted by amendment 363 in the next group

Persons eligible to receive kinship care assistance

Notes on amendments in this group
Amendment 363 in this group pre-empts by amendment 397 in the preceding group

Adoption register

Guidance for voluntary organisations
82

Modification of enactments
387

Amendments already debated

Speech, language and communication
With 216 (on Day 1) – 252, 253, 254, 255, 256

Guidance and directions
With 95 (on Day 1) – 115, 116, 118

Default powers in relation to children’s services planning
With 108 (on Day 1) – 117

Functions of named persons and corporate parents: prevention of harm
With 178 (on Day 2) – 329

Consideration, assessment etc. of needs for child’s plan and corporate parenting purposes and monitoring of whether planned outcomes achieved etc.
With 316 (on Day 2) – 328, 330, 331
Assistance etc. in relation to child’s plan
With 286 (on Day 2) – 311
Children and Young People (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 3).


The following amendments were disagreed to (by division)—

337 (For 4, Against 5, Abstentions 0)
48 (For 4, Against 5, Abstentions 0)
84 (For 3, Against 5, Abstentions 1)
338 (For 4, Against 5, Abstentions 0)
85 (For 3, Against 5, Abstentions 1)
86 (For 3, Against 5, Abstentions 1)
339 (For 4, Against 5, Abstentions 0)
340 (For 4, Against 5, Abstentions 0)
327 (For 4, Against 5, Abstentions 0)
341 (For 2, Against 6, Abstentions 1)
342 (For 4, Against 5, Abstentions 0)
343 (For 4, Against 5, Abstentions 0)
344 (For 4, Against 5, Abstentions 0)
345 (For 4, Against 5, Abstentions 0)
346 (For 4, Against 5, Abstentions 0)
395 (For 3, Against 6, Abstentions 0)
184 (For 4, Against 5, Abstentions 0)
396 (For 2, Against 7, Abstentions 0)
398 (For 3, Against 6, Abstentions 0)
399 (For 3, Against 6, Abstentions 0)
400 (For 2, Against 7, Abstentions 0)
401 (For 2, Against 7, Abstentions 0)
402 (For 2, Against 7, Abstentions 0)
404 (For 2, Against 7, Abstentions 0)
Amendment 332 was moved, and, no member having objected, withdrawn. The following amendments were pre-empted: 185, 334, 186, 335 and 397.

The following amendments were not moved: 49, 50, 328, 252, 329, 253, 347, 330, 331, 394, 333, 187, 188, 189 and 403.

The following provisions were agreed to without amendment: sections 42, 43, 44, 45, 46, 47, 48, 49, 53, 54, 55, 56 and 59.

The following provisions were agreed to as amended: section 50, schedule 3 and sections 51, 52, 57, 58, 60, 61, 62, 63, 64, 65, 66 and 67.

The Committee ended consideration of the Bill for the day amendment 379 having been disposed of.
Scottish Parliament

Education and Culture Committee

Tuesday 14 January 2014

[The Convener opened the meeting at 09:01]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning, and welcome to the second meeting in 2014 of the Education and Culture Committee. I remind everyone present to switch off their mobile phones and any other electronic devices, because they can interfere with the broadcasting system.

Today, we will continue our consideration of the Children and Young People (Scotland) Bill at stage 2. Once again, I welcome the Minister for Children and Young People, Aileen Campbell, and her accompanying officials. Officials are, of course, not permitted to participate in the formal proceedings.

We will not go beyond part 11 of the bill today. Depending on the progress that we make, I will conclude proceedings at a suitable point. Any amendments that we do not reach will be dealt with at our next meeting, on 21 January.

Section 42—Early learning and childcare

The Convener: Amendment 337, in the name of Liam McArthur, is in a group on its own.

Liam McArthur (Orkney Islands) (LD): Shortly, we will come to the substance of what we are looking to the bill to achieve on early learning and childcare but, whatever we decide in that context, I think that we would all accept that the bill can represent only a first step towards achieving our ambitions. There is an opportunity and, indeed, a need for us to underscore the purpose of what we seek to achieve and to ensure that it is outcome focused and focused on the needs of the child and of the family.

We all recognise the positive benefits that access to good-quality early learning and childcare in the crucial early years can deliver, which are wide ranging and are not limited to the aims that are set out in amendment 337. Nevertheless, I think that it is helpful to identify those key aims, beyond the policy memorandum, by making clear the specific challenges that we are—or, at least, should be—seeking to overcome through the measures in part 6.

As I said, we will come on to the issue of the level of ambition that we should show, particularly with respect to provision for children from the poorest backgrounds, but I hope that agreement can be reached, at least on the key aims that we are trying to meet.

I move amendment 337.

The Convener: As no other members wish to speak, I call the minister.

The Minister for Children and Young People (Aileen Campbell): Amendment 337 seeks to amend the early learning and childcare provisions to include specific reference to the aims of those provisions. It is unusual to place such general text in a bill, as it would have no practical effect. The one exception is that we have set out in the bill the aims of children's services plans. That is appropriate, because it relates to the aims of such plans rather than the aims of the bill itself.

Throughout the consultation on the bill and since its introduction, the Scottish Government has made clear commitments that the provisions are a first step towards longer-term aims that meet the needs of all children, parents and families, which will lead to improved outcomes for children and will support parents to work or study, as Liam McArthur acknowledged. That staged approach will focus initially on those children from more disadvantaged backgrounds in the context of access to high-quality, universal provision.

We have demonstrated our commitment to expanding eligibility by announcing an increased entitlement to cover two-year-olds in families that are seeking work from August this year, and a further expansion to those two-year-olds who meet the current criteria for free school meals from August next year. That will be funded through the Barnett consequentials that were confirmed in December last year. However, that still falls short of the transformation that we seek to make for all children and families in Scotland, further commitments on which have been set out in the Scottish Government's white paper, "Scotland's Future".

In relation to the aims of early learning and childcare, the bill introduces a new and more integrated concept of care and learning, which will be defined in more detail in statutory and supporting guidance on what we mean by early learning and childcare. Through that guidance, the Scottish Government will set out the bill's provisions in the context of the wider and longer-term aims, which will emphasise the evidence base for the expected multiple benefits and improved outcomes for children and families.

In summary, we do not support amendment 337.
Liam McArthur: I listened to what the minister said, particularly about the practical effect of amendment 337. Nevertheless, there would be value in setting out more clearly—beyond the policy memorandum, as I said—the aims that we seek to achieve through the bill. On that basis, I will press the amendment.

The Convener: The question is, that amendment 337 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 337 disagreed to.

Section 42 agreed to.

Section 43—Duty to secure provision of early learning and childcare

The Convener: Amendment 48, in the name of Liz Smith, is grouped with amendments 49 and 50.

Liz Smith (Mid Scotland and Fife) (Con): Thousands of children lose out on nursery provision simply because they were born in the wrong month. Children who were born between 1 September and 29 February receive fewer hours of nursery provision than those who were born in other months of the year, so their parents are also at a financial disadvantage.

Recent comprehensive statistical evidence that Reform Scotland published showed that that anomaly, which results from the Scottish Government’s policy of funding nursery provision after a child turns three, means that nursery provision can vary by up to 317 hours or by more than £1,000 within the cost of nursery partnership provision.

A child who was born between 1 March and 31 August is entitled to the full two years of nursery provision before beginning school, but a child who was born between 1 September and 31 December gets only 18 months’ provision and a child who was born between 1 January and 28 February receives just 15 months. The Scottish Conservatives believe that that situation is grossly unfair and that it would be much better if nursery provision started at a fixed point in the year for all children.

The Scottish Government’s defence of the current situation is that, when a child starts nursery at the beginning of the first term following their third birthday, that makes the best use of the entitlement and takes proper account of the child’s age and educational needs, and parents can keep younger children in nursery and defer the start of school if they feel that that is best. I ask the Scottish Government to consider the following points.

If we take a child who was born in late July and one who was born in late October, who both start primary school at the same time, where on earth is the logic in arguing that the child who was born in late July is entitled to six months more of nursery education? Under the current arrangements, only children who were born in January or February can defer entry to primary school and be guaranteed an extra year’s nursery provision. There is therefore further discrimination between those who were born between September and December and those who were born in January and February.

If there are to be arbitrary cut-off points, that is fine, but we need to be sure that all children are treated equally and that the system does not discriminate on the basis of children’s birthdays. Only 50 per cent of children who are born in Scotland are entitled to two full years of nursery provision. Children within the September to February group whose school entry is not deferred receive 400 hours less than the 600 hours a year under the Scottish Government’s policy.

Amendments 48 to 50 are designed to make the necessary changes to ensure a level playing field. I believe that the proposed changes have the support of Labour and Liberal members and of a wide cross-section of society. I hope that the minister will agree to change what is currently a highly discriminatory policy, which causes many children to lose out and many parents to face a financial penalty just because of when their children were born.

I move amendment 48.

Liam McArthur: Like Liz Smith and other members, during stage 1, I raised the issue of potential discrepancies in relation to how some children would benefit from the additional early learning and childcare provision that is being introduced through the bill.

I am pleased that Liz Smith has lodged amendments that would address that shortcoming. Given what appeared to be a cross-party consensus during the stage 1 debate on the need to tackle the issue, I hope that the minister will agree to these sensible changes. Indeed, given
that, last week, she lodged amendments to address not dissimilar anomalies regarding eligibility criteria for those who are entitled to aftercare, it would be passing strange for her not to take the same approach in relation to eligibility criteria in this instance.

I reiterate my support for amendments 48 to 50 in Liz Smith’s name, which would, as she said, create a level playing field.

Colin Beattie (Midlothian North and Musselburgh) (SNP): My concern with a change to commencement dates is that there seems to be no funding available for it. The amendments do not indicate where the funding would come from, despite the fact that the change would result in perhaps 30,000 additional two-year-olds entering the system. There is currently no capacity in the system for that.

I think that everyone round the table would like further expansion of early learning and childcare as and when it can be done. The Government’s proposals to allow for future expansion of the facility to more children are eminently sensible, but it has probably done the maximum that it can at the moment. The bill certainly provides future flexibility to allow changes to come in at a later date.

Under Liz Smith’s proposal, there would still be a slight variation in the provision as to whether the child starts on their birthday or the term after their birthday. The current system makes best use of the entitlement in relation to the kids’ needs and ages, so I will certainly oppose the amendments.

Aileen Campbell: As we have heard, amendments 48 to 50, through moving to a system of all children receiving two full years of funded early learning and childcare, would result in significant numbers of children taking up their entitlement, some from the age of two and a half.

Although the Government absolutely accepts the need to build on the provisions in the bill, the priority at this stage must be to build additional hours and flexibility into our high-quality universal provision—increasing the entitlement to about 16 hours a week—and to focus on our more vulnerable two-year-olds as we expand. As I said, we have demonstrated our commitment to do that through the increased coverage of more vulnerable two-year-olds that was announced last week.

The amendments are unnecessary, as any further expansion or changes to commencement dates for entitlement to early learning and childcare for two or three-year-olds can be achieved through secondary legislation made under the bill.

The bill makes a significant change in reconfiguring the system of early learning and childcare, and further expansion must be subject to adequate funding. All the research shows that pre-school provision is beneficial to young children, particularly those who are most disadvantaged, only when it is of high quality.

On the dates on which three-year-olds take up the funded entitlement, local authorities can and do deliver provision beyond the minimum number of hours and the minimum of eligible children. A number of local authorities already start children from their third birthday, or the month after their third birthday, where they have capacity to do so. The youngest children—those born in January or February—who may get less provision when they are three, will continue to be entitled to an additional year after they are four, where parents want that, to ensure that they benefit from early learning and childcare and are ready to start school.

As I said, the commencement dates for entitlement to early learning and childcare will be set through secondary legislation. The intention is to continue commencement for three-year-olds from the first term after their third birthday. Some slight variation will always remain—relating to whether children commence from their third birthday or the first term after that birthday—but I reiterate that the system makes the best use of the entitlement in relation to children’s ages and needs.

There are capacity issues. Colin Beattie suggested the possibility of 30,000 additional two-year-olds and the associated costs that go with that. He raised some pertinent points that Liz Smith might address when she sums up.

I reiterate that the bill represents the first step in our journey towards transforming childcare, starting with those who need it most—the most vulnerable two-year-olds. Last week, we indicated our intention to expand that provision further. Therefore, I do not support the amendments in this group.

09:15

Liz Smith: I listened carefully to what the minister said, which repeated the comment that the Scottish Government has made before—that the current policy makes the best use of the entitlement. That is all very well for children who can receive the entitlement, but it is not all very well for those who are discriminated against because of their birthday.

I note what the minister said about the cost. There is of course a cost, but there is also a choice about priorities. I do not accept that the blatant discrimination against quite a large number
of children can be allowed to continue. If the cost must be met, it should be met. In the context of all the recent Government announcements, it is hard for a minister to defend the existing policy, given all the other commitments that the Government has made about the essential nature of looking after our youngest children.

I do not accept the minister’s response. I will press amendment 48.

The Convener: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 48 disagreed to.

The Convener: Amendment 84, in the name of Neil Bibby, is grouped with amendments 338, 85, 86, 339 and 340.

Neil Bibby (West Scotland) (Lab): I am pleased to speak to my amendments 84 to 86, which would increase and guarantee the number of two-year-old children in Scotland who are eligible for early learning and childcare. I am disappointed that it appears from a letter to the committee last week that the minister has already ruled out Scottish National Party Government support for increasing and guaranteeing in the bill the number of two-year-olds who are eligible for childcare.

We all know the importance of providing quality childcare. It helps a child’s learning and development and helps to put money in families’ pockets. It is targeted at the poorest and helps to reduce child poverty, and it is good for the economy more generally.

All parties that are represented on the committee have said that we need to provide more childcare, particularly for two-year-olds. However, just 3 per cent of two-year-olds will be guaranteed free nursery provision in the bill, which states that looked-after two-year-olds and those who are the subject of a kinship care order will be eligible for free nursery provision. I have said since before the bill was published that that is unambitious and risks being a missed opportunity. Opposition parties have rightly said that we can and should go much further—I repeat that, despite the Scottish Government’s partial U-turn last week. That was a U-turn, given that the minister said on 8 October 2013:

“I am not prepared to announce something that we cannot deliver on later”.—[Official Report, Education and Culture Committee, 8 October 2013; c 2968.]

The Scottish Government has not gone far enough to back Labour’s proposal to give half Scotland’s two-year-olds childcare now. From September this year, 40 per cent of two-year-olds in England will receive nursery and childcare provision, but only 15 per cent will get that in Scotland. When that goes up to 27 per cent in Scotland in the following year, the SNP Government will still lag behind the Conservative and Lib Dem coalition on childcare.

As members know, amendment 85 would entitle half Scotland’s two-year-olds to 600 hours of childcare a year by using receipt of working tax credits and child tax credits as a criterion. That would benefit 30,000 children and save their families more than £2,000 a year in childcare costs—the figure was calculated using the same methods that the Scottish Government uses for its claims—and would be action to help with the cost of living and take children out of poverty. The policy is identical to the first stage of the plans that are in the Scottish Government’s white paper.

There are resources and powers to deliver on childcare now, as the First Minister proved last week, so this is a question of political will. Given that the policy is in the white paper, I expect SNP members to support amendment 85, which appeared to be SNP Government policy six or seven weeks ago.

Members should also support amendment 86, which would guarantee childcare for the poorest two-year-olds. It would extend childcare to two-year-olds who qualify to receive free school meals. That would mean that approximately 27 per cent of the poorest and most vulnerable two-year-olds would receive early learning and childcare, which was the SNP’s policy last week.

I am pleased that my amendments are supported by a significant number of children’s charities and others, who reaffirmed their support this week. Helping children in poverty should be a priority, and I expect members to support—as a minimum—amendment 86, given that its provisions appear to be the new SNP policy on childcare as announced last week.

I welcome Liam McArthur’s amendments 338 to 340. Our amendments propose different criteria, but they are consistent in acknowledging that the bill needs to go much further in providing nursery
places and guaranteeing childcare for two-year-olds, so I am happy to support those amendments.

It is worth re-stating that, even after the Scottish Government’s partial U-turn of last week, 40 per cent of English two-year-olds will, as of September this year, receive childcare, while only 15 per cent of two-year-olds in Scotland will receive such provision. The Scottish Government will still be lagging behind England on childcare, even when it gets the percentage up to 27 per cent.

I ask the minister to state in her response whether she thinks that the situation is satisfactory, and to explain why Scottish two-year-olds will not have the same access to nursery provision as English two-year-olds. Is the minister happy with that? I think that parents will agree with me that it is not satisfactory.

It is also worth stating that SNP members will, in voting against the amendments, be voting against their own white paper policy and the policy change that was announced last week. There seems to be a real reluctance to put additional childcare entitlements for two-year-olds in the text of bill, and the obvious question is why. The original childcare entitlement for 3 per cent of two-year-olds was in the text of bill, so why will the Government not go further and include additional entitlements?

Why will the Government not support its own policy and put its stated childcare commitments in the text of the bill? If the minister refuses to do so, will she confirm that there will be no commitment to childcare—other than for looked-after two-year-olds—in the bill as currently drafted?

My Labour colleagues and I have said that the bill risks being a missed opportunity, but in reality it is fast becoming a childcare bill with next to no childcare commitments written into it.

I move amendment 84.

Liam McArthur: What a difference a week makes. I know that we were unable to deal with part 6 of the bill last week, for perfectly understandable reasons, but it leaves us wondering what might have been. Would the minister have been granted licence to pre-empt the First Minister’s announcement later in the day regarding the extension of early learning and childcare provision for two-year-olds, or would Mr Salmond have required her to block the Opposition amendments in this grouping that are aimed at doing just that, in order to keep his powder dry?

Whatever the case, I reiterate my colleague Willie Rennie’s welcome for the substance of what was announced last Tuesday afternoon. Although the 27 per cent of two-year-olds who stand to benefit from the extension in provision by the summer of next year falls short—as Neil Bibby explained—of the 40 per cent that are covered south of the border, that is by any measure a major advance on what the Scottish Government had originally proposed in the bill.

The extension will bring real benefits to some of the most disadvantaged two-year-olds from this year onwards, and I congratulate the minister on that change of position. Colleagues will recall that an extension has been a priority for Scottish Liberal Democrats over successive budgets. It reflects our belief that, welcome though the plans are for three and four-year-olds, it is the investment before the age of three that can make the most significant difference in closing gaps in cognitive development, social skills and so on, and ultimately in attainment and outcomes later in life. That was the thrust of the evidence that we received from Save the Children, among others, and of the well-established empirical findings of Nobel laureate Professor James Heckman. If those gaps are not closed at that stage, it is difficult—if not impossible—to close them subsequently.

That is why my colleague Willie Rennie has been pressing the First Minister on the issue week after week. Initially, those calls were rejected on the basis of policy differences between the Scottish Liberal Democrats and the Government. More recently, the SNP ministers have argued that, in order to deliver ambitious plans for early learning and childcare for two-year-olds, we first need the powers of independence. Given that childcare is an entirely devolved area, that position was never credible, and last week’s announcement has thankfully put it to rest.

Not surprisingly, I am still keen for the Government to go further and to be more ambitious in the bill. Moreover, the delays in reaching the current position have had the unfortunate consequence—as Neil Bibby said—of limiting the scope for us to properly scrutinise the Government’s proposals for two-year-olds, which we are told will be introduced in secondary legislation rather than in the text of the bill.

In that context, the amendments in this grouping are very valuable. Indeed, they perhaps offer members an opportunity not only to keep the Government honest but to press for greater ambition yet.

I support Neil Bibby’s amendments, albeit that they go further than the figure of 40 per cent of two-year-olds that we have proposed until now. Ultimately, that is where we should be heading. Of course, it may be achievable only in stages, and my amendments address the ways in which eligibility criteria might be extended, although it seems logical to start with free school meals and tax credits.
Amendment 338 links eligibility to disability living allowance, reflecting the additional or specialist needs that that group of two-year-olds may have. Access to quality early learning and/or childcare in that context would be hugely beneficial in laying the foundations for improved outcomes in later life.

Amendment 339 widens the criteria to include those identified as having additional support needs and could make a dramatic difference to later outcomes. It also chimes with the approach that is taken in the Education (Additional Support for Learning) (Scotland) Act 2009.

Amendment 240 ties eligibility to those whose parents are in receipt of state pension credit. Although the previous two categories will be covered south of the border only from September 2014, two-year-olds in this group already benefit from what is being put in place by the coalition Government. The amendment also picks up a slight deficiency in Neil Bibby’s proposals, which appear to exclude this group of two-year-olds on the basis of the age of their parents or guardians. I think that he would perhaps accept that.

Again, I welcome the progress that has been made on the issue over the past week. The new year appears to have ushered in a new willingness on the part of the Government to listen. However, I urge the minister to go further and to support an even greater level of ambition for two-year-olds from the most disadvantaged backgrounds. On that basis, I will move the amendments in my name.

Clare Adamson (Central Scotland) (SNP): I will speak to amendments 84 to 86. The bill has always been a starting point for the Scottish Government’s ambitions and I am sure that, as Neil Bibby said, all members around the table agree on the importance of expanding childcare. However, at the core of this Government’s actions is that the changes should also be affordable, costed, phased, and delivered in a sustainable way. On the developments last week, we heard that, as Neil Bibby said, the original figure for two-year-olds who have access to childcare will change from 3 per cent to 15 per cent by August this year. In addition, with the changes that the Government outlined last week, provision will be extended by August 2015 to reach 27 per cent of two-year-olds. We know that those changes are phased, costed and planned for. The investment in the training of childcare specialists announced last week is also welcome.

The Government’s proposal is absolutely the right way to move ahead. We can talk about the 40 per cent figure for provision down south, but we have seen the reports on the quality of care. This Government will not compromise on the quality of childcare provision—I include staff ratios in that. The amendments are not required at the moment. The bill is a starting point and we have seen that the Government will continue to expand provision when it is reasonable to do so and when that has been costed.

Mr Bibby made comments about people voting against amendments that echo what is in the white paper. The bill is in the context of where we are now—we have a devolved Government with a fixed budget, within which we have no flexibility. We can deliver transformational childcare policy only if people seize the opportunity of independence, in which case we will vote for childcare as set out in the white paper.

Jayne Baxter (Mid Scotland and Fife) (Lab): Although I support all the amendments in the group, I wish to focus on those in the name of my colleague Neil Bibby.

It is disappointing that we did not have time to reach the amendments at our meeting last Tuesday, especially when we consider the subsequent debate in the chamber that afternoon, but we are finally here now. It is clear that there is support from the Scottish Government for extending childcare provision to 50 per cent of two-year-olds; indeed, that is clearly laid out in the white paper. Where we differ from colleagues in the Scottish Government is that we want to deliver that commitment now. Amendments 85 and 86 in particular could make a real financial difference to many parents across Scotland. By putting those amendments into the Children and Young People (Scotland) Bill today, we would be able to create a policy now—not years down the line—that would assist in getting parents into work and would help to lift the most vulnerable children out of poverty.

Joan McAlpine (South Scotland) (SNP): I apologise to the convener, the minister and members for my slightly late arrival.

I, too, wish to speak to amendments 84 to 86. First, I congratulate Liam McArthur on the measured and consistent nature of his remarks and his acknowledgement that what the Government is proposing is a substantial advance as regards early years education.

However, it must be put on the record that the Labour Party has no credibility whatever on the measure, because it voted against extending childcare provision last week. It has no clue how to pay for its proposals under the devolved settlement, other than by depriving young children of free school meals, although the free school meals policy is backed widely by child poverty charities.

We can advance to the level of childcare that we require only with full independence, which will allow the income tax from women returning to work to come back into the economy. That will make the policy sustainable in the long term.
I do not support amendments 84 to 86. It is amazing that Labour had the cheek to lodge them.

09:30

Liz Smith: I fully understand and accept that not all childcare can be delivered in one context. The Conservatives have been totally consistent about that. Nonetheless, a major point of principle is raised: at no stage in evidence to the committee or in negotiations with individual members did we have any indication whatever of how money would be found for possible policy changes or of the timescale for such changes.

I regret that the minister has announced that secondary legislation will be required, because the bill’s intention is clear. In its comments, the Government has been clear about the major principle that is behind the bill—it is very much about childcare. I regret that that focus has been dissipated and that we have ended up in a situation in which such amendments must be discussed at stage 2 and possibly at stage 3, when they are central to the arguments that have been made, particularly by many children’s charities.

I add my support to the amendments in the group, because they are important to advancing the policy debate.

The Convener: I must be honest and say that, without proper analysis of where the finance would come from, it is impossible to see how any member can seriously consider supporting the amendments in Neil Bibby’s name. In last week’s debate in the chamber, Mr Bibby said that we could just use the £300 million of Barnett consequentials. I am afraid that that shows a gobsmacking level of financial illiteracy on Labour’s behalf, to be frank.

We all know that part of the £300 million is capital and that part of it is financial transactions. What is left is the money that has been announced for free school meals. The Labour Party has said that it would use that money, but it is insufficient to pay for the £100 million policy that Mr Bibby wishes to introduce.

That only leaves the money that has been allocated to equalising the poundage for business rates in Scotland and England and the money to expand the small business bonus scheme. If Mr Bibby can tell us how he would get the £100 million that the policy would cost, I am sure that members would be extremely interested in that detail. What is also missing from amendments 84 to 86 and from Labour members’ comments is how the capacity to introduce the policy now would be found, where the staff would come from, how that would be paid for and any other detail that would make the policy available and its introduction now sustainable.

The amendments in Neil Bibby’s name are no more than an attempt to cover the Labour Party’s embarrassment at voting against free school meals and the expansion of childcare that the First Minister announced last week. I know that Labour members are in a difficult and embarrassing position, but the amendments do not help them. I do not support the amendments.

Aileen Campbell: We share the ambition to deliver early learning and childcare to significantly more two-year-olds who are in greater need. We know that children from more disadvantaged backgrounds benefit most from high-quality early learning and childcare. Far from ruling out expansion in my letter, I have consistently said that we will expand provision through secondary legislation. We have always planned to expand eligibility through the order-making power in the bill when that is affordable. Any orders will be subject to the affirmative procedure, so it will receive detailed parliamentary scrutiny. That is why the order-making power is included in the bill, as I said on 8 October.

I am absolutely delighted that the First Minister announced last week that, from August next year, we will increase entitlement to those two-year-olds who are set out in amendment 86, but we do not need an amendment to do that. The proposals that the First Minister announced, which, as the convener pointed out, Neil Bibby’s party voted against, cover two-year-olds in families that are seeking work—approximately 15 per cent of two-year-olds from August this year. That will be followed by the two-year-olds who are set out in Neil Bibby’s amendment 86—approximately 27 per cent of two-year-olds who meet the criteria for free school meals. That represents a phased and sustainable expansion of childcare for the most vulnerable two-year-olds. We are prioritising the young children and families who will benefit most from an expansion of funded hours.

That is a positive step in expanding childcare provision, but it is not the transformation that we seek through independence. That can come only when the revenue that is generated by increased numbers of women in the labour market can be used to pay for the increased provision of childcare.

We share Neil Bibby’s ambitions, but we have to be absolutely realistic. There are not the resources to do what he proposes. As we set out in “Scotland’s Future: Your Guide to an Independent Scotland”, a more fundamental transformation of childcare for pre-five children will be possible only with the increased tax revenues that will help to fund expanded childcare. Under our proposals, if labour market participation were increased, more
national insurance would be paid, while increased spending would boost VAT receipts and companies would pay corporation tax on the profits generated by their employees. This is about transforming the structure of our economy and the nature of our society.

That is why our ambitions for childcare cannot be funded on consequential hand-outs of money that is ours and comes back to us from Westminster. Under devolution, the vast majority of tax revenues flow to Westminster; we pay for Westminster policies that we do not necessarily agree with, such as the policy on Trident; and we are trying to mitigate the impact of welfare cuts that we cannot reverse, as tens of thousands of children grow up in poverty. It is suggested that about 50,000 children being pushed into poverty as a result of the coalition’s welfare reforms.

I urge members to recognise that we always planned to expand early learning and childcare provision through secondary legislation. The intention was made clear that that would apply to three and four-year-olds in the first instance, with further expansion when that was affordable and sustainable. The confirmation of consequential funding in December has enabled us to commit to making that initial expansion.

In his closing remarks, I urge Neil Bibby to provide us with clarity on how he and the Labour Party expect the proposals to be delivered. I am not just talking about the money, although I would be extremely interested in his comments on how he intends to fund the proposals, in relation to which the convener made good and valid points about the consequentials and the understanding of them. I would also be interested in how Neil Bibby intends to deliver the proposals in relation to capacity issues, such as staffing. How does he expect that to be coped with between now and August this year? If he cannot be specific on how he wants to deliver the proposals, the rate of expansion that he proposes could be viewed as political grandstanding.

I want to discuss other amendments in the group. Amendments 338 and 339 seek to extend the 600 hours of provision to two-year-olds who qualify for disability living allowance and to two-year-olds who have been identified as having additional support needs for the purposes of the Education (Additional Support for Learning) (Scotland) Act 2004. It is important that parents and professionals recognise that young children with additional support needs should be supported under the 2004 act. There are existing duties to provide appropriate educational support for disabled children before an entitlement to funded early learning and childcare would take effect—potentially from birth, where a need is identified.

Young children with additional support needs or a disability will also benefit from the named person provisions and from the requirement for a child’s plan where a wellbeing need is identified from birth. A key issue for young children with additional support needs that arise or become apparent in the first few years of life is the identification of those needs. A child’s health and wellbeing are assessed from birth during the contacts that are set out in the child health programme, which now includes a 27-month universal health review. The named person will support the identification of wellbeing concerns at an even earlier stage than the one at which entitlement to early learning and childcare would take effect.

Finally, the bill proposes that local authorities consult locally representative populations of parents. Local authorities should use those opportunities to encourage broad, open and transparent dialogue with parents, and to identify the needs of parents with a range of needs, including those who have children who are disabled.

The statutory guidance that will support the bill’s early learning and childcare provisions will refer to the code of practice on additional support for learning under section 27 of the Education (Additional Support for Learning) (Scotland) Act 2004, to make clear local authorities’ existing obligations regarding disabled two-year-olds and those with additional support needs. It is not necessary to amend the bill in those respects. With that, I have set out the reasons why we cannot support amendments 338 and 339.

We announced a significant expansion of childcare last week. We have always made it clear that that can be done through secondary legislation. The crux of the matter is how Neil Bibby intends to find the funding to cover what he proposes. There are also significant capacity issues. If Neil Bibby cannot respond to those points, to ensure that the quality of provision is such that two-year-olds can benefit developmentally from this first step towards transforming childcare in Scotland, something is seriously lacking in his proposal.

Neil Bibby: I want to rebut some of the highly misleading claims of Joan McAlpine, the minister and the convener, who said that Labour voted against increased childcare provision last week. I remind members that Labour proposed last week to provide childcare for half Scotland’s two-year-olds, whereas the SNP proposed to provide childcare for 15 per cent and then 27 per cent of two-year-olds. If any party voted against increased childcare last week, it was the SNP. I urge members to be careful about making erroneous claims, which I think highlight their insecurity about their party’s childcare policy.
Labour and other Opposition parties have lodged dozens of amendments to the bill, and so far not one has been supported by a single SNP committee member or by the Scottish Government. Perhaps that is not surprising. However, I am surprised that SNP members will not support their own childcare policies, as set out in the white paper and the policy change that was announced last week. The Government’s failure to support its own policy will leave parents and families perplexed about how committed the SNP Government is to its childcare policy. One week childcare is the Government’s number 1 priority, then it is not the number 1 priority, and then it is again.

We have heard excuses from the minister, and what she said is confusing. The minister who said that she would not go further on two-year-olds now says—after the First Minister’s announcement last week—that she was going to go further all along. The Scottish Government has the power and the resources to provide half of Scotland’s two-year-olds with childcare now, as it proved last week—

Aileen Campbell: Will you take an intervention?

Neil Bibby: I want to conclude, minister.

Labour supports the provision of more childcare now, under devolution. As I said, the SNP could have gone much further last week but chose not to do so.

Finance has been mentioned. If finance is the reason for objecting to the amendments in the group, SNP members cannot possibly object to amendment 86, because the SNP announced the money for the policy last week.

George Adam (Paisley) (SNP): Will you take an intervention?

Neil Bibby: No.

Concern about finance is not an argument against amendment 86, because the Scottish Government last week pledged to introduce and fully fund the approach for which amendment 86 would provide.

On amendment 85, I simply point out that this is a matter of priorities. The Scottish Government pledged to spend £88 million on free school meals and childcare in 2015–16 and I have no doubt that it could have found—and will find—an additional £12 million from somewhere before the budget is finalised if it decides to spend £100 million.

On the comments about financial illiteracy, I remind the minister that she had to provide a revised forecast for the cost of providing childcare for looked-after two-year-olds. The estimate went from £1.1 million to £4.5 million.

Members talked about capacity issues. I remind the minister that on 8 May, in the context of her objection to increasing provision beyond 3 per cent of two-year-olds, she said:

“It is not acceptable to this Government to run the risk of there being adverse impacts on our youngest children.”—[Official Report, 8 May 2013; c 19514.]

Capacity issues are certainly not a reason to object to amendment 86 or indeed amendment 85.

The SNP could and should go further, as Labour has suggested, but it has chosen not to. A YouGov survey last week showed that parents agree: 66 per cent of parents think that the Scottish Government should get on with expanding childcare now. However, despite what the minister has said, she will not put an extension of provision for two-year-olds in the bill. Given that the two-year-old entitlement is already in the bill and that expanding it is the Government’s own policy, I think that parents will be confused and will again question how committed the SNP Government is to its own childcare policies. They will be confused about why the Scottish Government is not putting its own stated commitments on childcare in the bill.

As I said, despite the partial U-turn last week, as of September this year 40 per cent of two-year-olds in England, but only 15 per cent of two-year-olds in Scotland, will get nursery provision. Even when the figure in Scotland goes up to 27 per cent, the SNP Government will still lag behind the Conservative and Liberal Democrat coalition.

The SNP could go further now on childcare but has chosen not to. The bill is a missed opportunity. It will be remembered as the childcare bill with next to no childcare commitments in it. We do not need separation to increase childcare. Members have said that they share Labour’s ambitions for increasing childcare. If so, they should vote for our amendments.

The Convener: The question is, that amendment 84 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)
The Convener: The result of the division is: For 3, Against 5, Abstentions 1.
Amendment 84 disagreed to.
Amendment 338 moved—[Liam McArthur].

The Convener: The question is, that amendment 338 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 338 disagreed to.
Amendment 85 moved—[Neil Bibby].

The Convener: The question is, that amendment 85 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Abstentions
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 5, Abstentions 1.
Amendment 85 disagreed to.
Amendment 86 moved—[Neil Bibby].

The Convener: The question is, that amendment 86 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 339 disagreed to.
Amendment 340 moved—[Liam McArthur].

The Convener: The question is, that amendment 340 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.
Amendment 340 disagreed to.
Amendment 49 not moved.

The Convener: Amendment 327, in the name of Neil Bibby, is grouped with amendments 301 to 302 and 344 to 346.
Neil Bibby: Childcare for the early years is only one part of the Scottish model of childcare that we need to develop. We need to ensure that we have a model of childcare up to the age of 14 that meets the needs of children and their families. That is why back in May 2013 Labour proposed a childcare commission to examine all the issues. It is very unfortunate that the proposal was rejected by the Scottish Government. It was particularly unfortunate because the Children and Young People (Scotland) Bill says nothing about out-of-school childcare and childcare at holiday times. The white paper does not mention those either, which is a major oversight.

Improving access, availability and the affordability of out-of-school care is crucial in developing a Scottish model of childcare that supports children and helps parents. My Labour colleagues and I have consistently raised those issues in committee and chamber debates on the bill, and when childcare has been debated more generally.

Amendment 327, which is supported by Barnardo’s, Children 1st and others, seeks to ensure that increasing childcare for the early years is not done to the detriment of out-of-school and holiday care. Councils are suffering significantly from budget cuts. Although they want to work with the Scottish Government to improve childcare, they need the funds to do that, and there is concern that out-of-school care and holiday care are vulnerable to budget pressures. Amendment 327 would ensure protection of existing services.

Children 1st, in its briefing for this meeting, said that parents and carers who contact parentline Scotland tell it that the need to improve availability of age-appropriate and affordable childcare for older children is a major issue. Childcare is important throughout childhood and is not limited to the early years.

Amendment 302 in the name of Clare Adamson is welcome in that it at least mentions out-of-school care. However, it would do little that is new. I suspect that local authorities already consult and plan alongside parents. The same is the case for amendment 301, although I welcome the intention to ensure that consultation happens. However, why does that have to be done every two years as opposed to every three, four or five years?

The general point is that the Scottish Government clearly does not view out-of-school care as a priority—it is not mentioned in the bill or the Government’s white paper. However, the fact that the SNP Administration does not place any emphasis on it does not mean that we cannot pass an amendment that would allow future Governments that value out-of-school care the opportunity to increase its availability.

Amendment 346 would ensure that the Scottish Government, working with local authorities and their community planning partners, provides out-of-school care. Save the Children, Children in Scotland, the Scottish Out of School Care Network, Parenting Across Scotland, the Scottish Childminding Association and One Parent Families Scotland point out that non-statutory services are vulnerable to cuts. Because of that—coupled with the changes that are planned by the UK coalition Government that will result in withdrawal of financial support for parents of over-5s and successor arrangements being put in place only incrementally over several years—they fear that parents and carers here could face severe pressures. Therefore, there is an increasing case for putting the provision of childcare for school-age children on a statutory footing.

Those organisations believe that priority should be given to school-age children in low-income households with working parents. Others may disagree with that focus, but the key is to establish out-of-school care as a key part of a Scottish model of childcare. Scottish children are at a disadvantage compared with English children in that regard. There is an existing duty on local authorities in England—the Childcare Act 2006 was passed by the previous UK Labour Government—to secure for working parents sufficient childcare that covers childcare for children up to 14 years.

Amendment 344 would introduce a right to childcare for young children and school-age children under 15. It is widely recognised that there is a lack of suitable childcare in Scotland for children and their families. As I have said, the bill says little about childcare for children under 3 and nothing about school-age children. There is considerable support for the measure. The Parliament’s Equal Opportunities Committee recommended that childcare for school-age children should be available on a statutory basis for children up to the age of 15. There is also public support for that—Save the Children has collected more than 1,000 signatures for its petition to the Scottish Government.

As is widely recognised, and as I very much recognise, there are cost implications for delivering wider childcare improvements in the long term. I do not expect that to happen overnight; I do not think that any member would. I hope that we can work together across the parties to amend the bill so that we can act when resources become available and can be given to local authorities so that they can provide more childcare for primary-school age children. My fear is that the bill, as it stands, is unambitious and that we will have missed an opportunity without substantial amendments in this area.

I move amendment 327.
Clare Adamson: I will speak to my amendment 301. I start by thanking Save the Children and other children’s charities that have been involved in drafting the amendment.

The purpose of the amendment is to require authorities to consult every two years and to prepare and publish plans in relation to early learning and childcare that they have the power to provide. Coupled with the requirement in section 46 to consult, and to prepare and publish plans in relation to 600 hours of mandatory early learning and childcare, the provisions in amendment 301 would ensure that there would be a comprehensive picture of the availability and integration of those services consistently across the country. The amendment would also require authorities every two years to consult and plan in relation to all-day care and out-of-school care that they have either a duty or a power to provide, in order to ensure a comprehensive picture of availability, and to identify opportunities to integrate and support provision, as appropriate.

Amendment 301 would provide local authorities with a more comprehensive picture of provision for childcare of all ages, and would encourage integrated and longer-term planning of support and the range of provision. It would also increase transparency and would include parents and carers in the process at a level that is not achieved under the current planning process.

George Adam: We have already heard today about unsustainable proposals for childcare. The convener said that it was “financial illiteracy”, but we have moved on to fiscal fantasy with the Labour Party. Neil Bibby says that he knows that costs will be involved and that he does not expect that what he wants would happen overnight. Why has he changed his attitude? It is expected that everything else would happen overnight. Why the change of heart? He usually asks for everything to be delivered now, at this precise moment.

The bill is a starting point. It is an opportunity for us to build towards something better for children. As some of my colleagues have already mentioned, the white paper says that when we get the powers of independence, we will be able to make that life-changing difference to young people. That is the important thing.

How would Mr Bibby pay for what he wants? Would it mean another attack on the small business bonus or would he take the money away from something else within the confines of devolution? Has Mr Bibby spoken to the Convention of Scottish Local Authorities and other relevant organisations? Amendment 327 is unnecessary because under the Children (Scotland) Act 1995, local authorities already have a statutory duty to provide care outside school hours and during school holidays. Amendment 344 seeks day care for pre-school children, which is no different from the early learning provision that is already offered in the bill. Mr Bibby not only has difficulty with the fiscal side of things, but seems to have difficulty with understanding the bill itself. Amendment 345 is too bureaucratic and would be difficult to define at national level.

Mr Bibby talks about trying to work with local government; having worked with Mr Bibby in local government, I would say that my five years was spent understanding what local government is about and how we can work with it in partnership, as opposed to the centre forcing things on it. I ask Mr Bibby and his Labour colleagues to think again and to try to join us here in the real world, where we work within the fiscal boundaries of the devolved settlement, and to look to the better future that independence offers.

Aileen Campbell: The amendments in Neil Bibby’s name highlight the important issue of out-of-school care, which the Government takes very seriously. The financial memorandum has estimated the additional costs that will arise from the bill, and the Scottish Government’s draft budgets for 2014-15 and 2015-16 include in full the costs of early learning and childcare. The Scottish Government has also since committed to fully funding the costs of an additional 15 per cent of two-year-olds in 2014 at £15 million, and an additional 27 per cent of two-year-olds in 2015 at £44 million. There is therefore no reason for local authorities to reduce funding from any budgets to meet the additional cost of early learning childcare as specified in the bill and through secondary legislation. We would not expect that.

10:00

Amendments 344 to 346 seek to introduce rights to day care for all pre-school children, and to out-of-school care for children up to the age of 14 who are attending school. They also seek to impose duties on local authorities to secure sufficient day care and out-of-school care in order to enable parents to work or study, based on assessments of sufficiency and the setting of mandatory hours for out-of-school care. However, the amendments’ effect would be to take us down a route that has not worked in England and which is currently being repealed. They would create rights that cannot be delivered and for which there is no immediate capacity or resourcing, and they would impose duties on local authorities—duties that would be both subject to mandatory hours and to being delivered only as “far as” would be “reasonably practicable”, which would likely be confusing and ineffective.

The Scottish Government has consistently indicated that the bill’s provisions are a first—but significant—step towards developing a system of
early learning and childcare that meets the needs of all children, parents and families. Day care for pre-school children is, in practice, largely the same provision as early learning and childcare, and the bill and associated guidance documents will clarify how local authorities can deliver their statutory duties alongside wider powers for children before they start school.

I have been consistently clear in saying that the bill is a starting point—which George Adam reiterated—and that we will expand entitlement, where doing so is affordable, through secondary legislation under the bill, under an all-encompassing definition of early learning and childcare.

I have also said consistently that high quality is paramount, which is why we announced significant increases in the number of eligible two-year-olds, using consequentials that were confirmed by the UK Government in December last year. That is why the First Minister asked the Council of Economic Advisers to consider the economic and social impacts of improving levels of childcare, and to guide our thinking on changes in policy that could provide the best system for children and families in our economy. That is also why he has identified transformational change in early learning and childcare as being a key priority for Scotland. It is also why we have set out in the white paper, “Scotland’s Future”, that transformational change to match the levels that are commonplace across Europe can be achieved only with independence. It is also why I announced that I would ask the early years task force to look at out-of-school care and to recommend what more can be done on it. We are working and engaging with our valued partners including the Scottish Childminding Association, the Scottish Out of School Care Network and the Care and Learning Alliance, and many have already benefited through the third sector early intervention fund and our strategic funding partners.

I support amendments 301 and 302, which will support the longer-term aims to develop systems of early learning and childcare and out-of-school care, and will enable local authorities to co-ordinate consultation on and planning of all mandatory provision of early learning and childcare, alongside the non-mandatory provision that local authorities have the power to deliver or support. I welcome Clare Adamson’s amendments 301 and 302 and their aim to broaden the scope of consultation and planning in the bill, to reflect its longer-term aims to develop systems of early childhood learning and care for all children, parents and families.

I agree that amendments 301 and 302 will provide local authorities with a more “comprehensive picture” for children of all ages and will encourage integrated and longer-term planning of and support for the range of provision.

This will create the opportunity for local authorities to co-ordinate consultation and planning of all mandatory provision of early learning and childcare, and out-of-school provision alongside the non-mandatory provision that local authorities have the powers to deliver, or support.

In this group, I support only Clare Adamson’s amendments 301 and 302.

The Convener: I call Neil Bibby to wind up and indicate whether he intends to press or withdraw amendment 327.

Neil Bibby: As I said in my introductory remarks, it is a major oversight that the Scottish Government has not mentioned out-of-school and holiday care in the bill or the white paper. I welcome the fact that the minister has said that the early years task force is now considering out-of-school care, but that should have been started some time ago. It is clear that we need to do more to improve access to and availability and affordability of out-of-school care during term time and school holidays. Given that, and the concerns that have been raised by parents and opposition parties, I am surprised that the minister has not lodged any amendments on out-of-school care.

As I said earlier, I welcome Clare Adamson’s amendment 302, but I do not believe that it sufficiently addresses the issue and the concerns that we have heard. I would expect that the services would be consulted on and planned with parents.

Although the bill may say something about out-of-school care, there is a real danger that if Clare Adamson’s amendment 302 is successful on its own it will do not very much to improve out-of-school care. That is why I lodged other amendments in this area. Amendment 327 is to protect existing out-of-school care services and my other amendments are to provide a potential framework for childcare for children under three and for primary-school age children.

Mr Adam mentioned that the Children (Scotland) Act 1995 already has regard to the matter. If Mr Adam reads my amendments, he will see that I am proposing to amend the 1995 act, because I do not think that the legislation is sufficient.

On finances, I acknowledge—as I have before and as is widely recognised—the potential cost implications of delivering childcare improvements in the long term, but my amendments provide the framework for that. It would not happen overnight, but over the longer term. I hope that we can amend the bill by working across the parties appropriately.
George Adam: Neil Bibby admits that there would be financial implications. I have already asked how he would pay for them. How would he pay for the measures?

Neil Bibby: Mr Adam is missing the point.

George Adam: So, does the money not count?

Neil Bibby: My amendments would provide the framework for providing out-of-school care and holiday care to children before the age of three and up to the age of 14. It would be possible to come up with individual policies after that, and it would be up to individual parties to propose policies along those lines. The amendments provide the framework for that.

I hope that, working across the parties, we can amend the bill to ensure that we are able to act when resources become available and are given to local authorities so that we can provide more childcare for primary-school age children.

I accept that there may be concerns over some aspects of my amendments, but they seek to address a gaping hole in the Scottish Government's childcare policy. If the amendments are not passed at stage 2, I sincerely hope that we can revisit them, or something similar, at stage 3. It is all very well to criticise the amendments, but there is a need to address the issue. No one, with the exception of Clare Adamson, and not even the minister, has made proposals.

I hope that members will support my amendments at stage 2. If not, we can revisit the matter at stage 3. Otherwise, this will be another area where the bill will prove to be a missed opportunity.

The Convener: The question is, that amendment 327 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 327 disagreed to.

Amendment 50 not moved.

Section 43 agreed to.

After section 43

The Convener: Amendment 341, in the name of Jayne Baxter, is grouped with amendment 313.

Jayne Baxter: Amendment 341 is designed to ensure that the order-making powers in section 43 are subject to increased parliamentary scrutiny. The intention is to ensure greater input from key stakeholders. The order specifying eligible pre-school children would be given the scrutiny worthy of such an important decision and would be properly debated by Parliament.

As is clear from the debate that we have had this morning, childcare and the provisions that are made by Parliament to support children and their parents are hugely important. The procedure that is set out in amendment 341 will ensure that all relevant bodies are consulted on the provisions, and it will give them an opportunity to help to shape proposals.

I move amendment 341.

Aileen Campbell: Amendment 341 seeks to make the order-making powers in section 43(2)(c)(ii) to specify which children are eligible for early learning and childcare subject to the super-affirmative procedure. My amendment 313 will make the order subject to the affirmative procedure, on the recommendation of the Delegated Powers and Law Reform Committee.

We think that the affirmative procedure will offer more detailed parliamentary scrutiny of orders. We consider that to be appropriate. Extensive consultation of stakeholders on eligibility for 600 hours of free early learning and childcare, and on supporting statutory guidance to be issued on the bill’s provisions has been undertaken and will continue over the coming months. That will build on our consultation of stakeholders. I believe that we have a great deal of consensus around our aims to increase eligibility and in the first instance to focus on children who are most vulnerable, and we shall engage closely with stakeholders to achieve that. However, we consider that making orders subject to the super-affirmative procedure is not necessary, so I ask members to support amendment 313.

The Convener: No other member has indicated that they wish to contribute, so I call Jayne Baxter to wind up and to indicate whether she wishes to press or withdraw amendment 341.

Jayne Baxter: I will press amendment 341. The level of interest and the contributions that we have seen throughout the progress of the bill is a measure of the knowledge and expertise that are out there. Amendment 341 would provide an opportunity for them to be channelled and brought to bear on the issue.
The Convener: The question is, that amendment 341 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
McArthur, Liam (Orkney Islands) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 1.

Amendment 341 disagreed to.

Sections 44 to 46 agreed to.

Section 47—Method of delivery of early learning and childcare

The Convener: Amendment 342, in the name of Liam McArthur, is grouped with amendment 343.

Liam McArthur: I am well aware that my track record on getting amendments passed so far has been less than impressive, and I put the blame for that squarely—if with a woeful lack of chivalry—at the door of the minister, but I shall try to break my ill-deserved duck.

Amendment 342 reflects the fact that, whether it is an increase in hours of early learning childcare for three and four-year-olds or an expansion in provision for two-year-olds from the most disadvantaged backgrounds, what matters most is the quality of what is provided—a point made by the minister in earlier remarks. As Children 1st pointed out, “increasing the amount of early learning and childcare will do nothing to improve outcomes for children if this care is of a low quality”.

That is not a point on which there will be any dispute in the committee, and the minister has already signalled her agreement in that respect, yet it is not clear how the bill guards against the potential dilution of quality, so my amendment leaves open at least the option for minimum standards to be agreed and set by ministers, if and where appropriate.

Amendment 343 would allow Parliament a means of monitoring progress in delivery by local authorities of greater flexibility in the delivery of early learning and childcare services. The committee heard at stage 1 that the current lack of flexibility in the way in which nursery provision is delivered is a problem, particularly for parents on lower incomes or without a wider network of family or friend support.

There are concerns that the bill has not delivered the improvements promised initially, and that the “have regard” duty on local authorities may provide less than adequate incentive for further change across the country, leading to the prospect—according to Save the Children and others—of “more ‘postcode lotteries’ for childcare.”

In that context, it seems necessary and sensible to ensure that data is collected on the progress being made in subsequent years. In that way, ministers and Parliament can identify where barriers remain and can take a view on whether further action and the necessary resources are required.

I hope that the two amendments find favour with colleagues and with the minister. I move amendment 342.

The Convener: No other member has indicated that they wish to contribute, so I call the minister to speak to amendments 342 and 343.

Aileen Campbell: Unfortunately, we are not in a position to assist Liam McArthur in breaking his duck. However, I recognise the spirit in which he has moved many of his amendments, and I want to continue working with him and with other members to improve the bill. I shall outline why we cannot support the amendments in his name this morning.

Amendment 342 seeks to introduce minimum standards for early learning and childcare provision and to enable any provider who meets those standards to deliver the entitlement where a parent wishes it. It is important to note that the bill maintains local authorities’ key responsibility for the system in Scotland, including their duties to secure partnership places and improvement in the quality of provision.

Amendment 342 reflects the fact that, whether it is an increase in hours of early learning childcare for three and four-year-olds or an expansion in provision for two-year-olds from the most disadvantaged backgrounds, what matters most is the quality of what is provided—a point made by the minister in earlier remarks. As Children 1st pointed out, “increasing the amount of early learning and childcare will do nothing to improve outcomes for children if this care is of a low quality”.

That is not a point on which there will be any dispute in the committee, and the minister has already signalled her agreement in that respect, yet it is not clear how the bill guards against the potential dilution of quality, so my amendment leaves open at least the option for minimum standards to be agreed and set by ministers, if and where appropriate.

Amendment 343 would allow Parliament a means of monitoring progress in delivery by local authorities of greater flexibility in the delivery of early learning and childcare services. The
support adaptations and improvements to the infrastructure.

We value highly partner providers’ contribution to early learning and childcare and, in the past, we have called on them mainly to deliver flexibility for working parents. We should move away from debates about the providers to focus on where parents can access high-quality provision and the patterns of hours that meet their needs. We can secure diversity, high quality and flexibility from all sectors and it is for local authorities to manage that process.

We have put flexibility and choice on a statutory footing for the very first time. Local authorities will consult parents locally on patterns of hours that give a degree of choice and flexibility and will develop systems to deliver them. Funded early learning and childcare is part of our high-quality universal education system based on the national frameworks curriculum for excellence and “Pre-Birth to Three: Positive Outcomes for Scotland's Children and Families”. By securing the expansion of that service through education authorities, we will protect education, quality and integration with other key areas of policy and practice for children such as, among many, getting it right for every child, additional support for learning and child protection. We will maintain a high-quality universal service that we can also seek to expand and build on to meet the needs of a wider range of children and families in the future.

Amendment 343 seeks to place a duty on Scottish ministers to report to Parliament on progress on delivering flexibility in early learning and childcare provision. When we consulted on the bill, respondents told us that placing duties on local authorities to offer a specific range of early learning and childcare flexible options would not be effective in ensuring more flexible delivery. As a result, we did not include that in the bill.

The bill now strengthens the original plans on flexibility proposed in the consultation by allowing far broader, more diverse and more locally based needs and options and being more reflective of them. In addition, each local authority will have to publish plans as a result of their consultations with representative populations of parents on patterns of provision that best meet their needs. Education authorities will also be under a duty to have regard to the desirability of ensuring that the method by which they make early learning and childcare available is flexible enough to allow parents an appropriate degree of choice over patterns of hours of provision when deciding how to access the service. The provisions on consulting, planning and flexibility are sufficient and transparency and local accountability will be key to the whole process. The requirement for Scottish ministers to report to Parliament would represent disproportionate bureaucracy and centralisation.

As a result, we do not support amendments 342 and 343. However, I reiterate that we are happy to engage on and accept any amendments that seek to improve the bill. I think that my comments on these amendments demonstrate that we have considered them very carefully, but at this point we are not in a position to accept them.

Liam McArthur: I am grateful to the minister for at least attempting to let me down gently with regard to these amendments.

On amendment 342, I certainly recognise that delivering the quality and the flexibility that we want is and must remain the responsibility of local authorities. Inevitably, that will draw on what partner providers are able to deliver and I do not necessarily envisage any problems in that respect. Nevertheless, it would be remiss of us not to include in the bill the sort of safeguard that I have envisaged in amendment 342.

As for amendment 343, I cannot see how a requirement on ministers to report to Parliament can be seen as either bureaucratic or disproportionate. The danger is that, during our consideration of a bill, we focus a great deal of attention on its strengths and weaknesses and there is a tendency for us then to move on to the next piece of legislation or issue that we are required to deal with and not necessarily return to the previous matter. Given that, as we have acknowledged, flexibility will be delivered progressively over time, we need to keep a watching brief on the matter to establish what barriers might remain, what further action might be needed and what resources might help to deliver it.

For that reason, I will be moving amendment 343 and, for now, will press amendment 342.

The Convener: The question is, that amendment 342 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 342 disagreed to.

Section 47 agreed to.
Section 48—Flexibility in way in which early learning and childcare is made available

Amendment 343 moved—[Liam McArthur].

The Convener: The question is, that amendment 343 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 343 disagreed to.

Section 48 agreed to.

Section 49 agreed to.

After section 49

Amendments 301 and 302 moved—[Clare Adamson]—and agreed to.

Amendment 344 moved—[Neil Bibby].

The Convener: The question is, that amendment 344 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 344 disagreed to.

Amendment 345 moved—[Neil Bibby].

The Convener: The question is, that amendment 345 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 345 disagreed to.

Amendment 346 moved—[Neil Bibby].

The Convener: The question is, that amendment 346 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

Amendment 346 disagreed to.

Amendment 347 moved—[Neil Bibby].

The Convener: The question is, that amendment 347 be agreed to. Are we agreed?

Members: No.

Amendment 347 disagreed to.

Section 50—Corporate parents

The Convener: Amendment 303, in the name of the minister, is grouped with amendments 304 to 307, 306, 310, and 315.

Aileen Campbell: Amendments 305, 306 and 307 remove the Scottish Court Service, the Scottish Further and Higher Education Funding Council and regional strategic bodies from the list of corporate parents that are contained in schedule 3. That is because, as administration and funding bodies respectively, those organisations do not have a key role to play in
direct decision making about children and young people and we are content that they do not have a corporate parenting role.

Amendment 303 retains Scotland’s Commissioner for Children and Young People and post-16 education bodies but exempts them from the duty to comply with directions issued by Scottish ministers in section 58 because it conflicts with their established status as independent from ministers, the Scottish Government and the Scottish Parliament as set out in existing legislation.

Additionally, should Scottish ministers add a new body to the list of corporate parents in future using the order-making power in section 52, amendment 303 allows the orders to modify section 50 so that the same exemption from ministerial direction can be applied to that body should that be appropriate, if for example, that new body has a similar protection of independence from ministers.

Amendments 304, 310 and 315 give Scottish ministers the flexibility to adjust the list of corporate parenting duties in section 52 and also to modify their application to particular corporate parents by order. That will allow us to be flexible in future when certain duties might be more appropriate to apply to specific corporate parents. It is not intended that the power be used to reduce the baseline of duties; it will allow for the future adjustment of corporate parenting duties in light of experience of the evolution of the role, including, where necessary or desirable, the flexibility to apply specific duties to an appropriate group of corporate parents or, indeed, to individual ones.

We cannot support amendment 347, in the name of Jayne Baxter, because it introduces a duty that is too specific to apply to all corporate parents. Although we acknowledge the principle of what amendment 347 is trying to achieve, it is not appropriate or practical to require those organisations that quite rightly have a role as a corporate parent but are not in the front line of supporting children and young people to promote and facilitate contact arrangements between them and those who have parental responsibilities for them and their siblings. Having said that, we believe that the corporate parenting responsibilities in section 52 are quite clear and that they communicate the importance that we place on that role. Each corporate parent will plan and report individually and collaboratively on how they have exercised that role. In due course, if required, Scottish ministers may use the order-making powers set out in amendment 310 to adjust the list of corporate parenting duties and their application to particular corporate parents in light of the experience and evolution of the role.

In summary, I ask the committee to support my amendments in this group and to consider not supporting amendment 347, whose principles we acknowledge but which we cannot support.

I move amendment 303.

Jayne Baxter: I wish to highlight the responsibilities of corporate parents as raised by amendment 347. The amendment has two main functions. The first is to extend to all corporate parents the duty that section 17 of the Children (Scotland) Act 1995 places on local authorities in respect of personal relations and contact between looked-after children and their parents. The second is to place a duty on corporate parents to at least consider whether contact between separated siblings is practicable and appropriate in the circumstances of each case, consistent with promoting the child’s interests, while providing a safeguard when it is not practicable or appropriate.

The community law advice network, which has extensive experience of representing children and young people, has highlighted the importance of amendment 347, as it has found that the relationships that looked-after children have with their siblings become all the more important to them when they are removed from their core family unit, and corporate parents often fail to consider the impact of sibling separation on children and young people or to promote the sibling relationship at all. Contact with siblings can be a reassuring link to the family home that might come without the pressures that parental contact can often bring, such as supervision and assessment.

Liam McArthur: On amendment 303, it would be helpful to get clarification from the minister in relation to a point that has been raised with me. I would certainly not argue against the removal of any power of direction from ministers over colleges or universities, as colleagues will recall from the Post-16 Education (Scotland) Bill process. Nevertheless, we are all aware of the concerns around educational attainment outcomes for those who are looked after in terms of their representation in further and higher education. It would therefore be helpful to know how—perhaps through outcome agreements and guidance to the funding council—the minister thinks that some of the objectives that we all want to be fulfilled for looked-after children might be attained without there necessarily being ministerial powers of direction over colleges and universities.

Aileen Campbell: I thank Jayne Baxter for lodging amendment 347 and for raising the points that she has made today in describing her intentions through that amendment. We do not support the introduction of duties that are too specific to apply to all corporate parents.
The corporate parenting responsibilities in section 52 clearly communicate the level of importance that we place on that role. If required in the light of experience and evolution of that role, Scottish ministers may use the order-making powers that are set out in amendment 310 to adjust the list of corporate parenting duties and their application to particular corporate parents. Amendment 347 is too specific to apply to all of them and to the different levels of interaction that corporate parents have. However, we appreciate Jayne Baxter raising the points that she has.

On the points that Liam McArthur has made, my officials engaged with all the relevant organisations before making a determination about whether to remove them from schedule 3. The aim is to balance their independence against the direction that ministers have, but we nevertheless feel that many organisations should have a corporate parenting responsibility, balanced with direction. That needs to be worked through and, through guidance, we will be able to provide that balance under this part of the bill.

We can work with all the stakeholders who may have remaining concerns, but the guidance will tidy up some of the issues. We are working with stakeholders to ensure that the bill does what we intend it to do to strengthen corporate parenting for children throughout Scotland.

Amendment 303 agreed to.

Amendment 304 moved—[Aileen Campbell]—and agreed to.

Section 50, as amended, agreed to.

Schedule 3—Corporate parents

Amendments 305 to 307 moved—[Aileen Campbell]—and agreed to.

Schedule 3, as amended, agreed to.

Section 51—Application of Part: children and young people

The Convener: Amendment 308, in the name of the minister, is grouped with amendments 309, 348, 394, 349, 395, 350 to 353, 381 to 385 and 314.

Aileen Campbell: This is a sizeable area of the bill and I will do my best to keep my comments as succinct as possible. However, there is an awful lot to get through and I want to give the committee as much information as I possibly can.

The committee will be aware that, on 6 January, I announced the Scottish Government’s commitment to a number of measures to support care leavers over the next 10 to 12 years. All my amendments in the group form part of that wider package. As a result of the amendments, starting in 2015, each new cohort of 16-year-olds in foster, kinship or residential care will have a right to stay in care until they are 21 years old. That means that, over the coming years, just as is the case with their non-looked-after peers, those who are not ready to leave home will be entitled to remain with their carers until the age of 21. Ultimately, we will put measures in place to enable care leavers to return to care if they need that support as they make their way towards independent living.

Just as important, this package of amendments provides that local authorities will be required to notify the Scottish ministers and the care inspectorate about the death of any care leaver in receipt of aftercare services. That is so that, where possible in such tragic circumstances, lessons are learned to ensure that, as far as possible, services are doing their utmost for all our young people who have been in care.

My amendments seek to clarify the eligibility of those care leavers who are entitled to corporate parenting and aftercare support, and they seek order-making powers to extend those types of support to further cohorts of formerly looked-after children, through secondary legislation.

During all stages of the development of the bill it has been our absolute priority to consult and to engage in some detail with young people and with all parts of the sector, so as to steer a path through the complex and emotive issues that are covered in various parts of the bill. We know that the bill is better as a result and we want that level of commitment to continue into the work of the expert group, which will be established very soon to work collaboratively to develop and deliver the next stage of measures.

This significant package of amendments represents a uniquely Scottish solution to tackle some of the most pressing issues that some of our most vulnerable young people face. Not only is it a huge step forward for Scottish teenagers in care, but it is groundbreaking in policy terms. I am very proud of these amendments and I want to record my thanks to the committee for its role in bringing to the fore many of the issues tackled in the bill, not least through the inquiry that we debated last year.

I would also like to acknowledge the effort and commitment shown by all the sectoral representatives, particularly Aberlour Child Care Trust, Barnardo’s Scotland and Who Cares? Scotland. I also acknowledge the Centre for Excellence for Looked After Children in Scotland, local government contacts and our looked-after young people themselves, who collectively and separately worked with us to identify the most appropriate and realistic way forward in challenging financial circumstances.
I will set out specifically what my amendments seek to achieve. Amendments 308, 309 and 314 will clarify who is eligible for corporate parenting support by replacing references to being over school age or ceasing to be of school age with references to “at least the age of 16” and “on the person’s 16th birthday”.

They will also add a new order-making power, subject to the affirmative procedure, for the Scottish ministers to specify descriptions of young people who were, but are no longer, looked after by a local authority. That is with the intention of extending the categories of young people who would be eligible for support.

Amendment 348 will remove the reference to persons being “over school age” and will convey eligibility for assessment for aftercare support to anyone who leaves care aged 16 or above. That will ensure that those who might enter care at a later age—15, for example—and leave care at 16 will be eligible. It will align corporate parenting eligibility in section 51 with section 60, on aftercare.

We also propose order-making powers for the Scottish ministers to specify additional descriptions of those who were but are no longer looked after by a local authority, who will then be eligible for aftercare support. That means that as soon as is practicable we will bring forward secondary legislation to extend the measures to additional cohorts of young people. It is appropriate to attach affirmative procedures to such orders, to give the Parliament the appropriate level of scrutiny to debate the merits and affirm any changes that are thought necessary.

As I mentioned, the expert group is still to work out details of any additional cohorts of those eligible for corporate parenting and aftercare support, but I want to emphasise the Government’s commitment to widen the groups of young people who are eligible. However, we cannot support Liam McArthur’s amendment 394, as it would introduce an entitlement for aftercare support that is too broad at this point: one that realistically could not be met with the current infrastructure. The expert group will provide ministers with realistic recommendations on the most appropriate timing and categories of additional cohorts of children who should be entitled to such support.

We acknowledge the need to immediately extend entitlement to stay in care to those who are 16 years old and wish to stay in their placement. Therefore, amendment 353 will insert a new section 26A into the 1995 act to specify who is eligible for continuing care. It defines continuing care, sets out the conditions under which the duty would not apply and sets out the circumstances under which the duty might cease. The effect of that will be that any child who is in care at 16 years old and then ceases to be looked after will have the right to stay in their kinship care, foster care or residential placement, subject to certain exceptions.

We also propose order-making powers to allow the Scottish ministers to modify new section 26A to vary the situations in which the duty to provide continuing care either does not apply or ceases to apply. There are also order-making powers to specify the upper age limit of eligible persons and the period of time for which the local authority’s duty to provide care lasts.

The last two powers will enable us to roll out the continuing care entitlement to additional cohorts of young people in a measured way over the coming years. We have suggested that that be subject to the affirmative procedure, to give the Parliament the appropriate level of scrutiny to debate the merits and make changes that are deemed to be necessary.

Amendment 350 will provide for the notification of deaths of those persons to whom the local authority was providing aftercare support, under section 29 of the 1995 act, at the time of their death. As I said earlier, it is important that lessons are learned to ensure, as far as possible, that services do their utmost for all our young people who have been in care. That replicates a similar provision for the notifications of deaths of looked-after children that is contained in regulation 6 of the Looked After Children (Scotland) Regulations 2009.

We will also revise existing 2007 guidance to child protection committees to include the death of a young person receiving aftercare in the suggested criteria for child protection committees to consider when deciding whether to conduct a significant case review.

10:45

I hope that that gives the committee a helpful level of detail on the amendments, so that we can make commitments of the magnitude that is required, with enough flexibility to fully develop the policy. That will require extensive consultation with the care sector and care leavers about the precise parameters of the entitlements, working with local government on how best to fund the extension of that support.

I turn now to Liam McArthur’s remaining amendment, amendment 395. We do not feel that it is necessary, as a procedure is already in place to allow aggrieved persons to appeal against local
authority decisions under section 29 of the 1995 act. The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 already include provisions allowing people to appeal against local authority decisions. It is likely that those regulations will have to be amended in consequence of section 60 of the bill, which will provide an opportunity to ensure that all measures are clarified.

A review of the complaints procedures, as provided for by section 5B of the Social Work (Scotland) Act 1968, is currently under way. Regulation 16(2) of the 2003 regulations provides that:

“All complaints, representations or appeals not falling within paragraph (1) shall be dealt with in accordance with the procedure established under section 5B of the Social Work (Scotland) Act 1968”.

As such, although some stakeholders might wish us to go further, we feel that the existing appeals procedures and our post-bill review of the current regulations are sufficient to address the needs of care leavers in this regard.

In summary, I ask members to support the amendments in my name. I reiterate my thanks to the committee for the work that it did in helping us to set out the amendments, which have been described as making Scotland world leading.

I move amendment 308.

Liam McArthur: I am very pleased to see the changes that the Scottish Government is proposing for the provision of aftercare to those who have been through the care system. Although I was happy to welcome the original proposals in the bill, it was clear at that stage that a number of important deficiencies remained. Failure to address them would not have made the bill a bad bill in relation to aftercare, but it certainly would have represented a missed opportunity.

It is therefore encouraging to see that the Government has listened to the concerns that were raised by me and by committee colleagues at stage 1, and to the very powerful evidence from Barnardo’s, the Aberlour Child Care Trust, Who Cares? Scotland and, crucially, care leavers themselves with regard to where improvements needed to be made. I note, however, that COSLA’s submission points to the need to take great care to ensure that the measures that are being introduced are fully and properly funded.

Removing the arbitrary eligibility criteria for access to aftercare is particularly welcome. That will ensure that the provisions benefit more people who actually need them. I would, however, welcome the minister’s view on how we might go about ensuring that those who are currently leaving the care system do not fall through the net. As I understand it, the number of people involved is likely to be very small, but the expectations of those concerned will have been raised, and it would be nice to think that they will not be left on the wrong side of an arbitrary deadline.

Enabling a return to care up to the age of 26 is also very welcome. That more fairly reflects the opportunity that exists for other young adults, which will hopefully provide reassurance, confidence and support for those care leavers who need it.

It would be interesting to hear the minister set out how what is envisaged under the amendments might be tapered to ensure that we do not create another cliff edge, this time at the age of 26, and to reflect the fact that we are talking about young adults, whose rights and needs must be balanced with those of other young people and children within the care system.

In relation to my amendments in this group, amendment 394 seeks to address the point that I have already referred to regarding an arbitrary cut-off point for eligibility. Amendment 395 reflects another concern that was raised at stage 1, namely the absence of an adequate mechanism for allowing decisions made by local authorities regarding on-going care and aftercare to be effectively questioned or appealed.

The former amendment appears to be adequately covered by the minister’s amendments in the group, so I will therefore not move it, but I am less sure that the point about appeals is covered. Despite the existing provisions, which the minister referred to, stakeholders clearly believe that what is in place at the moment is inadequate. If the minister were to indicate a willingness to discuss the matter further at stage 3, I would be minded not to move amendment 395.

I again thank Barnardo’s, Aberlour, Who Cares? Scotland and of course the young care leavers who spoke so passionately and eloquently about what they feel needs to happen to improve care and outcomes for those who find themselves in care. I believe that we have gone a considerable way in responding to those pleas, and I congratulate the minister on her efforts in that regard.

Clare Adamson: When the committee carried out its inquiry into the educational attainment of young people in care, I think that members felt a shared frustration that the problems and poor outcomes were well recognised but no significant progress had been made on tackling some of the issues. For politicians, when we are involved in inquiries and make proposals, there is always a concern that they will not lead to significant change. However, in this case, when I look at the minister’s amendments in the group, I have to agree with her term “groundbreaking”. I absolutely
believe that the amendments are groundbreaking and will make significant changes to the lives of young people in care.

I thank the minister for her words about the committee’s work on the issue and I associate myself with Liam McArthur’s comments about the stakeholders and young care leavers. The young care leavers’ evidence has been absolutely key to me in my deliberation on much of the bill, not least the issues that we are now considering about support, but also those that we debated previously regarding continuing family relationships for young people. Along with Liam McArthur—and I am sure the rest of the committee—I thank them for their contribution to both our inquiries on the issues.

I am delighted to support the minister’s amendments and I look forward to her summing-up comments regarding the issues that Liam McArthur raised.

Liz Smith: I add my whole-hearted support to the Government’s amendments. Nobody who sat through the substantial and compelling evidence on the issue could possibly find any reason to disagree with them. I warmly welcome the Government’s amendments and I am interested to hear the response to Mr McArthur’s amendments. In principle, I agree that there are concerns among some stakeholders, although I think that the Government has taken them on board.

George Adam: I fully support the minister’s amendments—it is great to see the changes come in. We have had two inquiries on the issues, during which, as Liam McArthur said, we heard compelling evidence from young people about their experience. As a politician, it is good to see the process working and moving things forward for people. At the end of the day, regardless of our political beliefs and disagreements, the reason why we all got involved was to try to make changes in our local communities and throughout the country. The minister’s amendments will make that big difference. Obviously, they will provide the help and support that are needed. As Liam McArthur said, the charities that gave evidence and worked with us on the two inquiries—Who Cares? Scotland, Barnardo’s and Aberlour—have to be congratulated on highlighting the issues. The process shows the many young people who have been involved, some of whom might be here today, that politics can work.

The Convener: Before I bring in the minister, I will add a few comments. I welcome the Government amendments, which perhaps show that parliamentary committees can work successfully. We have pushed the Government to where the committee agreed that we should be, so we are pleased about that. I think that I speak for all members in saying that the evidence that we received over two years and two inquiries led us to

believe that change is necessary. We are therefore delighted that the Government has agreed and lodged the amendments.

I join other members in thanking Barnardo’s, Aberlour and Who Cares? Scotland for their effort and forbearance over the past couple of years in helping us to get to this point. The work of the two inquiries that the committee undertook has been shown to have been well worth while, given this outcome. As others have done, I particularly thank the young people who took part in the inquiries and, outside the committee’s meetings, in some of our visits, during which we heard some of the most important and compelling evidence and discussion that took place during the inquiries. That helped us to come to the view that it was necessary for the Government to support such a change.

I welcomed the minister’s announcement a week past Monday about this. It would have been helpful if it had been a week past Saturday, because I and a member of Who Cares? Scotland were on the radio that morning discussing that very issue, but I thank the minister for the announcement anyway. I know that the committee appreciates the work that has been done by the outside groups and the Government in this area.

Aileen Campbell: Again, I want to reiterate how proud we are of these amendments and thank the committee for its work, which, as George Adam said, has shown how politics can work when we all come together to maximise the impact of legislation and the opportunities that it presents. We also want to thank again the sectoral representatives—Barnardo’s, Aberlour and Who Cares? Scotland, among a wider arena of representatives—who have done a great deal to ensure that we get this part of the bill absolutely right for young looked-after care leavers.

I want to put on record again my thanks to the young looked-after people who gave so much of their time and personal experience to help us to identify the most appropriate and realistic way forward with this bill. I think that some of them are in the committee room today. They have left an enormously positive legacy for future care leavers in Scotland.

We have been pleased with the feedback. We welcome the support that the committee has given to the amendments.

Liam McArthur talked about the possibility of the amendments leading to the creation of a new cliff edge. We do not want a new cliff edge for our looked-after children and this bill is also about changing culture to ensure that we are much more supportive of care leavers as they enter independent living. We want to ensure that they are supported as fully as possible and that no new cliff edge emerges, and our expert group—which
we announced at the time that you said, convener—will consider which other cohorts of children should be eligible for corporate parenting and aftercare. That should ensure that we get that right and that that support is there for them.

On Liam McArthur’s amendment about appeals, the 2003 regulations that I outlined in my opening remarks already include appeals. Regulations 17 to 20 set out the procedures that are to be followed in that regard.

I hope that that gives some reassurance to Liam McArthur that we do not want a new cliff edge to emerge, that the expert group will consider new cohorts as they emerge through the progress of the legislation and that appeals are covered in the existing regulations.

Amendment 308 agreed to.

Amendment 309 moved—[Aileen Campbell]—and agreed to.

Section 51, as amended, agreed to.

Section 52—Corporate parenting responsibilities

Amendments 328, 252, 329, 253 and 347 not moved.

Amendment 310 moved—[Aileen Campbell]—and agreed to.

Section 52, as amended, agreed to.

Sections 53 and 54 agreed to.

Section 55—Reports by corporate parents

Amendments 330 and 331 not moved.

Section 55 agreed to.

Section 56 agreed to.

11:00

Section 57—Guidance on corporate parenting

Amendment 115 moved—[Aileen Campbell]—and agreed to.

Section 57, as amended, agreed to.

Section 58—Directions to corporate parents

Amendment 116 moved—[Aileen Campbell]—and agreed to.

Section 58, as amended, agreed to.

Section 59 agreed to.

Section 60—Provision of aftercare to young people

Amendment 348 moved—[Aileen Campbell]—and agreed to.

Amendment 394 not moved.

Amendment 349 moved—[Aileen Campbell]—and agreed to.

The Convener: Amendment 332, in the name of Liam McArthur, is grouped with amendments 333, 184, 390, 354, 354A, 185, 334, 186, 335, 187, 391, 355, 356, 188, 392, 189, 393, 357, 386 and 388. I point out that if amendment 354 is agreed to I cannot call amendments 185, 334, 186 and 335 because of pre-emption. I advise members that amendments 184, 187, 188 and 189 are direct alternatives for, respectively, amendments 390, 391, 392 and 393.

Liam McArthur: My amendments in this group cover a couple of general areas of concern that were highlighted at stage 1, to which I will turn shortly.

I am conscious that—as the convener pointed out—the minister’s amendment 354 perhaps renders redundant a number of my proposed changes, and I am happy to accept that. Nevertheless, having concluded my remarks on the previous group by extolling the efforts of the minister, I once again find myself wondering why I bothered meeting her and her officials on two separate occasions to discuss possible amendments. The exchange of information seems to have been a rather one-way process.

Amendments 332 and 333 further reflect the excellent evidence that was provided to us by the broad coalition of experts behind the “Putting the Baby in the Bath Water” report. Amendment 333 reflects the reality that a disproportionately high percentage of care leavers become parents at an earlier age. Many of those who are intended to be beneficiaries of the bill’s aftercare provisions will already have children of their own. It is therefore likely that they will need assistance and support beyond that which is provided for eligible individuals. It would also be good policy and good practice for care leavers who are still only prospective parents to be far better supported than is the norm now to understand their options and the implications of their choices about whether and/or when to have children of their own.

Evidence indicates that the children of care leavers are more likely to become looked after themselves and are more likely to have additional support needs. The bill’s excellent aftercare provisions should therefore promote preventative spending and efforts to prevent current care leavers’ needs from becoming intergenerational ones.
Although the main issues will—and should—be addressed by statutory guidance, it would help to have a reference point in the bill. That would improve planning for, and working with, care leavers holistically. I encourage the minister to make a commitment to work with the coalition that produced the report when preparing the regulations and guidance in due course.

My amendments 184 to 189 address a concern about the terminology as originally set out in the bill, which could create confusion about the support that is potentially available. Although the definition of “counselling services” appears, thankfully, to be fairly broad, it suffers from perceptions of what that means in practice. A change to a reference to “early intervention” services better reflects what is intended by the bill.

I note that Colin Beattie has lodged very similar amendments—perhaps his meetings with the minister were more of a two-way process than mine—and I will support his amendments in the event of mine falling. However, I draw the committee’s attention to the fact that Children 1st’s preference is for the term “early intervention” rather than the more ambiguous reference to “relevant services”.

I move amendment 332.

Colin Beattie: As Liam McArthur said, amendments 390, 391, 392 and 393 take out the word “counselling” and insert the word “relevant”. The purpose of the amendments is to address concerns that the term “counselling services” might be a bit restrictive and might not cover the range of services that local authorities might consider.

The issue of “counselling services” as a generic term has been raised by a number of stakeholders and there has been some discussion about what would be the most appropriate term. Obviously, circumstances and appropriate supports will vary from child to child and will change over time. It therefore seems appropriate to change the terminology to the wider term “relevant services”.

Amendment 354A adds to the minister’s amendment 354—which I welcome—in so far as it provides further definition of the term “relevant service”. I take on board the fact that Liam McArthur has sought to do something very similar in substituting “early intervention” for “counselling services” but that would probably not be as appropriate because, in order to receive the counselling services under the bill, the family would need to seek help and be willing to participate in the service that was provided. It is important that the services are seen as a form of support rather than a form of state intervention. By substituting “relevant” for “counselling”, my amendments create a better definition.

Aileen Campbell: We have listened to members and have taken on board the concerns that have been expressed in our meetings with them to shape and hone the bill. I am sorry that Liam McArthur did not find the meetings useful; I wonder whether that is more to do with the fact that he was 45 minutes late for the first meeting. We will continue to work with members as we progress through the stages of the bill.

We cannot support amendments 332 and 333. The Scottish Government aims to ensure that all care leavers have access to the most appropriate support according to their needs, such as other young people typically receive from their parents. Local authorities are under a duty in section 29(5) of the Children (Scotland) Act 1995 to carry out an assessment of the needs of each care leaver to whom they have a duty under section 29(1) of that act and also to assess the needs of all those who make an application to them for aftercare support under section 29(2) of the act, whether they are parents or prospective parents. That assessment will be conducted in accordance with GIRFEC principles and all services—both adult and child services—will co-operate in delivering the best aftercare support possible to safeguard the wellbeing of all vulnerable young care leavers.

Furthermore, we believe that including pregnancy and parenthood in part 8, on aftercare, has the potential to cause unnecessary confusion over who, within children’s services, is responsible for the child or care leaver. Crucially, by putting that in the text of the bill and requiring throughcare and aftercare teams to take responsibility for babies and very young children, we may create unintended consequences around the level of qualification and training that is required.

As a consequence of the bill, an extensive update will be required of all guidance relating to throughcare and aftercare. We will undertake to ensure that every effort is made to provide clarification of and more detailed guidance on the expected level of service that is required under the new provisions.

Amendments 184 to 189 replace the term “counselling” with “early intervention” throughout part 9, which requires local authorities to provide such services to eligible children and their families. Colin Beattie’s amendments 390, 354A, 391, 392 and 393 seek to replace the term “counselling services” with “relevant services” throughout part 9. I accept that there are concerns among stakeholders that the term “counselling services” may be too restrictive, and we therefore accept the need to change that term. We have genuinely considered both sets of competing amendments and consider that those that best reflect the policy intention are Mr Beattie’s. Accordingly, we support
Mr Beattie’s amendments in favour of those lodged by Mr McArthur.

The term “early intervention”, although universally accepted in public service terminology as a good thing, is not appropriate when used in this context as it could imply a statutory or compulsory intervention, which is not the purpose of this part of the bill. The aim is to secure the willing involvement of families in preventing a child from becoming unnecessarily looked after. Therefore we cannot support Liam McArthur’s amendments in this group. The word “relevant”, which Colin Beattie’s amendment suggests, captures a wider range of services and is therefore much more appropriate.

A further Government amendment to section 61 will, if it is accepted, place the eligibility test for such services in the text of the bill and will make it clear that authorities are to provide such services as will help to prevent a child from becoming looked after. Further detail of the type of services that could be offered under that provision will be contained in secondary legislation, which we will consult on.

Taken together, the amendments will widen the term so that, where the child is at risk of becoming looked after, local authorities will be required to provide to eligible children and their families services that are not restricted to those that involve counselling or counsellors. The circumstances of individual families will vary greatly, and the type of service that they require will vary and may evolve over time. The proposed changes should mean that the provision will be wide enough to ensure that local authorities can provide a wide range of services to meet those needs and address those varying circumstances.

The amendments in my name do a number of things. They ensure that an eligible child and a qualifying person in relation to such a child are eligible for relevant services under part 9. That makes it clear that support can be provided to various members of the child’s family or to the child themselves, not just to their parent or to a person with parental rights and responsibilities in relation to the child, in order to avoid the risk of the child becoming looked after.

In response to concerns about a lack of detail in that part of the bill, the amendments ensure that the term “eligible child” is defined in the text of the bill rather than in an order. A child will be eligible if they are at risk of becoming looked after if relevant services are not provided. That risk need not be imminent but may be some way in the future, as the support that is to be provided under part 9 is intended to involve early intervention to offset or reduce the risk of the child becoming looked after.

It will be for local authorities to judge, on a case-by-case basis, whether a child meets that test, and it is intended that ministers will issue guidance to assist local authorities in making that assessment. Furthermore, there is an order-making power in sections 62(1)(a) and 62(1)(b) to allow further provision to be made on how the test is to be applied. In addition, it will be possible to amend the eligibility test by order if that is required.

The amendments also ensure that an eligible pregnant woman and qualifying persons in relation to such a woman—such as the father of her child, a person to whom she is married or with whom she is in a civil partnership, someone to whom she is otherwise related or with whom she is living, or a person whom the local authority considers will, when the pregnant woman gives birth, become a qualifying person in relation to the child—are all eligible for services under that part of the bill.

A pregnant woman will be considered to be eligible if a local authority considers that she is going to give birth to a child who will be eligible. That provision is a direct response to the request from the coalition behind “Putting the Baby in the Bath Water”. We agree that expectant parents would be a good target for an early intervention approach and have lodged our amendments accordingly.

Amendment 386 is a technical amendment that clarifies what is meant in parts 9 and 10 by a child becoming looked after. In summary, we cannot support Liam McArthur’s amendments, but we support Colin Beattie’s amendments and ask that members support the amendments in my name.

Liam McArthur: I thank Colin Beattie and the minister for their comments on my amendments on counselling services.

Colin Beattie is right to point to concerns about the rather restrictive nature of, and the potential lack of coverage that would arise from, the original wording in the bill. I note his comments on the potential for early intervention to be seen as too state interventionist rather than in the context of the support that will be provided.

I will certainly not wrestle Colin Beattie to the floor over our amendments, but I will press mine. As I indicated earlier, I will be happy to support his amendment 354A, which clearly indicates the benefits that are to be derived from turning up on time to meetings with ministers to the point at which one gets not only ministerial approval for one’s own amendment but an invitation to amend the minister’s amendments.

I note the minister’s points about the genesis of amendments 332 and 333 with regard to the importance of the “Putting the Baby in the Bath Water” report and recommendations. However, I would welcome a commitment from her to work
with the experts behind that group in developing regulations and guidance.

Aileen Campbell: I intend to work with all expert groups and stakeholders in developing guidance—I give that commitment.

Liam McArthur: On that basis, I seek to withdraw amendment 332.

Amendment 332, by agreement, withdrawn.

Amendment 333 not moved.

11:15

Amendment 395 moved—[Liam McArthur].

The Convener: The question is, that amendment 395 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 395 disagreed to.

Amendments 350 to 352 moved—[Aileen Campbell]—and agreed to.

Section 60, as amended, agreed to.

After section 60

Amendment 353 moved—[Aileen Campbell]—and agreed to.

Section 61—Provision of counselling services to parents and others

Amendment 184 moved—[Colin Beattie].

The Convener: The question is, that amendment 184 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 184 disagreed to.

Amendment 390 moved—[Colin Beattie]—and agreed to.

Amendment 354 moved—[Aileen Campbell].

Amendment 354A moved—[Colin Beattie]—and agreed to.

Amendment 354, as amended, agreed to.

Section 61, as amended, agreed to.

Section 62—Counselling services: further provision

Amendment 187 not moved.

Amendment 391 moved—[Colin Beattie]—and agreed to.

Amendments 355 and 356 moved—[Aileen Campbell]—and agreed to.

Amendment 188 not moved.

Amendment 392 moved—[Colin Beattie]—and agreed to.

Amendment 189 not moved.

Amendment 393 moved—[Colin Beattie]—and agreed to.

Section 62, as amended, agreed to.

Section 63—Interpretation of Part 9

Amendment 357 moved—[Aileen Campbell]—and agreed to.

Section 63, as amended, agreed to.

Section 64—Assistance in relation to kinship care orders

The Convener: Amendment 396, in the name of Jayne Baxter, is grouped with amendments 397 and 400 to 404. Amendment 396 is pre-empted by amendment 363, which is in the next group, and which concerns persons who are eligible to receive kinship care assistance.

Jayne Baxter: By strengthening the commitment by the Scottish ministers to set out in
secondary legislation their expectations of local authorities, the amendments in this group provide a route by which Scottish ministers can ensure that kinship carers receive adequate support. As we know, secondary legislation will be vital in setting out in detail how kinship care orders and assistance will work. I seek stronger measures to ensure that they must, and not just may, be enacted.

There is wide variation in the allowances that are paid to formal kinship carers across the 32 local authorities, which results in a postcode lottery of support. I am keen to hear from the minister whether the Scottish Government will consider setting out at stage 3 specified rates of payment for the provision of financial support and require local authorities to pay at least that rate to all qualifying persons.

Many kinship carers embark on that role with little or no awareness of their rights in the benefits system. Accurate and timely advice regarding benefits entitlement is essential if kinship carers are not to be financially disadvantaged and are to be able to make informed decisions about their future. A consultation by Children 1st for the Scottish Government’s financial review that involved more than 250 kinship carers found that they receive a range of different benefits and many do not know what they are entitled to or who to ask. If we ensure that financial support includes advice, it will help many kinship carers to maximise their income and thereby to mitigate any child poverty. Amendment 402 aims to do that.

Amendment 404 would ensure that local authorities review the kinship care assistance that is provided to kinship care families. At the moment, local authorities review the assistance that is provided only if an eligible child’s status changes. If an eligible child is in kinship care for, for example, six years, their support needs may change over those years. It may be that it is not the eligibility that changes, but the qualifying person and the child’s support needs. There is currently no right for a qualifying person who has obtained a kinship care order to ask for such a review of support. Amendment 404 enables ministers to provide for how or when a kinship carer who has obtained an order may request a review.

I move amendment 396.

Liz Smith: I have a lot of sympathy with the points that Jayne Baxter has raised, not least because we heard compelling evidence about kinship care. We must never forget that the issue has come back to the Parliament many times and that we are not yet doing the best possible job for kinship carers. However, I am a little concerned about the choice of wording in her amendments and whether it articulates with other legislation, so I will be interested to hear the minister’s response.

Aileen Campbell: Amendment 396 replaces “may” with “must” in section 64(2) to ensure that Scottish ministers must specify descriptions of kinship care assistance by order. Amendments 400 and 401 amend section 66(1) to remove the words “which may be” and replace “includes” with “must include” to require ministers, when making an order under section 64(2), to specify that kinship care assistance must include the categories of assistance that are specified in section 66(1). Amendment 403 replaces “may” with “must” in section 66(3) to ensure that Scottish ministers must by order make certain provisions about kinship care assistance, such as when or how it is to be provided.

We are aware that there is concern about the variation in the level of support that is offered to kinship carers across Scotland, and we believe that the amendments are intended to help to prevent that variation. However, we do not consider that they would result in local authorities providing a uniform level of support to kinship carers. Although we are sympathetic to Jayne Baxter’s aims and absolutely sympathise with some of the issues that she has outlined, we are also aware that individuals’ circumstances and the levels of assistance that they might require vary widely.

Given that, it is not appropriate to be so prescriptive in the bill about the type and level of support that is to be provided. The amendments would require ministers to exercise their order-making power in section 64(2) and require the assistance that they specify in doing so to include the categories of assistance that are specified in section 66(1). The amendments would also require ministers to exercise their order-making power in section 66(3) to make provision about when or how kinship care assistance is to be provided, for example.

The amendments are unnecessary. Ministers fully intend to exercise their powers under those sections to make orders that specify descriptions of the kinship care assistance that local authorities must make available to those who are eligible for that assistance. The orders will include the categories of assistance that are specified in section 66(1) and the provision that is specified in section 66(3).

As Liz Smith perhaps alluded to, the preference in legislation is to use the word “may” in relation to order-making powers, because the exercise of the power is ultimately and properly a matter for the Parliament. Using the word “must” would not necessarily ensure that any order that ministers made would become law; it would be for the
Parliament to decide whether to pass any secondary legislation that the Government made.

Amendment 397 would amend section 64(4) to provide that the Scottish ministers must, instead of may, by order specify a description of an eligible child. If the committee agrees to my amendment 363, it will place the description of an eligible child in the bill, so amendment 397 will not be necessary.

Amendment 402 would amend section 66(1) to provide that an order under section 64(2) must include the provision of “advice or information about how financial support may be obtained” as one of the categories of specified assistance. That is unnecessary. No other forms of kinship care assistance are specified in the bill. We intend to describe them in secondary legislation, and the order-making power in section 64(2) will allow us to do that. We will consult before making any such provision.

The intention is to issue guidance to local authorities on the kinship care assistance that they will be required to provide. We will consult widely on that. My reply to Jayne Baxter’s points about financial consistency across Scotland is that we await the outcomes of a financial review.

Amendment 404 would insert a new paragraph into section 66(3) to make a mechanism available “to review the kinship care assistance being made available to a person and when or how a person to whom ... assistance is being made available may request such a review”.

In practical terms, authorities would review the assistance that is being made available to a person in reviewing whether a child continues to be eligible under section 66(3)(c). Provision about that and about how a person can request a review of their assistance could be covered by section 66(3)(d), which enables ministers to make provision about “such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.”

We will work with stakeholders to ensure that any provision that is made under section 66(3) is as comprehensive as is necessary.

For those reasons, we do not support the amendments in Jayne Baxter’s name. I hope that it was helpful for me to explain the legislative preference and the choice of words in the bill and that that has given her clarity for when she considers how to proceed with her amendments.

Jayne Baxter: I thank the minister for her comments. The issue is not going away and I have heard nothing from her that reassures me about the intentions. In the absence of the outcome of the financial review, I will press amendment 396.

The Convener: The question is, that amendment 396 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 396 disagreed to.

11:30

The Convener: Amendment 358, in the name of the minister, is grouped with amendments 359 to 364, 398, 399, 365 to 369 and 389.

Aileen Campbell: Amendments 358 to 361 clarify two things: first, that kinship care orders subsist only until the eligible child reaches the age of 16 and therefore that those persons specified in sections 64(3)(a) to 64(3)(c) are entitled to kinship care assistance only until the child attains the age of 16; and, secondly, that a child who was subject to a kinship care order prior to attaining the age of 16 is still eligible to receive assistance until they are 18. That is to be made clear in the bill for the avoidance of any misunderstanding.

Amendments 362, 364 and 365 will remove the exclusion on a guardian from being a qualifying person and therefore from being eligible to receive kinship care assistance under section 64. We have considered the views of stakeholders on the issue and agree that the status of guardians is not sufficiently different from that of kinship carers to justify their exclusion from being eligible for kinship care assistance. It is not our intention to discourage people from applying for a guardianship order where that would be in the interests of the child, but that could be an unintended consequence of exclusion. Therefore, I lodged amendments 362, 364 and 365 to ensure that guardians—whether they are court appointed or appointed by parents in a will, for example—and the children who are being cared for are not at a disadvantage compared with kinship carers and children who are in kinship care.
The bill provides that kinship care assistance can be provided to specific categories of people where there is an eligible child, as set out in section 64(3), and that the description of an eligible child will be specified by order, under section 64(4). Amendment 363 will put the definition of “eligible child” in the bill, rather than in an order. That is in response to concerns about a perceived lack of detail in the bill, despite the reassurances that we have given. The test will be whether a child is at risk of becoming looked after if kinship care assistance is not provided.

Amendment 363 also gives ministers an order-making power to specify other descriptions of a child as eligible if that is considered to be required at a later date. Amendment 389 will amend section 77 to provide that such an order will be subject to the affirmative procedure. It will be for local authorities to judge on a case-by-case basis whether a child meets that test. It is intended that guidance will be issued to help local authorities to make that assessment. The order-making power in sections 66(3)(a) and 66(3)(b) allows further provision to be made in relation to how the test would be applied.

Amendments 367 and 368 make minor technical amendments to section 66(3) that are required in consequence of amendment 363, which places the eligibility test in the bill. Amendment 366 provides that a civil partner of a person who is related to an eligible child can be a qualifying person for a kinship care order. That is a technical amendment to correct an oversight in the bill and to ensure compliance with equalities and human rights legislation.

Amendment 369 will insert a definition of “parent” into section 67 so that the term, when used in part 10 of the bill, has the same meaning as in part 1 of the Children (Scotland) Act 1995. That will remove a potential for misunderstanding. Parents will not be eligible for kinship care orders under section 65. However, kinship carers can have parental rights and responsibilities for a child, which might lead to confusion about their status. We must be clear that, despite having those rights and responsibilities, kinship carers are not considered to be parents in this context and are still therefore eligible to obtain a kinship care order if they are a qualifying person under section 65(2).

Jayne Baxter’s amendments 398 and 399 seek to add to the categories of person who can be a qualifying person for the purposes of obtaining a kinship care order those with a pre-existing relationship to or connection with the child, and to remove the order-making power that allows ministers to specify such other relationships to or connection with the child as is considered appropriate.

Section 65 is drafted in a way that ensures that we cover all eventualities and do not unnecessarily exclude people from being eligible to be kinship carers. We understand the concerns that section 65(2) is too wide and could result in someone with no effective relationship with a child becoming their kinship carer. However, section 65(2)(c) allows ministers to specify such other relationships to or connections with a child as are considered appropriate, and we intend to consult extensively before making such an order.

Also, it will be for a sheriff to determine whether it is appropriate to grant an order under section 11(1) of the Children (Scotland) Act 1995, a residence order or a guardianship order—in other words, a kinship care order—which we think is a sufficient safeguard and meets any concerns about the provision being too widely drawn. Therefore, we consider that amendments 398 and 399 are not necessary.

I ask the committee to support the amendments in my name and not to support amendments 398 and 399.

I move amendment 358.

**Jayne Baxter:** I am keen to ensure that we acknowledge the concern that the wording in section 65 is too wide and recognise the importance of a kinship carer being a person who knows the child. By stipulating a pre-existing relationship, amendment 398 highlights the importance of the child being accommodated with someone who understands their circumstances and background, is aware of their needs and is best placed to offer optimum care and support.

**Aileen Campbell:** Under the bill, ministers will be able to specify by order other relationships to or connections with a child that are considered appropriate for eligibility for a kinship care order. As I said, we intend to consult extensively with a wide range of interested parties before making such an order.

It will be for the sheriff to determine whether it is appropriate to grant an order under section 11(1) of the 1995 act, a residence order or a guardianship order. That is a sufficient safeguard, which meets any concerns about section 65(2) of the bill being too widely drawn. I therefore consider that Jayne Baxter’s amendments are unnecessary.

**Amendment 358 agreed to.**

Amendments 359 to 362 moved—[Aileen Campbell]—and agreed to.

**The Convener:** I remind members that, if amendment 363 is agreed to, amendment 397 will be pre-empted.
Amendment 363 moved—[Aileen Campbell]—and agreed to.

Section 64, as amended, agreed to.

Section 65—Orders which are kinship care orders

Amendment 364 moved—[Aileen Campbell]—and agreed to.

Amendment 398 moved—[Jayne Baxter].

The Convener: The question is, that amendment 398 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 398 disagreed to.

Amendment 399 moved—[Jayne Baxter].

The Convener: The question is, that amendment 399 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
McArthur, Liam (Orkney Islands) (LD)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 400 disagreed to.

Amendment 401 moved—[Jayne Baxter].

The Convener: The question is, that amendment 401 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 401 disagreed to.

Amendment 402 moved—[Jayne Baxter].

The Convener: The question is, that amendment 402 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 399 disagreed to.

Amendments 365 and 366 moved—[Aileen Campbell]—and agreed to.

Section 65, as amended, agreed to.
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 402 disagreed to.
Amendment 403 not moved.

Amendments 367 and 368 moved—[Aileen Campbell]—and agreed to.
Amendment 404 moved—[Jayne Baxter].

The Convener: The question is, that amendment 404 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 404 disagreed to.

Section 66, as amended, agreed to.

Section 67—Interpretation of Part 10

Amendment 369 moved—[Aileen Campbell]—and agreed to.

Section 67, as amended, agreed to.

Section 68—Scotland’s Adoption Register

The Convener: Amendment 370, in the name of the minister, is grouped with amendments 371 to 380. As members have been advised, it has been determined that rule 9.12.6(b) of standing orders applies to amendment 380, which means that—depending on the amendments that are lodged for consideration at next week’s meeting—it could contribute to the bill requiring a financial resolution under rule 9.12.4, which deals with powers to charge fees. Amendment 380 can be debated today, but I intend to end today’s consideration of amendments before the decision on it. How we deal with it at next week’s meeting will depend on whether any amendments to deal with powers to charge fees are lodged and whether a financial resolution is in place.

Aileen Campbell: Amendments 370 to 372 arose from the Delegated Powers and Law Reform Committee’s stage 1 report, in which it asked the Scottish Government to consider lodging stage 2 amendments to proposed new section 13A of the Adoption and Children (Scotland) Act 2007, as inserted by section 68 of the bill, to

“make provision about the purpose or intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain.”

Amendments 373, 374, 376, 379 and 380 also arose from the Delegated Powers and Law Reform Committee’s stage 1 report. That committee was concerned that any arrangements that authorise the Scottish ministers’ function in respect of Scotland’s adoption register to be carried out by a registration organisation and which provide for payments to be made to such an organisation should be clear and accessible to those who are affected by them. That committee recommended that we include provisions in the bill to require ministers to publish details of any organisation that they have authorised to carry out their functions in respect of the register and details of payments to be made to that organisation other than those by the Scottish ministers. As a result, amendment 374 will require the Scottish ministers to publish any arrangements that they make to authorise an organisation to perform their functions in respect of the register.

The amendments go even further in addressing the concerns of the Delegated Powers and Law Reform Committee about the accessibility of arrangements to impose liability for payment on persons other than the Scottish ministers, by clarifying the payment provisions in respect of the register. Amendment 373 will make it clear that any arrangements that the Scottish ministers make to authorise a registration organisation to run the adoption register may include provision for payments to be made by the Scottish ministers to that organisation.

The amendments go even further in addressing the concerns of the Delegated Powers and Law Reform Committee about the accessibility of arrangements to impose liability for payment on persons other than the Scottish ministers, by clarifying the payment provisions in respect of the register. Amendment 373 will make it clear that any arrangements that the Scottish ministers make to authorise a registration organisation to run the adoption register may include provision for payments to be made by the Scottish ministers to that organisation.

Amendment 380 will make new provision for regulations to prescribe the fees to be paid or other payments to be made by adoption agencies in relation to the register, which means that any payment made or fee paid by persons other than the Scottish ministers will be set out in subordinate legislation. Amendments 376, 379 and 380 will bring all the provisions about payments and fees in respect of the register together in one section for clarity. We consider that the amendments address the Delegated Powers and Law Reform Committee’s concerns.
Amendments 375 and 377 address concerns that the British Association for Adoption and Fostering and others expressed and which were highlighted in the Education and Culture Committee’s stage 1 report about the requirement in the bill for parental consent when information is provided about a child for Scotland’s adoption register.

The amendments do two things: they remove from the bill the requirement for adoption agencies to obtain consent before disclosing certain information for the register and they allow regulations to specify circumstances in which adoption agencies are not to provide information for the register—for example, when consent might be an issue. We consider it best that any circumstances in which information is not to be put on the register, such as when consent might be an issue, should be set out in regulations.

Those regulations will be subject to the affirmative parliamentary procedure, which will ensure that this important issue receives the appropriate level of scrutiny. We will work in partnership with key stakeholders, including BAAF, when developing the regulations, to ensure that Scotland’s adoption register can operate effectively and without unnecessary delays in finding permanent homes for some of our most vulnerable children.

Amendment 378 is a technical amendment that will ensure that a register that is maintained in respect of England, Wales or Northern Ireland—referred to in proposed new section 13D(2)(b)(ii) of the 2007 act, as inserted by section 68 of the bill—is correctly described as a register containing information about children who are suitable for adoption or prospective adopters instead of simply as a register containing “information about children who are suitable for adoption”.

I hope that the committee will support the amendments. I move amendment 370.

Amendment 370 agreed to.

Amendments 371 to 379 moved—[Aileen Campbell]—and agreed to.
4th Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 3 Schedule 1
Sections 4 to 30 Schedule 2
Sections 31 to 50 Schedule 3
Sections 51 to 76 Schedule 4
Sections 77 to 80 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 68

Aileen Campbell

380 In section 68, page 35, line 15, at end insert—

<13DA Fees and other payments

Regulations made under section 13A(2) may prescribe—

(a) a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1),

(b) a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4),

(c) such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.>

After section 68

Michael Russell

405 After section 68, insert—

<PART

SCHOOL CLOSURE PROPOSALS, ETC.

References to the Schools (Consultation) (Scotland) Act 2010

In this Part, references to the 2010 Act are to the Schools (Consultation) (Scotland) Act 2010.>

Liz Smith

406 After section 68, insert—
<Restriction on closure proposals
After section 2 of the 2010 Act, insert—

“2A Restriction on closure proposals

(1) This section applies where a decision is made not to implement a closure proposal in relation to a school.

(2) For the purposes of subsection (1)—

(a) a decision not to implement a closure proposal is—

(i) a decision not to implement the proposal made by the education authority following the publication of a consultation report in relation to the proposal (whether or not the proposal was called-in under section 15),

(ii) a decision of a School Closure Review Panel in relation to the proposal under section 17C(1)(a),

(b) such a decision is made by a School Closure Review Panel on the day on which the Panel notifies the decision to the education authority in pursuance of section 17C(5).

(3) The education authority may not publish a proposal paper concerning a further closure proposal in relation to the school during the period of 5 years beginning with the day on which the decision is made unless there is a significant change in the school’s circumstances.”.>

Michael Russell

407 After section 68, insert—

<Financial implications of closure proposals
In section 4 of the 2010 Act (proposal paper), after subsection (2) insert—

“(2A) Where a proposal paper relates to a closure proposal, it must also contain information about the financial implications of the proposal.”.>

Michael Russell

408 After section 68, insert—

<Special provision for rural school closure proposals
(1) Before section 12 of the 2010 Act (factors for rural school closure), insert—

“11A Presumption against rural school closure

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The education authority may not decide to implement the proposal (wholly or partly) unless the authority—

(a) has complied with sections 12, 12A and 13, and

(b) having so complied, is satisfied that implementation of the proposal is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).”.>
(2) In that section—
   (a) subsection (3)(a) is repealed,
   (b) in subsection (4), after “(3)(b)” insert “and sections 12A(2)(c)(ii) and 13(5)(b)(ii)”,
   (c) in subsection (5), after “(3)(c)” insert “and sections 12A(2)(c)(iii) and 13(5)(b)(iii)”.

(3) After that section, insert—

‘12A Preliminary requirements in relation to rural school closure

(1) This section applies where an education authority is formulating a closure proposal as respects a rural school.

(2) The authority must—
   (a) identify its reasons for formulating the proposal,
   (b) consider whether there are any reasonable alternatives to the proposal as a response to those reasons,
   (c) assess, for the proposal and each of the alternatives to the proposal identified under paragraph (b) (if any)—
      (i) the likely educational benefits in consequence of the implementation of the proposal, or as the case may be, alternative,
      (ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,
      (iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(3) For the purposes of this section and section 13, reasonable alternatives to the proposal include (but are not limited to) steps which would not result in the school or a stage of education in the school (within the meaning of paragraph 12 of schedule 1) being discontinued.

(4) The authority may not publish a proposal paper in relation to the proposal unless, having complied with subsection (2), it considers that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(5) In this section and section 13, the references to the reasons for the proposal are references to the reasons identified by the education authority under subsection (2)(a).”.

(4) For section 13 of the 2010 Act substitute—

‘13 Additional consultation requirements

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The proposal paper must additionally—
   (a) explain the reasons for the proposal,
   (b) describe what (if any) steps the authority took to address those reasons before formulating the proposal,
(c) if the authority did not take such steps, explain why it did not do so,

(d) set out any alternatives to the proposal identified by the authority under section 12A(2)(b),

(e) explain the authority’s assessment under section 12A(2)(c),

(f) explain why the authority considers, in light of that assessment, that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(3) The notice to be given to relevant consultees under section 6(1) must—

(a) give a summary of the alternatives to the proposal set out in the proposal paper,

(b) state that written representations may be made on those alternatives (as well as on the proposal), and

(c) state that written representations on the proposal may suggest other alternatives to the proposal.

(4) In sections 8(4)(c), 9(4) and 10(2)(a), the references to written representations on the proposal include references to written representations on the alternatives to the proposal set out in the proposal paper.

(5) When carrying out its review of the proposal under section 9(1), the education authority is to carry out—

(a) for the proposal and each of the alternatives to it set out in the proposal paper (if any), a further assessment of the matters mentioned in section 12A(2)(c)(i) to (iii), and

(b) an assessment, in relation to any other reasonable alternative to the proposal suggested in written representations on the proposal, of—

(i) the likely educational benefits in consequence of the implementation of the alternative,

(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,

(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(6) The consultation report must additionally explain—

(a) the education authority’s assessment under subsection (5)(a),

(b) how that assessment differs (if at all) from the authority’s assessment under section 12A(2)(c),

(c) the authority’s assessment under subsection (5)(b).”.

(5) In section 1 of the 2010 Act (overview of key requirements), after subsection (4) insert—

“(4A) In the case of a closure proposal in relation to a rural school, the education authority must also comply with—

(a) the preliminary requirements set out in section 12A when it is formulating the proposal,
(b) the additional consultation requirements set out in section 13.”;

Liz Smith

408A As an amendment to amendment 408, line 10, leave out <is satisfied> and insert <has demonstrated>.

Michael Russell

409 After section 68, insert—

<Call-in of closure proposals

(1) In section 15 of the 2010 Act (call-in of closure proposals)—
(a) in each of subsections (3), (4) and (6) for “6” substitute “8”,
(b) subsection (5) is repealed.
(2) Section 16 of the 2010 Act is repealed.
(3) In section 17 of the 2010 Act (grounds for call-in etc.)—
(a) in subsection (3)—
(i) the word “or” immediately following paragraph (a) is repealed,
(ii) paragraph (b) is repealed,
(b) after that subsection insert—
“(3A) HMIE must provide the Scottish Ministers with such advice as to the educational aspects of a closure proposal as the Scottish Ministers may reasonably require of HMIE for the purpose of the Scottish Ministers’ consideration of whether to issue a call-in notice.”.
(4) After section 17 of the 2010 Act insert—

“17A Referral to the Convener of the School Closure Review Panels

(1) This section applies where a call-in notice is issued as respects a closure proposal.
(2) The Scottish Ministers must refer the proposal to the Convener of the School Closure Review Panels.
(3) The Convener must, within the period of 7 days beginning with the day on which the call-in notice is issued, constitute a School Closure Review Panel to review the proposal under section 17B(1).
(4) The education authority may not implement the proposal (wholly or partly)—
(a) unless the Panel grants its consent to it under section 17C(1), and
(b) until—
(i) the period mentioned in section 17D(2)(c) has expired without any appeal to the sheriff being made, or
(ii) where such an appeal is made, it is abandoned or the sheriff confirms the Panel’s decision.
(5) Schedule 2A makes further provision about the Convener and School Closure Review Panels.
In this Act—

(a) “the Convener” is the Convener of the School Closure Review Panels,

(b) a “School Closure Review Panel” is a School Closure Review Panel constituted under subsection (3).

### 17B Review by Panel

(1) A School Closure Review Panel must consider both of the following in relation to a closure proposal—

(a) whether the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,

(b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(2) The education authority must provide the Panel with such information in connection with the proposal as the Panel may reasonably require of it for the purpose of subsection (1).

(3) HMIE must provide the Panel with such advice as to the educational aspects of the proposal as the Panel may reasonably require of them for the purpose of subsection (1).

(4) The Panel may request such other information and advice from any other person as it may reasonably require for the purpose of subsection (1).

(5) The Scottish Ministers may by regulations make further provision as to the procedures to be followed by the Panel when carrying out a review under subsection (1).

### 17C Decision following review

(1) Following a review of a closure proposal under section 17B(1), the School Closure Review Panel may—

(a) refuse to consent to the proposal,

(b) refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation,

(c) grant consent to the proposal—

   (i) subject to conditions, or

   (ii) unconditionally.

(2) The Panel must give reasons for its decision.

(3) Where the Panel remits the proposal to the education authority under subsection (1)(b), the Panel may specify any steps in the process provided for in sections 1 to 11 and (in relation to a closure proposal as respects a rural school) 12A that the authority must take again in relation to the proposal before making a fresh decision.

(4) The Panel may refuse to consent to the proposal under subsection (1)(a) or (b) only if the Panel finds either or both of the following—
(a) that the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,

(b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(5) The Panel must notify the education authority of its decision within the period of 8 weeks beginning with the day on which the Panel is constituted unless (before the end of that period) the Panel issues a notice to the education authority—

(a) stating that the Panel does not intend to notify the decision within that period,

(b) specifying the reason why that is so, and

(c) indicating the likely date for notifying the decision.

(6) Where the Panel issues a notice under subsection (5), it must notify the education authority of its decision within the period of 16 weeks beginning with the day on which the Panel is constituted.

(7) After the Panel notifies the education authority of its decision, the Panel must—

(a) notify the Scottish Ministers of the decision, and

(b) publish notice of the decision in such manner as it considers appropriate.

(8) Where the Panel grants consent to the proposal subject to conditions, the education authority must comply with the conditions.

17D Appeal against decision of the Panel

(1) An appeal may be made to the sheriff against a decision of a School Closure Review Panel under section 17C(1) by—

(a) the education authority,

(b) a relevant consultee in relation to the closure proposal.

(2) An appeal under subsection (1)—

(a) may be made only on a point of law,

(b) must be made by way of summary application,

(c) must be made within the period of 14 days beginning with the day on which the Panel publishes notice of the decision under section 17C(7)(b).

(3) In the appeal, the sheriff may—

(a) confirm the decision, or

(b) quash the decision and refer the matter back to the Panel.

(4) The sheriff’s determination of the appeal is final.”.

(5) After schedule 2 to the 2010 Act, insert—
“SCHEDULE 2A
(introduced by section 17A)

SCHOOL CLOSURE REVIEW PANELS

Convener of the School Closure Review Panels

1 (1) There is established the office of the Convener of the School Closure Review Panels.

(2) The Scottish Ministers must appoint a person to hold that office.

(3) A person so appointed—

(a) is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown,

(b) subject to any provision made in regulations under sub-paragraph (9), holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(4) The Convener—

(a) may delegate a function conferred on the Convener by this Act,

(b) must delegate such a function if required to do so by directions issued under paragraph 4.

(5) Nothing in sub-paragraph (4)(a) prevents the Convener from carrying out any function delegated under that sub-paragraph.

(6) Sub-paragraph (7) applies during any period when—

(a) the office of the Convener is vacant, or

(b) the person holding that office is unable to perform the functions conferred on the office because the person is incapacitated.

(7) The Scottish Ministers may appoint a person to act as Convener during that period.

(8) A person appointed to act as Convener under sub-paragraph (7)—

(a) is to be appointed on such terms and conditions as the Scottish Ministers may determine,

(b) while acting as such, is to be treated for all purposes, except those of any regulations made under sub-paragraph (9), as the Convener.

(9) The Scottish Ministers may by regulations make provision for or about—

(a) eligibility for, and disqualification from, appointment under sub-paragraph (2),

(b) tenure and removal from office of a person appointed under sub-paragraph (2),

(c) payment of—

(i) salary, fees, expenses and allowances to such a person,

(ii) pensions, allowances or gratuities (including by way of compensation for loss of office) to, or in respect of, such a person,

(d) such other matters in relation to the appointment of the Convener as the Scottish Ministers consider appropriate.
Panel members

2 (1) The Convener is to appoint such number of persons as the Convener considers appropriate to be eligible to serve as members of a School Closure Review Panel.

(2) Each Panel is to consist of 3 of the persons appointed under sub-paragraph (1).

(3) It is for the Convener to select—
   (a) the members of the Panel,
   (b) one of those members to chair the Panel.

(4) The Convener is to make appropriate arrangements for the training of persons appointed under sub-paragraph (1).

(5) The Scottish Ministers may by regulations make provision for or about—
   (a) eligibility for, and disqualification from, appointment under sub-paragraph (1),
   (b) tenure and removal from office of persons so appointed,
   (c) the process for the selection of Panel members under sub-paragraph (3),
   (d) payment of expenses, fees and allowances to persons selected under that sub-paragraph,
   (e) such other matters as the Scottish Ministers consider appropriate in relation to—
      (i) the appointment of persons under sub-paragraph (1),
      (ii) the selection of Panel members under sub-paragraph (3).

Property, staff and services

3 (1) The Scottish Ministers may—
   (a) provide, or ensure the provision of, such property, staff and services to the Convener as they consider necessary or expedient in connection with the exercise of the Convener’s functions,
   (b) pay grants to the Convener for the purposes of enabling the Convener to employ staff and obtain services in connection with the exercise of the Convener’s functions.

(2) The Convener is to provide a School Closure Review Panel with such staff and services as the Convener considers necessary or expedient in connection with the exercise of the Panel’s functions.

Directions

4 (1) The Scottish Ministers may issue directions to the Convener as to the exercise of the Convener’s functions (and the Convener must comply with them).

(2) Directions under sub-paragraph (1) may vary or revoke earlier such directions.

(3) The Scottish Ministers must publish any directions issued under sub-paragraph (1) in such manner as they consider appropriate.
Reports

5 (1) As soon as practicable after the end of each calendar year, the Convener must prepare a report on—

(a) the exercise of the Convener’s functions during that year, and

(b) the exercise of the functions of any School Closure Review Panel which has carried out a review under section 17B during that year.

(2) A report prepared under sub-paragraph (1) must be—

(a) submitted to the Scottish Ministers, and

(b) published in such manner as the Convener considers appropriate.”.

(6) In section 4 of the 2010 Act (proposal paper), in subsection (2) for “17” substitute “17D”.

(7) In section 19 of the 2010 Act (guidance)—

(a) the existing text becomes subsection (1),

(b) after that subsection insert—

“(2) The Convener, and a School Closure Review Panel, must have regard to any such guidance in exercising their functions under this Act.”.

(8) In section 20 of the 2010 Act (regulations)—

(a) in subsection (3) for “17” substitute “17D”,

(b) after subsection (6) insert—

“(7) Regulations under section 17B(5) and paragraphs 1(9) and 2(5) of schedule 2A—

(a) may make different provision for different purposes,

(b) may make supplemental, incidental, consequential, transitional, transitory or saving provision,

(c) are subject to the negative procedure.”.

(9) In section 21(2) of the 2010 Act (definitions)—

(a) after the definition of “consultation period” insert—

“‘the Convener’ is defined in section 17A(6),”;

(b) after the definition of “rural school” insert—

“‘School Closure Review Panel’ is defined in section 17A(6)”.

(10) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), before paragraph 21C insert—

“21ZC The Convener of the School Closure Review Panels.”.

(11) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—

(a) before paragraph 62C insert—

“62ZC The Convener of the School Closure Review Panels.”;

(b) after paragraph 76 insert—
“76A A School Closure Review Panel constituted under section 17A(3) of the Schools (Consultation) (Scotland) Act 2010.”.

(12) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), before the cross-heading “Executive bodies” insert—
   “the Convener of the School Closure Review Panels”.

Liam McArthur

409A As an amendment to amendment 409, line 78, at end insert—
   <( ) Where the Panel does not find that the education authority has—
   (a) failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal, or
   (b) failed to take proper account of a material consideration relevant to its decision to implement the proposal,
   the Panel may include in the notification to the authority of its decision a statement that, in the Panel’s view, no call-in notice should have been issued in relation to the proposal.>

Before section 69

Aileen Campbell

410 Before section 69, insert—
   <Safeguarders: exceptions to duty to prepare report on appointment
   In section 33 of the 2011 Act—
   (a) in subsection (1)(a), after “(2)” insert “or (3)”,
   (b) after subsection (2), insert—
   “(3) This subsection applies where the children’s hearing was arranged under section 45, 46, 50, 96, 126 or 158.”.>

Aileen Campbell

411 Before section 69, insert—
   <Maximum period of child protection order
   In each of paragraphs (c) and (d) of section 54 of the 2011 Act, after “day” insert “after the day on which”.>

Aileen Campbell

412 Before section 69, insert—
   <Power to determine that deeming of person as relevant person to end
   (1) The 2011 Act is amended as follows.
   (2) In section 79—
(a) in subsection (1), for “This section applies” substitute “Subsections (2) to (5) apply”;

(b) after subsection (1), insert—

“(1A) Subsection (5A) applies (in addition to subsections (2) to (5)) where the children’s hearing is—

(a) a subsequent children’s hearing under Part 11, or

(b) held for the purposes of reviewing a compulsory supervision order.”;

(c) after subsection (5), insert—

“(5A) The Principal Reporter—

(a) must refer the matter of whether an individual deemed to be a relevant person by virtue of section 81 should continue to be deemed to be a relevant person in relation to the child for determination by a pre-hearing panel if requested to do so by—

(i) the individual so deemed,

(ii) the child, or

(iii) a relevant person in relation to the child,

(b) may refer that matter for determination by a pre-hearing panel on the Principal Reporter’s own initiative.”.

(3) After section 81, insert—

“81A Determination that deeming of person as relevant person to end

(1) This section applies where a matter mentioned in section 79(5A)(a) is referred to a meeting of a pre-hearing panel.

(2) Where the matter is referred along with any other matter, the pre-hearing panel must determine it before determining the other matter.

(3) The pre-hearing panel must determine that the individual is no longer to be deemed to be a relevant person if it considers that the individual does not have (and has not recently had) a significant involvement in the upbringing of the child.

(4) Where the pre-hearing panel makes a determination as described in subsection (3), section 81(4) ceases to apply in relation to the individual.

(5) Where, by virtue of section 80(3), the children’s hearing is to determine a matter mentioned in section 79(5A)(a), references in subsections (2) to (4) to the pre-hearing panel are to be read as references to the children’s hearing.”.

Aileen Campbell

413 Before section 69, insert—

<Grounds hearing: non-acceptance of facts supporting ground

In section 90 of the 2011 Act—

(a) in subsection (1), for paragraph (a) substitute—

“(a) explain to the child and each relevant person in relation to the child—

(i) each section 67 ground specified in the statement of grounds, and
(ii) the supporting facts in relation to that ground,”,

(b) after subsection (1) insert—

“(1A) In relation to each ground that a person accepts applies in relation to the child, the chairing member must ask the person whether the person accepts each of the supporting facts.

(1B) Where under subsection (1A) any person does not accept all of the supporting facts in relation to a ground, the ground is taken for the purposes of this Act to be accepted at the grounds hearing only if the grounds hearing considers that—

(a) the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child, and

(b) it is appropriate to proceed in relation to the ground on the basis of only those supporting facts which are accepted by the child and each relevant person.

(1C) Where a ground is taken to be accepted for the purposes of this Act by virtue of subsection (1B), the grounds hearing must amend the statement of grounds to delete any supporting facts in relation to the ground which are not accepted by the child and each relevant person.

(1D) In this section, “supporting facts”, in relation to a section 67 ground, means facts set out in relation to the ground by virtue of section 89(3)(b).”.

Aileen Campbell

414 Before section 69, insert—

<Failure of child to attend grounds hearing: power to make interim order

In section 95 of the 2011 Act, after subsection (2) insert—

“(3) Subsection (4) applies where under subsection (2) the grounds hearing requires the Principal Reporter to arrange another grounds hearing.

(4) If the grounds hearing considers that the nature of the child’s circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.

(5) An interim compulsory supervision order made under subsection (4) may not include a measure of the kind mentioned in section 83(2)(f)(i).”.

Aileen Campbell

415 Before section 69, insert—

<Limit on number of further interim compulsory supervision orders

In section 96(4) of the 2011 Act, for the words from “the effect” to the end substitute “it would be the third such order made under subsection (3) in consequence of the same interim compulsory supervision order made under section 93(5)”.

Aileen Campbell
Section 69

Aileen Campbell

416 In section 69, page 35, line 31, leave out <Children’s Hearings (Scotland) Act 2011> and insert <2011 Act>

Section 70

Aileen Campbell

417 In section 70, page 36, line 31, leave out <Children’s Hearings (Scotland) Act 2011> and insert <2011 Act>

After section 70

Aileen Campbell

418 After section 70, insert—

<Interpretation of Part 12

In this Part, “the 2011 Act” means the Children’s Hearings (Scotland) Act 2011.>

Section 71

Aileen Campbell

419 In section 71, page 37, line 7, at end insert—

<( ) An appeal under subsection (1) may be made jointly by—

(a) the child and one or more relevant persons in relation to the child; or

(b) two or more relevant persons in relation to the child.

( ) An appeal must not be held in open court.>

Aileen Campbell

420 In section 71, page 37, line 23, leave out from <has> to <2011;> in line 30 and insert <is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011 (including anyone deemed to be a relevant person in relation to the child by virtue of section 81(3), 160(4)(b) or 164(6) of that Act);>

After section 71

Aileen Campbell

421 After section 71, insert—
Power of Scottish Ministers to modify circumstances in which children’s legal aid to be made available

(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) The title of section 28L becomes “Power of Scottish Ministers to extent or restrict types of proceedings before children’s hearings in which children’s legal aid to be available”.

(3) After section 28L, insert—

“28LA Power of Scottish Ministers to provide for children’s legal aid to be available to other persons in relation to court proceedings

(1) The Scottish Ministers may by regulations modify this Part so as to—

(a) provide that children’s legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F,

(b) vary any availability provided by virtue of paragraph (a), or

(c) remove any availability provided by virtue of paragraph (a).

(2) If regulations are made making children’s legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children’s legal aid is made available.

(3) The conditions are—

(a) that it is in the best interests of the child that children’s legal aid be made available,

(b) that it is reasonable in the particular circumstances of the case that the child should receive children’s legal aid,

(c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and

(d) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.

(4) If regulations are made making children’s legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children’s legal aid is made available.

(5) The conditions are—

(a) that it is reasonable in the particular circumstances of the case that the person should receive children’s legal aid,

(b) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person, and
(c) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.”.

Aileen Campbell

422 After section 71, insert—

<Licensing of child performances
Extension of licensing of child performances to children under 14

Section 38 of the Children and Young Persons Act 1963 (licences for performances by children under 14 not to be granted except for certain dramatic or musical performances) is repealed.>

Alex Johnstone

433 After section 71, insert—

<Sex education in schools
Sex education in schools

(1) A parent of a child who is aged under 16 and in attendance at a public school, may, by making a request to the head teacher of the school which the child attends, withdraw the child from any programme of sex education provided by the school.

(2) A head teacher to whom a request under subsection (1) is made must make arrangements for the child to whom the request relates to be provided with alternative educational provision at the times when the child would otherwise be attending the programme of sex education.>

Liam McArthur

434 After section 71, insert—

<Additional support needs
Additional support needs

(1) The Education (Additional Support for Learning) (Scotland) Act 2004 is amended as follows.

(2) In section 1(3)(b), for “in the circumstances” substitute—

“(i) to promote the development of the personality, talents and mental and physical abilities of the child to their fullest potential, 

(ii) to prevent new additional support needs from arising, and 

(iii) to prevent existing additional support needs from becoming more severe or longer lasting.”.

(3) In section 4(1)(a)—

(a) the words from “each” to “responsible,” become sub-paragraph (i), and 

(b) after that sub-paragraph, insert “and 

(ii) each child under school age belonging to the authority’s area,”.

(4) In section 5, for subsections (2) and (3) substitute—
“(2) Every education authority must provide such additional support as is appropriate for each child belonging to the authority’s area who—

(a) is under school age (other than a prescribed pre-school child), and

(b) has or appears to have additional support needs.

(3) Every education authority must provide such information and support as is appropriate to parents or primary carers of children falling within subsection (2).”.

(5) In section 6(1), after “among” insert “children under school age belonging to the authority’s area and”.

(6) In section 27 (2)—

(a) after paragraph (a) insert—

“(aa) the primary prevention of such circumstances or factors,

(ab) the mitigation of such circumstances or factors through the earliest appropriate intervention,”,

(b) in paragraph (b) after “section 2” insert “including for children under school age belonging to that authority’s area”.

(7) In section 27A(1), after paragraph (a) insert—

“(aa) the number of school age children belonging to that education authority’s area and appearing to have additional support needs,”.

Mary Fee

435 After section 71, insert—

<Gender recognition

Minimum age of persons applying for gender recognition certificate

(1) The Scottish Ministers must, for the purpose mentioned in subsection (2), review the requirement in section 1(1) of the Gender Recognition Act 2004 that a person making an application for a gender recognition certificate must be aged at least 18.

(2) That purpose is to consider whether the age at which persons who are ordinarily resident in Scotland may apply for a gender recognition certificate should be lowered (to 16 or to 17).

(3) The Scottish Ministers must, in conducting the review, consult such persons as they consider appropriate.

(4) The Scottish Ministers must, no later than 1 July 2015, publish a report of the review (in such manner as they consider appropriate).

(5) The Scottish Ministers may, if they consider it appropriate in light of the report of the review, by order modify section 1(1) of the Gender Recognition Act 2004 so as to lower to 16 or to 17 the age at which a person who is ordinarily resident in Scotland may apply for a gender recognition certificate.”>
Section 72

Michael Russell

423 Leave out section 72

Section 73

Aileen Campbell

381 In section 73, page 38, line 6, leave out <or 22> and insert <, 22 or 26A>

Aileen Campbell

382 In section 73, page 38, line 8, after <children> insert <and young people>

Aileen Campbell

383 In section 73, page 38, line 11, after <child> insert <or young person>

Aileen Campbell

384 In section 73, page 38, line 13, at end insert <or young person>

Aileen Campbell

385 In section 73, page 38, line 14, after <child> insert <or young person>

After section 73

Jayne Baxter

254 After section 73, insert—

<National speech, language and communication strategy for children and young people>

(1) The Scottish Ministers must, no later than one year after this section comes into force, lay a national speech, language and communication strategy for children and young people before the Scottish Parliament.

(2) The strategy must, in particular, set out—

(a) the Scottish Ministers’ objectives for speech, language and communication for children and young people,

(b) their proposals for meeting those objectives,

(c) the timescales over which those proposals and policies are expected to take effect.

(3) Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with—

(a) children and young people, including children and young people with speech, language and communication needs,
(b) the parents of children and young people with speech, language and communication needs,
(c) persons working for, and on behalf of, children and young people, including children and young people with speech, language and communication needs,
(d) the providers of services to children with speech, language and communication services in relation to those needs,
(e) such others persons as they consider appropriate.

(4) The strategy must be accompanied by a report setting out—
(a) the consultation process undertaken in order to comply with subsection (3), and
(b) the ways in which the views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).

(5) The Scottish Ministers must, no later than—
(a) 5 years after laying a strategy before the Scottish Parliament under subsection (1), and
(b) the end of every subsequent period of 5 years,
lay a revised strategy before the Scottish Parliament; and subsections (2) to (4) apply to a revised strategy as they apply to a strategy laid under subsection (1).>
(a) means sharing information in a way that everybody can understand,
(b) relates to all modes of communication, and
(c) requires that service providers—
   (i) recognise that people understand and express themselves in different ways,
   and
   (ii) provide information to people in ways which meet their needs.

Aileen Campbell

386 In section 75, page 39, line 21, after <being> insert <or becoming>

Schedule 4

Aileen Campbell

424 In schedule 4, page 44, line 15, leave out <(r)> and insert <(s)>

Aileen Campbell

425 In schedule 4, page 44, line 16, leave out <(s)> and insert <(t)>

Aileen Campbell

426 In schedule 4, page 44, line 37, at end insert—
<Legal Aid (Scotland) Act 1986
   (1) The Legal Aid (Scotland) Act 1986 is amended as follows.
   (2) In section 28F(1)(b), after “deemed” insert “, or is no longer to be deemed,”.
   (3) In section 37(2), after “28L(1) or (8),” insert “28LA(1),”.

Aileen Campbell

387 In schedule 4, page 45, line 8, after <2011;> insert—
   <( ) Part 9 or 10 of the Children and Young People (Scotland) Act 2014;>

Aileen Campbell

427 In schedule 4, page 45, line 9, leave out <(s)> and insert <(t)>

Aileen Campbell

428 In schedule 4, page 45, line 16, leave out <any> and insert <the>

Aileen Campbell

429 In schedule 4, page 45, line 16, after <in> insert <, or any other child connected (in any way) with,>
Aileen Campbell

430 In schedule 4, page 45, line 23, leave out <In section 57A(16) of the Criminal Procedure (Scotland) Act 1995,> and insert—

<(  ) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
(  ) In section 44(11), in the definition of “secure accommodation” for “2000 Act” in each place where it occurs substitute “Care Standards Act 2000”.
(  ) In section 57A(16),>

Aileen Campbell

431 In schedule 4, page 45, line 24, at end insert—

<Education Act 1996
Paragraph 11 of Schedule 37 to the Education Act 1996 is repealed.>

Liam McArthur

436 In schedule 4, page 46, line 10, at end insert—

<(  ) In section 6(3)(a) after “parent,” insert “or the child’s named person (unless the child’s parent does not consent),”.
(  ) In section 8(2)(b) after “parent,” insert “or the child’s named person (unless the child’s parent does not consent),”.
(  ) In section 26(1)(e) after sub-paragraph (i) insert—

“(ia) to every named person for children under school age,”.>

Liam McArthur

437 In schedule 4, page 46, line 14, at end insert—

<(  ) after the definition of “local authority” insert—

““named person” has the same meaning as in Part 4 of the Children and Young People (Scotland) Act 2013;”,.>

Aileen Campbell

432 In schedule 4, page 46, line 27, leave out <In schedule 6 to the Children’s Hearings (Scotland) Act 2011> and insert <The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(  ) In section 80(1), after “(2)” insert “or (5A)”.
(  ) In section 81—

(a) in subsection (2), after “must” insert “, unless that other matter is a matter mentioned in section 79(5A)(a),”,
(b) in subsection (5)(b), after sub-paragraph (iv) insert—

“(iva) section 81A,”.
(  ) In section 94(3), for the second “of” substitute “given in compliance with section 90(1) in relation to”.
(  ) In section 105, after subsection (1) insert—
“(1A) The reference in subsection (1)(b) to the ground being accepted is, in relation to a ground which was not accepted by virtue of section 90(1B), a reference to all of the supporting facts in relation to the ground being accepted.”.

( ) In section 106, after subsection (1) insert—
“(1A) The reference in subsection (1)(b) to the ground being accepted is, in relation to a ground which was not accepted by virtue of section 90(1B), a reference to all of the supporting facts in relation to the ground being accepted.”.

( ) In section 142, after subsection (1) insert—
“(1A) But this section does not apply where the matter of whether the individual should continue to be deemed to be a relevant person in relation to the child—
(a) has been determined by a meeting of a pre-hearing panel held in relation to the children’s hearing, or
(b) is, by virtue of section 80(3), to be determined by the children’s hearing.”.

( ) In section 160, for subsection (1)(a) substitute—
“(a) a determination of a pre-hearing panel or a children’s hearing that an individual—
(i) is or is not to be deemed a relevant person in relation to a child,
(ii) is to continue to be deemed, or is no longer to be deemed, a relevant person in relation to a child.”.

( ) In section 202(1), after the definition of “super-affirmative procedure” insert—
““supporting facts” has the meaning given by section 90(1D),”.

( ) In schedule 6,>
Aileen Campbell
315 In section 77, page 40, line 19, at end insert—
   <section 52(2)>

Aileen Campbell
388 In section 77, page 40, line 19, at end insert—
   <section 61(2)(b)>

Aileen Campbell
389 In section 77, page 40, line 19, at end insert—
   <section 64(4)(b)>

Mary Fee
438 In section 77, page 40, line 19, at end insert—
   <section (Minimum age of persons applying for gender recognition certificate)>

After section 77

Aileen Campbell
118 After section 77, insert—
   <Guidance and directions
     (1) Any power of the Scottish Ministers to issue guidance or directions under this Act may be exercised—
        (a) to issue guidance or directions generally or for particular purposes,
        (b) to issue different guidance or directions to different persons or otherwise for different purposes.
     (2) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under this Act.
     (3) In subsection (2)—
        (a) the reference to guidance includes revision of guidance,
        (b) the reference to directions includes revision and revocation of directions.>
4th Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the fourth day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

**School closures**
405, 406, 407, 408, 408A, 409, 409A, 423

**Children’s hearings**
410, 411, 412, 413, 414, 415, 416, 417, 418, 432

**Appeal against detention of child in secure accommodation**
419, 420, 430

**Children’s legal aid**
421

**Licensing of child performances**
422, 431

**Sex education in schools**
433

**Amendments to Education (Additional Support for Learning) (Scotland) Act 2004**
434, 436, 437

**Minimum age of persons applying for gender recognition**
435, 438

**Guidance for voluntary organisations**
82
Minor and consequential modifications of enactments
424, 425, 426, 387, 427, 428, 429

Amendments already debated

**Speech, language and communication**
With 216 (on Day 1) – 254, 255, 256

**Guidance and directions**
With 95 (on Day 1) – 118

**Default powers in relation to children’s services planning**
With 108 (on Day 1) – 117

**Assistance etc. in relation to child’s plan**
With 286 (on Day 2) – 311

**Order specifying eligible pre-school children: procedure**
With 341 – 313

**Corporate parents and their responsibilities**
With 303 – 315

**Looked after children: aftercare, continuing care and period for which corporate parenting duties apply etc.**
With 308 – 381, 382, 383, 384, 385, 314

**Counselling and other support for certain children, parents etc.**
With 332 – 386, 388

**Persons eligible to receive kinship care assistance**
With 358 – 389

**Adoption register**
With 370 – 380
Present:

George Adam Jayne Baxter
Colin Beattie Marco Biagi (Committee Substitute)
Neil Bibby (Deputy Convener) Stewart Maxwell (Convener)
Joan McAlpine Liam McArthur
Liz Smith

Also present: Mary Fee, Alex Johnstone, Mike MacKenzie

Apologies were received from Clare Adamson.

**Children and Young People (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 4).


The following amendments were agreed to (by division)—
406 (For 7, Against 2, Abstentions 0)
408 (For 7, Against 0, Abstentions 2)
409 (For 7, Against 2, Abstentions 0)

The following amendments were disagreed to (by division)—
254 (For 2, Against 6, Abstentions 0)
255 (For 2, Against 6, Abstentions 0)
82 (For 3, Against 4, Abstentions 0)
256 (For 1, Against 6, Abstentions 0)

The following amendments were moved and, no member having objected, withdrawn: 433, 434 and 435.

The following amendments were not moved: 408A, 409A, 436, 437 and 438.

The following provisions were agreed to without amendment: sections 74, 76, 78, 79 and 80 and the long title.

The following provisions were agreed to as amended: sections 68, 69, 70, 71, 73 and 75, schedule 4 and section 77.
The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament
Education and Culture Committee
Tuesday 21 January 2014

[The Convener opened the meeting at 09:52]

Children and Young People (Scotland) Bill: Stage 2

The Convener (Stewart Maxwell): Good morning and welcome to the third meeting in 2014 of the Education and Culture Committee. I remind everyone present to switch off mobile phones and other electronic devices because they affect the broadcasting system.

Today is the fourth and final day of stage 2 of the Children and Young People (Scotland) Bill. I welcome to the meeting Michael Russell, who is the Cabinet Secretary for Education and Lifelong Learning, and his accompanying officials. I remind the officials that they are not permitted to participate in the formal proceedings—I am sure that they are well aware of that fact.

Some additional members will be coming along this morning to move amendments and get involved in our discussions. Clare Adamson is absent, but has been replaced by her substitute Marco Biagi. I know that Mr Biagi has another appointment, but he will stay with us for as long as possible; I thank him for coming along this morning. The Minister for Children and Young People will join us after we have debated the amendments on school closures.

Section 68—Scotland’s Adoption Register

The Convener: I start by calling amendment 380. As members know, the Presiding Officer has determined that rule 9.12.6(B) applies to this amendment. However, as no further amendments dealing with powers to charge fees have been lodged and as this is the final day of stage 2 consideration, we are able to dispose of amendment 380 according to normal marshalled order.

Amendment 380 moved—[Michael Russell]—and agreed to.

Section 68, as amended, agreed to.

After section 68

The Convener: Amendment 405, in the name of the cabinet secretary, is grouped with amendments 406, 407, 408, 408A, 409, 409A and 423.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Thank you very much, convener, and thank you for inviting me before the committee to discuss these amendments. Unfortunately, given the amendments that I will be covering, I will have to speak for a reasonable length of time, but I hope that the committee will bear with me.

Amendment 405 sets the scene for the substantive package of amendments on school closures that has been lodged in my name, by seeking to insert a new part into the bill and by making it clear that any references to “the 2010 act” in the part are to the Schools (Consultation) (Scotland) Act 2010.

I think that we are all familiar with the issues here. School closures are emotive and disruptive events for the children, parents and communities who are affected by them, and it is clear that the 2010 act has not been operating satisfactorily either for those who are affected or for education authorities. The commission on the delivery of rural education, which was jointly established by the Government and the Convention of Scottish Local Authorities, was charged with examining the 2010 act. Its report made a number of recommendations for change, all of which bar one were accepted by the Government. The amendments that we are debating today will implement many of those recommendations. I add that some of the recommendations do not require legislation.

The commission’s remit was to consider rural education; amendment 408 applies to rural schools only. However, the other amendments in my name apply to all schools and will improve and strengthen consultation in every community.

Amendment 407 seeks to require an education authority to present information about the financial implications of a school closure proposal as part of its proposal paper for consultation. I think that we are all determined that educational benefit must continue to be the primary consideration in making the case for school closure proposals. However, requiring authorities to provide clear financial information to communities will ensure that there is a more informed debate about such proposals.

Amendment 408 seeks to make a number of changes to the process for rural school closures under the 2010 act by clarifying how an education authority should assess whether a rural school should close, and it will ensure that the 2010 act operates as Parliament originally intended. When the Scottish Parliament unanimously passed the 2010 act, it intended that the three rural factors in section 12 would operate as a presumption against closure of rural schools. It was expected that they would require local authorities to show that they had carefully considered and weighed up
the implications of proposed closures. However, following the judicial review that was brought by Comhairle nan Eilean Siar, it was clear that the provision in the act was not having the required impact. Clarity on the issue was recommended by the commission, was strongly supported in the Government’s consultation and is what I now wish to deliver through amendment 408.

Amendment 408 seeks to set out the detailed careful consideration that an education authority is required to carry out before even proposing a rural school closure. Authorities will be subject to an additional requirement to identify any reasonable alternatives to closure, and to assess the likely educational benefits and effect on the rural community and on travel arrangements of any and each such alternative. The alternatives are to be set out in the consultation on the proposal and further alternatives may be proposed during the consultation. The authority is then to reassess the proposal and the alternatives following consultation and, if it chooses to proceed, to explain why, in the light of those assessments, it still considers that the closure proposal is the most appropriate response. I want to ensure that future consultations reach not just the letter but the spirit of what Parliament intended when it passed the 2010 act.

When I gave evidence to the committee in December, I explained that we were still considering the best way of ensuring that the presumption against closure was as clear as possible. Having given the matter careful consideration, we think that from a legal perspective it is clearer and safer to set out exactly what we expect authorities to have assessed and considered in formulating a closure proposal for a rural school, and to set out exactly what they must assess and explain when consulting on a closure proposal. We think that amendment 408 will ensure that authorities will not be able to proceed with a closure proposal unless there is a clear educational benefit in doing so, and unless there is no more appropriate means of addressing whatever problem a rural school is experiencing. In other words, if this clear test is not met, a closure proposal cannot be implemented.

We consider that revising, adding to and strengthening both the statutory assessment and consultation requirements that authorities are subject to is a better way of achieving the policy. We consider that to be clearer than simply referring to a presumption against closure in the 2010 act, which education authorities and the courts might, in any case, not find clear.

The additional and strengthened statutory processes in proposed new sections 12A and 13 of the 2010 act, which will be inserted by amendment 408, should secure the careful and comprehensive consideration that education authorities have to give any proposal to close a rural school, given their particularly important status and the long-term consequences of closure on both families and rural communities. I believe that that is what those communities want and that it is what they deserve.

Amendment 409 seeks to make a number of changes to the process for calling in and determining school closure proposals. It will require Her Majesty’s Inspectorate of Education to provide advice that is requested by Scottish ministers in deciding whether to call in a closure proposal. Formalisation of that mechanism in legislation will add transparency to the process and ensure that ministers have access to educational advice when making their call-in decision.

10:00

Amendment 409 will require ministers, following call-in of a school closure proposal, to refer the proposal to a new public appointee—the convener of the school closure review panels. It also makes provision for the convener’s appointment. It will be the responsibility of the convener to appoint individuals who will be eligible to be members of a panel, and to constitute panels on a case-by-case basis to determine on particular closure proposals once they are called in.

Establishing the school closure review panels to determine school closure proposals will improve transparency and remove allegations of political bias from the decision-making process. Although it has never been the case that ministers’ decisions have been biased or influenced by political considerations, it is a perception that is often hard to refute, so it is better that in the future those decisions will be taken away from the political spotlight and be made at arm’s length from ministers.

Amendment 409 also provides for the panels to be able to draw on advice from HMIE, as well as information from the education authority and any other person, just as ministers may obtain expert advice from HM Inspectorate of Education at the call-in stage.

The judgment in the case of Comhairle nan Eilean Siar v the Scottish ministers held that the 2010 act as written required ministers to consider the merits and the procedural aspects of an education authority’s decision to implement a closure proposal. The commission also recommended that ministers should consider the merits of the decision as well as its procedural aspects. We have accepted that recommendation.

We have considered whether further clarification of the 2010 act is required. However, given that
the judgment from the inner house of the Court of Session is clear that the wording in section 17(2) of the 2010 act requires such consideration, we have concluded that, although it was not the original policy intention behind the provision, no amendment to section 17(2) is required. We have used the same formulation in proposed new sections 17B and 17C to make it clear that a school closure review panel will also be required to consider the merits and procedural aspects of an education authority’s decision in determining whether to consent to or refuse a proposal once it has been called in. Had we chosen to amend the wording in the 2010 act, that might have been interpreted as meaning that the amended provision did not require a determination of merits and process. We therefore concluded that we should follow the wording in the 2010 act in relation to call-in.

Amendment 409 also sets out the options that a school closure review panel will have for determining a school closure proposal. The commission recommended an additional option of remitting the proposal back to a local authority for the authority to take the decision afresh, so amendment 409 will add that option to the decisions that are available to the school closure review panel. That respects the primacy of local decision making in a case where a flaw in a closure proposal process, for example, can be easily remedied, and is especially important given that amendment 406, which has been lodged by Liz Smith, and to which I will speak in more detail later, would mean that refusing consent would lead to a five-year restriction on repeating the closure proposal.

Finally, amendment 409 provides for a right of appeal against a panel decision to the sheriff court on a point of law only. That will achieve the right balance between providing a right of appeal and the need to ensure that decisions can be taken forward efficiently.

I believe that the extensive changes to the call-in and determination process that are contained in amendment 409 will significantly improve the transparency of the overall process, so that it has the full confidence of communities and education authorities.

I now turn, with relief, to the non-Government amendments.

I welcome amendment 406, which has been lodged by Liz Smith, and which I believe will significantly benefit communities that have been affected by a school closure proposal and give them a degree of certainty over their school’s future. I agree that a five-year period sets the correct balance between providing assurance to a community and not unreasonably restricting an education authority’s ability to manage its school estate.

Liz Smith’s amendment 406 recognises that there will be exceptions to the moratorium during the five-year period; I agree that it is necessary to have limited flexibility in that area. Significant changes in a school’s circumstances might include a school’s roll declining dramatically, or the fabric of the building requiring significant unplanned investment. The Government proposes to set out in the revised statutory guidance for the 2010 act further advice on the types of appropriate exception.

I am glad that there is support across the political divide for amendment 406. That very much reflects the spirit in which the 2010 act came into being, and the unanimous support that Parliament gave in passing it. I believe that amendments 405 to 409 will benefit all those who are involved in and affected by school closures.

Amendment 408A, in the name of Liz Smith, would amend amendment 408 to alter the basis on which an education authority could decide to implement a rural school closure proposal. Instead of the authority being “satisfied”, it would have to have “demonstrated” that closure was the best option.

I am sympathetic to that proposal, and I understand and respect the intention behind the amendment. I accept that Liz Smith and others have concerns about whether “satisfied” is the most appropriate term to use—it may not be. However, I do not believe that changing the wording of amendment 408 to include “has demonstrated” will deliver the clarity and improvements in the assessment and consultation process that both Liz Smith and I wish to be implemented.

I have concerns that the change that amendment 408A proposes would result in a lack of clarity. It is unclear to whom it would need to be demonstrated that closure would be the most appropriate response, and—crucially—such a requirement could inject into the process further uncertainty and delay for parents and young people. Furthermore, given how controversial closure proposals can be, it is unclear that an education authority would ever be able to satisfy that test fully. In addition, amendment 408, as drafted, maintains consistency with the rest of the 2010 act, which is desirable.

As I have explained, amendment 408 will require an education authority to carry out a more rigorous assessment in formulating a rural school closure proposal, and to consult in a more thorough and transparent way. Its complying with those requirements should mean that the authority will, in practice, demonstrate that its decision is the
most appropriate response based on the reasons for formulating the proposal. If it does not, and the decision is considered to be unreasonable, ministers may call in that decision for the panel to determine.

However, as I have indicated many times throughout the bill process, I am prepared to listen, in advance of stage 3, to suggestions to improve the provisions that relate to rural school closure proposals. The additional safeguards for rural schools that were originally included in the 2010 act followed a sustained campaign from communities that was supported by a number of MSPs and championed by Murdo Fraser. The campaign was an example of MSPs from a number of different political parties working together to deliver a common objective, which I hope we can do again.

I am happy to discuss with Liz Smith, and with others who have an interest in the issue, their concerns and the best way to deliver what we are all after: an improved assessment and consultation process. We need to step back and think through carefully the implications and consequences of any amendment, but we are clear, as legislators, that the proposal is what we want. If Liz Smith is prepared to undertake that process with those with whom she is involved, I am prepared to do so too, and to come back with an improved amendment at stage 3.

Liam McArthur will be disappointed that I am not going to be quite as positive in my comments on his amendment 409A. The Scottish ministers may issue a call-in notice for a school closure proposal only where it appears to them that the education authority “may”—I use that word advisedly, because it is in the legislation—have failed either to comply with the factors that are set out in sections 17(2)(a) and (b) and therefore failed significantly to comply with the requirements that are imposed on it by or under the 2010 act, in so far as they are relevant to the closure proposal, or to take proper account of a material consideration that is relevant to its decision to implement the proposal.

The crucial word in the 2010 act is “may”. At that stage in the process, ministers have not decided that a failure has occurred. Issues might have been raised in representations to ministers, or in reviewing the documentation that is associated with the proposal, which suggest that the education authority “may” have failed to comply with the 2010 act and that ministers should call in the proposal.

However, in undertaking further investigation and evidence gathering following call-in, a school closure review panel could find that the authority has not failed in either of those respects and that the appropriate decision is to grant consent. That does not mean that the proposal should not have been called in. It is important that possible failures are investigated, and undertaking further investigation and making determinations on proposals that have been called in, in a manner that has the confidence of the affected community and the education authority, is the primary role of the school closure review panels.

Amendment 409 will require a panel to give reasons for its decision, which may in practice make it clear whether the panel considers that a call-in was required or not. Furthermore, it requires the convener of the panels to provide an annual report to the Scottish Parliament on its decisions. It will therefore be apparent if there are many—or any—school closure proposals that are called in but given unconditional consent by the panels.

Although I will listen to any cogent arguments that Liam McArthur makes, I do not think that amendment 409A is necessary; indeed, it may deflect a panel towards spending time looking backwards instead of considering the matters that are in front of it. Therefore—with some relief—I ask the committee to support amendments 405, 407, 408, 409 and 423 in my name, and amendment 406 in the name of Liz Smith. I do not support amendments 408A and 409A, although I am willing to work with Liz Smith to see whether we can find a way forward through amendments to improve the legislation.

I move amendment 405.

The Convener: I have been extremely generous with time because, given that we are inserting a completely new part into the bill, I feel that it is appropriate for members to have a full understanding of what the amendments refer to. I will be equally generous with other members who have amendments to this part of the bill, although I hope that their speeches will not be quite as lengthy.

I call Liz Smith to speak to amendment 406 and the other amendments in the group.

Liz Smith (Mid Scotland and Fife) (Con): I am afraid that my speech will be a little lengthy, but not quite as lengthy as the cabinet secretary’s speech, I hope.

In the event of a school closure proposal being rejected, my amendment 406 would ensure that the decision would not be revisited for a period of five years. I have listened carefully to the debate about the appropriate length of time for a moratorium following the rejection of a school closure, and I am grateful to Councillor Douglas Chapman and his colleagues at COSLA for the letter that they wrote to the committee on 17 January—specifically paragraph 7—in which he set out his reasons for the rejection of the amendment.
I have considered Councillor Chapman’s points carefully, especially his concern about the Scottish Government’s decision not to implement the commission’s recommendation 20. I have also considered how to balance educational benefit—to which the cabinet secretary referred, quite rightly, as the prime motive—with the challenges that local authorities face as they seek to rationalise their education services. It is not an easy issue, but I have come down on the side of favouring a five-year moratorium with some flexibility. I shall explain why.

A moratorium would prevent a multiple review from occurring over a short period of time, and it would give parents, pupils and teachers the necessary confidence to commit to the school and develop it beyond just the short term. Although it has been a rare occurrence, there have been instances of a school going through three or four closure proposals in under a decade. Such uncertainty benefits no one and can create a vicious circle whereby parents opt against sending their child to the school, which in turn calls into question its long-term viability.

A five-year moratorium would ensure that communities are not put through what Leslie Manson of the Association of Directors of Education in Scotland described as “a constant merry-go-round”. Indeed, it might well encourage parents to send their children to rural schools safe in the knowledge that the school has a medium-term future and the opportunity to address any shortcomings.

A further upshot of the five-year period concerns the fact that any second proposal would therefore fall after council elections and, as such, would be considered by some fresh faces. That would ensure that the arguments were deliberated anew and that different voices would participate in the process.

Although there are arguments for having a three-year or seven-year moratorium, the need to provide the balance that we seek between safeguarding the school’s immediate future and monitoring its progress has persuaded me to come down on the side of having a five-year moratorium.

I thank the cabinet secretary for his comments on amendment 408A. When our predecessor committee met on 30 September 2009, the then cabinet secretary Fiona Hyslop said:

“The intention of the bill is to create a robust, fair and transparent process that addresses such concerns.” — [Official Report, Education, Culture and Lifelong Learning Committee; 30 September 2009; c 2770.]

That was very much the spirit of the bill at that time. Section 5 of the 2010 act was supposed to be absolutely watertight when it came to ensuring that the decision-making process is based on accurate and relevant information and that there is absolutely no scope for misinterpretation. That has turned out not to be the case, which is largely why we are here to amend the legislation.

In the interim period, we have been furnished with very detailed evidence from several key witnesses who have been able to demonstrate just how extensive has been the misuse of information and, in a few cases, the failure to present accurate information in decision making. That evidence included examples of situations in which information had been incomplete, other situations in which the information had been inaccurate and—perhaps worst of all—situations in which it was alleged that information had been withheld or misrepresented to suit a specific viewpoint.

The committee has been presented with very detailed evidence in the area. I will not go over it all again; suffice it to say that, whatever the reason for misinformation happens to be, it is completely unacceptable. It is important that, under the current bill, there is no scope for that practice in the future.

10:15

Amendment 408A is an attempt to ensure that any local authority has to demonstrate how it has arrived at its decision, rather than just being called on to claim that it is satisfied that it has met the correct criteria. Simply having one stakeholder saying that it is satisfied is absolutely no guarantee of that or of any appropriate, objectively drawn conclusions having been made.

It is my understanding that the cabinet secretary is sympathetic to the spirit of amendment 408A, but I understand what he has said: that it will be necessary to be more specific when it comes to demonstrating that a proposal is appropriate. I will take him up on his offer of meeting before stage 3, so that we can lodge a tighter amendment. The last thing that we want to do is to create any further confusion. I thank the cabinet secretary for his offer.

On the other amendments in the cabinet secretary’s name and amendment 409A in Liam McArthur’s name, I am grateful to the cabinet secretary for noting that the Scottish Conservatives have a long-standing interest in the issue, given the efforts by my colleague Murdo Fraser in 2007, when he made his own proposal for a member’s bill. I thank the cabinet secretary for referring to that.

The cabinet secretary is absolutely correct when he says that the essential principles that ought to underpin all school closures, irrespective of whether they are rural or urban, must revolve around the maximum educational, economic and
social benefit that can be achieved. A completely level playing field must be provided; there must be full transparency when it comes to the actual decision-making process; and there needs to be an opportunity for engagement with and participation by the interested parties.

I believe that those principles have been at the basis of the deliberations on the issue since before 2010, but for one reason or another—mainly to do with the interpretation of language in the bill—it has not been possible for many of the recent decisions regarding school closure proposals to adhere to the principles.

The six areas of concern that were set out by the Sutherland commission are absolutely correct, and it is appropriate that we are examining each of them with regard to the amendments.

We had an interesting debate at committee about the concept of presumption: what it really means and whether it needs to be set in stone in the bill. It was pointed out by some witnesses that, if it was fully written into the bill, it would raise too many expectations among parents and that all schools would stay open even where that is not the correct decision. In one witness’s words, that would set the bar too high.

Although I understand the logic behind that statement, I have been persuaded by other evidence that, in too many cases, the intended presumption against closure would in some circumstances be interpreted by local authorities as a presumption to close. I note what the cabinet secretary said in response to a question from Joan McAlpine at committee on 3 December 2013.

The ruling by the Court of Session clearly said that it is not sufficiently tight to rely on provisions involving matters “to have regard to” and that doing so had allowed misunderstanding and evasion. Anything that we can do to tighten up the provisions is crucial.

I will support the Government’s amendments in this area. Although I understand the spirit with which Mr McArthur presents his amendment 409A, I accept what the cabinet secretary has said about the wording, so I am interested to hear what Mr McArthur has to say.

Liam McArthur (Orkney Islands) (LD): Like the cabinet secretary and Liz Smith, I apologise at the start for the length of my comments, convener, although I hope that you are reassured that we will witness an increasing level of brevity, in accordance with Liz Smith’s comments.

As ever, I need to declare an interest in this issue, as the father of a son at a primary school that was identified for closure prior to the last local council elections. From that experience, I am all too well aware of the impact that even the prospect of school closure can have on pupils, staff, parents and the wider rural community.

Fortunately, two of the proposed school closures in Orkney appear to have been shelved, but it is fair to say that people in Stenness and Burray remain apprehensive. That threat brought both communities closer together, although the experience was difficult for all those involved. I accept that it was also difficult for those on the council who were involved in the proposals.

All of that might be predictable, but I did not anticipate the effect that the situation had on some of the pupils involved. Listening to my youngest son, it was clear that he, along with some or perhaps all of his peers, felt somehow responsible for what was happening. That was despite the reassurances and support that were given by us as parents, by the teachers, by support staff and by others. I confess that I found that almost the most difficult aspect of the whole experience to deal with.

I do not underestimate the importance of the amendments to this part of the bill, including Liz Smith’s amendment 406, which seeks to limit the speed with which any closure proposal affecting a particular school could be initiated—save in exceptional circumstances, as articulated by Mr Russell. However, we passed the previous act only in 2010 and, if that experience tells us anything, it is that we should take great care not to raise expectations unduly about what we are trying to do or what the bill will be able to do.

I am in absolutely no doubt that responsibility for the decisions should continue to rest with local authorities and not with ministers or panels of experts, however esteemed or independent they are. We can undoubtedly assist in that task and help to ensure that decisions are taken on the best possible evidence and are subject only to tightly defined and clearly understood criteria, but ultimately government at all levels is about making choices and taking decisions even—or indeed particularly—when they are difficult. To pretend otherwise may offer short-term respite, but the longer-term consequences can invariably prove more serious and damaging.

I turn to the amendments in the group. I broadly support the proposed changes, which, as the cabinet secretary said, largely reflect the conclusions of the Sutherland commission. That said, I recognise the disappointment that some commission members and many in local government feel about the Scottish Government’s refusal to accept recommendation 20. It seems to me that this is likely to be the area on which the most controversy will continue to be focused and where decisions will be challenged in future. However, it was not clear to me—like, I think, Liz Smith and the minister—that adopting
recommendation 20 and diluting the educational benefit threshold that has to be met would avoid those challenges.

I welcome the efforts to support councils in the earlier stages as well as to improve the basis on which proposals come forward and are then consulted on. I certainly hope that amendments 407 and 408 reduce the number of cases that are subsequently challenged, although it is not entirely clear how Education Scotland will be able to manage the potential conflicts of interest in its different roles, as was indicated through evidence early in the process. The Chinese walls that are needed here may well be visible from space.

Mr Russell’s amendment 409 proposes changes to call-in procedures and introduces the idea of a review panel. He recalled in his earlier remarks our exchanges during stage 1 evidence and my concerns about ministers retaining the power to call in council decisions but leaving examination and determination to an independent panel of experts. I accept—and Mr Russell has confirmed—that I am not going to persuade him to change his mind, but he will appreciate my concern that that leaves ministers free to play to the gallery in calling in controversial decisions without having to worry about actually determining whether they were justified.

In order to address that issue, my amendment 409A seeks to introduce an option for the panel also to pass judgment on the validity of the call-in by the minister. That option would be exercised only when the panel felt that the council was justified in its original decision to close, but it—or at least a variant of it—could act as a useful check on ministers simply calling in decisions because it is politically expedient to do so. Even the perception of that, as the minister acknowledged, is damaging and has given rise in the past to accusations of political bias.

Like the cabinet secretary, I understand the motivation behind Liz Smith’s amendment 408A, but I have concerns about the practicalities of the provision. At the end of the day, it may be impossible to demonstrate to the satisfaction of those who oppose a proposed closure the benefits to be had, in which case such wording is likely only to raise expectations unfairly, prolong conflict or indeed both. I know that we are all keen to avoid that.

In conclusion, I acknowledge the importance of the improvements that we are seeking to introduce in this part of the bill. I am disappointed by the cabinet secretary’s failure to accept my amendment in the group, although at this stage it hardly comes as a surprise. I accept that improvements are being introduced to the bill through amendment 409 but, without some safeguard of the kind that I seek to introduce through my amendment 409A, I have reservations about how they will be implemented. I therefore reserve the right to bring my amendment or a variant of it back at stage 3. However, I welcome the comments that the cabinet secretary made to clarify his position.

**The Convener:** A number of members wish to contribute to the debate on this group. I begin by calling Neil Bibby.

**Neil Bibby (West Scotland) (Lab):** I have a number of concerns about amendment 408, and I note COSLA’s concerns about the exclusion from the bill of provisions to implement recommendation 20 in the COSLA and Scottish Government commission report. That recommendation states:

> “It should be acceptable for an Educational Benefits Statement to conclude that the educational impact is neutral, with no overall educational detriment to the children directly concerned.”

Councillor Douglas Chapman from COSLA has since written to the committee:

> “By not implementing recommendation 20 the Government has altered the balance brought in by the Commission, and we are now concerned it will be actually far harder for local authorities to take necessary decisions on the school estate.”

He says that he has written to the cabinet secretary to express concern that

> “This is the impact that amended legislation could have on improving educational outcomes”,

and he also raises COSLA members’ concerns

> “that the proposals to amend the 2010 Act do not ... embrace all that the Commission was trying to achieve and because of this local government’s job will be made all the harder.”

In discussing these amendments, we need to take note of such very serious concerns and, indeed, the valuable points that have been raised about amendment 408.

In addition, I am concerned about the unnecessary burden that the required steps, particularly those to be taken before any school closure proposals are made, could place on local authorities. For example, if there is a school with zero pupils in an area where the population is not likely to increase, there is little point in looking at alternatives. We do not want schools with no children to be mothballed. There is also the obvious question about why the community benefits and transport opportunities should apply only to rural schools and not to all.

I also have a number of concerns about the proposal in amendment 409, the first of which is, as Liam McArthur has already mentioned, the abdication of ministerial and Government responsibility. Although the panel will be appointed
by ministers, it will have a fair degree of autonomy and the amendment says little about the criteria for appointing the convener, who will select the panel members. That appears to be an attempt to divert responsibility for making unpopular decisions to the panel, and it is also unclear who the panel will be accountable to.

As has been suggested, the panel will be another quango from a Government that said that it would cut the number of quangos. Given the Scottish Government’s statement that the panel will have whatever staff and resources are needed, its creation is likely to increase expenditure. As a result, it would be helpful to find out whether the Scottish Government has set any cost limit for establishing the panel. For all those reasons, I cannot support amendment 409.

I very much agree with amendment 409A, in the name of Liam MacArthur, which would ensure that, if a minister called in a closure proposal but the panel found in favour of the authority, the panel would have to say in its response that the proposal should not have been called in.

Amendment 406, in the name of Liz Smith, seeks to ensure that local authorities cannot make any new proposals for five years. I believe that such a measure has the potential to be too restrictive and that the period should be reduced from five years to three. The five-year period is likely to outlast the period of an administration given that it is unlikely to consult and get a decision on any new proposals on day 1 of its period in office.

Amendment 407 in the name of Mike Russell, which relates to the financial impact of closures, appears to allow the Scottish Government to show that certain proposals by councils are being used to save money. However, on the flip-side, local authorities might be able to show that money is being better spent and, on that basis, I am comfortable with the amendment.

Finally, amendment 408A in the name of Liz Smith seeks to place on local authorities an additional burden of demonstration. I do not believe that such a measure is necessary because, if an authority had met the preliminary requirements, it would in effect have demonstrated that closure is the most appropriate course of action. I am therefore not convinced by the proposal.

At present, I will abstain on amendment 408 and oppose amendments 406, 408A and 409.

10:30

Colin Beattie (Midlothian North and Musselburgh) (SNP): Having experienced the closure of no less than six rural schools in Midlothian, I obviously have a big interest in this proposed new section.

I welcome the cabinet secretary’s amendments, which seek to extend the consistency that the Government has put in place in order to improve transparency and public confidence in the school closure process. We should keep in mind that, back in June, the cabinet secretary confirmed that educational benefit would remain a key consideration of the school closure decision-making process. As such, I very much welcome this package of amendments.

On amendment 406 in the name of Liz Smith, I must say that when I saw the reference to five years I thought that it was quite a long time. Neil Bibby has made one or two relevant comments but, considering the responses to the consultation, which overwhelmingly support the five-year moratorium, I am persuaded that it is right to support the amendment.

With regard to amendment 408A, I do not actually think that such a change is necessary. It is the education authority’s responsibility to be satisfied with compliance and the implementation of the proposal as the most appropriate response to the reasons for the formulation of the proposal. That should really remain with the education authority; indeed, I think that there would be a lot of opposition from local authorities to the proposed move.

On amendment 409A, amendment 409 already requires a panel to give reasons for its decision, and I presume that its explanation will make it clear whether it thought that the call-in was required. Moreover, the convener of the school closure review panel will send an annual report to Parliament on the decisions that have been taken during the year, which means that any information about the number of school closure proposals that have been called in and the cases in which consent has been granted will be readily available. As a result, I do not really see the purpose of amendment 409A.

Mike MacKenzie (Highlands and Islands) (SNP): I am grateful for the opportunity to speak in favour of amendment 408. Indeed, I felt it important to do so, given the real difficulty that the issue of school closures has caused across the Highlands and Islands. I also make it clear that I am sympathetic to the spirit of what Liz Smith is attempting to achieve in amendment 408A.

The issue causes difficulty not only for councils, council members, parents, children and communities but, as we have seen, for the courts. For the sake of all concerned, the Parliament needs to take this opportunity to clarify matters. Although the spirit and intention of the 2010 act seem very clear, in practice, the legislation does
I was disappointed that when Argyll and Bute Council gave evidence to the committee it did not enter into the spirit of candour that characterises the interaction of most agencies and individuals with this Parliament. The committee and the Parliament should have the benefit of learning from the experience of the proposed Argyll and Bute school closures in 2010, because the experience of the parents and communities affected by the proposals differs greatly from the version that the council presented. For example, the community on the island of Luing very quickly showed that the closure of their school would result in pupils having to take a very much longer journey than the guidelines suggested. Moreover, the journey to the next nearest school involved a ferry journey that is often subject to cancellation or delay because of bad weather. As a result, that school was taken off the list of proposed closures, which was very quickly reduced to 25, but similar inaccuracies were found in the proposals for a high number of the other schools.

Parents were aghast to discover that the council that they trusted with the education of their children could be so casual about the closure proposals. They were shocked, too, to discover so many mistakes. Instead of admitting its mistakes, the council clung tenaciously to the proposals and, inevitably and understandably, trust then began to break down.

Thanks to the good offices of the Scottish rural schools network and the expertise of Sandy Longmuir, from whom the committee has heard, and to the parents’ own diligence in scrutinising the proposals and acquiring their own expertise, the proposals were revealed as increasingly incompetent. Local council members were also disappointed that the information that they had accepted from officers proved to be so untrustworthy. The final straw came when Sandy Longmuir was able to prove conclusively that, far from saving the council money, many of the proposals would cost money.

The statistics show that our small rural schools substantially outperform the average school. They are the jewels in the crown of our education system and if they can be saved they should be. They are at the very foundations of sustainable rural communities, as parents, quite rightly, place a high value on the quality of education.

Argyll and Bute is one of the few areas in Scotland with a declining population. People are voting with their feet and rejecting the dead hand of Argyll and Bute Council. Parliament must take into account the worst of councils as well as the best of them. I therefore urge the committee to support amendment 408 and the other amendments in the name of the cabinet secretary.

The Convener: Before I call the cabinet secretary, I have one or two comments to make on the amendments.

I support the amendments in the name of the cabinet secretary. Given what has occurred since the 2010 act came into being, it is clear that a relatively quick resolution is required, so I very much welcome the changes that have been proposed in the cabinet secretary’s amendments.

I turn to the amendments in the names of Opposition members. I too am interested in amendment 406, in the name of Liz Smith, and in the five-year period that was chosen—not because I thought that it was too long, but because I wondered whether seven years was a more appropriate period, as that is the length of an individual pupil’s primary schooling. However, I accept that a period of five years probably strikes the right balance in the circumstances that Liz Smith outlined.

I do not believe that five years is too short a period. If we had a period of three years, we would effectively have a perpetual round of closure proposals—we would never escape from that cycle. If that were the case, as outlined by Liz Smith, parents would effectively vote with their feet and schools would close by default, rather than be closed by intent. That shows that three years would be too short a period.

I welcome the discussion and agreement between the cabinet secretary and Liz Smith on amendment 406A. We must have absolute clarity in that area, as we do not want to have to come back in a short time to go over the issue again.

Finally, I cannot support amendment 409A, in the name of Liam McArthur, not because it is in the name of Liam McArthur, as he may be beginning to suspect, but because I do not believe that any cabinet secretary or minister can call in such a decision on a whim. That is not the basis on which such things are done. There is a process that has to be undertaken and it can be difficult to persuade a minister to call in a decision by a council. Having gone through some of the process myself, I think that it is important that there is the right balance and a separation of powers in that area, and I do not think that amendment 409A strikes at the reality of the situation regarding the decision that a minister—whether this cabinet secretary or any future cabinet secretary—would make. There is a process to be undertaken, and I am sure that ministers follow it diligently and have due regard to it and to the rules that are in place. Therefore, I cannot support amendment 409A.

I call the cabinet secretary to wind up.
Michael Russell: Thank you, convener, and thank you for the discussion that has taken place.

I will start with Mr McArthur's amendment 409A. I understand the point that he is making and the fact that ministers might be more reluctant to call in proposals if they feel that they will be publicly criticised for doing so. However, when we look at the list of proposals that have been called in and at the suggestion—the intention—that in future the list should be even shorter, given the involvement of Education Scotland, we can see that amendment 409A is unnecessary. Mr McArthur should be reassured to know that a panel could undertake the actions that we are talking about without the need for any specific legislation. There is to be an annual report, and I would expect that an independent convener would want to say if they felt that ministers were abusing the legislation in any way.

Mr McArthur's intention is probably a good one but adding what he proposes to the bill is unnecessary. If his proposal was enshrined in legislation, local authorities might be encouraged to focus solely on trying to get the panel to justify why there should not have been a call-in. We have a better situation in the bill, so, reluctantly, I do not support his amendment.

Liam McArthur: Will the cabinet secretary take an intervention?

Michael Russell: Absolutely.

Liam McArthur: I am grateful that the cabinet secretary accepts at least the principle that lies behind what I am seeking to achieve with amendment 409A. He has just implied what the response of local authorities might be. Does he accept that that is no different from my suggestion that we might need to guard against even the perception that the minister might take a certain approach to calling in particular proposals? Does he accept that that would be better dealt with on the face of the bill rather than our simply making an assumption that it will happen as a matter of course?

Michael Russell: No—I disagree. The matter will be best dealt with if we have robust legislation that is entirely clear, and we are trying to improve the 2010 act in this process. Once we have the legislation in place, the issue will be well dealt with if all those involved forbear from attacking ministers for being politically partisan when they make these decisions and instead look at the facts of the case. Those two things together will assist.

I have in front of me the number of school closure proposals that have been called in. The final outcome was that six cases received unconditional consent, which is 7 per cent of the total. It is therefore possible that, in 7 per cent of cases, that might have been the panel's judgment. The issue is around the use of the word "may"—a small number of cases might have been subject to comment, and the panel would be free to comment. It is interesting to note that there was conditional consent in 24 per cent of the total number of schools that were prepared for closure.

That meant that there were issues that were clarified and assisted by the process, which is a vital point. Only in 10 per cent of cases was consent refused.

I understand the points that Mike MacKenzie makes. I lived through the experience of the school closure proposals in Argyll and Bute not once but twice, because I was involved in an earlier round of school closures—I declare an interest, in that my wife was the headteacher of a school that was closed.

The process is damaging for everyone involved, and Mr McArthur was quite right to say that pupils and staff often blame themselves for the process that they are going through. As Liz Smith has said on a number of occasions, we must have a fair and transparent process. That objective is not assisted if the information in the process is regarded as being unfair, not comprehensive and—as has often happened—impossible to understand. I regret that the information that the committee was given, in the opinion of many people in Argyll and Bute, did not conform to the facts of the chronology of the process. That was regrettable—the council might still want to consider that point.

I turn to the points made by Mr Bibby. If the school has no pupils, the local authority will have to consider alternatives only when there are alternatives. I have never argued that all schools should remain open. There are schools that close because they have no pupils, so that issue is a red herring.

Mr Bibby's position is logically inconsistent. Having attacked me for refusing to accept one out of 37 recommendations—the only one that was not unanimously agreed by the commission—Mr Bibby announced at the end of his comments that he is going to reject more than that in his approach to my amendments. He is therefore taking a position that is even less consistent than that taken by COSLA and is motivated more by the Bain principle than by anything else.

Neil Bibby: Will the cabinet secretary take an intervention?

Michael Russell: Of course.

Neil Bibby: It is not just me who has raised concerns about the altering of the balance of the legislation—Councillor Douglas Chapman has done that, too, on behalf of COSLA.
Michael Russell: I heard Mr Bibby the first time that he mentioned that. My point remains. I disagree with COSLA on the issue. I have done so openly and have had a discussion with COSLA. I disagree because I believe, as we should all believe, that educational benefit is paramount in all educational decisions. We have had that disagreement, which is on one out of 37 recommendations—the only one on which there was a minority report. I repeat that Mr Bibby’s position will be to oppose more of the recommendations than that. Therefore, if I am altering the balance of the measures, Mr Bibby is undermining them in an even greater way. That speaks volumes about the fact that his approach is motivated by the Bain principle rather than by anything else.

I think that my amendments are valuable contributions, not because I am proposing them but because the commission on the delivery of rural education proposed them and had strong views on what should change. In those circumstances, the amendments will be welcomed right across Scotland. There are differences of opinion. COSLA objects to the idea of a five-year moratorium. Again and again, I hear those who are involved in the process and who have saved a school say, “Please, don’t let them come again for us too quickly.” People recognise that times change, but they do not want to go through the process again and again. I believe that the five-year proposal is sensible.

On Liz Smith’s amendment 408A, I repeat the undertaking to work with her and others to ensure that we get the approach absolutely correct. I hope that, at stage 3, we can find a way in which she can lodge an amendment that will achieve the effect that she and others wish for.

The changes to call-in and the determination process in amendment 409 are important. It is right to take ministers out of the final decision. Mr Bibby lambasted me for giving up that right, but he and his colleagues usually lambast me for exercising my rights as a minister—there really is no winning in these matters. However, I think that it is absolutely right to ensure that there is another set of voices in the process, so that we can return to the intention of the 2010 act, which was to have a level playing field and transparency and to ensure that people are treated fairly. We are taking a further step towards that, difficult as it has been.

I encourage members not to sit on the sidelines or to undermine the commission, as Mr Bibby proposes to do, but to support my amendments and ensure that we take the issue forward.

Amendment 405 agreed to.

Amendment 406 moved—[Liz Smith].

The Convener: The question is, that amendment 406 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 406 agreed to.

Amendment 407 moved—[Michael Russell]—and agreed to.

Amendment 408 moved—[Michael Russell].

The Convener: I ask Liz Smith to move or not move amendment 408A.

Liz Smith: I will not move it, on the basis of the strict understanding that the cabinet secretary will engage prior to stage 3 and that we can put in motion an amendment that prevents the type of incidents to which Mr MacKenzie referred. Information has been misinterpreted in other councils, too.

Amendment 408A not moved.

The Convener: The question is, that amendment 408 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Abstentions
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 0, Abstentions 2.

Amendment 408 agreed to.

Amendment 409 moved—[Michael Russell].

The Convener: I ask Liam McArthur to move or not move amendment 409A.
Liam McArthur: With less hope and expectation than Liz Smith, I will not move the amendment and will return to the issue at stage 3.

Amendment 409A not moved.

The Convener: The question is, that amendment 409 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 409 agreed to.

The Convener: I call a short suspension to allow a change of minister.

10:51

Meeting suspended.

10:53

On resuming—

Before section 69

The Convener: I welcome the Minister for Children and Young People.

Amendment 410, in the name of the minister, is grouped with amendments 411 to 418 and 432.

The Minister for Children and Young People (Alileen Campbell): The Children’s Hearings (Scotland) Act 2011 places an obligation on safeguarders who are appointed under the act to produce a report for a children’s hearing. In certain circumstances, it is extremely difficult for a safeguarder to carry out their investigations and produce a detailed report for the hearing because of the time limits for certain hearings proceedings. The standard time for producing a safeguarder report is 35 days, but some hearings take place after as few as two working days. Amendment 410 will remove the duty on safeguarders to produce reports in those limited circumstances, as no meaningful report can be produced.

Amendment 411 is a technical amendment to ensure that, where a child protection order is made under the 2011 act, the period within which the eighth-working-day hearing is to take place begins on the eighth working day after the making or implementation of the order, as was the case under the Children (Scotland) Act 1995.

Amendment 412 gives power to a pre-hearing panel to determine whether a person who had previously been deemed to be a relevant person in relation to a child should not continue to be deemed a relevant person. The pre-hearing panel would have power to make such a determination if the person did not have and had not recently had a significant involvement in the upbringing of the child.

A pre-hearing panel has power to deem a person to be a relevant person in relation to a child, so we consider it appropriate that it should also have power to undeem a relevant person. Part of amendment 432 provides that a person undeemed by a pre-hearing panel may appeal against that decision and part of amendment 426, which is part of a later group, ensures that children’s legal aid is available for such an appeal.

Amendment 414 addresses the situation in which a child does not attend a grounds hearing for unforeseen reasons but in which the child’s circumstances are such that it is necessary as a matter of urgency for that hearing to put in place measures to protect the child. The amendment would give the grounds hearing power to make an interim compulsory supervision order where the hearing considers that the nature of the child’s circumstances is such that an ICSO is necessary as a matter of urgency for the protection, treatment, guidance or control of the child. That would allow the hearing to be assured that appropriate supervision was in place to protect the child for an interim period until a subsequent grounds hearing could be held.

Amendment 413 addresses the situation in which a child’s circumstances are such that it is necessary as a matter of urgency for that hearing to put in place measures to protect the child. The amendment would give the grounds hearing power to make an interim compulsory supervision order where the hearing considers that the nature of the child’s circumstances is such that an ICSO is necessary as a matter of urgency for the protection, treatment, guidance or control of the child. That would allow the hearing to be assured that appropriate supervision was in place to protect the child for an interim period until a subsequent grounds hearing could be held.

Amendment 413 is a technical, clarifying amendment to ensure that a children’s hearing is able to address all the issues that may merit compulsory supervision. Situations can arise where the child or relevant person indicates to the hearing that grounds are accepted but certain facts—perhaps significant facts—are not. The hearing should not be impeded by limited acceptance of certain facts, especially where it considers it appropriate to be able to send the disputed matters to the sheriff for determination.

The policy intention is that children’s hearings should be able to address all the issues in a child’s life that may merit compulsory supervision. Amendment 413 obliges the chair of the hearing to check understanding and acceptance of each fact and, on that basis, enables the hearing to decide whether to proceed only on the basis of the accepted facts alone or to send the matter to the sheriff for determination.
Amendment 415 simplifies the basis on which the timeframes can be calculated for interim compulsory supervision orders that the principal reporter seeks from the sheriff. The previous provision made it difficult for the reporter to align the expiry of ICSOs with a timely and appropriate application to the sheriff. To comply with the statutory timescales, children and families were being called into ICSO review hearings to renew an interim order for a matter of days before returning to the sheriff for the same case. That process was not child centred.

Amendment 415 enables the reporter to make an application at a suitable point before the expiry of the third ICSO. It keeps ICSO decisions in the hands of the tribunal, limits the number of successive ICSOs applying to the child, simplifies hearings administration and still prevents the sheriff from becoming involved at an unduly early stage in the process.

Amendments 416 to 418 are technical amendments to aid interpretation of the bill.

I ask the committee to support all the amendments in this group.

I move amendment 410.

Amendment 410 agreed to.

Amendments 411 to 415 moved—[Aileen Campbell]—and agreed to.

Section 69—Area support teams: establishment

Amendment 416 moved—[Aileen Campbell]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Area support teams: administrative support by local authorities

Amendment 417 moved—[Aileen Campbell]—and agreed to.

Section 70, as amended, agreed to.

After section 70

Amendment 418 moved—[Aileen Campbell]—and agreed to.

Section 71—Appeal against detention of child in secure accommodation

The Convener: Amendment 419, in the name of the minister, is grouped with amendments 420 and 430.

Aileen Campbell: Amendments 419 and 420 bring the appeal process created by section 44A of the Criminal Procedure (Scotland) Act 1995, as inserted by section 71 of the bill, in relation to situations where a child has been placed in secure accommodation following the making of an order by a sheriff under section 44 of that act, into line with the relevant parts of the appeal process set out in the Children’s Hearings (Scotland) Act 2011 and subordinate legislation made under that act.

11:00

Amendment 419 provides that an appeal under the new section 44A may be made jointly by the child and one or more relevant persons or by two or more relevant persons and that the appeal must not be held in open court.

Amendment 420 provides that a relevant person in relation to a section 44A appeal is a relevant person for the purpose of the 2011 act and includes a person who has been deemed to be a relevant person.

Amendment 430 is a minor technical amendment to correct a small error in an amendment made by the recent section 104 order in consequence of the Children’s Hearings (Scotland) Act 2011. It clarifies that each reference to the 2000 act in the definition of secure accommodation in section 44(11) of the Criminal Procedure (Scotland) Act 1995, as amended by the section 104 order, is to the Care Standards Act 2000.

I ask that the committee supports amendments 419, 420 and 430 in my name.

I move amendment 419.

Amendment 419 agreed to.

Amendment 420 moved—[Aileen Campbell]—and agreed to.

Section 71, as amended, agreed to.

After section 71

The Convener: Amendment 421, in the name of the minister, is in a group on its own.

Aileen Campbell: Amendment 421 adds new section 28LA to the Legal Aid (Scotland) Act 1986, which will allow Scottish ministers to make regulations extending the availability of children’s legal aid for court proceedings under that act. This addresses concerns that were raised by stakeholders during consultation on the draft Children’s Legal Assistance (Scotland) Regulations 2013 about when children’s legal aid can and cannot be extended under the existing powers and ensures that children’s legal aid can be made available to more people in the future where that is appropriate.

It is important that children’s legal aid can be made available to those individuals who need it for proceedings under the Children’s Hearings
(Scotland) Act 2011. Most commonly, applicants for children’s legal aid will be children and relevant persons as described by the 2011 act. Discussion with stakeholders has shown that children’s legal aid may also need to be made available to other people, including for court proceedings. That requires flexibility to lay regulations to make legal aid available where further discussion shows that that should be the case.

Similarly, the eligibility tests for making legal aid generally available must be equitable and consistent. Children’s legal aid is no different. Where the circumstances are the same, the same tests should apply.

The amendment achieves both those aims: it allows flexibility to make children’s legal aid more widely available where that is appropriate; and it does so in a way that is consistent with existing children’s legal aid provisions. I therefore ask committee members to support the amendment.

I move amendment 421.

Liam McArthur: I am very supportive of amendment 421. In the context of the financial memorandum, has any calculation been made about the impact that these provisions would have on the overall legal aid budget, particularly in the light of what we all understand are quite serious pressures on the budget already?

Aileen Campbell: I take on board the points that Liam McArthur makes. There will be a supplementary financial memorandum to accompany some of the changes that have been made as a result of the amendments that have been agreed to, not just in this regard but in other areas, too.

Amendment 421 agreed to.

The Convener: Amendment 422, in the name of the minister, is grouped with amendment 431.

Aileen Campbell: Amendment 422 seeks to remove outdated restrictions linked to the participation of children under the age of 14 in performances by repealing section 38 of the Children and Young Persons Act 1963.

Amendment 431 is a minor repeal in consequence of amendment 422.

You will be aware that I wrote to the committee on 13 January setting out the background to the proposals in this area. The arrangements for licensing children to participate in performances, whether on stage or on screen, are of long standing and are in need of modernisation.

The vast majority of the changes that we need to make can be delivered through revised secondary legislation, and we will shortly publish a consultation paper that sets out what that should look like. However, in December it became clear that Scotland could be negatively impacted by changes that are proposed by way of amendment to the UK Government’s Children and Families Bill, which is before the House of Lords. An amendment to that bill will remove restrictions that limit the types of performance in which children under 14 can be involved across England and Wales, by repealing section 38 of the Children and Young Persons Act 1963. Scotland could be placed at a disadvantage, in terms of opportunities for our young people and for our creative industries if a similar change is not pursued here.

Of course, our young people’s wellbeing must always be our primary consideration. We would not propose the removal of the rule if we were concerned that doing so could result in children being placed at risk. However, the rule seems arbitrary and unnecessary, given the broader licensing arrangements for all children below school-leaving age. All licensing decisions that are taken by a local authority should be based on a thorough assessment of a child’s circumstances and not simply on the child’s age. Indeed, that is the child-centred approach that we should be taking to all decisions that impact on our young people.

It is unfortunate that the timing of the amendment to the UK bill has left us little scope for consultation on the proposed change. However, throughout December we sought views from a number of key organisations, including the Scottish Youth Theatre, Barnardo’s Scotland, Glasgow City Council, BBC Scotland and the Office of Communications, all of which supported the removal of the under-14 rule. My officials have written to COSLA on the matter, and no concerns have been raised.

I hope that the committee, having taken what I said into account, is satisfied as to the merits of making the change and I encourage members to support amendments 422 and 431, in my name.

I move amendment 422.

The Convener: For clarity and for my own interest, can you reassure the committee that amendment 422 will in no way affect the protection of children? It is clear that the rule was put in place some time ago, for good reasons, and I want to be reassured that if section 38 of the Children and Young Persons Act 1963 is repealed, children and young people who take part in artistic performances will still be properly protected.

Aileen Campbell: The approach will in no way affect a child’s wellbeing, which is paramount not only in relation to amendment 422 but throughout the bill. We have taken views, not just from stakeholders who have an interest in performance but from Barnardo’s, and COSLA did not raise issues. We will be able to continue to look at the
issue through the consultation and engagement that will be required for the secondary legislation.

Amendment 422 agreed to.

The Convener: Amendment 433, in the name of Alex Johnstone, is in a group on its own.

Alex Johnstone (North East Scotland) (Con): Members will instantly recognise amendment 433 as a blunt instrument; they will be equally unsurprised that this is my weapon of choice. I have lodged the amendment in the context of the Marriage and Civil Partnership (Scotland) Bill, with a view to ensuring that children are educated in line with their parents’ wishes. The amendment would apply to sex education across the board, but it is the introduction of same-sex marriage that makes it necessary at this time.

There is no doubt that the Marriage and Civil Partnership (Scotland) Bill is controversial. Therefore, it is of paramount importance that the rights of parents in relation to what their children are taught are fully protected. It is correct, of course, that children are taught the law of the land, regardless of whether they or their parents or teachers agree with it. That is not in dispute. However, that is different from lessons that endorse or promote a particular lifestyle to which many parents might have a sincere moral objection, such as same-sex marriage.

The Scottish Government appears to concede the need for safeguards in the area. It did so in July 2012 when it promised that, through consultation, it would “consider any additional measures that may be required to guarantee freedom of speech and religion in specific circumstances, including education.” Therefore, it is unfortunate that the bill neglects the area.

The Scottish Government’s approach is to rely on guidance, but in the eyes of many people guidance is insufficient. Many parents, because of religious or other convictions, will not want their children to learn about same-sex marriage before they reach a certain age, fearing that they will find it confusing. Some parents might be concerned that teaching on the subject will not be balanced or will not respect their convictions on the matter.

The danger, if the right of withdrawal is not strengthened and placed on a statutory footing, is that parents’ deeply held beliefs will be undermined by their inability to have their children educated in accordance with their convictions, as is their right under article 2 of protocol 1 to the European convention on human rights, which people fear might be infringed. I would like to hear the minister’s views on whether there is a problem and how she has satisfied herself that the Children and Young People (Scotland) Bill satisfies the undertaking that was given in 2012.

I am aware that there is more than one option for dealing with the circumstances. Other suggested routes might yet be explored. I look forward to hearing what the minister has to say, so that I can decide how to proceed.

I move amendment 433.

Neil Bibby: The amendment raises a difficult question of competing rights. A child has a right to education about his or her health. The number of teenage pregnancies and sexually transmitted diseases is rising in some areas. It would be difficult to tell a 15-year-old who is capable of making their own decisions and who might well be sexually active—we do not know—that they cannot attend sex education classes and that doing so would not be in their best interests.

However, as Alex Johnstone said, there is a right to private family beliefs and a right to raise a child in a religious family with certain views. The decision is about whether withdrawal from sex education is in a child’s best interests. I do not believe that that would in all probability be in a child’s best interests, so I do not support Alex Johnstone’s amendment 433.

Liam McArthur: The Government is consulting on legislation to license airguns. I have misgivings about aspects of that, but perhaps we should look at licensing blunt weapons, given Alex Johnstone’s performance this morning. I understand the background to the concerns that he has raised and the motivation for the amendment, but I see sex education as an important part of equipping our children and young people with the knowledge that they need to make safe, sensible and informed decisions about issues that can have a dramatic impact on their lives.

There is no dispute that the development of such education and even aspects of its content should be discussed between on the one hand schools and on the other hand children and young people and their parents or guardians. That can provide helpful reassurance and address the fairly legitimate point that Alex Johnstone raised about ensuring that materials are age appropriate.

However, sex education is a fundamental part of ensuring that our children and young people are equipped and empowered to deal with the challenges that life throws up, and the safeguards that Alex Johnstone wants are covered in guidance. In its briefing, Barnardo’s Scotland points out that paragraph 13 of Scottish Executive circular 2/2001 says:

‘While it is a nationally accepted part of the existing and agreed curricular framework for Scottish schools and of pupils’ educational entitlement, there is no statutory
requirement for participation in a programme of sex education. Schools and authorities must therefore be sensitive to the rare cases in which a parent or carer may wish to withdraw a child from all or part of a planned sex education programme."

I understand what Mr Johnstone seeks to do and the further assurances that he seeks, but amendment 433 is unnecessary and would not help to do what we all seek to do through the bill, which is to underscore the rights of children and young people.

Liz Smith: I understand exactly where Mr Johnstone is coming from. Irrespective of people’s views, it is important that the Government appreciates the concern that the existing legislation—whether it is considered by this committee or any other committee—is not sufficiently tight. I understand why Mr Johnstone lodged amendment 433.

However, I am concerned that the amendment would not necessarily articulate with some current legislation. I worry that if it was taken in its full context, the system would become bureaucratic and it would be difficult to spell out exactly what sex education consists of. On that basis, I will abstain.

11:15

George Adam (Paisley) (SNP): It is good to see that Mr Johnstone is starting the new year being a wee bit more subtle than he has been in the past—that was sarcasm.

On the whole, I can understand the concerns and reasoning behind Mr Johnstone’s amendment, but I do not agree with it and there is no definition of "any programme of sex education" in the amendment.

I remember going through sex education at a difficult time in the 1980s, when it was an important part of my own development as a person. As a parent, I have gone through it again with my two now 20-something children. I do not like to be reminded of the time that I had to talk about contraception with my daughter, who was a teenager at the time, but it was something important that we had to do, so I am a strong advocate of sexual health education.

Following the Marriage and Civil Partnership (Scotland) Bill, the Government will issue guidance and will seek views, and I think that guidance is probably the best way forward. I have faith that Scotland’s teachers will be able to deal with the issue in a way that helps young people to develop as young adults. Like Liam McArthur, I do not believe that amendment 433 is necessary.

The Convener: I very much agree with the comments made by a number of members this morning about amendment 433. In particular, I emphasise the point made by Liam McArthur about the issue already being covered. There is flexibility in the system, so the amendment is unnecessary. The amendment as laid down is also badly drafted.

I have concerns, too, because the motivation behind the amendment, if I understand Mr Johnstone correctly, is concern about the same-sex marriage issue that is being debated at the moment in Parliament. However, his amendment refers to the withdrawal of the child "from any programme of sex education",

so I do not think that his motivation meets with what is in the amendment itself. Those two things do not equate.

Finally, I would like to emphasise a point that other members have mentioned. Sex education is an extremely important part of a young person’s health. It should not be seen as somehow different from other matters of health education. Irrespective of the balance of privacy and the rights of parents, young people have a right to understand fully the implications of engaging in sexual activity and the possible impacts on their health, and to deny them that would be a mistake on our part, as legislators. Therefore, I cannot support Alex Johnstone’s amendment.

Aileen Campbell: The Government does not support amendment 433, in the name of Alex Johnstone. The Government is a strong believer in and advocate of sexual health education. Neil Bibby has raised some important points about a right to education and about how sex education enables young people to develop appropriate relationships and to keep themselves safe—a point that you also made, convener.

Liam McArthur also made important points about the rights of the child, which underpin much of the bill. I understand that a number of issues have been raised in the debate on the Marriage and Civil Partnership (Scotland) Bill, and we have sought views on guidance for education authorities and schools to follow. The Government believes that parents should be given transparent information about what children should be learning, so that parents can offer views and feedback. That is true not only in relation to sexual health education, although we recognise that it can be a sensitive area, so we consider guidance to be the best and most appropriate route.

As Alex Johnstone suggested in his opening remarks, amendment 433 is blunt, and it is not clear what it includes. A definition of "any programme of sex education"
would need to be included for members to know exactly what they are voting on. That is another point that you raised, convener, and Elizabeth Smith also alluded to it.

As I said, we have sought views on updated guidance on sexual health education and have received more than 60 responses, which we are currently considering. We aim to issue revised guidance towards the end of March and will continue to keep stakeholders informed of progress.

I am sure that we will take on board this morning’s debate and the points that have been made regarding the concerns that parents have raised, so that we can strike the right balance when we publish that revised guidance in the spring. I suggest that having guidance in this regard is better than having provisions in legislation. Therefore, and for all the reasons that other members have outlined, I do not support Alex Johnstone’s amendment 433.

Alex Johnstone: Having heard the discussion, I have some hope. I have heard members expressing one or two concerns that are in line with those that I expressed myself.

However, I am convinced that not everybody around the table fully understands the desire that exists among some parents to ensure that the liberal attitudes that resulted in the Marriage and Civil Partnership (Scotland) Bill are not universally shared. There is a reluctance among those who support movement towards the bill to accommodate the broad needs of others. The discussion has not been reassuring. As a consequence, I remain very concerned about the position in which some individuals will find themselves as a result of the Marriage and Civil Partnership (Scotland) Bill once it passes into law.

Given the views that have been expressed, I give an undertaking that I will continue to pursue the matter and will consult a number of organisations on how the issue might be dealt with before this bill or other proposed legislation reaches stage 3.

Amendment 433, by agreement, withdrawn.

The Convener: Amendment 434, in the name of Liam McArthur, is grouped with amendments 436 and 437.

Liam McArthur: The Education (Additional Support for Learning) (Scotland) Act 2004 was a landmark piece of legislation for our Parliament, of which we can feel justifiably proud, not least our predecessor Education Committee. The 2004 act attracted cross-party support and has made a real, positive difference to the lives of children and young people, their parents and Scottish education more widely.

As we have already noted this morning in connection with the debate on rural school closures—an area of legislation that is in for an overhaul after less than four years—no legislation is ever perfect, and so it is with the ASL act. Ten years ago, our understanding of the crucial importance of the earliest years in shaping later educational results was less robust, and prevention was only starting to become a guiding principle of public policy.

The coalition behind the “Putting the Baby in the Bath Water” report reminds us of three facts in this regard. First, although children are officially covered by the 2004 act from birth, its implementation has not benefited equally those below the age of three. That is reflected in the fact that progress reports have next to nothing to say about children with ASL needs from birth to three years. On average, 15 per cent of the school-age population has established ASL needs, a number that appears to have risen dramatically, according to the figures that ministers recently released in response to a question from me, yet the number and proportion of under-school-age children having or likely to have ASL needs remains unknown, or at least unexplored.

Secondly, Scotland does well in identifying and dealing with physical conditions that suggest ASL needs that are obvious at or soon after birth. However, many ASL needs, such as those associated with communication difficulties, autism and foetal alcohol harm, develop or emerge in the two years between the age of two months, when universal health visiting usually ends, and 27 to 30 months, when the new universal checks will start occurring. That hiatus appears to be out of step with the whole notion of early intervention. Some preventable problems are not being prevented, just as some problems that could be addressed through early intervention instead get worse.

Finally, we know that that situation has arisen in part because the ASL act is an education act and was not written with under-school-age children in mind, and because the act’s benefits have been limited—unlike for children of any other age—to those eligible under the Disability Discrimination Act 1995. That undermines primary prevention and denies support during most of the first 1,001 days of life, when young children and their parents could most effectively and inexpensively be helped through genuinely early intervention.

Although the gap in ASL assessment and provision has not gone unrecognised over the years, it remains to be closed. Amendment 434 offers such an opportunity by explicitly including in the ASL legislation a duty with regard to prevention in the 1,001 days of life, which, after all, are also the first 1,001 days of learning.
As has been said many times, the bill before us is a starting point and this amendment not only provides an illustration of what could and should happen next in the delivery of its objectives but is entirely in keeping with recommendations in the “Putting the Baby in the Bath Water” report. I hold out little hope that the amendment will be supported but, in moving it, I encourage committee members to see this as unfinished business and invite the minister to commit to looking at ways of closing this particular gap.

Amendments 436 and 437 are much simpler and seek to enable a named person for an under-school-age child to request an ASL assessment instead of relying almost entirely on parents to do so. Parental consent would still be required but not direct parental action and I urge the committee to support the amendments.

I move amendment 434 and look forward to the responses from the minister and other colleagues.

Joan McAlpine (South Scotland) (SNP): I support Liam McArthur’s comments. He has raised an important issue and I think that we will all agree that the ASL act was a landmark and has made a positive difference to the lives of many children. However, I think that what these amendments are trying to achieve is already covered in the bill. Every child, including pre-school-age children, will have access to a named person and, where there is a wellbeing need, the named person can seek to determine the best way of supporting the child, which might well be through a co-ordinated support plan. Although Liam McArthur has raised a number of very important issues, I am not sure that these amendments to this bill are necessary at this stage and, as a result, I will not be supporting them.

The Convener: Before I bring in the minister, I, too, will make one or two comments.

I am certainly very sympathetic to Liam McArthur’s argument and think that he has made a number of very pertinent points in defence of his amendments. As a result, I would like to hear from the minister a clear statement of the Government’s view of the amendments, an indication of whether, as Joan McAlpine has suggested, these issues are already covered in the bill and perhaps a commitment to further discussions about some of these areas. After all, these amendments and others that we have dealt with are making a wider point that requires to be discussed not just today but outwith the committee itself.

With that, I call the minister.

Aileen Campbell: I thank Liam McArthur for the points that he has raised and the coalition behind “Putting the Baby in the Bath Water” for suggesting these amendments.

First of all, I reiterate that we absolutely support the principle of prevention and early intervention that lies behind all of these amendments, especially where such early intervention might prevent an additional support need from developing in the first place or existing additional support needs from getting worse. Indeed, that is why, as Joan McAlpine has pointed out, the bill contains a number of early intervention and prevention provisions. I want to outline some of the areas of the bill where we think that such an approach is most apparent and then address the specific requests that have been made by Liam McArthur and Stewart Maxwell.

A child’s health and wellbeing are assessed from birth during the contacts set out in the child health programme, which now includes a 27 to 30-month universal health review. Where wellbeing needs require it, a child’s plan will be developed in partnership with the child, their family and relevant professionals and will take account of learning needs to ensure that as part of the named person’s role to promote, support and safeguard children’s wellbeing the learning needs of children under school age are met alongside any other needs that might affect their wellbeing.

Section 24 requires service providers to publish information about the named person service and its functions and contact arrangements to ensure that families are made aware of the most appropriate contact for information. The named person functions include a duty to advise, inform and support the child and their parents.

Section 25 requires service providers and relevant authorities, where requested, to provide assistance to the named person service provider where it would assist the exercise of the named person functions, and section 38 contains a similar duty in respect of child’s plans. As a result, the bill already contains sufficient provision to ensure that relevant information about children’s wellbeing, including any learning needs, is or can be made available to those who require it.

11:30

More specifically in relation to the points made by Liam McArthur and Stewart Maxwell, the advisory group for additional support for learning has agreed that the issue of prevention and early intervention through the early years is very important. The statutory code of practice for ASL is already being revised because we wish to be clear about the delivery of additional support for learning in the context of this bill, and that work will specifically include a focus on prevention and early intervention. The revised code of practice will be subject to full consultation and parliamentary scrutiny as required under section 27 of the 2004 act and, given the considered and thoughtful input
that the campaign behind “Putting the Baby in the Bath Water” has already made, I know that the code’s revision will benefit from the coalition’s expertise, knowledge and input.

With regard to the collection of data on school-age children with additional support needs, I note that under the bill’s provisions relating to child’s plans local authorities and health boards will be required to report on outcomes prescribed by the Scottish ministers, including a number of outcomes related to early intervention and primary prevention activity. Again, statutory guidance on this part of the bill will be developed in collaboration with a wide range of partners and stakeholders.

Although I appreciate the points that Liam McArthur has made, we believe that, for all the reasons that I have set out, his amendments are unnecessary. However, I hope that my commitment to a full and wide consultation on the revision of the code gives comfort not only to committee members but to the coalition, which has already suggested some very thought-provoking amendments to this section of the bill.

Liam McArthur: I thank the convener, Joan McAlpine and the minister for their very encouraging comments. As Joan McAlpine has indicated, the 2004 act is a landmark piece of legislation and I think that this bill will address a number of the concerns that have been raised. However, we need to guard against any suggestion that once this bill has been passed our business is done. Clearly, we will have to keep the matter under review and, in that respect, I welcome the minister’s comments about the advisory group’s consideration of the statutory code. I also think that the invitation to the coalition behind the “Putting the Baby in the Bath Water” report to engage directly with that process will be helpful.

I am conscious that we will be discussing our work programme later on. It might be a bit premature for this issue to be picked up in that item but we certainly have an opportunity to come back to it in due course. For the time being, I am grateful to the minister, in particular, for her comments and will not press amendment 434.

Amendment 434, by agreement, withdrawn.

The Convener: Amendment 435, in the name of Mary Fee, is grouped with amendment 438.

Mary Fee (West Scotland) (Lab): Amendments 435 and 438 relate to the minimum age at which a young transgender person can apply for a gender recognition certificate. At the moment, the minimum age is 18 and the lack of gender recognition for 16 and 17-year-old transgender people means that, compared with other 16 and 17-year-olds, they are discriminated against, including being prevented from marrying in accordance with their gender identity until they are 18.

During stage 1 of the Marriage and Civil Partnership (Scotland) Bill, the Equal Opportunities Committee heard evidence on the need to reduce the minimum age for gender recognition from 18 to 16 and, in its stage 1 report, that committee asked the Scottish Government to provide a detailed response. In that response, the Government said that it needs to consult and obtain more evidence on the matter before making any such change. That is exactly what my amendments would provide for. They were ruled out of scope for the Marriage and Civil Partnership (Scotland) Bill because they do not relate only to marriage and civil partnerships; however, they fall within the scope of this bill.

This is a very important issue for young transgender people. A significant number of young people are diagnosed with gender dysphoria in their early teenage years and, with their parents’ support, transition until they are full time in the opposite gender to that on their birth certificate. They can change their name on a range of documents, including school reports, medical and dental records, bank records and bus passes but without a gender recognition certificate their legal gender remains unchanged, which causes significant discrimination in education and employment, for example, when they make college or job applications.

People can apply for gender recognition as long as they have a diagnosis of gender dysphoria and have lived in their acquired gender for at least two years. Significant numbers of 16 and 17-year-olds qualify but are prevented from applying by the minimum age being 18. Changing the application age to 16 is supported by the specialist psychiatrist who provides treatment to young transgender people in Scotland; it is also in line with best practice in other European countries.

Amendment 435 would provide for a consultation and review on the proposed change. If a review concluded that a change should be made, the amendment would provide for a one-off order-making power for that purpose only. Amendment 438 would make the order-making power subject to the affirmative procedure. I believe that a review of the matter is needed and should not be delayed, because young transgender people are facing real discrimination now and the sooner that the issue is sorted, the better. I hope that the committee can support the amendment.

I move amendment 435.
The Convener: Thank you very much, Mary, and congratulations on getting through that although you have a cold.

Liam McArthur: I congratulate Mary Fee on lodging the amendments and, indeed, getting through the process of speaking to them.

Mary Fee’s call for at least a review of the minimum age for applying for gender recognition is well made. Reviewing whether the limit should be lowered from 18 to 16 or 17, possibly through secondary legislation, seems to me to be perfectly sensible and it would go some way towards better reflecting the needs of young transgender people in Scotland. As LGBT Youth Scotland pointed out in its briefing for this morning’s proceedings, many transgender young people begin living in their new or acquired gender well before they reach 16, so they must live for far longer than the normally required two years in their new gender role without proper legal documentation or recognition. It is not hard to appreciate, as Mary Fee set out, that that can force those who are affected to develop a very negative perception of themselves, and it can impact adversely on the way in which others view them.

Mary Fee also set out some of the practical disadvantages that arise from the way in which the law is currently framed. If the minister does not support the amendments, I hope that she will at least offer a commitment to have the position reviewed outwith the context of the bill. Again, I thank Mary Fee for bringing her amendments to the committee this morning.

Joan McAlpine: I am sympathetic to the spirit of Mary Fee’s amendments. I commend the briefing on the subject that we received from the Equality Network, which covers many of the comments that Mary Fee made. I learned a lot from reading the briefing, including that the issue is obviously a very sensitive and important one for those who are affected. However, the fact that I learned so much from reading the briefing and that the committee has not heard any of that evidence makes me uncomfortable about supporting Mary Fee’s amendments. The way in which the committee should work and how we should pass legislation is that we should be able to take evidence on a subject, particularly one as important as this, before making a change to the law.

I, too, would welcome the minister’s comments. As I said, I support the spirit of amendment 435 and the organisations that have argued in favour of it.

Liz Smith: I think that I understand the basis on which amendments 435 and 438 have been proposed, because there are quite clearly some discrimination issues that we must address.

However, I have concerns about the issue in Parliament just now of applying legislation to 16 to 18-year-olds, whether this committee deals with it or not. I do not think that our approach to such legislation is entirely consistent, and I hope that that can be addressed in terms of whether we take forward amendment 435.

I think that there is a debate to be had about not just the merits of amendment 435, but where we sit with regard to legislation that includes 16 to 18-year-olds, because there are lots of inconsistencies. On that basis, I am not comfortable about voting for amendment 435. It is nothing to do with the discrimination aspect; it is because I am not comfortable about the consistency of our legislative process at present.

The Convener: Mary Fee has very fairly raised an issue that needs to be addressed. The problem that I face with regard to her amendments 435 and 438 is the lack of background knowledge, information and evidence received by the committee throughout the process. The issue has come to the committee out of left field, if I may put it that way. It is certainly very new to the committee, and I am personally unaware of the detail and the arguments, both in favour of and against such a change.

The issue has to be properly debated and argued through. Like other members, I am very interested to hear what the Government’s position on it is. I am sympathetic to removing discrimination if such discrimination exists but, unfortunately, I cannot support Mary Fee’s amendments at this stage, because of that lack of background evidence. We have not had such evidence as we have gone through the process of scrutinising the bill, and that leaves me in some difficulty when it comes to supporting the amendments.

Aileen Campbell: I thank Mary Fee for battling through her sore throat in speaking to and moving her amendments.

The issue of reducing the application age for gender recognition arose, as the member outlined, in the context of the Marriage and Civil Partnership (Scotland) Bill, which is also making its way through Parliament. Amendment 435 is deemed to be outwith the scope of that bill. As Mary Fee suggested, this is an incredibly sensitive issue, and the young people whom Mary Fee mentioned can face very difficult and uncertain circumstances. It is critical that we make the right legislative choices and have the right understanding to support all those who face such important decisions about their lives. However, we do not believe that this is the right point at which to make those choices, nor do we think that the Children and Young People (Scotland) Bill is the best place in which to do it.
We understand the points that were made in evidence to the Equal Opportunities Committee, where the matter was first raised. However, the Government considers it premature to take an order-making power now. As the convener mentioned, the matter was not raised in the original consultation on the Children and Young People (Scotland) Bill or in the committee’s evidence gathering at stage 1. We think that it would be responsible to consult and seek expert advice on the issue, as Joan McAlpine outlined. That consultation would of course include expert groups such as the equalities groups that have provided briefing material to committee members.

Under the current requirements of the Gender Recognition Act 2004, a person normally has to live in the acquired gender for two years before applying to the gender recognition panel. That means that children would have to start living in the acquired gender at 14 in order to be able to apply at 16. That raises questions about the support and advice that are available to people of that age, which deserve far more detailed and careful consideration. Liz Smith raised some important issues about the wider context of the bill.

Policy responsibility rests with my health colleagues. I understand that the equalities minister, Shona Robison, will carefully and seriously consider representations on the issue. We will not forget the points that have been raised and raised well here at this committee. We will ensure that the equalities minister is updated about today’s debate and the points that have been made, including the submissions that have been presented by the equalities groups.

However, in the meantime we cannot support Mary Fee’s amendments, and I invite her to withdraw amendment 435 and not move amendment 438.

Mary Fee: I thank the minister and committee members for their comments, and for their understanding of a very sensitive subject. I am slightly disappointed that a greater commitment has not been given to review the issue in some way. However, I take on board the minister’s comments about the equalities minister looking into the issue. We will ensure that the equalities minister is updated about today’s debate and the points that have been made, including the submissions that have been presented by the equalities groups.

Mary Fee: On that basis, I am happy to withdraw amendment 435.

Amendment 435, by agreement, withdrawn.

Section 72—Closure proposals: call-in by the Scottish Ministers
Amendment 423 moved—[Aileen Campbell]—and agreed to.

Section 73—Consideration of wellbeing in exercising certain functions
Amendments 381 to 385 moved—[Aileen Campbell]—and agreed to.
Section 73, as amended, agreed to.

After section 73
Amendment 254 moved—[Jayne Baxter].

11:45
The Convener: The question is, that amendment 254 be agreed to. Are we agreed?
Members: No.
The Convener: There will be a division.
For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Against
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
The Convener: The result of the division is: For 2, Against 6, Abstentions 0.
Amendment 254 disagreed to.
Amendment 255 moved—[Jayne Baxter].
The Convener: The question is, that amendment 255 be agreed to. Are we agreed?
Members: No.
The Convener: There will be a division.
For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Against
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
The Convener: The result of the division is: For 2, Against 6, Abstentions 0.
Amendment 255 disagreed to.
Section 74 agreed to.
After section 74

The Convener: Amendment 82, in the name of Liz Smith, is in a group on its own.

Liz Smith: This committee knows better than any other committee in the Parliament about the outstanding work that voluntary organisations do in supporting the development of children and young people. It is as a result of their important and highly informative insistence that I have lodged amendment 82. Its purpose is to enable the Scottish Government to provide voluntary bodies with either general or particular guidance after consulting them beforehand, which acknowledges the unique role of voluntary bodies in assisting development. Guidance that is issued to local authorities is sometimes not appropriate or consistent with that which is required for voluntary bodies, and its demands might be too onerous or take up scarce resources that volunteer organisations do not have or at times when those resources are best deployed elsewhere.

Amendment 82 would prevent such problems from arising by creating a separate avenue through which distinct guidance can emerge, which would ensure that voluntary bodies always have a voice in the process of development on issues relating to children and young people. I think that we are all aware that, as things stand, voluntary bodies are nervous that their interests will not always be adequately reflected and that guidance sometimes fails to take into account their special role and circumstances.

Amendment 82 is designed to address those concerns head on, and would go a long way towards reassuring voluntary bodies that their specific role and character will be taken into account.

I move amendment 82.

Liam McArthur: I can think of few other bills that have impacted quite so much on voluntary organisations or on the third sector more widely, given the extent to which this bill will rely on the voluntary sector in delivering its objectives. Liz Smith makes the fair point that guidance for public bodies more generally does not necessarily apply in its entirety to voluntary organisations. Amendment 82 would appear to be a sensible addition to the bill that would allow ministers to provide more specific guidance where it is appropriate.

Aileen Campbell: I echo Liz Smith's view that the voluntary sector is unique and plays an important role in services and in developing policy. The voluntary sector is actively engaged in all aspects of the bill, including the development of guidance, and we have said a number of times that we will want to consult those organisations as we progress the bill's implementation. Third sector organisations are represented at all levels of consultation and policy development.

However, the amendment's use of the term "voluntary organisations" is imprecise and does not reflect the complexity and range of provision of children's services by non-public sector organisations, which include voluntary, charitable, social enterprise, non-governmental and private sector organisations.

The inclusion of the term “voluntary organisations” would require a legal definition and an attendant consultation with the sector to agree on that definition. Previous discussions and consultations on the issue have resulted in general agreement on the term “third sector”, which is now generally accepted.

Traditionally, the third sector has valued its independence. Specific reference on the face of a Government bill could undermine that and it would not be welcomed by all parties in the sector.

Scottish ministers can at any time issue non-statutory guidance to voluntary organisations about the application of the act to them—that can be achieved without the need for amendment 82.

I therefore urge the member to withdraw amendment 82.

Liz Smith: I have listened to what the minister said, but amendment 82 was lodged because of lobbying and consultation with many who are in the third sector or voluntary organisations. They were very clear indeed that they do not have the clarity that they require about the roles that they will have and how they will proceed when it comes to children and young people. We have to be extremely clear that we are giving them that guidance. I am not convinced at present that the guidance is sufficient to make it clear to the organisations exactly what is expected of them and where their role lies. For that reason, I will press amendment 82.

The Convener: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

Against
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.
Amendment 82 disagreed to.

Section 75—Interpretation

Amendment 256 moved—[Jayne Baxter].

The Convener: The question is, that amendment 256 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Baxter, Jayne (Mid Scotland and Fife) (Lab)

Against
Adam, George (Paisley) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Amendment 256 disagreed to.

Amendment 386 moved—[Aileen Campbell]—and agreed to.

Section 75, as amended, agreed to.

Section 76 agreed to.

Schedule 4—Modification of enactments

The Convener: Amendment 424, in the name of the minister, is grouped with amendments 425, 426, 387 and 427 to 429.

Aileen Campbell: Amendments 424 and 425 are minor technical drafting amendments consequential on the Children’s Hearings (Scotland) Act 2011, which came into force after the introduction of the bill. Amendment 427 is consequential on the changes that are made by amendments 424 and 425.

Amendment 426 makes two minor consequential amendments in relation to legal aid as a result of amendments 412, 432 and 421 in previous groups. It will ensure that legal aid is available for appeals against the decision that a person previously deemed to be a relevant person is no longer deemed a relevant person under the Children’s Hearings (Scotland) Act 2011. It will also ensure that affirmative procedures apply to the new section 28LA powers to be inserted in the Legal Aid (Scotland) Act 1986 by amendment 421.

Amendment 387 makes an amendment to section 20 of the Children (Scotland) Act 1995 in consequence of provisions in the bill on counselling services and kinship care orders. Under section 20 of the 1995 act, local authorities must, from time to time, prepare and publish information about relevant services that they provide.

Amendment 387 extends the definition of “relevant services” to cover services provided by local authorities for, or in respect of, children in their area under part 9, which is on counselling, and part 10, which is on kinship care orders. It is a technical amendment to ensure that local authorities publish information about the kinship care assistance and counselling services that they provide, alongside information about other services that support children and families and promote their wellbeing.

Amendments 428 and 429 are two minor drafting amendments to make small adjustments to the text of an amendment that is being made by paragraph 3(4) of schedule 4 to the bill to section 44(1) of the Children (Scotland) Act 1995. Section 44 of the 1995 act makes provision for publishing restrictions in relation to certain proceedings involving children. The amendments align the wording in new section 44(1)(a) of the 1995 act with an amendment previously made to that section by section 52(a) of the Criminal Justice (Scotland) Act 2003 to ensure drafting consistency.

I ask the committee to support the amendments in this group.

I move amendment 424.

Amendment 424 agreed to.

Amendments 425, 426, 387 and 427 to 431 moved—[Aileen Campbell]—and agreed to.

Schedule 4, as amended, agreed to.

Amendments 117, 311, 313 to 315, 388 and 389 moved—[Aileen Campbell]—and agreed to.

Amendment 438 not moved.

Amendment 432 moved—[Aileen Campbell]—and agreed to.

Schedule 4, as amended, agreed to.

Section 77—Subordinate legislation

Amendments 117, 311, 313 to 315, 388 and 389 moved—[Aileen Campbell]—and agreed to.

Amendment 438 not moved.

Section 77, as amended, agreed to.

After section 77

Amendment 118 moved—[Aileen Campbell]—and agreed to.

Sections 78 to 80 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank all members who lodged amendments; you contributed to a substantial period of scrutiny. I also thank the minister and her accompanying officials and the
cabinet secretary, who came along this morning, for their contributions to stage 2.

Aileen Campbell: I thank the committee.

The Convener: Thank you, minister.

The timing for stage 3 proceedings will be confirmed soon. We will publish details on the committee’s web page.
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Children and Young People (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children’s hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

PART 1

RIGHTS OF CHILDREN

1 Duties of Scottish Ministers in relation to the rights of children

10 (1) The Scottish Ministers must—

(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and

(b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

15 (2) The Scottish Ministers must promote public awareness and understanding (including appropriate awareness and understanding among children) of the rights of children.

(3) As soon as practicable after the end of each 3 year period, the Scottish Ministers must lay before the Scottish Parliament a report of—

(a) what steps they have taken in that period to secure better or further effect in Scotland of the UNCRC requirements,

(b) what they have done in that period in pursuance of subsection (2), and

(c) their plans until the end of the next 3 year period—

(i) to take steps to secure better or further effect in Scotland of the UNCRC requirements, and

(ii) to do things in pursuance of subsection (2).
(3A) In preparing such a report the Scottish Ministers must take such steps as they consider appropriate to obtain the views of children on what their plans for the purposes of subsection (3)(c) should be.

(4) In subsection (3), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

(5) As soon as practicable after a report has been laid before the Scottish Parliament under subsection (3), the Scottish Ministers must publish it (in such manner as they consider appropriate).

2 Duties of public authorities in relation to the UNCRC

(1) As soon as practicable after the end of each 3 year period, an authority to which this section applies must publish (in such manner as the authority considers appropriate) a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements.

(2) In subsection (1), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

(3) Two or more authorities to which this section applies may satisfy subsection (1) by publishing a report prepared by them jointly.

3 Authorities to which section 2 applies

(1) The authorities to which section 2 applies are the persons listed, or persons within a description listed, in schedule 1.

(2) The Scottish Ministers may by order modify schedule 1 by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) varying an entry listed in it.

(3) An order under subsection (2)(a) may—

(a) add a person only if the person falls within subsection (4),

(b) add a description of persons only if each of the persons within the description falls within subsection (4).

(4) A person falls within this subsection if the person—

(a) is part of the Scottish Administration,

(b) is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or

(c) is a publicly owned company.

(5) In subsection (4)(c), “publicly owned company” means a company that is wholly owned by—
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(a) the Scottish Ministers, or
(b) a person listed, or a person within a description listed, in schedule 1.

(6) For the purpose of subsection (5), a company is wholly owned—
(a) by the Scottish Ministers if it has no members other than—
(i) the Scottish Ministers or other companies that are wholly owned by them, or
(ii) persons acting on behalf of the Scottish Ministers or of such other companies,
(b) by a person listed, or a person within a description listed, in schedule 1 if it has no members other than—
(i) the person or other companies that are wholly owned by the person, or
(ii) persons acting on behalf of the person or of such other companies.

(7) In this section, “company” includes any body corporate.

4 Interpretation of Part 1

(1) In this Part—
“the rights of children” includes the rights and obligations set out in—
(a) the UNCRC,
(b) the first optional protocol to the UNCRC, and
(c) the second optional protocol to the UNCRC,
“the UNCRC” means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989,
“the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,
“the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
“the UNCRC requirements” means the rights and obligations set out in—
(a) Part 1 of the UNCRC,
(b) Articles 1 to 6(1), 6(3) and 7 of the first optional protocol, and
(c) Articles 1 to 10 of the second optional protocol.

(2) A reference in subsection (1) to a UNCRC document is to be read as a reference to that document subject to—
(a) any amendments in force in relation to the United Kingdom at the time, and
(b) any reservations, objections or interpretative declarations by the United Kingdom in force at the time.

(3) In subsection (2), “UNCRC document”—
(a) means the UNCRC or any optional protocol to the UNCRC, and
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(4) Where subsection (5) applies, the Scottish Ministers may by order modify subsection (1) as they consider appropriate to take account of—
   (a) an optional protocol to the UNCRC, or
   (b) an amendment of a document referred to in subsection (1) at the time.

(5) This subsection applies where the protocol or amendment is one which—
   (a) the United Kingdom has ratified, or
   (b) the United Kingdom has signed with a view to ratification.

(6) No modification may be made by an order under subsection (4) so as to come into force before the protocol or amendment is in force in relation to the United Kingdom.

PART 2

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

5 Investigations by the Commissioner

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 7—
   (a) for subsections (1) and (2), substitute—
      “(1) The Commissioner may carry out an investigation into—
      (a) whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (such an investigation being called a “general investigation”),
      (b) whether, by what means and to what extent a service provider had regard to the rights, interests and views of a child or young person in making a decision or taking an action that affected that child or young person (such an investigation being called an “individual investigation”).

(2) The Commissioner may carry out a general investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to—
   (a) children and young people generally, or
   (b) particular groups of children and young people.

(2A) The Commissioner may carry out an investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.”,

(b) in subsection (3), omit paragraph (b),

(c) after that subsection, add—

“(4) Subsection (5) applies in relation to a matter about which the Commissioner may carry out an individual investigation.
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(5) Where the Commissioner considers that the matter may be capable of being resolved without an investigation, the Commissioner may with a view to securing that outcome take such steps as the Commissioner considers appropriate.”.

5 (3) In section 8—
(a) in subsection (1), for paragraph (b) substitute—
“(b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.”,

10 (b) in subsection (2), for “An” substitute “A general”,
(c) after that subsection, add—
“(3) An individual investigation is to be conducted in private.”.

(4) In section 11—
(a) in subsection (1), for “lay before the Parliament” substitute “prepare”,
(b) in subsection (3), for “laid before the Parliament” substitute “finalised”,
(c) after that subsection, add—
“(4) The Commissioner must lay before the Parliament the report of a general investigation.
(5) The Commissioner may lay before the Parliament the report of an individual investigation.”.

6 Requirement to respond to Commissioner’s recommendations

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 11—
(a) after subsection (2), insert—
“(2A) In relation to any such recommendation, the report may include a requirement to respond.
(2B) A requirement to respond is a requirement that the service provider provides, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out—
(a) what the service provider has done or proposes to do in response to the recommendation; or
(b) if the service provider does not intend to do anything in response to the recommendation, the reasons for that.”,

35 (b) after subsection (5) (as inserted by section 5 of this Act), add—
“(6) Where a report of an investigation includes a requirement to respond, the Commissioner must give a copy of the report to the service provider.”.

(3) After section 14, insert—
“14AA Publication of responses to recommendations of investigations

(1) The Commissioner must publish any statement provided in response to a requirement to respond to a recommendation arising out of a general investigation.

(2) Subsection (1) does not apply if, or to the extent that, the Commissioner considers publication to be inappropriate.

(3) The Commissioner may publish any statement provided in response to a requirement to respond to a recommendation arising out of an individual investigation.

(4) The Commissioner must ensure that, so far as reasonable and practicable having regard to the subject matter, the version of the statement which is published under subsection (1) or (3) does not name or identify any child or young person, or group of children or young people, referred to in it.

(5) The Commissioner may, in such manner as the Commissioner considers appropriate, publicise a failure to comply with a requirement to respond.”.

PART 3
CHILDREN’S SERVICES PLANNING

7 Introductory

(1) For the purposes of this Part—

“children’s service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which is provided wholly or mainly to, or for the benefit of—

(a) children generally, or

(b) children with needs of a particular type (such as looked after children or children with a disability or a need for additional support in learning),

“other service provider” means—

(a) the chief constable of the Police Service of Scotland,

(b) the Scottish Fire and Rescue Service,

(c) the Principal Reporter,

(d) the National Convener of Children’s Hearings Scotland,

(e) the Scottish Court Service,

“related service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which though not a children’s service is capable of having a significant effect on the wellbeing of children,

“relevant health board” means a health board whose area comprises some or all of the area of the local authority.

(2) The persons referred to in the definitions of “children’s service” and “related service” in subsection (1) are—

(a) the local authority,

(b) any relevant health board,
(c) any other service provider,
(d) the Scottish Ministers (but only in relation to a service provided by them in exercise of their functions under the Prisons (Scotland) Act 1989).

(3) The Scottish Ministers may by order specify—

(a) services which are to be considered to be included within or excluded from the definition of “children’s service” or “related service” in subsection (1),
(b) matters in relation to services falling within either of those definitions which are to be considered to be included within or excluded from those services.

(4) Before making such an order, the Scottish Ministers must consult—

(a) each health board,
(b) each local authority, and
(c) where the service concerned is provided by one of the other service providers, that person.

(5) The Scottish Ministers may by order modify the definition of “other service provider” in subsection (1) by—

(a) adding a person or a description of persons,
(b) removing an entry listed in it, or
(c) varying an entry listed in it.

(6) A function conferred by this Part on a local authority and each relevant health board is to be exercised by those persons jointly.

8 Requirement to prepare children’s services plan

(1) A local authority and each relevant health board must in respect of each 3 year period prepare a children’s services plan for the area of the local authority.

(2) In subsection (1)—

“3 year period” means—

(a) the period of 3 years beginning with such date after the coming into force of this section as the Scottish Ministers specify by order, and
(b) each subsequent period of 3 years,

“children’s services plan” means a document setting out their plans for the provision over that period of all—

(a) children’s services, and
(b) related services.

9 Aims of children’s services plan

(1) A children’s services plan is to be prepared with a view to securing the achievement of the aims in subsection (2).

(2) Those aims are—

(a) that children’s services in the area concerned are provided in the way which—
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(i) best safeguards, supports and promotes the wellbeing of children in the area concerned,

(ii) ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising,

(iii) is most integrated from the point of view of recipients, and

(iv) constitutes the most efficient use of available resources,

(b) that related services in the area concerned are provided in the way which, so far as consistent with the objects and proper delivery of the service concerned, safeguards, supports and promotes the wellbeing of children in the area concerned.

10 Children’s services plan: process

(1) In preparing a children’s services plan a local authority and each relevant health board must—

(a) give each of the other service providers and the Scottish Ministers an effective opportunity (consistent with the extent to which the services they provide are to be the subject of the children’s services plan) to participate in or contribute to the preparation of the plan, and

(b) consult—

(i) such organisations as appear to fall within subsection (2),

(ii) such social landlords as appear to provide housing in the area of the local authority, and

(iii) such other persons as the Scottish Ministers may by direction specify.

(2) The organisations falling within this subsection are organisations (whether or not formally constituted) which—

(a) represent the interests of persons who use or are likely to use any children’s service or related service in the area of the local authority, or

(b) provide a service in the area which, if it were provided by the local authority, any relevant health board, any of the other service providers or the Scottish Ministers, would be a children’s service or a related service.

(3) In subsection (1)(b)(ii), “social landlords” has the meaning given by section 165 of the Housing (Scotland) Act 2010.

(4) A direction under subsection (1)(b)(iii) may be revised or revoked.

(5) Each of the other service providers is and the Scottish Ministers are to participate in or contribute to the preparation of the children’s services plan in accordance with the opportunity given to them under subsection (1)(a).

(6) The persons to be consulted under subsection (1)(b) are to meet any reasonable request which the local authority and each relevant health board make of them—

(a) to participate in the preparation of the children’s services plan for the area,

(b) to contribute to the preparation of that plan.

(7) As soon as reasonably practicable after a children’s services plan has been prepared, the local authority and each relevant health board must—
(a) send a copy to—
   (i) the Scottish Ministers, and
   (ii) each of the other service providers, and
(b) publish it (in such manner as the local authority and each relevant health board consider appropriate).

5 (8) Where the Scottish Ministers or any of the other service providers disagrees with the plan in relation to any matter concerning the provision of a service by them, they must prepare and publish (in such manner as they consider appropriate)—
   (a) a notice of the matters in relation to which they disagree, and
   (b) a statement of their reasons for disagreeing.

10 11 Children’s services plan: review

(1) A local authority and each relevant health board—
   (a) must keep the children’s services plan for the area of the local authority under review, and
   (b) may in consequence prepare a revised children’s services plan.

(2) The following provisions apply to a revised children’s services plan as they apply to a children’s services plan—
   section 9,
   section 10, and
   subsection (1) of this section.

15 12 Implementation of children’s services plan

(1) During the period to which a children’s services plan relates, the persons mentioned in subsection (2) must, so far as reasonably practicable, provide children’s services and relevant services in the area of the local authority in accordance with the plan.

(2) Those persons are—
   (a) the local authority,
   (b) each relevant health board,
   (c) the Scottish Ministers,
   (d) the other service providers.

(3) The duty in subsection (1) to provide services in accordance with the plan—
   (a) does not apply to the extent that the person providing the service considers that to comply with it would adversely affect the wellbeing of a child,
   (b) does not apply in relation to the Scottish Ministers or the other service providers to the extent of any matter within a notice published by them under section 10(8) in relation to the plan.
13 **Reporting on children’s services plan**

(1) As soon as practicable after the end of each 1 year period, a local authority and each relevant health board must publish (in such manner as they consider appropriate) a report on the extent to which—

(a) children’s services and related services have in that period been provided in the area of the local authority in accordance with the children’s services plan, and

(b) that provision has achieved—

(i) the aims listed in section 9(2),

(ii) such outcomes in relation to the wellbeing of children in the area as the Scottish Ministers may by order prescribe.

(2) In subsection (1), “1 year period” means—

(a) the period of 1 year beginning with the date specified under section 8(1), and

(b) each subsequent period of 1 year.

14 **Assistance in relation to children’s services planning**

(1) A person mentioned in subsection (2) must comply with any reasonable request made of them to provide a local authority and each relevant health board with information, advice or assistance for the purposes of exercising their functions under this Part.

(2) Those persons are—

(a) any of the other service providers or the Scottish Ministers (but only in so far as the information, advice or assistance relates to a children’s service or a related service which it is a function of the person to provide),

(b) any of the persons mentioned in section 10(1)(b).

(3) Subsection (1) does not apply where the person considers that the provision of the information, advice or assistance concerned would—

(a) be incompatible with any duty of the person, or

(b) unduly prejudice the exercise of any function of the person.

15 **Guidance in relation to children’s services planning**

(1) A person or the persons mentioned in subsection (2) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 12).

(2) Those persons are—

(a) a local authority and each relevant health board,

(b) each of the other service providers.

(5) Before issuing or revising guidance, the Scottish Ministers must consult the persons to whom it relates.
16  Directions in relation to children’s services planning

(1) A person or the persons mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 12).

(2) Those persons are—

(a) a local authority and each relevant health board,
(b) each of the other service providers.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to which it relates.

17  Children’s services planning: default powers of Scottish Ministers

(1) This section applies where the Scottish Ministers consider that a local authority and each relevant health board—

(a) are not exercising a function conferred on them by this Part (other than the function of complying with section 12), or

(b) are in exercising such a function not complying with section 15(1).

(2) The Scottish Ministers may direct that the function—

(a) is to be exercised in a particular way, or

(b) is to be exercised instead by such of the persons mentioned in subsection (3) as the Scottish Ministers consider appropriate.

(3) Those persons are—

(aa) the local authority,
(ab) any relevant health board,
(b) another local authority or health board.

(4) A direction under subsection (2)(b) may include such provision as the Scottish Ministers consider appropriate as to the making by a person who is not to be exercising the function of payment to a person who is to exercise the function by virtue of the direction.

(5) Before issuing, revising or revoking a direction under subsection (2) the Scottish Ministers must consult—

(a) the local authority and relevant health boards whose failure is to be, or is, the subject of the direction, and

(b) such other persons as they consider appropriate.

(5A) The persons to whom a direction under subsection (2) is addressed must comply with the direction.

18  Interpretation of Part 3

In this Part—

“children’s services plan” has the meaning given by section 8(2),

“service” means any service or support—
(a) which must be provided by the person concerned, or
(b) which the person concerned has power to provide.

PART 4

PROVISION OF NAMED PERSONS

19 Named person service

(1) In this Part, “named person service” means the service of making available, in relation to a child or young person, an identified individual who is to exercise the functions in subsection (5).

(2) An individual may be identified for the purpose of a named person service only if the individual falls within subsection (3).

(3) An individual falls within this subsection if—
   (a) the individual—
      (i) is an employee of the service provider, or
      (ii) is, or is an employee of, a person who exercises any function on behalf of the service provider, and
   (b) the individual meets such requirements as to training, qualifications, experience or position as may be specified by the Scottish Ministers by order.

(4) An individual does not fall within subsection (3) if the individual is a parent of the child or young person.

(5) The functions referred to in subsection (1) are—
   (a) subject to subsection (5A), doing such of the following where the named person considers it to be appropriate in order to promote, support or safeguard the wellbeing of the child or young person—
      (i) advising, informing or supporting the child or young person, or a parent of the child or young person,
      (ii) helping the child or young person, or a parent of the child or young person, to access a service or support, or
      (iii) discussing, or raising, a matter about the child or young person with a service provider or relevant authority, and
   (b) such other functions as are specified by this Act or any other enactment as being functions of a named person in relation to a child or young person.

(5A) The function in subsection (5)(a) does not apply in relation to a matter arising at a time when the child or young person is, as a member of any of the reserve forces, subject to service law.

(6) The named person functions are exercised on behalf of the service provider concerned.

(7) Responsibility for the exercise of the named person functions lies with the service provider rather than the named person.
20 Named person service in relation to pre-school child

(1) A health board is to make arrangements for the provision of a named person service in relation to each pre-school child residing in its area.

(2) A “pre-school child” is a child who—

(a) has not commenced attendance at a primary school, and

(b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child’s commencement at primary school being delayed.

(3) For the purposes of this section—

(a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,

(b) references to attendance at a primary school do not include attendance at a nursery class in such a school,

(c) references to the relevant local authority are to the local authority for the area in which the child concerned resides.

21 Named person service in relation to children not falling within section 20

(1) A local authority is to make arrangements for the provision of a named person service in relation to each child residing in its area, other than—

(a) a pre-school child, or

(b) a child falling within subsection (2) or (3).

(2) A child falls within this subsection if the child is—

(a) a pupil at a public school which is managed by a different local authority,

(b) a pupil at—

(i) a grant-aided school, or

(ii) an independent school,

(c) kept in secure accommodation, or

(d) in legal custody or subject to temporary release from such custody.

(2A) For the purposes of subsection (2)(d), a child is in legal custody—

(a) while confined in or being taken to or from any penal institution in which the child may be lawfully confined,

(b) while working, or for any other reason, outside the penal institution in the custody or under the control of an officer of the institution, a constable or a police custody and security officer,

(c) while being taken to any place to which the child is required or authorised to be taken by virtue of the Prisons (Scotland) Act 1989, or

(d) while kept in custody in pursuance of such a requirement or authorisation.

(3) A child falls within this subsection if the child is a member of any of the regular forces.
(4) During any period when a child falls within subsection (2)(a), the local authority which manages the school concerned is to make arrangements for the provision of a named person service in relation to the child.

(5) During any period when a child falls within subsection (2)(b) or (c), the directing authority of the establishment concerned is to make arrangements for the provision of a named person service in relation to the child.

(6) During any period when a child falls within subsection (2)(d), the Scottish Ministers are to make arrangements for the provision of a named person service in relation to the child.

22 Continuation of named person service in relation to certain young people

(1) A person mentioned in subsection (5) is to make arrangements for the provision of a named person service in relation to each young person.

(2) A “young person” is a person who—
   (a) attained the age of 18 years while a pupil at a school, and
   (b) has since attaining that age, remained a pupil at that or another school.

(5) The person referred to in subsection (1) is—
   (a) where the young person is a pupil at a school managed by a local authority, that authority,
   (b) where the young person is a pupil at a grant-aided school or an independent school, the directing authority of the establishment concerned.

23 Communication in relation to movement of children and young people

(1) This section applies where a person ceases to be the service provider in relation to a child or young person.

(2) The person (“the outgoing service provider”) must as soon as is reasonably practicable—
   (a) inform any other person which has become or which it considers may be the service provider in relation to the child or young person (“the incoming service provider”) that the outgoing service provider has ceased to be the service provider in relation to the child or young person, and
   (b) provide the incoming service provider with—
      (i) the name and address of the child or young person and each parent of the child or young person (so far as the outgoing service provider has that information), and
      (ii) all information which the outgoing service provider holds which falls within subsection (3).

(3) Information falls within this subsection if the outgoing service provider considers that—
   (a) it is likely to be relevant to—
      (i) the exercise by the incoming service provider of any functions of a service provider under this Part, or
(ii) the future exercise of the named person functions in relation to the child or young person,

(b) it ought to be provided for that purpose, and

(c) its provision would not prejudice the conduct of a criminal investigation or the prosecution of any offence.

(4) In considering for the purpose of subsection (3)(b) whether information ought to be provided, the outgoing service provider is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(5) In having regard to the views of a child under subsection (4), an outgoing service provider is to take account of the child’s age and maturity.

(6) The outgoing service provider may decide for the purpose of subsection (3)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.

(7) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

24 Duty to communicate information about role of named persons

(1) Each service provider must publish (in such manner as it considers appropriate) information about—

(aa) the operation of the named person service provided in pursuance of the arrangements made by it, including in particular—

(i) how the named person functions are, generally, exercised, and

(ii) the arrangements, generally, for contacting named persons,

(d) how the service provider generally exercises its functions under this Part, and

(e) such other matters relating to this Part as it considers appropriate.

(2) The service provider in relation to a child or young person must provide the child or young person and the parents of the child or young person with information about the arrangements for contacting the named person for the child or young person—

(a) as soon as reasonably practicable after it becomes the service provider in relation to the child or young person, and

(b) as soon as reasonably practicable after there is any change in those arrangements.

25 Duty to help named person

(1) Subsection (2) applies where it appears to the service provider in relation to a child or young person that another service provider or a relevant authority could, by doing a certain thing, help in the exercise of any of the named person functions for a child or young person.

(2) The other service provider or relevant authority must comply with any request for such help which is made of it, unless subsection (3) applies.

(3) This subsection applies where the other service provider or relevant authority considers that the provision of the help would—
be incompatible with any duty of the other service provider or relevant authority,
or
(b) unduly prejudice the exercise of any function of the other service provider or relevant authority.

**Information sharing**

(1) A service provider or relevant authority must provide to the service provider in relation to a child or young person any information which the person holds which falls within subsection (2).

(2) Information falls within this subsection if the information holder considers that—

(a) it is likely to be relevant to the exercise of the named person functions in relation to the child or young person,

(b) it ought to be provided for that purpose, and

(c) its provision to the service provider in relation to the child or young person would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

(3) The service provider in relation to a child or young person must provide to a service provider or relevant authority any information which the person holds which falls within subsection (4).

(4) Information falls within this subsection if the information holder considers that—

(a) it is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person,

(b) it ought to be provided for that purpose, and

(c) its provision to the service provider or relevant authority would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

(4A) In considering for the purpose of subsection (2)(b) or (4)(b) whether information ought to be provided, the information holder is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(4B) In having regard to the views of a child under subsection (4A), an information holder is to take account of the child’s age and maturity.

(4C) The information holder may decide for the purpose of subsection (2)(b) or (4)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.

(5) The service provider in relation to a child or young person may provide to a service provider or relevant authority any information which the person holds which falls within subsection (6).

(6) Information falls within this subsection if the information holder considers that its provision to the service provider or relevant authority is necessary or expedient for the purposes of the exercise of any of the named person functions.

(7) References in this section to a service provider or a relevant authority include any person exercising a function on behalf of a service provider or relevant authority.
(8) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

27 Disclosure of information

(2) This section applies—

(a) where by virtue of this Part, a person provides information in breach of a duty of confidentiality, and

(b) in providing the information, the person informs the recipient of the breach of duty.

(3) The recipient is not to provide the information to any other person, unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

28 Guidance in relation to named person service

(1) A person mentioned in subsection (1A) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Part.

(1A) Those persons are—

(a) a local authority,

(b) a health board,

(c) a directing authority,

(d) a relevant authority.

(4) Before issuing or revising guidance, the Scottish Ministers must consult any person to whom it will relate.

29 Directions in relation to named person service

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part.

(2) Those persons are—

(a) a local authority,

(b) a health board,

(c) a directing authority,

(d) a relevant authority.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to which it relates.

30 Interpretation of Part 4

(1) In this Part—

“constable” has the same meaning as in section 13(b) of the Prisons (Scotland) Act 1989,

“directing authority” means—
(a) when used generally, each of the following—

(i) the managers of each grant-aided school,

(ii) the proprietor of each independent school, and

(iii) the local authority or other person who manages each residential establishment which comprises secure accommodation,

(b) when used in relation to a particular establishment—

(i) in relation to a grant-aided school, the managers of the school,

(ii) in relation to an independent school, the proprietor of the school,

(iii) in relation to secure accommodation, the local authority or other person who manages the residential establishment,

“named person” means the identified individual made available in pursuance of a named person service,

“named person functions” means the functions to be exercised by way of the named person service,

“parent” has the same meaning as in the 1980 Act,

“penal institution” means any—

(a) prison (other than a naval, military or air force prison),

(b) remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or

(c) young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

“pre-school child” has the meaning given by section 20(2),

“regular forces” has the meaning given by section 374 of the Armed Forces Act 2006,

“relevant authority” means a person listed, or within a description listed, in schedule 2,

“reserve forces” has the meaning given by section 374 of the Armed Forces Act 2006,

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

“service provider” means—

(a) when used generally, each of the following—

(i) each health board,

(ii) each local authority,

(iii) each directing authority, and

(iv) the Scottish Ministers,
(b) when used in relation to a child or young person, the person which has the function of making arrangements for the provision of a named person service in relation to the child or young person,

“subject to service law” has the meaning given by section 374 of the Armed Forces Act 2006,

“temporary release” means release by virtue of rules made under section 39(6) of the Prisons (Scotland) Act 1989,

“young person” has the meaning given by section 22(2).

(2) The Scottish Ministers may by order modify schedule 2 by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) varying an entry listed in it.

**PART 5**

**CHILD’S PLAN**

**31 Child’s plan: requirement**

(1) For the purposes of this Part, a child requires a child’s plan if the responsible authority in relation to a child considers that—

(a) the child has a wellbeing need, and

(b) subsection (3) applies in relation to that need.

(2) A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter.

(3) This subsection applies in relation to a wellbeing need if—

(a) the need is not capable of being met, or met fully, by the taking of action other than a targeted intervention in relation to the child, and

(b) the need, or the remainder of the need, is capable of being met, or met to some extent, by one or more targeted interventions in relation to the child.

(4) A “targeted intervention” is a service which—

(a) is provided by a relevant authority in pursuance of any of its functions, and

(b) is directed at meeting the needs of children whose needs are not capable of being met, or met fully, by the services which are provided generally to children by the authority.

(4A) The references in subsection (4) to services being provided by a relevant authority include references to services provided by a third person under arrangements made by the relevant authority.

(5) In deciding whether a child requires a child’s plan, the responsible authority—

(a) is, where the child’s named person is not an employee of the responsible authority, to consult the child’s named person, and

(b) is so far as reasonably practicable to ascertain and have regard to the views of—

(i) the child,
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(ii) the child’s parents,

(iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

(iv) such other persons as the responsible authority considers appropriate.

(6) In having regard to the views of the child, the responsible authority is to take account of the child’s age and maturity.

(7) Subsection (1) does not apply in relation to—

(a) a child who already has a child’s plan,

(b) a child who is a member of any of the regular forces.

(8) In subsection (7)(b), “regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

32 Content of a child’s plan

(1) A child’s plan is to contain a statement of—

(a) the child’s wellbeing need,

(b) the targeted intervention which requires to be provided, or the targeted interventions which require to be provided, in relation to the child, and

(c) in relation to each such targeted intervention—

(i) the relevant authority which is to provide the targeted intervention,

(ii) the manner in which the targeted intervention is to be provided, and

(iii) the outcome in relation to the child’s wellbeing need which the targeted intervention is intended to achieve.

(1A) A child’s plan may contain a targeted intervention only where the relevant authority which would provide it, or under whose arrangements it would be provided, agrees.

(1B) If that relevant authority is not to prepare the plan, it must provide to the person who is to prepare the plan a statement of its reasons for not agreeing.

(2) The Scottish Ministers may by order make provision as to—

(a) other information which is, or is not, to be contained in child’s plans,

(b) the form of child’s plans.

33 Preparation of a child’s plan

(1) This section applies where a child requires a child’s plan.

(2) Subject to subsections (3) and (5A), the responsible authority is to prepare such a plan as soon as is reasonably practicable.

(3) Where the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare a child’s plan, the relevant authority is to prepare the plan as soon as is reasonably practicable.

(5) A relevant authority which declines to give its agreement as mentioned in subsection (3) must provide a statement of its reasons.
(5A) Subsection (2) does not apply where, by virtue of section 32(1A), there are no targeted interventions which may be contained in a child’s plan.

(6) In preparing a child’s plan, an authority—
   (a) is, where the child’s named person is not an employee of the authority, to consult the child’s named person, and
   (b) is so far as reasonably practicable to ascertain and have regard to the views of—
      (i) the child,
      (ii) the child’s parents,
      (iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and
      (iv) such other persons as the authority considers appropriate.

(7) In having regard to the views of the child, the authority preparing the child’s plan is to take account of the child’s age and maturity.

(8) The Scottish Ministers may by order—
   (a) make further provision as to the preparation of child’s plans,
   (b) make provision requiring or permitting the authority which prepared a child’s plan to provide a copy of it to a particular person or to the persons within a particular description.

(9) An order under subsection (8)(b) may include provision to the effect that a copy of a child’s plan is to be provided to a person, or to persons within a particular description, only—
   (a) in circumstances described in the order, or
   (b) where the authority considers it appropriate.

34 Responsible authority: general

(1) For the purposes of this Part, the responsible authority in relation to a child is—
   (a) where the child is a pre-school child, the health board for the area in which the child resides,
   (b) where the child is not a pre-school child, the local authority for the area in which the child resides.

(2) Subsection (1) is subject to section 35.

(3) A “pre-school child” is a child who—
   (a) has not commenced attendance at a primary school, and
   (b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child’s commencement at primary school being delayed.

(4) For the purposes of this section—
   (a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,
   (b) the references to attendance at a primary school do not include attendance at a nursery class in such a school, and
(c) the references to the relevant local authority are to the local authority for the area in which the child concerned resides.

35 **Responsible authority: special cases**

(1) Where in pursuance of a decision of a local authority or health board a pre-school child resides in the area of a health board which is different to that in which the child would otherwise reside, the health board for the area in which the child would otherwise reside is the responsible authority in relation to the child.

(2) Where the child is a pupil at a public school which is managed by a local authority other than the one for the area in which the child resides, that other authority is the responsible authority in relation to the child.

(3) Where the child is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the child.

(4) Subsection (3) does not apply where the child is such a pupil by virtue of a placement by a local authority.

(4A) Where—

(a) the child falls within subsection (4B), and

(b) in consequence the child resides in the area of a local authority which is different to that in which the child would otherwise reside,

the local authority for the area in which the child would otherwise reside is the responsible authority in relation to the child.

(4B) A child falls within this subsection if—

(a) in pursuance of the duties of a local authority under the 1980 Act the child—

(i) is a pupil at a grant-aided school or an independent school, and

(ii) resides in accommodation provided for the purpose of attending that school by its managers,

(b) by virtue of Chapter 1 of Part 2 of the 1995 Act, the child is placed in a residential establishment (within the meaning of section 93 of that Act),

(c) by virtue of an order under the Children’s Hearing (Scotland) Act 2011, the child resides at a residential establishment (within the meaning of section 202 of that Act), or

(d) in pursuance of an order under the Criminal Procedure (Scotland) Act 1995, the child is detained in residential accommodation provided under Part 2 of the 1995 Act.

(5) The Scottish Ministers may by order modify this section so as to make further or different provision as to circumstances in which section 34(1) does not apply in relation to a child.

36 **Delivery of a child’s plan**

(1) A relevant authority is so far as reasonably practicable—

(a) to provide any targeted intervention contained in a child’s plan which is to be provided by it in accordance with the plan,
(b) to secure that any targeted intervention contained in a child’s plan which is to be provided by a third person under arrangements made by the authority is provided in accordance with the plan.

(2) Subsection (1) does not apply to the extent that the authority considers that to comply with it would adversely affect the wellbeing of the child.

### 37 Child’s plan: management

(1) The managing authority of a child’s plan is to keep under review whether—

(a) the wellbeing need of the child stated in the plan is still accurate,

(b) in relation to each targeted intervention, it or the manner of its provision, is still appropriate,

(c) the outcome of the plan has been achieved, and

(d) the management of the plan should transfer to another relevant authority.

(2) In reviewing a child’s plan, the managing authority—

(a) is to consult—

(i) each other relevant authority to which subsection (2A) applies,

(ii) where it is neither the managing authority nor consulted under sub-paragraph (i), the responsible authority in relation to the child, and

(iii) where the child’s named person is not an employee of the managing authority, the child’s named person, and

(b) is so far as reasonably practicable to ascertain and have regard to the views of—

(i) the child,

(ii) the child’s parents,

(iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

(iv) such other persons as the managing authority considers appropriate.

(2A) This subsection applies to a relevant authority if—

(a) it is providing a targeted intervention contained in the plan, or

(b) a targeted intervention contained in the plan is being provided by a third person under arrangements made by the authority.

(3) In having regard to the views of the child as mentioned in subsection (2)(b)(i), the managing authority is to take account of the child’s age and maturity.

(4) The managing authority of a child’s plan may in consequence of the review—

(a) amend the plan so as to revise—

(i) the wellbeing need of the child,

(ii) a targeted intervention,

(iii) the manner in which a targeted intervention requires to be provided, or

(iv) the outcome which the plan is intended to achieve,

(b) transfer the management of the plan to another relevant authority, or
(c) end the plan.

(5) The Scottish Ministers may by order make provision about the management of child’s plans, including provision about—

(a) when and how a child’s plan is to be reviewed in accordance with subsection (1),

(b) who is to be the managing authority of a child’s plan,

(c) when and to whom management of a child’s plan is to or may transfer under subsection (4)(b),

(d) when and how a new targeted intervention may be included in a child’s plan,

(e) the keeping, disclosure and destruction of child’s plans.

(6) Subject to provision made under subsection (5)(b), the managing authority of a child’s plan is—

(a) the relevant authority which prepared it, or

(b) where management of the child’s plan has been transferred under subsection (4)(b), the relevant authority to which the management of the child’s plan was so transferred (or where there has been more than one such transfer, last so transferred).

38 Assistance in relation to child’s plan

(1) A person mentioned in subsection (1A) must comply with any reasonable request made of the person to provide a person exercising functions under this Part with information, advice or assistance for that purpose.

(1A) Those persons are—

(a) a relevant authority,

(b) a person listed, or within a description listed, in schedule 2A.

(2) Subsection (1) does not apply where the person to whom the request is made considers that provision of the information, advice or assistance concerned would—

(a) be incompatible with any duty of the person, or

(b) unduly prejudice the exercise of any function of the person.

(3) Other than in relation to a duty of confidentiality, subsection (1) does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

(4) Subsection (5) applies—

(a) where, by virtue of subsection (1), a person provides information in breach of a duty of confidentiality, and

(b) in providing the information, the person informs the recipient of the breach of duty.

(5) The recipient is not to provide the information to any other person unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

(6) The Scottish Ministers may by order modify schedule 2A by—

(a) adding a person or description of persons,
(b) removing an entry listed in it, or
(c) varying an entry listed in it.

39  Guidance on child’s plans

(1) A person mentioned in subsection (1A) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 36).

(1A) Those persons are—
(a) a relevant authority,
(b) a person (other than the Scottish Ministers) listed, or within a description listed, in schedule 2A.

(4) Before issuing or revising guidance, the Scottish Ministers must consult any person to whom it will relate.

40  Directions in relation to child’s plans

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 36).

(2) Those persons are—
(aa) a relevant authority,
(ab) a person (other than the Scottish Ministers) listed, or within a description listed, in schedule 2A.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to which it relates.

41  Interpretation of Part 5

In this Part—

“child’s named person” means the individual who is the child’s named person by virtue of Part 4,
“directing authority” means—
(a) when used generally—
   (i) the managers of each grant-aided school,
   (ii) the proprietor of each independent school,
(b) when used in relation to a particular establishment—
   (i) in relation to a grant-aided school, the managers of the school,
   (ii) in relation to an independent school, the proprietor of the school,
“parent” has the same meaning as in the 1980 Act,
“relevant authority” means any—
(a) health board,
(b) local authority, or
(c) directing authority,

“service” includes support,

“targeted intervention” has the meaning given by section 31(4).

**PART 6**

**EARLY LEARNING AND CHILDCARE**

**42 Early learning and childcare**

In this Part, “early learning and childcare” means a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.

**43 Duty to secure provision of early learning and childcare**

(1) An education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare is made available for each eligible pre-school child belonging to its area.

(2) An “eligible pre-school child” is a child who—

(a) is under school age,

(b) has not commenced attendance at a primary school (other than at a nursery class in such a school), and

(c) either—

(i) falls within subsection (3), or

(ii) is within such age range, or is of such other description, as the Scottish Ministers may by order specify.

(3) A child falls within this subsection if the child is aged 2 or over and is or has been at any time since the child’s second birthday—

(a) looked after by the authority concerned or by any other local authority, or

(b) the subject of a kinship care order.

(4) An order made under subsection (2)(c)(ii) may provide that a child is to be an eligible pre-school child only if the education authority concerned is satisfied as to any matter relating to the child which is specified in the order.

(5) In subsection (3)(b), “kinship care order” has the meaning given by section 65(1).

**44 Mandatory amount of early learning and childcare**

(1) The “mandatory amount”, for the purposes of section 43(1), means—

(a) 600 hours in each year for which a child is an eligible pre-school child, and

(b) a pro rata amount for each part of a year for which a child is an eligible pre-school child.

(2) The Scottish Ministers may by order modify subsection (1) so as to vary the amount of early learning and childcare which is to be made available in pursuance of section 43(1).
(3) Such an order may, without prejudice to section 77(1)(a), make different provision in relation to different types of eligible pre-school children.

45  Looked after 2 year olds: alternative arrangements to meet wellbeing needs

(1) Subsection (2) applies where—

(a) an authority’s duty under section 43(1) applies in relation to a child only by virtue of the child falling within section 43(3)(a),

(b) the authority, after assessing the child’s needs, considers that making alternative arrangements in relation to the child’s education and care would better safeguard or promote the child’s wellbeing.

(2) Where this subsection applies, the authority—

(a) need not comply with its duty under section 43(1) in relation to the child, but

(b) must make such alternative arrangements in relation to the child’s education and care as it considers appropriate for the purposes of safeguarding or promoting the child’s wellbeing.

(3) Subsection (2) does not apply in relation to a child who is not being looked after by the authority if a parent of the child objects to the authority making alternative arrangements.

(4) The authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) (and must do so on becoming aware of any significant change in the child’s circumstances) and may, following such a review, alter those arrangements.

(5) The authority must seek to ensure that a record of—

(a) the outcome of any assessment of a child’s needs that it undertakes in pursuance of subsection (1)(b), and

(b) any alternative arrangements that it makes in relation to the child’s education and care in pursuance of subsection (2)(b),

is included in any child’s plan which is prepared for the child under Part 5.

46  Duty to consult and plan on delivery of early learning and childcare

(1) An education authority must, at least once every 2 years—

(a) consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available in pursuance of this Part, and

(b) after having had regard to views expressed, prepare and publish a plan for how it intends to make early learning and childcare available in pursuance of this Part.

(2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

47  Method of delivery of early learning and childcare

(1) An education authority must ensure that it makes early learning and childcare available in pursuance of this Part by way of sessions—
Children and Young People (Scotland) Bill

Part 6A—Power to provide school education for pre-school children

(a) which are provided during at least 38 weeks of every calendar year, and
(b) which are each of more than 2.5 hours but less than 8 hours in duration.

(2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the method of delivering early learning and childcare which it describes.

Flexibility in way in which early learning and childcare is made available

In exercising functions under sections 46 and 47, an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available in pursuance of this Part is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service.

Interpretation of Part 6

In this Part—

“early learning and childcare” has the meaning given by section 42,
“eligible pre-school child” has the meaning given by section 43(2),
“parent” has the same meaning as in the 1980 Act.

Power to provide school education for pre-school children

Duty to consult and plan in relation to power to provide school education for pre-school children

In section 1 of the 1980 Act, after subsection (2A) insert—

“(2B) An education authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of pre-school children within their area about whether and if so how they should provide school education for such children under subsection (1C) above; and

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of such education for such children under that subsection.

(2C) The Scottish Ministers may by order modify subsection (2B) above so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

(2D) An order made under subsection (2C) above is subject to the negative procedure.”.

Day care and out of school care

Duty to consult and plan in relation to day care and out of school care

(1) Section 27 of the 1995 Act is amended as follows.

(2) After subsection (1) insert—
“(1A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and

(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.

(1B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection;

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.

(3) After subsection (3) insert—

“(3A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and

(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide appropriate care for such children in pursuance of that subsection.

(3B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children within their area who are in attendance at a school but are not in need about whether and if so how they should provide appropriate care for such children under subsection (3) above; and

(b) after having had regard to the views expressed, prepare and publish plans in relation to the provision of appropriate care for such children in their area under that subsection.

(3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or (3B) above so as to vary the regularity within which a local authority must consult and plan in pursuance of that subsection.

(3D) An order made under subsection (3C) above is subject to the negative procedure.”.
PART 7

CORPORATE PARENTING

50 Corporate parents

(1) The persons listed, or within a description listed, in schedule 3 are “corporate parents” for the purposes of this Part (subject to subsection (3)).

(2) The Scottish Ministers may by order modify schedule 3 by—
   (a) adding a person or description of persons,
   (b) removing an entry listed in it, or
   (c) varying an entry listed in it.

(3) The Scottish Ministers are not corporate parents for the purposes of sections 55 to 58.

(3A) The following persons are not corporate parents for the purposes of section 58—
   (a) the Commissioner for Children and Young People in Scotland,
   (b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

(3B) An order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a corporate parent, or the persons within the description are not corporate parents, for the purposes of section 58.

(4) In this Part, references to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 52(1).

51 Application of Part: children and young people

(1) This Part applies to—
   (a) every child who is looked after by a local authority, and
   (b) every young person who—
       (i) is under the age of 26, and
       (ii) was (on the person’s 16th birthday or at any subsequent time) but is no longer looked after by a local authority.

(2) This Part also applies to a young person who—
   (a) is at least the age of 16 but under the age of 26, and
   (b) is not of the description in subsection (1)(b)(ii) but is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

52 Corporate parenting responsibilities

(1) It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions—
   (a) to be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom this Part applies,
(b) to assess the needs of those children and young people for services and support it provides,
(c) to promote the interests of those children and young people,
(d) to seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing,
(e) to take such action as it considers appropriate to help those children and young people—
   (i) to access opportunities it provides in pursuance of paragraph (d), and
   (ii) to make use of services, and access support, which it provides, and
(f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

(2) The Scottish Ministers may by order—
   (a) modify subsection (1) so as to confer, remove or vary a duty on corporate parents,
   (b) provide that subsection (1) is to be read, in relation to a particular corporate parent or corporate parents of a particular description, with a modification conferring, removing or varying a duty.

53 Planning by corporate parents

(1) A corporate parent must—
   (a) prepare a plan for how it proposes to exercise its corporate parenting responsibilities, and
   (b) keep its plan under review.

(2) Before preparing or revising a plan, a corporate parent must consult such other corporate parents, and such other persons, as it considers appropriate.

(3) A corporate parent must publish its plan, and any revised plan, in such manner as it considers appropriate (and, in particular, plans may be published together with, or as part of, any other plan or document).

54 Collaborative working among corporate parents

(1) Corporate parents must, in so far as reasonably practicable, collaborate with each other when exercising their corporate parenting responsibilities or any other functions under this Part where they consider that doing so would safeguard or promote the wellbeing of children or young people to whom this Part applies.

(2) Such collaboration may include—
   (a) sharing information,
   (b) providing advice or assistance,
   (c) co-ordinating activities (and seeking to prevent unnecessary duplication),
   (d) sharing responsibility for action,
   (e) funding activities jointly,
55 Reports by corporate parents

(1) A corporate parent must report on how it has exercised—
   (a) its corporate parenting responsibilities,
   (b) its planning and collaborating functions in pursuance of sections 53 and 54, and
   (c) its other functions under this Part.

(2) Reports may, in particular, include information about—
   (a) standards of performance,
   (b) the outcomes achieved in pursuance of this Part.

(3) Reports are to be published in such manner as the corporate parent considers appropriate
   (and, in particular, reports may be published together with, or as part of, any other report
   or document).

56 Duty to provide information to Scottish Ministers

(1) A corporate parent must provide the Scottish Ministers with such information as they
may reasonably require about how it is—
   (a) exercising its corporate parenting responsibilities,
   (b) planning, collaborating or reporting in pursuance of sections 53, 54 or 55, or
   (c) otherwise exercising functions under this Part.

(2) Information which is required may, in particular, include information about—
   (a) standards of performance,
   (b) the outcomes achieved in pursuance of this Part.

57 Guidance on corporate parenting

(1) A corporate parent must have regard to any guidance about corporate parenting issued
by the Scottish Ministers.

(2) Guidance may, in particular, include advice or information about—
   (a) how corporate parents should—
       (i) exercise their corporate parenting responsibilities,
       (ii) promote awareness of their corporate parenting responsibilities,
       (iii) plan, collaborate or report in pursuance of sections 53, 54 or 55, or
       (iv) otherwise exercise functions under this Part,
   (b) outcomes which corporate parents should seek to achieve in exercising functions
      under this Part.

(5) Before issuing or revising guidance, the Scottish Ministers must consult—
   (a) any corporate parent to which they relate, and
   (b) such other persons as they consider appropriate.
58 Directions to corporate parents

(1) A corporate parent must comply with any direction issued by the Scottish Ministers about—
   (a) its corporate parenting responsibilities,
   (b) its planning, collaborating or reporting functions under sections 53, 54 or 55, or
   (c) its other functions under this Part.

(4) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
   (a) any corporate parent to which it relates, and
   (b) such other persons as they consider appropriate.

59 Reports by Scottish Ministers

(1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.

(2) In subsection (1), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and
(b) each subsequent period of 3 years.

60 Provision of aftercare to young people

(1) The 1995 Act is amended as follows.

(2) In section 29—
   (ya) in subsection (1)—
      (i) for “over school age” substitute “who is at least sixteen”,
      (ii) for the words from first “at” substitute “either—
         (a) was (on his sixteenth birthday or at any subsequent time) but is no longer
             looked after by a local authority; or
         (b) is of such other description of person formerly but no longer looked after
             by a local authority as the Scottish Ministers may specify by order.”,
   (za) after subsection (1) insert—
     “(1A) An order made under subsection (1)(b) above is subject to the affirmative
        procedure.”, 
   (a) in subsection (2)—
      (i) for “twenty-one” substitute “twenty-six”,
      (ii) the words from third “and” to the end of the subsection are repealed,
(b) in subsection (3), for “or (2) above” substitute “above or (5A) or (5B) below”,

(ba) in subsection (4), for “over school” substitute “who is at least sixteen years of”,

(c) after subsection (5) insert—

“(5A) After carrying out an assessment under subsection (5) above in pursuance of an application made by a person under subsection (2) above, the local authority—

(a) must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs, and

(b) may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare,

(5B) A local authority may (but is not required to) continue to provide advice, guidance and assistance to a person in pursuance of subsection (5A) after the person reaches the age of twenty-six.”,

(d) in subsection (6), for “(5)” substitute “(5B)”,

(e) after subsection (7) insert—

“(8) For the purposes of subsection (5A)(a) above, a person has “eligible needs” if the person needs care, attention or support of such type as the Scottish Ministers may by order specify.

(9) An order made under subsection (8) is subject to the affirmative procedure.

(10) If a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section has died, the local authority must as soon as reasonably practicable notify—

(a) the Scottish Ministers, and

(b) Social Care and Social Work Improvement Scotland.”.

(3) In section 30—

(a) in subsection (2)—

(i) in paragraph (a)—

(A) for “over school” substitute “at least sixteen years of”,

(B) for “twenty-one” substitute “twenty-six”,

(ii) for paragraph (b) substitute—

“(b) he either—

(i) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or

(ii) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

(2A) An order made under subsection (2)(b)(ii) above is subject to the affirmative procedure.”,

(b) omit subsections (3) and (4).
PART 8A

CONTINUING CARE

60A Continuing care: looked after children

(1) After section 26 of the 1995 Act insert—

“26A Provision of continuing care: looked after children

(1) This section applies where an eligible person ceases to be looked after by a local authority.

(2) An “eligible person” is a person who—

(a) is at least sixteen years of age, and

(b) is not yet such higher age as may be specified.

(3) Subject to subsection (5) below, the local authority must provide the person with continuing care.

(4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.

(5) The duty to provide continuing care does not apply if—

(a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,

(b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or

(c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.

(6) A local authority’s duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.

(7) The duty to provide continuing care ceases if—

(a) the person leaves the accommodation of the person’s own volition,

(b) the accommodation ceases to be available, or

(c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.

(8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—

(a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,

(b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,

(c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.

(9) The Scottish Ministers may by order—
(a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,
(b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,
(c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.

(10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—
(a) the Scottish Ministers, and
(b) Social Care and Social Work Improvement Scotland.

(11) An order under this section—
(a) may make different provision for different purposes,
(b) is subject to the affirmative procedure.

(12) In this section—
“carer”, in relation to a care placement, means the family or persons with whom the placement is made,
“care placement” means a placement such as is mentioned in section 26(1)(a) of this Act,
“specified” means specified by order made the Scottish Ministers.”.

(2) In section 29 of the 1995 Act, after subsection (2) insert—
“(2A) Subsections (1) and (2) above do not apply to a person during any period when the person is being provided with continuing care under section 26A of this Act.”.

PART 9
SERVICES IN RELATION TO CHILDREN AT RISK OF BECOMING LOOKED AFTER, ETC.

61 Provision of relevant services to parents and others

(1) A local authority must make arrangements to secure that relevant services of such description as the Scottish Ministers may by order specify are made available for—
(a) each eligible child residing in its area,
(b) a qualifying person in relation to such a child,
(c) each eligible pregnant woman residing in its area,
(d) a qualifying person in relation to such a woman.

(1A) A “relevant service” is a service comprising, or comprising any combination of—
(a) providing information about a matter,
(b) advising or counselling about a matter,
(c) taking other action to facilitate the addressing of a matter by a person.

(2) An “eligible child” is a child who the authority considers—
(a) to be at risk of becoming looked after, or
(b) to fall within such other description as the Scottish Ministers may by order specify.

(3) A “qualifying person” in relation to an eligible child is a person—

(a) who is related to the child,
(b) who has any parental rights or responsibilities in relation to the child, or
(c) with whom the child is, or has been, living.

(4) An “eligible pregnant woman” is a pregnant woman who the authority considers is going to give birth to a child who will be an eligible child.

(5) A “qualifying person” in relation to an eligible pregnant woman is a person—

(a) who is the father of the child to whom the pregnant woman is to give birth,
(b) who is married to, in a civil partnership with or otherwise related to the pregnant woman,
(c) with whom the pregnant woman is living, or
(d) who does not fall within any of paragraphs (a) to (c) but who the authority considers will, when the pregnant woman gives birth to the child, become a qualifying person in relation to the child.

(6) The references in this section to a person who is related to another person (“the other person”) includes a person who—

(a) is married to or in a civil partnership with a person who is related to the other person,
(b) is related to the other person by the half blood.

(7) This section is without prejudice to section 22 of the 1995 Act.

**Relevant services: further provision**

(1) The Scottish Ministers may by order make provision about—

(a) when or how relevant services specified in an order under section 61(1) are to be provided,
(b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 61(2),
(c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 61(2),
(d) such other matters about the provision of relevant services specified in an order under section 61(1) as the Scottish Ministers consider appropriate.

(2) An order under subsection (1)(d) may include provision about—

(a) circumstances in which relevant services specified in an order under section 61(1) may be provided subject to conditions (including conditions as to payment), and
(b) consequences of such conditions not being met.
Interpretation of Part 9

The following expressions have the same meaning in this Part as they have in Part 1 of the 1995 Act—

parental responsibilities

parental rights.

PART 10
SUPPORT FOR KINSHIP CARE

64 Assistance in relation to kinship care orders

(1) A local authority must make arrangements to secure that kinship care assistance is made available for a person residing in its area who falls within subsection (3).

(2) “Kinship care assistance” is assistance of such description as the Scottish Ministers may by order specify.

(3) A person falls within this subsection if the person is—

(a) a person who is applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years,

(b) an eligible child who has not attained the age of 16 years who is the subject of a kinship care order,

(c) a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists,

(d) a child who has attained the age of 16 years, where—

(i) immediately before doing so, the child was the subject of a kinship care order, and

(ii) the child is an eligible child,

(e) a person who is a guardian by virtue of an appointment under section 7 of the 1995 Act of an eligible child who has not attained the age of 16 years (but this is subject to subsection (3A)),

(f) an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.

(3A) Subsection (3)(e) does not include a person who is also a parent of the child.

(4) An “eligible child” is a child who the local authority considers—

(a) to be at risk of becoming looked after, or

(b) to fall within such other description as the Scottish Ministers may by order specify.

65 Orders which are kinship care orders

(1) In section 64, “kinship care order” means—

(a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,
(b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person, or

(c) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.

(2) For the purposes of subsection (1), a “qualifying person” is a person who, at the time the order is made—

(a) is related to the child,

(b) is a friend or acquaintance of a person related to the child, or

(c) has such other relationship to, or connection with, the child as the Scottish Ministers may by order specify.

(3) But a parent of a child is not a “qualifying person” for the purposes of subsection (1).

(4) The references in subsection (2) to a person who is related to a child include a person who is—

(a) married to or in a civil partnership with a person who is related to the child,

(b) related to the child by the half blood.

66 Kinship care assistance: further provision

(1) The assistance which may be specified as kinship care assistance includes—

(a) the provision of counselling, advice or information about any matter,

(b) the provision of financial support (or support in kind) of any description,

(c) the provision of any service provided by a local authority on a subsidised basis.

(2) An order under section 64(1) may specify assistance by reference to assistance which a person was entitled to from, or being provided with by, a local authority immediately before becoming entitled to assistance under that section.

(3) The Scottish Ministers may by order make provision about—

(a) when or how kinship care assistance is to be provided,

(b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 64(4),

(c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 64(4),

(d) such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.

(4) An order under subsection (3)(d) may include provision about—

(a) circumstances in which a local authority may provide kinship care assistance subject to conditions (including conditions as to payment for the assistance or the repayment of financial support), and

(b) consequences of such conditions not being met (including the recovery of any financial support provided).

67 Interpretation of Part 10

In this Part—
“kinship care assistance” has the meaning given by section 64(2),
“parent” has the same meaning as it has in Part 1 of the 1995 Act.

PART 11
ADOPTION REGISTER

Scotland’s Adoption Register

After section 13 of the Adoption and Children (Scotland) Act 2007, insert—

“CHAPTER 1A
SCOTLAND’S ADOPTION REGISTER

13A Scotland’s Adoption Register

(1) The Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register for the purposes of facilitating adoption (referred to in this Chapter as “the Register”).

(2) The Scottish Ministers may by regulations—
(a) prescribe information relating to adoption which is, or types of information relating to adoption which are, to be included in the Register, which may include information relating to—
(i) children who adoption agencies consider ought to be placed for adoption,
(ii) persons considered by adoption agencies as suitable to have a child placed with them for adoption,
(iii) matters relating to such children or persons which arise after information about them is included in the Register,
(iv) children outwith Scotland who may be suitable for adoption,
(v) prospective adopters outwith Scotland,
(b) provide for how information is to be retained in the Register,
(c) make such further provision in relation to the Register as they consider appropriate.

(3) The Register is not to be open to public inspection or search.

(4) Information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

13B Registration organisation

(1) Arrangements made by the Scottish Ministers under section 13A(1) may in particular—
(a) authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation),
(b) provide for payments to be made by the Scottish Ministers to an organisation so authorised.
(1A) The Scottish Ministers must publish arrangements under section 13A(1) so far as they authorise an organisation as mentioned in subsection (1)(a).

(2) An organisation authorised in pursuance of subsection (1)(a) (a “registration organisation”) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

13C Supply of information for the Register

(1) An adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about—

(a) children who it considers ought to be placed for adoption or persons who were included in the Register as such children,

(b) persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons.

(3) Regulations made under section 13A(2) may—

(a) provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers,

(b) provide for how and by when information is to be provided in pursuance of subsection (1),

(d) prescribe circumstances in which an adoption agency, despite subsection (1), is not to disclose information of the type prescribed for the purposes of that subsection.

13D Disclosure of information

(1) It is an offence to disclose any information derived from the Register other than in accordance with regulations made under section 13A(2) in pursuance of this section.

(2) Regulations made under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register—

(a) to an adoption agency for the purposes of helping it—

(i) to find persons with whom it would be appropriate to place a child for whom the agency is acting, or

(ii) to find a child who is appropriate for adoption by persons for whom the agency is acting,

(b) to any person (whether or not established or operating in Scotland) specified in the regulations—

(i) for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter,

(ii) for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption or prospective adopters,
(iii) for the purpose of enabling or assisting that person to perform any functions which relate to adoption,

(iv) for use for statistical or research purposes, or

(v) for any other purpose relating to adoption.

(3) Regulations made under section 13A(2) may—

(a) set out terms and conditions on which information may be disclosed in pursuance of this section,

(b) specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2),

(c) authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption.

(4) Subsection (1) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.

(5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

13DA Fees and other payments

Regulations made under section 13A(2) may prescribe—

(a) a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1),

(b) a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4),

(c) such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.

13E Use of an organisation as agency for payments

(1) The Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

(2) A registration organisation or other person authorised under subsection (1) is to perform the functions exercisable by virtue of that subsection in accordance with any directions (general or specific) given by the Scottish Ministers.

13F Supplementary

Nothing authorised or required to be done by virtue of this Chapter constitutes an offence under section 72(2) or 75(1)."
PART 11A

SCHOOL CLOSURE PROPOSALS, ETC.

68A References to the Schools (Consultation) (Scotland) Act 2010

In this Part, references to the 2010 Act are to the Schools (Consultation) (Scotland) Act 2010.

68B Restriction on closure proposals

After section 2 of the 2010 Act, insert—

“2A Restriction on closure proposals

(1) This section applies where a decision is made not to implement a closure proposal in relation to a school.

(2) For the purposes of subsection (1)—

(a) a decision not to implement a closure proposal is—

(i) a decision not to implement the proposal made by the education authority following the publication of a consultation report in relation to the proposal (whether or not the proposal was called-in under section 15),

(ii) a decision of a School Closure Review Panel in relation to the proposal under section 17C(1)(a),

(b) such a decision is made by a School Closure Review Panel on the day on which the Panel notifies the decision to the education authority in pursuance of section 17C(5).

(3) The education authority may not publish a proposal paper concerning a further closure proposal in relation to the school during the period of 5 years beginning with the day on which the decision is made unless there is a significant change in the school’s circumstances.”.

68C Financial implications of closure proposals

In section 4 of the 2010 Act (proposal paper), after subsection (2) insert—

“(2A) Where a proposal paper relates to a closure proposal, it must also contain information about the financial implications of the proposal.”.

68D Special provision for rural school closure proposals

(1) Before section 12 of the 2010 Act (factors for rural school closure), insert—

“11A Presumption against rural school closure

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The education authority may not decide to implement the proposal (wholly or partly) unless the authority—

(a) has complied with sections 12, 12A and 13, and
(b) having so complied, is satisfied that implementation of the proposal is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a)."

(2) In that section—

(a) subsection (3)(a) is repealed,

(b) in subsection (4), after "(3)(b)" insert "and sections 12A(2)(c)(ii) and 13(5)(b)(ii)",

(c) in subsection (5), after "(3)(c)" insert "and sections 12A(2)(c)(iii) and 13(5)(b)(iii)".

(3) After that section, insert—

"12A Preliminary requirements in relation to rural school closure

(1) This section applies where an education authority is formulating a closure proposal as respects a rural school.

(2) The authority must—

(a) identify its reasons for formulating the proposal,

(b) consider whether there are any reasonable alternatives to the proposal as a response to those reasons,

(c) assess, for the proposal and each of the alternatives to the proposal identified under paragraph (b) (if any)—

(i) the likely educational benefits in consequence of the implementation of the proposal, or as the case may be, alternative,

(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,

(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(3) For the purposes of this section and section 13, reasonable alternatives to the proposal include (but are not limited to) steps which would not result in the school or a stage of education in the school (within the meaning of paragraph 12 of schedule 1) being discontinued.

(4) The authority may not publish a proposal paper in relation to the proposal unless, having complied with subsection (2), it considers that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(5) In this section and section 13, the references to the reasons for the proposal are references to the reasons identified by the education authority under subsection (2)(a)."

(4) For section 13 of the 2010 Act substitute—

"13 Additional consultation requirements

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The proposal paper must additionally—
(a) explain the reasons for the proposal,
(b) describe what (if any) steps the authority took to address those reasons before formulating the proposal,
(c) if the authority did not take such steps, explain why it did not do so,
(d) set out any alternatives to the proposal identified by the authority under section 12A(2)(b),
(e) explain the authority’s assessment under section 12A(2)(c),
(f) explain why the authority considers, in light of that assessment, that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(3) The notice to be given to relevant consultees under section 6(1) must—
(a) give a summary of the alternatives to the proposal set out in the proposal paper,
(b) state that written representations may be made on those alternatives (as well as on the proposal), and
(c) state that written representations on the proposal may suggest other alternatives to the proposal.

(4) In sections 8(4)(c), 9(4) and 10(2)(a), the references to written representations on the proposal include references to written representations on the alternatives to the proposal set out in the proposal paper.

(5) When carrying out its review of the proposal under section 9(1), the education authority is to carry out—
(a) for the proposal and each of the alternatives to it set out in the proposal paper (if any), a further assessment of the matters mentioned in section 12A(2)(c)(i) to (iii), and
(b) an assessment, in relation to any other reasonable alternative to the proposal suggested in written representations on the proposal, of—
(i) the likely educational benefits in consequence of the implementation of the alternative,
(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,
(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(6) The consultation report must additionally explain—
(a) the education authority’s assessment under subsection (5)(a),
(b) how that assessment differs (if at all) from the authority’s assessment under section 12A(2)(c),
(c) the authority’s assessment under subsection (5)(b).”.

(5) In section 1 of the 2010 Act (overview of key requirements), after subsection (4) insert—
“(4A) In the case of a closure proposal in relation to a rural school, the education authority must also comply with—

(a) the preliminary requirements set out in section 12A when it is formulating the proposal,

(b) the additional consultation requirements set out in section 13.”.

68E Call-in of closure proposals

(1) In section 15 of the 2010 Act (call-in of closure proposals)—

(a) in each of subsections (3), (4) and (6) for “6” substitute “8”,

(b) subsection (5) is repealed.

(2) Section 16 of the 2010 Act is repealed.

(3) In section 17 of the 2010 Act (grounds for call-in etc.)—

(a) in subsection (3)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) after that subsection insert—

“(3A) HMIE must provide the Scottish Ministers with such advice as to the educational aspects of a closure proposal as the Scottish Ministers may reasonably require of HMIE for the purpose of the Scottish Ministers’ consideration of whether to issue a call-in notice.”.

(4) After section 17 of the 2010 Act insert—

“17A Referral to the Convener of the School Closure Review Panels

(1) This section applies where a call-in notice is issued as respects a closure proposal.

(2) The Scottish Ministers must refer the proposal to the Convener of the School Closure Review Panels.

(3) The Convener must, within the period of 7 days beginning with the day on which the call-in notice is issued, constitute a School Closure Review Panel to review the proposal under section 17B(1).

(4) The education authority may not implement the proposal (wholly or partly)—

(a) unless the Panel grants its consent to it under section 17C(1), and

(b) until—

(i) the period mentioned in section 17D(2)(c) has expired without any appeal to the sheriff being made, or

(ii) where such an appeal is made, it is abandoned or the sheriff confirms the Panel’s decision.

(5) Schedule 2A makes further provision about the Convener and School Closure Review Panels.

(6) In this Act—

(a) “the Convener” is the Convener of the School Closure Review Panels,
(b) a “School Closure Review Panel” is a School Closure Review Panel constituted under subsection (3).

17B Review by Panel

(1) A School Closure Review Panel must consider both of the following in relation to a closure proposal—

(a) whether the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,

(b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(2) The education authority must provide the Panel with such information in connection with the proposal as the Panel may reasonably require of it for the purpose of subsection (1).

(3) HMIE must provide the Panel with such advice as to the educational aspects of the proposal as the Panel may reasonably require of them for the purpose of subsection (1).

(4) The Panel may request such other information and advice from any other person as it may reasonably require for the purpose of subsection (1).

(5) The Scottish Ministers may by regulations make further provision as to the procedures to be followed by the Panel when carrying out a review under subsection (1).

17C Decision following review

(1) Following a review of a closure proposal under section 17B(1), the School Closure Review Panel may—

(a) refuse to consent to the proposal,

(b) refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation,

(c) grant consent to the proposal—

(i) subject to conditions, or

(ii) unconditionally.

(2) The Panel must give reasons for its decision.

(3) Where the Panel remits the proposal to the education authority under subsection (1)(b), the Panel may specify any steps in the process provided for in sections 1 to 11 and (in relation to a closure proposal as respects a rural school) 12A that the authority must take again in relation to the proposal before making a fresh decision.

(4) The Panel may refuse to consent to the proposal under subsection (1)(a) or (b) only if the Panel finds either or both of the following—

(a) that the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,
(b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(5) The Panel must notify the education authority of its decision within the period of 8 weeks beginning with the day on which the Panel is constituted unless (before the end of that period) the Panel issues a notice to the education authority—

(a) stating that the Panel does not intend to notify the decision within that period,

(b) specifying the reason why that is so, and

(c) indicating the likely date for notifying the decision.

(6) Where the Panel issues a notice under subsection (5), it must notify the education authority of its decision within the period of 16 weeks beginning with the day on which the Panel is constituted.

(7) After the Panel notifies the education authority of its decision, the Panel must—

(a) notify the Scottish Ministers of the decision, and

(b) publish notice of the decision in such manner as it considers appropriate.

(8) Where the Panel grants consent to the proposal subject to conditions, the education authority must comply with the conditions.

17D Appeal against decision of the Panel

(1) An appeal may be made to the sheriff against a decision of a School Closure Review Panel under section 17C(1) by—

(a) the education authority,

(b) a relevant consultee in relation to the closure proposal.

(2) An appeal under subsection (1)—

(a) may be made only on a point of law,

(b) must be made by way of summary application,

(c) must be made within the period of 14 days beginning with the day on which the Panel publishes notice of the decision under section 17C(7)(b).

(3) In the appeal, the sheriff may—

(a) confirm the decision, or

(b) quash the decision and refer the matter back to the Panel.

(4) The sheriff’s determination of the appeal is final.”.

(5) After schedule 2 to the 2010 Act, insert—
“SCHEDULE 2A
(introduced by section 17A)

SCHOOL CLOSURE REVIEW PANELS

Convener of the School Closure Review Panels

1 (1) There is established the office of the Convener of the School Closure Review Panels.

(2) The Scottish Ministers must appoint a person to hold that office.

(3) A person so appointed—
   (a) is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown,
   (b) subject to any provision made in regulations under sub-paragraph (9), holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(4) The Convener—
   (a) may delegate a function conferred on the Convener by this Act,
   (b) must delegate such a function if required to do so by directions issued under paragraph 4.

(5) Nothing in sub-paragraph (4)(a) prevents the Convener from carrying out any function delegated under that sub-paragraph.

(6) Sub-paragraph (7) applies during any period when—
   (a) the office of the Convener is vacant, or
   (b) the person holding that office is unable to perform the functions conferred on the office because the person is incapacitated.

(7) The Scottish Ministers may appoint a person to act as Convener during that period.

(8) A person appointed to act as Convener under sub-paragraph (7)—
   (a) is to be appointed on such terms and conditions as the Scottish Ministers may determine,
   (b) while acting as such, is to be treated for all purposes, except those of any regulations made under sub-paragraph (9), as the Convener.

(9) The Scottish Ministers may by regulations make provision for or about—
   (a) eligibility for, and disqualification from, appointment under sub-paragraph (2),
   (b) tenure and removal from office of a person appointed under sub-paragraph (2),
   (c) payment of—
      (i) salary, fees, expenses and allowances to such a person,
      (ii) pensions, allowances or gratuities (including by way of compensation for loss of office) to, or in respect of, such a person,
   (d) such other matters in relation to the appointment of the Convener as the Scottish Ministers consider appropriate.
Panel members

2 (1) The Convener is to appoint such number of persons as the Convener considers appropriate to be eligible to serve as members of a School Closure Review Panel.

(2) Each Panel is to consist of 3 of the persons appointed under sub-paragraph (1).

(3) It is for the Convener to select—

(a) the members of the Panel,

(b) one of those members to chair the Panel.

(4) The Convener is to make appropriate arrangements for the training of persons appointed under sub-paragraph (1).

(5) The Scottish Ministers may by regulations make provision for or about—

(a) eligibility for, and disqualification from, appointment under sub-paragraph (1),

(b) tenure and removal from office of persons so appointed,

(c) the process for the selection of Panel members under sub-paragraph (3),

(d) payment of expenses, fees and allowances to persons selected under that sub-paragraph,

(e) such other matters as the Scottish Ministers consider appropriate in relation to—

(i) the appointment of persons under sub-paragraph (1),

(ii) the selection of Panel members under sub-paragraph (3).

Property, staff and services

3 (1) The Scottish Ministers may—

(a) provide, or ensure the provision of, such property, staff and services to the Convener as they consider necessary or expedient in connection with the exercise of the Convener’s functions,

(b) pay grants to the Convener for the purposes of enabling the Convener to employ staff and obtain services in connection with the exercise of the Convener’s functions.

(2) The Convener is to provide a School Closure Review Panel with such staff and services as the Convener considers necessary or expedient in connection with the exercise of the Panel’s functions.

Directions

4 (1) The Scottish Ministers may issue directions to the Convener as to the exercise of the Convener’s functions (and the Convener must comply with them).

(2) Directions under sub-paragraph (1) may vary or revoke earlier such directions.

(3) The Scottish Ministers must publish any directions issued under sub-paragraph (1) in such manner as they consider appropriate.
Reports

5 (1) As soon as practicable after the end of each calendar year, the Convener must prepare a report on—
(a) the exercise of the Convener’s functions during that year, and
(b) the exercise of the functions of any School Closure Review Panel which has carried out a review under section 17B during that year.

(2) A report prepared under sub-paragraph (1) must be—
(a) submitted to the Scottish Ministers, and
(b) published in such manner as the Convener considers appropriate.”.

6 In section 4 of the 2010 Act (proposal paper), in subsection (2) for “17” substitute “17D”.

7 In section 19 of the 2010 Act (guidance)—
(a) the existing text becomes subsection (1),
(b) after that subsection insert—
“(2) The Convener, and a School Closure Review Panel, must have regard to any such guidance in exercising their functions under this Act.”.

8 In section 20 of the 2010 Act (regulations)—
(a) in subsection (3) for “17” substitute “17D”,
(b) after subsection (6) insert—
“(7) Regulations under section 17B(5) and paragraphs 1(9) and 2(5) of schedule 2A—
(a) may make different provision for different purposes,
(b) may make supplemental, incidental, consequential, transitional, transitory or saving provision,
(c) are subject to the negative procedure.”.

9 In section 21 of the 2010 Act (definitions)—
(a) after the definition of “consultation period” insert—
““the Convener” is defined in section 17A(6),”,
(b) after the definition of “rural school” insert—
““School Closure Review Panel” is defined in section 17A(6)”.

10 In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), before paragraph 21C insert—
“21ZC The Convener of the School Closure Review Panels.”.

11 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
(a) before paragraph 62C insert—
“62ZC The Convener of the School Closure Review Panels.”,
(b) after paragraph 76 insert—
“76A A School Closure Review Panel constituted under section 17A(3) of the Schools (Consultation) (Scotland) Act 2010.”.

(12) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), before the cross-heading “Executive bodies” insert—

“the Convener of the School Closure Review Panels”.

PART 12
CHILDREN’S HEARINGS

68F Safeguarders: exceptions to duty to prepare report on appointment

In section 33 of the 2011 Act—

(a) in subsection (1)(a), after “(2)” insert “or (3)”,

(b) after subsection (2), insert—

“(3) This subsection applies where the children’s hearing was arranged under section 45, 46, 50, 96, 126 or 158.”.

68G Maximum period of child protection order

In each of paragraphs (c) and (d) of section 54 of the 2011 Act, after “day” insert “after the day on which”.

68H Power to determine that deeming of person as relevant person to end

(1) The 2011 Act is amended as follows.

(2) In section 79—

(a) in subsection (1), for “This section applies” substitute “Subsections (2) to (5) apply”,

(b) after subsection (1), insert—

“(1A) Subsection (5A) applies (in addition to subsections (2) to (5)) where the children’s hearing is—

(a) a subsequent children’s hearing under Part 11, or

(b) held for the purposes of reviewing a compulsory supervision order.”,

(c) after subsection (5), insert—

“(5A) The Principal Reporter—

(a) must refer the matter of whether an individual deemed to be a relevant person by virtue of section 81 should continue to be deemed to be a relevant person in relation to the child for determination by a pre-hearing panel if requested to do so by—

(i) the individual so deemed,

(ii) the child, or

(iii) a relevant person in relation to the child,
(3) After section 81, insert—

“81A Determination that deeming of person as relevant person to end

(1) This section applies where a matter mentioned in section 79(5A)(a) is referred to a meeting of a pre-hearing panel.

(2) Where the matter is referred along with any other matter, the pre-hearing panel must determine it before determining the other matter.

(3) The pre-hearing panel must determine that the individual is no longer to be deemed to be a relevant person if it considers that the individual does not have (and has not recently had) a significant involvement in the upbringing of the child.

(4) Where the pre-hearing panel makes a determination as described in subsection (3), section 81(4) ceases to apply in relation to the individual.

(5) Where, by virtue of section 80(3), the children’s hearing is to determine a matter mentioned in section 79(5A)(a), references in subsections (2) to (4) to the pre-hearing panel are to be read as references to the children’s hearing.”.

68I Grounds hearing: non-acceptance of facts supporting ground

In section 90 of the 2011 Act—

(a) in subsection (1), for paragraph (a) substitute—

“(a) explain to the child and each relevant person in relation to the child—

(i) each section 67 ground specified in the statement of grounds, and

(ii) the supporting facts in relation to that ground,”;

(b) after subsection (1) insert—

“(1A) In relation to each ground that a person accepts applies in relation to the child, the chairing member must ask the person whether the person accepts each of the supporting facts.

(1B) Where under subsection (1A) any person does not accept all of the supporting facts in relation to a ground, the ground is taken for the purposes of this Act to be accepted at the grounds hearing only if the grounds hearing considers that—

(a) the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child, and

(b) it is appropriate to proceed in relation to the ground on the basis of only those supporting facts which are accepted by the child and each relevant person.

(1C) Where a ground is taken to be accepted for the purposes of this Act by virtue of subsection (1B), the grounds hearing must amend the statement of grounds to delete any supporting facts in relation to the ground which are not accepted by the child and each relevant person.

(1D) In this section, “supporting facts”, in relation to a section 67 ground, means facts set out in relation to the ground by virtue of section 89(3)(b).”.
Failure of child to attend grounds hearing: power to make interim order

In section 95 of the 2011 Act, after subsection (2) insert—

“(3) Subsection (4) applies where under subsection (2) the grounds hearing requires
the Principal Reporter to arrange another grounds hearing.

(4) If the grounds hearing considers that the nature of the child’s circumstances is
such that for the protection, guidance, treatment or control of the child it is
necessary as a matter of urgency that an interim compulsory supervision order
be made, the grounds hearing may make an interim compulsory supervision
order in relation to the child.

(5) An interim compulsory supervision order made under subsection (4) may not
include a measure of the kind mentioned in section 83(2)(f)(i).”.

Limit on number of further interim compulsory supervision orders

In section 96(4) of the 2011 Act, for the words from “the effect” to the end substitute “it
would be the third such order made under subsection (3) in consequence of the same
interim compulsory supervision order made under section 93(5)”.

Area support teams: establishment

(1) The 2011 Act is amended as follows.

(2) In schedule 1—

(a) in paragraph 12—

(i) in sub-paragraph (1), omit “and maintain”,

(ii) for sub-paragraph (3), substitute—

“(3) The National Convener—

(a) must keep the designation of areas under sub-paragraph (1) under
review, and

(b) may at any time revoke a designation or make a new one.

(3A) In exercising the powers to make and revoke designations, the National
Convener must ensure that at all times each local authority area falls within an
area designated under sub-paragraph (1).

(3B) Revocation of a designation under sub-paragraph (1) has the effect of
dissolving the area support team established in consequence of the designation.

(3C) Before deciding to make or revoke a designation under sub-paragraph (1), the
National Convener must consult each affected local authority.

(3D) In sub-paragraph (3C), “affected local authority” means—

(a) in the case of making a designation, each local authority whose area falls
within the area proposed to be designated,

(b) in the case of revoking a designation, each constituent authority for the
area support team established in consequence of the designation.
(3E) On making or revoking a designation under sub-paragraph (1), the National Convener must notify each local authority which was consulted under sub-paragraph (3C) in relation to the decision to make or revoke the designation."

(b) in paragraph 13—

(i) in sub-paragraph (1), the words “the National Convener establishes an area support team under paragraph 12(1)” become sub-sub-paragraph (a),

(ii) after that sub-sub-paragraph insert “, and

(b) the area of the area support team consists of or includes a new area.”,

(iii) in sub-paragraph (4)(a), for “area of the area support team” substitute “new area concerned”;

(iv) in sub-paragraph (7), after the definition of “Children’s Panel Advisory Committee” insert—

“‘new area’ means an area which has never previously been the area (or part of the area) of an area support team.”.

(3) An area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

70 Area support teams: administrative support by local authorities

(1) The 2011 Act is amended as follows.

(2) In schedule 1, in paragraph 14, after sub-paragraph (8) insert—

“(9) A constituent authority must provide an area support team with such administrative support as the National Convener considers appropriate.

(10) In sub-paragraph (9), “administrative support” means staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.”.

70A Interpretation of Part 12

In this Part, “the 2011 Act” means the Children’s Hearings (Scotland) Act 2011.

PART 12A

OTHER REFORMS

Detention of children in secure accommodation

71 Appeal against detention of child in secure accommodation

After section 44 of the Criminal Procedure (Scotland) Act 1995 insert—

“44A Appeal against detention in secure accommodation

(1) A child, or a relevant person in relation to the child, may appeal to the sheriff against a decision by a local authority to detain the child in secure accommodation in pursuance of an order made under section 44 of this Act.

(1A) An appeal under subsection (1) may be made jointly by—

(a) the child and one or more relevant persons in relation to the child; or
(b) two or more relevant persons in relation to the child.

(1B) An appeal must not be held in open court.

(2) The sheriff may determine an appeal by—

(a) confirming the decision to detain the child in secure accommodation; or

(b) quashing that decision and directing the local authority to move the child to be detained in residential accommodation which is not secure accommodation.

(3) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).

(4) Regulations under subsection (3) may in particular—

(a) specify the period within which an appeal may be made;

(b) make provision about the hearing of evidence during an appeal;

(c) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

(5) Regulations under subsection (3) are subject to the affirmative procedure.

(6) In this section—

―relevant person‖, in relation to a child, means any person who is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011 (including anyone deemed to be a relevant person in relation to the child by virtue of section 81(3), 160(4)(b) or 164(6) of that Act);

―secure accommodation‖ has the same meaning as in section 44 of this Act.”.

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### Children’s legal aid

**71A Power of Scottish Ministers to modify circumstances in which children’s legal aid to be made available**

(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) The title of section 28L becomes “Power of Scottish Ministers to extent or restrict types of proceedings before children’s hearings in which children’s legal aid to be available”.

(3) After section 28L, insert—

“28LA Power of Scottish Ministers to provide for children’s legal aid to be available to other persons in relation to court proceedings

(1) The Scottish Ministers may by regulations modify this Part so as to—

(a) provide that children’s legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F;

(b) vary any availability provided by virtue of paragraph (a), or

(c) remove any availability provided by virtue of paragraph (a).
(2) If regulations are made making children’s legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children’s legal aid is made available.

(3) The conditions are—

(a) that it is in the best interests of the child that children’s legal aid be made available,

(b) that it is reasonable in the particular circumstances of the case that the child should receive children’s legal aid,

(c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and

(d) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.

(4) If regulations are made making children’s legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children’s legal aid is made available.

(5) The conditions are—

(a) that it is reasonable in the particular circumstances of the case that the person should receive children’s legal aid,

(b) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person, and

(c) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.”.

**Licensing of child performances**

**71B Extension of licensing of child performances to children under 14**

Section 38 of the Children and Young Persons Act 1963 (licences for performances by children under 14 not to be granted except for certain dramatic or musical performances) is repealed.

**Wellbeing under 1995 Act**

**73 Consideration of wellbeing in exercising certain functions**

After section 23 of the 1995 Act, insert—

“23A Sections 17 and 22: consideration of wellbeing

(1) This section applies where a local authority is exercising a function under or by virtue of section 17, 22 or 26A of this Act.”
(2) The local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing.

(3) For the purpose of subsection (2) above, the local authority is to assess the wellbeing of a child or young person by reference to the extent to which the matters listed in section 74(2) of the 2014 Act are or, as the case may be, would be satisfied in relation to the child or young person.

(4) In assessing the wellbeing of a child or young person as mentioned in subsection (3) above, a local authority is to have regard to the guidance issued under section 74(3) of the 2014 Act.

(5) In this section, “the 2014 Act” means the Children and Young People (Scotland) Act 2014.”.

PART 13
GENERAL

Assessment of wellbeing

(1) This section applies where under this Act a person requires to assess whether the wellbeing of a child or young person is being or would be—

(a) promoted,
(b) safeguarded,
(c) supported,
(d) affected, or
(e) subject to an effect.

(2) The person is to assess the wellbeing of the child or young person by reference to the extent to which the child or young person is or, as the case may be, would be—

Safe,
Healthy,
Achieving,
Nurtured,
Active,
Respected,
Responsible, and
Included.

(3) The Scottish Ministers must issue guidance on how the matters listed in subsection (2) are to be used to assess the wellbeing of a child or young person.

(4) Before issuing or revising such guidance, the Scottish Ministers must consult—

(a) each local authority,
(b) each health board, and
(c) such other persons as they consider appropriate.
(5) In measuring the wellbeing of a child or young person as mentioned in subsection (2), a person is to have regard to the guidance issued under subsection (3).

(6) The Scottish Ministers may by order modify the list in subsection (2).

(7) Before making an order under subsection (6), the Scottish Ministers must consult—

(a) each local authority,

(b) each health board, and

(c) such other persons as they consider appropriate.

Interpretation

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980,

“the 1995 Act” means the Children (Scotland) Act 1995,

“child” means a person who has not attained the age of 18 years,

“health board” means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.

(2) References in this Act to a child being or becoming “looked after” are to be construed in accordance with section 17(6) of the 1995 Act.

(3) The following expressions have the same meaning in this Act as they have in the 1980 Act—

education authority
grant-aided school
independent school
managers
nursery class
primary school
proprietor
public school
pupil
school age.

Modification of enactments

Schedule 4 (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

Subordinate legislation

(1) Any power of the Scottish Ministers to make an order under this Act includes power to make—

(a) different provision for different purposes,
(b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

(2) An order made under any of the following sections is subject to the affirmative procedure—

- section 3(2)
- section 7(5)
- section 30(2)
- section 35(5)
- section 38(6)
- section 43(2)(c)(ii)
- section 44(2)
- section 47(2)
- section 50(2)
- section 51(2)(b)
- section 52(2)
- section 61(2)(b)
- section 64(4)(b)
- section 74(6).

(3) An order made under section 78 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to the affirmative procedure.

(4) All other orders made under this Act are subject to the negative procedure.

(5) This section does not apply to an order made under section 79(2).

### 77A Guidance and directions

(1) Any power of the Scottish Ministers to issue guidance or directions under this Act may be exercised—

- (a) to issue guidance or directions generally or for particular purposes,
- (b) to issue different guidance or directions to different persons or otherwise for different purposes.

(2) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under this Act.

(3) In subsection (2)—

- (a) the reference to guidance includes revision of guidance,
- (b) the reference to directions includes revision and revocation of directions.

### 78 Ancillary provision

The Scottish Ministers may by order make—
(a) such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act, and

(b) such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

79 Commencement

(1) This Part (apart from sections 74, 75 and 76) comes into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.

80 Short title

The short title of this Act is the Children and Young People (Scotland) Act 2014.
SCHEDULE 1
(introduced by section 3)

AUTHORITIES TO WHICH SECTION 2 APPLIES

1  A local authority
2  Children’s Hearings Scotland
3  The Scottish Children’s Reporter Administration
4  A health board
5  A board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978
6  Healthcare Improvement Scotland
7  The Scottish Qualifications Authority
8  Skills Development Scotland Co. Ltd (registered number SC 202659)
9  Social Care and Social Work Improvement Scotland
10  The Scottish Social Services Council
11  The Scottish Sports Council
12  The chief constable of the Police Service of Scotland
13  The Scottish Police Authority
14  The Scottish Fire and Rescue Service
15  The Scottish Legal Aid Board
16  The Mental Welfare Commission for Scotland
17  The Scottish Housing Regulator
18  Bòrd na Gàidhlig
19  Creative Scotland

SCHEDULE 2
(introduced by section 30)

RELEVANT AUTHORITIES

2  NHS 24
3  NHS National Services Scotland
4  Scottish Ambulance Service Board
5  State Hospitals Board for Scotland
5A  The National Waiting Times Centre Board
6  Skills Development Scotland Co. Ltd (registered number SC 202659)
7  Social Care and Social Work Improvement Scotland
8  The Scottish Sports Council
9  The chief constable of the Police Service of Scotland
### Schedule 2A

**Persons listed for the purposes of section 38**

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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>10</td>
<td>The Scottish Police Authority</td>
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<tr>
<td>11</td>
<td>The Scottish Fire and Rescue Service</td>
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<td>13</td>
<td>The Commissioner for Children and Young People in Scotland</td>
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<tr>
<td>16</td>
<td>A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005</td>
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### Schedule 3

**Corporate parents**

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<tr>
<td>1</td>
<td>The Scottish Ministers</td>
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<td>2</td>
<td>A local authority</td>
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<td>3</td>
<td>The National Convener of Children’s Hearings Scotland</td>
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<td>4</td>
<td>Children’s Hearings Scotland</td>
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<tr>
<td>5</td>
<td>The Principal Reporter</td>
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<tr>
<td>6</td>
<td>The Scottish Children’s Reporter Administration</td>
</tr>
<tr>
<td>7</td>
<td>A health board</td>
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<tr>
<td>8</td>
<td>A board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978</td>
</tr>
</tbody>
</table>
Children and Young People (Scotland) Bill
Schedule 4—Modification of enactments

9 Healthcare Improvement Scotland
10 The Scottish Qualifications Authority
11 Skills Development Scotland Co. Ltd (registered number SC 202659)
12 Social Care and Social Work Improvement Scotland
13 The Scottish Social Services Council
14 The Scottish Sports Council
15 The chief constable of the Police Service of Scotland
16 The Scottish Police Authority
17 The Scottish Fire and Rescue Service
19 The Scottish Legal Aid Board
20 The Commissioner for Children and Young People in Scotland
21 The Mental Welfare Commission for Scotland
22 The Scottish Housing Regulator
23 Bòrd na Gàidhlig
24 Creative Scotland
25 A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005

SCHEDULE 4
(introduced by section 76)

MODIFICATION OF ENACTMENTS

Social Work (Scotland) Act 1968

1 In section 5 of the Social Work (Scotland) Act 1968—
   (a) in subsection (1)—
      (i) for “1995 and” substitute “1995,”,
      (ii) after “2013 (asp 1)” insert “Part 6 (in so far as it applies to looked after children) and Parts 9 and 10 of the Children and Young People (Scotland) Act 2014 (asp 00),”,
   (b) in subsection (1B), after paragraph (s) insert—
      “(t) Part 6 (in so far as it applies to looked after children) of the Children and Young People (Scotland) Act 2014 (asp 00),”,
   (c) after subsection (1B) insert—
      “(1C) In subsections (1) and (1B) of this section, the references to looked after children are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.”.

Education (Scotland) Act 1980

2 (1) The 1980 Act is amended as follows.
(2) In section 1—

(a) in subsection (1A), for the words from first “as” to “order” substitute “to the extent required by section 43(1) of the Children and Young People (Scotland) Act 2014”,

(b) omit subsections (1B) and (4A),

(c) in subsection (5)(a), for sub-paragraph (i) substitute—

“(i) early learning and childcare;”.

(3) In section 135—

(a) after the definition of “dental treatment” insert—

“‘early learning and childcare’ has same meaning as in Part 6 of the Children and Young People (Scotland) Act 2014;”,

(b) for the definitions of “nursery school” and “nursery class” substitute—

“‘nursery schools’ and “nursery classes” are schools and classes which provide early learning and childcare;”.

15 Legal Aid (Scotland) Act 1986

2A(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) In section 28F(1)(b), after “deemed” insert “, or is no longer to be deemed,“.

(3) In section 37(2), after “28L(1) or (8),” insert “28LA(1),”.

Children (Scotland) Act 1995

3 (1) The 1995 Act is amended as follows.

(2) Section 19 is repealed.

(3) In section 20, for subsection (2) substitute—

“(2) In subsection (1) above, “relevant services” means services provided by a local authority under or by virtue of—

(a) this Part of this Act;

(b) the Children’s Hearings (Scotland) Act 2011;

(ba) Part 9 or 10 of the Children and Young People (Scotland) Act 2014; or

(c) any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (t) of the Social Work (Scotland) Act 1968.”.

(4) In section 44—

(a) for subsection (1) substitute—

“(1) No person shall publish any matter in respect of proceedings before a sheriff on an application under section 76(1) of this Act which is intended to, or is likely to, identify—

(a) the child concerned in, or any other child connected (in any way) with, the proceedings; or

(b) any address or school as being that of any such child.”,
(b) in subsection (5)—

(i) omit paragraphs (b) and (c),

(ii) in the full-out, omit “, the Court or the Secretary of State as the case may be”.

5 Criminal Procedure (Scotland) Act 1995

4 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 44(11), in the definition of “secure accommodation” for “2000 Act” in each place where it occurs substitute “Care Standards Act 2000”.

(3) In section 57A(16), in the definition of “relevant services” for “19(2)” substitute “20(2)".

Education Act 1996

4A Paragraph 11 of Schedule 37 to the Education Act 1996 is repealed.

Standards in Scotland’s Schools Act 2000

5 In section 34 of the Standards in Scotland’s Schools Act 2000—

(a) in paragraph (a), after “Act” insert “and Part 6 of the Children and Young People (Scotland) Act 2014”,

(b) in paragraph (b), for “that Act” substitute “those Acts”.

Regulation of Care (Scotland) Act 2001

6 In section 73(2)(a) of the Regulation of Care (Scotland) Act 2001—

(a) after first “provided” insert “under subsection (1) or (5A)(a) of that section”,

(b) for “the subsection in question” substitute “subsection (5A)(b) or (5B) of that section”.

Mental Health (Care and Treatment) (Scotland) Act 2003

7 In section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003, in the definition of “relevant services” for “19(2)” substitute “20(2)’”.

Education (Additional Support for Learning) (Scotland) Act 2004

8 (1) The Education (Additional Support for Learning) (Scotland) Act 2004 is amended as follows.

(2) In section 1(3)—

(a) in paragraph (a), for “a prescribed” substitute “an eligible”,

(b) in paragraph (b), for “a prescribed” substitute “an eligible”.

(3) In section 5(3)(a), in paragraph (a), for “a prescribed” substitute “an eligible”.

(4) In section 29(1)—
(a) after the definition of “co-ordinated support plan” insert—

"eligible pre-school child” has the same meaning as in Part 6 of the Children and Young People (Scotland) Act 2014,”,

(b) omit the definition of “prescribed pre-school child”.

Adoption and Children (Scotland) Act 2007

9 (1) The Adoption and Children (Scotland) Act 2007 is amended as follows.

(2) Section 4 is repealed.

(3) In section 6(1), omit “or 4”.

(4) The title of section 6 becomes “Assistance in carrying out functions under section 1”.

(5) In section 117(5)(a), after sub-paragraph (i) insert—

“(ia) section 13A(2),

(ib) section 13E(1),”.

(6) In section 119(1), in paragraph (b) of the definition of “adoption agency”, after “sections” insert “13A, 13D, 13E,”.

Children’s Hearings (Scotland) Act 2011

10 (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In section 80(1), after “(2)” insert “or (5A)”.

(3) In section 81—

(a) in subsection (2), after “must” insert “, unless that other matter is a matter mentioned in section 79(5A)(a),”;

(b) in subsection (5)(b), after sub-paragraph (iv) insert—

“(iva) section 81A,”.

(4) In section 94(3), for the second “of” substitute “given in compliance with section 90(1) in relation to”.

(5) In section 105, after subsection (1) insert—

“(1A) The reference in subsection (1)(b) to the ground being accepted is, in relation to a ground which was not accepted by virtue of section 90(1B), a reference to all of the supporting facts in relation to the ground being accepted.”.

(6) In section 106, after subsection (1) insert—

“(1A) The reference in subsection (1)(b) to the ground being accepted is, in relation to a ground which was not accepted by virtue of section 90(1B), a reference to all of the supporting facts in relation to the ground being accepted.”.

(7) In section 142, after subsection (1) insert—

“(1A) This section does not apply where the matter of whether the individual should continue to be deemed to be a relevant person in relation to the child—

(a) has been determined by a meeting of a pre-hearing panel held in relation to the children’s hearing, or
(b) is, by virtue of section 80(3), to be determined by the children’s hearing.”.

(8) In section 160, for subsection (1)(a) substitute—

“(a) a determination of a pre-hearing panel or a children’s hearing that an individual—

(i) is or is not to be deemed a relevant person in relation to a child,

(ii) is to continue to be deemed, or is no longer to be deemed, a relevant person in relation to a child.”.

(9) In section 202(1), after the definition of “super-affirmative procedure” insert—

“supporting facts” has the meaning given by section 90(1D),”.

(10) In schedule 6, in the entry for the 1995 Act—

(a) at the end of the reference to sections 39 to 74 insert “, except section 44”,

(b) in the reference to section 105, omit “44,”.
Children and Young People (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children’s hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

Introduced by: Alex Neil
Supported by: Aileen Campbell
On: 17 April 2013
Bill type: Government Bill
INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these Revised Explanatory Notes are published to accompany the Children and Young People (Scotland) Bill (introduced in the Scottish Parliament on 17 April 2013) as amended at Stage 2. Text has been added or deleted as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Scottish Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

Summary and background

4. The Bill makes provision in relation to aspects of children’s services reform to:

- Reflect in domestic law the role of the United Nations Convention on the Rights of the Child (UNCRC) in influencing the design and delivery of policies and services by placing duties on the Scottish Ministers and the wider public sector, and strengthening the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people;

- Improve the way services work to support children, young people and families by: ensuring there is a single planning approach for children who need additional support from services; creating a single point of contact around every child or young person; ensuring coordinated planning and delivery of services with a focus on outcomes, and providing a holistic and shared understanding of a child’s or young person’s wellbeing;

- Strengthen the role of early years support in children’s and families’ lives by:
  - Increasing the amount and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds; 2 year olds who
are, or have been at any time since turning 2, looked after or subject to a kinship care order; as well enabling further expansion through secondary legislation;

- Introducing a comprehensive and coordinated approach to consultation and planning on all early learning and childcare, day care and out of school care which local authorities have duties or powers to secure.

- Ensure better permanence planning for looked after children by: extending corporate parenting across the public sector; clarifying eligibility of care leavers who are entitled to corporate parenting and aftercare support; extending support to young people leaving care for longer (up to and including the age of 25); entitling 16 year olds in foster, kinship or residential care the right to stay in care until they are 21 years old; supporting families and the parenting role of kinship carers through new legal entitlements; and putting Scotland’s National Adoption Register on a statutory footing; and

- Strengthen existing legislation on school closures under the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”), adding to the requirements education authorities are subject to when taking forward a school closure proposal, particularly when proposing to close a rural school. A new process is also put in place for school closure proposals called in by Scottish Ministers which are to be referred to the Convener of the School Closure Review Panels for determination by a Panel.

- Strengthen existing legislation that affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical changes in the areas of children’s hearings support arrangements.

COMMENTARY ON SECTIONS

Part 1 – Children’s Rights

Section 1 – Duty on Scottish Ministers in relation to the rights of children

5. Section 1 places duties on the Scottish Ministers in relation to the rights of children as set out in the UNCRC and its First and Second Optional Protocols.

6. Subsection (1)(a) places a duty on the Scottish Ministers to keep under consideration whether there are any steps which they could take to give better or further effect to the UNCRC requirements. In effect, this means a requirement on the Scottish Ministers to keep under review their approach to implementation of the UNCRC in the exercise of their functions. Subsection (1)(b) requires the Scottish Ministers to take steps which they believe to be appropriate in consequence of that consideration.

7. Subsection (2) places a duty on the Scottish Ministers to promote public awareness and understanding of the rights of children. The term “rights of children” has a different definition to the term “UNCRC requirements” for these purposes. An interpretation of both terms is included at section 4. This provision has the effect of incorporating Article 42 of the UNCRC into Scots law, introducing a new domestic requirement on the Scottish Ministers to raise awareness and understanding of the UNCRC amongst children, and those individuals working with children and members of the public. This could involve, for example, targeted work within schools, the development of information materials, the preparation of guidance for professionals and the
provision of support to other organisations who have a role in promoting children’s rights in Scotland.

8. Subsection (3) requires the Scottish Ministers to lay a report before the Scottish Parliament every 3 years detailing the steps they have taken in the 3 year period just ended to give better or further effect to the UNCRC requirements and to promote public awareness and understanding of the rights of children. The report must also include details of the steps that the Scottish Ministers intend to take in the current 3 year period in pursuance of those same aims. The Scottish Ministers must take appropriate steps to obtain the views of children on what their plans should be.

9. Subsection (4) defines what is meant by “3 year period”. This is the period of 3 years beginning with the day the section comes into force and each period of 3 years thereafter.

10. Subsection (5) requires the Scottish Ministers to publish the report they have laid before the Scottish Parliament as soon as practicable.

Section 2 – Duties of public authorities in relation to the UNCRC

11. Subsection (1) requires each identified public authority, as listed, or with a description listed, in schedule 1, to publish (in a way they think is appropriate) a report every 3 years setting out the steps it has taken in that 3 year period to give better or further effect within its areas of responsibility to the UNCRC requirements. The public authority may choose to satisfy the duty through, for example, annual reports. The public authority can also satisfy the duty through development of a standalone report, should it choose.

12. Subsection (3) makes clear that two or more of the public authorities to whom the duty applies may satisfy the duty through preparation and publication of a joint report.

Part 2 – Commissioner for Children and Young People In Scotland

Section 5 – Investigations by the Commissioner

13. Section 7 of the Commissioner for Children and Young People (Scotland) Act 2003 (the 2003 Act) provides for the Commissioner to undertake an investigation into whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people. Any such investigation must focus on a matter of particular significance to children and young people generally or to particular groups of children and young people, but not to individual children.

14. Subsections (1) and (2) amend sections 7(1) and 7(2) of the 2003 Act in order to allow for the Commissioner to undertake two distinct types of investigation: a “general investigation” which is consistent with the Commissioner’s original investigatory power under section 7 of the 2003 Act; and an “individual investigation” focusing on the extent to which a service provider has had regard to the rights, views and interests of an individual child or young person. The term “service provider” is defined in the 2003 Act and means any person or organisation providing a
service to children and young people. This includes the private, public and voluntary sector. Thus any individual who, or organisation or company which, provides services to children or young people can be investigated by the Commissioner. For example, organisations which give advice, provide guidance or provide goods could be investigated. The service in question does not need to be provided exclusively to children or young people. Parents carrying out their parental responsibilities are not service providers. However, the local authorities to whom parental responsibilities have been transferred are treated as service providers.

15. Section 7(2) of the 2003 Act as amended provides that the Commissioner can only carry out a general investigation if the evidence and information collected demonstrates that there is an issue that is significant for children and young people generally or specific groups of children and young people.

16. New section 7(2A) of the 2003 Act makes clear that the Commissioner may only undertake either a general or individual investigation if they are satisfied that it would not duplicate the work that is the function of another person. There are a number of bodies already tasked with considering complaints and responding to concerns raised by members of the public in Scotland including the Scottish Public Services Ombudsman, Social Care and Social Work Improvement Scotland (the Care Inspectorate) and the Equality and Human Rights Commission. Each has a particular function and where it is recognised that a complaint falls within the remit of one of these bodies or any other complaint handling body, the Commissioner should not pursue the matter.

17. Subsection (2)(b) removes section 7(3)(b) of the 2003 Act. This is the provision that currently prevents the Commissioner from undertaking investigations in relation to individual children.

18. Subsection 2(c) amends section 7 of the 2003 Act to provide for the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.

19. Subsection (3)(a) replaces section 8(1)(b) of the 2003 Act, removing the requirement for the Commissioner to publish notice of any investigation and terms of reference. Instead, it simply requires the Commissioner to give notice of an investigation to those individuals who are likely to be affected by it. The change reflects the fact that it will not always be appropriate for details of a planned investigation to be made widely available, particularly where the investigation focuses on sensitive matters relating to an individual child. Subsections (3)(b) and (c) provide for individual investigations to be held in private whilst the presumption is that general investigations will be held in public unless the Commissioner is satisfied that there are grounds for taking evidence in private, as is currently provided for under section 8(2) of the 2003 Act.

20. Subsection (4)(a) amends section 11(1) of the 2003 Act, removing the need for all investigation reports to be laid before the Scottish Parliament. Instead, section 11(1) will require that the Commissioner prepares a report in relation to each investigation. In order to finalise the report, the Commissioner will share its content for consideration and comment with all those
persons named within the report or identifiable from it. Should the report be amended as a consequence of this process, a revised version will be made available to all of the above persons.

21. Subsection (4)(c) adds new subsections to section 11 that require the Commissioner to lay before the Scottish Parliament any finalised report relating to a general investigation. The Commissioner will have the power, but not an obligation, to lay before the Scottish Parliament a report relating to an individual investigation.

Section 6 – Requirement to respond to Commissioner’s recommendations

22. Subsection (2) amends section 11 of the 2003 Act, providing the Commissioner with a power to require a response from a service provider to any recommendations made as part of a report linked to either a general investigation or an individual investigation and to identify a time by which that response must be received. Where a report includes a requirement to respond, a copy of the report must also be shared with the service provider on whom the requirement is made.

23. Subsection (3) sets out the arrangements for publishing a service provider’s response to any recommendations made by the Commissioner. It requires the Commissioner to publish any response made by a service provider in respect of recommendations following a general investigation unless the Commissioner considers publication to be inappropriate. The Commissioner may publish a response to recommendations following an individual investigation. Any published material should not, so far as reasonable and practicable, name or identify any child/children referred to in it.

24. Where a service provider fails to respond to a requirement, the Commissioner may take steps to publicise this failure.

Part 3 – Children’s Services Planning

Section 7 – Introductory

25. Subsections (1) and (2) are interpretation subsections for this Part. Subsection (1) defines the terms “children’s service” and “related service” and who are “other service providers” and “relevant health boards” for the purposes of Part 3. Subsection (2) defines the persons who may provide a “children’s service” or a “related service” as being local authorities, relevant health boards, any other service provider and the Scottish Ministers (but only in relation to a service provided by them in exercise of their functions under the Prisons (Scotland) Act 1989) i.e. when they are providing children’s or related services as the Scottish Prison Service.

26. Subsections (3) and (4) provide that the Scottish Ministers may, by order, specify the services which are to be included within or excluded from the definition of children’s services or related services for the purposes of this Part. They may also specify matters in relation to those services. Before making such an order the Scottish Ministers must consult with each relevant health board, local authority and where the service is provided by another service provider, that person.
27. Subsection (5) provides that the Scottish Ministers may, by order, modify the definition of “other service provider” in subsection (1) by adding a person, removing an entry or varying an entry.

28. This Part confers certain functions on “a local authority and each relevant health board”. Subsection (6) provides that those are joint functions (i.e. functions that are to be exercised by those persons together).

Section 8 – Requirement to prepare children’s services plan

29. Subsection (1) provides that each local authority and relevant health board must jointly prepare a children’s services plan for the area of the local authority, in respect of each 3 year period.

30. Subsection (2) defines “3 year period” as that beginning with such date after the coming into force of this section as the Scottish Ministers specify, by order, and each subsequent period of 3 years. It defines “children’s services plan” as a document setting out their plans for the provision of children’s services and related services over that 3 year period.

Section 9 – Aims of children’s services plan

31. Subsections (1) and (2) provide that a children’s services plan should be prepared with a view to achieving the aims of providing children’s services in the area in a way which: best safeguards, supports or promotes the wellbeing of children; ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising; is most integrated from the point of view of the recipients; and constitutes the most efficient use of available resources. Most integrated would be where service providers cooperate with each other to ensure that service provision is planned and delivered in a way which best meets the needs of children and families. Also, related services in the area are to be provided in the way which safeguards, supports or promotes the wellbeing of children, so far as this is consistent with the objects and proper delivery of the service concerned.

Section 10 – Children’s services plan: process

32. Subsection (1) provides that in preparing a children’s services plan, the local authority and relevant health board must give the other service providers and the Scottish Ministers an effective opportunity to participate in or contribute to the preparation of the plan. The local authority and relevant health board must also consult with organisations falling within subsection (2) (which represent the interests of persons who use or are likely to use any children’s service or related service in the area; or provide a service in the area which, if it were provided by the local authority, health board, other service provider or the Scottish Ministers, would be a children’s service or related service), such social landlords as appear to provide housing in the area of the local authority and other such persons as the Scottish Ministers may, by direction, specify. “Social landlords” has the meaning given by section 165 of the Housing (Scotland) Act 2010.

33. Subsection (4) provides that a direction under subsection (1)(b)(iii) may be revised or revoked.
34. Subsections (5) and (6) require the other service providers and the Scottish Ministers to participate in, or contribute to, the preparation of the children’s services plan, and the bodies to be consulted within subsection (1)(b) are to meet any reasonable request of the local authority or health board in participating in, or contributing to, the preparation of the children’s services plan. Subsection (7) provides that, as soon as reasonably practicable after the plan has been prepared, the persons who prepared it must send a copy to the Scottish Ministers and each of the other service providers, and publish it (in such a manner as considered appropriate).

35. Subsection (8) provides that, where the Scottish Ministers or any of the other service providers disagree with any aspect of a plan which relates to a service provided by them, they must prepare and publish a notice detailing the matters in relation to which they disagree and a statement of their reasons for disagreeing.

Section 11 – Children’s services plan: review

36. Subsection (1) provides that local authorities and relevant health boards in an area must jointly keep the children’s services plan under review and as a consequence of that review may prepare a revised plan.

37. Subsection (2) means that where a revised plan has been prepared, the local authority and each relevant health board must keep it under review and may in consequence prepare a revised plan.

Section 12 – Implementation of children’s services plan

38. Subsections (1) and (2) provide that, during the period to which the children’s services plan relates, the local authority, each relevant health board, the Scottish Ministers and each of the other service providers in an area must, so far as reasonably practicable, provide services in accordance with the children’s services plan for that area. Subsection (3) provides that the duty does not apply to the extent the person providing the service considers that doing so would adversely affect the wellbeing of a child or where the service is delivered by the Scottish Ministers or one of the other service providers and they have published a notice of disagreement in line with section 10(8).

Section 13 – Reporting on children’s services plan

39. Subsection (1) provides that as soon as is practicable at the end of each year, the local authority and relevant health board must publish, in a way they consider appropriate, a joint report on how the provision of children’s services and related services in that area during that period have been provided in accordance with the children’s services plan and the extent to which the aims, specified in section 9(2) have been achieved, and such outcomes in relation to the wellbeing of the children in the area as the Scottish Ministers may, by order, prescribe.

40. Subsection (2) defines “1 year period” as the period of a year beginning on the date on which the children’s services plan for the area has begun, in accordance with section 8(1), and each period of a year thereafter.
Section 14 – Assistance in relation to children’s services planning

41. Subsections (1) and (2) provide that any of the other service providers, the Scottish Ministers and persons mentioned in section 10(1)(b) must comply with any reasonable request made of them to provide the local authority or relevant health board with information, advice or assistance, for the purposes of carrying out their functions under this Part.

42. Subsection (3) states that subsection (1) does not apply where the person considers the provision of information, advice or assistance would be incompatible with any duties of that person or unduly prejudices the carrying out of any functions of the person.

Section 15 – Guidance in relation to children’s services planning

43. Subsections (1) and (2) state that local authorities and relevant health boards and the other service providers in each area must have regard to any guidance issued by the Scottish Ministers about how to exercise the functions conferred by this Part (other than the function of complying with section 12).

44. Subsection (5) states that before guidance is issued or revised, the Scottish Ministers have to consult with the persons to whom the guidance relates.

Section 16 – Directions in relation to children’s services planning

45. Subsections (1) and (2) provide that local authorities, relevant health boards and the other service providers must comply with any direction issued by the Scottish Ministers about the carrying out of the functions conferred by this Part (other than the function of complying with section 12).

46. Subsection (5) provides that, before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to whom it relates.

Section 17 – Children’s services plan: default powers of Scottish Ministers

47. Subsection (1) states that this section applies where the Scottish Ministers consider that local authorities and relevant health boards are either not carrying out one of their functions conferred on them by this Part (other than the function of complying with section 12) or, in carrying out such a function, are not complying with their duty to have regard to guidance issued under section 15(1).

48. Subsection (2) provides a power for the Scottish Ministers to issue directions stating that the function is to be carried out in a particular way or that the function is to be carried out instead by such of the persons mentioned in subsection (3) as the Scottish Ministers consider appropriate.

49. Subsection (3) explains that persons referred to in subsection (2)(b) are the local authority, any relevant health board or another local authority or health board.
50. Subsection (4) states that a direction under subsection (2)(b) may include such provision as the Scottish Ministers consider appropriate as to the making by a local authority or relevant health board in an area, which is not to be carrying out the function, of payment to a person who is to carry out the function by virtue of the direction.

51. Subsection (5) states that before issuing, revising or revoking a direction under subsection (2) the Scottish Ministers must consult with the local authority or relevant health boards whose failure is to be, or is, the subject of the direction, and such other persons as they consider appropriate.

52. Subsection (5A) requires that any direction given under subsection (2) must be complied with.

Section 18 – Interpretation of Part 3

53. This is an interpretation section for this Part.

Part 4 – Provision of named persons

Section 19 – Named person service

54. Subsections (1) and (5) define “named person service” as meaning the service of making available an individual from within named person service providers who carry out the functions in order to promote, support or safeguard the wellbeing of the child or young person. They will do this through a number of activities, including: advising, informing or supporting the child or young person or their parent; helping them to access a service or support; or discussing or raising a matter about that child or young person with a service provider or relevant authority.

55. Subsections (2) and (3) provide that individuals can only be identified for the named person service if they are an employee of the service provider, or are either a person, or employee of a person, who carries out functions on behalf of the service provider. Individuals must also satisfy such requirements as to qualifications, training and experience as the Scottish Ministers may specify by order.

56. Subsection (4) provides that the named person function cannot be carried out by a parent of the child or young person. Subsection (5A) confirms that the named person functions are not to be exercised during any time when a child or young person is subject to service law as a member of the reserve forces.

57. Subsections (6) and (7) state that the named person functions are carried out on behalf of the service provider and the responsibility for carrying out the named person function lies with the service provider and not with the individual named person.

Section 20 – Named person service in relation to pre-school child

58. Subsections (1) and (2) provide that it is the duty of the health board to make arrangements to provide a named person for each pre-school child in its area and defines “pre-school child” as a
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2  
(SP Bill 27A)

child who has not started primary school either because they are not old enough or the education authority has allowed the child to delay starting at primary school.

59. Subsection (3) explains that for the purposes of this section, school age should be taken to be that determined by the relevant education authority by reference to the school commencement dates fixed by it. Attendance at primary school does not include attendance at a nursery class based in a school, and relevant education authority means that of the area where the child lives.

Section 21 – Named person service in relation to children not falling within section 20

60. Subsections (1), (2) and (3) state that an education authority must make arrangements to provide a named person service for each child living in its area unless: they are a pre-school child (as defined in section 20); they attend a school managed by a different local authority or attend a grant-aided school or independent school; they are kept in secure accommodation; or they are in legal custody (as defined at subsection (2A) or subject to temporary release from custody. The duty to provide a named person does not apply to a child if they are a member of any of the regular forces.

61. Subsection (4) provides that, during any period when a child is a pupil at a public school managed by a different authority from the one in which they reside, then that local authority must make arrangements to provide the named person service for that child. Subsection (5) provides that at any time when the child attends a grant-aided school, independent school or is kept in secure accommodation, that establishment must provide the named person service for the child. Subsection (6) provides that, during any period when a child is in legal custody or subject to temporary release from such custody, the Scottish Ministers must make arrangements to provide the named person service for the child.

Section 22 – Continuation of named person service in relation to certain young people

62. This section provides that, where a young person attends a public school, the education authority must make arrangements to provide the named person service to that young person. Where the young person attends a grant-aided or independent school, the directing authority of the establishment, as defined in section 30(1), must make arrangements to provide the named person service. “Young person” is defined as anyone who has reached the age of 18 but still attends school.

Section 23 – Communication in relation to movement of children and young people

63. This section provides that where a service provider no longer provides named person services to a child, they must provide the new service provider, or the person it considers will be the new service provider, with information it holds that is likely to be relevant in the exercise of any functions of the service provider under this Part, or the future exercise of the named person functions in relation to the child or young person, if it ought to be provided for that purpose and unless this information prejudices the conduct of a criminal investigation or the prosecution of an offence.
64. Subsection (4) provides that, when establishing whether information ought to be shared, the outgoing service provider is, so far as reasonably practicable, required to ascertain and have regard to the views of the child or young person. In having regard to the views of a child, the outgoing service provider is to take account of their age and maturity (subsection (5)).

65. Subsection (6) provides that the outgoing service provider can only decide that information ought to be shared, for the purpose of section 23(3)(b), if the likely benefit to a child or young person’s wellbeing in doing so outweighs any likely adverse effect on their wellbeing.

66. Subsection (7) makes it clear that section 23 does not permit or require the sharing of information in breach of any legal prohibition or restriction on the disclosure of information, except a duty of confidentiality.

Section 24 – Duty to communicate information about role of named persons

67. Subsection (1) provides that a service provider, as defined in section 30(1), must publish, in such a manner as it considers appropriate, information about the operation of the named person service provided by it, including: details of how the named person functions are exercised; how to contact named persons in their area or establishment; how the service provider exercises its functions under Part 4; and any other matters they consider appropriate.

68. Subsection (2) states that service providers must provide the child or young person for whom they are providing the named person, and their parents, with details of how to contact named persons in their area as soon as is reasonably practicable after they become the service provider for the child, and as soon as is reasonably practicable after there is any change in those arrangements.

Section 25 – Duty to help named person

69. This section provides that where it appears to a service provider that another service provider or relevant authority could, by doing something, help in the exercise of any of their functions as provider of a named person, the other service provider or relevant authority must comply with a request for help. This could entail the relevant authority providing assessments or analysis, chronologies of significant events or any other information which would assist the named person in assessing the overall needs of the child and determining how they can be met. This duty to comply with a request applies unless the request is incompatible with any of its own duties or unduly prejudices the exercise of any of its functions. Schedule 2 contains a list of relevant authorities.

Section 26 – Information sharing

70. Subsections (1) and (2) provide that a service provider or relevant authority (as listed in schedule 2) must provide to the service provider in relation to a child or young person information which it holds if it considers that: it is likely to be relevant to the exercise of the named person functions; it ought to be provided for that purpose; and its provision would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
71. Subsections (3) and (4) provide that a service provider in relation to a child or young person must provide, to a service provider or relevant authority, any information which it holds that is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person. This applies where the service provider in relation to the child or young person considers that the information ought to be provided for that purpose and where its provision would not prejudice the conduct of any criminal investigation.

72. Subsection (4A) requires that, in establishing whether information ought to be shared, the information holder is, so far as reasonably practicable, required to ascertain and have regard to the views of the child or young person. In having regard to the views of a child, the information holder is to take account of their age and maturity (subsection (4B)). Subsection (4C) provides that the information holder can only decide that information ought to be shared, for the purpose of subsection (2)(b) or (4)(b), if the likely benefit to the child or young person’s wellbeing in doing so outweighs any likely adverse effect on their wellbeing.

73. Subsections (5) and (6) provide that the named person service provider may provide to a service provider or relevant authority any information they hold which is necessary or expedient to help them carry out their named person role.

74. Subsection (8) makes it clear that section 26 does not permit or require the sharing of information in breach of any legal prohibition or restriction on the disclosure of information, except a duty of confidentiality.

Section 27 – Disclosure of information

75. Section 27 applies where a person (“the recipient”) receives information in accordance with Part 4 of the Bill which has been provided in breach of a duty of confidentiality and where the recipient has been made known of this breach. The recipient is not then to provide that information to anyone else (a third party), unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 4) or any rule of law.

Section 28 – Guidance in relation to named person service

76. Section 28 provides that all persons listed in subsection (1A) must have regard to any guidance issued by the Scottish Ministers about exercising functions Part 4.

77. Subsection (4) provides that before issuing or revising guidance, the Scottish Ministers must consult with any person to whom it will relate.

Section 29 – Directions in relation to named person service

78. This section provides that all persons listed in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by Part 4. Before issuing, revising or revoking a direction, the Scottish Ministers must consult the persons to which it relates.
Section 30 – Interpretation of Part 4

79. Subsection (1) explains the definition of phrases used in this Part. Subsection (2) confers upon the Scottish Ministers a power to modify schedule 2 which contains a list of relevant authorities.

Part 5 – Child’s plan

Section 31 – Child’s plan: requirement

80. Subsections (1) to (4A) provide that for this Part a child requires a child’s plan where the responsible authority considers that the child has a wellbeing need and that need is not capable of being met, or fully met, by taking action other than targeted intervention, and the need is capable of being met, at least to some extent, by one or more targeted interventions. A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter. “Targeted intervention” means the provision of a service, by a health board or local authority or a grant aided or independent school, provided by a relevant authority (either directly or through a third party) which is directed at meeting the needs of children whose needs cannot be met, or fully met, by the services which are generally provided to all children by that body.

81. Subsections (5) and (6) provide that in deciding whether a child requires a child’s plan, the responsible authority is, so far as reasonably practicable, to ascertain and have regard to the views of the child, their parent(s), any persons as the Scottish Ministers may by order specify, and any other persons as it considers appropriate. In having regard to the views of the child, the responsible authority is to take account their age and maturity. The responsible authority must also consult the child’s named person where that individual is not employed by them.

82. Subsections (7) and (8) provide that if a child already has a plan, or if the child is a member of any of the regular forces, then subsection (1) does not apply. Where a child already has a plan, section 37 would apply. “Regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

Section 32 – Content of a child’s plan

83. Subsection (1) provides that a child’s plan must include a statement of: the child’s wellbeing need; any targeted intervention(s) which requires to be provided in relation to the child to address the wellbeing need; details of the relevant authority which is tasked with providing any targeted intervention; details of how the intervention is to be provided; and the outcome which the intervention is intended to achieve. A child’s plan may contain a targeted intervention only where the relevant authority tasked with delivering the intervention agrees to its inclusion. If the relevant authority is not in agreement and is not leading on the preparation of the plan, it must provide the person preparing the plan with its reasons for not agreeing to provide an intervention.

84. Subsection (2) provides that the Scottish Ministers may, by order, make provision as to any other information which is, or is not, to be contained in child’s plans and the form of those plans.
Section 33 – Preparation of a child’s plan

85. Subsections (1) and (3) state that where a child requires a child’s plan, the responsible authority should prepare the plan unless the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare the plan. Subsections (2) and (5A) provide that the plan should always be prepared as soon as is reasonably practicable unless there are no targeted interventions to be included because a relevant authority has not agreed to them in the terms of section 32(1A).

86. Subsection (5) provides that where a relevant authority declines to give its agreement to prepare a plan, the relevant authority must provide a statement of its reasons for declining.

87. Subsection (6) provides that in preparing a child’s plan, an authority must consult with the child’s named person where that individual is not employed by the authority. Furthermore, the authority must, so far as reasonably practicable, ascertain and have regard to the views of the child, their parent(s), any other persons as specified by order by the Scottish Ministers and any other persons as it considers appropriate. In having regard to the views of the child, the authority is to take account of the child’s age and maturity. Subsections (8) and (9) provide that the Scottish Ministers may, by order, make further provision as to the preparation of child’s plans, including provisions requiring or permitting a copy of the plan to be given to a particular person or persons within a particular description, in the circumstances described in the order or where the authority considers it appropriate.

Section 34 – Responsible authority: general

88. Subsection (1)(a) provides that for the purposes of this Part the responsible authority for a pre-school child is the health board for the area where the child lives. Subsection (1)(b) provides that the responsible authority for a child who is not a pre-school child is the local authority for the area where the child lives. Subsection (2) provides that subsection (1) is subject to special cases outlined in section 35. Special cases are those not covered in section 34.

89. Subsection (3) defines “pre-school child” as a child who has not started primary school and, if the child is of school age, has not started school because the education authority has consented to this being delayed.

90. Subsection (4) provides that for the purposes of this section, the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant education authority; the references to attendance at primary school do not include attendance at nursery classes based in a primary school; and the references to relevant education authority are to the education authority for the area where the child resides.

Section 35 – Responsible authority: special cases

91. Section 35 makes provision about who the responsible authority is in relation to special cases, which are cases where section 34 does not apply. Subsection (1) provides that where a pre-school child resides in the area of a health board, by virtue of a placement by another health board or local authority, the health board for the area in which the child resides immediately
before that placement is the responsible authority in relation to the child. “Pre-school child” has the meaning given by section 34(3).

92. Subsection (2) provides that where the child is at a public school managed by a local authority other than the one for the area in which the child lives, that other authority is the responsible authority in relation to the child.

93. Subsection (3) provides that where the child is a pupil at a grant-aided or independent school, the directing authority of that school is the responsible authority in relation to that child.

94. Subsection (4) provides that subsection (3) does not apply where the child is a pupil at a grant-aided or independent school by virtue of a placement by a local authority.

95. Subsection (4A) provides that where a child’s residence is displaced by virtue of their falling within any of the categories set out in subsection (4B), the local authority for the area in which they would normally reside is the responsible authority in relation to the child. Subsection (4B) specifies these categories as: where, in pursuance of a local authority’s duties under the Education (Scotland) Act 1980, a child is a pupil at a grant-aided or independent school and resides in accommodation provided for the purpose of attending that school; where the child is placed in a residential establishment by virtue of Chapter 1 of Part 2 of the Children (Scotland) Act 1995; where the child resides at a residential establishment by virtue of an order under the Children’s Hearing (Scotland) Act 2011; or where the child is detained in residential accommodation in pursuance of an order under the Criminal Procedure (Scotland) Act 1995.

96. Subsection (5) provides that the Scottish Ministers may, by order (subject to affirmative procedure), modify this section so as to make further or different provision as to the circumstances in which section 34(1) does not apply in relation to the child.

**Section 36 – Delivery of a child’s plan**

97. Subsection (1) provides that a relevant authority which is to provide a targeted intervention (either directly or through a third party) in terms of a child’s plan is to provide it, so far as reasonably practicable, in accordance with the plan. This does not apply where the responsible authority considers that to do so would adversely affect the wellbeing of the child (subsection (2)).

**Section 37 – Child’s plan: management**

98. Subsection (1) provides that the managing authority of a child’s plan must keep under review: whether the wellbeing need of the child stated in the plan is still accurate; whether the targeted intervention(s) or manner of provision of those interventions is still appropriate; whether the outcome of the plan has been achieved; and whether the management of the plan should transfer to another authority. In reviewing a child’s plan, subsections (2), (2A) and (3) state that the managing authority is to consult each relevant authority which is providing a targeted intervention contained in the plan (either directly or through a third party), the responsible authority (where that authority is neither the managing authority nor providing a targeted intervention) and the child’s named person where that individual is not employed by the
managing authority. The managing authority must also, so far as is reasonably practicable, ascertain and have regard to the views of the child, their parents, such other persons as the Scottish Ministers may specify by order, and any other person that the managing authority considers appropriate. In having regard to the child’s views, the managing authority is to take account of their age and maturity.

99. In consequence of this review, the managing authority may, under subsection (4)(a) amend the plan so as to revise the wellbeing need of the child, any targeted intervention(s), or manner of the provision of targeted intervention(s) which require to be provided, or the outcome which the plan is intended to achieve. The managing authority may also transfer the management of the plan to a relevant authority or end the plan (subsections (4)(b) and (c)).

100. Subsection (5) provides that the Scottish Ministers may make, by order, provision about: the management of the child’s plan, including when and how a child’s plan is to be reviewed in accordance with subsection (1); who is to be the managing authority of the plan; when and to whom the management of the plan is to or may be transferred under subsection (4)(b); when and how a new targeted intervention may be included in a child’s plan; and the keeping, disclosure and destruction of child’s plans.

101. Subsection (6) provides that the managing authority of a child’s plan is the authority which prepared it, or where the management of the plan has been transferred, the person to whom it was transferred. This is subject to any different provision made under subsection (5)(b).

Section 38 – Assistance in relation to child’s plan

102. Subsections (1) and (1A) provide that any relevant authority or person listed in schedule 2A must comply with any reasonable request made of them to provide a person exercising a function under this Part with information, advice and assistance.

103. Subsection (2) provides that subsection (1) does not apply where the authority or person to whom the request is made considers that the provision of such information, advice or assistance would be incompatible with any of their duties or would unduly prejudice the exercise of any of their functions.

104. Subsection (3) provides that subsection (1) does not permit or require the sharing of information in breach of any legal prohibition or restriction linked to the sharing of such information, other than a breach of a duty of confidentiality.

105. Subsections (4) and (5) apply where a person (“the recipient”) receives information in accordance with section 38(1), which has been provided in breach of a duty of confidentiality and where the recipient has been made known of this breach. The recipient is not then to provide that information to anyone else (a third party) unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 5) or any rule of law.
106. Subsection (6) provides that the Scottish Ministers may by order modify schedule 2A by adding, removing or varying an entry listed in it.

Section 39 – Guidance on child’s plans

107. Subsection (1) and (1A) provide that relevant authorities and those persons listed in schedule 2A (with the exception of the Scottish Ministers) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions under Part 5 (other than the function of complying with section 36). Before issuing or revising guidance, the Scottish Ministers must consult any person to whom it will relate.

Section 40 – Directions in relation to child’s plans

108. Subsections (1) and (2) provide that relevant authorities and those persons listed in schedule 2A (with the exception of the Scottish Ministers) must comply with any direction issued by the Scottish Ministers about the exercise of the functions conferred by Part 5 (other than the function of complying with section 36). Before issuing, revising or revoking a direction, the Scottish Ministers must consult the person to whom it relates.

Section 41– Interpretation of Part 5

109. This is an interpretation section for this Part. It includes the definition of “directing authority”. When used generally, this means the managers of each grant-aided school and the proprietor of each independent school. When used in relation to a grant-aided school, it means the managers of the school, and in relation to an independent school, it means the proprietor of the school. It also defines “relevant authority” as any health board, local authority or directing authority.

Part 6 – Early Learning and Childcare

Section 42 – Early learning and childcare

110. Section 1(1) of the Education (Scotland) Act 1980 (the 1980 Act) imposes a duty on every education authority to secure that there is adequate and efficient provision of school education made for their area. Section 42 defines “early learning and childcare” as a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, with regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting. The phrase “of a kind which is suitable in the ordinary case for children who are under school age” is consistent with its use in the Education (Scotland) Act 1980. Guidance issued by the Scottish Ministers under section 34 of the Standards in Scotland’s Schools Act 2000 (the 2000 Act) (which is amended by paragraph 5 of schedule 4) together with national guidance will be used to provide more detail as to what those types of interactions and experiences will encapsulate.

Section 43 – Duty to secure provision of early learning and childcare

111. Subsection (1) provides that an education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2
(SP Bill 27A)

(as defined in section 42) is made available for each eligible pre-school child belonging to its area. Section 23(3) of the 1980 Act provides that a pupil receiving school education is deemed to belong to the area where the pupil’s parent is ordinarily residing. This is subject to any regulations made by the Scottish Ministers.

112. Subsection (2) defines “eligible pre-school child”. It means a child who is under school age, has not started primary school and either falls within subsection (3) or is within such age range, or is of such other description, as the Scottish Ministers may by order specify.

113. Subsection (3) provides that a child is also an eligible pre-school child if the child is aged 2 or over, and is, or has been at any time since their 2nd birthday, looked after by a local authority (“looked after” is defined in section 75(2)) or the subject of a kinship care order. Kinship care order is defined in subsection (5) as having the meaning given by section 65(1).

114. Section 75(3) provides that “school age” has the same meaning as it has in the 1980 Act. Section 31 of the 1980 Act defines a person as being of “school age” if they have attained the age of 5 but not 16 years. Section 31 is however qualified by section 32(3) of the 1980 Act which provides that a child who does not attain the age of 5 on a school commencement dated (defined in section 32(1)) shall for the purposes of section 31 be deemed not to have attained that age until the school commencement date following his/her 5th birthday.

115. An order under section 43(2)(c)(ii) is subject to affirmative resolution procedure. It is anticipated that any order made under that enabling power will include provision akin to that made in the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (SSI 2002/90) made under section (1A) of the 1980 Act (which order making power is to be removed from the 1980 Act by paragraph 2(2)(a) and (b) of schedule 4), so for example to set out that eligibility for early learning and childcare starts from the first term following the child’s 3rd birthday; or to 15% of 2 year olds from workless or job seeking households, or the 27% of 2 year olds whose parents are on certain welfare benefits. Subsection (4) provides that an order under section 43(2)(c)(ii) may sub-delegate the function of determining the eligibility criteria to an education authority so for example the order might provide that a child is an eligible pre-school child only if the education authority is satisfied as to any matter relating to the child which is specified in the order.

Section 44 – Mandatory amount of early learning and childcare

116. Subsection (1) defines the mandatory amount of early learning and childcare for the purposes of section 43(1) as 600 hours in each year for which a child is an eligible pre-school child and a pro rata amount for each part of a year for which a child is so eligible.

117. Subsection (2) provides that the Scottish Ministers may, by order, modify the mandatory amount of early learning and childcare in subsection (1) for eligible pre-school children so as to vary the amount of early learning and childcare which is to be made available. Under subsection (3) the order is capable of making different provision for different types of eligible pre-school children (for example different amounts for children of different ages). Such an order is subject to affirmative procedure by virtue of section 77(2).
Section 45 – Looked after 2 year olds: alternative arrangements to meet wellbeing needs

118. Section 45 enables an authority to make alternative provision of education and care in order to meet the wellbeing needs of children. Subsection (1) provides that where an authority’s duty under section 43(1) applies in relation to a child only by virtue of the child falling within section 43(3)(a)(that is any 2 year old who is, or has been at any time since turning 2, looked after until he or she becomes eligible under section 43(2)), and the authority, after assessing the child’s needs considers that making alternative arrangements in relation to the child’s education and care would better safeguard or promote the child’s wellbeing, then subsection (2) applies.

119. Subsection (2) provides that in relation to these children the authority need not comply with its duty under section 43(1) in relation to the child but must make alternative arrangements in relation to the child’s education and care as it considers appropriate for the purposes of safeguarding or promoting the child’s wellbeing. The power for the authority to make alternative arrangements by virtue of 45(1) and (2) continues to apply notwithstanding that the 2 year old child ceases to be looked after so as to ensure continuity in the education and care of the child. However, under subsection (3), alternative arrangements cannot continue to be made if a parent of the child objects to those alternative arrangements being made.

120. Subsection (4) provides that the authority may, at any time, review any alternative arrangements it makes in relation to a child in pursuance of subsection (2)(b) and must do so on becoming aware of any significant change in the child’s circumstances. It may, following such a review, alter those arrangements.

121. Subsection (5) provides that the authority must seek to ensure that a record of the outcome of any assessment of a child’s needs that it undertakes in pursuance of subsection (1)(b) and any alternative arrangements that it makes in relation to the child’s education and care in pursuance of subsection (2)(b) is included in any child’s plan which is prepared under Part 5.

Section 46 – Duty to consult and plan on delivery of early learning and childcare

122. Subsection (1)(a) provides that an education authority must consult such persons as appear to it to be representative of parents of children under school age in its area about how it should make early learning and childcare available. Subsection (1)(b) provides that the education authority must have regard to the views expressed in that consultation and having done so prepare and publish a plan for how it intends to make early learning and childcare available. Such consultation must be carried out every 2 years although subsection (2) enables the Scottish Ministers to vary the regularity of that consultation by order subject to negative resolution procedure. Guidance issued by the Scottish Ministers under section 34 of the 2000 Act (as amended by paragraph 5 of schedule 4) will be used to set out more detail about how it is expected the consultation will be carried out and in relation to the preparation of the requisite plans for how early learning and childcare will be delivered.

Section 47 – Method of delivery of early learning and childcare

123. Subsection (1) provides that an education authority must ensure that it makes early learning and childcare available by way of sessions which are provided during at least 38 weeks
of every calendar year, and which are at least 2.5 hours but no more than 8 hours in duration. This is the minimum framework for delivering early learning and childcare.

124. Subsection (2) provides that the Scottish Ministers may by order modify subsection (1) so as to vary the minimum framework for delivering early leaning and childcare. Such an order is subject to affirmative procedure by virtue of section 77(2).

Section 48 – Flexibility in way in which early learning and childcare is made available

125. This section provides that in exercising functions under sections 46 (duty to consult and plan on delivery of early learning and childcare) and 47 (method of delivery of early learning and childcare), an education authority must have regard to the desirability of ensuring that the method by which it makes early learning and childcare available is flexible enough to allow parents an appropriate degree of choice when deciding how to access the services.

Section 49 – Interpretation of Part 6

126. This section is an interpretation section for this Part which explains that the expression “early learning and childcare” has the meaning given by section 42, “eligible pre-school child” has the meaning given by section 43(2) and “parent” has the meaning given by the 1980 Act. Other interpretation provisions relevant to this Part are contained in section 75.

Part 6A – Power to provide school education for pre-school children

Section 49A - Duty to consult and plan in relation to power to provide school education for pre-school children

127. Section 49A inserts subsections (2B), (2C) and 2(D) into section 1 of the Education (Scotland) Act 1980 (“the 1980 Act”). Section 1(1C) of the 1980 Act gives power to education authorities to provide school education for pre-school children (i.e. early learning and childcare) in addition to the mandatory provision required in terms of section 1(1A) of the 1980 Act as amended by Part 6 of this Bill.

128. Subsection (2B) requires education authorities to consult parents of pre-school children in their area at least once every two years about whether and if so how they should provide such education in exercise of their power under section 1(1C) of the 1980 Act and, having had regard to those views, prepare and publish plans in relation to that. Subsection (2C) enables the Scottish Ministers by order to vary the regularity within which such consultation and planning should happen and such an order is subject to negative procedure in terms of subsection (2D).

Part 6B – Day care and out of school care

Section 49B - Duty to consult and plan in relation to day care and out of school care

129. Section 49B inserts new subsections (1A), (1B), (3A), (3B), (3C) and (3D) into section 27 of the Children (Scotland) Act 1995 (“the 1995 Act”). Section 27(1) of the 1995 Act requires local authorities to provide day care for pre-school children who are in need and gives local authorities power to provide day care for pre-school children who are not in need. Section 27(3)
of the 1995 Act requires local authorities to provide out of school care for school aged children who are in need and gives local authorities power to provide out of school care for school aged children who are not in need.

130. Subsections (1A) and (3A) requires local authorities at least once every 2 years to consult with such persons who are representative of parents of pre-school and school aged children in need about how they should provide day care and out of school care for such children; and, having had regard to the views expressed, prepare and publish plans in relation to their duty to provide day care to pre-school children in need and out of school care to school aged children in need.

131. Subsections (1B) and (3B) requires local authorities at least once every 2 years to consult with such persons who are representative of parents of pre-school children and school aged children about whether and if so how they should provide day care and out of school care; and, having had regard to the views expressed, prepare and publish plans in relation to their powers to provide day care to pre-school children who are not in need and out of school care to school aged children who are not in need.

132. Subsection (3C) enables the Scottish Ministers by order to vary the regularity with which such consultation and planning in relation to day care and out of school care provided under section 27 of the 1995 Act should happen and such an order is subject to negative procedure in terms of subsection (3D).

Part 7 – Corporate parenting

Section 50 – Corporate parents

133. This Part of the Bill gives effect to a concept of “corporate parenting”. This concept involves placing new duties on certain public bodies to act in particular ways in support of certain children and young people. The public bodies are called “corporate parents” and the duties are “corporate parenting responsibilities”.

134. Subsection (1) of this section provides that those people listed, or included within a description which is listed, in schedule 3 are “corporate parents”.

135. Subsection (2) provides that the Scottish Ministers can, by order, modify schedule 3 by adding a person or description of persons, removing an entry or changing an entry. Such an order is subject to affirmative procedure by virtue of section 77(2) (subordinate legislation). Subsection (3B) provides that an order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a corporate parent for the purposes of section 58 (directions).

136. Although the Scottish Ministers are corporate parents, there is an exception for them in relation to certain of the provisions (see subsection (3)). This is because of their special position in relation to some of the duties. Also, subsection (3A) provides that the Commissioner for Children and Young People in Scotland and “post-16 education bodies” are not corporate parents for the purposes of section 58.
137. Subsection (4) provides that references in this Part to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 52(1).

Section 51 – Application of Part: children and young people

138. The children and young people in relation to whom corporate parenting responsibilities apply are set out in this section. They are children who are looked after by a local authority in accordance with section 17(6) of the 1995 Act and young people who are under 26 and were, on their 16th birthday, or at any subsequent time, but are no longer, looked after by a local authority. This Part also applies to a young person who is at least the age of 16 but under 26 and is not of the description in subsection (1)(b)(ii) but is of other such description as the Scottish Ministers may specify by order. Such an order is subject to affirmative procedure by virtue of section 77(2).

Section 52 – Corporate parenting responsibilities

139. As noted above, this section sets out the corporate parenting responsibilities. Subsection (1) provides that it is the duty of every corporate parent (where consistent with their other functions): to be alert to matters which could adversely affect the wellbeing of children and young people to whom this Part applies; to assess the needs of those children and young people for support and services it provides; to promote the interests of those children and young people; to seek to provide those children and young people with opportunities to participate in activities designed to advance their wellbeing; to take such action as it considers appropriate to help those children and young people to access those opportunities and to make use of services, and access the support, which it provides; and to take any other action it considers appropriate to improve the way in which it carries out its functions in relation to those children and young people.

140. Subsection (2)(a) provides that the Scottish Ministers may, by order, modify subsection (1) so as to confer, remove or vary a duty on corporate parents. By virtue of subsection (2)(b) such an order may also provide that subsection (1) is to be read, in relation to a particular corporate parent or particular descriptions of corporate parents, with a modification conferring, removing or varying a duty. The effect of this is that the power may be used to apply different duties to different corporate parents. Orders under subsection (2) are subject to affirmative procedure by virtue of section 77(2).

Section 53 – Planning by corporate parents

141. Subsection (1) provides that corporate parents must prepare a plan for how they propose exercising their corporate parenting responsibilities and must keep this plan under review.

142. Subsection (2) provides that before preparing or revising this plan, corporate parents must consult with other corporate parents and persons as they consider appropriate.

143. Subsection (3) provides that corporate parents must publish their plan, or revised plan, in such manner as they consider appropriate (and, in particular, that plans may be published together with, or as a part of, any other plan or document).
Section 54 – Collaborative working among corporate parents

144. Subsection (1) provides that corporate parents must collaborate with each other, in so far as is reasonably practicable, when undertaking their corporate parenting responsibilities or any other functions under this Part, where they consider that doing so would safeguard or promote the wellbeing of children or young people which this Part applies to.

145. Subsection (2) gives examples of what that collaboration may include, namely sharing information, providing advice or assistance, co-ordinating activities, sharing responsibility for action, funding activities jointly and exercising these functions jointly (for example, by publishing a joint plan or joint report).

Section 55 – Reports by corporate parents

146. Subsection (1) provides that a corporate parent must report on how it has exercised its corporate parenting responsibilities, planning and collaborating functions in pursuance of sections 53 and 54, and its other functions under this Part.

147. Subsection (2) states that these reports may, in particular, include information about standards of performance, and the outcomes achieved in pursuance of this Part.

148. Subsection (3) provides that reports are to be published in such manner as the corporate parent considers appropriate (and, in particular, that reports may be published together with, or as part of, any other report or document).

Section 56 – Duty to provide information to Scottish Ministers

149. Subsection (1) states that a corporate parent must provide the Scottish Ministers with such information they require about how it is: exercising its corporate parenting responsibilities; planning, collaborating or reporting in pursuance of sections 53, 54 or 55; or otherwise exercising functions under this Part.

150. Subsection (2) states that information which is required may include information about standards of performance, and the outcomes achieved in pursuance of this Part.

Section 57 – Guidance on corporate parenting

151. Subsection (1) provides that a corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers.

152. Subsection (2) states that guidance may include advice or information about how corporate parents should: exercise their corporate parenting responsibilities; promote awareness of their corporate parenting responsibilities; plan, collaborate or report in pursuance of sections 53, 54 and 55; and otherwise exercise their functions under this Part. Guidance may also include information about the outcomes which corporate parents should seek to achieve in exercising their functions.
153. Subsection (5) provides that before issuing guidance the Scottish Ministers must consult with the corporate parents to which guidance relates and anyone else they consider appropriate.

Section 58 – Directions to corporate parents

154. Subsection (1) provides that corporate parents have to comply with any direction issued by the Scottish Ministers about their corporate parenting responsibilities, their planning or collaborating or reporting functions in pursuance of sections 53, 54 and 55 or their functions under this Part. Section 53 requires a corporate parent to prepare and review a plan for how it proposes to exercise its corporate parenting responsibilities. Section 54 requires corporate parents to work collaboratively when exercising their corporate parent responsibilities or other functions under this Part. Section 55 requires a corporate parent to report on how it has exercised its corporate parenting responsibilities, collaborating functions and its other functions under this Part.

155. Subsection (4) provides that before issuing, revising, or revoking directions, Scottish Ministers must consult with any corporate parent to which it relates and such other persons as they consider appropriate.

Section 59 – Reports by Scottish Ministers

156. Subsection (1) provides that the Scottish Ministers must, as soon as practicable, after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.

157. Subsection (2) states that “3 year period” means the period of 3 years beginning with the day on which this section comes into force, and each subsequent 3 years.

Part 8 – Aftercare

Section 60 – Provision of aftercare to young people

158. Subsection (2) of this section amends section 29 of the 1995 Act which places certain duties on, and gives certain powers to, local authorities in relation to the provision of aftercare to young people that were at one stage looked after. Subsection (3) of this section amends section 30 of the 1995 Act which gives local authorities the power to provide financial assistance to a similar category of young people for the purpose of meeting expenses connected with their education and training.

159. Subsection (2)(ya) amends section 29(1) of the 1995 Act to provide that a local authority shall, unless they are satisfied that their welfare does not require it, advise, guide and assist any person in their area who, is at least sixteen but not nineteen years of age who, either was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by the local authority; or is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order. Subsection (2)(za) inserts a new subsection (1A) into section 29 to provide that such orders will be subject to the affirmative procedure. Section 29(1) previously only placed local authorities under a duty to provide aftercare support to those
persons in their area who were over school age but not yet nineteen years of age who, at the time they ceased to be of school age or at any subsequent time, were but are no longer, looked after.

160. Subsection (2)(a) amends section 29(2) to provide that a person who is at least nineteen and who is otherwise a person as described in section 29(1) (as amended) may apply to their local authority for advice, assistance and support up to the age of twenty-six. This provision increases the upper age limit for aftercare support from twenty-one up to the age to twenty-six.

161. Subsection (2)(c) inserts new subsections (5A) and (5B) into section 29. New subsection (5A) provides that, after carrying out an assessment under section 29(5) in pursuance of an application made by a person under section 29(2), the local authority must, if satisfied that the person has eligible needs and that these cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs. The local authority may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare. New subsection (5B) provides that a local authority can continue to provide advice, guidance and assistance after a person reaches the age of 26, but they are not required to do so.

162. Subsection (2)(e) inserts new subsections (8) and (9) into section 29 to provide that the Scottish Ministers may, by order, specify types of care, attention and support that constitute “eligible needs” for the purposes of new subsection (5A)(a). It also inserts new subsection (10) into section 29 to provide that if a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section has died, the authority must as soon as reasonably practicable notify the Scottish Ministers and Social Care and Social Work Improvement Scotland.

163. Subsection (3) amends section 30(2) of the 1995 Act to alter the definition of who is a “relevant person” for the purposes of a local authority’s power in section 30(1) to provide such persons with financial assistance towards education or training. As amended, a person is a relevant person if he is at least sixteen years of age but not yet twenty-six years of age (increased from twenty-one) and either (was on his sixteenth birthday or at any subsequent time) but is no longer looked after by the local authority; or is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order. Subsection (3) also inserts a new subsection (2A) into section 30 to provide that such orders will be subject to the affirmative procedure.

Part 8A – Continuing care

Section 60A – Continuing Care: looked after children

164. Subsection (1) of section 60A inserts a new section 26A after section 26 of the 1995 Act. This new section details the provision of continuing care to those who cease to be looked after children. Subsection (4) of new section 26A defines “continuing care” as meaning the same accommodation and other assistance as was being provided for the person by the local authority immediately before they ceased being looked after.
165. Subsection (1) of new section 26A provides that this section only applies where an eligible person ceases to be looked after by a local authority. Subsection (2) defines an “eligible person” as a person who is at least sixteen years of age and is not yet such higher age as may be specified. By virtue of new section 26A(12), “specified” means specified by order made by the Scottish Ministers which will be subject to affirmative procedure (see new subsection (11)(b)).

166. Subsection (3) of new section 26A provides that, subject to subsection (5), the local authority must provide the person with continuing care. Subsection (6) provides that this duty lasts, subject to subsection (7), until the expiry of such period as may be specified by order made by Scottish Ministers (subject to affirmative procedure by virtue of subsection (11)(b)).

167. Subsection (5) of new section 26A provides that the duty to provide continuing care does not apply if the accommodation the person was in immediately before ceasing to be looked after was secure accommodation; was a care placement and the carer has indicated to the authority that they are unable or unwilling to continue to provide the placement; or the local authority considers that providing the care would significantly adversely affect the welfare of the person.

168. Subsection (7) of new section 26A provides that the duty to provide continuing care ceases if: the person leaves the accommodation of the person’s own volition; the accommodation ceases to be available; or the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person. Subsection (8) provides that the situations in which accommodation ceases to be available include: in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement; in the case of a residential establishment provided by the local authority, where the authority closes the establishment; or in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.

169. Subsection (9) of new section 26A provides that the Scottish Ministers may, by order: make provision about when or how a local authority is to consider whether providing or continuing to provide the care would significantly adversely affect the person’s welfare; modify subsection (5) so as to add, remove or vary a situation in which the duty to provide continuing care does not apply; or modify subsection (7) or (8) so as to add, remove or vary a situation in which the duty to provide continuing care ceases.

170. Subsection (10) of new section 26A provides that, if a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify the Scottish Ministers and Social Care and Social Work Improvement Scotland.

171. Subsection (11) provides that an order made under this section may make different provision for different purposes and is subject to the affirmative procedure.

172. Subsection (2) of section 60A amends section 29 of the 1995 Act by adding a new subsection (2A) which provides that subsections (1) and (2) of section 29 do not apply to a person during any period when they are being provided with continuing care under new section 26A. This means that a person receiving continuing care under new section 26A cannot also
receive aftercare support under section 29 of the 1995 Act at the same time. However, if the duty to provide continuing care to that person ceases for one of the reasons set out in new section 26A(7) of the 1995 Act that person will then be able to apply for aftercare support under section 29 of the 1995 Act as amended by section 60 of the Bill.

**Part 9 – Services in relation to children at risk of becoming looked after, etc.**

**Section 61 – Provision of relevant services to parents and others**

173. Subsection (1) of section 61 provides that a local authority must make arrangements to secure that relevant services as described by the Scottish Ministers, by order, are made available for each eligible child residing in its area, a qualifying person in relation to such a child, each eligible pregnant woman residing in its area and a qualifying person in relation to such a woman.

174. Subsection (1A) defines a “relevant service” as a service comprising, or comprising any combination of: providing information about a matter; advising or counselling about a matter; and taking other action to facilitate the addressing of a matter by a person.

175. Subsection (2) defines an “eligible child” as a child who the authority considers to be at risk of becoming looked after or who falls within such other description as the Scottish Ministers may specify by order. Subsection (3) defines a “qualifying person” in relation to an eligible child as a person: who is related to the child; who has any parental rights or responsibilities in relation to the child; or with whom the child is or has been living.

176. Subsection (4) defines an “eligible pregnant woman” as a pregnant woman who the authority considers is going to give birth to a child who will be an eligible child. Subsection (5) defines a “qualifying person” in relation to an eligible pregnant woman as a person: who is the father of the child to whom the pregnant woman is to give birth; who is married to, in a civil partnership with or otherwise related to the pregnant woman; with whom the pregnant woman is living; or who does not fall within any of these descriptions but who the authority considers will, when the pregnant woman gives birth to the child, become a qualifying person in relation to the child.

177. Subsection (6) explains that the references in this section to a person who is related to another person includes a person who is married to or in a civil partnership with a person who is related to the other person, or a person who is related to the other person by the half blood.

**Section 62 – Relevant services: further provision**

178. Section 62(1) provides that the Scottish Ministers may make, by order, provision about: when or how relevant services specified in an order under section 61(1) are to be provided; when or how a local authority is to consider whether a child falls within paragraphs (a) and (b) of section 61(2) (a child at risk of becoming looked after or falling within such other description as the Scottish Ministers specify by order); when or how a local authority is to review whether a child continues to fall within paragraphs (a) and (b) of section 61(2); and such other matters about the provision of relevant services specified in an order under section 61(1) as the Scottish Ministers consider appropriate.
179. Subsection (2) provides that an order under subsection (1)(d) may include provision about circumstances in which relevant services specified in an order under section 61(1) may be provided subject to conditions (including conditions as to payment), and consequences of such conditions not being met.

Section 63 – Interpretation of Part 9

180. This is an interpretation section for this Part of the Bill and explains that the terms parental responsibilities and parental rights have the same meaning as in Part 1 of the Children (Scotland) Act 1995.

Part 10 – Support for kinship care

Section 64 – Assistance in relation to kinship care orders

181. Subsections (1), (2), (3) and (3A) of section 64 provide that local authorities must make arrangements to ensure that kinship care assistance, which is assistance of such description as specified by the Scottish Ministers by order, is made available to those persons, living in its area specified in subsection (3) as: a person applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years; an eligible child who has not attained the age of 16 years who is subject of a kinship care order; a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists; a child who is 16 years old where, immediately before attaining the age of 16, the child was the subject of a kinship care order and where the child is still eligible; a person who is a guardian by virtue of an appointment under section 7 of the Children (Scotland) Act 1995 of an eligible child who has not attained the age of 16 years (but this is subject to subsection (3A) which provides that this does not include a parent who is a guardian of an eligible child); and an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.

182. Subsection (4) defines an “eligible child” as a child who the local authority considers to be at risk of becoming looked after, or who falls within such other description as the Scottish Ministers may by order specify.

Section 65 – Orders which are kinship care orders

183. A kinship care order is not a new, or separate, form of court order. Subsection (1) of section 65 explains that for the purposes of this section a “kinship care order” is an order under section 11(1) of the 1995 Act which gives a qualifying person the right to have the child living with that person or to otherwise regulate the child’s residence; a residence order which has the effect of the child living with or predominately living with a qualifying person; or an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.

184. Subsection (2) provides that a “qualifying person” means a person who, at the time the order is made, is related to a child, is a friend or acquaintance of someone related to a child or who has another relationship to, or connection with, a child, as specified by order by the Scottish Ministers. An acquaintance is someone who is known slightly to the relative, where the relationship does not necessarily have the same depth or intimacy as a friendship, for example a
neighbour. It will be for the sheriff to decide on a case by case basis whether to grant the order referred to in section 65(1) in the usual way for the order concerned.

185. Subsection (3) provides that a parent is not a “qualifying person” for the purposes of subsection (1). In subsection (2) where it refers to a person who is related to a child, subsection (4) provides that this includes someone married to or in a civil partnership with a person who is related to the child, or a person who is related to the child by half blood.

Section 66 – Kinship care assistance: further provision

186. Subsection (1) of section 66 provides that the kinship care assistance which the Scottish Ministers may specify in an order under section 64(1) includes: the provision of counselling, advice or information about any matter; financial support (or support in kind) of any description; and any service provided by a local authority on a subsidised basis.

187. Subsection (2) provides that the assistance specified by such an order may include assistance which a person was entitled to from, or being provided with by, a local authority, immediately prior to a person becoming entitled to assistance under section 64(1). This allows for a person to continue to receive assistance (which is of a description of assistance specified by Ministers by order under section 64(2)) which they received from a local authority prior to their becoming eligible.

188. Subsection (3) provides that the Scottish Ministers may, by order, make provision about: when or how kinship care assistance is to be provided; when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 64(4) (at risk of becoming looked after or falling within such other description as the Scottish Ministers specify by order); when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 64(4); and such other matters about the provision of kinship care assistance specified in an order under section 64(1) as the Scottish Ministers consider appropriate.

189. Subsection (4) provides that an order under subsection (3)(d) may include provision about circumstances in which a local authority may provide kinship care assistance specified in an order under section 64(2) subject to conditions (including conditions as to payment for the assistance or the repayment of financial support) and consequences of such conditions not being met (including the recovery of any financial support provided).

Section 67 – Interpretation of Part 10

190. This is an interpretation section for this Part and provides that “kinship care assistance” has the meaning given by section 64(2) and that “parent” has the same meaning as it has in Part 1 of the 1995 Act.

Part 11 – Adoption register

Section 68 – Scotland’s Adoption Register

191. This section amends the Adoption and Children (Scotland) Act 2007 by inserting sections 13A to 13F after section 13 of that Act.
Section 13A – Scotland’s Adoption Register

192. Subsection (1) provides that the Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register (“the Register”) for the purposes of facilitating adoption.

193. Subsection (2) provides that the Scottish Ministers may, by regulations, prescribe information relating to adoption which is, or types of information relating to adoption which are, to be included in the Register. This may include information relating to: children who adoption agencies consider should be placed for adoption; persons considered by adoption agencies as suitable to have a child placed with them for adoption; matters relating to such children or persons which arise after information about them is included in the Register; or prospective adopters outwith Scotland. It provides that the Scottish Ministers may, by regulations, provide for how information is to be retained in the Register and make such further provision in relation to the Register as they consider appropriate.

194. Subsection (3) provides that the Register is not to be open to public inspection or search. The information on the Register cannot be accessed or searched by anyone other than the Scottish Ministers, or the Registration organisation on behalf of the Scottish Ministers.

195. Subsection (4) provides that information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

Section 13B – Registration organisation

196. Subsection (1) provides that arrangements made by the Scottish Ministers under the previous section may, in particular: authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation) and provide for payments to be made by the Scottish Ministers to an organisation so authorised. Section 13B(1A) requires Scottish Ministers to publish arrangements under section 13A(1) so far as they authorise an organisation to perform the functions of Scottish Ministers in respect of the Register.

197. Subsection (2) provides that an organisation authorised in pursuance of subsection (1) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

Section 13C – Supply of information for the Register

198. Subsection (1) provides that an adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about children who it considers ought to be placed for adoption or persons who were included in the Register as such children; and persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons. Subsection (3) provides that regulations made under section 13A(2) may: provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers; provide for how and by when that information is to be provided; prescribe circumstances in
which an adoption agency, despite the requirement to provide information in subsection (1) is not to disclose information of the type prescribed for the purposes of that subsection.

Section 13D – Disclosure of information

199. Subsection (1) provides that it is an offence to disclose any information derived from the Register other than in accordance with the regulations under section 13A(2). Subsection (2)(a) provides that the regulations under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register to an adoption agency for the purposes of helping it to find someone with whom it would be appropriate to place a child for whom the agency is acting, or to find a child who is appropriate for adoption by someone for whom the agency is acting. Subsection (2)(b) provides that regulations may authorise the Scottish Ministers or registration organisation to disclose this information: to any person (whether or not established or operating in Scotland) specified in the regulations, for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter; for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption or prospective adopters, for the purpose of enabling or assisting that person to perform any functions which relate to adoption; for use for statistical or research purposes; and for any other purpose relating to adoption.

200. Subsection (3) provides that regulations made under section 13A(2) may set out terms and conditions on which information may be disclosed in pursuance of this section; specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2); and authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption.

201. Subsection (4) provides that subsection (1) (the offence provision) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.

202. Subsection (5) provides that a person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

Section 13DA – Fees and other payments

203. This section provides that regulations made under section 13A(2) may prescribe: a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1); a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4); and such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.
Section 13E – Use of an organisation as agency for payments

204. Subsection (1) provides that Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

205. Subsection (2) provides that a registration organisation or other person authorised under subsection (1) is to perform the functions exercisable under section 13E(1) in accordance with any directions given by the Scottish Ministers.

Section 13F - Supplementary

206. Section 13F provides that nothing authorised or required to be done by virtue of Chapter 1A constitutes an offence under section 72(2) or 75(1) of the Adoption and Children (Scotland) Act 2007. Section 72(2) of the 2007 Act provides it is an offence to make, agree or offer to make, receive or agree to receive, or attempt to obtain certain payments in relation to the adoption of a child. Section 75(1) of the 2007 Act provides that it is an offence to make arrangements for the adoption of a child or to place a child for adoption (this does not apply to adoption agencies).

Part 11A - School Closures

Section 68A – References to the Schools (Consultation) (Scotland) Act 2010

207. Section 68A provides that references in Part 11A of the Bill to “the 2010 Act” are to the Schools (Consultation) (Scotland) Act 2010.

Section 68B – Restriction on closure proposals

208. Section 68B inserts a new section 2A (restriction on closure proposals) after section 2 in the 2010 Act. Section 2A(3) provides that, following a decision not to implement a closure proposal, an education authority would not be able to publish a proposal paper under section 4(4) of the 2010 Act for the same school within 5 years (beginning with the day on which the decision not to implement a closure proposal is made) unless there had been a significant change in the school’s circumstances.

209. Subsection (2) of section 2A makes it clear what is meant by “a decision not to implement a closure proposal”, which is a decision taken by an education authority not to implement the proposal after it has published a consultation report on the proposal, or a decision by a School Closure Review Panel to refuse consent to the proposal.

Section 68C – Financial implications of closure proposals

210. Section 68C amends section 4 of the 2010 Act (proposal paper), adding a new subsection (2A) which requires education authorities, as part of the proposal paper prepared under that section, to provide information about the financial implications of a proposal, where the proposal
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

paper relates to a school closure. This will ensure that school closure consultations provide financial information. Further detail on the type and level of financial information required to be provided by education authorities in their proposal paper can be set out in statutory guidance issued under section 19 of the 2010 Act.

Section 68D – Special provision for rural school closure proposals

211. Section 68D inserts a number of new sections into the 2010 Act (sections 11A, 12A and a substituted section 13) which impose additional requirements on education authorities in terms of the process to be followed for rural school closure proposals. It also makes consequential amendments to section 12 of the 2010 Act (Factors for rural closure proposals).

212. Subsection (1) of section 68D inserts a new section 11A (Presumption against rural school closure) into the 2010 Act. Section 11A(1) provides that section 11A only applies to closure proposals for rural schools (which are those designated as such under section 14 of the 2010 Act). Section 11A(2) prevents an education authority from making a decision to implement a closure proposal unless it has complied with the additional requirements that apply to rural schools in sections 12, 12A and 13, and having so complied, unless it is also satisfied that a closure proposal is the most appropriate response to the reasons for formulating the proposal (which it is required to identify under section 12A(2)(a)).

213. Subsection (2)(a) amends section 12 of the 2010 Act (Factors for rural school proposals). It repeals section 12(3)(a) of the 2010 Act, which provided for “any viable alternatives to the closure proposal” to be one of the factors to which an education authority must have special regard in proposing a rural school closure (new sections 12A and 13 to the 2010 Act make new provision requiring education authorities to consider alternatives to the closure proposal).

214. Subsections (2)(b) and (c) amend section 12(4) and (5) to provide that for the purpose of sections 12(2)(c)(ii) and 13(5)(b)(iii) and of sections 12(2)(c)(iii) and 13(5)(b)(iii), the effect on the community and the effect caused by any different travelling arrangements of any reasonable alternatives which an education authority identifies or which are identified by consultees in their written representations on a closure proposal, must be assessed by reference to the factors specified in sections 12(4) and (5). These sections require an education authority to assess the likely effect on the community and the likely effect caused by any different travelling arrangements, in relation to reasonable alternatives to the proposal identified before and during the consultation process.

215. Subsection (3) of section 68D inserts a new section 12A (Preliminary requirements in relation to rural school closure) into the 2010 Act. This new provision outlines preliminary steps that an education authority must take before it can publish a proposal paper for the closure of a rural school.

216. Section 12A(2) requires the education authority to identify its reasons for the closure proposal (12A(2)(a)) and consider whether there are any reasonable alternatives to the proposal which could respond to those reasons (12A(2)(b)). For the proposal and each and any alternatives identified, the education authority is required to assess the likely educational benefits, the likely effect on the local community and the likely effect of different travelling
arrangements (12A(2)(c)). Section 12A(3) provides that reasonable alternatives to the closure proposal may be steps or actions that could be taken which would not result in the school or part of the school closing. However, they are not limited to this and could also include alternative steps or actions that could be taken which would result in the school or part of the school closing.

217. Section 12A(4) places a duty on the education authority not to publish a proposal paper unless, following the consideration required under section 12A(2), it considers that implementation of the proposal is the most appropriate response to the reasons for the proposal.

218. Subsection (4) of section 68D substitutes a new section 13 (additional consultation requirements) into the 2010 Act. The new section 13 imposes fuller and additional requirements on education authorities in consulting on a rural school closure proposal.

219. Section 13(2)(a) to (f) lists the additional information or explanations an education authority must include in a proposal paper for the closure of a rural school, over and above the information specified in section 4 of the 2010 Act. This requires the education authority to inform consultees of the reasons why the proposal is being made, the steps the education authority has taken (if any) to address those reasons (and if no such steps have been taken, why not), and any reasonable alternatives to the closure proposal identified by the authority, and it requires the authority to explain to the consultees their assessment under section 12A(2)(c) of the educational benefit, effect on the community and effect of different travelling arrangements that would result from the proposal and any alternatives identified, and to explain why the authority considered, in light of that assessment, that implementation of the proposal would be the most appropriate response to the reasons for the proposal.

220. Section 13(3) provides that for rural school closure proposals, the notice an education authority must give to relevant consultees under section 6(1) of the 2010 Act must additionally summarise the alternatives to the closure proposal identified in the proposal paper and to state that representations can be made on those alternatives and that representations can suggest other alternatives.

221. Section 13(4) provides that references to written representations in sections 8(4)(c), 9(4) and 10(2)(a) of the 2010 Act, also include written representations regarding the alternatives to the proposal set out in the consultation paper.

222. Section 13(5) imposes additional assessment requirements on an education authority in terms of the review it must carry out of the proposal under section 9(1) of the 2010 Act (the review which follows the authority’s receipt of HMIE’s report after public consultation on the proposal). It is required, for rural school closure proposals, that the authority must carry out a further assessment in relation to the educational benefit, community effect and effect on travelling arrangements of the proposal and reasonable alternatives set out in the proposal paper following the receipt of the HMIE report, and that it must also carry out an assessment of any reasonable alternatives suggested by consultees in their written representations (section 13(5)(a) and (b)).

223. Section 13(6) provides that the consultation report the authority prepares under section 9(2) of the 2010 Act must additionally explain the assessments it makes under section 13(5)(a)
and (b) and how these differ (if at all) from the authority’s assessment carried out before consultation (under section 12A(2)(c)).

224. Subsection (5) of section 68D amends section 1 of the 2010 Act (overview of key requirements), inserting a new subsection (4A) which makes it clear that in the case of rural school closure proposals, the key requirements an education authority must comply with in formulating a closure proposal in relation to a rural school include complying with the preliminary and additional requirements set out in new sections 12A and 13.

**Section 68E – Call-in of closure proposals**

225. Section 68E amends the provisions in the 2010 Act regarding call-in and determination of school closure proposals. It inserts new sections 17A, 17B, 17C and 17D and schedule 2A into the 2010 Act which make new provision for a proposal which has been called-in by the Scottish Ministers under section 15 of the Act to be referred to the Convener of School Closure Review Panels for determination by a Panel. There is also detailed provision in relation to the appointment and role and functions of the Convener and the School Closure Review Panels.

226. Subsection (1)(a) amends section 15(3), 15(4) and 15(6) of the 2010 Act to amend the period for the Scottish Ministers to issue a call-in notice to the education authority. This is amended from 6 weeks to 8 weeks and has the effect of giving the Scottish Ministers an additional 2 weeks to consider whether to issue a call-in notice.

227. Subsection (1)(b) repeals section 15(5) of the 2010 Act, which provided that a call-in notice issued by the Scottish Ministers under section 15(3) has the effect of remitting the closure proposal to the Scottish Ministers. New section 17A to the 2010 Act, introduced by subsection (4), makes new provision for closure proposals which have been called-in by the Scottish Ministers.

228. Subsection (2) repeals section 16 of the 2010 Act, which provided for the Scottish Ministers to determine closure proposals which had been called-in. Subsection (3)(a) makes a consequential repeal of section 17(3)(b) of the 2010 Act which refers to the Scottish Ministers’ consideration of consent under section 16(2) which is repealed by subsection (2)(a).

229. Subsection (3)(b) adds a new subsection (3A) following section 17(3) of the 2010 Act. This places a duty on HMIE (a reference to HMIE is defined under section 8(7) of the 2010 Act as a reference to Her Majesty’s Inspectors) to provide the Scottish Ministers with any advice that they reasonably require in considering whether to issue a call-in notice. This advice is to concern the educational aspects of a closure proposal.

230. Subsection (4) inserts 4 new sections into the 2010 Act, sections 17A, 17B, 17C and 17D.

231. New section 17A (referral to the Convener of the School Closure Review Panels) of the 2010 Act provides that a school closure proposal which has been called-in by the Scottish Ministers must be referred to the Convener of the School Closure Review Panels. Section
17A(3) provides that the Convener has a period of 7 days to constitute a School Closure Review Panel which is to consider the case that has been referred to the Convener.

232. Section 17A(4) prevents an education authority from implementing a closure proposal which has been referred to the Convener unless the School Closure Review Panel reviewing the proposal grants consent to it and either the period during which that decision may be appealed to the sheriff has expired or an appeal has been abandoned or the sheriff has confirmed the Panel’s decision to consent to the proposal. Section 17A(5) introduces a new schedule 2A to the 2010 Act which makes further provision about the Convener and School Closure Review Panels including provision for the appointment of the Convener and panel members.

233. Section 17A(6) defines the Convener and a School Closure Review Panel.

234. New section 17B (review by Panel) of the 2010 Act provides for the review that a School Closure Review Panel is required to carry out when it is constituted under section 17A(3). Section 17B(1) requires the Panel to consider both: whether the education authority has failed to comply with the requirements imposed on the authority under the 2010 Act and whether the education authority failed to take proper account of a material consideration relevant to its decision. These are the same issues which the Scottish Ministers are required to consider under section 17(2) of the 2010 Act in considering whether to call-in a closure proposal (although Ministers only have to consider if the authority may have failed to comply with the requirements imposed on the authority under the 2010 Act or to take proper account of a material consideration).

235. New sections 17B(2), (3) and (4) relate to providing information and advice that a School Closure Review Panel reasonably requires in conducting its review of closure proposal. Section 17B(2) places a duty on the education authority to provide information to the Panel. Section 17B(3) places a duty on Her Majesty's Inspectors of Education (HMIE) to provide a Panel with advice that it reasonably requires in conducting its review of closure proposal. This advice is concerning the educational aspects of a closure proposal. Section 17B(4) provides a power for a School Closure Review Panel to request information or advice from any other person for the purpose of its review. This could include experts on issues that are relevant to the proposals, or those who made representations regarding the proposal.

236. New section 17B(5) provides a power for the Scottish Ministers to make provision in regulations as to the procedures to be followed by a School Closure Review Panel in carrying out a review under section 17B(1). This power, which is subject to the negative procedure, ensures that Ministers can specify procedures for the Panels to follow in carrying out their review of a school closure proposal once called-in by Ministers.

237. New section 17C(1) (decision following review) sets out the decisions available to a School Closure Review Panel following a review of a school closure proposal. Section 17C(2) requires the Panel to give reasons for its decision. In addition to the options currently available to Ministers under section 16 of the 2010 Act (which is repealed by section 68E(2)) - to consent, consent with conditions or refuse consent to a school closure proposal - the Panel has the option to refuse consent to the proposal and remit it back to the education authority to reconsider and make a fresh decision as to implementation (section 17C(1)(b)).
238. Section 17C(3) provides that in the case of remitting the proposal back to the authority, the Panel may specify which steps under the 2010 Act must be taken again before the authority can take a fresh decision on the proposal. The grounds on which a Panel may refuse consent to a proposal or to remit a proposal back to the education authority are set out in 17C(4). Section 17C(4) also provides that the Panel may refuse to consent to a proposal for either or both of the grounds or reasons set out in paragraphs (a) or (b), and this is irrespective of the grounds on which Ministers called the proposal in.

239. Sections 17C(5) and (6) provide time limits for a Panel to make its decision. A Panel is required to make a decision within 8 weeks of being constituted, unless it has issued a notice that a further period is required and, in such a case, this further period is to be no longer than 16 weeks in total from when the Panel was constituted.

240. Section 17C(8) provides that any conditions set by a Panel as part of its consent to a proposal are binding on an education authority.

241. New section 17D (appeal against decision of the Panel) provides that a decision of a School Closure Review Panel may be appealed to the sheriff by the education authority or a relevant consultee in relation to the closure proposal. An appeal can only be made on a point of law, must be made by summary application and must be made within 14 days of the Panel’s decision. Section 17D(3) provides that the sheriff may confirm the Panel’s decision or quash the decision and refer the matter back to the Panel, and section 17D(4) provides that this decision by the sheriff is final and is not subject to further appeal.

242. Subsection (5) of section 68E inserts a new schedule 2A (School Closure Review Panels) into the 2010 Act. This is introduced by the new section 17A of the 2010 Act. Schedule 2A makes detailed provision for the Convener of the School Closure Review Panels and those Panels.

243. Schedule 2A, paragraph 1 makes provision for the establishment of the office of the Convener of the School Closure Review Panels, for the appointment by the Scottish Ministers of a person to hold that office, and for the status of the office-holder. It also provides that the Convener may delegate his or her functions, and for Ministers to appoint a person to act as Convener if the office is vacant or the office holder is unable to perform their functions for whatever reason. Paragraph 1(9) provides a regulation making power that allows Ministers to make provision for or about eligibility for and disqualification from appointment, tenure and removal from office and about the payment of salary etc. to the Convener, and these regulations are subject to negative procedure.

244. Schedule 2A, paragraph 2 makes provision for the appointment of persons eligible to serve as members of the School Closure Review Panel, for the appointment of those persons to individual Panels, for the Convener to make arrangements to train those persons appointed and for a regulation making power to allow Ministers to make provision about eligibility for and disqualification from appointment, tenure, removal from office, payment of expenses and fees etc. to Panel members.
Schedule 2A, paragraph 3 allows Ministers to provide such property, staff and services to the Convener as they think necessary or expedient in connection with the exercise of the Convener’s functions (including the payment of grants to allow the Convener to employ staff etc.) and requires the Convener to provide a Panel with such staff and services the Convener thinks necessary or expedient in connection with the exercise of the Panel’s functions.

Schedule 2A, paragraphs 4 and 5 allow Ministers to issue directions to the Convener as to the exercise of the Convener’s functions and require the Convener to prepare an annual report on the exercise of their functions and of the Panel’s functions during the year and for this to be submitted to Ministers.

Subsections (6), (7), (8) and (9) to section 68E make consequential and technical amendments to various other provisions of the 2010 Act, including requiring the Convener and School Closure Review Panels to have regard to guidance issued by the Scottish Ministers.

Subsections (10), (11) and (12) to section 68E amend the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002 and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to add the Convener to the list of authorities which are respectively subject to investigation by the Ombudsman, subject to Freedom of Information requests and whose appointments are subject to the Public Appointments Code of Practice.

Part 12 – Children’s Hearings

Section 68F – Safeguarders: exceptions to duty to prepare report on appointment

The Children’s Hearings (Scotland) Act 2011 was introduced to Parliament in February 2010 and was enacted on 6 January 2011. The 2011 Act was commenced on 24 June 2013. The Act aims to strengthen and modernise the children's hearings system and brings into one place most of the children’s hearings related legislation. Section 68F amends section 33 of the Children’s Hearings (Scotland) Act 2011 (functions of safeguarder). Section 33(1) of the 2011 Act requires any safeguarder appointed by a children’s hearing by virtue of section 30, on appointment, to prepare a report for the hearing. Following amendment, section 33 of the 2011 Act will provide that a report does not require to be prepared by a safeguarder if the children’s hearing is arranged under any of the following sections of the 2011 Act: section 45 (review by children's hearing where child in place of safety), section 46 (review by children's hearing where order prevents removal of child), section 50 (children’s hearing to provide advice to sheriff in relation to application), section 96 (children’s hearing to consider need for further interim compulsory supervision order), section 126 (review of contact direction), or section 158 (compulsory supervision order: suspension pending appeal).

Section 68G – Maximum period of child protection order

Section 68G amends section 54 of the Children’s Hearings (Scotland) Act 2011 (termination of child protection order after maximum of 8 working days). Following amendment, section 54 of the 2011 Act will provide that if, following the making of a child protection order under section 37 of the 2011 Act, a children’s hearing does not take place within the period of 8 working days beginning on the day after the day on which a child is removed...
under the child protection order to a place of safety or within the period of 8 working days beginning on the day after the day on which the order was made, the child protection order automatically terminates.

**Section 68H – Power to determine that deeming of person as relevant person to end**

251. Section 68H amends section 79 (referral of certain matters for pre-hearing determination) of the Children’s Hearings (Scotland) Act 2011 and adds a new section 81A into the 2011 Act. Following amendment, the 2011 Act will provide for a pre-hearing panel to determine whether an individual previously deemed for the purposes of the 2011 Act to be a “relevant person” in relation to a child should continue to be deemed a “relevant person” in relation to the child. The amendments at paragraph 10(2), (3) and (7) of schedule 4 are consequential on these substantive provisions. The amendment to section 160 of the 2011 Act at paragraph 10(8) of schedule 4 makes provision for appeal to the sheriff against a determination of the pre-hearing panel.

**Section 68I – Grounds hearing: non-acceptance of facts supporting ground**

252. Section 68I amends section 90 of the Children’s Hearings (Scotland) Act 2011 (grounds to be put to child and relevant person). Following amendment, section 90(1)(a) requires the chairing member of a children’s hearing arranged under section 69(2) or 95(2) of the 2011 Act (known as the “grounds hearing”) to explain to the child and each relevant person each ground for referral to the children’s hearing (known as a “section 67 ground”) as set out in the statement of grounds prepared by the Principal Reporter under section 89 of the 2011 Act and all the facts supporting each section 67 ground set out in the statement of grounds. Existing section 90(1)(b) requires the chairing member to ask the child and each relevant person whether they accept that each section 67 ground applies in relation to the child. New section 90(1A) requires the chairing member to ask the child and each relevant person whether, in relation to each section 67 ground that that person accepts, each of the supporting facts is also accepted. New section 90(1B) provides that where the child or relevant person does not accept all of the supporting facts in relation to a section 67 ground which they have accepted, the ground is taken, for the purposes of the 2011 Act, to be accepted only if the grounds hearing considers that the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child and it is appropriate to proceed in relation to the ground on the basis only of those supporting facts which are accepted. New section 90(1C) provides that where a ground is taken to be accepted by virtue of section 90(1B), the grounds hearing is required to amend the statement of grounds to delete any supporting facts which are not accepted. The amendments at paragraph 10(4), (5), (6) and (9) of schedule 4 are consequential on these substantive amendments.

**Section 68J – Failure of child to attend grounds hearing: power to make interim order**

253. Section 68J amends section 95 of the Children’s Hearings (Scotland) Act 2011 (child fails to attend grounds hearing). Following amendment, new section 95(3) and (4) will give power to a children’s hearing arranged under section 69(2) or 95(2) (known as a “grounds hearing”) to make an interim compulsory supervision order (ICSO) where a child fails to attend that hearing and was not excused from attending the hearing and the hearing, as a result, has required the Principal Reporter to arrange another grounds hearing. New section 95(4) provides
that this power is available if the hearing considers that the nature of the child’s circumstances is such that for their protection, guidance, treatment or control it is necessary that an ICSO be made as a matter of urgency. New section 95(5) provides that an ICSO made under section 95(4) may not include a requirement that the implementation authority arrange a specified medical or other examination of the child.

**Section 68K – Limit on number of further interim compulsory supervision orders**

254. Section 68K amends section 96 of the Children’s Hearings (Scotland) Act 2011 so that a children’s hearing may only make a maximum of 3 interim compulsory supervision orders (ICSOs) in respect of a child in relation to one reference to the Hearing. If a further ICSO is required beyond that, an application must be made to the sheriff under section 98 of the 2011 Act.

**Section 69 – Area support teams: establishment**

255. Section 69 amends paragraphs 12 and 13 of schedule 1 of the Children’s Hearings (Scotland) Act 2011 (the 2011 Act). Schedule 1 of the 2011 Act makes further provision about the National Convener of Children’s Hearings Scotland (CHS) and about CHS itself – such as provision relating to appointment and functions, etc. Paragraph 12 of the schedule provides for the establishment and membership of area support teams (ASTs) which are to carry out for their areas, the selection of children’s hearing members and paragraph 13 applies when the National Convener first establishes an AST under paragraph 12 and is a transitional provision dealing with the transfer of members from a Children’s Panel Advisory Committee to an AST. Paragraph 14 makes provision for the functions of ASTs.

256. Section 69(2)(a) provides that the National Convener must keep the designation of areas under paragraph 12(1) under review and that the National Convener may revoke or make a new designation at any time. The National Convener will be required to ensure, when revoking or making new designations, that each local authority will fall within a designated area under paragraph 12(1). Where a designation is revoked, this will have the effect of dissolving the area support team that was established as a consequence of the designation. New paragraph 12(3C) requires the National Convener to consult with the affected local authority before revoking or making a designation. This means that the National Convener must ensure that when exercising the power to make and revoke designations of ASTs, there will always be an AST in relation to each local authority area and therefore that there will not be a time when a local authority no longer has an AST as a result of a revocation.

257. New paragraph 12(3D) provides that in sub-paragraph 3C “affected local authority” means in the case of making a designation the local authority whose area falls with the area proposed to be designated and, in the case of a revocation of a designation, each constituent local authority for the area support team established as a consequence of the designation.

258. On making or revoking a designation under paragraph 12(1) and 12(3B), the National Convener must notify each affected constituent local authority.
259. Section 69(2)(b) amends paragraph 13 of schedule 1 to the 2011 Act so that paragraph 13 applies where the National Convener establishes an area support team under paragraph 12(1) and where the area of the area support team consists of or includes a new area.

260. Paragraph 13(b)(iv) amends paragraph 13(7) to provide that “new area” means an area which has never previously been the area (or part of the area) of an area support team.

261. Section 69(3) provides that an area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

Section 70 – Area support teams: administrative support by local authorities

262. This section amends paragraph 14 of schedule 1 to the 2011 Act to provide that each constituent local authority (of an area support team, as established by the National Convener in terms of schedule 1, paragraph 12 of the 2011 Act) must provide an area support team with such administrative support as the National Convener considers appropriate. “Administrative support” is defined as staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.

Part 12A – Other reforms

Detention of children in secure accommodation

Section 71 – Appeal against detention of child in secure accommodation

263. This section amends the Criminal Procedure (Scotland) Act 1995 (the CPSA) to insert a new provision, section 44A. This new section provides that a child or relevant person(s) in relation to the child, or the child and one or more relevant persons jointly or 2 or more relevant persons jointly, may appeal to the sheriff against a local authority decision to detain the child in secure accommodation following an order having been made to detain the child in residential accommodation under section 44 of the CPSA. New section 44A(1B) provides that an appeal hearing under this new section cannot be held in open court. New section 44A(2) provides that the sheriff may either confirm the decision to detain the child in secure accommodation or quash the decision and direct the local authority to move the child to residential accommodation which is not secure accommodation instead.

264. New section 44A(3) allows the Scottish Ministers by regulations to make further provisions about appeals. These regulations, which are subject to affirmative procedure, may specify the period within which appeals should be made, make provision about the hearing of evidence during an appeal and provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

265. “Relevant person” is defined as any person who is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011, including any person who is deemed to be a relevant person in relation to the child by virtue of sections 81(3), 160(4)(b) or 164(6) of the 2011 Act.
266. This new procedure reflects appeal rights in the 2011 Act. Section 151 of that Act sets out the ways in which secure accommodation authorisations are implemented where a children’s hearing makes a relevant order or warrant (including a compulsory supervision order) in relation to a child and section 162 of that Act provides for an appeal to the sheriff against a decision to implement a secure accommodation authorisation, including by one or more relevant persons in relation to a child. Section 81(4) of the 2011 Act provides that where the children’s hearing deems the individual to be a relevant person, they are to be treated as relevant persons for the purposes of Part 15 (which includes the appeal to the sheriff against secure accommodation authorisation implementation decisions) and section 81(3) provides that the children’s hearing must deem the individual to be a relevant person if it considers that the individual has or has recently had a significant involvement in the upbringing of the child.

267. Secure accommodation in this section has the meaning assigned to it in Part II of the 1995 Act.

Children’s legal aid

Section 71A – Power of Scottish Ministers to modify circumstances in which children’s legal aid to be made available

268. This section inserts a new section 28LA into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Section 28L of the 1986 Act allows Scottish Ministers to make children’s legal aid available by regulations for specified children’s hearings under the 2011 Act to specified persons. The purpose of section 28LA is to allow Scottish Ministers to make similar regulations in respect of court proceedings under the 2011 Act. Those regulations would be subject to affirmative procedure.

269. The same tests would apply to similar circumstances whether children’s legal aid is provided by means of section 28LA or another section of the Act. In relation to court proceedings, the eligibility tests for a person (other than a child) are whether it is reasonable and whether undue hardship would occur if state-funded representation is not provided. In relation to court proceedings where the person is a child, the eligibility tests are reasonableness, undue hardship, and whether it is in the best interests of that child for children’s legal aid to be made available. If the court proceedings are an appeal, the person (whether or not they are a child) must satisfy an additional test of substantial grounds for making or responding to that appeal.

Licensing of child performances

Section 71B – Extension of licensing of child performances to children under 14

270. This section repeals section 38 of the Children and Young Persons Act 1963 (“the 1963 Act”). It has the effect of removing restrictions in that section which limit children under the age of 14 from being granted a performance licence under section 37 of the 1963 Act, except where the child is dancing in a ballet or acting and the part can only be taken by a child of that age, or where the performance is wholly or mainly musical or consists only of opera and ballet.

Wellbeing

Section 73 – Consideration of wellbeing in exercising certain functions

271. This section inserts text after section 23 of the 1995 Act to create a new section 23A.
272. Subsection (1) of the new section 23A applies where a local authority is exercising a function under or by the virtue of section 17, 22 or 26A of the 1995 Act.

273. Subsection (2) provides that the local authority must have regard to the general principle that their functions in relation to children and young people should be exercised in a way which is designed to promote, safeguard and support their wellbeing.

274. Subsection (3) provides that for the purposes of the previous subsection the local authority is to assess the wellbeing of a child or young person by referring to the extent to which the wellbeing indicators in section 74(2) are or would be satisfied in relation to them.

275. Subsection (4) provides that a local authority is to have regard to the guidance issued under section 74(3) of the Children and Young People (Scotland) Act 2014 when assessing the wellbeing of the child or young person.

276. Subsection (5) defines “the 2014 Act” as the Children and Young People (Scotland) Act 2014.

Part 13 - General

Section 74 – Assessment of wellbeing

277. Subsection (1) applies where a person is to assess whether the wellbeing of a child or young person is being, or would be, promoted, safeguarded, supported, or adversely affected.

278. Subsection (2) provides that the person should assess the wellbeing of the child or young person by reference to the extent to which the child or young person would be safe, healthy, achieving, nurtured, active, respected, responsible and included.

279. Subsection (3) provides that the Scottish Ministers must issue guidance on how the wellbeing indicators listed in subsection (2) are to be used to assess the wellbeing of a child or young person.

280. Subsections (4) and (5) provide that the Scottish Ministers must consult with local authorities, health boards and any other persons they think appropriate before a person issues or revises guidance and that, in measuring the wellbeing of a child or young person, they must have regard to the guidance issued in subsection (3).

281. Subsections (6) and (7) provide that Scottish Ministers can, by order, modify the list of wellbeing indicators in subsection (2) and before making an order must consult with each local authority, health board and any other people they think are appropriate.

Section 76 – Modification of enactments

282. This section introduces schedule 4 which contains minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act.
Section 77 – Subordinate legislation

283. Subsection (1) provides that any power of the Scottish Ministers to make an order or regulations includes powers to make different provision for different purposes and such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

284. Subsection (2) states that an order made under the following sections is subject to the affirmative procedure – sections 3(2), 7(5), 30(2), 35(5), 38(6), 43(2)(c)(ii), 44(2), 47(2), 50(2), 51(2)(b), 52(2), 61(2)(b), 64(4)(b) and 74(6).

285. Subsection (3) provides that an order made under section 78 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to affirmative procedure.

286. Subsection (4) provides that other orders made under this Act, and any regulations made under this Act, are subject to negative procedure.

287. Subsection (5) provides that this section does not apply to an order made under section 79(2).

Section 77A – Guidance and directions

288. This section provides that any guidance or directions issued by the Scottish Ministers in exercise of their powers under the Act can be issued either generally or for particular purposes and different guidance or directions can be issued to different persons or otherwise for different purposes. Subsection (2) require the Scottish Ministers to publish (in a manner they consider appropriate) any guidance or directions issued by them under the Act. Subsection (3) makes clear that the requirement to publish includes a requirement to publish any revised guidance and revised or revoked directions.

Section 78 – Ancillary provision

289. This section allows the Scottish Ministers, by order, to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act. Such an order may also make such transitional, transitory or savings provision as Scottish Ministers consider appropriate for the purposes of, or in connection with, the coming into force of any provision.

Section 79 – Commencement

290. This section provides for this Part (except for sections 74, 75 and 76) to come into force on the day after Royal Assent and for the other provisions of the Act to be commenced by order made by the Scottish Ministers. Such an order may include transitional, transitory or savings provision.
Section 80 – Short title

291. This section states the short title of the Act as being the Children and Young People (Scotland) Act 2014.

Schedule 1 – Authorities to which section 2 applies

292. Schedule 1 lists the authorities to which the duty in section 2 of the Act (duties of public authorities in relation to the UNCRC) applies. Schedule 1 is introduced by section 3. The persons included in this schedule are those persons who it is considered are likely to, in the course of their function, engage directly with children and young people, and as such should be taking steps to secure better or further effect, within the area of its responsibility, of the UNCRC requirements.

Schedule 2 – Relevant authorities

293. Schedule 2 lists relevant authorities for the purposes of Part 4 (named persons) of the Act and is introduced by section 30. The persons included in this schedule are those persons who it is considered are likely to, in the course of their function, engage directly with children, families and adults.

Schedule 2A – Persons listed for the purposes of section 38

294. Schedule 2A lists the persons who must comply with any reasonable request made of them to provide a person exercising child's plan functions under Part 5 with information, advice or assistance for that purpose. The persons included in this schedule are those persons who it is considered are likely to, in the course of their functions, engage directly with children, families and adults.

Schedule 3 – Corporate parents

295. Schedule 3 lists the persons who are “corporate parents” for the purposes of Part 7 (corporate parenting) of the Act and is introduced by section 50. The persons included in this schedule are those bodies who it is considered are likely to, in the course of exercising their functions, engage directly with looked after children.

Schedule 4 – Modification of enactments

296. Schedule 4 makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act. Schedule 4 is introduced by section 76.

297. Paragraph 1 amends the Social Work (Scotland) Act 1968 (the 1968 Act). Section 5(1) of the 1968 Act provides that local authorities shall perform their functions under certain enactments under the general guidance of the Scottish Ministers. Further, section 5(1A) enables the Scottish Ministers to issue directions to local authorities (either individually or collectively) as to the manner in which they are to exercise their functions under the enactments mentioned in subsection (1B); and a local authority is required to comply with any direction made.
298. Paragraph 1(2)(a)(i) and (ii) of schedule 4 amend section 5 of the 1968 Act so as to bring the early learning and childcare provisions and the kinship care order and counselling services provisions within the ambit of section 5(1) of the 1968 Act; the effect will be that local authorities must perform their functions in relation to early learning and childcare in so far as they apply to children falling within section 43(3)(a) of the Act (that is looked after 2 year olds), and in relation to the provision of support to kinship carers and the provision of counselling services to those eligible to receive it under the general guidance of the Scottish Ministers. Paragraph 1(b) amends section 5(1B) of the 1968 Act so as to include the provisions on early learning and childcare in so far as they relate to looked after 2 year olds within subsection (1B) of the 1968 Act: the effect being that the Scottish Ministers will be able to issue directions to local authorities as to the manner in which they exercise their functions in relation to early learning and childcare for looked after 2 year olds. Paragraph 1(c) inserts a definition of looked after children into section 5 of the 1968 Act.

299. Paragraph 2 amends the Education (Scotland) Act 1980 (the 1980 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Paragraph 2(2)(a) amends section 1(1A) of the 1980 Act so as to provide that the duty to provide adequate and effective provision of school education conferred on education authorities under section 1(1) of the 1980 Act, in relation to children who are under school age, is to be exercisable only to the extent required by section 43(1). Under the current law, the duty to provide adequate and effective school education in relation to children who are under school age is exercisable only in respect of children described in an order made under subsection (1A) of section 1 of the 1980 Act.

300. Paragraph 2(2)(b) removes subsections (1B) and (4A) from section 1 of the 1980 Act; those provisions set out that an order made under subsection (1A) could set out the amount of school education which children described in the order are to be provided with (subsection (1B)) and that such an order was subject to negative procedure (subsection (4A)).

301. Section 1(5)(a)(i) of the 1980 Act defines school education in relation to pupils who are under school age. Paragraph 2(2)(c) of schedule 4 replaces that definition with the concept of early learning and childcare which has the meaning given in Part 6 of the Act (see the definition of “early learning and childcare” inserted into section 135 of the 1980 Act by paragraph 2(3)(a) of schedule 4).

302. Paragraph 2(3) amends section 135 of the 1980 Act which is an interpretation section. Paragraph 2(3)(a) inserts a definition of “early learning and childcare” which has the same meaning as in Part 6. Paragraph 2(3)(b) substitutes the definitions of “nursery school” and “nursery classes” and replaces the current definition (which gives them the same meaning in section 1(5)(a)(i) of the 1980 Act) with a definition which states that they are schools and classes which provide early learning and childcare.

303. Paragraph 2A amends the Legal Aid (Scotland) Act 1986. Specifically, it amends sections 28F(1)(b) to provide that children’s legal aid is available in relation to the changes made by section 68H of this Act, and it amends section 37(2) of the 1986 Act to provide that affirmative procedure applies to the powers of Scottish Ministers under the new section 28LA of the 1986 Act (inserted by section 71A of this Act).
Paragraph 3 amends the Children (Scotland) Act 1995 (the 1995 Act). Paragraph 3(2) repeals section 19 (local authority plans for services for children) of the 1995 Act in consequence of the provisions in Part 3 of the Bill relating to Children’s Services Planning. Paragraph 3(3) amends section 20 (publication of information about services for children) of the 1995 Act to substitute a new subsection (2) which defines “relevant services” for the purposes of that section which means services provided by a local authority under or by virtue of Part II of the 1995 Act, the Children’s Hearings (Scotland) Act 2011, Part 9 or 10 of the Children and Young People (Scotland) Act 2014 or any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (t) of the 1968 Act. A further connected amendment is made in paragraphs 4 and 7 of schedule 4 and is explained below.

Paragraph 3(4) amends section 44 of the 1995 Act to prevent a person publishing information which would identify a child, their address or school only in respect of proceedings before a sheriff on an application for an exclusion order under section 76(1) of the 1995 Act. This is connected to the amendment made in paragraph 10 of schedule 4 which is explained below.

Paragraph 4 makes minor drafting amendments to the Criminal Procedure (Scotland) Act 1995.

Paragraph 4A repeals paragraph 11 of section 37 of the Education (Scotland) Act 1996 in consequence of the repeal of section 38 of the Children & Young Persons Act 1963 which is achieved through section 71B of this Bill.

Paragraph 5 amends the Standards in Scotland’s Schools Act 2000 (the 2000 Act) in consequence of the provisions on early learning and childcare in Part 6 of the Act. Section 34 of the 2000 Act contains a power for the Scottish Ministers to issue guidance to education authorities as respects the discharge of their functions under the 1980 Act and education authorities must in discharging those functions have regard to such guidance. Paragraph 4(a) and (b) of schedule 4 amend section 34 to enable guidance to be issued by the Scottish Ministers to local authorities about their functions in relation to the provision of early learning and childcare under Part 6 of the Act.

Paragraph 6 amends section 73(2)(a) of the Regulation of Care (Scotland) Act 2001 in consequence of the provision made at 60 of the Act relating to the provision of aftercare to young people. Section 73(2) is a power for the Scottish Ministers to make regulations to specify the manner in which assistance may be provided under subsections (1) and (2) of section 29 of the Children (Scotland) Act 1995. Section 73(2)(a) is amended so that this power may be exercised in relation to assistance provided under new subsections (5A)and (5B) which are inserted by section 60 of the Act.

Paragraph 7 amends the Mental Health (Care and Treatment) (Scotland) Act 2003 so as to make a change to the definition of “relevant services” consequential on the repeal of section 19 of the Children (Scotland) Act 1995 by paragraph 3(2) of schedule 4 explained above.

Paragraph 8 amends the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act) in consequence of the provisions on early learning and childcare in Part 6 of
the Act. Paragraph 6(2), (3) and (4)(a) amends sections 1(3), 5(3)(a) and 29(1) of the 2004 Act respectively so as to replace the concept of "prescribed pre-school child" (as under current law such children are prescribed under an order section 1(1A) and (1C) of the 1980 Act) with the concept of "eligible pre-school child" as defined in section 43(2) of the Act. Paragraph 8(4)(b) of schedule 4 removes the definition of "prescribed pre-school child" in consequence of the other amendments made by paragraph 8. It should be noted that an “eligible pre-school child” for the purposes of the early learning and childcare provisions in Part 6 of the Act will fall squarely within the definition of “pre-school child” in the 2000 Act and other enactments which refer to that concept.

312. Paragraph 9 amends the Adoption and Children (Scotland) Act 2007 to provide that any orders or regulations made under section 13A(2) or 13E(1) respectively, are not to be made unless a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament (affirmative procedure instruments).

313. Paragraph 10 amends sections 80(1), 81, 142 and 160 of the Children’s Hearings (Scotland) Act 2011 in consequence of the changes made by section 68H (power to determine that deeming of person as relevant person to end) of this Bill. It also amends sections 94(3), 105, 106 and 202(1) of the 2011 Act in consequence of the changes made by section 68I (grounds hearing: non-acceptance of facts supporting ground) of this Bill. Further, it amends schedule 6 (repeals) of the Children’s Hearings (Scotland) Act 2011 (the 2011 Act) to omit the repeal of section 44 of the Children (Scotland) Act 1995 (prohibition of publication of proceedings at children’s hearing) from the list of repealed provisions in that Act. Section 44, whilst broadly replaced by provision made at section 182 of the 2011 Act, requires to be retained in relation to proceedings for exclusion orders under section 76(1) of the 1995 Act. Paragraph 3(4) of schedule 4 makes amendments to section 44 of the 1995 Act to limit its effect in this regard.
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Children and Young People (Scotland) Bill (introduced in the Scottish Parliament on 17 April 2013) as amended at Stage 2.

2. This Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the Financial Memorandum on the Bill as introduced.

3. This Supplementary Financial Memorandum includes the financial impact of Stage 2 amendments. The majority of the amendments do not significantly affect the assumptions in the original Financial Memorandum. This document, therefore, only addresses those Stage 2 amendments with anticipated or apparently potential cost implications.

4. The new costs in the Supplementary Financial Memorandum have resulted in revised total costs for the Bill as a whole and for the different categories of body bearing the costs, and these are set out in the tables below. As with the original Financial Memorandum, the period covered by the supplementary Financial Memorandum is up to 2019-20.

Table 1: Summary of costs (£)

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*The figure for 2015-16 for ‘Other Organisations’ has been changed to reflect a mistake of transposition in Table 2 of the original Financial Memorandum. The total figure for 2015-16 should be £199,230 rather than £202,280, in line with Table 5 below.
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

Table 2: Costs on the Scottish Administration (£)

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Table 3: Costs on local authorities (£)

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Table 4: Costs on the NHS (£)

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</table>
NAMED PERSON

5. The duties relating to the named person are being placed on local authorities, health boards and the bodies which run independent and grant-aided schools. However, following an amendment at Stage 2, section 21(6) now places a duty on Scottish Ministers to make arrangements for the provision of a named person service for children held in legal custody or subject to temporary release from custody. In practice, this will be achieved via the Scottish Prison Service, and there is anticipated to be minimal associated costs. The provision will be required for a very small number of children each year and the role essentially formalises some of the good practice which the Scottish Prison Service has already developed for children and young people in custody. Scottish Prison Service managers have been fully engaged in the process of identifying their role in these circumstances, and they are content that any additional costs can be met within existing budgets.

EARLY LEARNING AND CHILDCARE

6. While the power in section 43(2)(c)(ii) of the Bill to extend eligibility has not been amended, the stated intentions of how the power will be used have changed since the original Financial Memorandum. Local authorities will be required to provide 600 hours of early learning and childcare to any 2-year old who is defined as living in a workless household from August 2014, with further extension to all 2-year olds who qualify for free school meals under the current passported benefits eligibility criteria from August 2015. This equates to around an additional 8,400 2-year olds from August 2014, rising to approximately 15,400 from August 2015.

7. The main costs of these Bill provisions are for expanding the availability of 600 hours of early learning and childcare to additional 2-year old children, specifically:
   - staff costs;
   - operational costs;
   - support service costs;
   - partner provider uprating; and
• special education/additional support costs.

8. The costs will fall wholly on local authorities. These have been estimated by applying a similar methodology to that used in the original Financial Memorandum, for 2-, 3- and 4-year olds, along with the estimated costs of delivering new models. Provision costs to these 2-year olds are different from previous costs, allowing some adjustment to reflect a degree of flexibility to provide more individualised approaches, given the needs of these vulnerable children. The costs are different from what would be offered to a “universal” 2-year old not deemed “vulnerable”.

Table 6: Summary of additional costs for early learning and childcare

<table>
<thead>
<tr>
<th>Year</th>
<th>Total cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>14,532,559</td>
</tr>
<tr>
<td>2015-16</td>
<td>44,016,733</td>
</tr>
<tr>
<td>2016-17</td>
<td>58,367,643</td>
</tr>
<tr>
<td>2017-18</td>
<td>58,985,766</td>
</tr>
<tr>
<td>2018-19</td>
<td>59,679,764</td>
</tr>
<tr>
<td>2019-20</td>
<td>60,299,911</td>
</tr>
</tbody>
</table>

9. Estimated costs are based on:
   • terms 1 and 2 of the academic year 2014-15 covering the period August 2014 to April 2015;
   • costs in 2015-16 include continuity of offer for those children whose entitlement began in 2014-15, delivery of Term 3 to that cohort of children, and the increase in eligibility from August 2015;
   • 2016-17 costs reflect the full 12-month provision to the widened group of 2-year olds;
   • cost totals in 2017-18 take forward the cost estimate for the year before and apply growth from the population projection. Thus, the cost in 2017-18 is 1% higher than in 2016-17; and
   • the revenue costs include staff costs (provided by COSLA and adjusted for higher staff:child ratios for 2-year olds), operational costs, support service costs, additional support needs costs and the partner provider uprating for inflation.

10. The main costs arising from these provisions will be staff costs associated with the additional staff required to deliver the expansion in eligibility, based on higher staff:child ratios for 2-year olds (1:5). The additional staff costs associated with a range of patterns of delivery have been estimated on the basis of previous work with COSLA. Additional operational and support costs have been added to those staff costs, based on variable marginal costs as set out in the original Financial Memorandum. Recruitment for additional staff and extensions or renegotiations of current staff contracts will also be required.

11. Early learning and childcare will continue to include those children with additional support needs, and this has been factored into the estimated revenue costs. They have been
calculated on a pro-rata basis from the existing additional support for learning needs published expenditure, as set out in the original Financial Memorandum. Special education apportionment is estimated at 3.3% of the special school population and 3.3% of the special education budget. 90% of this is estimated as a variable cost.

12. Broadly, local authorities secure around 40% of provision through independent, private and third sector partners; it is anticipated that local authorities will continue to use those sectors to provide capacity for this expansion. It is also envisaged that a continued mix of early years staff and skills will be paramount to ensure quality of expanded provision.

13. Capital costs have not been explicitly estimated. It is not possible to provide an accurate estimate of the level of infrastructure investment required at this stage. Further work will be required to explore the need for any additional capital funding.

14. It should be noted that any future changes to eligibility under section 43(2)(c)(ii) would have cost implications, which cannot be anticipated or estimated at this stage.

15. Lastly, it is not anticipated that the new duties in section 6 – to consult and plan in relation to pre-school children and school aged children in need and not in need, alongside duties to consult on provision of mandatory hours of early learning and childcare – will incur additional costs. Consultation with communities is already embedded and widespread good practice within local authorities, and there will be no requirement on local authorities to make additional provision available.

**AFTERCARE/CONTINUING CARE**

**Changing the age of leaving care**

16. Amendments agreed by the Education and Culture Committee change the “age at leaving care” eligibility criteria for aftercare support from “beyond school minimum leaving age” to “age 16”. This will result each year in a number of additional 16-year olds being eligible for aftercare services that would otherwise not have been eligible. The costs will fall wholly on local authorities.

17. On average, over the last 4 years there were 901 children each year ceasing to be looked after at age 16. In 2012 around 54% were eligible for aftercare support; of these, 60% were in receipt of aftercare services. If the “age at leaving care” criteria was changed to 16, then it can be assumed that all care-leavers aged 16 would be eligible – i.e. roughly 901 16-year olds each year.

18. If it is assumed that similar proportions to those currently eligible will claim aftercare services (around 60%), it might be expected that around 540 of these 901 care-leavers will potentially claim. Given that over the last 3 years an average of 312 16-year olds have received aftercare each year, the legislation could be expected to give rise to an additional 228 claims (i.e. 540 less the 312 who would claim under the current eligibility criteria).

19. If it is further assumed that they also draw on aftercare services for an average duration of 3 years, consistent with the assumptions in the original Financial Memorandum, then by year 3
there will be an additional population of 684 (i.e. 228 multiplied by 3) 16-year old care-leavers eligible for support in the first, second and third years of aftercare support. Costs in years 1 and 2 are lower because there are fewer cohorts of newly qualifying 16-year olds; by year 3 there are three cohorts of new care-leavers in years 1, 2 and 3.

20. This is set out in Table 7, which also sets out the gross costs of the proposal. With an estimated aftercare cost of £3,142 per year per young person (as set out in the original Financial Memorandum), the total additional cost of the proposal would be approximately £2.1 million from year 3 onwards. It should be noted that some of those eligible for aftercare may choose continuing care. This option is included in section below on costing continuing care. This generates the aftercare avoided costs over the period when the young person chooses the continuing care option and is set out in Table 12.

Table 7: Number of additional care-leavers eligible for aftercare support and annual cost (rolling from 2019-20 onward)

<table>
<thead>
<tr>
<th>Age</th>
<th>Total population</th>
<th>Total cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>228</td>
<td>716,376</td>
</tr>
<tr>
<td>17</td>
<td>228</td>
<td>1,432,752</td>
</tr>
<tr>
<td>18</td>
<td>684</td>
<td>2,149,128</td>
</tr>
</tbody>
</table>

Continuing care

21. Amendments have been added that will enable 16-year old care-leavers eligible for aftercare support whose final placement was not at home to choose to stay in their care placement (“continuing care”) until a higher age which may be specified by order. The Scottish Government has set out its policy intention of setting this age at 21; consequently, costs have been calculated on this basis. Any future changes to eligibility will have cost implications, which cannot be anticipated or estimated at this stage. The anticipated costs will fall wholly on local authorities.

22. The estimates are based on the expected number of those eligible who will take up this provision from the cohort of 16-year olds who will be eligible for aftercare support, (around 901 16-year olds each year\(^1\)). Of these care-leavers, it is estimated that around 45% (405) will have a final care placement of ‘looked after at home’ and they are, therefore, not deemed eligible for continuing care. This leaves 496 16-year old care-leavers who would be eligible for either aftercare or the option of continuing care. Currently, of all those eligible for aftercare support, around 60% are actually in receipt.\(^2\)

- it is assumed that around 60% of those eligible will claim (298);
- of those who claim it is anticipated 75% are expected to choose aftercare (224);

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\(^{1}\) CLAS average number of 16-year olds ceasing to be looked after over last 4 years to 2011-12.

\(^{2}\) CLAS average proportion in receipt of aftercare over last 3 years to 2011-12.
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

- this leaves 25% (74 young persons) choosing the option of continuing care. This figure is an estimate based partly on the evaluation of the Costing the When I am Ready Scheme report, which evaluated a similar pilot programme in Wales (published in November 2013). It is assumed that in each subsequent year, a decreasing number of the young persons will choose continuing care as they reach older ages; this accords with current trends, wherein decreasing numbers remain in care through until 21 years of age;
- it is also assumed that once the 16-year olds leave care, they do not have the right to return;
- these numbers are annual flows, in the sense that in year 2 of the policy, a further 74 16-year old potential care-leavers will choose to the continuing care option and may do so up to and including age 21;
- this dynamic is modelled in Table 9 below for each annual cohort, taking account of the tailing off in numbers remaining in care;
- the offer of continuing care is only extended to potential care-leavers aged 16 and not aged 17 and over; and
- by 2019-20, there will be roughly an additional 164 young persons in care between the ages of 16 and 21 inclusive.

23. The unit and total costs and savings associated with this proposal are set out in Tables 10-13 below. Table 13 identifies the net total costs each year from 2016-17 to 2019-20. They are lowest in year 1 of implementation at £4.2 million, rising to £9.3 million by 2019-20 at which point they stabilise along with the additional numbers of children in care.

24. The costs of remaining in care depend upon the type of care placement from which the young person is considering leaving. A breakdown of the split applied to those staying in care is set out in Table 8, drawing on data from CLAS statistics 2011-12, identifying the final care placement type for care-leavers over minimum school-leaving age. The proportions are adjusted to remove care-leavers who were at home and in secure care and/or crisis accommodation.

25. For all those young persons who choose continuing care, avoided costs arise in the form of the foregone aftercare service costs. These were estimated to be approximately £3,142 per annum per young person in the original Financial Memorandum and the same figure is applied in the current modelling. Table 12 sets out the total avoided costs for each cohort for each subsequent year in care; the profile declines as the numbers who continue to stay in care reduces year on year. Each new cohort starting at the age of 16 will have this profile of saving and cost through until age 21.
Table 8: Number of young people ceasing to be looked after who were beyond minimum school-leaving age by final placement type (2011-12)

<table>
<thead>
<tr>
<th>Placement Type</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>With friends/relatives</td>
<td>177</td>
</tr>
<tr>
<td>With foster carers provided by local authority</td>
<td>151</td>
</tr>
<tr>
<td>With foster carers purchased by local authority</td>
<td>53</td>
</tr>
<tr>
<td>In other community</td>
<td>47</td>
</tr>
<tr>
<td>In local authority home</td>
<td>138</td>
</tr>
<tr>
<td>In voluntary home</td>
<td>25</td>
</tr>
<tr>
<td>In residential school</td>
<td>71</td>
</tr>
<tr>
<td>Total</td>
<td>662</td>
</tr>
</tbody>
</table>

Kinship 34%
Foster 31%
Residential 35%

Table 9: Dynamic cohorts of 16-year olds choosing continuing care

<table>
<thead>
<tr>
<th>Year</th>
<th>Cohort 1</th>
<th>Cohort 2</th>
<th>Cohort 3</th>
<th>Cohort 4</th>
<th>All cohorts</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016-17</td>
<td>74</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>74</td>
</tr>
<tr>
<td>2017-18</td>
<td>45</td>
<td>74</td>
<td>0</td>
<td>0</td>
<td>119</td>
</tr>
<tr>
<td>2018-19</td>
<td>30</td>
<td>45</td>
<td>74</td>
<td>0</td>
<td>149</td>
</tr>
<tr>
<td>2019-20</td>
<td>15</td>
<td>30</td>
<td>45</td>
<td>74</td>
<td>164</td>
</tr>
</tbody>
</table>

Table 10: Cost split across types of care, unit costs and total cohort cost for each subsequent year in care

<table>
<thead>
<tr>
<th>Type</th>
<th>% split</th>
<th>Unit cost estimate</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kinship</td>
<td>34%</td>
<td>£7,800</td>
<td>25</td>
<td>£196,362</td>
<td>£117,817</td>
<td>£78,545</td>
</tr>
<tr>
<td>Foster</td>
<td>31%</td>
<td>£18,200</td>
<td>23</td>
<td>£417,269</td>
<td>£250,362</td>
<td>£166,908</td>
</tr>
<tr>
<td>Residential</td>
<td>35%</td>
<td>£145,600</td>
<td>26</td>
<td>£3,829,060</td>
<td>£2,297,436</td>
<td>£1,531,624</td>
</tr>
<tr>
<td>Total cost</td>
<td>100%</td>
<td>£4,442,691</td>
<td>74</td>
<td>£4,442,691</td>
<td>£2,665,615</td>
<td>£1,777,077</td>
</tr>
</tbody>
</table>

1 by last care placement.
2 The numbers in each cohort have been rounded in some places, but the unrounded numbers have been used to calculate the full total cost.

Table 11: Gross annual costs of continuing care for all cohorts (£)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cohort 1</th>
<th>Cohort 2</th>
<th>Cohort 3</th>
<th>Cohort 4</th>
<th>Total cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016-17</td>
<td>4,442,691</td>
<td>2,665,615</td>
<td>1,777,077</td>
<td>888,538</td>
<td>4,442,691</td>
</tr>
<tr>
<td>2018-19</td>
<td>1,777,077</td>
<td>1,777,077</td>
<td>2,665,615</td>
<td>2,665,615</td>
<td>8,885,383</td>
</tr>
<tr>
<td>2019-20</td>
<td>888,538</td>
<td>888,538</td>
<td>2,665,615</td>
<td>4,442,691</td>
<td>9,773,921</td>
</tr>
</tbody>
</table>
Table 12: Annual avoided costs on aftercare for all cohorts (£)

<table>
<thead>
<tr>
<th></th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cohort 1</td>
<td>233,765</td>
<td>140,259</td>
<td>93,506</td>
<td>46,753</td>
</tr>
<tr>
<td>Cohort 2</td>
<td>233,765</td>
<td>140,259</td>
<td>93,506</td>
<td></td>
</tr>
<tr>
<td>Cohort 3</td>
<td></td>
<td>233,765</td>
<td>140,259</td>
<td></td>
</tr>
<tr>
<td>Cohort 4</td>
<td></td>
<td></td>
<td></td>
<td>233,765</td>
</tr>
<tr>
<td>Total avoided costs</td>
<td>233,765</td>
<td>374,024</td>
<td>467,530</td>
<td>514,283</td>
</tr>
</tbody>
</table>

Table 13: Net annual costs of staying in care for all cohorts (£)

<table>
<thead>
<tr>
<th></th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>2019-20</th>
</tr>
</thead>
<tbody>
<tr>
<td>4,208,927</td>
<td>6,734,283</td>
<td>8,417,853</td>
<td>9,259,639</td>
<td></td>
</tr>
</tbody>
</table>

COUNSELLING SERVICES

26. As an amendment to Part 9 of the Bill, a pregnant woman who a local authority considers will give birth to a child who is at risk of becoming looked after, and their families or the people with whom they are living, are also eligible for the services to be provided under Part 9. Unborn children can already be placed on the child protection register, and in 2011-12 95 were placed on it, which is a strong indication that they were at risk of becoming looked after. Of those 95 there will be a proportion whose families are already eligible for support under Part 9 by virtue of other children in the family. There will also be some unborn children about whom the local authority has concerns but for whatever reason has chosen not to place them on the child protection register. Extending eligibility to this group is particularly worthwhile because they are easily identifiable and the cost savings to the wider public sector of such early intervention and support are likely to be maximised as the child is not yet born.

27. Because the numbers related to this expansion are very small in relation to the much larger numbers modelled in the original Financial Memorandum (see paragraphs 133-142), which in themselves contain a margin of error at least as big as this expansion, the view is that this amendment can be absorbed within the original estimates of costs and savings.

28. In terms of other changes made at Stage 2, minor changes to the eligibility for support and the re-titling are considered of negligible impact on the overall costing assumptions. In practice, support would be available to the family around a child, not just the parents and persons with parental rights and responsibilities in relation to, an eligible child. Consequently, the modelling set out in the original Financial Memorandum was done on that basis. Amendments to this provision of Part 9 clarify the different categories of person who can receive support. ‘Counselling services’ was a term intended to cover a wide variety of services that could be available. The change to the term ‘relevant services’ and the re-titling of the provision does not represent a change in the anticipated range of support available, or the associated costs. Similarly, the eligibility test is now on the face of the Bill, as opposed to being defined separately; this test was always intended to be put in place in practice and was used as the basis for the original financial modelling.
29. Any future changes to eligibility would have cost implications, but as there are no policy intentions of doing so at this stage, they cannot be anticipated or estimated.

**KINSHIP CARE ORDER**

30. In the introductory draft of the Bill, guardians, along with parents, were excluded from kinship care assistance. However, a guardian can be in a very similar position to a kinship carer and the child or children they care for may be at risk of becoming looked after. In order to ensure that guardians, and the children for whom they care, are not at a disadvantage, they are now to be eligible for kinship care assistance. Amendments to sections 64 and 65 mean that guardians are now to be deemed to have the same eligibility for a kinship care order.

31. Guardians are appointed in 2 ways – under section 7 of the Children (Scotland) Act 1995 (“the 1995 Act”) or under section 11(2)(h) of that Act. Under section 7, an appointment of a guardian is a private matter between individuals with no court process – this is where a guardian is appointed through a will or similar. It is not possible to know how many people become guardians through this route each year. However, it is assumed that, where this happens, a parent is also likely to have made financial provision for the child and/or the chosen guardian, who has had to agree to be a guardian, is likely to have the means to support the child without recourse to the state. There will be situations where this is not the case, but it is considered that this will be absorbed within the estimated 1.5-3.5% of informal carers who have already been estimated may apply for a kinship care order per annum (see paragraph 125 of the original Financial Memorandum) and it is not proposed to model this group further.

32. Where a guardian is appointed under section 11(2)(h) of the 1995 Act, this goes through the civil courts. There are statistics for orders pursued under section 11(2) (orders relating to parental rights and responsibilities), but these are not broken down sufficiently to show the exact number of orders under section 11(2)(h). Contact orders and residence orders are the main categories of orders under section 11(2) and are recorded individually. The remainder, covering 6 other potential types of order, are grouped together as ‘other’. There were 583 of these ‘other’ orders in 2011-12. There are few section 11(2)(h) orders and, therefore, a figure of 60 per year can be assumed (roughly 1/10 of the ‘other’ total). This is a relatively stable number, as the 1995 Act and the Bill do not provide any particular incentive to take out guardianship and the flexible nature of section 11 orders means many people seeking guardianship would in practice seek a different order – so are included in the existing modelling. This measure, therefore, to some extent closes a perceived loophole in support for a small residual group who face unexpected difficulties when taking in a child following the death of the birth parent(s).

33. The calculation of gross costs and avoided costs for this group follows the same methodology as for informal kinship carers in the kinship care order section in the original Financial Memorandum. The differences are that it is assumed that:

- guardians will not require transport costs to facilitate contact, as guardianship is generally where there is no parental involvement; and
- only 33% avoid care, which is a lower figure than assumed for informal kinship carers but reflects the view that people who pursue guardianship generally do so because they already have the means and/or the child is unlikely otherwise to be at risk of becoming looked after.
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2
(SP Bill 27A)

34. The assessment of the costs of including this group within the kinship are order are, therefore, as follows. The costs will fall wholly on local authorities.

Table 14: Individual kinship care costs for guardians

<table>
<thead>
<tr>
<th>Description of service</th>
<th>% eligible</th>
<th>Number in receipt*</th>
<th>Unit cost (£)</th>
<th>Total cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start-up grant</td>
<td>50%</td>
<td>30</td>
<td>500</td>
<td>15,000</td>
</tr>
<tr>
<td>Parenting capacity assessment</td>
<td>100%</td>
<td>60</td>
<td>1,500</td>
<td>90,000</td>
</tr>
<tr>
<td>Petition support</td>
<td>66%</td>
<td>40</td>
<td>1,500</td>
<td>59,400</td>
</tr>
<tr>
<td>Information</td>
<td>100%</td>
<td>60</td>
<td>180</td>
<td>10,800</td>
</tr>
<tr>
<td>Annual total cost</td>
<td></td>
<td></td>
<td></td>
<td>175,200</td>
</tr>
</tbody>
</table>

*These numbers have been rounded in some places, but the unrounded numbers have been used to calculate the full total cost.

Table 15: Total avoided costs for kinship care for guardians

| Avoided cost of care                     | £5,331 |
| Avoided cost of social work time         | £3,667 |
| Annual avoided cost per young person (saving) | £8,998 |
| Applied to % of kinship care (guardian) order | 33%   |
| Annual total avoided costs               | £178,161 |

35. In response to concerns about a perceived lack of detail in this Part of the Bill, Scottish Ministers agreed to make amendments at Stage 2 to provide for a clear, core eligibility test for kinship care assistance on the face of the Bill (whether or not a child was in danger of becoming looked after). However, this test was the same as was used in the underlying financial modelling and, therefore, the amendments result in no changes to the overall financial impact. Although there is a power to add to the description of child that is eligible by order, there are no current plans to make use of this power; consequently, it is not possible to model these costs at this stage.

36. Overall, there were no additional net costs in relation to kinship care in the original Financial Memorandum. This remains the case with these amendments.

SCHOOL CLOSURE

37. Part 11A of the Bill, added by way of amendments, makes a number of amendments to the process for school closure proposals under the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”). This Act sets out the consultation processes and procedures that education authorities are required to follow when proposing changes to their school estate. The amendments to the 2010 Act that are anticipated to result in some costs are as follows:

- the requirement to provide financial information in relation to school closure proposals (section 68C);
- the additional requirements for rural school closure proposals (section 68D);
- the expansion of the role of Education Scotland (section 68E);
the establishment of an independent referral mechanism following Ministerial call in (section 68E); and

the provision which prevents the publication of a closure proposal within 5 years of a previous publication of such a proposal (section 68B).

Providing financial information

38. Section 68C amends section 4 of the 2010 Act to provide that closure proposals should be accompanied by relevant financial information. The Scottish Government will work closely with education authorities and other stakeholders to develop guidance in relation to and a standard form for the presentation of this information, to ensure that those being consulted are provided with accurate, consistent and easily understood information. While some education authorities are very good at presenting this information, others are less so, with information presented containing errors, omissions or simply unclear to lay readers as to how the figures have been derived.

Costs on the Scottish Administration

39. The Scottish Government will be responsible for drafting the guidance on how this information is to be presented. The staff costs associated with this are estimated at less than £10,000 and will be managed from within existing resources.

Costs on local authorities

40. Education authorities will be required to provide specific financial information to accompany their closure proposals in line with the guidance. COSLA and ADES strongly support this new duty and it is hoped that setting this important information out in a clear and consistent way will allow the financial implications of a closure proposals to be more clearly understood. It is believed this will help the overall consultation process by ensuring less contention around the details underpinning the proposal.

41. This is one part of a comprehensive package of information which education authorities are required to put forward as evidence to support a closure proposal. However, it does not require education authorities to collate new information or information not already held by them; it simply requires them to present it in a consistent and transparent way. Consequently, it is not considered that this new requirement will place any significant additional cost burden on education authorities.

Additional requirements for rural school closure proposals

42. Section 68D inserts a number of new sections into the 2010 Act (sections 11A, 12A and a substituted section 13) which impose additional requirements on education authorities in terms of the process to be followed for rural school closure proposals. An education authority will be required to carry out a more rigorous assessment in its formulation of a closure proposal, requiring it to consider reasonable alternatives to closure and assess the likely educational benefits, effect on the local community and likely effect of any different travelling arrangements of both the closure proposal and any alternatives identified. It will also require an authority to consult in a more thorough and transparent way.
Costs on the Scottish Administration

43. The Scottish Government will be responsible for drafting guidance in relation to the additional requirements for rural school closure proposals. The staff costs associated with this are estimated at less than £10,000 and will be managed from within existing resources.

Costs on local authorities

44. At present the 2010 Act contains additional safeguards for rural schools. There are 3 factors which a local authority must have special regard to when proposing a rural school closure. The Financial Memorandum for the 2010 Act set out the expected costs for this special provision for rural schools. The overall conclusion was that there were no additional school running costs directly attributable to the new and more rigorous consultation procedures but that there would be minor costs associated with publishing how the special factors relating to rural school closure proposals had been applied, of the order of an additional £2,200 per annum.

45. The procedures set out in section 68D are those that it was originally expected would be followed by local authorities under the 2010 Act when consulting on a rural school closure. Therefore, it is not considered that these new requirements will place any significant additional cost burden on education authorities beyond that which Parliament intended when passing the 2010 Act.

Clarifying and expanding Education Scotland’s role

46. Ministers have previously sought Education Scotland’s advice on a case by case basis either when considering calling in a proposal, or when determining a proposal that has been called in, or both. This amendment will formalise the role for Education Scotland in statute. The Bill refers to Education Scotland as Her Majesty’s Inspectors of Education (HMIE) as it is the appropriate part of Education Scotland which would provide this advice (HMIE is responsible for the inspection of schools in Scotland – it has statutory powers of inspection conferred on it by Part III of the Education (Scotland) Act 1980 and also by the Public Services Reform (Scotland) Act 2010).

47. Given that Ministers’ role in determining proposals that have been called in is to be transferred to the School Closure Review Panels under section 68E which inserts new section 17A into the 2010 Act, equivalent provision is also made in new section 17B of the 2010 Act for School Closure Review Panels to call on Education Scotland for advice where necessary.

Costs on the Scottish Administration

48. This will have a minor resource implication for Education Scotland, which is funded from the Scottish Administration. The precise cost will depend on the number of closure proposals that come forward in future and on whether Education Scotland’s advice is sought by Ministers considering call ins or by the School Closure Review Panels considering proposals once called in.

49. Based on previous experience and in light of the effect of the various amendments being proposed to the 2010 Act, it is estimated that the number of school closure proposals being made in Scotland is likely to be in the range of 25 to 30 per annum. It is further expected that Scottish
Ministers may require to request advice from Education Scotland in around a third of these closure proposals – between 8 to 10 cases per annum. Provision of this further advice would not require Education Scotland to submit an additional report, but rather respond to specific issues raised with them by Scottish Ministers.

50. It is also estimated that around 5 to 6 closure proposals per annum might be called in and referred to the new School Closure Review Panels for determination. For some of these, the Panel may require additional advice from Education Scotland to assist them with their determination, perhaps 3 to 6 cases per year. However again, this will not require Education Scotland to prepare and submit a revised report; rather this will be dealt with in correspondence between the Panel and Education Scotland.

51. Education Scotland has estimated the cost of the additional requirement this will place on inspection staff at around £9,300. Education Scotland is expected to manage these costs within its existing budgets.

Establishing an independent referral mechanism

52. At present, school closure proposals that have been called in are determined by the Scottish Ministers. Section 68E which inserts new sections 17A to 17D into the 2010 Act changes that process by referring school closure proposals which have been called in (by Scottish Ministers) to the Convener of the School Closure Review Panels, who is to constitute a School Closure Review Panel to determine the case. The Convener is a statutory role and he or she will be appointed through the Ministerial appointments process. The Convener will be responsible for administering School Closure Review Panels, including the appointment of people eligible to serve as members of a Panel, the selection of members of Panels to determine each case, setting the rules for how Panels conduct a review and reporting to Ministers. This involves a transfer in functions from the Scottish Ministers who are currently responsible for determining school closures decisions that have been called in. There will be costs associated with the new independent function, though these will be partially offset by a reduction in the costs of administering the current “in-house” system. These costs will be borne by the Scottish Administration.

Costs on the Scottish Administration

53. The Convener of the School Closure Review Panels is expected to be a part-time appointment. It is hoped the Scottish Arbitration Centre may be in a position to provide administrative support for this function; this is being actively explored with the Centre. The equivalent of 2 administrative staff might be required to carry out administrative functions to support the Convener and School Closure Review Panel members. Based on current Scottish Government employment costs, it is estimated that the annual costs of the Convener of the School Closure Review Panels and the administrative support services which will be required to be delivered to both will be between £83,000 and £90,000.

54. It is hoped that it may be possible for the Convener of the School Closure Review Panels and the necessary administrative support to be located within the Scottish Arbitration Centre; the details of this are being actively explored with the Centre. Sharing office space and other resources with the Scottish Arbitration Centre should increase flexibility and value for money. If
co-location with the Scottish Arbitration Centre were not possible, other alternatives would be considered, including the possibility of locating the Convener within current Scottish Government accommodation. These office costs are estimated to be £22,000 per annum.

55. There will be initial and ongoing costs relating to appointing the Convener of the School Closure Review Panels and the Panel members. The Convener will be appointed under the public appointment process, making use of existing Scottish Government infrastructure and resourced centrally, with costs limited to £2,000 for advertising. This would be required every 5 years.

56. The Convener will be responsible for appointing Panel members, who will serve on Panels as required depending on when closure proposals are called in by Ministers. It is proposed that Panel members are recruited for a set period of 5 years and appointments are made in at least 3 tranches (to plan for staggered replacement of Panel members and to allow any vacancies that arise mid-term to be addressed). Costs might be incurred initially in years 1, 2 and 4. The additional cost of each appointment cycle round is estimated at £2,000.

Training for panel members

57. There will be on-going costs associated with the training for Panel members to ensure that they are fully aware and compliant with the statutory responsibilities set out under the Schools (Consultation) (Scotland) Act 2010. It is estimated that this would cost £15,000 in the first year, with further training costs of £10,000 in subsequent years whenever a new group of Panel members were appointed.

Costs associated with determination

58. As stated above, it is expected that on average education authorities will bring forward in the region of 25-30 school closure proposals per year, of which around 5-6 may be called in for determination by the School Closure Review Panel. Cases will vary in their complexity and the amount of time that the Panel will require to investigate and determine proposals. The complexity of the case and the length of time it takes for the Panel to determine it, will determine the cost, and it is estimated that the likely costs will range from £5,000 (for more straightforward cases) to £10,000 (for proposals with more complex issues), giving a total cost for determining 5-6 cases between £25,000 and £60,000 per year. An estimate of the travel and subsistence costs incurred by Panel members, to cover travel, overnight accommodation and meals where necessary, increases these cost estimates by £4,250 to £10,200 (depending on the complexity and number of cases considered) to a total of £29,250 to £70,200. The travel costs will vary significantly based on the location of Panel members, and it could be expected that members would be more likely to come from rural areas. The Panels are also likely to require legal advice and legal costs per annum are estimated to be around £10,000, which again will depend on the Panel’s caseload and the complexity of the case.

59. These costs will be partially offset by savings from reduced workload for the civil servants currently delivering this function, and these savings are estimated at around £51,000-£65,000. These savings will start from 2015-16, once the transitional arrangements are completed. In the total cost tables at the start of this Memorandum, the higher of the figures in the ranges in Table 16 have been used.
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Table 16: Costs of the school closures amendments (£)

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<th>2015-16</th>
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<tr>
<td>Total</td>
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<td>105,000 to 139,000</td>
<td>93,000 to 127,000</td>
<td>105,000 to 139,000</td>
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</table>

*Data for 2014-15 assumes that the Convener and Panels are operational for 6 months and incur 50% of standard annual costs.

Costs on local authorities

60. The School Closure Review Panel will be able to request the education authority to provide any relevant additional information it may require about the proposal in order to be able to make its determination. These would normally be requested to be provided in writing – it is not intended that a hearing will be required which would require either the education authority to attend or to be legally represented. The costs education authorities might incur in providing additional information are considered to be small and not expected to be an additional burden on the education authority. As noted above, it is estimated that only 5-6 cases might be considered by the School Closure Review Panels per annum.

Costs on other bodies, individuals and businesses

61. Representations about school closure proposals come from many sources, for example, from parents, pupils, community groups and other individuals including local businesses and employers. Where a case is referred to the School Closure Review Panel, it may seek additional information or representations from these groups or individuals. Any costs involved in this would be borne by the groups and individuals concerned, and it will be a priority that the practices developed by the Panel will minimise the burdens they place on third parties.

A 5-year moratorium between school closure proposals

62. At present, when an education authority decides not to implement a closure proposal or where consent is not given by the Scottish Ministers to a proposal called in, it is open to the authority to immediately start the process again. Section 68B which inserts new section 2A into the 2010 Act provides that when an education authority decides not to proceed with a closure
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

proposal or, in the event of call in, the School Closure Review panel refuses to give consent, the authority may not publish a proposal to close the same school again before the expiry of a 5-year period. There is, however, provision for exceptions to be made where a significant change has taken place.

Costs on the Scottish Administration

63. The new section 2A of the 2010 Act as inserted by section 68B, could mean a minor reduction in the number of closure proposals coming forward for consideration by Scottish Ministers for call in, and on those being referred to the School Closure Review Panels. However, the number of repeat proposals would be expected to be very small so this saving is not expected to be significant.

Costs on local authorities

64. The new section 2A of the 2010 Act will make it harder for education authorities to quickly repeat a school closure proposal which they have either decided against at a late stage or had refused by a School Closure Review Panel. However, this will be possible 5 years after a decision not to close the school or a decision of School Closure Review Panel to refuse consent, has been made, or earlier where a significant change has taken place. It would be anticipated that this would cover scenarios where the case for closure became compelling, for example, where the school roll had fallen very substantially or the school building had become unsuitable.

65. In preventing an education authority from bringing forward a closure proposal until the expiry of a period of 5 years after the publication of a previous closure proposal in relation to the same school, it could be argued that there may be a cost in maintaining a school for longer than the authority wished. However, it could not be guaranteed that a closure proposal made during that period would have received consent. Therefore it is not possible to estimate any cost implication in relation to such an argument as this would depend on the individual circumstances of the school concerned, its costs and the costs of the possible alternative arrangements and the time that the change was delayed by this new provision, section 2A.

CHILDREN’S LEGAL AID

66. An amendment introduced a new 71A section into the Bill, inserting a new section 28LA into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Section 28L of the 1986 Act allows Scottish Ministers to make children’s legal aid available by regulations for specified children’s hearings under the 2011 Act to specified persons. The purpose of section 28LA is to allow Scottish Ministers to make similar regulations, in order to make children’s legal aid available to children and other persons in respect of court proceedings under the 2011 Act.

67. The financial impact of the amendment is estimated to be relatively modest compared to current provision for children’s legal assistance. Expenditure on children’s legal assistance in 2012-13, prior to the 2011 Act coming into force, was £5.4 million. The Scottish Legal Aid Board has forecast that the impact of the 2011 Act on the cost of children’s legal assistance will be £3.3 million. It is difficult to estimate the exact financial impact of the new section 28LA; children’s legal aid is particularly susceptible to the impact of a small number of very expensive cases and the effects of the 2011 Act are still in their early stages. There are only a very small number of instances where it is felt likely to be appropriate to extend the availability of
children’s legal aid for court proceedings as a result of the amendment. Nonetheless, the Scottish Legal Aid Board estimates that such an extension would be likely to have a very limited impact on application volumes although an individual case could be relatively expensive. It has, therefore, tentatively estimated a financial impact of around £10,000 per year.
SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Children and Young People (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PART A – POWERS TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

The Delegated Powers and Law Reform Committee in their Report of 1 October 2013 suggested some changes which have led to the following revisals:

Part 6 – Early learning and childcare

Section 43 – Duty to secure provision of early learning and childcare

Subsection (2)(c)(ii) – Power to specify additional categories of eligible pre-school child

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: Revised
Parliamentary Procedure: Affirmative

Provision

2. Section 43(2) sets out the children who are to be eligible for the mandatory amount of Early Learning and Childcare in accordance with subsection (1). Such children are referred to as “eligible pre-school children” and under the Bill they are those children who are under school age and who have not commenced primary school and either fall within subsection (3) (that is, they are 2 or over and are, or have been at any time since their 2\textsuperscript{nd} birthday, looked after or subject to a kinship care order) or are within such age range, or are of such description, as the Scottish Ministers may by order specify (subsection (2)(c)(ii)).

3. Section 43(2)(c)(ii) enables the Scottish Ministers to specify by order additional categories of “eligible pre-school child” in relation to whom Early Learning and Childcare will be made by reference to the description of such children and their ages. The policy intention is to specify that 3 and 4 year olds will be eligible for Early Learning and Childcare from the first term after their 3\textsuperscript{rd} birthday in a similar way in which the current law does so by virtue of the
order made under Section 1(1A) of the Education (Scotland) Act 1980 (“the 1980 Act”), which the Bill amends.

4. Subsection (4) provides that an order under section 43(2)(c)(ii) may sub-delegate the function of determining eligibility criteria to an education authority so, for example, the order might provide that a child is an “eligible pre-school child” only if the education authority is satisfied as to any matter relating to the child which is specified in the order.

Reason for taking this power

5. The current policy is part of a longer term ambition to increase and improve Early Learning and Childcare for all children. The power will allow the Scottish Ministers to specify additional categories of “eligible pre-school child” in the future, and thereby provide maximum flexibility and enable progress towards this longer term ambition.

Choice of Procedure

6. The Delegated Powers and Law Reform Committee recommended that the procedure for this order be changed. The order was previously subject to negative procedure but has been amended to be subject to an affirmative procedure. The current policy intention is that the power will be used to specify 3 and 4 year olds, however, it could be used to make different provision in the future. Given that this might be a matter which the Parliament may wish to have the ability to debate in full, the Scottish Government is content that affirmative procedure offers a more suitable level of Parliamentary scrutiny. An amendment to section 77(2) has been made at Stage 2 so as to make this order-making power subject to affirmative procedure.

Part 9 – Services in relation to children at risk of becoming looked after, etc

Section 61 – Provision of relevant services to parents and others

(Subsection (3) – Power to specify the definition of “eligible child” – this power has been removed at Stage 2 and a new and different power inserted as follows:)

Subsection (2)(b) – Power to specify another description of an ”eligible child”

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: Revised
Parliamentary Procedure: Affirmative

Provision

7. This subsection provides that the Scottish Ministers may, by order, specify a description of an “eligible child” other than the description of “eligible child” provided for in subsection 61(2)(a); a child at risk of becoming looked after.
Reason for taking this power

8. Subsection 61(2)(a) was added as an amendment at Stage 2 and provides that an “eligible child” is a child who the authority considers to be at risk of becoming looked after. This was added to the face of the Bill to address concerns about a lack of detail in this section. The power at subsection 61(2)(b) (which replaces with minor drafting changes what was previously section 61(3)) was also added as an amendment. This power allows the Scottish Ministers to specify by order an additional description of an eligible child to that at subsection 61(2)(a). The reason for taking this power is to ensure that relevant services are targeted at those in greatest need. It is highly desirable to retain flexibility to specify other descriptions of an “eligible child” so that, if necessary, adjustments can be made in the future to ensure that support is focused on those most in need.

Choice of procedure

9. The Delegated Powers and Law Reform Committee recommended that the Parliamentary procedure for the power which was contained in section 61(3) should be changed from negative procedure to affirmative procedure. The Scottish Government agrees that a more detailed level of Parliamentary scrutiny is required. This is because the use of the power will result in additional descriptions of children and qualifying persons in relation to such children becoming eligible for relevant services provided by Local Authorities and given that the power could be used to remove or vary any descriptions of children so added (although it is not the intention to remove a description of child once added). This would clearly have an impact on those eligible for, and in receipt of, relevant services, which is why it is considered that affirmative procedure with its more detailed level of Parliamentary scrutiny is more appropriate. An amendment to section 77(2) has been made at Stage 2 to make the power in section 61(2)(b) (which was previously contained in section 61(3)) subject to affirmative procedure.

Part 10 – Support for kinship care

Section 64 – Assistance in relation to kinship care orders

(Subsection (4) – Power to specify the description of a child who is considered an “eligible child” – this power has been removed at Stage 2 and a new and different power added as follows:

Subsection (4)(b) – Power to specify another description of an “eligible child”

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: Revised
Parliamentary Procedure: Affirmative
Provision

10. This subsection provides that the Scottish Ministers may, by order, specify a description of an “eligible child” other than the description of “eligible child” provided for in subsection 64(4)(a); a child at risk of becoming looked after.

Reason for taking this power

11. Subsection 64(4)(a) was added as an amendment at Stage 2 and provides that an “eligible child” is a child who the authority considers to be at risk of becoming looked after. This was added to the face of the Bill to address concerns about a lack of detail in this section. The power at subsection 64(4)(b) (which replaces with minor drafting changes what was previously section 64(4)) was also added as an amendment. This power allows the Scottish Ministers to specify by order an additional description of an eligible child to that at subsection 64(4)(a). As with subsection 61(2)(b), the reason for taking this power is to ensure that services are targeted at those in greatest need. It is highly desirable to retain flexibility to specify other descriptions of an “eligible child” so that, if necessary, adjustments can be made in the future to ensure that support is focused on those most in need.

Choice of Procedure

12. The Delegated Powers and Law Reform Committee recommended that the Parliamentary procedure for the power which was contained in section 64(4) (and which section 64(4)(b) now contains) should be changed from negative procedure to affirmative procedure. The Scottish Government agrees that a more detailed level of Parliamentary scrutiny is required. This is because the use of the power will result in additional descriptions of children and qualifying persons in relation to such children becoming eligible for kinship care assistance provided by Local Authorities and given that the power could be used to remove or vary any descriptions of children so added (although it is not the intention to remove a description of a child once added). This would clearly have an impact on those eligible for, and in receipt of, kinship care assistance, which is why it is considered that affirmative procedure with its more detailed level of Parliamentary scrutiny is more appropriate. An amendment to section 77(2) has been made at Stage 2 to make the power in section 64(4)(b) (which was previously contained in section 64(4)) subject to affirmative procedure.

Part 11 – Adoption Register

Section 68 – Scotland’s Adoption Register (inserting new chapter 1A after section 13 of the Adoption and Children Act (Scotland) 2007)

Section 13A – Scotland’s Adoption Register

Subsection (1) – Arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP 27A)

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** Revised. The amendment narrows the scope of an existing power.  
**Parliamentary Procedure:** Affirmative

**Provision**

13. This provision inserts into section 13A(1) detail about the purpose of Scotland’s Adoption Register.

**Reason for taking this power**

14. In the Delegated Powers and Law Reform Committee’s Report it was suggested that the Scottish Government should consider bringing forward amendments to section 13A at Stage 2 to make provision about the purpose and intended use of the Register, in order to inform the broad power in section 13A(2) to make regulations about the Register and the information which it is to contain. The Scottish Government agrees and section 13A(1) is being amended at Stage 2 to clarify that the purpose of Scotland’s Adoption Register is for facilitating adoption. There is no change to the procedure for the regulations under section 13A(2) which remains affirmative.

**Choice of Procedure**

15. The regulations under section 13A(2) are subject to affirmative procedure by virtue of Section 117(5)(ia) of the Adoption and Children (Scotland) Act 2007 (as inserted by paragraph 9(5) of Schedule 4 to the Bill). Affirmative procedure allows for a more detailed level of Parliamentary scrutiny, which is considered appropriate.

**Section 13A – Scotland’s Adoption Register**

**Subsection (2)(a) – Power to prescribe in regulations the information which is to be included in the Adoption Register**

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Regulations made by Scottish statutory instrument  
**Revised or new power:** Revised. The amendment clarifies the use of an existing power.  
**Parliamentary Procedure:** Affirmative

**Provision**

16. This provision narrows the powers in section 13A(2)(a) which prescribe information that can be included in the Register.

**Reason for taking this power**

17. In the Delegated Powers and Law Reform Committee’s Report it was suggested that the terms of the power in section 13A(2)(a) should be restricted to reflect the stated intention in
taking the power. The Scottish Government agrees and is amending the Bill at Stage 2 to narrow the regulation-making power to make it clear that regulations under section 13A(2)(a) may prescribe information relating to adoption which is to be included in the Register.

Choice of Procedure

18. The regulations are subject to affirmative procedure by virtue of Section 117(5)(ia) of the Adoption and Children (Scotland) Act 2007 (as inserted by paragraph 9(5) of Schedule 4 to the Bill). Affirmative procedure allows for a more detailed level of Parliamentary scrutiny, which is considered appropriate.

The following revision is not as a result of comments from the Delegated Powers and Law Reform Committee but is a change to existing powers:

Part 7 – Corporate parenting

Section 50 – Corporate parents

Subsection (3B) – Expansion of power to modify Schedule 3 contained in section 50(2)

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: Revised
Parliamentary Procedure: Affirmative

Provision

19. The order-making power at section 50(2) allows the Scottish Ministers to modify Schedule 3 to add, remove or vary the list of Corporate Parents in that Schedule. A new section 50(3B) expands that power so that an order made under 50(2) which adds a person, or description of persons, to Schedule 3 may also modify section 50 to provide that the person is not a Corporate Parent for the purposes of section 58 (directions to Corporate Parents).

Reason for taking this power

20. This power was revised by way of Government amendment at Stage 2 to acknowledge that in adding further persons to Schedule 3 in the future using the power in section 50(2) it may not always be appropriate for those persons to be subject to the duty to comply with Ministerial directions issued under section 58. For example, the same Government amendment provided that the Commissioner for Children and Young People in Scotland was not to be a Corporate Parent for the purposes of section 58. This was brought forward to acknowledge that the Commissioner has a statutory protection of independence in the Commissioner for Children and Young People (Scotland) Act 2003 (paragraph 2 of Schedule 1) so that the Commissioner is not subject to the direction or control of any member of the Parliament, the Scottish Government or the Parliamentary corporation. It may be that persons to be added to Schedule 3 in the future will also have a similar degree of independence written into their founding provisions and so it is appropriate to have this level of flexibility built into the revised power in section 50(2).
Choice of Procedure

21. The revised power at section 50(2) remains subject to affirmative procedure by virtue of section 77(2) and this is still thought to afford the appropriate level of Parliamentary scrutiny for this power.

PART B – FURTHER PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED AT STAGE 2

Part 5 – Child’s plan

Section 31 – Child’s plan: Requirement

Subsection (5) – Power to specify persons whose views should be taken into account in deciding whether a child requires a Child’s Plan

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<td>Power exercisable by:</td>
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<td>Parliamentary Procedure:</td>
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Provision

22. These provisions relate to the persons who require to be consulted about the requirement for a Child’s Plan. The provisions allow the Scottish Ministers to specify such persons by order. This is in addition to those listed on the face of the Bill, which will be the child, the child’s parents and such other persons as the responsible authority in respect of the Child’s Plan considers appropriate.

Reason for taking this power

23. These provisions add an order-making power so that the provisions about Child’s Plans more closely reflect the requirements of the Looked After Children (Scotland) Regulations 2009 (“the 2009 Regulations”). The elements of the Child’s Plan in respect of Looked After Children will be incorporated in to the Child’s Plan required by the Bill, so that there is a single Child’s Plan incorporating all of the relevant information. The 2009 Regulations require persons other than the child and their parents to be consulted on the Child’s Plan, for example, any person who has parental rights and responsibilities. This power has been taken to ensure that the order to be made under Part 5 of the Bill, setting out the procedure for creating, preparing and reviewing Child’s Plans, can contain the necessary provisions so as to incorporate the requirements of the 2009 Regulations.

Choice of Procedure

24. The negative procedure is considered appropriate because the order-making powers for the 2009 Regulations are also subject to negative procedure. In a similar way to Regulation 4(2)
of the 2009 Regulations (which requires specified persons to be consulted when assessing a looked after child’s needs and how they can be met, after which a Child’s Plan is prepared), an order made under this section will allow for the Scottish Ministers to make provision as to who should be consulted about the requirement for a Child’s Plan in terms of the Bill. The persons who require to be consulted may change over time, for example to reflect future changes in other legislation. An order made under this section would not allow the criteria for determining whether a Child’s Plan is required, as set out in section 31(1), to be amended, but would only allow for detail to be provided as to further persons who require to be consulted about this requirement, in addition to those already specified on the face of the Bill. The negative procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

Section 33 – Preparation of a child’s plan

Subsection (6) and (8)(b) – Power to specify persons whose views should be taken into account in preparing a Child’s Plan, and to make provision requiring or permitting a copy of the plan to be given to particular persons

**Power conferred on:** The Scottish Ministers  
**Power exercisable by:** Order made by Scottish statutory instrument  
**Revised or new power:** New  
**Parliamentary Procedure:** Negative

*Provision*

25. These provisions relate to the persons who require to be consulted about the preparation of a Child’s Plan. The provisions allow the Scottish Ministers to specify such persons by order. This is in addition to those listed on the face of the Bill, which will be the child, the child’s parents and such other persons as the authority preparing the Plan considers appropriate. The existing order-making power in section 33(8) is also being widened slightly to allow the Scottish Ministers to provide that a copy of a Child’s Plan is to be given to particular persons in certain circumstances.

*Reason for taking this power*

26. These provisions add an order-making power so that the provisions about Child’s Plans more closely reflect the requirements of the 2009 Regulations. The elements of the Child’s Plan in respect of looked after children will be incorporated in to the Child’s Plan required by the Bill, so that there is a single Child’s Plan incorporating all the relevant information. The 2009 Regulations require persons other than the child and their parents to be consulted on the Child’s Plan, for example, any person who has parental rights and responsibilities. They also require a copy of the Plan to be given to the child, their parents and, in certain circumstances, to other persons. This power has been taken to ensure that the order to be made under Part 5 of the Bill, setting out the procedure for creating, preparing and reviewing Child’s Plans, can contain the necessary provisions so as to incorporate the requirements of the 2009 Regulations.
Choice of Procedure

27. The negative procedure is considered appropriate because the order-making powers for the 2009 Regulations are also subject to negative procedure. The existing order-making power in subsection (8) is subject to the negative procedure, and the above amendment, which is minor in nature, does not necessitate a change in this procedure.

Section 37 – Child’s plan – management

Subsection (2)(b) – Power to specify persons whose views should be taken into account in reviewing a child’s plan

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<td>Revised or new power:</td>
<td>New</td>
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<tr>
<td>Parliamentary Procedure:</td>
<td>Negative</td>
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Provision

28. These provisions relate to the persons who require to be consulted about the review of a Child’s Plan. The provisions allow the Scottish Ministers to specify such persons by order. This is in addition to those listed on the face of the Bill, which will be the child, the child’s parents and such other persons as the managing authority of the Plan considers appropriate.

Reason for taking this power

29. These provisions add an order-making power so that the provisions about Child’s Plans more closely reflect the requirements of the 2009 Regulations. The elements of the Child’s Plan in respect of looked after children will be incorporated in to the Child’s Plan required by the Bill, so that there is a single Child’s Plan incorporating all the relevant information. The 2009 Regulations require persons other than the child and their parents to be consulted on the Child’s Plan, for example, any person who has parental rights and responsibilities. This power has been taken to ensure that the order to be made under Part 5 of the Bill, setting out the procedure for creating, preparing and reviewing Child’s Plans, can contain the necessary provisions so as to incorporate the requirements of the 2009 Regulations.

Choice of Procedure

30. The negative procedure is considered appropriate because the order-making powers for the 2009 Regulations are also subject to negative procedure. In a similar way to Regulation 44(3) of the 2009 Regulations (which requires specified persons to be consulted when reviewing a looked after child’s case and revising their Child’s Plan), an order made under this section will allow the Scottish Ministers to make provision as to who should be consulted about the review of a Child’s Plan in terms of the Bill. The persons who require to be consulted may change over time, for example to reflect future changes in other legislation. An order made under this section will not allow the requirements for the review of a child’s plan, as set out in section 37(1), to be amended, nor will it change the existing consultation requirements as set out in section 37(2), but
would only allow for detail to be provided as to further persons who require to be consulted about the review, in addition to those specified on the face of the Bill. The negative procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

Section 38 – Assistance in relation to child’s plan

Subsection (6) – Power to modify Schedule 2A

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<td>Parliamentary Procedure:</td>
<td>Affirmative</td>
</tr>
</tbody>
</table>

Provision

31. The Bill has been amended at Stage 2 to create a new Schedule 2A, which lists persons who are required to provide information and assistance to an authority exercising Child’s Plan functions under Part 5. In large part, Schedule 2A replicates the existing Schedule 2 in the Bill. However, a separate Schedule was considered necessary because the Scottish Ministers, by virtue of a Stage 2 amendment to Part 4, required to be removed from the existing Schedule 2. A separate Schedule which included the Scottish Ministers for the purpose of Part 5 was therefore necessary. The order-making power being taken here is to allow for the Scottish Ministers to modify the new Schedule 2A by order.

Reason for taking this power

32. The reason for taking this power is so that the list of persons in Schedule 2A can be modified in the future should new bodies be created, or listed persons' names be changed.

Choice of Procedure

33. An order made under this provision is subject to affirmative procedure (by virtue of section 77(2)) which allows for a more detailed level of Parliamentary scrutiny. This is considered appropriate given that the order may be used to modify primary legislation.
Part 6 – Early learning and childcare

Section 49A – Duty to consult and plan in relation to power to provide school education for pre-school children (Early Learning and Childcare)

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Negative

Provision

34. Part 6A of the Bill amends section 1 of the Education (Scotland) Act 1980 (“the 1980 Act”). Section 1(2B)(a) of the 1980 Act requires an education authority to consult within its area about whether, and if so how, it should provide school education to pre-school children under its powers in section 1(1C) of the 1980 Act (this is the power to provide non-mandatory Early Learning and Childcare over and above that which authorities are statutorily obliged to provide under section 43(1) and 44 of the Bill). Section 1(2B)(b) of the 1980 Act requires the authority, after having had regard to the views expressed in that consultation, to prepare and publish Plans for how it intends to make non-mandatory Early Learning and Childcare available. The education authority is required to consult and plan at least once every 2 years. Section 1(2C) of the 1980 Act provides that the Scottish Ministers may, by order, modify subsection (2B) so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

Reason for taking this power

35. The reason for taking this power is to provide the Scottish Ministers with a degree of flexibility over the frequency of the requirement to consult and plan. Two years is necessary in the first instance to provide consistency with momentum of consultation on statutory entitlement to the mandatory amount of Early Learning and Childcare; and, to co-ordinate, integrate and align those processes of consultation. The regularity within which authorities are required to consult and plan could be reduced if successive consultations were producing similar findings, or if a wide range of flexible provision had been achieved. Conversely, the regularity could be increased if there was, for example, a major policy change emerging in response to local consultations.

Choice of Procedure

36. The order is subject to negative procedure in terms of section 1(2D) of the 1980 Act. The power is not being used to change any of the requirements to consult and plan but only the regularity within which that consultation and planning is to take place and therefore it is considered that the level of Parliamentary scrutiny afforded should be subject to negative procedure is sufficient. Further, negative procedure is consistent with the procedure selected for the current power in section 46(2) (power to modify regularity in relation to the mandatory amount of Early Learning and Childcare) of the Bill. The negative procedure is considered to
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

Section 49B –Duty to consult and plan in relation to day care and out of school care

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Negative

Provision

37. Part 6B of the Bill inserts new subsections (1A), (1B), (3A), (3B), (3C) and (3D) into section 27 of the Children (Scotland) Act 1995 (“the 1995 Act”). Section 27(1A)(a) of the 1995 Act requires a Local Authority to consult in its area every 2 years about how it should provide day care for pre-school children who are in need which they have a duty to provide in terms of section 27(1) of the 1995 Act. Section 27(1B)(a) of the 1995 Act contains a similar consultation requirement in relation to how and whether the Local Authority should provide day care to pre-school children who are not in need which they have a power to provide in terms of section 27(1) of the 1995 Act.

38. Section 27(1A)(b) and (1B)(b) of the 1995 Act requires the Local Authority, after having regard to the views expressed in that consultation, to prepare and publish plans for how it intends to make day care for pre-school children in need available and whether and, if so how, it intends to make day care for pre-school children, who are not in need available.

39. Section 27(3A)(a) of the 1995 Act requires a Local Authority to consult in its area every 2 years about how it should provide appropriate out of school care for school aged children who are in need which they have a duty to provide in terms of section 27(3) of the 1995 Act. Section 27(3B)(a) of the 1995 Act contains a similar consultation requirement in relation to whether, and if so how, the Local Authority should provide appropriate out of school care for school aged children who are not in need which they have a power to provide in terms of section 27(3) of the 1995 Act.

40. Section 27(3A)(b) and (3B)(b) of the 1995 Act requires the authority, after having regard to the views expressed in that consultation, to prepare and publish a Plan for how it intends to make out of school care for school aged children in need available and in relation to the provision of out of school care for school aged children who are not in need.

41. The education authority are required to consult and plan at least once every 2 years. Section 27(3C) of the 1995 Act provides that the Scottish Ministers may, by order, modify subsections (1A), (1B), (3A) or (3B) so as to vary the regularity within which a Local Authority must consult and plan in pursuance of those subsections.
Reason for taking this power

42. The reason for taking this power is to provide the Scottish Ministers with a degree of flexibility over the frequency of the requirement to consult and plan. Two years is necessary in the first instance to provide consistency with momentum of consultation on statutory entitlement to the mandatory amount of Early Learning and Childcare and to co-ordinate, integrate and align those processes of consultation. The regularity within which authorities are required to consult and plan could be reduced if successive consultations were producing similar findings, or if a wide range of flexible provision had been achieved. Conversely, the regularity could be increased if there was, for example, a major policy change emerging in response to local consultations.

Choice of Procedure

43. The order is subject to negative procedure in terms of section 27(3D) of the 1995 Act. The power is not being used to change any of the requirements to consult and plan but only the regularity with which that consultation and planning is to take place and therefore it is considered that the level of Parliamentary scrutiny afforded should be subject to negative procedure is sufficient. Further, negative procedure is consistent with the procedure selected for the current power in section 46(2) (power to modify regularity in relation to the mandatory amount of Early Learning and Childcare) of the Bill. The negative procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.

Part 7 – Corporate parenting

Section 51 – Application of Part: children and young people

Subsection (2)(b) – Power to extend eligibility for corporate parenting support to additional descriptions of formerly looked after young persons

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

Provision

44. A new subsection (2) was added to section 51 by amendment at Stage 2. It inserts a new power to allow the Scottish Ministers to extend the application of Part 7, and therefore the eligibility for Corporate Parenting support, to such persons who are between the ages of 16 and 26 and who are not of the description in section 51(1)(b)(ii) but are of such other description of person formerly but no longer looked after by a Local Authority, as they may specify by order.
Reason for taking this power

45. Taking this power will allow Ministers to, in the future, widen the application of Part 7 of the Bill to new groups of young people who have been formerly looked after, effectively extending eligibility criteria for Corporate Parenting support under that Part.

Choice of Procedure

46. The higher level of scrutiny afforded by affirmative procedure is more appropriate than negative to allow Parliament to debate the merits of extending Corporate Parenting support to new categories of young people who were formerly looked after. This is achieved by adding the power to section 77(2) of the Bill.

Section 52 – Corporate parenting responsibilities

Subsection (2) – Power to modify Section 52(1) to add, remove or vary the list of corporate parenting duties and to apply different duties to different corporate parents

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

Provision

47. This order-making power allows the Scottish Ministers to modify section 52(1) to confer, remove or vary a duty on Corporate Parents. The power also allows Ministers to provide that section 52(1) is to be read, in relation to a particular Corporate Parent or Corporate Parents of a particular description, with a modification conferring, removing or varying a duty.

Reason for taking this power

48. It is useful to be able to adjust the duties of Corporate Parents in light of the experience of these provisions taking effect and the Corporate Parent role in practice evolving over time. A power to amend section 52 gives the flexibility to allow what may be progressive adjustments to be made without the requirement of primary legislation to make the changes. The power to apply certain duties to certain Corporate Parents would also allow for more duties to be tailored for particular Corporate Parents which might not be appropriate to apply to all Corporate Parents listed in Schedule 3.

Choice of Procedure

49. As the new power in section 52(2) is a power to modify primary legislation it is thought that affirmative procedure is appropriate and this is achieved by adding the power to section 77(2). Affirmative procedure affords Parliament a higher level of scrutiny and to debate the merits of any proposed addition of new duties or variation or removal of existing duties in section 52. The power is also wide enough to allow the modification in relation to particular
Corporate Parents and, again, modifying the application of primary legislation in this way merits affirmative procedure being used.

**Part 8 – Aftercare**

**Section 60 – Provision of aftercare to young people**

**Subsection (2) – Inserting new Section 29(1)(b) of the Children (Scotland) Act 1995**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order made by Scottish statutory instrument
- **Revised or new power:** New
- **Parliamentary Procedure:** Affirmative

**Provision**

50. This provision inserts a new section 29(1)(b) of the 1995 Act to allow Ministers to extend eligibility for Aftercare support to such descriptions of formerly but no longer looked after persons, as they may specify by order.

**Reason for taking this power**

51. Taking this power will allow Ministers to, in the future, widen the application of section 29 of the 1995 Act to new groups of young people who have been formerly looked after, effectively extending eligibility criteria for Aftercare under that section.

**Choice of Procedure**

52. The higher level of scrutiny afforded by affirmative procedure is more appropriate than negative to allow Parliament to debate the merits of extending this type of support to new categories of young people who were formerly looked after. This is achieved by provision made in new section 29(1A) of the 1995 Act.

**Section 60 – Provision of aftercare to young people**

**Subsection (3) – Inserting new Section 30(2)(b)(ii) of the Children (Scotland) Act 1995**

- **Power conferred on:** The Scottish Ministers
- **Power exercisable by:** Order made by Scottish statutory instrument
- **Revised or new power:** New
- **Parliamentary Procedure:** Affirmative

**Provision**

53. This provision inserts a new section 30(2)(b)(ii) of the 1995 Act to allow Ministers to extend eligibility for financial assistance towards expenses of education or training under that
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

section to such descriptions of formerly but no longer looked after persons, as they may specify by order.

Reason for taking this power

54. Taking this power will allow Ministers to, in the future, widen the application of section 30 of the 1995 Act to new groups of young people who were formerly looked after, effectively extending eligibility for financial assistance towards the expenses of education or training under that section.

Choice of Procedure

55. The higher level of scrutiny afforded by affirmative procedure is more appropriate than negative to allow Parliament to debate the merits of extending this type of support to new categories of young people who were formerly looked after. This is achieved by provision made in new section 30(2A) of the 1995 Act.

Part 8A – Continuing care

Section 60A – Inserting new section 26A into the Children (Scotland) Act 1995 – various order making powers

Powers conferred on: The Scottish Ministers
Powers exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

Provision

56. This provision inserts a new Part 8A on Continuing care which inserts a new section 26A into the Children (Scotland) Act 1995. New section 26A places a duty on Local Authorities to provide “continuing care” to “eligible persons” who cease to be looked after by them. “Continuing care” is defined in new section 26A(4) and “eligible person” in subsection (2) as meaning a person who is at least sixteen years of age and is not yet such higher age as may be specified. Subsection (6) provides that a Local Authority’s duty to provide continuing care lasts, subject to subsection (7), until the expiry of such period as may be specified. “Specified” is defined in subsection (12) as meaning specified by order made by the Scottish Ministers.

57. Subsections (5) and (7) respectively set out when the duty to provide continuing care does not apply and when it ceases. Subsection (8) provides, for the purposes of subsection (7)(b), examples of situations in which accommodation ceases to become available. Subsection (9) takes powers for Scottish Ministers to, by order –

(a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) is the case (i.e. when or how they consider that providing or continuing to provide the care would significantly adversely affect the welfare of the person);
(b) modify subsection (5) so as to add, remove or vary a situation in which the duty to provide continuing care does not apply;
(c) modify subsection (7) or (8) so as to add, remove or vary a situation in which the duty to provide continuing care ceases.

58. Subsection (11) provides that orders made under new section 26A may make different provision for different purposes and are subject to the affirmative procedure.

Reason for taking these powers

59. Taking the power in subsection (2) to specify the upper age of an “eligible person” and the power in subsection (6) to specify the period for which the Local Authority’s duty to provide care lasts in subsection (6) will allow Ministers to extend the eligibility for continuing care over the coming years to additional cohorts of young persons with the eventual policy aim that it be available to all care leavers up to the age of 21.

60. Taking the order-making powers contained in subsection (9) will allow Ministers to add, remove or vary the situations in which the duty to provide continuing care either does not apply or ceases to apply. This will allow Ministers to modify subsections (5), (7) or (8) in light of experience of the duty being operated in practice so that, for example, if a particular situation in (5) is framed too widely or too restrictively it can be varied or if it comes to light that a new situation in which accommodation ceases to be available needs to be added to subsection (8) it can be done by order. It is also conceivable that, for example, in modifying the situations in subsections (5) or (7), different provision may need to be made for different purposes and so that is why the power in subsection (11)(a) is sought.

Choice of Procedure

61. The higher level of scrutiny afforded by affirmative procedure is more appropriate than negative to allow Parliament to debate the merits of extending eligibility for continuing care to additional cohorts of young care leavers. Also, as the powers in subsection (9) include powers to modify primary legislation, it is, therefore, appropriate to attach affirmative procedure to those particular powers.

Part 11 – Adoption Register

Section 68 – Scotland’s Adoption Register (inserting new chapter 1A after section 13 of the Adoption and Children (Scotland) Act 2007)

Section 13C – Supply of information for the Register
Subsection (3) – Inserting new paragraph to section 13C(3) of the Adoption and Children (Scotland) Act 2007

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative
Provision

62. A new paragraph is being inserted into section 13C(3) of the Adoption and Children (Scotland) Act 2007 by amendment at Stage 2. This provision creates a new power to prescribe in regulations circumstances in which adoption agencies will not be required to disclose information to Scotland’s Adoption Register.

Reason for taking this power

63. This power will allow Ministers to prescribe in regulations any circumstances in which an adoption agency, despite the requirement in section 13C(1) to provide information, is not to disclose prescribed information to the Register. At the same time, section 13C(2) of the Adoption and Children (Scotland) Act 2007 (as added by section 68 of the Bill), which requires the consent of certain persons before the disclosure of information to the Adoption Register, is being removed. It is anticipated that the circumstances in which information is not to be disclosed to the Register prescribed by regulations may include circumstances where consent may be an issue.

Choice of Procedure

64. Affirmative procedure allows for a more detailed level of Parliamentary scrutiny, which is considered appropriate. This is achieved by paragraph 9(5) of Schedule 4 to the Bill which amends section 117(5)(ia) of the Adoption and Children (Scotland) Act 2007.

Section 13DA — Fees and other payments

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

Provision

65. New section 13DA is being added to the Adoption and Children (Scotland) Act 2007 by amendment at Stage 2. Paragraphs (a) and (b) of that new section directly replace existing sections 13C(3)(c) and 13D(3)(d). Section 13DA(c) contains a new power to prescribe in regulations under section 13A(2) fees to be paid by adoption agencies or payments to be made by them in relation to the Adoption Register.

Reason for taking this power

66. The new section brings the provisions for fees and payments in relation to the Adoption Register together in one place and the new power will enable Scottish Ministers to prescribe in regulations any fees to be paid or payments to be made by adoption agencies in relation to the Register. This new power addresses the concerns of the Delegated Powers and Law Reform Committee expressed in their Stage 1 Report with regard to the provision in section 13B(1)(b) of
the Adoption and Children (Scotland) Act 2007 for payments to be made in relation to the Register, in particular that any provision for payments should be clear and accessible to those affected.

Choice of Procedure

67. Affirmative procedure allows for a more detailed level of Parliamentary scrutiny, which is considered appropriate. This is achieved by paragraph 9(5) of Schedule 4 to the Bill which amends section 117(5)(ia) of the Adoption and Children (Scotland) Act 2007.

Part 11A – School closure proposals, etc.

Section 68E – Inserting new section 17B (Review by the Panel) into the Schools (Consultation) (Scotland) Act 2010

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Provision

68. Part 11A of the Bill makes a number of amendments to the process for School Closure proposals under the Schools (Consultation) (Scotland) Act 2010 (the 2010 Act). Section 68E adds section 17B to the 2010 Act (Review by the Panel) and section 17B(5) provides a power for Scottish Ministers to make provision in regulations as to the procedures to be followed by a School Closure Review Panel in carrying out a review under section 17B(1).

Reason for taking this power

69. The reason for taking this power is to provide the Scottish Ministers with a power to set out in regulations the procedures that Panels are to follow in carrying out a review of a School Closure proposal under the 2010 Act. This is a useful power to ensure that Ministers can specify procedures for the Panels to follow in carrying out their review of a School Closure proposal once called in by Ministers if it is decided that such regulations are necessary either at the point the Panels are set up or at a later point to address any issues that have arisen during their operation, for example, in carrying out their first reviews. The Panels will be new, so it appropriate to provide this power in case it is required. It is appropriate that these procedures and any revisions to them should be set out in regulations rather than primary legislation, given they will relate to procedures and processes to be followed by the Panels as opposed to anything more substantive.

Choice of Procedure

70. Negative procedure is considered to be appropriate for these regulations, which would set out the detail of procedures that Panels were to follow in carrying out a review of a School Closure proposal once called in by Ministers. The provision to be set out in regulations will be
This document relates to the Children and Young People (Scotland) Bill as amended at Stage 2 (SP Bill 27A)

technical and procedural in nature rather than affecting the powers or responsibilities of a School Closure Review Panel, therefore, it is not considered that a higher level of Parliamentary scrutiny is required.

Section 68E – Inserting new section 17A which introduces new Schedule 2A (School Closure Review Panels) into the Schools (Consultation) (Scotland) Act 2010

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Provision

71. Section 68E of the Bill also inserts a new section 17A (Referral to the Convener of the School Closure Review Panels) into the 2010 Act which provides that the Scottish Ministers must refer any School Closure proposal once called in under section 17 of the 2010 Act to the Convener of the School Closure Review Panel. New section 17A also introduces new Schedule 2A (School Closure Review Panel) into the 2010 Act. Paragraph 1(9) of Schedule 2A allows the Scottish Ministers to make regulations regarding the appointment of the Convener of the School Closure Review Panels. These regulations may cover eligibility for and disqualification from appointment, the Convener’s tenure and removal from office, remuneration arrangements, and any other matters in relation to the appointment of the Convener which the Scottish Ministers think fit.

Reason for taking this power

72. It is considered that it is more appropriate to provide for the administrative and procedural aspects in relation to appointment of the Convener in regulations rather than in the primary legislation, given the level of detail that is likely to be required. It is also considered that it would be useful to have the flexibility to change the administrative aspects of the appointment process if the need arises and that doing so through primary legislation would not be an effective use of Parliamentary time.

Choice of Procedure

73. The regulations are subject to negative procedure given the administrative and technical nature of the provision that is to be made in them. The negative procedure is considered to offer an appropriate balance between, on the one hand, expediency and convenience and on the other, the need for scrutiny for a provision of this nature.
Section 68E – Inserting new section 17A (Referral to the Convener of the School Closure Review Panels) which introduces new Schedule 2A (School Closure Review Panels) into the Schools (Consultation) (Scotland) Act 2010

**Power conferred on:** The Scottish Ministers
**Power exercisable by:** Regulations made by Scottish statutory instrument
**Revised or new power:** New
**Parliamentary Procedure:** Negative

**Provision**

74. Section 68E in new Part 11A of the Bill inserts section 17A (Referral to the Convener of the School Closure Review Panels) into the 2010 Act and new section 17A introduces new Schedule 2A (School Closure Review Panel) into the 2010 Act. Paragraph 2(5) of Schedule 2A allows the Scottish Ministers to make regulations about appointment and selection of members of the School Closure Review Panels. This includes eligibility for (and disqualification from) appointment, tenure and removal from office, the process for the selection of panel members, remuneration arrangements, and any other matters in relation to the appointment and selection of School Closure Review Panel members.

**Reason for taking this power**

75. The reason for taking this power is to provide for Scottish Ministers to set out clear arrangements for the appointment and selection of members of the School Closure Review Panels, ensuring that these Panels, who will operate independently and at arm’s length from Government, with members appointed by the Convener of the School Closure Review Panels, are subject to transparent and accountable appointment procedures. Making this provision in regulations is appropriate given the level of detail that is likely to be required and the desirability for flexibility to update these arrangements over time as the need arises.

**Choice of Procedure**

76. The regulations are subject to negative procedure given the administrative and procedural nature of the provision that can be made in them. The negative procedure is considered to offer an appropriate balance between, on the one hand, expedition and convenience and, on the other, the need for scrutiny for a provision of this nature.
Part 12 – Other Reforms

Section 71A – Power of Scottish Ministers to provide for children’s legal aid to be available to other persons in relation to court proceedings

New section 28LA of the Legal Aid (Scotland) Act 1986

- **Power conferred on:** Scottish Ministers
- **Power exercisable by:** Regulations made by statutory instrument
- **Revised or New Power:** New
- **Parliamentary procedure:** Affirmative

Provision

77. Section 71A(3) inserts section 28LA into the Legal Aid (Scotland) Act 1986 (“the 1986 Act”). Subsection (1) provides the Scottish Ministers with a regulation-making power to make children’s legal aid available for specified court proceedings under the Children’s Hearings (Scotland) Act 2011 (“the 2011 Act”) to specified persons, other than where children’s legal aid is already available. The power includes the power to vary or remove the children’s legal aid previously made available.

78. Subsections (2) to (5) make provision as to the eligibility tests which must be used in any regulations made by the Scottish Ministers under subsection (1). The tests will be applied by the Scottish Legal Aid Board. The tests reflect the existing tests, under sections 28D, 28E and 28F of the 1986 Act, which already apply to children and other persons.

Reason for taking power

79. The power is needed to allow Scottish Ministers to make children’s legal aid available for court proceedings under the 2011 Act to persons other than in the circumstances already covered by provisions of the 1986 Act. One instance of potential use of the power has already been identified in respect of individuals to whom section 126 of the 2011 Act applies. The power would be exercised in respect of court proceedings involving those individuals at first instance and on appeal.

80. However, this may not be the only situation in which the power is needed – hence the general nature of the power. Other examples of persons in respect of whom the power might be used are a child who has now become an adult, or a person has formerly been a relevant person.

81. It was previously thought that section 28L of the 1986 Act was sufficient in respect of court proceedings, but further investigation has shown that that power is not suitable other than in respect of children’s hearings.

82. The power being taken maintains consistency with other provisions of the 1986 Act in respect of the eligibility tests which applicants must satisfy in order for children’s legal aid to be provided.
Choice of procedure

83. The regulation-making power is subject to affirmative procedure. This is consistent with the similar existing power under section 28L of the 1986 Act, and other provisions of the 1986 Act regarding eligibility for legal aid. The Scottish Government considers that affirmative power is appropriate as it allows the Parliament to consider the impact and need for any regulations which the Scottish Ministers bring forward. The Government recognises these are important matters requiring thorough Parliamentary scrutiny.

PART C – OTHER MATTERS RAISED BY THE DPLRC

Guidance and Direction-making powers

84. In paragraphs 17, 24 and 86 of their 50th Report, 2013 (Session) 4, the Delegated Powers and Law Reform Committee asked the Scottish Government to consider bringing forward amendments at Stage 2 to require the publication of any guidance or directions issued by the Scottish Ministers under the powers contained in sections 28(1), 29(1), 39(1), 40(1) and 74(3).

85. After consideration of these points, Scottish Government amendments were brought forward at Stage 2 of the Bill to amend the various guidance and direction-making powers across the Bill to make them more consistent with each other. Also, a new general section on guidance and directions was inserted in Part 13 (section 77A) which draws together the common elements of all these powers and includes a requirement that the Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under the Bill. This is in response to the points raised by the Committee and the requirement covers any guidance or directions issued under the Bill and not just those highlighted in the Committee’s 50th Report.

Requirement to publish arrangements (authorisation to perform functions and provision for payments) relating to Scotland’s Adoption Register

86. At paragraphs 63 and 64 of the Committee’s 50th Report, they drew to the lead Committee’s attention the duty of Scottish Ministers to make arrangements for the establishment and maintenance of Scotland’s Adoption Register contained in new section 13A of the Adoption and Children (Scotland) Act 2007 as read with new section 13B (both inserted by section 68 of the Bill). In particular the Committee was concerned that any arrangements which authorise the Scottish Ministers’ functions in respect of Scotland’s Adoption Register to be carried out by a registration organisation and provide for payments to be made to such an organisation should be clear and accessible to those affected by them.

87. In light of these concerns, new section 13B was amended at Stage 2 to provide that the Scottish Ministers must publish arrangements under section 13A(1) so far as they authorise a registration organisation to perform the Scottish Ministers’ functions in respect of the Register. New section 13B(1)(b) was also amended to make it clear that any arrangements made by the Scottish Ministers authorising a registration organisation to run the Adoption Register may include provision for payments to be made by the Scottish Ministers to that organisation. A new section 13DA(c) which was inserted at Stage 2 will allow regulations made by the Scottish
Ministers under 13A(2) to prescribe fees and other payments and this is covered earlier in this Memorandum at paragraphs 65 to 67.
Present:

George Adam Clare Adamson
Jayne Baxter Colin Beattie
Neil Bibby (Deputy Convener) Stewart Maxwell (Convener)
Joan McAlpine Liam McArthur
Liz Smith

Children and Young People (Scotland) Bill (in private): The Committee considered correspondence received on school closures relating to written evidence from Argyll and Bute Council submitted for the evidence session it held on 3 December.

The Committee—

- noted the written and oral evidence received on school closures including comments made during the stage 2 meeting on 21 January;
- considered it was adequately informed to consider the amendments, which were designed to avoid any recurrence of problems which had happened and provide clarity and transparency;
- agreed that the evidence from Argyll and Bute Council concerning its processes around school closures did not influence the approach members took on stage 2 amendments;
- agreed that deliberately misleading a parliamentary committee was a serious matter;
- agreed to take no further action in respect of the written evidence submitted by Argyll and Bute Council;
- agreed to bring this minute to the attention of all relevant parties;
- agreed to publish a redacted version of the correspondence received, taking into account relevant data protection legislation, along with the clerk’s covering paper.
Education and Culture Committee

4th Meeting, 2014 (Session 4), Tuesday, 28 January 2014

Rural School Closures and the evidence from Argyll and Bute Council

Purpose
This paper brings to members’ attention 5 written submissions received following the 3 December evidence session on school closures. This note summarises these communications (which are attached at Annexe A).

Background
The Committee held an evidence session on 3 December to inform their understanding prior to considering government amendments to the Children and Young People (Scotland) Bill on school closures.

In July 2011 the Scottish Government and COSLA agreed the membership and remit for the Commission on the Delivery of Rural Education (the Commission). In June 2012 the Commission agreed to delay its findings pending the outcome of a judicial review on school closures in the Eilean Siar.

The Commission published its recommendations in April 2013 following the conclusion of legal proceedings and the Scottish Government accepted all but one of the 38 recommendations and announced it would legislate in the Children and Young People (Scotland) Bill.

In July 2013, the Scottish Government wrote to local authorities describing the court’s interpretation of the 2010 Act as:

“represent(ing) a significant shift in the role of Ministers in the call-in and determination of school closure cases. Previously Ministers looked only at whether the correct processes and procedures as set out in the 2010 Act had been followed”

SPICe prepared a full briefing for the Committee which covered the pattern of school closures since 1995. It gave an overview of policy developments leading to the 2010 Act, the new process under that Act and developments since which led to the current proposals for change.

On 3 December the Committee took oral evidence from 2 panels of witnesses including local authority education officials, one of whom was a member of the Commission as well as Sandy Longmuir, the Chairman of Scottish Rural Schools Network. The Cabinet Secretary for Education and Lifelong Learning, Michael Russell and officials also gave evidence. This session was supported by written submissions including from Argyll and Bute Council.

Although raising no concerns in oral evidence Mr Longmuir subsequently e-mailed the Committee complaining that the written evidence from Argyll and Bute Council contained “several misrepresentations”. Subsequently further written evidence was
received from the Council which elaborated on the earlier evidence. The Committee considered these in private on 10 December and indicated no action was required.

Amendments to the Bill introducing changes to the procedure for rural school closures were lodged by the Government on 13 January and agreed by the Committee on 21 January.

On 13 and 14 January five e-mails were received concerning the evidence session on 3 December. These are summarised in the following section.

**Communications received**

i. Councillor Michael Breslin indicates his role in the council process to agree the written submission.

ii. Mr Longmuir provides his interpretation of historical events which led to the amendments suggesting that a basic (emphasis added) understanding of what went wrong is essential reading to make good legislation. He also expresses concern that members were not adequately informed of issues.

iii. [Redacted] focusses exclusively on the behaviour of an elected official.

iv. [Redacted] comments on the reliability of Mr Longmuir.

v. Mike MacKenzie MSP suggests that Argyll and Bute’s written evidence was “misleading and a misinterpretation of the truth” and “may have influenced the Committee in its scrutiny”. He further asks that the Bill safeguard parents and communities (rights). Finally he observes that this has “the wider implication of casting doubt on the integrity of the Parliamentary process.”

**Action**

Members are invited to consider, in the light of the communications received, what, if any, action they wish to take in relation to these communications. In summary there appears to be three questions:-

- Do members consider they were adequately informed to consider the amendments on school closures?
- Did the evidence from Argyll and Bute council concerning their consultation exercise influence the approach members took to the amendments on school closures?
- Do members wish to take any action in respect of the written evidence submitted by Argyll and Bute council?

David Cullum
Clerk to the Committee

January 2014
Annexe A

Correspondence from Councillor Michael Breslin, Argyll and Bute Council

Date: 14 January 2014 07:25:22 GMT
To: "Stewart.Maxwell.
Cc: "Mike.MacKenzie

Subject: Argyll & Bute's evidence to the Education Committee

Dear Mr Maxwell

I am one of the elected members of Argyll & Bute Council who was very concerned at the evidence provided to your committee by my council, both verbally and in writing. I am writing to you in a personal capacity since I cannot speak for the council on this issue. I will keep this as brief as I can but my concerns were:

- The written evidence was tabled as a last minute paper to the November meeting of the council. I wasn’t a councillor at the time of the school closure debacle but I did take an interest in it, primarily due to the poor standard of papers that were produced and the allegations, later substantiated, that a number of them contained inaccurate information.

- At the November council meeting I didn’t spot the factual errors in the tabled paper and my only excuse for that is that I wasn’t as fully informed as others of what happened in the previous life of the council.

- I was greatly concerned when I later discovered that some of the information was inaccurate. I took the view that the council itself had been misled in November and subsequently the education committee.

- Despite only being a councillor since May 2012, this is far from the first time I have had misleading information given to me. Often it’s misleading by omission rather than what happened here.

- The defence offered subsequently doesn’t wash I’m afraid. I do accept that this wasn’t a full history of events but the potted version was plainly inaccurate in the way it described what were in fact formal consultations on 26 possible school closures as informal ones. Even a potted history has to be accurate.

- I think there are 2 possible reasons why this may have happened. One is that a mistake was made, albeit an inexplicable one. In that event, all that we needed to do was say sorry, here is the corrected version. But we didn’t do that I regret to say. The other possible reason is one I will leave to you.

I did raise this issue at the December meeting of the council but the reply I got was not satisfactory.
Please accept my personal apologies for the inaccurate information provided to your committee and I sincerely hope it never happens again. I am genuinely ashamed that this has happened.

Yours sincerely

Michael Breslin
Independent Councillor, Ward 7 Dunoon
Correspondence from Mr Sandy Longmuir

Dear Committee

It has been brought to my attention that Education Committee may be under the impression that I am "content" with the supplementary written evidence supplied by Argyll & Bute Council in respect of the events in late 2010. This is far from the truth but before I explain my objections in any detail I feel it is essential that Education Committee understands just why this is so important.

1) We are just about to see amendments brought forward on an Act of Parliament which is still under 4 years old and which was voted through unopposed with the universal support of the then Education Committee. Questions have to be asked as to why the Schools (Consultation) Act 2010 has fallen so short of what Parliament intended for it? In my opinion it is impossible to look forwards towards improvement without an understanding of why it has been seen to fail in important respects. Any search of the official report will show a number of examples of where the Act has been seen not to supply the intended improvement in consultation practices. By far the largest and most influential of these is undoubtedly the aborted formal consultation on 25 schools in Argyll from the 25th November 2010 until 5th January 2011. If we are to make good legislation and suitable amendments then a basic understanding of what went wrong here should be considered essential reading.

2) What has happened at Committee regrading the evidence supplied by Argyll & Bute Council is a microcosm of a situation which has faced community after community who have undergone school closure consultations. My own personal reasons for getting involved in the Parliamentary procedure was primarily because I was knowingly supplied false and inadequate information by Angus Council in 2004. I have now worked across the country on consultations in many of our rural areas and similar misrepresentations are commonplace. We have proven some of these to be simple errors and some incompetence. More still are a result of having a desired outcome and working backwards to present an argument for that outcome - thereby missing salient points which do not support the conclusion. The final category of misrepresentation of information is the most troubling. It is the calculated and deliberate decision to present false or inadequate information. We have consistently asked, not that no schools should close - that would be absurd - but that decisions should be taken on the best possible information and that there should be a deterrence for supplying false or inadequate information. Section 5 of the 2010 Act was supposed to present the solution to this problem but it has failed spectacularly in this regard. By far the most significant example of this was the events in Argyll in 2010 and the reaction of the Council to having the accuracy of their information challenged.

I personally could not believe that Argyll & Bute Council would dare to present the Scottish Parliament with similar airbrushing of history and the deliberate omission of pertinent facts that their communities now accept as commonplace. Local Councillors and elements of the local press who followed the events are similarly stunned by the portrayal of events. One member of the press contacted me with a supplementary explanation provided to him by the Council which his own records satisfied him as being nothing more than fabrication.
I copy below some detail as to why the information supplied to Parliament and press is far from adequate, especially in light of the fact that we are trying to amend legislation in a manner which will eradicate such behaviour. Some Councils have managed to operate within the legislation and have closed schools without the sky falling in on them. It should not be an impossible task to draft legislation which forces the worst to attain the standards of the best. It will be difficult if we do not understand what it is that the worst have been doing and fail to learn from it.

Best regards,

Sandy Longmuir

Argyll & Bute Council launched a FORMAL consultation under the terms of the Schools (Consultation) Act 2010 on the 25th November 2010 and withdrew all the proposals in complete disarray on the 5th January 2011.

It was remarkable that the first submission from Argyll & Bute Council failed entirely to mention those events and instead listed the preliminary events to the second formal consultation as "informal" and a "review process". Presenting evidence in this manner was clearly designed to draw Parliament's attention away from scrutiny of what was a disastrous consultation process.

The second attempt at informing Committee and Parliament is in some ways worse. When you couple this with attempts to persuade the local press with further inaccuracies it would appear that there have been further attempts to prevent accurate scrutiny ahead of legislation.

The detail supplied regarding events between November 2010 and March 2011 is very restricted in terms of actual events and gives a very different impression of the reason for the failure of the 25 school consultation process. While the official reason given in Council minutes was a "political motion" this is not a true reflection of the position as viewed by almost everyone except those who voted for that motion. The real reason was that the consultation process had been destroyed by countless individuals who had explored vast amounts of errors and assumptions within the proposal documents. These documents were so badly flawed that it was impossible that they could have continued within any legal framework. At no time have the Council ever acknowledged something which is clearly understood by public, press and Parliament. This latest submission to Parliament simply continues this process of denial in the face of overwhelming evidence.

There is still an attempt to state that the list of 12 schools taken forward in March is somehow a "short list" derived from the "long list" of 25 schools formally consulted on. This is confused by emails from the Council to local press sources which state that the "informal" consultation referred to in the first submission was in fact visits to the 25 schools by the Education Spokesperson following the collapse of the statutory consultations.

All of this is yet again another attempt to rewrite well known history after the event.
The motion on the 5th January 2011 clearly instructs officers to draw up a "NEW" list of schools to consult and not simply to narrow the existing list to a shorter one. This is reinforced by the fact that not all of the 12 schools on the second list were in the original "long list" of 25. (How can you add new items to a short list derived from a long one?)

Despite efforts to say the the Education Spokesperson visited the 25 schools in informal consultation, this is again confounded by the fact that she claimed to have visited 66 schools in preparing the NEW list. The new schools added to the list of 12 schools not in the previous list of 25 WERE included in the list of 66 schools visited.

This is a Council determined that the events of 2010/11 are not revisited and that the real causes of the collapse of the consultation process is not explored, understood and used to inform the legislative process.

This behaviour is a recurring theme within this Council. Time and again during the process the Council used evasive and diversionary tactics to obscure errors and changes of position during the process. I give an example below from one of my Argyll colleagues...

"Not the first time he has airbrushed history to cover this tracks. Anyone remember when [redacted] was suddenly removed from his role in the school closure proposal – strangely enough just after his role in the entire process was clearly shown to be totally lacking in the independence the council claimed he had.

[Name] was challenged then to explain why he had been deemed surplus to requirements. His response (sent to an elected member by e-mail on 16 December 2010) was

"[Name] was engaged to provide an input to the informal consultation only and was therefore involved in the process that recommended that the school estate be reviewed. To ensure there would be no allegations of partiality in the subsequent statutory consultation we are looking to appoint someone unconnected with the earlier exercise. There is no inference to be drawn from this approach regarding [name] credentials which are of a national standing."

This response might have had a degree of credibility if it were not for the fact that in Annex 2 of the ‘Review of School Estate’ papers submitted to full Council on 2 November 2010 [redacted] recommended that Members:

"Agree to delegate power to the Executive Director of Community Services and the Head of Education to procure the services of [redacted] as an Education Consultant to support the statutory consultation process in accordance with the accompanying report, Review of the School Estate – Consultation Process ."

Somewhere between 2 November 2010 and 16 December 2010 [redacted] appeared to have erased his desire to procure the services of [redacted] to
support the consultation process and replaced it with a desire to avoid 'allegations of partiality'.

Education Committee has just become subject to exactly the type of tactic that school communities were regularly treated to. Although this type of practice was at its most prolific in Argyll it remains a feature of consultation practices throughout Scotland. It is vitally important that those in charge of legislation are fully aware of the shifting sands of truth - especially when they have been victims to it themselves.


Correspondence from [redacted]

Dear Mike and Stewart,

I am writing with regards the evidence submitted to the Education Committee by Argyll & Bute Council on the Provision of Rural Education.

From analysis of the submission, I can see that [redacted] has been as accurate in this as he was in the ridiculously inept and flawed closure proposals he put forward which triggered this whole need for the commission's investigation to take place.

In particular, I am wishing to point out [redacted] in this section:

"From that feedback the Council undertook a review of its school estate and identified an initial long leet of 26 primary schools it wished to conduct an informal consultation on with communities to explore school mergers. 2.2 Following a further review of the proposals this long leet was reduced to a short leet of 12 proposed school mergers on which the Council proposed to conduct a statutory consultation in terms of the Schools Consultation (Scotland) Act 2010. The consultation commenced on 3rd May 2011 with an intended end date of 30th June 2011 and the programme of public meetings for each school commenced in May 2011. The programme was ceased following the Council's consideration of the request from the Cabinet Secretary for Education and Lifelong Learning for a moratorium on school closures and the establishment of the Commission for Rural Education".

May I first point out, that these events took place in 2010, not 2011 as stated, however I believe this is a simple oversight.

The list of 26 schools were NEVER consulted upon and I have documentation from the Council to prove this.

During the school closures I submitted a Freedom of Information request to A&BC for copies of the letters sent to my children's school inviting us to the "consultation" on education. As you can see from the attached response, 2 letter were sent. One to our HT and one to the then chair of the Parent Council. At no point on the letter does it mention school closures specifically and nowhere does it state that our school, Luss Primary was one of the 26 being "informally" consulted upon.

Also with this FOI request is a copy of the outcome of these meetings, a summary of the feedback from the attendees instead of minutes and you can see that there is no mention of any specific schools being named for closure and certainly not a list of 26.

You can also obtain through A&BC's website, documents from the 17th of May 2010 where it clearly states the council are agreeing that [redacted] can investigate where savings in the school estate can be made, it does not give him permission to informally consult on the closure of any specific school or a list of candidates.
The list of 26 schools quite clearly, did not exist at this point and not during the informal meetings held throughout June 2010.

repeatedly lied throughout the school closures debacle and how he remains in post is a bafflement to me, especially as his behaviour seems to be continuing to have such a loose connection to telling the truth.

I have now heard the he has tried to respond to the allegations that his version of events are inaccurate and misleading, however I wish to make it clear, he is lying yet again. I can provide further proof of "form" with documents from during the consultation on my children's school.

As a member of the and the I am disgusted that continues to play God with our children and our communities by manipulating the truth and lying to cover his tracks.

I would like this deception to be pointed out to the Education Committee.

Kind regards
Correspondence from John

Dear Mike,

Further to my previous communication I am alarmed that Argyll & Bute Council has attempted to gloss over its grossly misleading evidence with further misleading evidence. I am very clear, as a member of the Commission for the delivery of rural education, that Sandy Longmuir cannot be challenged. He was involved in the Argyll & Bute debacle from the earliest murmurs and gained the respect and absolute trust of parents across the region. His records are accurate and his attention to detail is forensic. Further, he will not allow inaccuracy from fellow campaigners. You can be certain that his letter to the committee contains the absolute and provable truth.

Conversely, our collective experience of Argyll & Bute Council and the committee in particular is that error, manipulation and untruths are ingrained in every document. We are however aghast that they seem to hold MSPs in the same contempt in which they held parents, children, teachers and communities. I very much hope the committee will take a dim and serious view of such blatant lies. There is more at stake here than schools. Democracy is not served at all when officials feel they can operate however they like with complete impunity. Please do all you can to ensure this council is dragged into the light of the twenty-first century and held to account.
Correspondence from Mike MacKenzie MSP

Dear Stewart,

Please accept my apologies for the delay in replying. I am afraid that I am unimpressed by the latest communication from Argyll and Bute Council but I wanted to discuss these issues with parents and others affected by the Argyll and Bute school closures programme and also and importantly with the then Convenor of Education at Argyll and Bute Council who has only this weekend returned from a holiday in Australia. I felt it important to do so to be absolutely sure that Sandy Longmuir’s and my own concerns were shared by others who had been involved.

Opinion amongst those I have talked to is unanimous that the evidence presented to the Education Committee is misleading and a misrepresentation of the truth. There is concern that this may have influenced the Committee in its scrutiny.

There is a further perhaps more fundamental concern where parents and communities feel that they have been the victims of a lack of good faith on the part of the Council, feel that their schools are still under threat of closure and wonder if it is possible for the Parliament to provide any safeguards in respect of a Council who will apparently misrepresent issues material to school closures not just to themselves as parents but also to the Parliament.

I would therefore ask if the Committee could consider what steps it could take to remedy this unfortunate situation bearing in mind that I consider this to have the wider implication of casting doubt on the integrity of the Parliamentary process.

Best Regards

Mike
Delegated Powers and Law Reform Committee

12th Report, 2014 (Session 4)

Children and Young People (Scotland) Bill as amended at stage 2

Published by the Scottish Parliament on 5 February 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
INTRODUCTION

1. At its meeting on 4 February 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Children and Young People (Scotland) Bill as amended at Stage 2 ("the Bill")\(^1\). The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. In broad outline, the Bill concerns the rights and wellbeing of children and young people, and the duties of public authorities to support children, young people and their families. It places duties on the Scottish Ministers and other public authorities in line with the requirements of the United Nations Convention on the Rights of the Child, and amends the powers of the Children’s Commissioner to enable investigations to be conducted in relation to individual children and young people.

3. The Bill also makes provision about the way public services work to support children and young people, by providing for a single planning approach for children who need additional support from services ("child’s plans") and creating a single point of contact around every child or young person (the "named person service"). It also requires authorities which provide children’s services to have a coordinated approach to planning and delivery of those services, and makes provision about the approach to assessing the wellbeing of children and young people.

4. The Bill also extends the duties of local authorities to provide early learning and childcare for pre-school age children and extends the support available to looked after children and young people leaving care. It makes provision for counselling services and other forms of assistance to be made available to parents and kinship carers, and creates a statutory adoption register for Scotland.

\(^1\) Children and Young People (Scotland) Bill as amended at Stage 2 available at: http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27as4-stage2-amend-rev.pdf
5. Finally, the Bill amends existing legislation which affects children and young people by creating a new right to appeal a local authority decision to place a child in secure accommodation, and by making procedural and technical arrangements in the areas of children’s hearings support arrangements and school closures.

6. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”).

7. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its 50th report of 2013.

DELEGATED POWERS PROVISIONS

8. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

9. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:

- Section 43 – Duty to secure provision of Early Learning and Childcare. Subsection (2)(c)(ii) – Power to specify additional categories of eligible pre-school child
- Section 50 – Corporate Parents. Subsection (4) – Expansion of power to modify Schedule 3 contained in section 50(2)
- Section 61 – Provision of counselling services to parents and others. Subsection (2)(b) – Power to specify another description of an “eligible child”
- Section 64 – Assistance in relation to kinship care orders. Subsection (4)(b) – Power to specify another description of an “eligible child”
- Section 68 – Scotland’s Adoption Register insofar as inserting section 13A and section 13DA of the Adoption and Children (Scotland ) Act 2007 – Scotland’s Adoption Register
- Section 31 – Child’s Plan: Requirement. Subsection (5) – Power to specify persons whose views should be taken into account in deciding whether a child requires a child’s plan.

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2 Children and Young People (Scotland) Bill Supplementary Delegated Powers Memorandum available at: http://www.scottish.parliament.uk/S4_Bills/CYP_SDPM.pdf
• Section 33 – Preparation of a child’s plan. Subsection (6) and (8)(b) – Power to specify persons whose views should be taken into account in preparing a child’s plan, and to make provision requiring or permitting a copy of the plan to be given to particular persons

• Section 37 – Child’s Plan – Management. Subsection (2)(b) – Power to specify persons whose views should be taken into account in reviewing a child’s plan

• Section 38 – Assistance in relation to child’s plan. Subsection (6) – Power to modify schedule 2A

• New Part 6A – Section 49A: Duty to consult and plan in relation to power to provide school education for pre-school children

• New Part 6B – Section 49B: Duty to consult and plan in relation to day care and out of school care

• Section 51 – Application of Part: children and young people. Subsection (2)(b) – Power to extend eligibility for corporate parenting support to additional descriptions of formerly looked after young persons

• Section 60 – Provision of aftercare to young people. Subsection (2) – Inserting new section 29(1)(b) of the Children (Scotland) Act 1995

• Section 60 – Provision of aftercare to young people. Subsection (3) – Inserting new section 30(2)(b)(ii) of the Children (Scotland) Act 1995

• Section 68E(4) – Inserting new section 17B (Review by the Panel) into the Schools (Consultation) (Scotland) Act 2010

• Section 68E(5) – Inserting new schedule 2A (School Closure Review Panels) into the Schools (Consultation) (Scotland) Act 2010 paragraphs 1(9) and 2(5)

• Section 71A(3) – Power to provide for children’s legal aid to be available to other persons in relation to court proceedings (inserting new section 28LA of the Legal Aid (Scotland) Act 1986)

• Section 77A: Guidance and directions – requirement to publish guidance and directions.

10. The Committee’s comments and, where appropriate, recommendations on the other delegated powers in the Bill are detailed below.

Section 52 – Corporate Parenting responsibilities
Subsection (2) – Power to modify section 52(1) to add, remove or vary the list of corporate parenting duties and to apply different duties to different corporate parents

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
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<td>Order made by Scottish statutory instrument</td>
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<td>Parliamentary Procedure:</td>
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11. Section 52(2)(a) allows the Scottish Ministers to modify section 52(1) by order to confer, remove or vary duties on corporate parents. Section 52(2)(b) also allows Ministers to provide that section 52(1) is to be read, in relation to a particular corporate parent or corporate parents of a particular description, with any modification conferring, removing or varying a duty.

12. The SDPM states that it is useful to be able to adjust the duties of corporate parents in light of the experience of these provisions taking effect and the corporate parent role in practice evolving over time. A power to amend section 52 gives the flexibility to allow what may be progressive adjustments to be made without the requirement of primary legislation to make the changes. The power to apply certain duties to certain corporate parents would also allow for more duties to be tailored for particular corporate parents which might not be appropriate to apply to all corporate parents listed in schedule 3.

13. The Committee considers this to be an important power since it allows Ministers to remove, add or vary new duties which are to be fulfilled by corporate parents. The Committee agrees with the Scottish Government that powers to modify duties set out in primary legislation, particularly in the manner proposed, merit the affirmative procedure.

14. At present the Bill applies all duties to all corporate parents. A further power will allow Ministers to alter this “one size fits all” model so as to tailor the duties to specific corporate parents or classes of corporate parent. The Committee finds this acceptable in principle. The power is framed in such a way that suggests the duties will become fragmented between primary legislation (which appears absolute in applying to all) and modifications in subordinate legislation. The Committee is concerned that the proposed structure could lead to confusion in determining which duties are owed by which authorities unless the interaction between the primary and secondary legislation is clear.

15. The Committee finds the power in section 52(2)(b) acceptable in principle and that it is subject to the affirmative procedure.

16. However, the Committee reports that it is concerned that the structure proposed by the power of a mandatory list of duties in primary legislation modified by subordinate legislation which requires those duties to be read in a different way could lead to confusion and a lack of clarity.
Part 8A – Continuing Care
Section 60A – Inserting new section 26A into the Children (Scotland) Act 1995 – various order making powers

Powers conferred on: The Scottish Ministers
Powers exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

Provision
17. New part 8A inserts a new section 26A into the Children (Scotland) Act 1995 which places a duty on local authorities to provide “continuing care” to “eligible persons” who cease to be looked after by them. The provision confers several powers on the Scottish Ministers within this framework. Ministers have to specify the upper age limit of eligible persons (subsection (2)). Ministers also specify the period for which the duty to provide continuing care subsists (subsection (6)). Subsection (9) allows Ministers to modify the Bill to provide when the duty to provide continuing care does not apply or when it ceases. Subsection (11) provides that all powers under new section 26A may make different provision for different purposes.

18. The SDPM explains that the powers in subsections (2) and (6) will allow Ministers to extend the eligibility for continuing care over the coming years to additional cohorts of young persons on a staged basis with the eventual policy aim that it be available to all care leavers up to the age of 21.

19. The SDPM explains that subsection (9) will allow Ministers to add, remove or vary the situations in which the duty to provide continuing care either does not apply or ceases to apply in light of experience of the duty being operated in practice.

20. The Committee considers that the duty to provide continuing care for looked after children is a significant addition to the Bill. Within the framework provided by the Bill there are a number of powers which are themselves of importance in structuring the scope and application of the duty over time. As a result of these being inserted in the Bill at stage 2 the Committee does not have the opportunity to scrutinise the purpose of the power and its effects as effectively as it would at stage 1 since time does not permit it.

21. The powers offer maximum flexibility to Ministers to structure the duty and to vary the application of the duty over time in the manner they consider appropriate. Whilst it is understood that Ministers intend to “roll out” the duty to different cohorts over time, the power could be used very differently. Each of the powers is subject to the affirmative procedure which affords a high level of scrutiny and for active involvement by the Parliament but there is no requirement for consultation with local authorities, Social Care and Social Work Improvement Scotland or persons who may be affected. The Committee considers that the subject matter is of sufficient importance that some prior consultation with such persons should be required when using the delegated powers to alter the scope of the duty. This could also assist the Parliament in its scrutiny of proposals for the “roll out” of the duty.
22. The Committee reports that it is concerned that powers of this significance have been added at stage 2 which has reduced the scrutiny which the Committee has been able to apply.

23. The Committee recommends that there should be a requirement for consultation with local authorities, SCSWIS and persons representing the interests of looked after children before the powers are exercised.

Section 68 – Scotland’s Adoption Register inserting section 13C(3) of the Adoption and Children (Scotland) Act 2007 – Supply of information for the Register

| Power conferred on: | The Scottish Ministers |
| Power exercisable by: | Regulations made by Scottish statutory instrument |
| Revised or new power: | New |
| Parliamentary Procedure: | Affirmative |

24. A new power has been inserted into section 13C(3) of the Adoption and Children (Scotland) Act 2007 by amendment at Stage 2. This provision permits Ministers to prescribe circumstances in which adoption agencies must not disclose prescribed information concerning information relevant to Scotland’s Adoption Register despite the general duty to do so set out in section 13C(1). Section 13C(3)(a) provides that disclosure may be to a registration organisation rather than to the Scottish Ministers.

25. On introduction section 13C(2) required the consent of certain persons to be obtained before disclosure was required. That provision has been removed and replaced with the power in section 13C(3)(d) to prescribe circumstances in which the adoption agency is not to disclose information. The Scottish Government anticipates that the circumstances in which information is not to be disclosed may include circumstances where consent will be required.

26. Given the nature of the information to which the obligation on disclosure relates the Committee views the exercise of this power as significant in ensuring that the disclosure regime is compatible with ECHR rights. On introduction the requirement placed upon adoption agencies to provide the Scottish Ministers with information about children who ought to be placed for adoption and suitable adopters was tempered by a requirement for consent to that disclosure to be obtained from the child’s parents and any other prescribed persons. The requirement to obtain consent to disclosure has now been removed from the face of the Bill. In its place is a power which permits the Scottish Ministers to prescribe the circumstances in which prescribed information is not to be disclosed.

27. By removing the consent requirements from the face of the Bill Parliament has given up its control over them to the Ministers. The Committee considers this to be an issue of importance which it should draw to the Parliament’s attention. In so doing the Parliament has retained the ability to reject any proposed regulations under the affirmative procedure. But the Parliament can no longer insist on the
Government bringing forward regulations which make consent to disclosure mandatory.

28. The Committee reports that it is concerned that the requirement for consent to be obtained for disclosure under section 13C of the 2007 Act has been removed from the face of the Bill and has been replaced with a power which enables Ministers to prescribe those circumstances in which disclosure is not permitted but which does not require consent to disclosure to be obtained.
1. The Committee reported on the delegated powers in the Children and Young People (Scotland) Bill as amended at stage 2 on 5 February 2014 in its 12th Report of 2014.

2. In its report the Committee invited the Scottish Government to respond in relation to three matters.

3. The first relates to the power to modify section 52(1) to add, remove or vary the list of corporate parenting duties and to apply different duties to different corporate parents. The Committee reported that it was concerned that the structure proposed by the power of a mandatory list of duties in primary legislation modified by subordinate legislation which requires those duties to be read in a different way could lead to confusion and a lack of clarity.

4. Secondly, insofar as section 60A, which inserts new section 26A into the Children (Scotland) Act 1995 is concerned, the Committee reported its concerns that powers of this significance had been added at stage 2 reducing the scrutiny which the Committee was able to apply.

5. Furthermore, with regard to inserted section 26A, the Committee recommended that there should be a requirement for consultation with local authorities, SCSWIS and persons representing the interests of looked after children before the powers are exercised.

6. Finally, in terms of section 68 insofar as it inserts section 13C(3) of the Adoption and Children (Scotland) Act 2007, the Committee reported its concerns that the requirement for consent to be obtained for disclosure under section 13C of the 2007 Act had been removed from the face of the Bill and had been replaced with a power enabling Ministers to prescribe those circumstances in which disclosure is not permitted but which does not require consent to disclosure to be obtained.

7. The response from the Scottish Government to these matters is attached at the Annex.

8. Members are invited to note the Scottish Government’s response and to make any comments they wish.
CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL AS AMENDED AT STAGE 2

Section 52 – Corporate Parenting responsibilities

Subsection (2) – Power to modify section 52(1) to add, remove or vary the list of corporate parenting duties and to apply different duties to different corporate parents

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

The Committee finds the power in section 52(2)(b) acceptable in principle and that it is subject to the affirmative procedure.

However, the Committee reports that it is concerned that the structure proposed by the power of a mandatory list of duties in primary legislation modified by subordinate legislation which requires those duties to be read in a different way could lead to confusion and a lack of clarity.

We note that the Committee finds the power in section 52(2)(b) of the Bill, which is subject to affirmative procedure, acceptable in principle.

We also note the Committee’s concerns about the structure of the proposed power, however, we do not agree that the exercise of the power could lead to confusion and a lack of clarity.

It is clear on reading section 52(2)(b) that the list of Corporate Parent duties in 52(1) has to be read in conjunction with any orders made under that power which provide for modifications in relation to particular Corporate Parents or Corporate Parents of a particular description. This is a clear signpost to the reader that they will have to look beyond section 52 to any secondary legislation made under the power to see the full extent of the duties that apply to particular Corporate Parents.

An alternative approach would have been to frame the power as a power to modify the text of section 52(1) itself so that any modifications of the listed duties for particular Corporate Parents are on the face of primary legislation. However, given the intention is that, in due course, the power may be exercised from time to time to tailor duties for particular parents, it is suggested that this approach would ultimately result in a rather unwieldy list of duties in section 52.

In practice, the Scottish Ministers will of course consult with the particular Corporate Parents who will be affected by the proposed exercise of the power in 52(2)(b) prior to such an order being made and so they will be well aware of the extent of the duties about to be placed on them. Also, it is intended that guidance issued by
Scottish Ministers under section 57 of the Bill will be developed in collaboration with key stakeholders and will contain advice or information about how Corporate Parents should exercise their responsibilities and promote awareness of their responsibilities so that they are as well informed as possible as to the extent of their duties.

Part 8A – Continuing Care

Section 60A – Inserting new section 26A into the Children (Scotland) Act 1995 – various order making powers

Powers conferred on: The Scottish Ministers
Powers exercisable by: Order made by Scottish statutory instrument
Revised or new power: New
Parliamentary Procedure: Affirmative

The Committee reports that it is concerned that powers of this significance have been added at stage 2 which has reduced the scrutiny which the Committee has been able to apply.

The Committee recommends that there should be a requirement for consultation with local authorities, SCSWIS and persons representing the interests of looked after children before the powers are exercised.

We note the Committee is concerned about the stage at which these powers have been added to the Bill, however, they have been pursued in response to an on-going campaign by stakeholders. Ministers were keen to have as full and detailed an engagement as possible with those stakeholders so that the provision ultimately met their aspirations. This on-going dialogue necessitated amendments being brought forward at Stage 2 rather than provision being made on Introduction.

We note the Committee’s comments in relation to these powers. Whilst we appreciate that there are a number of powers within new section 60A which will affect how Ministers “roll out” the new duty, they are subject to affirmative procedure to allow the Parliament the appropriate level of scrutiny when the proposals come before them.

We fully agree with the Committee about the importance of the subject matter and Ministers have committed to setting up a Blueprint Working Group to assist in the development of secondary legislation to be brought forward under the powers in new section 60A. This Working Group will be comprised of sectoral representatives, service providers, young people, Local Authorities and other relevant stakeholders and will be tasked with assisting the Scottish Government to develop the policy in consideration of appropriate timing, resourcing and infrastructure. This commitment has been well received by the representatives and is seen as an important continuation of the detailed dialogue conducted to date.

However, in light of the Committee’s comments and recommendation relating to consultation we have brought forward a Government amendment for Stage 3 which will insert a requirement for Ministers to consult Local Authorities and such other persons as they consider appropriate before they exercise the powers. In addition to
the planned Working Group to develop the proposals in detail, this consultation requirement will ensure that all those with an interest are formally consulted before the order is made.

**Section 68 – Scotland’s Adoption Register inserting section 13C(3) of the Adoption and Children (Scotland) Act 2007 – Supply of information for the Register**

Power conferred on: The Scottish Ministers  
Power exercisable by: Regulations made by Scottish statutory instrument  
Revised or new power: New  
Parliamentary Procedure: Affirmative

The Committee reports that it is concerned that the requirement for consent to be obtained for disclosure under section 13C of the 2007 Act has been removed from the face of the Bill and has been replaced with a power which enables Ministers to prescribe those circumstances in which disclosure is not permitted but which does not require consent to disclosure to be obtained.

During Stage 1 proceedings, Ministers were made aware by practitioners of real concerns about whether the absolute requirement at section 13C(2) for consent to be obtained was workable. In their written evidence to the Education and Culture Committee, the British Association of Adoption and Fostering (BAAF) expressed “extreme concern” about this absolute requirement. BAAF stated that if adoption agencies were required in all cases to first obtain the consent of parents or person with parental rights or responsibilities, this would result in fewer children being referred to the Register. It is BAAF’s experience that if parents’ consent is required for referral and parents are not in favour of plans for adoption, they will usually withhold consent. It was necessary to find a way to deal with this difficulty to ensure that the Register could operate as effectively as possible.

It was decided to remove from the Bill the absolute requirement for consent to be obtained from those persons named in the Bill or from persons who would have been prescribed in regulations. Ministers will instead prescribe in regulations circumstances in which an adoption agency is not to disclose information. Ministers do not have an unfettered discretion as to the exercise of this power, however, and in prescribing circumstances in which adoption agencies would not require to disclose information, will require to exercise the new power at section 13(3)(d) in a way which complies with Data Protection Act and ECHR requirements as to consent to the disclosure of information. Given the concerns expressed by stakeholders during Stage 1, it is considered appropriate to consult with all adoption agencies and other key stakeholders including BAAF about the regulations in order that the information may be disclosed to the Register in a way that addresses both the practical and legal issues in this regard.

**Children’s Rights and Wellbeing**  
Scottish Government  
February 2014
Children and Young People (Scotland) Bill (in private): The Committee considered correspondence from the Scottish Government in response to its report on the Bill as amended at Stage 2.
Children and Young People (Scotland) Bill: After Stage 2

11:36

The Convener: Item 5 is the Children and Young People (Scotland) Bill. As members will recall, the committee agreed its report on the Children and Young People (Scotland) Bill as amended at stage 2 at last week’s meeting. The committee asked the Scottish Government to respond to concerns raised by the committee in its report. Members have seen the Scottish Government’s response. Do members have any comments to make?

John Scott (Ayr) (Con): I have a concern that, given the proposals and the withdrawals that have been made, the bill may not be fully compliant with the European convention on human rights. I know that we have the Government’s assurance that it intends to consult widely, but there is, on my part at any rate, an underlying concern. Given the recent history on ECHR compliance, I would like to make certain that all the i’s are dotted and the t’s are crossed at this stage, if that is possible.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): It is pretty clear that the bill itself appears to be ECHR compliant. The issue arises in relation to powers that could be exercised under the bill. Of course, that is probably quite common to bills, because it is always possible to draft powers that might step outside the ECHR. Of course, the committee will have the opportunity to consider secondary legislation as it is brought forward.

The Convener: Do other members have any comments? I am in your hands as to how we might proceed on this.

Stewart Stevenson: I propose that we simply accept it as it is and be grateful for the changes that have already been made.

Richard Baker (North East Scotland) (Lab): On the issue of compliance, what has already been highlighted by the committee is the importance of ministers consulting on regulations that are to be brought forward. Of course, the committee will have another chance to scrutinise the regulations when they come before us, and that process of consultation and scrutiny will be important. More generally, I think that our consideration of these proposals has shown the difficulty that can be caused by the short timescale between stages 2 and 3 of the bill process. I think that it is well worth our flagging up that issue again to ministers.

John Scott: I endorse that comment about the timescales being perhaps too short to allow us to
fully assess and understand all the implications. That may need to be addressed in greater depth at a future date.

The Convener: Indeed. I think that that point is well understood. I think that we have made it already.

Stewart Stevenson: I have just a very brief point. It might be useful if our clerks ensure that the Standards, Procedures and Public Appointments Committee clerks are aware of this specific example, rather than simply the general case, which I think is probably understood already.

The Convener: Okay. On balance, is the committee content to note the Scottish Government’s response and await the subordinate legislation, whenever it comes through?

Members indicated agreement.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

5th Meeting, 2014 (Session 4)

Wednesday 19 February 2014

Present:

Gavin Brown  Kenneth Gibson (Convener)
Jamie Hepburn  John Mason (Deputy Convener)
Michael McMahon  Jean Urquhart

Apologies were received from Malcolm Chisholm.

Children and Young People (Scotland) Bill: The Committee took evidence on the supplementary Financial Memorandum of the Bill as amended at Stage 2 from—

Philip Raines, Acting Deputy Director, Children’s Rights and Wellbeing Division, Scottish Government.
10:56

On resuming—

Children and Young People (Scotland) Bill: Financial Memorandum

The Convener: Our third item of business is to take evidence from the Scottish Government bill team on the supplementary financial memorandum to the Children and Young People (Scotland) Bill, which has been lodged following amendments at stage 2.

I welcome to the meeting Philip Raines, who is acting deputy director, children’s rights and wellbeing division, and Gordon Wales, who is deputy director, finance programme management division. Would either of you like to make a statement before we proceed to questions?

Philip Raines (Scottish Government): No, we are happy to answer questions on the supplementary financial memorandum. As you know, the stage 3 debate takes place this afternoon, so we will be happy to do anything that we can to clarify the issues that arise from the stage 2 amendments now or, if that is not possible during the oral evidence, afterwards.

The Convener: Thank you. We will move straight to questions. I will ask the initial ones, after which colleagues will ask theirs. Some of the questions will relate directly to the financial revisions.

As you will know, significant revisions have been made, with the additional costs going from £14.7 million in 2014-15 to £71.7 million. The supplementary FM appears to reflect the costs associated with the expanded provision that was announced on 7 January, but it does not appear to include the additional costs that were outlined in the Minister for Children and Young People’s letter of 12 September, which, as you may recall, mentioned an increase of some £4.2 million. Will you give us a wee explanation of that, please?

Philip Raines: Absolutely. The best way to explain it is that the letter of 12 September dealt with funding issues. In a sense, it was to do with how the bill for the early learning and childcare elements of the original financial memorandum—which, of course, have now changed—would be picked up. It did not touch on the costs.

As I recall, the letter of 12 September dealt with two elements: the funding for the vulnerable two-year-olds who were to be included in the extension of hours; and the element of the costs that would arise for the partner provider uprating—the element for which local authorities negotiate funding, for other organisations to provide the early learning and childcare. The letter set out how that would be funded as a result of the budget discussions and negotiations, but it did not touch on the costs. The costs for two-year-olds and for the partner provider uprating should not and would not have changed as a result of that letter. How that would be funded—the division between local government and central Government—is what was addressed as part of that letter.

The letter set out that the extension of provision for the cohort of two-year-olds as set out in the original financial memorandum would be paid for from an additional £4.5 million a year, some of which—the money for 2014-15—would incorporate the early years change fund, which operates up to the end of this financial year.

An additional element would cover the difference—the inflationary uprating, if you will—between the partner provider floor, which is the national figure that was used for calculating the funding between local authorities and private sector providers and which was last set in 2007, and what that figure might look like currently as a result of inflation, which was set out in the original financial memorandum.

11:00

The Convener: The original financial memorandum set out the childcare costs in 2011-12 prices, but the supplementary FM does not state what price basis is used.

Philip Raines: I confirm that the same price basis is used.

The Convener: It is the same. I also wonder why capital costs have not been included with regard to the planned extension to the policy. The supplementary FM states:

“It is not possible to provide an accurate estimate of the level of infrastructure investment required at this stage.”

That contrasts with the approach taken in the original FM, in which capital costs were included. Why is there a difference of approach?

Philip Raines: That is purely down to time. There just was not enough time between the conclusion of the stage 2 amendments and the point at which the supplementary financial memorandum had to be submitted to calculate the capital costs that we recognise there will be. We are in close discussion with the Convention of Scottish Local Authorities and the Association of Directors of Education in Scotland about what those costs will be.

The approach also reflects the fact that the capital costs for the vulnerable group of children will not necessarily be the same as we would expect to be the case for three and four-year-olds. For three and four-year-olds, we are talking about
a more universal provision and therefore a different staff to child ratio. We are also perhaps looking at providing more standardised service to those children through early learning and childcare. However, the group of vulnerable two-year-olds covered by the January announcement may have more significant needs, so we will be considering different staff to child ratios, and the capital costs will be quite different.

It will take time to get in the estimates, do the calculations and work through them with COSLA and ADES. Unfortunately, there just was not that time in the window that we had for providing the supplementary FM.

The Convener: When will those figures be available?

Philip Raines: I cannot confirm when they will be available but, because the policy commences in August, the costs will have to be developed very quickly. I can provide additional information to the committee about the timescale and, perhaps as importantly, what those costs will be.

The Convener: Who will be expected to meet those capital costs?

Philip Raines: As ministers have set out, all additional costs for local authorities arising from the Children and Young People (Scotland) Bill will be picked up by the Scottish Government. The understanding—COSLA understands this—is that, although we do not know exactly what the costs will be, those additional costs will fall to the Scottish Government, as is the case with all the other early learning and childcare costs.

The Convener: Thank you very much. I am keen to let in colleagues, but I have one or two wee other issues that I want to ask about.

The first is about the amendment to eligibility for continuing care. Table 13 of the supplementary FM estimates the costs of that to be £9.3 million by 2019-20. Concern has been raised that there is a wide variation in the costs of the different types of care and that they have not been provided for “because no sensitivity analysis has been presented.”

You will be aware that local government is suggesting that the costs may be almost twice as much as the estimated £3,142; indeed, some local authorities estimate the cost to be £6,000. Will you talk us through that issue?

Philip Raines: There are two separate points, and I will take them in the order in which you raised them.

In order to calculate the costs for those staying in care, we need to know what type of care they will be in. As you mentioned, table 13 sets out the costs, but table 10 sets out the estimated share for the type of care. The table 10 figures are taken from the official looked-after children statistics. We have used the most up-to-date statistics—I think those are the 2011-12 figures—which show where kids left care from.

We have not looked at what those variations might be because the statistics have remained relatively stable over the years. We have no sense that the policy that we are pursuing would lead to a shift in the proportions. A sensitivity analysis would make sense if we had good reason or evidence to believe that the figures had shifted significantly either historically or over recent time, or if the policy was likely to lead to a significant shift in the proportions of children in the different types of care.

If anything, our sense from anecdotal evidence is that the use of residential care—the most expensive element—is probably reducing, so by using the historical figures we may well have made an underestimate of the number of children in other types of care. However, we must use the firm figures. That is why we used those proportions and applied them as assumptions.

Your second point was about what might be called the unit cost. For the record, paragraph 101 of the original financial memorandum set out the figure of £3,142. As with all such calculations, we must take evidence and take a view on how to make them up. One of the components that was perhaps the most difficult to get a consensus on was travel costs.

I saw in the Scottish Parliament information centre briefing that COSLA has cited a figure of £6,000 per person. That arose largely from COSLA discussions with some local authorities that felt that travel costs would be much more significant and therefore what would be provided for every care leaver might be significantly more than we estimate.

As we said before, we feel that the higher figure for travel costs does not represent an average across local authorities. It represents the higher end of the figures, which will undoubtedly apply in some rural areas, such as Argyll and Bute and the Highlands, but which will not necessarily be the costs in places that are not as large or where travel is easier, such as Glasgow. We have taken the average cost as £3,142.

The short answer is that we used exactly the same estimates and the same assumptions for the supplementary financial memorandum as we used for the original calculations to produce the original financial memorandum.

The Convener: The point, which you have addressed, was that some local authorities considered £6,000 to be a more realistic figure. Will the additional costs that local authorities incur
for geographic and other reasons be taken into account in funding?

Philip Raines: I hope so. Such costs are worked out at a global level. A distribution mechanism will be needed for the funding that goes to local authorities; that applies as much to the aftercare and continuing care elements as it does to early learning and childcare. There are well-understood and well-established mechanisms and governance arrangements for that. I believe that a distribution group that COSLA operates will work with the Scottish Government on how best to deal with that.

The Convener: I will make one more point before handing over to the deputy convener.

When we took evidence previously, we had concerns about partner providers. We understand that "It is entirely the responsibility of Local Authorities to decide what they pay partner providers", but some of us were somewhat concerned about that, given that some local authorities might not be as generous as others. It was interesting that you touched on partner providers. The Scottish Government has announced that it will provide an extra £800,000. Is there any guarantee that that will be used as it is supposed to be?

Philip Raines: If you are asking whether we have placed conditions on and ring fenced the use of that money, the committee will understand that that is not how our relationship operates.

The Convener: That is what I thought.

Philip Raines: The answer to your question has two parts. We are not treating the funding differently from other similar types of funding; we expect local authorities to meet their obligations and to get the adequate additional provision that they should get from partner providers, which is a matter for them. However, there is a clear role for us in setting out expectations in national guidance.

We have not taken a statutory role, which will remain the case, but we have a role in relation to how the funding provision should operate. The issue is sensitive and should properly be addressed as part of guidance. In developing that guidance, we will deal with providers. We need to bring the National Day Nurseries Association closely into the discussions on developing the guidance. I believe that that work has started and will continue.

The Convener: I think that all committee members are aware that there is no ring fencing, but I wondered whether, through COSLA and others, you have had any kind of gentleman’s agreement that the money would be put where it is supposed to be put. Obviously, in some cases the partner providers are concerned about their own survival, let alone viability. It must be deeply frustrating if we are providing additional money and the local authorities decide not to put it into those areas. Is there any sort of quid pro quo, in which the Scottish Government, in discussions with local authorities, says, “We’ll give you additional money; we know it’s not in tablets of stone that it’ll go into this but we expect an understanding that that’s where it will be spent”?

Philip Raines: I am not aware of such discussions. To be honest, it is the sort of question that is probably best answered by COSLA. At the end of the day, the local authorities and COSLA are the ones that need to account for how they are fulfilling their obligations and relationships with the partners who are doing the provision.

The Convener: Thank you for that. I now pass over to John Mason.

John Mason: I want to follow up one of the areas that the convener touched on, which was the capital costs. I was a little uneasy with the questions, I mean the answers—obviously I was happy with the questions. [Laughter.]

The supplementary financial memorandum states:

“Capital costs have not been explicitly estimated.”

My understanding is that they have not been estimated at all, so the word “explicitly” does not really mean anything. Is that correct?

Philip Raines: I would say that internal calculations are going on and that the work is being taken forward. People clearly cannot be resting on their laurels in going forward. However, if it is "explicitly" in the sense in which we would be happy to share those estimates and costs formally because they have reached the point where we can verify them, I would say that that is not the case. The work is under way, though—it has to be under way.

John Mason: I am relatively new—I have been here for only three years—and I do not remember a situation in which we were looking at a financial memorandum in the morning, we did not have the figures and the bill was due to be approved in the afternoon. Maybe that is common—I do not know.

We are sitting here with a figure of nil. We know that it will be something but we have no idea what. Could you give us even a range of figures that we might be talking about?

Philip Raines: No. I would not go as far as that.

John Mason: So will it be under £100 million?

Philip Raines: Sorry. I have just said that I would not go as far as that.
John Mason: You would not say that it is under £100 million.

Philip Raines: I would not say anything at all. I cannot provide those estimates or figures, I am afraid.

John Mason: And—

Philip Raines: All I can say is that we have shared our working and calculations with COSLA. We are working closely with COSLA, and concerns have not been raised about the capital costs from the people who are going to be the providers.

John Mason: COSLA is not going to raise any concerns if the Government is going to pay for it, is it? That is fairly clear.

Effectively, the figure of nil has been put in. Okay, there is a note saying that nil will not be the figure—

Philip Raines: No. I think that there is a difference between putting in no figure and saying a figure of nil. A figure of nil suggests that we think there is no cost. That is clearly not the case. We are just saying that, at this stage, we are not in a position to be able to offer estimates. That is not the same as zero.

John Mason: Well, I would argue that that is just semantics. However, I take your point that there is a slight difference between not having a figure and having a figure of nil. I just want to say publicly that I find it very unsatisfactory that we are being asked to approve this supplementary financial memorandum and we have not been given even a range of figures.

Gavin Brown: The convener and deputy convener have raised most of my queries. You are not in a position to tell us the figure—

Philip Raines: I am sorry—I misunderstood what you meant. As far as capital costs are concerned, I am afraid that I am not in a position to be able to say whether the per child cost as worked out would be higher or lower than what we used in the financial memorandum, which related to three and four-year-olds.

Gavin Brown: So when you talked about the costs being higher, you were talking about the staffing costs per head.

Philip Raines: Yes.

Gavin Brown: And you do not know about the capital costs.

Philip Raines: That is true.

Gavin Brown: Thank you.

Jamie Hepburn: Just to clarify the issue a little more, I should point out that the Scottish Government has given a clear commitment to meet the capital costs of the bill's provisions. I think that Mr Raines has made that pretty clear. I am not going to ask for a specific figure because Mr Raines has quite fairly set out why that is not available at this time.

Given the early work, the on-going work and the calculations that are under way, are you able to give a commitment that the Scottish Government can meet these costs and that this policy is not going to bankrupt the nation?

Philip Raines: It will not. The number of additional two-year-olds we are talking about falls well within the scope of all this. In that sense, it is not significantly different from what was done for three and four-year-olds.

The Scottish Government has made it very clear that the additional costs as a whole, including the capital costs, arising from early learning and childcare for local authorities will be met. That commitment remains.

Jamie Hepburn: Again, can you clarify that a burden will not be placed on any other part of the
public sector to meet these costs and that the Scottish Government will meet them?

Philip Raines: Yes.

Jamie Hepburn: Thank you.

Michael McMahon: When the original financial memorandum came before the committee, members raised a number of concerns about the estimates and assumptions that it contained. I do not know what other committee members think, but I certainly have not been assured by the answers that have been given in response to our report on that financial memorandum.

As John Mason has said, here we are on the morning of stage 3 of the bill, discussing additional costs and the additional funds that have been introduced into the financial memorandum. Could these additional costs and the mechanism by which they were scrutinised have come at a later date when the figures were available so that we could have had greater clarity about them? Do they have to be included in today’s proceedings?

Philip Raines: I am not sure why this evidence session was scheduled for today, so I am afraid that I cannot comment on that.

The costs in the supplementary financial memorandum arise largely from the stage 2 amendments and the announcements that were made barely six weeks ago in January. Obviously the time for making calculations has been shortened and accelerated, and we provided the supplementary financial memorandum as quickly as possible after the conclusion of stage 2.

Clearly we cannot put out a supplementary financial memorandum until stage 2 is completed. As soon as it was completed, we carried out some quite intensive work in an accelerated way to enable the committee to consider the costs as quickly as possible.

Michael McMahon: So it would have been possible for the committee not to have discussed this issue today. It could have waited until the bill had been passed and then a supplementary memorandum in which we could actually see the figures could have been put before the committee.

Philip Raines: No—

Michael McMahon: This morning we are discussing an addition to the financial memorandum that is based on stage 2 amendments. You say that you had only six weeks to carry out this work, but can you tell us what happens in other circumstances? After all, we do not come back with supplementary financial memoranda every time a bill is amended at stage 2, so why are we doing it today?

Philip Raines: I draw your attention to paragraph 3 of the briefing that you have received. It refers to rule 9.7.8B of standing orders, which basically sets out how to deal with what happens at stage 2. When changes are made to a bill, it makes sense for Parliament to be able to consider their cost implications.

Rule 9.7.8B also sets out a timescale from the completion of stage 2—after all, you cannot tell people what the bill is going to cost until stage 2 is completed—for producing our formal estimate of those costs. We met those timescales, produced the document as quickly as possible and provided it to Parliament.

Beyond that, the consideration of the supplementary financial memorandum by the committee is an internal matter for yourselves, as is the scheduling of today’s evidence session. The document was produced within the existing timescales as set out by Parliament and according to the understood process for putting bills together. You might be asking wider and deeper questions that I cannot answer because they are to do with parliamentary process.

Michael McMahon: It is partly to do with that, but the other problem is that, whatever the timeframe might be, you have told us that you do not actually have the costs that the stage 2 amendments will incur. Why are we discussing this issue when, first of all, the timescale does not allow for the amendments to be properly scrutinised and, secondly, you cannot tell us whether the costs are up or down or what the capital costs will be? We are just expected to accept this supplementary financial memorandum and go into this afternoon’s debate no wiser about the changes that are being made.

Philip Raines: I want to make it clear that we have provided the costs for everything else except the capital costs. Admittedly, the capital costs are quite complex and we are not in a position to provide that information so, in that respect, what you say is true. However, I do not think that it is fair to say that we have not provided costs.

We have provided quite a lot of costs; indeed, we have easily provided the lion’s share of costs. The ratio of the capital costs in the original financial memorandum to the total costs of early learning and childcare was, although significant, perhaps not the most significant element. I think that the revenue element was probably more significant.

Michael McMahon: But what was significant about the earlier financial memorandum was that we had major concerns about the costings involved and there has been no attempt to amend, change or clarify them.

Philip Raines: That is not true. On 28 October, we wrote to the Education and Culture Committee to respond in detail to a number of the issues that
your committee raised in your report. We have responded on those points, but whether you are satisfied with our responses is another issue.

Michael McCoVE: That is the point that I made earlier: the answers certainly did not satisfy me.

Philip Raines: But it is not fair to say that we have not responded. We responded in great detail to the comments that were made and which were passed to us by the Education and Culture Committee.

The Convener: Just to provide some clarification, I point out that the supplementary financial memorandum was published on 31 January. As there was a recess, we did not really have an opportunity to discuss or take evidence on it before today. I decided that it would be more appropriate to take the item today instead of a week after stage 3 so that we could get as much clarification as possible about the available information. As Mr Raines has pointed out, information has been provided except on the capital issue.

It is very unusual to have a supplementary financial memorandum and it is only happening now because of the scale of the amendments. Rule 9.7.8B of standing orders states:

“If a Bill is amended at Stage 2 so as to substantially alter any of the costs set out in the Financial Memorandum that accompanied the Bill on introduction, the member in charge shall lodge with the Clerk, not later than the end of the second week before the week on which Stage 3 is due to start, a revised or supplementary Financial Memorandum.”

That is what has happened.

That said, I want to raise with Mr Raines an issue with regard to rule 9.3.2 of standing orders, which states:

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

The committee’s concern is that it has received no real estimates of the capital costs. There are not even any margins of uncertainty; we do not have anything that says, for example, that the costs might be between £10 million and £50 million, £20 million and £100 million, or whatever. That is what the committee is frustrated about.

Standing orders make it clear that we really need that information so that even if we go into this afternoon’s debate not knowing everything—and you have explained to us why that is the case—we have at least a ballpark figure, for want of a better phrase. Do you not agree? It is clear in standing orders.

Philip Raines: That would be the interpretation of that rule—

The Convener: I do not think that it needs to be interpreted—it is pretty straightforward. I have just read out the rule in standing orders word for word, and it talks about

“an indication of the margins of uncertainty”.

The real issue is that there are no parameters with regard to the capital costs.

Philip Raines: I do not think that we were in a position to provide those margins within the timescale that we had to produce the supplementary financial memorandum. As you know, it was provided by 31 January, a couple of weeks after the announcement was made. It is now 19 February, and work on this issue has progressed. I apologise for not being in a position to be able to provide an oral update about those parameters, but I imagine that they are beginning to emerge. If we cannot provide those margins of uncertainty, we cannot address the question.

The Convener: We will have to deliberate further on the matter, but I have one further question on a different issue that I hope you will be able to answer.

The supplementary financial memorandum contains a significant section on individual kinship care costs for guardians. Paragraph 36 says:

“Overall, there were no additional net costs in relation to kinship care in the original Financial Memorandum. This remains the case with these amendments”.

I note, however, that paragraph 35 states:

“In response to concerns about a perceived lack of detail in this Part of the Bill, Scottish Ministers agreed to make amendments at Stage 2 to provide for a clear, core eligibility test for kinship care assistance on the face of the Bill”.

I find it counterintuitive that there are no additional costs whatever. Can you talk us through why that might be the case?

Philip Raines: The methodology that was applied to the calculation of the additional cohort that might be eligible for kinship care was also applied to this element. As you will know from the original financial memorandum and our evidence to the committee, our view is that this policy will lead to avoided costs or, in effect, net savings.

These particular numbers—which, as I have said, were produced using the same methodology—are set out in table 14, which sets out the gross costs, and table 15, which sets out the avoided costs. As the avoided costs are larger than the gross costs, our view is that, as with the original methodology for calculating kinship care in
the financial memorandum, the provision will not lead to additional costs.

**The Convener:** Because of the £3,000 margin between tables 14 and 15.

**Philip Raines:** Yes. It is the same principle that was applied in the original financial memorandum.

**The Convener:** I just wanted to get that clarification on the record.

As my colleagues do not seem to have any further questions, do you wish to make any further points or comments?

**Philip Raines:** No, except to say that as the further work, particularly on capital costs, is carried out we will be very keen and happy to provide that additional information at a suitable date for the committee, to enable you to carry out your rightful role of scrutinising the costs as they emerge.

**The Convener:** I am pretty sure that I am speaking on behalf of the committee when I say that we would very much appreciate the opportunity to take evidence once the figures are available.

Thank you very much for answering our questions; your responses were appreciated. As we are moving into private session, I ask our witnesses, the public and the official reporters to leave the meeting.

11:28

*Meeting continued in private until 11:54.*
Dear Aileen

Children and Young People (Scotland) Bill

The Finance Committee considered the supplementary Financial Memorandum (FM) on the Children and Young People (Scotland) Bill at its meeting this morning. Paragraph 13 of the FM states that: “Capital costs have not been explicitly estimated. It is not possible to provide an accurate estimate of the level of infrastructure investment required at this stage.” However, the FM does not appear to include any estimate of the capital costs. The Committee pursued this point in evidence with the Bill Team who were unable to provide this information. The Committee is very concerned that a best estimate has not been provided for the capital costs as required by Rule 9.3.2 of the Parliament’s Standing Orders. The Committee asks for an explanation as to why a best estimate has not been provided and an assurance that these costs will be provided to the Committee at the very earliest opportunity. The Committee also invites you to give evidence on these costs once they are available.

Yours sincerely

Kenneth Gibson MSP
Convener
Children and Young People (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 80  Schedules 1 to 4
Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Before section 1

Jean Urquhart

116* Before section 1, insert—

<Duty on Scottish Ministers to establish a body to consider whether the UNCRC should be given legislative effect

(1) Within one year of this Act receiving Royal Assent, the Scottish Ministers must by order establish a body to consider whether the UNCRC should be given legislative effect.

(2) Where a body established under subsection (1) has completed its consideration it must—

(a) make a written report of its conclusions,
(b) lay the report before the Scottish Parliament,
(c) publish the report.

(3) As soon as practicable after the report has been laid before the Parliament, the Scottish Ministers must make a statement—

(a) responding to the report,
(b) indicating, on the basis of that report, whether they intend to give legislative effect to the UNCRC.

(4) The Scottish Ministers must—

(a) lay a copy of the statement under subsection (3) before the Parliament,
(b) publish the statement in such a manner as they consider appropriate.

(5) An order under subsection (1) may make provision about—

(a) the status, constitution and proceedings of the body,
(b) the period within which the body must report to the Parliament,
(c) the matters which must be covered in the report,
(d) the publication of the report.>
Section 1

Liam McArthur

117 In section 1, page 1, line 9, at end insert—

<(A1) The Scottish Ministers must, when exercising any of their functions, treat the best interests of any children likely to be affected by the exercise of the function as a key consideration.

(A2) Subsection (A1) does not apply to the extent that the Scottish Ministers are required by any enactment to consider the best interests of a child as the paramount or a primary consideration.>

Liam McArthur

118 In section 1, page 1, line 9, at end insert—

<( ) The Scottish Ministers must, when exercising any of their functions, give any children affected by the exercise of the function an opportunity to express any views freely and give any such views due weight in accordance with the age and maturity of the child.>

Siobhan McMahon

92 In section 1, page 1, line 13, after <requirements> insert <and the UNCRPD requirements>

Aileen Campbell

93 In section 1, page 1, line 15, at end insert—

<( ) In complying with their duty under subsection (1)(a), the Scottish Ministers must take such account as they consider appropriate of any relevant views of children of which the Scottish Ministers are aware.>

Alison Johnstone

119 In section 1, page 1, line 15, at end insert—

<(1A) The Scottish Ministers must take all appropriate legislative, administrative, social and educational measures to protect children from all forms of—

(a) physical or mental violence,

(b) injury or abuse,

(c) neglect or negligent treatment,

(d) maltreatment or exploitation, including sexual abuse.

(1B) Protective measures under subsection (1A), may include—

(a) effective procedures for the establishment of social programmes to provide necessary support for children and for those who have care of children,

(b) identification, reporting, referral, investigation and treatment,

(c) follow-up of instances of maltreatment as described in subsection (1A),

(d) as appropriate, judicial involvement.>
Siobhan McMahon
In section 1, page 1, line 21, at end insert <and the UNCRPD requirements>.

Alison Johnstone
In section 1, page 1, line 22, leave out <subsection> and insert <subsections (1A) and>.

Neil Bibby
In section 1, page 1, line 22, after <(2),> insert—

<(  ) what they have done in response to any statements made (however made or communicated) in that period by the United Nations Committee on the Rights of the Child (as established by Article 43 of the UNCRC) that—

(a) relate specifically to Scotland (whether or not they also relate to other parts of the United Kingdom), or

(b) are generally applicable to all state parties to the UNCRC.>

Siobhan McMahon
In section 1, page 1, line 25, after <requirements> insert <and the UNCRPD requirements>.

Alison Johnstone
In section 1, page 1, line 26, leave out <subsection> and insert <subsections (1A) and>.

Neil Bibby
In section 1, page 2, line 2, after <children> insert <,>

(  ) the Commissioner for Children and Young People in Scotland, and

(  ) such other persons as they consider appropriate;>

Neil Bibby
In section 1, page 2, line 2, leave out <what their> and insert <the matters mentioned in subsection (3B)>.

(3B) Those matters are—

(a) the extent to which—

(i) steps taken by the Scottish Ministers in the 3 year period referred to in subsection (3)(a) have secured better or further effect in Scotland of the UNCRC requirements, and

(ii) things done by the Scottish Ministers in that period in pursuance of subsection (2) have succeeded in promoting the public awareness and understanding mentioned in that subsection, and

(b) what the Scottish Ministers’>
After section 1

Liam McArthur

125  After section 1, insert—

<Duties of Scottish Ministers: statements of compatibility with the UNCRC in relation to bills

(1) As soon as reasonably practicable after the introduction of a Bill, the Scottish Minister in charge of that Bill must—

(a) make a statement to the effect that in the Minister’s view the provisions of the Bill are compatible with the UNCRC requirements (“a statement of compatibility”), or

(b) make a statement to the effect that although the Minister is unable to make a statement of compatibility, the Minister nevertheless wishes to proceed with the Bill.

(2) A statement of compatibility must set out how the Bill will secure better or further effect in Scotland of the UNCRC requirements.

(3) The statement must be in writing and be published in such a manner as the Minister making it considers appropriate.>

Liam McArthur

126* After section 1, insert—

<Children’s rights impact assessment

(1) The Scottish Ministers must prepare and publish an assessment of the impact on the rights of children (“a children’s rights impact assessment”) in relation to every relevant Bill introduced in the Scottish Parliament by a member of the Scottish Government.

(2) A children’s rights impact assessment under subsection (1) must be laid before the Parliament before the introduction of the Bill to which it relates.

(3) The Scottish Ministers may prepare and publish a children’s rights impact assessment in relation to—

(a) any relevant subordinate legislation laid by virtue of an enactment introduced prior to the commencement of this section,

(b) any other relevant subordinate legislation where the Scottish Ministers or the Parliament consider that the children’s rights impact assessment under subsection (1) of the Bill by virtue of which the subordinate legislation is laid was unsatisfactory.

(4) A children’s rights impact assessment under subsection (3) must be laid in the Parliament before the laying of the subordinate legislation to which it relates.

(5) In preparing a children’s rights impact assessment under subsection (1) or (3) the Scottish Ministers must consult—

(a) children,

(b) such other persons as they consider appropriate.

(6) A children’s rights impact assessment under subsection (1) or (3) must contain—

(a) information on the impact of the Bill or subordinate legislation on children,
(b) information on how the Bill or subordinate legislation might secure better or further effect in Scotland of the UNCRC requirements,
(c) the views of children on the Bill or subordinate legislation,
(d) such other information as the Scottish Ministers consider appropriate.

(7) The Scottish Ministers may by order specify further documents in relation to which a children’s rights impact assessment must or may be required.

(8) In this section a “relevant Bill” or “relevant subordinate legislation” means a Bill or subordinate legislation which impacts on the rights of children.

Section 2

Siobhan McMahon

96 In section 2, page 2, line 15, at end insert <and the UNCRPD requirements>

Section 4

Siobhan McMahon

97 In section 4, page 3, line 19, at end insert <and

( ) Article 7 of the UNCRPD,>

Siobhan McMahon

98 In section 4, page 3, line 31, at end insert <,


“the UNCRPD requirements” means the rights and obligations set out in Article 7 of the UNCRPD.>

Siobhan McMahon

99 In section 4, page 3, line 32, after <document> insert <or to Article 7 of the UNCRPD>

Siobhan McMahon

100 In section 4, page 3, line 33, after <document> insert <or Article>

Section 7

Siobhan McMahon

127 In section 7, page 6, line 25, at end insert <, or

( ) families of children mentioned in paragraph (b).>
Siobhan McMahon

128  In section 7, page 6, line 33, after <service> insert <or a young persons’ service>

Siobhan McMahon

129  In section 7, page 6, line 34, at end insert <or young persons>

Aileen Campbell

55  In section 7, page 6, line 35, leave out from <a> to the end of line 36 and insert—

< ( ) if the area of the local authority is the same as that of a health board, that
health board,

( ) if the area of the local authority is not the same as that of a health board,
the health board within whose area the area of the local authority falls.>

Siobhan McMahon

130* In section 7, page 6, line 36, at end insert <, “young person” means a person who has attained the age of 18 years but who has not attained the age of 25 years and who—

(a) has needs of a particular type (such as needs arising from having been a
looked after child, needs arising from a disability or a need for additional
support in learning), or

(b) is of a description specified by order by the Scottish Ministers,

“young persons’ service” means any service provided in the area of a local
authority by a person mentioned in subsection (2) to young persons; but, where
such a service is also provided to persons other than young persons, “young
persons’ service” includes the service only to the extent that it is provided to
young persons.>

Siobhan McMahon

131 In section 7, page 6, line 37, after first <service‖> insert <, “young persons’ service”>

Aileen Campbell

56  In section 7, page 6, line 40, leave out <any> and insert <the>

Siobhan McMahon

132 In section 7, page 7, line 6, after first <service‖> insert <, “young persons’ service”>

Siobhan McMahon

133 In section 7, page 7, line 7, leave out <either> and insert <any>

Aileen Campbell

57  In section 7, page 7, line 19, leave out <each> and insert <the>
Section 8

Aileen Campbell

58 In section 8, page 7, line 22, leave out first <each> and insert <the>

Siobhan McMahon

134 In section 8, page 7, line 23, after <children’s> and insert <and young persons’>

Siobhan McMahon

135 In section 8, page 7, line 29, after <children’s> insert <and young persons’>

Siobhan McMahon

136* In section 8, page 7, line 31, after <services,> insert—

<( ) young persons’ services,>

Section 9

Siobhan McMahon

137 In section 9, page 7, line 34, after <children’s> insert <and young persons’>

Siobhan McMahon

138 In section 9, page 7, line 37, after <services> insert <and young persons’ services>

Siobhan McMahon

139 In section 9, page 8, line 1, after <children> insert <and young persons>

John Wilson

140 In section 9, page 8, line 6, leave out <most efficient> and insert <best>

Siobhan McMahon

141 In section 9, page 8, line 6, at end insert—

<( ) that young persons’ transitions, on attaining the age of 18, from children’s services to young persons’ services are planned sufficiently well in advance,>

Siobhan McMahon

142 In section 9, page 8, line 9, after <children> insert <and young persons>

Section 10

Siobhan McMahon

143 In section 10, page 8, line 12, after <children’s> insert <and young persons’>
Aileen Campbell
59  In section 10, page 8, line 12, leave out <each> and insert <the>

Siobhan McMahon
144 In section 10, page 8, line 16, after <children’s> insert <and young persons’>

Siobhan McMahon
145 In section 10, page 8, line 26, after first <service> insert <, young persons’ service>

Aileen Campbell
60  In section 10, page 8, line 27, leave out <any> and insert <the>

Siobhan McMahon
146 In section 10, page 8, line 29, after first <service> insert <, a young persons’ service>

Siobhan McMahon
147 In section 10, page 8, line 34, after <children’s> insert <and young persons’>

Aileen Campbell
61  In section 10, page 8, line 37, leave out <each> and insert <the>

Siobhan McMahon
148 In section 10, page 8, line 38, after <children’s> insert <and young persons’>

Siobhan McMahon
149 In section 10, page 8, line 40, after <children’s> insert <and young persons’>

Aileen Campbell
62  In section 10, page 8, line 41, leave out <each> and insert <the>

Aileen Campbell
63  In section 10, page 9, line 4, leave out <each> and insert <the>

Section 11

Aileen Campbell
64  In section 11, page 9, line 12, leave out <each> and insert <the>

Siobhan McMahon
150 In section 11, page 9, line 13, after <children’s> insert <and young persons’>
Section 12

Siobhan McMahon
154 In section 12, page 9, line 22, after <children’s> insert <and young persons’>

Aileen Campbell
65 In section 12, page 9, line 27, leave out <each> and insert <the>

Siobhan McMahon
155 In section 12, page 9, line 23, after <services> insert <, young persons’ services>

Aileen Campbell
66 In section 13, page 10, line 2, leave out second <each> and insert <the>

Siobhan McMahon
157 In section 13, page 10, line 5, after first <services> insert <, young persons’ services>

Siobhan McMahon
158 In section 13, page 10, line 6, after <children’s> insert <and young persons’>

Siobhan McMahon
159 In section 13, page 10, line 9, after <children> insert <and young persons>

Section 14

Aileen Campbell
67 In section 14, page 10, line 16, leave out <each> and insert <the>
Siobhan McMahon
160 In section 14, page 10, line 20, after <service> insert <, a young persons’ service>

Section 15

Aileen Campbell
68 In section 15, page 10, line 32, leave out <each> and insert <the>

Aileen Campbell
69 In section 15, page 10, line 34, leave out from second <the> to end of line 35 and insert—
<(  ) any person to which it relates, and
(  ) such other persons as they consider appropriate.>

Section 16

Aileen Campbell
70 In section 16, page 11, line 6, leave out <each> and insert <the>

Aileen Campbell
71 In section 16, page 11, line 8, leave out from second <the> to end of line 9 and insert—
<(  ) any person to which it relates, and
(  ) such other persons as they consider appropriate.>

Section 17

Aileen Campbell
72 In section 17, page 11, line 11, leave out <each> and insert <the>

Aileen Campbell
73 In section 17, page 11, line 22, leave out <any> and insert <the>

Aileen Campbell
74 In section 17, page 11, line 30, leave out <boards> and insert <board>

Section 18

Siobhan McMahon
161 In section 18, page 11, line 37, after <children’s> insert <and young persons’>
Section 19

Liz Smith
1 In section 19, page 12, line 7, leave out <or young person>

Liz Smith
2 In section 19, page 12, line 19, leave out <or young person>

Liz Smith
3 In section 19, page 12, line 21, leave out <subject to subsection (5A),>

Liz Smith
4 In section 19, page 12, line 23, leave out <or young person>

Liz Smith
5 In section 19, page 12, line 24, leave out <or young person>

Liz Smith
6 In section 19, page 12, line 25, leave out <or young person>

Liz Smith
7 In section 19, page 12, line 26, leave out first <or young person>

Liz Smith
8 In section 19, page 12, line 26, leave out second <or young person>

Liz Smith
9 In section 19, page 12, line 28, leave out <or young person>

Liz Smith
10 In section 19, page 12, line 31, leave out <or young person>

Liz Smith
11 In section 19, page 12, line 32, leave out subsection (5A)

Liz Smith
162 In section 19, page 12, line 34, at end insert—

<(5B) A named person may exercise the functions mentioned in subsection (5) only if the exercise of the functions is necessary—

(a) in the interests of public safety,
(b) for the prevention of crime or disorder,
(c) for the protection of the wellbeing of the child or young person in respect of
   whom the functions are proposed to be exercised, or
(d) for the protection of the rights or freedoms of others.

Liz Smith

162A As an amendment to amendment 162, line 6, leave out <or young person>

Section 21

Liz Smith

12 In section 21, page 13, line 20, leave out <or (3)>

Liz Smith

13 In section 21, page 13, leave out lines 27 to 36

Liz Smith

14 In section 21, page 13, line 37, leave out subsection (3)

Liz Smith

15 In section 21, page 14, line 7, leave out subsection (6)

Section 22

Liz Smith

16 Leave out section 22

Section 23

Liz Smith

17 In section 23, page 14, line 23, leave out <or young person>

Liz Smith

18 In section 23, page 14, line 27, leave out <or young person>

Liz Smith

19 In section 23, page 14, line 29, leave out <or young person>

Liz Smith

20 In section 23, page 14, line 31, leave out <or young person>
In section 23, page 14, line 32, leave out <or young person>

In section 23, page 15, line 1, leave out <or young person>

In section 23, page 15, line 8, leave out <or young person>

In section 23, page 15, line 13, leave out <or young person>

After section 23

After section 23, insert—

<Notification that named person functions are to be exercised>

(1) A service provider must, as soon as reasonably practicable after it decides that one or more of the conditions mentioned in section 19(5B) for the exercise of the named person functions is met in relation to a child or young person, give the child or young person, and the parents of the child or young person, notice in writing of that fact.

(2) A notice under subsection (1) must—

(a) state—

(i) in relation to each condition mentioned in section 19(5B) which the service provider considers is met, the service provider’s reasons for so considering,

(ii) when it intends to start exercising the named person functions in relation to the child or young person, and

(iii) how it intends to exercise those functions, and

(b) identify the person who is to be the named person for the child or young person and provide details of how that person may be contacted.

(3) A person who receives a notice under subsection (1) may appeal against the service provider’s decision that one or more of the conditions mentioned in section 19(5B) is met in relation to the child or young person to the sheriff.>

As an amendment to amendment 163, line 5, leave out first <or young person>

As an amendment to amendment 163, line 5, leave out second <or young person>
Liz Smith
163C As an amendment to amendment 163, line 6, leave out <or young person>

Liz Smith
163D* As an amendment to amendment 163, line 12, leave out <or young person>

Liz Smith
163E* As an amendment to amendment 163, line 14, leave out <or young person>

Liz Smith
163F* As an amendment to amendment 163, line 18, leave out <or young person>

Section 24

Liz Smith
164 In section 24, page 15, line 23, after <exercised> insert <(in cases where they may be exercised)>

Liz Smith
25 In section 24, page 15, line 27, leave out first <or young person>

Liz Smith
26 In section 24, page 15, line 27, leave out second <or young person>

Liz Smith
27 In section 24, page 15, line 28, leave out <or young person>

Liz Smith
28 In section 24, page 15, line 29, leave out <or young person>

Liz Smith
29 In section 24, page 15, line 31, leave out <or young person>

Section 25

Liz Smith
30 In section 25, page 15, line 34, leave out <or young person>

Liz Smith
31 In section 25, page 15, line 36, leave out <or young person>
Section 26

Liz Smith
32 In section 26, page 16, line 7, leave out <or young person>

Liz Smith
33 In section 26, page 16, line 11, leave out <or young person>

Liz Smith
34 In section 26, page 16, line 13, leave out <or young person>

Liz Smith
35 In section 26, page 16, line 16, leave out <or young person>

Liz Smith
36 In section 26, page 16, line 21, leave out <or young person>

Liam McArthur
165 In section 26, page 16, line 27, after <practicable> insert—

<(a)> 

Liz Smith
37 In section 26, page 16, line 28, leave out <or young person>

Liam McArthur
166 In section 26, page 16, line 28, at end insert—

<(b) where the information to be provided is confidential, seek to obtain informed and explicit consent—

(i) if the information holder considers that the child has capacity to give informed consent, from the child or young person, or

(ii) if the information holder does not consider that the child has such capacity, from any person with parental responsibilities in respect of the child, unless the information holder considers that to seek such consent would be likely to adversely affect the wellbeing of the child or young person.>

Liam McArthur
167 In section 26, page 16, line 28, at end insert—

<(c) In the event that consent under subsection (4A)(b) cannot be obtained, the information holder should proceed in accordance with the terms of any guidance issued under section 28.>
Liam McArthur

168* In section 26, page 16, line 29, leave out <(4A)> and insert <(4A)(a) or seeking to obtain the informed and explicit consent of a child under subsection (4A)(b)>

Liz Smith

38 In section 26, page 16, line 33, leave out <or young person>

Liz Smith

39 In section 26, page 16, line 35, leave out <or young person>

Liam McArthur

169 In section 26, page 17, line 1, leave out subsection (8)

Section 28

Liam McArthur

170 In section 28, page 17, line 20, at end insert—

<(... Guidance issued under subsection (1) must include guidance on how an information holder should proceed with the sharing of confidential information under section 26 in the event that consent under section 26(4A)(b) cannot be obtained.)>

Aileen Campbell

75 In section 28, page 17, line 21, leave out from <any> to end of line 22 and insert—

<(... any person to which it relates, and
(... such other persons as they consider appropriate.)>

Section 29

Aileen Campbell

76 In section 29, page 17, line 31, leave out from second <the> to end of line 32 and insert—

<(... any person to which it relates, and
(... such other persons as they consider appropriate.)>

After section 29

Aileen Campbell

101 After section 29, insert—

<Complaints in relation to Part 4

(1) The Scottish Ministers may by order make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part.

16
The provision which may be made under subsection (1) includes provision about—
(a) matters which may, or may not, be the subject of a complaint,
(b) who may make a complaint,
(c) how a complaint may be made,
(d) time limits for making complaints,
(e) steps which require to be taken before a complaint may be made,
(f) who is to consider a complaint,
(g) the procedure for the consideration of a complaint,
(h) the obtaining of information for the purpose of considering a complaint,
(i) the keeping of records in relation to complaints or their consideration,
(j) the making of findings, and reporting, following the consideration of a complaint.

An order under subsection (1) may modify any enactment.

Aileen Campbell

77 After section 29, insert—

<Relevant authorities

(1) The persons listed, or within a description listed, in schedule 2, are “relevant authorities” for the purposes of this Part (subject to subsection (3)).

(2) The Scottish Ministers may by order modify schedule 2 by—

(a) adding a person or description of persons,
(b) removing an entry listed in it, or
(c) varying an entry listed in it.

(3) The following persons are not relevant authorities for the purposes of section 29—

(a) the Commissioner for Children and Young People in Scotland,
(b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

(4) An order under subsection (2) which adds a person, or a description of persons, to schedule 2, may modify this section so as to provide that the person is not a relevant authority, or the persons within the description are not relevant authorities, for the purposes of section 29.>

Liam McArthur

77A* As an amendment to amendment 77, leave out line 10

Section 30

Liz Smith

40 In section 30, page 17, line 34, at end insert—

<“child” means a person who has not attained the age of 16 years,>
In section 30, page 17, leave out lines 35 and 36

In section 30, page 18, leave out lines 16 to 21

In section 30, page 18, leave out lines 23 and 24

In section 30, page 18, leave out lines 25 and 26

In section 30, page 18, leave out lines 27 and 28

In section 30, page 18, leave out line 38

In section 30, page 19, leave out lines 4 and 5

In section 30, page 19, leave out lines 6 and 7

In section 30, page 19, leave out line 8

In section 30, page 19, line 9, leave out subsection (2)

Section 38

In section 38, page 24, line 23, leave out <person listed, or within a description listed, in schedule 2A> and insert <listed authority>

In section 38, page 24, line 28, leave out subsection (3)

In section 38, page 24, line 39, leave out subsection (6)
Section 39

Aileen Campbell

82 In section 39, page 25, line 9, leave out <person (other than the Scottish Ministers) listed, or within a description listed, in schedule 2A> and insert <listed authority>

Aileen Campbell

83 In section 39, page 25, line 11, leave out from <any> to end of line 12 and insert—
<(  ) any person to which it relates, and
(  ) such other persons as they consider appropriate.>

Section 40

Aileen Campbell

84 In section 40, page 25, line 19, leave out <person (other than the Scottish Ministers) listed, or within a description listed, in schedule 2A> and insert <listed authority>

Aileen Campbell

85 In section 40, page 25, line 21, leave out from second <the> to end of line 22 and insert—
<(  ) any person to which it relates, and
(  ) such other persons as they consider appropriate.>

After section 40

Aileen Campbell

102 After section 40, insert—

<Complaints in relation to Part 5

(1) The Scottish Ministers may by order make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part.

(2) The provision which may be made under subsection (1) includes provision about—
(a) matters which may, or may not, be the subject of a complaint,
(b) who may make a complaint,
(c) how a complaint may be made,
(d) time limits for making complaints,
(e) steps which require to be taken before a complaint may be made,
(f) who is to consider a complaint,
(g) the procedure for the consideration of a complaint,
(h) the obtaining of information for the purpose of considering a complaint,
(i) the keeping of records in relation to complaints or their consideration,
(j) the making of findings, and reporting, following the consideration of a complaint.

(3) An order under subsection (1) may modify any enactment.

Aileen Campbell

86 After section 40, insert—

<Listed authorities

(1) The persons listed, or within a description listed, in schedule 2A, are “listed authorities” for the purposes of this Part (subject to subsections (3) and (4)).

(2) The Scottish Ministers may by order modify schedule 2A by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) varying an entry listed in it.

(3) The Scottish Ministers are not a listed authority for the purposes of sections 39 and 40.

(4) The following persons are not listed authorities for the purposes of section 40—

(a) the Commissioner for Children and Young People in Scotland,

(b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

(5) An order under subsection (2) which adds a person, or a description of persons, to schedule 2A, may modify this section so as to provide that the person is not a listed authority, or the persons within the description are not listed authorities, for the purposes of section 40.>

Liam McArthur

86A* As an amendment to amendment 86, leave out line 11

Section 43

Liz Smith

51 In section 43, page 26, line 16, leave out from <under> to end of line 22 and insert <of pre-school age and has not commenced attendance at a primary school (other than at a nursery class in such a school), or

(b) is under pre-school age but falls within subsection (3).

(2A) A child is of pre-school age from the school commencement date in the year in which, on the last day of February, the child was aged (or turned) 2 until the school commencement date two years later.

(2B) The Scottish Ministers may by order specify that a child—

(a) who—

(i) is under school age on the second school commencement date mentioned in subsection (2A),
(ii) is not commencing attendance at a primary school on that date (other than
commencing or continuing attendance at a nursery class in such a school), and

(iii) meets such other criteria as may be specified in the order,
is, until the next school commencement date, to be regarded as an eligible pre-
school child, or

(b) who is within such age range below pre-school age, or is of such other
description, as may be specified in the order is to be regarded as an eligible pre-
school child.

Aileen Campbell
103 In section 43, page 26, line 23, at beginning insert <Subject to subsection (3A),>

Neil Bibby
172 In section 43, page 26, line 23, after <and> insert—

   <(aa) the child>

Aileen Campbell
104 In section 43, page 26, line 26, at end insert <or a child falling within section 64(3)(f)>

Neil Bibby
173 In section 43, page 26, line 26, at end insert <,

   (ab) the child—

      (i) would, if the child was a pupil at a school, be entitled by virtue of
      subsection (3)(a) of section 53 of the 1980 Act to be provided with a school
      lunch free of charge by virtue of subsection (3AA) of that section, or

      (ii) has at any time since the child’s second birthday fallen within sub-
      paragraph (i).>

Aileen Campbell
105 In section 43, page 26, line 26, at end insert—

   <(3A) The Scottish Ministers may by order provide that a child aged 4 or over does not (or is
   no longer to) fall within subsection (3) in such circumstances as may be specified in the
   order.>

Neil Bibby
174 In section 43, page 26, line 26, at end insert—

   <(3B) The Scottish Ministers must, no later than 30 April 2015, lay before the Scottish
   Parliament an order under subsection (2)(c)(ii) which secures the outcome specified in
   subsection (3C).

   (3C) That outcome is that, with effect from a date in August 2015 specified in the order,
every child within the description in subsection (3D) is an eligible pre-school child.
(3D) That description is a child—

(a) who is under school age but aged 2 or over,
(b) who has not commenced attendance at a primary school (other than at a nursery class in such a school), and
(c) who—

(i) would, if the child was a pupil at a school, be entitled by virtue of subsection (3)(a) of section 53 of the 1980 Act to be provided with a school lunch free of charge by virtue of subsection (3AA) of that section, or

(ii) has at any time since the child’s second birthday fallen within sub-paragraph (i).>

**Liz Smith**

52 In section 43, page 26, line 27, leave out <(2)(c)(ii) may provide that a child is to be> and insert <(2B) may provide that a child is to be regarded as>

**Liz Smith**

53 In section 43, page 26, line 29, at end insert—

<( ) In subsection (2A), “school commencement date” means the date fixed under section 32(1) of the 1980 Act by the local authority for the area in which the child resides.>

**Before section 49**

**Neil Bibby**

175 Before section 49B, insert—

<Duty to provide out of school care>

(1) Section 27 of the 1995 Act is amended as follows.

(2) For subsection (3) substitute—

“(3) Each local authority must secure that the mandatory amount of—

(a) care outside school hours, and

(b) care during school holidays,

is made available to children within their area who are in attendance at a school.

(3ZA) The “mandatory amount” for the purposes of subsection (3) is such number of hours, to be provided over such period of time and by such methods, as the Scottish Ministers may by order specify in relation to each of paragraph (a) and (b) of that subsection.

(3ZB) A local authority may secure that—

(a) care outside school hours,

(b) care during school holidays,

other than that which they are required to secure under subsection (3) is made available to children within their area who are in attendance at a school.
(3ZC) An order under subsection (3ZA)—
    (a) may make different provision for different purposes (and may in
        particular specify different mandatory amounts in relation to different
        descriptions of children specified in the order),
        (b) is subject to the affirmative procedure.

(3ZD) Before laying a draft order under subsection (3ZA) before the Scottish
    Parliament, the Scottish Ministers must consult—
    (a) each local authority,
    (b) such other persons as they consider appropriate.

(3ZE) For the purposes of such consultation, the Scottish Ministers must—
    (a) lay a copy of the proposed draft order before the Parliament,
    (b) publish the proposed draft order in such manner as they consider
        appropriate, and
    (c) have regard to any representations about the proposed draft order that are
        made to them within 60 days of the date on which the copy of the
        proposed draft order is laid before the Parliament under paragraph (a).

(3ZF) In calculating any period of 60 days for the purposes of subsection (3ZE)(c),
    no account is to be taken of any time during which the Parliament is dissolved
    or is in recess for more than 4 days.

(3ZG) When laying a draft order under subsection (3ZA) before the Parliament, the
    Scottish Ministers must also lay before the Scottish Parliament an explanatory
    document giving details of—
    (a) the consultation carried out under subsection (3ZD),
    (b) any representations received as a result of the consultation, and
    (c) the changes (if any) made to the proposed draft order as a result of those
        representations.”.

Section 50

Aileen Campbell
87 In section 50, page 30, line 5, leave out <subsection (3)> and insert <subsections (3) and (3A)>

Liam McArthur
176 In section 50, page 30, leave out line 12

Section 57

Aileen Campbell
88 In section 57, page 32, line 35, leave out <they relate> and insert <it relates>
After section 59

Jayne Baxter

177*  After section 59, insert—

</PART>

Sibling contact: duty of local authority to child looked after by that authority

(1)  The 1995 Act is amended as follows.

(2)  In section 17—

(a) in subsection (1)(c)—

(i) after first “to” insert “—

(ii) after first “him” insert—

“(ii) promote and facilitate, on a regular basis, personal relations and
direct contact between the child and any siblings of the child.”,

(iii) the text after sub-paragraph (ii) becomes full-out text to paragraph (c) as a
whole,

(b) after subsection (7), insert—

“(8) Any reference in this section to a sibling includes a sibling by virtue of
adoption, marriage or civil partnership, a sibling of the half blood and any
other person the child regards as the child’s sibling and with whom the child
has an established family life.”.

Section 60

Aileen Campbell

89  In section 60, page 34, line 27, at end insert—

<( ) in the opening words, for “Subject to subsection (3) below, a” substitute
“A”,>

Section 60A

Aileen Campbell

178  In section 60A, page 36, line 14, at end insert—

<( ) Before making an order under this section, the Scottish Ministers must consult—

(a) each local authority, and

(b) such other persons as they consider appropriate.>
Section 64

Jayne Baxter

180 In section 64, page 38, line 11, after <is> insert—

<(a) in the case of a person who is applying for a kinship care order in relation to an eligible child who has not attained the age of 16 years or who falls within paragraph (c) or (e) of subsection (3)—

5 (i) the provision of the minimum rate of financial support, and
(ii) the provision of additional assistance of such description as the Scottish Ministers may by order specify,
(b) in any other case, the provision of assistance of such description as the Scottish Ministers may by order specify.

10 (2A) The Scottish Ministers must by order specify the minimum rate of financial support for the purposes of subsection (2)(a)(i).
(2B) An order under subsection (2A)—
(a) must provide for the rate to be the same for all local authorities, but
(b) may provide for the rate to increase with the age of the child.>

Jayne Baxter

180A As an amendment to amendment 180, line 2, leave out <an eligible> and insert <a>

Jayne Baxter

180B* As an amendment to amendment 180, line 4, leave out <(c) or (e)> insert <(aa), (c), (ca), (e) or (ea)>

Jayne Baxter

181 In section 64, page 38, line 15, leave out <an eligible> and insert <a>

Jayne Baxter

202* In section 64, page 38, line 15, at end insert—

<(aa) a person who is applying for a kinship care order in relation to an eligible child who—

5 (i) has attained the age of 16 but not the age of 18, and
(ii) is cared for by the person applying for the order,>

Jayne Baxter

202A* As an amendment to amendment 202, line 2, leave out <an eligible> and insert <a>

Jayne Baxter

182 In section 64, page 38, line 16, leave out <an eligible> and insert <a>
Jayne Baxter

183 In section 64, page 38, line 18, leave out <an eligible> and insert <a>

Jayne Baxter

203* In section 64, page 38, line 19, at end insert——

<(ca) a person——

(i) who is caring for an eligible child who has attained the age of 16 but not the age of 18, and

(ii) in whose favour a kinship care order in relation to that child subsists or subsisted immediately prior to the child attaining the age of 16,>

Jayne Baxter

203A* As an amendment to amendment 203, line 3, leave out <an eligible> and insert <a>

Jayne Baxter

184 In section 64, page 38, line 22, leave out from <and> to end of line 23

Jayne Baxter

185 In section 64, page 38, line 25, leave out <an eligible> and insert <a>

Jayne Baxter

204* In section 64, page 38, line 26, at end insert——

<(ea) a person——

(i) who is caring for an eligible child who has attained the age of 16 but not the age of 18, and

(ii) who is or was, immediately prior to the child attaining the age of 16, a guardian of that child by virtue of an appointment under section 7 of the 1995 Act,

(but this is subject to subject to subsection (3A)),>

Jayne Baxter

204A* As an amendment to amendment 204, line 3, leave out <an eligible> and insert <a>

Jayne Baxter

186 In section 64, page 38, line 27, leave out <an eligible> and insert <a>

Jayne Baxter

205* In section 64, page 38, line 29, leave out <Subsection (3)(e) does> and insert <Paragraphs (e) and (ea) of subsection (3) do>
In section 64, page 38, line 30, leave out subsection (4)

In section 66, page 39, line 17, after <specified> insert <by virtue of section 64(2)(a)(ii) or (b)>

In section 66, page 39, line 25, after <assistance> insert <specified by virtue of section 64(2)(a)(ii) or (b)>

In section 66, page 39, leave out lines 26 to 29

After section 66

After section 66, insert—

<Kinship care assistance: allowances for care

In section 110 of the Adoption and Children (Scotland) Act 2007—

(a) in subsection (1) at the beginning insert “Subject to subsection (1A),”,

(b) after subsection (1) insert—

“(1A) The Scottish Ministers must make regulations under subsection (1) in respect of a child who falls within subsection (2) and is in the care of a qualifying person.,”

(c) in subsection (3) at the beginning insert “Subject to subsection (3A),”,

(d) after subsection (3) insert—

“(3A) Regulations under subsection (1) where subsection (1A) applies—

(a) must specify the minimum rate of financial support to be provided to a qualifying person,

(b) must provide for that rate to be the same for all local authorities, but

(c) may provide for the rate to increase with the age of the child.”,

(e) after subsection (6) insert—

“(6A) For the purposes of this section “qualifying person” has the same meaning as in Part 10 of the Children and Young People (Scotland) Act 2014.”>
After section 68C

Liam McArthur

After section 68C, insert—

<Correction of proposal paper>

(1) Section 5 of the 2010 Act (correction of the proposal paper) is amended in accordance with subsections (2) to (4).

(2) In subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) after that paragraph insert—

“(aa) inform the notifier of its determination under paragraph (a), and the reasons for that determination,”,

(c) in paragraph (b), for “subsection (3)” substitute “subsection (4) and of the reasons why it is, or is not, taking such action”,

(d) after paragraph (b) insert “, and

(e) invite the notifier to make representations to the authority if the notifier disagrees with the authority’s determination under paragraph (a) or its decision as to whether to take action under subsection (4).”.

(3) After that subsection insert—

“(2A) Where the notifier makes representations to the authority in pursuance of subsection (2)(c), the authority may—

(a) make a fresh determination under subsection (2)(a),

(b) make a fresh decision as to whether to take action under subsection (4).

(2B) The authority must inform the notifier if it takes a step mentioned in subsection (2A)(a) or (b).”.

(4) For subsection (3) substitute—

“(3) Subsection (4) applies—

(a) where, in a situation mentioned in subsection (1)(a), the education authority determines that—

(i) relevant information has (in its opinion) been omitted from the proposal paper, or

(ii) there is (in fact) an inaccuracy in the proposal paper,

(b) in a situation mentioned in subsection (1)(b).

(4) Where—

(a) the information that has been omitted or, as the case may be, the inaccuracy relates to a material consideration relevant to the education authority’s decision as to implementation of the proposal, it must take action as mentioned in subsection (5)(a) or (b),

(b) that information or inaccuracy does not relate to such a material consideration, the authority may—

(i) take action as mentioned in subsection (5)(a) or (b), or
(ii) take no further action (except by virtue of section 10(3)).

(5) The action referred to in subsection (4)(a) and (b)(i) is—

(a) to take the following steps—

(i) publish a corrected proposal paper,

(ii) give revised notice in accordance with section 6, and

(iii) send a copy of the corrected paper to HMIE,

(b) to issue a notice to the relevant consultees and HMIE—

(i) providing the omitted information or, as the case may be, correcting the inaccuracy, and

(ii) if the authority considers it appropriate, extending the consultation period by such period as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction.

(6) Where the education authority issues a notice mentioned in subsection (5)(b) after the end of the consultation period—

(a) the notice may, instead of extending the consultation period, specify such further period during which representations may be made on the proposal as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction, and

(b) any such further period is to be treated as part of the consultation period for the purposes of sections 8, 9 and 10.”.

(5) In section 10 of the 2010 Act (content of the consultation report), in subsection (3)—

(a) in the opening text, after “applies,” insert “including any alleged omission or inaccuracy notified to the education authority,”,

(b) in paragraph (a), after “inaccuracy” insert “, or (as the case may be) the alleged omission or inaccuracy,”,

(c) in paragraph (b), after “inaccuracy” insert “, or (as the case may be) the alleged omission or inaccuracy,”,

(d) after that paragraph insert—

“(c) any representations made to the authority in pursuance of section 5(2)(c).”.

Section 68D

Michael Russell

106 In section 68D, page 43, line 31, after <closure> insert <proposals>

Michael Russell

107 In section 68D, page 44, line 1, after <that> insert <such>

Liz Smith

108 In section 68D, page 44, line 3, at end insert—
<(3) The authority must publish on its website notice of—

(a) its decision as to implementation of the proposal, and

(b) where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).”.

Michael Russell

109 In section 68D, page 45, line 8, after <explain> insert <the reasons>

Michael Russell

110 In section 68D, page 45, line 39, at end insert—

<( ) whether and, if so, the reasons why the authority considers that implementation of the proposal (wholly or partly) would be the most appropriate response to the reasons for the proposal.”.>

Section 68E

Michael Russell

111 In section 68E, page 46, line 7, at end insert—

<( ) in subsection (2), after paragraph (b)(ii) insert—

“(iii) where the decision relates to a rural school, the notice published under section 11A(3).”,

( ) after that subsection insert—

“(2A) At the same time as it notifies the Scottish Ministers of the decision under subsection (2)(a), the education authority must publish on its website notice of—

(a) the fact that the Scottish Ministers have been so notified, and

(b) the opportunity for making representations to the Scottish Ministers in connection with subsection (4), including the date on which the 3 week period referred to in that subsection ends.”.>

Section 71A

Adam Ingram

192 After section 71A, insert—

<Provision of school meals

Provision of free school lunches

(1) Section 53 of the 1980 Act is amended as follows.

(2) Subsection (2) is repealed.

(3) In subsection (2A), after “lunches” insert “which the authority are required to provide by virtue of subsection (3)”.>
In subsection (2C)(b), the words “(other than in the middle of the day)” are omitted.

In subsection (2D), the words “(2) or” are omitted.

In subsection (3), after paragraph (b) insert—

“(c) who is in such yearly stage of primary or secondary education, or is of such other description, as the Scottish Ministers may by regulations prescribe.”.

After section 71B

Liam McArthur

193* After section 71B, insert—

<Pre-school children with additional support needs

General functions of education authority in relation to children with additional support needs

In section 5 of the Education (Additional Support for Learning) (Scotland) Act 2004—

(a) in subsection (2)—

(i) after first “have” insert “additional support”,

(ii) omit “of the type mentioned in subsection (3)(c)”,

(b) in subsection (3)—

(i) insert the word “and” immediately after paragraph (a),

(ii) omit the word “and” immediately following paragraph (b),

(iii) omit paragraph (c).

Siobhan McMahon

179* After section 71B, insert—

<Mentoring scheme

Mentoring scheme for children and young people with a disability

(1) The Scottish Ministers may by order make provision for a mentoring scheme for eligible children and young people with a disability to support such children and young people in their transition to adulthood.

(2) An order under subsection (1) must include provision about—

(a) the criteria which will be applied in determining eligibility for the scheme,

(b) the advice, assistance and support to be provided under the scheme,

(c) the qualifications and experience required of persons to provide such advice, assistance and support under the scheme,

(d) such other matters about the establishment and provision of the scheme as the Scottish Ministers consider appropriate.

(3) For the purposes of this section, a child or young person is disabled if they have a disability within the meaning of section 1 of the Disability Discrimination Act 1995.
After section 71B, insert—

National speech, language and communication strategy for children and young people

(1) The Scottish Ministers must, no later than one year after this section comes into force, lay a national speech, language and communication strategy for children and young people before the Scottish Parliament.

(2) The strategy must, in particular, set out—
   (a) the Scottish Ministers’ objectives for speech, language and communication for children and young people,
   (b) their proposals for meeting those objectives,
   (c) the timescales over which those proposals and policies are expected to take effect.

(3) Before laying the strategy before the Parliament, the Scottish Ministers must publish a draft strategy and consult with—
   (a) children and young people, including children and young people with speech, language and communication needs,
   (b) the parents of children and young people with speech, language and communication needs,
   (c) persons working for, and on behalf of, children and young people, including children and young people with speech, language and communication needs,
   (d) the providers of services to children with speech, language and communication needs in relation to those needs,
   (e) such others persons as they consider appropriate.

(4) The strategy must be accompanied by a report setting out—
   (a) the consultation process undertaken in order to comply with subsection (3), and
   (b) the ways in which the views expressed during that process have been taken account of in finalising the strategy (or stating that no account has been taken of such views).

(5) The Scottish Ministers must, no later than—
   (a) 3 years after laying a strategy before the Parliament under subsection (1), and
   (b) the end of every subsequent period of 3 years,
lay a revised strategy before the Parliament; and subsections (2) to (4) apply to a revised strategy as they apply to a strategy laid under subsection (1).

(6) The Scottish Ministers must, when laying a revised strategy before the Parliament, also lay before the Parliament a report evaluating the effectiveness of the strategy immediately preceding that revised strategy.
Section 75

Liz Smith

49 In section 75, page 59, line 12, after <means> insert <(except in Part 4)>

Section 77

Jayne Baxter

195 In section 77, page 59, line 35, at beginning insert <except in the case of an order under section 64(2A),>

Aileen Campbell

112 In section 77, page 60, line 6, at end insert—

   <section (Complaints in relation to Part 4)>(1),>

Aileen Campbell

90 In section 77, page 60, line 7, leave out <30(2)> and insert <(Relevant authorities)(2)>

Aileen Campbell

113* In section 77, page 60, line 8, at end insert—

   <section (Complaints in relation to Part 5)>(1),>

Aileen Campbell

91 In section 77, page 60, line 9, leave out <38(6)> and insert <(Listed authorities)(2)>

Liz Smith

54 In section 77, page 60, line 10, leave out <43(2)(c)(ii)> and insert <43(2B)>

Aileen Campbell

114 In section 77, page 60, line 10, at end insert—

   <section 43(3A),>

Siobhan McMahon

196* In section 77, page 60, line 17, at end insert—

   <section (Mentoring scheme for children and young people with a disability)>(1)>

Section 79

Aileen Campbell

115 In section 79, page 61, line 9, at end insert—
Subsections (2) to (4) of section 43 also come into force on the day after Royal Assent.

Neil Bibby

115A As an amendment to amendment 115, line 2, after <(4)> insert <(other than subsection (3)(ab))>

Neil Bibby

197 In section 79, page 61, line 11, at end insert—

<( ) The day (or days) appointed for section 43(3)(ab) to come into force must be in or before August 2015.>

Schedule 2

Liz Smith

50 In schedule 2, page 62, line 26, at end insert—

<The Scottish Ministers>

Liam McArthur

198 In schedule 2, page 63, line 3, leave out paragraph 13

Schedule 2A

Liam McArthur

199 In schedule 2A, page 63, line 21, leave out paragraph 13

Schedule 3

Liam McArthur

200* In schedule 3, page 64, line 11, leave out paragraph 20

Schedule 4

Adam Ingram

201 In schedule 4, page 65, line 7, at end insert—

<( ) In section 53A(2), for “53(3)” substitute “53”.

( ) In section 53B—

(a) in subsection (1)—

(i) after “applies” insert “, subject to subsection (1A),”,

(ii) for “53(3)” substitute “53”,

(b) after subsection (1), insert—

“(1A) This section does not apply in such circumstances as the Scottish Ministers may by regulations prescribe.”,
(c) in subsection (5)(b), for “53(3)” substitute “53”.

( ) In section 133—

(a) in subsection (2), for “(2ZA)” substitute “(2YA)”,

(b) after subsection (2), insert—

“(2YA)Subsection (2) above shall not apply to any regulations under section 53(3)(c) of this Act; and such regulations shall be subject to the affirmative procedure.”.
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated during Stage 3 proceedings, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Duties of Scottish Ministers in relation to the rights of children**
116, 117, 118, 93, 119, 120, 121, 122, 123, 124, 125, 126

**Group 2: Duties in relation to Article 7 of UN Convention on the Rights of Persons with Disabilities**
92, 94, 95, 96, 97, 98, 99, 100

Debate to end no later than 40 minutes after proceedings begin

**Group 3: Meaning of children’s service: inclusion of families of children with needs of a particular type**
127

**Group 4: Services provided to certain young people: inclusion in children’s services planning and transition from children’s services**

**Group 5: Children’s services planning: meaning of “relevant health board”**
55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 72, 73, 74

Debate to end no later than 1 hour 10 minutes after proceedings begin
Group 6: Aims of children’s services plans: use of available resources
140

Group 7: Requirement on the Scottish Ministers to consult particular persons before issuing guidance or directions
69, 71, 75, 76, 83, 85, 88

Group 8: Provision of named person service: persons to whom service is to be provided
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 162, 162A, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 163, 163A, 163B, 163C, 163D, 163E, 163F, 164, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

Debate to end no later than 1 hour 45 minutes after proceedings begin

Group 9: Information sharing: requirement to obtain informed consent where information concerned is confidential
165, 166, 167, 168, 169, 170, 171

Group 10: Named person and child’s plans functions: complaints procedure
101, 102, 112, 113

Group 11: Meaning of relevant and listed authorities etc.
77, 77A, 78, 79, 80, 81, 82, 84, 86, 86A, 87, 176, 90, 91, 198, 199, 200

Debate to end no later than 2 hours 20 minutes after proceedings begin

Group 12: Provision of early learning and childcare

Group 13: Duty to provide a mandatory amount of out of school care
175

Debate to end no later than 3 hours 5 minutes after proceedings begin

Group 14: Sibling contact: duty on local authority in relation to looked after children
177

Group 15: Aftercare and continuing care: minor amendments
89, 178

Group 16: Kinship care assistance: eligibility and assistance to be provided
180, 180A, 180B, 181, 202, 202A, 182, 183, 203, 203A, 184, 185, 204, 204A, 186, 205, 187, 188, 189, 190, 206, 195

Debate to end no later than 3 hours 35 minutes after proceedings begin
Group 17: School closures
191, 106, 107, 108, 109, 110, 111

Group 18: Provision of free school lunches
192, 201

Debate to end no later than 4 hours 15 minutes after proceedings begin

Group 19: Functions of education authority in relation to pre-school children with additional support needs
193

Group 20: National speech, language and communication strategy
194

Debate to end no later than 4 hours 40 minutes after proceedings begin
EXTRACT FROM THE MINUTES OF PROCEEDINGS

Vol. 3, No. 79 Session 4

Meeting of the Parliament

Wednesday 19 February 2014

Note: (DT) signifies a decision taken at Decision Time.

Business Motion: Joe FitzPatrick, on behalf of the Parliamentary Bureau, moved S4M-09071—That the Parliament agrees that, during stage 3 of the Children and Young People (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 and 2: 40 minutes
Groups 3 to 5: 1 hour 10 minutes
Groups 6 to 8: 1 hour 45 minutes
Groups 9 to 11: 2 hours 20 minutes
Groups 12 and 13: 3 hours 5 minutes
Groups 14 to 16: 3 hours 35 minutes
Groups 17 and 18: 4 hours 15 minutes
Groups 19 and 20: 4 hours 40 minutes.

The motion was agreed to.

Children and Young People (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 93, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 101, 77, 78, 79, 80, 81, 82, 83, 84, 85, 102, 86, 103, 104, 105, 87, 88, 89, 178, 191, 106, 107, 108, 109, 110, 111, 112, 90, 113, 91, 114 and 115.

The following amendments were agreed to (by division)—

140 (For 101, Against 19, Abstentions 0)
192 (For 98, Against 15, Abstentions 0)
201 (For 115, Against 0, Abstentions 0)

The following amendments were disagreed to (by division)—

116 (For 36, Against 84, Abstentions 0)
117 (For 55, Against 65, Abstentions 0)
118 (For 56, Against 65, Abstentions 0)
92 (For 42, Against 78, Abstentions 0)
The following amendments were moved and, with the agreement of the Parliament, withdrawn: 177, 193 and 194.

The following amendments were not moved: 119, 94, 120, 95, 122, 96, 97, 99, 100, 129, 131, 132, 133, 134, 135, 136, 137, 138, 139, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 163 (and, as a consequence, 163A, 163B, 163C, 163D, 163E and 163F), 164, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 168, 38, 39, 169, 170, 40, 41, 42, 43, 44, 45, 46, 47, 48, 171, 52, 53, 202A, 182, 183, 203A, 184, 185, 204 (and, as a consequence, 204A), 186, 205, 187, 188, 189, 190, 49, 195, 54, 196, 115A, 197, 50, 198, 199 and 200.

The Deputy Presiding Officer extended the third time-limit under Rule 9.8.4A(c).
The Minister for Parliamentary Business moved a motion without notice under Rule 9.8.5A to move the fourth time limit by up to 30 minutes. The motion was agreed to. As a consequence, subsequent time limits were also moved by 30 minutes.

**Children and Young People (Scotland) Bill - Stage 3:** The Minister for Children and Young People (Aileen Campbell) moved S4M-09050—That the Parliament agrees that the Children and Young People (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 103, Against 0, Abstentions 15).
Point of Order

14:09

Neil Bibby (West Scotland) (Lab): On a point of order, Presiding Officer. This morning, the Finance Committee considered the supplementary financial memorandum to the Children and Young People (Scotland) Bill. During the meeting, members were informed by Scottish Government officials that the Scottish Government is “at this stage ... not in a position to be able to offer estimates” for the capital costs of the bill. That is in direct contravention of rule 9.3.2 of the standing orders, which states that a bill shall be “accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

I understand that the Finance Committee is very concerned about that failure and has written to the minister, asking for an urgent explanation. Presiding Officer, I would welcome your advice on the implications of what is a clear breach of the standing orders by the Scottish Government, what that means for the debate this afternoon and whether this would set a precedent whereby rule 9.3.2 of the standing orders no longer applies.

The Deputy Presiding Officer (Elaine Smith): I thank the member for prior notification of the point of order. I have given the matter consideration and it is clear that, under rule 9.12 of the standing orders of the Parliament, the financial resolution was passed by the Parliament at stage 1 of the bill and a supplementary financial memorandum was lodged, as is required under rule 9.7.8B, as a result of amendments that were agreed to at stage 2. As the member mentioned, supplementary financial memorandums must “set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise”.

I appreciate, from what the member has said, that he has concerns about the information that has been provided in the supplementary financial memorandum to the bill. It is, of course, perfectly legitimate to raise those points in debate. However, it is up to members to decide to what extent they take that into account in taking a position on amendments and the bill. The current rules do not require that the Parliament pass a resolution on a revised financial memorandum.

The member raises an interesting question with the point that he makes. He might like to write to our Standards, Procedures and Public
Appointments Committee, which—as he may know—is currently reviewing the legislative procedures of the Parliament.

That is my answer, under the standing orders at the moment, to the member’s question on the financial resolution. Members may wish to raise those points as matters of debate.

**Children and Young People (Scotland) Bill: Stage 3**

14:14

**The Deputy Presiding Officer (Elaine Smith):** We move to stage 3 proceedings on the Children and Young People (Scotland) Bill. Members should have copies of the bill as amended at stage 2, the marshalled list and the groupings of amendments. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon, and the period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after the group is called. We are very tight for time this afternoon.

**Before section 1**

**The Deputy Presiding Officer:** Group 1 is on duties of Scottish ministers in relation to the rights of children. Amendment 116, in the name of Jean Urquhart, is grouped with amendments 117, 118, 93 and 119 to 126.

**Jean Urquhart (Highlands and Islands) (Ind):** The stated policy intention behind the bill is to contribute to Scotland being the best place for children to grow up, and I applaud that intention. It is vital to the Scotland that we wish to create, which recognises not only the vital contribution that children and young people make to our society and our communities but that, in order for them to make that contribution, they deserve and require our respect, our protection and our nurturing.

I welcome the provisions in part 1 of the bill but, like many organisations and individuals working with and for children in Scotland, I am disappointed that part 1 does not go further. Accepting all the stage 3 amendments would go some way to progress our commitment to children’s rights, and accepting amendment 116 would form a key part of that commitment.

14:15

My amendment seeks to place a duty on Scottish ministers to establish a body within one year of royal assent to examine the case for giving legislative effect to the United Nations Convention on the Rights of the Child. I recognise that the Government has intimated that it believes full incorporation to be unnecessary; I also recognise that the Education and Culture Committee’s stage
I hear what the committee has said about incorporating children’s rights, but why do we need evidence to accept that children have rights that should be upheld and promoted in law in the same way that adults do? The same arguments were not made when the case was made for the adoption of the European convention on human rights, or for extending the Human Rights Act 1998 to apply to devolved matters during the passage of the Scotland Act 1998. If we did not require evidence to apply human rights to our domestic law, why do we need evidence for children to have rights in law?

There has been strong support for such a move from the children’s sector and the human rights sector. Incorporation of the UNCRC was supported by UNICEF, the Scottish Human Rights Commission, Scotland’s Commissioner for Children and Young People, the NSPCC, Families Outside and Together. Amendment 116 has the support of Children 1st, Barnardo’s, Together, YouthLink Scotland, Scotland’s Commissioner for Children and Young People and a number of academics across the legal and sociological disciplines. For such a move to be supported by such a wide range of interested organisations surely suggests that the amendment has merit.

The bill should mark not the end of our journey in the process, but the beginning. Today, we can commit to explore how to incorporate children’s rights into our legislative framework; signal our intent to make our society truly a child-centred one; and recognise children as having rights in their own regard, which all of us should be willing and devoted to pursuing.

Amendment 116 would give Scottish ministers considerable scope to determine how best to achieve that. Setting up a body such as an independent commission to examine the options would make a statement that I hope we can all support. The amendment would not require Scottish ministers or the Parliament to commit to anything other than the establishment of an appropriate body and consideration of its report. In doing that, we would send a clear signal about the importance that we attach to children’s rights and provide a clear message about the seriousness of our commitment to make Scotland the best place to grow up. Therefore, I hope that Scottish ministers and all MSPs, from all political parties and none, will support amendment 116.

I move amendment 116.

Liam McArthur (Orkney Islands) (LD): The bill represents the coming together of two pieces of proposed legislation, one of which is a bill on children’s rights. As Jean Urquhart identified, the Government appears largely to have lost sight of that aspect of what we should be trying to achieve.

The Law Society of Scotland and the Faculty of Advocates said that the bill added little to what was in place and in some respects even diluted children’s rights. Our committee concluded at stage 1 that the duty on ministers was “little more than a restatement of existing obligations.”

Although improvements were introduced at stage 2, the children’s commissioner is clear that “So far the opportunity has been missed to be ambitious for children’s rights and to embed children’s rights in Scotland’s governance and public services.”

My amendments are an attempt to address that position, not just with regard to the bill but with regard to future legislation.

Like others, I did not feel that the case had been made for the full incorporation of the UNCRC, but more can and should be done to incorporate key principles, most notably articles 3 and 12. Tam Baillie proposed that idea in his stage 1 evidence, and he was backed by a wide range of children’s charities. Despite that, the minister and her Scottish National Party colleagues refused to support any of my stage 2 amendments.

Parliament should have a further opportunity to consider the issues and to take a view. My amendments 117 and 118 reflect what we have heard about the need to put children’s rights and interests at the centre of the bill, to make sure that their voices and views are heard, and to give proper effect to the principles that should underpin the bill. I am sad to say that the minister’s amendment 93 will not do that. While I have sympathy with Jean Urquhart’s amendment 116, the important thing is to get substantive and meaningful changes into the bill now.

At stage 2, I sought to beef up the reporting requirements on ministers with regard to the steps taken to comply with the duties that are placed upon them. All my amendments in that regard were rejected. I am pleased that Neil Bibby has taken up the cudgels at stage 3 and I will support his efforts.

I will be interested to hear Alison Johnstone’s comments about the amendments in her name. I am instinctively sympathetic, but it is perhaps unfortunate that she did not lodge amendments with such effect at stage 2, to enable more detailed consideration and, if necessary, refinement.

Amendments 125 and 126 represent an attempt to safeguard children’s rights in the context of future legislation. Amendment 126 repeats an amendment that I lodged at stage 2 and would require a children’s rights impact assessment to be carried out on every relevant bill that was
introduced to the Scottish Parliament. Ministers would have discretion about how widely the approach would apply. The approach would enable us to reflect the Education and Culture Committee’s recommendation, follow the lead that has been taken in Wales and deliver a cultural shift in the way in which we view children’s rights.

The minister has argued that undertaking CRIAs could be delivered through non-legislative means. However, although the Government committed to trialling CRIAs in its UNCRC action plan in 2009, not a single CRIA has been carried out.

Amendment 125 tries to skin the cat in another way and would place a duty on ministers to make a statement or assessment of compatibility with the UNCRC, as currently happens with regard to the Human Rights Act 1998. I understand that such an approach works well in Australia. I hope that if amendment 126 remains unpalatable to the minister, amendment 125 will be an acceptable alternative.

On children’s rights, the bill remains a missed opportunity. The children’s commissioner has made clear that if my amendments and others in this group are not agreed to, the bill “will fall far short of matching the high ambition to ‘make rights real’, often stated by Ministers.”

I urge the Parliament to vote to put that right.

The Minister for Children and Young People (Aileen Campbell): I welcome the opportunity to respond to the range of amendments that focus on part 1 of the bill. The bill will ensure that children’s rights properly influence the design and delivery of policy and services, by placing new duties on ministers.

Amendment 116 proposes the establishment of a new body to look at legal implementation of the UNCRC. The proposal seems similar to the children’s commissioner’s suggestion at stage 1 that a parliamentary inquiry look at UNCRC incorporation. The suggestion was not pursued by the Education and Culture Committee in its report.

We have robust structures for holding ministers to account for their approach to the UNCRC. We have the Scottish Parliament and its committees, the children’s commissioner and a national implementation group for children’s rights. Another body is not required, and even if it were required, there would be no need to legislate for its creation.

UNCRC incorporation was the subject of a great deal of discussion at stage 1. A range of views was given by key figures with expertise in children’s rights and the law. The Education and Culture Committee carefully considered the arguments and was not convinced of the merits of incorporation. Professor Ken Norrie said:

“I think that to incorporate the convention into the domestic legal system of Scotland would be bad policy, bad practice and bad law. I say that primarily because the UN convention was not drafted or worded to create directly enforceable legal rights in the domestic legal system.”—[Official Report, Education and Culture Committee, 3 September 2013; c 2682.]

We will continue to engage with partners about how we can strengthen children’s rights, through the fora that are in place, and build on the strong foundations in the bill, which are a good starting point from which to develop the UNCRC.

On amendment 117, a similar amendment was considered at stage 2. Now, as then, we have concerns about the introduction of the concept that children’s interests should be “a key consideration”. The UNCRC clearly recognises that children’s best interests should be a primary, rather than a key, consideration. That is the standard towards which we should be working. It does not make sense to pursue such a broad-ranging principle through blanket duties on ministers, which would open up the risk of unnecessary litigation. That would serve no one’s interests.

It makes sense to consider amendment 118 alongside amendment 93, in my name, as both amendments focus on the views of children. Amendment 93 stems from a suggestion from stakeholders that the Government should consider incorporating article 12 of the UNCRC, recognising a child’s right to be heard. Our position remains that implementation of article 12 is not best achieved through a blanket duty. Instead, we require targeted changes, tailored to individual circumstances. Nevertheless, we remain keen to explore how our commitment to article 12 can be realised. Amendment 93 is designed to ensure that children’s views feature in ministerial decision making.

Amendment 118 would go further than amendment 93, by requiring ministers actively to seek children’s views in relation to all decisions. I recognise the value of consulting children and young people, but that must be done in a meaningful way. Amendment 93 addresses that point by offering flexibility around when to consult. For that reason, I encourage members to support amendment 93 as an alternative to amendment 118.

Amendments 119, 120 and 122 represent a radical departure from our current system for protecting children. They would impose on ministers a duty to take all measures to protect children from violence and ill treatment. Although I welcome the intention behind what is proposed and respect Alison Johnstone’s commitment to children and young people, the proposed duty may be impractical and would be impossible to satisfy. Ministers can introduce legislation and policies to
protect children, but we cannot guarantee that a child will be safe from violence and neglect in the way that amendment 119 seems to require.

Furthermore, Alison Johnstone’s amendments fail to recognise the central role that many other bodies must play if we are to protect children effectively. Our system does not provide for Scottish ministers to work directly with individual children and their families on a day-to-day basis. Instead, it is founded first and foremost on strong multi-agency working at a local level. That approach continues to deliver an ever-improving system for supporting our most vulnerable children, as is evidenced by the many inspections of children’s services that have been undertaken over the years.

Amendments 119, 120 and 122 cut across all that. They fail to recognise that the people who are best placed to support children are those who have most contact with them and their families. Our focus must be on strengthening those relationships, because that is what our children need.

Getting it right for every child builds on the approach that I have described, and it is through the effective implementation of that model that we will best be able to ensure that all children—including those who are at risk of violence or ill treatment—get the help and support that they need at the time that they need it.

Amendment 121 seeks to recognise the important role that the UN Committee on the Rights of the Child plays in shaping our approach to children’s rights. Although it is important to recognise the excellent work that that committee does, the bill is not the best place to do that. Furthermore, I am not sure what practical difference the amendment would achieve. Any steps taken in response to recommendations by the committee would already be captured by the existing reporting duties under our bill.

The issue with which amendments 123 and 124 deal was debated at stage 2. There is now a well-established expectation that ministers will consult stakeholders as part of the policy development process. Accordingly, there is no need to identify every instance in which consultation is necessary and with which organisations it must be carried out. I am sure that we would all recognise that, when it comes to engaging children, our practice is perhaps not as well established. That is why we took steps at stage 2 to introduce section 1(3A), which will ensure that children will be consulted on ministers’ UNCRC implementation plans.

Amendment 124 would place on ministers a requirement to consult every three years on the steps that have been taken to secure “better or further effect” of the UNCRC. At stage 2, I made it clear that I could not see the value of consulting on a list of steps that ministers had taken with a particular aim in mind. After all, that is quite different from producing a plan of future actions, in relation to which there is scope for influencing activity. That same scope simply does not exist in relation to a retrospective report.

Amendment 125 would require ministers to prepare and publish a statement of UNCRC compatibility for all future bills. There would be a huge degree of overlap between that proposal and the children’s rights impact assessments that are proposed in amendment 126, and a system of unnecessary bureaucracy would be created.

As I made clear at stage 2, the Scottish Government recognises the importance of assessing our decisions against the rights of children, and we are developing a children’s rights impact assessment for use across Government as a direct consequence of the duty in section 1(1). Therefore, amendments 125 and 126 are disproportionate and unnecessary.

Liam McArthur: I listened carefully to what the minister said. She seemed to be concerned that amendment 125 overlaps with amendment 126. That would make sense if she intended to accept either of them, but by the sound of things she will accept neither of them.

As I made clear, in the UNCRC action plan that was published in 2008 it was indicated that the Government was committed to trialling CRIAs, yet we have not seen one in the intervening years. When might the first CRIA be piloted under the action plan?

Aileen Campbell: As I have said, we are developing that. That is something that we will achieve in order to ensure that we make rights real for children and that the UNCRC is much more keenly felt across the Government’s wider agenda.

For all the reasons that I outlined before Liam McArthur’s intervention, we cannot support any of the amendments in the group except my amendment 93, for which I seek members’ support.

I add that I respect the role that Liam McArthur, Alison Johnstone and Jean Urquhart have played and the way in which they have set out their arguments. I hope that we can work together to achieve more on the UNCRC and to make rights real for children in Scotland.

14:30

Alison Johnstone (Lothian) (Green): It has, at times, been difficult to articulate through this bill the potential impact of the United Nations convention on the rights of the child on children’s lives. Some see the articles in the UNCRC as very
I note Jeannette Funnel’s comments about the lodging of my amendments, but I know that he agrees that we must strive to do all that we can to give children the best start in life. Amendment 119, which uses almost exactly the same language as that found in article 19, aims to ensure that Governments have to do exactly that: to strive for the best and comply with the UNCRC.

The intention is to create an overarching national approach to protecting children from abuse, neglect and violence and to modernise criminal provisions in this area that are now 76 years old. Although the obsolete parts of section 12 of the Children and Young Persons (Scotland) Act 1937 have been repealed, our authorities continue to rely on that statute to protect children from harmful, criminal acts of abuse, neglect and violence and adopting amendment 119 would provide a holistic framework within which we can work to protect children.

I note the minister’s concerns about the adoption of this particular article but I hope that she will respond to my points about modernising the legislation and say how, if amendment 119 does not find support, the Government will progress the protections that protect children in Scotland.

Neil Bibby (West Scotland) (Lab): I welcome the opportunity to speak to amendments 121, 123 and 124 in my name as well as the other amendments in the group.

Although I join members of all parties in welcoming the general principle of raising awareness of children’s rights, it is clear that section 1 could—and should—be improved and go further. During the Education and Culture Committee’s scrutiny of the bill, a number of witnesses said that, in reality, this particular section fails to add anything new and lacks ambition. The Law Society of Scotland described the duty that is placed on ministers as a “diluted version of ... existing obligations” and it was noted that the bill requires ministers only to “consider” the UNCRC but not to act on or explain those considerations.

If the bill is to avoid becoming what Jeannette Funnel has described as a missed opportunity, members should support my amendments, which would add a requirement on ministers to demonstrate how they have responded to general comments or recommendations made directly to the United Kingdom by the UN Committee on the Rights of the Child. That would bring the reporting duty more in line with the children’s scheme that is set out in the Rights of Children and Young Persons (Wales) Measure 2011, which contains a duty of “due regard” to the UNCRC and has been widely welcomed by those working with and for children in Wales. It is important that we can properly scrutinise ministers’ actions if we are to ensure that the bill is having the kind of impact that we all want it to have.

On amendment 116 in the name of Jean Urquhart, during the bill’s passage through Parliament there has been a great deal of discussion and debate about the extent to which the UNCRC should be incorporated into law. Amendment 116 would allow us to continue that discussion by placing on ministers a duty to establish a group to consider the merits of incorporating the UNCRC into law and to report back. Any decision on the extent to which incorporation is appropriate would, of course, be a decision for Parliament and would be informed by the best available evidence.

Finally, I am also supportive of the amendments in the name of Liam McArthur and Alison Johnstone. In particular, I draw members’ attention to the importance of seeking the views of children who are likely to be affected by decisions and ensuring that children’s rights impact assessments are carried out on every relevant bill. Having spoken a number of times in the chamber about the importance of listening to children and young people instead of just talking at them, I am slightly disappointed that the minister’s amendment in this respect does not go as far as Liam McArthur’s amendment.

Amendments 116 to 126 as well as amendment 93 would significantly strengthen what is widely regarded as a weak section in the bill. I urge members to support those amendments if the bill is to match our ambition.

Liz Smith (Mid Scotland and Fife) (Con): Over a lengthy period, I have listened very carefully to what has been the most challenging but nevertheless one of the most interesting aspects of the debate on the bill. As I said on the very first day of evidence taking at stage 1, the main difficulty all along with part 1 has been the need to assimilate very different legal perspectives on the bill, especially the need to reach a rational judgment on the need to incorporate the UNCRC into Scots law.
In turn, that meant examining whether the current duties on Scottish ministers are sufficiently strong in terms of protecting children and whether in some cases we have not done enough to enhance the rights of children. In particular, there was a need to ensure that there was a clear understanding of the duties on ministers and those that fall on local authorities and other bodies.

At the end of that process, the Scottish Conservatives do not believe that there is a sufficiently strong case for full incorporation of the UNCRC into Scots law, on account of the fact that some aspects of the UNCRC are not fully compatible with our legal traditions. However, we believe that there has to be more clarity over the rights of ministers, children and their families and, just as important, those of local authorities and other professional bodies. Following those criteria, we will support amendments 117, 118, 93, 121, 123 and 124 but not the other amendments in the group.

Joan McAlpine (South Scotland) (SNP): Like Liz Smith, I listened as part of the Education and Culture Committee to the evidence on this section of the bill. Like the rest of the committee, I came to the conclusion that there was little evidence of how full incorporation of the UNCRC would improve outcomes for children in Scotland.

Paragraph 38 of the committee’s conclusions in its stage 1 report notes:

“the UNCRC is implemented in Scotland in a number of ways already”.

In fact, article 42 is incorporated into the bill and it obliges ministers to promote awareness of children’s rights among children as well as parents. That aspect of the bill has been welcomed by the Scottish Information Commissioner.

The committee’s conclusions also state:

“We are not persuaded of the case for full incorporation of the UNCRC into Scots law … We agree that the benefits arising from incorporation of the UNCRC could be realised from improvements in policy and practice, such as through the implementation of GIRFEC.”

Liam McArthur mentioned that Neil Bibby had taken up the cudgels at stage 3. I find it quite strange that it has taken such a long time for Neil Bibby to reach that position, given that he was one of the members of the committee who signed up to those fairly fulsome conclusions.

The Deputy Presiding Officer (John Scott): Minister, would you like to respond to any of the points that were made in the debate? You do not have to by any measure.

Aileen Campbell: Joan McAlpine raised the fact that the committee did not support the full incorporation of the UNCRC, and I reflect again on Professor Ken Norrie’s comments on the bill. Technical difficulties prevent us from accepting Alison Johnstone’s amendments, but there is a firm commitment to ensure that we can work with everyone who is interested, to ensure that we make rights real across Scotland. This is about making sure that we put Scotland on the path towards becoming the best place to grow up, and making rights real is a key part of that.

I will make sure that we work with others across the chamber to allow us to have the proper scrutiny, which, as I set out in my opening remarks, is already there through the Parliament, the Education and Culture Committee and the children’s commissioner. By working together, we can have a bill that we are proud of, with regards to UNCRC provision.

Jean Urquhart: I return to the wording of amendment 116 and reiterate what it would do and what it would not. It would require Scottish ministers to set up a body to consider whether the UNCRC should be given legislative effect. It does not state what sort of body that should be, nor does it insist that the UNCRC should be given legislative effect. It would allow ministers and indeed MSPs to charge that body with exploring all the issues relating to this matter. The body would have to lay its report before Parliament and Scottish ministers would be expected to respond. At no point in that process would there be a burden, responsibility or even an expectation on Scottish ministers and MSPs to commit to giving legislative effect to the UNCRC.

As someone who believes passionately in creating a rights-based society for all, I hope that the option of giving legislative effect to the UNCRC would be explored fully and that the body would conclude that that would be the appropriate thing to do. I hope, too, that the body would provide advice on how and when to do so. However, committing to establishing the body would not commit future Governments or Parliaments to its recommendations. We would still be able to make that democratic decision, which is as it should be.

I have made my views clear on why I think it is important for Scotland to incorporate the UNCRC into our legislative framework, but far greater politicians than me have called on us all to do more for children. Someone said:

“Our children are our greatest treasure. They are our future.”

He also said:

“History will judge us by the difference we make in the everyday lives of children.”

There are many reasons to follow the teachings and words of the late, great Nelson Mandela. Throughout his presidency and his retirement, Mandela championed the cause of children. His
love for children and his appreciation of their needs, rights and interests, and of society’s duty and responsibility to protect and nurture them by being child centred and furthering their rights, provide us with more and indeed compelling reasons to do as I suggest.

I uphold my amendment 116.

The Deputy Presiding Officer: I am afraid that I did not hear what you said. Are you pressing or withdrawing your amendment?

Jean Urquhart: I am upholding it—I am pressing it.

The Deputy Presiding Officer: Right. The question is, that amendment 116 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. We will have it shortly, as there will now be a five-minute gap—the word I am looking for is “suspension”.

14:40

Meeting suspended.

14:45

On resuming—

The Deputy Presiding Officer: We move to the division on amendment 116.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boychak, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McGregor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Miline, Nanette (North East Scotland) (Con)
The Deputy Presiding Officer: The result of the division is: For 36, Against 84, Abstentions 0.

Amendment 116 disagreed to.

Section 1—Duties of Scottish Ministers in relation to the rights of children

Amendment 117 moved—[Liam McArthur].

The Deputy Presiding Officer: The question is, that amendment 117 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Amendment 117 disagreed to.

Amendment 118 moved—[Liam McArthur].

Amendment 118 moved—[Liam McArthur].

The Deputy Presiding Officer: The question is, that amendment 118 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Eltrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urqhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Firthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Robin (Caitness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
I also understand that the Scottish Government does not wish to highlight specific groups of children and seeks to promote the notion of universality. However, given that the bill specifically mentions looked-after children, the precedent has already been set and it would be remiss of the bill not to mention disabled children in the way that I propose.

The minister will be aware that my proposed amendments are supported by the Health and Social Care Alliance Scotland, Enable Scotland and Children 1st.

Notwithstanding the fact that there is a problem with the financial memorandum and that we in the Labour Party are concerned about the financial support that is available for the bill, I urge the minister to support amendment 92 and all other amendments in this group.

I move amendment 92.

Liz Smith: As I mentioned at stage 2, I have a great deal of sympathy for the intent of Siobhan McMahon’s amendments, and by bringing them to stage 3, she has allowed us to undertake further detailed and important scrutiny of the rights issue. I am also grateful to the Health and Social Care Alliance Scotland for its helpful briefing.

Having sought other legal advice on the issue and revisited the lengthy and fairly complex debates that we had during the passage of legislation on additional support for learning, we remain nervous about identifying a specific group of young people who have special needs without addressing the concerns of others. We will therefore not support the amendments in the group, but we would like the minister to provide further reassurance beyond that which she gave at stage 2 that the rights of disabled children will not in any way be undermined or diluted when it comes to providing them with the appropriate levels of support.

Aileen Campbell: Amendments 92 and 94 to 100 seek to place requirements on Scottish ministers and public bodies to take steps with the aim of furthering the rights set out under article 7 of the United Nations Convention on the Rights of Persons with Disabilities.

The proposals mirror a series of amendments lodged by Siobhan McMahon at stage 2 and, as I was then, I am happy to welcome the sentiment behind the amendments, and I take the opportunity to thank Siobhan McMahon for bringing the matter to members’ attention today.

The rights set out under the UNCRPD apply to all children, including disabled children. On Siobhan McMahon’s particular point, the UNCRPD specifically recognises the importance of ensuring that disabled children are supported to access the...
same opportunities as their peers. Article 7 of the UNCRPD restates those important principles.

We are strong advocates of the UNCRPD, but it is important to remember that part 1 of the bill seeks to promote a universal approach to protecting and promoting the rights of all children, in express recognition of our responsibilities to each and every one of our children, irrespective of their background or needs. To begin to recognise some groups of children and not others would begin to dilute that notion of universality, which echoes the points that Liz Smith made in her remarks.

I state this categorically, and I hope that it gives comfort to Siobhan Mcmahon and Liz Smith: the fact that we are not making explicit reference to disabled children does not in any way detract from the commitment that we are making to them. We have worked and will continue to work with all the groups that Siobhan Mcmahon mentioned that are supportive of the intention behind her amendments. Although I am supportive of that intention, we cannot support the amendments, but we will continue to work with the groups that have been helpful with the drafting of the amendments to ensure that we get things right for children who have disabilities.

Siobhan Mcmahon: I appreciate the comments made by Liz Smith and the minister. Liz Smith and I spoke earlier and at stage 2 about her concerns, so I appreciate where she is coming from. However, I suggest that we pay attention to the third sector organisations that wish for this to happen. As the minister keeps saying, the key principle of universality is about ensuring that everyone has the same rights and access to everything in education. Therefore, when a disabled child faces additional barriers, we should make provision for their needs. That is the reason for my amendments and I will press them.

The Deputy Presiding Officer: The question is, that amendment 92 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Amendment 92 disagreed to.

Amendment 93 moved—[Alison Campbell]—and agreed to.

Amendments 119, 94 and 120 not moved.

Amendment 121 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 121 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)

Against

Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhán (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge andChryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Amendment 123 moved—[Neil Bibby].

Amendment 123 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 123 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)

Against

Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Dundee City West) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urguhart, Jean (Highlands and Islands) (Ind)
Amendment 123 disagreed to.

Amendment 124 moved—[Neil Bibby].

15:00

The Deputy Presiding Officer: The question is, that amendment 124 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)

Against

Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urqhart, Jean (Highlands and Islands) (Ind)
Amendment 125 moved—[Liam McArthur].

The Deputy Presiding Officer: The question is, that amendment 125 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)

Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumbriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Galloway and West Dumfries) (Con)
Amendment 125 disagreed to.

Amendment 126 moved—[Liam McArthur].

The Deputy Presiding Officer: The question is, that amendment 126 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)

Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)

Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McKean, Ian (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pettigrew, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urguhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Churchill, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Bob (Galloway, Sutherland and Ross) (SNP)
The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearnsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen South and North Kincardine) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 42, Against 79, Abstentions 0.

Amendment 98 disagreed to.

Amendments 99 and 100 not moved.

Section 7—Introductory

Amendment 127, in the name of Siobhan McMahon, is the only amendment in the group.

Siobhan McMahon: Amendment 127 aims to ensure that family support services are reflected in children’s services planning in order to inform local commissioning strategies. The amendment would ensure specifically that the bill’s policy aim translates into effective services that meet the needs of disabled children and young people and their families.

The amendment has come from the for Scotland’s disabled children group, a banner organisation for several charities and organisations working for and with disabled children and their families. The organisation and I believe that without a clear duty in the bill that ensures that the specific needs of that vulnerable group of children and their families are reflected in joint local planning and in the local commissioning processes, there is a real danger that opportunities to deliver innovative support for that group will be missed.

I urge the chamber to support the amendment.

I move amendment 127.

Aileen Campbell: Amendment 127 from Siobhan McMahon was raised at stage 2. It has a good policy intention—to ensure that children’s services planning covers support for the families of children with particular needs. As I said at stage 2, we share the belief that children’s services planning should include support for families in their caring roles for children with particular needs and that kind of support is already covered by the bill as drafted.

We will ensure that guidance makes that more explicit and we will work with others who have an interest in this area to develop that very important guidance. Nevertheless, as drafted, the amendment does not make it clear which services for such families would be covered, which could undermine the focus of children’s services planning. Consequently, we do not support amendment 127. I understand the intention behind it and will continue to work with groups to ensure that the guidance makes provision much more explicit.

Siobhan McMahon: I welcome the minister’s comments and I appreciate that she will make that support explicit in the guidance. However, I will press my amendment.

The Deputy Presiding Officer: The question is, that amendment 127 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chirnside) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urqhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunningham North) (SNP)

Siobhan McMahon: The amendments in this group have been lodged to serve as a clear guide

The Deputy Presiding Officer: The result of the division is: For 37, Against 84, Abstentions 0.

Amendment 127 disagreed to.
to public authorities that local commissioning strategies must reflect the needs of young people transitioning into adult life, services and support.

For disabled young people, there is a further significant pressure point at the transitions planning stage, when young people are moving from one set of eligibility criteria under the additional support for learning framework to a completely different framework under social care. Many young people with less complex care needs may no longer qualify for a formal care plan and so are likely to require access to softer, community-based support services that currently might not exist or which are not accessible to disabled young people.

It is therefore crucial that the bill places a duty on local authorities to develop and implement children's and young people's services plans as opposed to children's services plans. That would support the transitions process and would be of particular benefit to those young disabled people who have less complex support needs and for whom the adult social care assessment framework may mean that they fall short of being assessed for a formal care plan as they move into adulthood and independent living.

Amendment 179 would give Scottish ministers the powers to introduce a national mentoring scheme to support children and young people with a disability during the key transition from childhood to adulthood. As we know, children and young people with a disability often face significant barriers in accessing life chances, including employment and leisure opportunities and opportunities to develop social contacts. Amendment 179 seeks to address that and could significantly improve outcomes in those key areas for children and young people with a disability across Scotland.

I urge the minister and the chamber to support the amendments in this group.

I move amendment 128.

Liam McArthur: I start by paying tribute to Siobhan McMahon not only for the amendments in this group but for those in earlier groups and for the work that she did at stage 2 to bring issues to the attention of the committee. Like her, I have been concerned about some of the problems that can arise around a young person's transition to adulthood when they reach the age of 18 and all the support suddenly disappears or starts to fragment. Although I am conscious of the need to protect the rights of adults, and adults with particular needs, I think that the issues that she raises in these amendments are extremely pertinent.

In addition, amendments 179 and 196, which seek to provide a right to mentoring support for children and young people with a disability, are well made, and I am happy to lend my support to them.

Aileen Campbell: On amendments 128 to 139 and 142 to 161, I said in response to the similar amendments that Siobhan McMahon raised at stage 2 that we believe that widening the planning of services around children by including the needs of young people up to the age of 25 risks making such planning less meaningful. The services that children need are not necessarily the same as those that young adults require. Conflating both within the same set of plans overcomplicates planning and does not necessarily serve children and young people well.

On amendment 141, we recognise the difficulties that are associated with the transition from children's services to adult services and that good transition planning is essential for those children whose needs will require continuing support into adulthood. Planning for that absolutely should be covered by children's services plans, which is why the existing provisions in the bill allow for that. We will work with relevant stakeholders to ensure that that is clear in the guidance supporting this part of the bill.

On amendments 179 and 196, we can see the merit in a scheme that provides mentors to disabled children to help to ease their transition into adulthood and promote their wellbeing. Indeed, there is strong evidence that goal-oriented mentoring can help young people to achieve and to become more confident in expressing their views. To that end, I announced in December my intention to establish a national mentoring scheme, initially focused on the children who will benefit the most from such help—especially children looked after at home, aged from eight to 14—before being expanded to other groups of young people.

The scheme is non-statutory in nature and will allow us to test how to apply it to improve outcomes. Although it is not aimed directly at children with a disability, it will still benefit a significant number of disabled children. As the scheme develops, I am open to discussing with Siobhan McMahon and others how we can target it further to help those most in need. Consequently, I do not believe that the amendments are necessary.

It is important to remember that not every child with a disability will need—or, indeed, want—a mentoring service. However, through our mentoring scheme, we can actively explore means by which such a scheme can be made more widely available to those children who will benefit.
For those reasons, we do not support this group of amendments. We are happy to continue the dialogue around the intentions behind the amendments.

Siobhan McMahon: I thank Liam McArthur for his kind comments. I feel as if I am an honorary member of the Education and Culture Committee, I thank him for welcoming me on the days that I was there and for offering his support in relation to these amendments, which are genuinely my best attempt to deliver a better bill in relation to the transition service. I think that the minister has recognised that. However, I disagree with her to an extent. Of course not all disabled children and young people are the same but, at the moment, young adults are getting lost in the system because there is not a care plan for them, so I will be pressing the amendments.

On the mentoring scheme, I absolutely believe that the intention behind the scheme that the minister announced in December is right. Of course I will continue the dialogue to expand that. However, I do not think that that prohibits us from voting for these amendments today.

I press amendment 128.

The Deputy Presiding Officer: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (South Scotland) (LD)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Murdo (Mid Scotland and Fife) (Con)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)

Against
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGregor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Cockbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watson, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Southside) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 56, Against 65, Abstentions 0.

Amendment 128 disagreed to.

Amendment 129 not moved.

15:15

The Deputy Presiding Officer: We move to group 5. Amendment 55, in the name of the minister, is grouped with amendments 56 to 68, 70, and 72 to 74.

Aileen Campbell: The amendments in this group are technical amendments to take into account the effect of recent legislative changes to the administrative boundaries of health board areas and ensure that the definition of “relevant health board” in section 7(1) and associated references throughout part 3 are consistent with that legislation.

The text in part 3 of the bill as introduced was drafted on the basis that local authority and health board boundaries are currently not aligned. As a result, to ensure that the joint planning duties would cover each local authority area, the original provisions required local authorities to plan jointly with each health board that operated within that local authority area. However, in light of the recent decision to introduce secondary legislation to adjust the boundaries of health board areas to ensure that they are aligned with those of local authority areas, amendments are now required to part 3 of the bill. The National Health Service (Variation of Areas of Health Boards) (Scotland) Order 2013 will make the changes to health board areas with effect from 1 April.

Amendment 55 amends the definition of “relevant health board” in section 7(1) to reflect those changes. Consequently, associated references in part 3 should be amended from “each” or “any” relevant health board to “the relevant health board” or “the health board”. That is the effect of amendments 56 to 68, 70, and 72 to 74.

I move amendment 55 and ask Parliament to support the amendments in my name.

Amendment 55 agreed to.

Amendment 130 moved—[Siobhan McMahon].

The Deputy Presiding Officer: The question is, that amendment 130 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McEwan, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)
Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunninghame, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Robin (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mline, Nanette (North East Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 46, No 73, Abstentions 0.

Amendment 130 disagreed to.
Amendment 131 not moved.
Amendment 56 moved—[Aileen Campbell]—and agreed to.
Amendments 132 and 133 not moved.
Amendments 57 and 58 moved—[Aileen Campbell]—and agreed to.
Amendments 134 to 136 not moved.

Section 9—Aims of children’s services plan
Amendments 137 to 139 not moved.

The Deputy Presiding Officer: Group 6 concerns the aims of children’s services plans. Amendment 140, in the name of John Wilson, is the only amendment in the group.

John Wilson (Central Scotland) (SNP): I thank the Coalition of Care and Support Providers in Scotland for suggesting the amendment.

Section 9 sets out the four aims of the children’s services plan. The fourth aim, which is in section 9(2)(a)(iii), says that children’s services should be provided in the way that “constitutes the most efficient use of available resources”.

If the amendment is agreed to, the provision would read “constitutes the best use of available resources”. The reason for lodging the amendment is that the present wording is inconsistent with the statutory duty of best value, to which all local authorities must have regard when planning and delivering services under section 1 of the Local Government in Scotland Act 2003.

Maintaining a balance between the two principles of efficiency and effectiveness is essential to the idea of best value. It is believed that including only one of those two fundamental principles in the children’s services planning part of the bill is inconsistent with that Government policy and related legislation and may send a message to local authorities that might encourage an emphasis on cost to the detriment of quality and effectiveness in the provision of children’s services.

Audit Scotland has repeatedly highlighted the importance of best value as the key to success for local authorities. In 2012, it said:
“Local authorities that place best value at the centre of all they do are well placed to deal with the challenges in 2012 and beyond.”

Audit Scotland has also raised concerns about the possibility of local authorities taking an overzealous approach to cost cutting at the expense of service quality and provision.

Therefore, although the amendment appears to deal with a small issue in the context of the many significant issues with which the bill deals, it is no less important, given the potential positive impact of good-quality, effective children’s services. This is an opportunity to improve the drafting of the bill.

I move amendment 140.

Aileen Campbell: The amendment is not likely to make a significant difference to the way that children’s services plans are prepared. Local authorities remain bound by section 1 of the Local Government in Scotland Act 2003, which sets out the basic principles of best value. Local authorities would not be able to develop children’s services plans without taking account of best value, and we would ensure that that principle was clearly set out in the national guidance on how to prepare children’s services plans.

Nevertheless, we can see the attraction of providing greater consistency in the language of best value between different pieces of legislation. Best value remains a key principle at the heart of our children’s services, and we support an amendment that further highlights its importance. Therefore, we support John Wilson’s amendment.

John Wilson: The minister has clearly stated that the Government has accepted the amendment, and I press it.

The Deputy Presiding Officer: The question is, that amendment 140 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baird, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kinnock, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McCluskey, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahan, Michael (Uddingston and Bellshill) (Lab)
McMahan, Siobhan (Dumfries and Galloway) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dundfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Peterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)

The Deputy Presiding Officer: The result of the division is: For 101, Against 19, Abstentions 0.

Amendment 140 agreed to.

Amendment 141 moved—[Siobhan McMahon].

The Deputy Presiding Officer: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glascow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Hume, Jim (South Scotland) (LD)
Johnston, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McArthur, Liam (Orkney Islands) (LD)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)

The Deputy Presiding Officer: The result of the division is: For 101, Against 19, Abstentions 0.

Amendment 140 agreed to.

Amendment 141 moved—[Siobhan McMahon].

The Deputy Presiding Officer: The question is, that amendment 141 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 44, Against 74, Abstentions 0.

Amendment 141 disagreed to.

Amendment 142 not moved.

Section 10—Children’s services plan: process

Amendment 143 not moved.

Amendment 59 moved—[Aileen Campbell]—and agreed to.

Amendments 144 and 145 not moved.

Amendment 60 moved—[Aileen Campbell]—and agreed to.

Amendments 146 and 147 not moved.

Amendment 61 moved—[Aileen Campbell]—and agreed to.

Amendments 148 and 149 not moved.

Amendments 62 and 63 moved—[Aileen Campbell]—and agreed to.

Section 11—Children’s services plan: review

Amendment 64 moved—[Aileen Campbell]—and agreed to.

Amendments 150 to 153 not moved.

Section 12—Implementation of children’s services plan

Amendments 154 and 155 not moved.

Amendment 65 moved—[Aileen Campbell]—and agreed to.

Amendment 156 not moved.

Section 13—Reporting on children’s services plan

Amendment 66 moved—[Aileen Campbell]—and agreed to.

Amendments 157 to 159 not moved.

Section 14—Assistance in relation to children’s services planning

Amendment 67 moved—[Aileen Campbell]—and agreed to.

Amendment 160 not moved.

Section 15—Guidance in relation to children’s services planning

Amendment 68 moved—[Aileen Campbell]—and agreed to.

15:30

The Deputy Presiding Officer: We move to group 7. Amendment 69, in the name of the minister, is grouped with amendments 71, 75, 76, 83, 85 and 88.

Aileen Campbell: Amendments 69, 71, 75, 76, 83 and 85 amend the sections on guidance and directions in parts 3, 4, and 5, which cover, respectively, children’s services planning, the named person and the child’s plan. The amendments make it clear that, before issuing, revising or revoking guidance or directions under those parts, Scottish ministers, in addition to consulting any person to whom the guidance or directions relates, must consult such other persons as they consider appropriate.

It has always been the Scottish Government’s intention to consult as widely as is required in respect of guidance and directions that are issued under those parts of the bill, including with children, parents and third sector organisations when that is appropriate. However, we consider that it is helpful to make it clear in the bill that consideration should be given to who will be affected by the issue, revision or revocation of any set of guidance or any direction, as that will ensure that the necessary consultation is undertaken.

The amendments also achieve drafting consistency across parts 3 to 5 in respect of the provisions on guidance and directions.
Amendment 88 makes a minor drafting adjustment to section 57 to achieve drafting consistency between that section, which concerns guidance that is issued in respect of the corporate parenting duties in part 7, and the sections on guidance in parts 3 to 5.

I move amendment 69.

Amendment 69 agreed to.

Section 16—Directions in relation to children’s services planning

Amendments 70 and 71 moved—[Aileen Campbell]—and agreed to.

Section 17—Children’s services planning: default powers of Scottish Ministers

Amendments 72 to 74 moved—[Aileen Campbell]—and agreed to.

Section 18—Interpretation of Part 3

Amendment 161 not moved.

Section 19—Named person service

The Deputy Presiding Officer: That takes us to group 8. Amendment 1, in the name of Liz Smith, is grouped with amendments 2 to 11, 162, 162A, 12 to 24, 163, 163A, 163B, 163C, 163D, 163E, 163F, 164 and 25 to 50.

Liz Smith: From the very outset, the Conservatives have argued strongly against the introduction of a named person for all nought to 18-year-olds, and we will now do so again. We believe that the policy is wrong in principle, that it does not have conclusive supporting evidence and that it has not been properly costed—something that was unanimously agreed by the Finance Committee. In addressing the bill team, the committee’s convener, Kenny Gibson, said:

“the savings that you are talking about over a short period ... are not realistic, and ... that would lead, two or three years after the bill has been passed, to significant funding shortfalls.”—[Official Report, Finance Committee, 18 September 2013; c 2991.]

Again this afternoon, concerns have been raised about the revised financial memorandum.

Amendments 1 to 50 and 162 to 164 seek to address two of the most fundamental flaws. Amendments 1 to 50 would remove those aged 16 and above from the named person plans—a move that I know has the unqualified support of both Labour and the Liberals and, I suspect, some SNP members, too. Even the most ardent supporters of the policy do not believe that it is workable beyond 16, because it is not compatible with many other aspects of Scots law that define an adult at age 16 and because many practitioners believe there would be additional confusion over the lines of accountability. Bill Alexander, of Highland Council, who is one of the most ardent supporters, said:

“I do not understand how my daughter, who is 17 and doing performing arts in Manchester, could have a named person; she will not need or want one.”—[Official Report, Education and Culture Committee, 24 September 2013; c 2858.]

Professor Norrie said:

“I should have been more comfortable if the limit of childhood were set at 16”.

The Scottish Government’s response to those points at stage 2 was exceedingly weak, so I hope that, in the intervening time, it has had a change of heart. We are talking about young adults—16 and 17-year-olds who are allowed to marry, free to leave school and able to enlist—who are being told by this Government that they are old enough to vote in the upcoming referendum but not old enough to go about their business without being assigned a named person. That inherent contradiction speaks for itself.

The second set of amendments—amendments 162 to 164—seeks to limit the function of the named person and create a route for parents to contest any decision that a named person is necessary. The reasoning behind that combines the substantial concerns raised by several groups and by Aidan O’Neill QC, that there would be scope for a legal challenge against the Scottish Government’s proposals, particularly with regard to article 8 of the European convention on human rights which safeguards the right to “private and family life”.

Since stage 2, we have listened very carefully to the concerns that a general opt-out could undermine efforts to safeguard the welfare of our most vulnerable children. Consequently, amendment 162 proposes limiting the functions of the named person policy to instances where there is a safety, legal, wellbeing or rights concern.

Similarly, amendments 163 and 164 place a duty on the service provider to inform parents, children and young people of a decision to appoint a named person and create a provision for that judgment to be subject to appeal. Taken together, the amendments will ensure that the policy is based on need rather than imposed across the board. That point has been raised by a number of organisations, including several churches and parents groups, many of which have written to MSPs in the past few weeks to ask them to reconsider the matter. Time after time, they are pointing out that the named person policy fails the criteria of what makes good law, that it tips the balance away from parental and family responsibilities towards the state, that it is not properly costed and that it will be open to legal challenge. For all those reasons, and for the sake
of common sense, I ask the chamber to support the amendments in my name.

I move amendment 1.

The Deputy Presiding Officer (Elaine Smith): I have a number of members who want to contribute to this group of amendments, so I ask that they be as brief as possible.

Fiona McLeod (Strathkelvin and Bearsden) (SNP): It is difficult to be brief on the topic of the named person, given the amount of misinformation that has been going out in their lives.

First, I make clear to members that I speak as someone who was once a chair of a children's panel advisory committee and who was, many years ago, a researcher for the former Royal Scottish Society for Prevention of Cruelty to Children. What is so important about the named person provision is that we are trying to provide a universal safety net for all young people. The point about universal access to the safety net is that that would proactively support young people, rather than reacting when things go bad in their lives.

The amount of misinformation that we have had has been appalling. Liz Smith mentioned the emails that members have received. Some of the emails that I have received have bordered on the offensive. Indeed, some of them talked about “state surveillance”, “1930s Nazi Germany”, and “Big Brother”. I have to wonder whether some of those emails have been orchestrated.

Given my child protection background, I know that it is most important that the named person is a universal service for all young people. As parents, most of us will bring up our children well, but we never can know or foretell when we or our children may suffer through, for example, bereavement, family break-up or illness, or when we might need instant access to a named person who knows our child well and can provide access to all the relevant services at the time of need.

As with our children's hearings service and GIRFEC, Scotland is, with the named person, introducing groundbreaking legislation and child protection work. I urge every member to support the named person provisions.

Neil Bibby: There is no doubt that this is the most controversial aspect of the bill. The measure must be properly debated and discussed, as it has been at some length on the Labour benches. There are strong feelings about it. Some people believe that it is absolutely necessary if we are to identify and protect vulnerable children; some people believe that it is not required and will potentially interfere in family life.

As I have said, in principle I have no objection to provision for a named person being in the bill. However, I do not believe that it is the state’s role or job to bring up all children—I hope that all members agree. I would welcome reassurances from the minister on the concerns that parents have raised in recent weeks.

Like many members, I want us to have the best possible protection and support system for our children. However, there are two critical tests for the named person provision: the system must work in practice; and it must be properly resourced. The minister and the Government have completely failed to address those two key concerns.

Labour cannot support all the amendments in this group, but we will support Liz Smith's amendments on reducing the age limit for having a named person from 18 to 16. We supported similar amendments at stage 2. Liz Smith referred to Bill Alexander, the director of health and social care at Highland Council. When he gave evidence to the committee, I was concerned when he questioned why a named person would be needed for most children who have left school. He said:

“I do not understand how my daughter, who is 17 and doing performing arts in Manchester, could have a named person; she will not need or want one.”—[Official Report, Education and Culture Committee, 24 September 2013; c 2858.]

There is no doubt that some young people will require additional support after leaving school. However, the vast majority of young people will neither need nor want a named person. As members know, Highland Council was the national pathfinder for implementing GIRFEC, so Bill Alexander is highly respected by the Parliament. During the stage 1 debate, a member said:

“Bill Alexander knows more about the subject than almost anybody else, and I have found what he says to be true”.—[Official Report, 21 November 2013; c 24832.]

That member was the cabinet secretary, Mike Russell. It is therefore astonishing that the Scottish Government intends to proceed without listening to what people such as Bill Alexander and Opposition parties say about the issue.

My position on resources is the same as that of the child protection charity the NSPCC, which said:

“NSPCC Scotland supports the intention behind the Named Person approach which, if properly resourced, could increase the likelihood of early intervention for children and young people; thus improving their outcomes.”

The key phrase is “if properly resourced.” During the stage 1 debate, I raised concerns about resourcing on behalf of the Royal College of Nursing. The RCN said:

“Using the Scottish Government’s own estimate of health visiting hours required to deliver the Named Person role specifically—on top of the rest of the health visiting workload—the RCN estimates it would necessitate around...
an additional 450 health visitors to be recruited and trained.”

The matter was raised at stage 1 and the minister said that she was listening, but no action was taken. It was raised at stage 2 and the minister said that she was listening, but no action was taken.

Aileen Campbell: Has the member had a chance to read what the City of Edinburgh Council said? It said:

“The Council believes that the costs for Children’s Rights, GIRFEC, Early Learning/Childcare and Other Proposals are accurately reflected based on our understanding of the requirements of the legislation.”

Does he agree with the City of Edinburgh Council? Does he agree that we have been listening to others, to ensure that the estimates in our financial memorandum are the best that they can be, to finance the approach thoroughly?

Neil Bibby: With respect, I say that the minister listens to the people to whom she wants to listen. She says that she is listening, but she is not hearing the concerns of the RCN. The issue was raised at stages 1 and 2. If she is serious about the policy, where are the extra health visitors?

I have not even mentioned the resources that local authorities and teachers will require if they are to meet their named person responsibilities and provide on-going, rather than one-off, training. It is also still not clear how the named person role will be properly resourced or how it will work during 12 weeks of school holidays. It is no wonder that the Finance Committee said, in its damning report on the bill:

“The Committee has a number of concerns in relation to some of the costings within this FM and notes that there is a lack of evidence to support the figures provided for some aspects of the Bill.”

The Scottish Government has failed properly to address the resource issues. The policy will not achieve its intended purpose unless it is properly resourced.

The minister has said consistently that she was hearing, but I do not think that she has been listening. She has not listened to Opposition parties, to people such as Bill Alexander or to organisations such as the RCN.

Like many other members, I can support the policy in principle, but the minister and the Scottish Government have failed the two key tests in relation to the practical and resource issues. By failing those key tests, the Scottish Government risks failing Scotland’s children.

15:45

Gil Paterson (Clydebank and Milngavie) (SNP): I will restrict my comments to the named person in a school setting.

What is proposed will normalise what takes place in any well-run school. It will give people confidence to approach a person whom a child trusts—the headteacher. We should not forget that the named person can be for the whole school complement. That person will be there to listen and to advise. The first port of call, I assume, would be the family. The named person will have no powers in bringing up a child, but sometimes extremely serious incidents happen in the home. We know about such situations—they are graphic, worrying and detrimental to children. In such circumstances, society does not simply expect us to intervene; it demands that we intervene. There is an expectation that intervention should take place swiftly. As a result of the named person being well connected with the different authorities involved, it will be possible to act swiftly for the sake of the child.

The evidence and experience from the Highlands, where no person or family has raised any issues in regard to the named person, is there for all to see.

Liam McArthur: As Neil Bibby indicated, part 4 of the bill, on named persons, has attracted the most attention, controversy and opposition since stage 1.

After some initial misgivings, through the process I have been persuaded of the benefit that a named person arrangement can deliver. That said, I was concerned—as were a number of witnesses—about the practical implications of the way in which resources would be allocated and about the circumstances in which information would be shared. We will come to that issue in a later group.

On the former, it is still not clear whether the focus on the wellbeing of a child as opposed to the narrower definition of their welfare will have the effect—in some cases—of diverting resources and attention, with the risk that cases of genuine welfare concern will not be picked up, or will be picked up later than would otherwise have been the case. The serious criticisms that the Parliament’s Finance Committee—whose convener and deputy convener are Government back benchers—made of the bill’s financial memorandum did nothing to allay those concerns.

In addition, I am not convinced that the task of implementation has been made any easier by the insistence of the Scottish Government on making the named person provisions apply universally in relation to young people all the way up to the age of 18. At stage 1, we were told that applying the
named person provisions through the teenage years becomes increasingly problematic. That will come as no surprise to any of us who have or have had teenagers. Even Highland Council—the exemplar in the delivery of GIRFEC and a pioneer of the named person approach—appears to have been unable to make that aspect of the named person approach work. Neil Bibby and Liz Smith were quite right to cite what Bill Alexander said in evidence about his own experience, and we know the high regard in which his views are held by the education secretary.

I question whether insisting on a named person for young people up to the age of 18 is necessary or achievable. That being the case, why risk spending scarce resources trying to do what even the convener of the Education and Culture Committee, from his personal experience, acknowledged would be a formidable challenge? Therefore, I support Liz Smith’s amendments that are aimed at limiting the universal application of the named person provisions to children and young people up to the age of 16.

This is an area that is crying out for post-legislative scrutiny. Although Highland Council’s experience has been persuasive, it should be recalled that the named person arrangements were implemented on a non-statutory basis. How named person provisions will operate on a statutory footing remains to be seen, but Parliament will want to be reassured that what the bill proposes remains proportionate, and we may need to return to the issue in the coming years.

Joan McAlpine: Labour’s front benchers say that they support the named person in principle, but Neil Bibby used the phrase that it is not “the state’s... job to bring up... children”.

That is not just speaking with forked tongue; it is pandering to the most hysterical misinterpretation of the proposal and, as such, it is profoundly irresponsible.

Neil Bibby rose—

Joan McAlpine: We know that all the children's charities support the universal principle universally, but so—interestingly—do parents charities. In committee, when my colleague Colin Beattie asked Clare Simpson of parenting across Scotland whether she agreed with opponents of the named person that the proposal would usurp the role of the parent, she said:

“I do not feel that that is accurate at all. Parents’ rights and responsibilities are firmly enshrined in law.”—[Official Report, Education and Culture Committee, 10 September 2013; c 2746.]

She went on to talk about a MORI poll that her organisation carried out in which parents across Scotland were asked whether they knew where to turn when they felt that they needed help and support in their parenting. According to that survey, 72 per cent of parents across Scotland and 84 per cent of parents in deprived areas did not know where to turn. I think that I will listen to Clare Simpson before I listen to some of the rather hysterical arguments against the named person provision which, through the application of the universal principle, is intended to protect the most vulnerable children in our society.

Kezia Dugdale (Lothian) (Lab): Honestly, I think that Joan McAlpine could pick a fight with the Labour Party in an empty room. That was ridiculous. [Interruption.]

The Deputy Presiding Officer: Order, please.

Kezia Dugdale: Liz Smith has lodged two different sets of amendments: those that reduce the maximum age at which people will have a named person from 18 to 16, which we can support, and those that seek to diminish the universality of the named person, which we cannot.

That said, it has not been easy for us to come to this conclusion. We have always said that, although the principle is sound, resourcing is an issue. Concerns about resourcing are as strong as ever and, indeed, are being expressed by those such as the RCN and the Educational Institute of Scotland that actually support the named person principle. I say to Fiona McLeod that any misconception about what the named person is and does has arisen because her Government’s front bench has failed to stand up and explain the principle in a way that parents find meaningful.

I ask the minister, first, to specifically reassure Parliament in her closing speech that no resources will be moved away from children who are in need to those who do not need support. Secondly, if this is not state interference in family life—and the minister needs to listen to such concerns, which parents are raising; after all, it is our duty as parliamentarians to give voice to them—can she tell us why parents who feel that their child is healthy, happy and succeeding should need a named person? That simple and legitimate question is being asked by thousands of parents across the country and if the minister wants their support, she has to answer it.

We support what the Government is doing, but the minister needs to do a much better job of explaining exactly what this provision means to people across the country.

Clare Adamson (Central Scotland) (SNP): Mr Bibby mentioned Bill Alexander’s evidence to the committee. I remember that and, indeed, the discussion that we had about it after the meeting. He had mentioned a daughter who had left school to go on to university and I challenge anyone in
the chamber to say that those who are at university or college are not supported. There are student welfare associations, universities provide pastoral care and so on—those young people are in supported places.

However, not all young school leavers have such an outcome, and some 16-year-olds leaving school will be denied access to a named person simply because they are leaving earlier. My own son is 16; if he stays on until sixth year, he will be in school until a month before his 18th birthday. However, a 16-year-old who leaves the school system might go on to a difficult working situation, might experience financial problems that they were not expecting or might have a different type of lifestyle from what they had expected when they left school. Those young people should not be denied access to a named person because of that.

Finally, in the excellent chamber debate that we had on the Public Petitions Committee’s report on child sexual exploitation, there was unanimous support for a named person for any victim of child sexual exploitation who was going through the court process. I would suggest, however, that the court process should not be the beginning and the end of that support. If a named person were universally available to all young people, any victim of child sexual exploitation would be able to go to that person at the very beginning of the process.

Aileen Campbell: The debate about the named person provisions has attracted a lot of comment, information and—as Fiona McLeod made clear in her remarks—misinformation. As a result, before I turn to the specifics of Liz Smith’s amendments, I want to make absolutely clear our intentions and how the provisions will help us to achieve them.

We want to ensure that our children have the best start and outcomes, that children and families have somewhere to go if they need an extra bit of help and that no one is left without support.

We want to promote an early intervention and prevention approach that is co-ordinated and prevents problems from escalating into crises. We want to ensure, as far as possible, that no child slips through that net. A named person for every child will help us to achieve all that. It has to be for every child because we do not know when that extra bit of help is needed. It is a universal service, as Fiona McLeod stated; a public good. As Martin Crewe, director of Barnardo’s Scotland, said:

“If we’re to try and create a system where children don’t fall through the gaps, it has to be a universal system. Unfortunately children aren’t born with an ‘at risk’ sign on their heads, so we have to have a system that does its very best not to allow children to slip through the gaps.”

Following the serious case review of the tragic death of Daniel Pelka, Anne Houston, the chief executive of Children 1st, said:

“Deaths like Daniel’s remind us why the principle behind the named person ... in the Children and Young People Bill is a sound one as it aims to prevent children slipping through the net.”

The named person also provides parents, families and children with a familiar person to whom they can go if they want a bit of advice or help navigating other services. In Highland, where the role has been implemented, Bill Alexander, who has already been mentioned, said:

“It operates effectively, and enables agencies to respond more quickly to parents who raise concerns about their child’s wellbeing.”

Mr Alexander also said:

“We do not get complaints about the named person role being deployed; we get complaints when parents believe it has not been deployed.”

We have consulted widely on the bill’s provisions and we have listened to parents and other groups. The bill has been shaped and honed by what people told us was needed—that includes parents and families as well as charities and other organisations.

It was after listening to views and concerns, including those of parent groups, that we strengthened the information sharing provisions at stage 2. Fundamentally, parents told us that they wanted a single point of contact and were fed up with repeating the same stories to a number of different services. We listened to parents and we will continue to listen to them, because, as I have consistently said, they are almost always the best people to support and protect their children.

I clarify that ministers will use powers under the bill to issue guidance in relation to the named person service prior to the commencement of the duties. The majority of children get all the love, support and encouragement that they need from their parents and wider family, but it is impossible to say which children or families may at some stage need extra support.

If the named person can spot early signs that a child is experiencing difficulty they can work with the parents and family to put in place the right support where required. Parents will still have the right not to accept the advice. The only circumstances in which parents would not be fully involved would be where to involve them could place the child at risk of harm or danger, or adversely affect the wellbeing of the child or young person. That will be the exception. Our guidance will be absolutely clear on those principles and I will continue to work with parent and family groups when developing the statutory guidance.
To undo this part of the bill, as the amendments in this group would do, and as Neil Bibby seems to want to do, would be wrong and ill thought out, as it would remove the universal framework that will support early intervention and the better outcomes and wellbeing for our children that we all want to see.

Amendments 1-50 specifically seek to remove support from young people and their families at the very time when they may be facing the challenges of transition to adult services and post-school services. As Jim Sweeney, chief executive officer of YouthLink Scotland, said:

“It is vitally important to support young people through this key transitional stage. Unfortunately, not all young people have parents who are willing or able to provide them with the support that they need at this difficult time – a period when they are making choices that will affect their future lives.”

Indeed, during its inquiry into decision making on whether to take children into care, the Education and Culture Committee heard from many children and young people, including those over the age of 16 who reported their desire to have access to support services and to be able to go and speak to somebody.

Ms Smith’s amendments fail to acknowledge that, or to—

Liam McArthur: Will the minister take an intervention?

Aileen Campbell: I will take an intervention from Liam McArthur.

Liam McArthur: I have listened to what the minister said and I think that she is right about the evidence that we heard about the benefits of the named person. However, as Liz Smith and Neil Bibby indicated, Bill Alexander’s evidence varied. He specifically highlighted the problem of having a named person for those in later teenage years. I am not saying that a named person should not be available to those aged 16, 17 or 18, but the universality of that provision risks diverting resources away from and undermining the very things that she is intent on achieving.

The Deputy Presiding Officer: Before I call you back, minister, I say that as we are nearing the agreed time limit for the debate on this group, I will exercise my power under rule 9.8.4A(c) to allow the debate on the group to continue beyond the time limit, in order to avoid its being unreasonably curtailed.

16:00

Aileen Campbell: Thank you, Presiding Officer.

I will go on to make more points on the issue, but if providing co-ordinated and targeted support to children from their earliest years up to the age of 16 is effective—as we know it is—the same principle holds true for young people aged 16 and 17. Liz Smith’s amendments fail to acknowledge that, or that a young person needs to be able to access support if they have personal challenges, which might be related to addiction, mental health issues, unemployment or homelessness.

Liz Smith: What prevents young people and their families from accessing that important support now?

Aileen Campbell: The measure is about ensuring that support is co-ordinated in an effective way and that there is a single point of contact, so that people know where to go if they do not get support from their family, friends or whatever. That is why the approach has worked well in the Highlands and why there have been fewer inappropriate referrals to the children’s reporters and to children’s panels. We have been able to better target support at those who are the most vulnerable.

Jim Sweeney—someone whom we should listen to—has pointed out:

“Even if young people who leave school before they are 18 succeed in accessing a positive opportunity such as a job or a Further Education place, they may need support to sustain these opportunities, as many young people drop out of courses or have difficulties in finding and keeping a job. Failing to find or keep a first job can have a ‘scarring’ effect on the rest of young people’s lives, leading to negative outcomes such as poor health and reduced life expectancy, and can also contribute to generational cycles of worklessness and poverty”.

Our aim through the bill is to provide better and slicker support for those who need it or where significant concerns emerge. We all recognise that young people aged 16 or over have varying degrees of need, skill and maturity and that the majority of them will be able to reach their own decisions on the issues that affect them. Many will not need to use the named person service and guidance. The role should be delivered with flexibility and with a light-touch approach when required. However, no one knows what might happen in the coming days, weeks or months. People might look to family and friends but, when they turn to public services for help, we should not remove the support of their named person just because they have reached their 16th birthday, which is what Liz Smith’s amendments would do and what Labour seems to want to support.

Liz Smith has referred a number of times to the situation in which a young couple who are aged 17 could be parents and could have contact with three named persons. What has not been acknowledged is the fact that many young parents struggle to cope and can benefit from having a professional to turn to who can help them to access the support that they need. Liz Smith
suggests that the way to streamline support for such young people is to take it away altogether.

More generally, Liz Smith’s amendments 162 to 164 would fundamentally undermine the named person role and restrict the ability to encourage the early intervention and prevention approach that is needed if we are to prevent crises.

Amendment 163 would add unnecessary bureaucracy to the named person role. In respect of the proposed right of appeal to a sheriff, procedures are already in place at local level to deal with complaints about the exercise of the named person functions. We have lodged Scottish Government amendments, which we will debate later, to ensure that there is a clear and accessible route for parents and families to take for independent consideration of complaints and determination of the issues, if those local procedures are unsuccessful.

Amendments 162A and 163A to 163F are dependent on amendments 162 and 163 being agreed to. Similarly to amendments 1 to 50, they would remove references to “young person”. Liz Smith’s suggestion does not support a responsive, preventative and early intervention approach, but rather is overly bureaucratic, resource intensive, unnecessary and, ultimately, not in the best interests of our children and young people.

In response to Neil Bibby’s point about finance, we have costed the measure and we are financing it. Health visitor numbers have increased by more than 14 per cent since 2007. As Joan McAlpine stated, we have to wonder about Labour’s full commitment to the policy, which has proven to be a success and has allowed services to be better and more effectively targeted at our most vulnerable young people and children.

I do not support the amendments in Liz Smith’s name.

**Liz Smith**: I repeat that we have two fundamental objections to this part of the bill. We thoroughly object to the assertion that all children between the nought and 18 need a named person. I will go back to some of the evidence. It has been cited time and again that Highland Council has been highly successful because of its named person policy. I do not doubt that Highland has been highly successful, but I can see no evidence whatever that that is to do with the named person policy, rather than other highly efficient aspects of GIRFEC, the council’s good leadership and the way in which social services are organised. The council has had a particular success rate on that, but I cannot find the evidence that it is to do with the named person.

A further point was brought to the Parliament’s attention by the Finance Committee. The minister has alleged that the policy is fully costed and funded. I simply do not accept that, nor did every single member of the Finance Committee, which in effect said that the minister’s plans on this policy looked as though they had been written on the back of an envelope.

It is very clear to me that the lack of costing and funding for the policy has serious implications. We have teachers and perhaps health visitors who are very concerned about the accountability that they will have under the policy and where the resources will come from. I ask the minister to think about that very carefully before we come to the vote.

Some members referred to all the evidence from parents and said that it has always been the case that parents have supported the named person policy. That is simply not true. The Scottish Parent Teacher Council’s extensive survey showed that 83 per cent of the parents surveyed did not accept the policy. I therefore think that we have to be very careful about how we balance that evidence.

I will press amendment 1 because we have a fundamental objection to this part of the bill.

**The Deputy Presiding Officer**: The question is, that amendment 1 be agreed to. Are we agreed?

**Members**: No.

**The Deputy Presiding Officer**: There will be a division.

**For**

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Ruterglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provost) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)

Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen North) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 51, Against 69, Abstentions 0.
Amendment 1 disagreed to.
Amendment 2 not moved.

Liz Smith: Presiding Officer, in order to save time, I ask your permission to not move consequential amendments 3 to 50 all together.

The Deputy Presiding Officer: As the Parliament has heard, Liz Smith does not intend to move amendments 3 to 50. However, we must proceed in order through the marshalled list, because any member may move any amendment on the marshalled list. To speed things up, where amendments that Liz Smith has indicated that she will not move appear consecutively, I will simply read out the numbers in order. If anyone wishes to move one of the amendments they should shout loudly, because I will take silence to mean that the amendment is not moved.

Amendments 3 to 11 not moved.
Amendment 162 moved—[Liz Smith].
Amendment 162A moved—[Liz Smith].

The Deputy Presiding Officer: The question is, that amendment 162A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)

Against
Stewart, David (Highlands and Islands) (Lab)

The Deputy Presiding Officer: The result of the division is: For 51, Against 69, Abstentions 0.
Amendment 1 disagreed to.
Amendment 2 not moved.
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marr, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Allan, Liam (Central Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Mid Scotland and Fife) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Donnan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hebburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robinson, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 41, Against 79, Abstentions 0.

Amendment 162A disagreed to.

The Deputy Presiding Officer: The question is, that amendment 162 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Amendments 16 to 15 not moved.

Amendment 162 disagreed to.

Section 21—Named person service in relation to children not falling within section 20

Amendments 12 to 15 not moved.

Section 22—Continuation of named person service in relation to certain young people

Amendment 16 not moved.

Section 23—Communication in relation to movement of children and young people

Amendments 17 to 24 not moved.

After section 23

Amendment 163 not moved.

The Deputy Presiding Officer: As Liz Smith has not moved amendment 163, I cannot call amendments 163A to 163F, all in the name of Liz
Smith, and all previously debated with amendment 1.

Section 24—Duty to communicate information about role of named persons
Amendments 164 and 25 to 29 not moved.

Section 25—Duty to help named person
Amendments 30 to 31 not moved.

Section 26—Information sharing
Amendments 32 to 36 not moved.

The Deputy Presiding Officer: Group 9 is on information sharing and the requirement to obtain informed consent when the information concerned is confidential. Amendment 165, in the name of Liam McArthur, is grouped with amendments 166 to 171.

16:15

Liam McArthur: The minister and committee colleagues will be aware that I have been pursuing this issue since stage 1. I recognise that progress has been made since then—notably through a series of amendments that the minister lodged at stage 2.

Sections 26 and 27 came in for fairly pointed criticism, not least from Professor Norrie, whom the minister quoted earlier and who gave the committee every encouragement to dump over the side sections 26 and 27 lock, stock and barrel. However tempting that might have been, we opted for a different approach, and as a result sharing of information about a child or young person can take place only when it is proportionate and relevant. Moreover, it can happen only with regard having been had to the views of the child.

Welcome although that is—I acknowledge the steps that the minister took at stage 2—evidence that the committee received makes it clear that information being shared will not require the child’s consent. As a result, there is a risk that the child’s right to privacy under article 16 of the UNCRC or article 8 of the ECHR could be compromised.

They go on to confirm that a child or young person’s right to privacy “is not respected in the absence of a requirement to seek consent”.

My amendments acknowledge the need for exceptions to be made where “the information holder considers that to seek ... consent would be likely to adversely affect the wellbeing of the child or young person.”

The amendments would require that guidance be drawn up on how confidential information could be shared in such circumstances. I understand that the amendments reflect the approach that is already taken in the health service. The absence of a more explicit reference to a need to seek informed and explicit consent weakens the bill and opens it up to justified criticism.

I look forward to hearing comments from the minister and other colleagues.

I move amendment 165.

Stewart Maxwell (West Scotland) (SNP): Information sharing was discussed extensively in evidence taking at stage 1 by the Education and Culture Committee. Concerns were raised by some witnesses, as Liam McArthur fairly said, and the committee raised the matter in its stage 1 report. The committee had the chance to discuss and debate information sharing again at stage 2, and we did so extensively.

In my view, this provision was improved by amendments that were passed at stage 2, so the bill is now robust and balanced in this respect. In addition, the minister committed to publishing full guidance on implementation of the information-sharing provisions.

I turn directly to Liam McArthur’s amendments on confidentiality. Of course confidentiality should be respected at all times. However, Liam McArthur must recognise—I think that he does, because he was careful in how he spoke—that there is an expectation that there will be discussions with the child and that their views will be taken into account before a decision is made to share information. A decision to breach confidentiality would never be taken lightly, but sometimes such a decision is necessary in order to promote, support or safeguard a child’s wellbeing.

I am concerned that, if Liam McArthur’s amendments were to be agreed to, they would interfere with the bill’s intention regarding safeguarding a child’s wellbeing. I know that that is not Liam McArthur’s intention and that he is doing his best to strike a difficult balance. However, I am sure that he is aware that in many of the most tragic cases of recent years lack of information sharing has been identified as one of the key factors in the tragedy. I therefore cannot support
amendments that could in any way result in appropriate information sharing being either confused or slowed down.

**Kezia Dugdale:** I support Liam McArthur's amendments for two reasons. First, they seek to increase the amount of rights that children have. That is important given that, a long time ago, two bills were proposed, one of which was a rights of children and young people bill. To involve them wherever possible in consent to access their data is absolutely the correct approach.

The other reason is that Liam McArthur’s amendments would give parents the right to be consulted where organisations propose to share information about the child that is not specifically about the parents. That is sensible, and it is why Labour members will support Liam McArthur's amendments.

**Liz Smith:** I, too, am grateful to Liam McArthur for lodging the amendments in group 9, which strike at the heart of the concerns about the data-sharing aspect of the bill. Notwithstanding Stewart Maxwell’s well-intentioned comments, there is no doubt that data sharing remains a controversial element of the bill and that there is, as things stand, still scope for data sharing to be misused or abused, and not only in relation to the named person policy.

Many professionals are concerned about where their responsibilities lie and, therefore, about where accountability will lie, especially in a dispute or even a general disagreement between them, the family and the named person. We will support the amendments.

**Joan McAlpine:** As Stewart Maxwell does, I respect how Liam McArthur has put his argument across. He will know that I raised concerns in committee about some of the bill's provisions, including the concerns of LGBT Youth Scotland with regard to the privacy of young gay teenagers. However, I am confident that the guidance will address those concerns and that, given the amount of attention that we have paid to data sharing, professionals will act appropriately.

There is also the issue of confidentiality for parents. Again, I had concerns about how proportionate the provisions are with regard to sharing information about children whose wellbeing is not threatened. However, we must balance such considerations and consider what is best for vulnerable children.

In the wider context, it is important that every inquiry into a child’s death has concluded that information sharing was not robust. I believe that, on balance, I and others should put our concerns aside and trust that professionals will make the correct judgments and protect the most vulnerable children. I will therefore not support the amendments in group 9.

**Aileen Campbell:** We have listened carefully to the arguments in support of the amendments in group 9, and we share many of the sentiments that have been expressed. We must ensure that appropriate information is shared when there is a reason to do so, and that we seek to respect the views of the child and their right to privacy with regard to data protection and ECHR legislation as well as seeking to promote, support and safeguard their wellbeing.

In that context, the amendments seek to strike a careful balance in what are complex provisions. However, I will set out why we believe that the provisions in the bill as amended at stage 2 best reflect—as Joan McAlpine and Stewart Maxwell pointed out—an appropriate balance in terms of sharing information, promoting good practice and meeting the important aims that Liam McArthur has set out.

Amendments 165, 166 and 168 seek to ensure that informed and explicit consent is obtained prior to the sharing of confidential information under section 26. They would also provide that the information holder take account of the child’s age and maturity when seeking consent. An exception to the duty to seek consent would be made if the information holder considered that it would adversely affect the child or young person’s wellbeing to do so.

The amendments in the group rightly recognise that confidential information should not routinely be shared, that the child’s views about the information being shared are important, and that sharing or not sharing information can have a serious effect on a child. The information sharing provisions in the bill as amended at stage 2 already provide that careful consideration be given to issues of confidentiality, the views of the child or young person and the impact of information sharing on their wellbeing. The amendments are more limited in scope than the current bill provisions in that they do not extend to sections 23 and 38, which also require information sharing.

Amendments 169 and 171 seek to remove sections 26(8) and 38(3). They would therefore remove the protection that we introduced at stage 2 to make it explicit that where there is a legal prohibition or restriction on sharing information, that prohibition or restriction cannot be ignored. The amendments do not include an amendment to the corresponding provision in section 23, which we included in our stage 2 amendments. Although the bill's provisions refer to a duty of confidentiality, the amendments refer simply to “confidential” information without any definition, which leaves room for potential confusion.
Amendments 167 and 170 seek to ensure that guidance that is to be published on part 4 of the bill contains advice on how to proceed when consent to sharing of confidential information cannot be obtained, and that information holders must proceed in accordance with that guidance. Section 28 of the bill already allows for guidance to be issued in relation to the exercise of all functions that will be conferred by part 4, including the information-sharing duties, and it also already requires all persons exercising those functions to have regard to the guidance. The amendments are therefore unnecessary. The bill is clear that practitioners need to consider carefully what information must be shared, when and with whom.

The bill’s provisions support early intervention; that is why it is crucial for the named person to be aware of all concerns about a child’s wellbeing. We have listened to the views of stakeholders—specifically in the health sector—who have experienced confusion and, at times, conflict when operating under a duty of confidentiality, even when they knew that it would be in the best interests of the child to share information. Section 26(8), as amended, therefore permits them to share information, but only after consideration of all the other tests in section 26. Sections 23(7) and 26(8) also make it clear that the bill does not permit a breach of any other legal restrictions on disclosure of information.

Of course we know that the child’s views are important—that is why at stage 2 we lodged amendments to all the information-sharing provisions to ensure that the child’s views are obtained wherever possible. As stipulated in section 28, guidance will reinforce those important principles, which recognise the importance of taking the child’s views into account, and recognise that sharing information about a child’s wellbeing can do harm as well as good. The amendment to further specify that guidance should be followed is not required and will add nothing to the existing provisions.

Amendments 165 to 171 seek to go too far when a child’s wellbeing is at risk and would potentially prevent information from being shared appropriately. Stewart Maxwell has already pointed out that every inquiry into a child’s death in the past few decades has shown that lack of information sharing has been a key factor. What is proposed in the amendments would complicate and potentially confuse—the intention behind the bill, which is to ensure that appropriate and proportionate information gets to the named person well before crisis point is reached.

We therefore strongly oppose all the amendments in group 9, not because we do not respect the principles that they seek to promote—as outlined by Liam McArthur—but because we strongly believe that the bill already provides for the important principles that Liam McArthur laid out to be respected.

Liam McArthur: I thank Kezia Dugdale and Liz Smith for their comments and support. I also thank Joan McAlpine for her interest in and pursuit of the issue throughout stage 2, in particular in relation to the concerns that were raised by LGBT Youth Scotland. I was very sympathetic to those concerns. I thank Stewart Maxwell for what I thought was a fairly accurate explanation of the journey that the committee went through and the evidence that we took. He is right to highlight the concern that we do not want to do anything that would either create confusion or slow down the process.

However, as I said earlier, there is equally a risk that we will slow down the process through children and young people and their parents and guardians not engaging with confidential services because of concerns about lack of explicit consent. The presumption of consent—with the exemption that consent would not be sought when it was likely to affect adversely the wellbeing of the child or the young person—would strike the right balance. To pick up on the point that the minister—and, I think, Joan McAlpine—made, it would also leave scope for the professional judgment of the people who are tasked with making enormously difficult decisions about the circumstances under which they should share confidential information.

I think that the amendments in group 9 are important in that they would give more confidence to children and young people and their parents and guardians that what will be put in place is proportionate and robust and will allow latitude for the exchange of information in the correct circumstances.

On that basis, and notwithstanding the comments that have been made by the minister and other colleagues, I press amendment 165.

The Presiding Officer (Tricia Marwick): The question is, that amendment 165 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Amendment 37 not moved.

The Presiding Officer: The question is, that amendment 166 be agreed to. Are we agreed?

No.

The Presiding Officer: There will be a division.

The Presiding Officer: The result of the division is: For 55, Against 65, Abstentions 0.

Amendment 165 disagreed to.

Amendment 166 moved—[Liam McArthur].

The Presiding Officer: The question is, that amendment 166 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.
Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Ferguson (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Strathclyde) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillian, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 44, Against 76, Abstentions 0.

Amendment 166 disagreed to.

Amendment 167 moved—[Liam McArthur].

The Presiding Officer: The question is, that amendment 167 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Griffith, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (SNP)
Habermacher, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Ruthegeren) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McFaddie, Margaret (Central Scotland) (Lab)
McInnes, Alston (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Urguhart, Jean (Highlands and Islands) (Ind)

Against
Adams, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabell (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christie (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)

Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mihal, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Barnsffire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 42, Against 78, Abstentions 0.
Amendment 167 disagreed to.

The Presiding Officer: Amendment 168, in the name of Liam McArthur, has already been debated with amendment 165.

Liam McArthur: On the basis that I am losing support with each amendment, I will not move amendment 168.

Amendment 168 not moved.
Amendments 38 and 39 not moved.
Amendment 169 not moved.

Section 28—Guidance in relation to named person service

Amendment 170 not moved.

Amendment 75 moved—[Aileen Campbell]—and agreed to.
Section 29—Directions in relation to named person service

Amendment 76 moved—[Aileen Campbell]—and agreed to.

The Presiding Officer: Before we move to the next group, which is group 10, I invite any member to move a motion without notice under rule 9.8.5A of standing orders to extend the next time limit by up to 30 minutes, in order to allow proceedings on amendments to be concluded, and to allow discussion.

Motion moved,

That the next time limit be extended by up to 30 minutes.—[Joe FitzPatrick.]

Motion agreed to.

After section 29

The Presiding Officer: We move to group 10. Amendment 101, in the name of the minister, is grouped with amendments 102, 112 and 113.

Aileen Campbell: The Scottish Government is committed to clear, quick and accessible routes for consideration of complaints if there are disagreements about the exercise of the named person or child’s plan functions. We are also committed to ensuring that a mechanism for that is in place in advance of the commencement of the GIRFEC duties, which are currently scheduled for 2016, as set out in the financial memorandum.

However, we do not want to add unnecessary complexity to the complaints landscape, where there are existing mechanisms to enable people to challenge decisions or roles in public services. In evidence to the committee the Scottish Public Services Ombudsman—the independent body that handles complaints about devolved public services in Scotland—highlighted the difficulties that are sometimes caused by the complexity of complaints processes.

Amendment 101 will enable ministers to propose provisions for dealing with complaints in respect of the named person duties in part 4. It will also enable ministers to propose changes to other legislation, if required, in order to provide as accessible and consistent an avenue as possible for complaints handling in relation to the named person duties. Amendment 102 will allow the Scottish ministers to make equivalent provision in respect of the child’s plan duties in part 5.

Amendments 112 and 113 propose that the order-making powers will be subject to affirmative procedure. That is considered appropriate so that Parliament has the opportunity to scrutinise, to debate and, if satisfied, to affirm the detailed proposals before they can come into force.

I am grateful to Liz Smith for her help and her input into discussions on the amendments, and for the useful meeting that we had following the stage 2 committee meetings. I hope that we can continue working together as we develop the detail of the proposals. Processes already exist for consideration of complaints at local level; we expect that disagreements about the duties in parts 4 and 5 will be resolved at that level, where possible.

If that is not possible, we want to ensure that there is a clear and accessible route for parents and families to go for independent consideration of complaints and determination on issues. The order-making powers will enable us to ensure that all matters that should be subject to a complaint and independent investigation are covered. That will be a key focus of our planned consultation, as we take into account stakeholder views on the detail of what is required. We will also continue our discussions and work with the SPSO to ensure that we avoid duplication and do not add unnecessary complexity to the complaints landscape.

As we develop the detail, we also need to take into account the current wider consideration of complaints in social work, where we are keen that the system should meet the needs of service users. We do not want to pre-empt the outcome of that work by putting detail for the GIRFEC provisions in the bill now.

We are therefore proposing the order-making powers to give the flexibility that is required to take into account related developments elsewhere. That will also enable us to engage further with stakeholders—especially parents and families—which will inform the development of our proposals.

As I said previously, we are committed to having in place a clear and accessible system for consideration of complaints in advance of commencement of the GIRFEC duties. The proposed order-making power will enable us to achieve that. Therefore, we ask Parliament to support the amendments in my name.

I move amendment 101.

Liz Smith: As the minister has indicated, at stage 2 I lodged three amendments that sought to introduce provisions for resolution of disputes regarding the need, content and management of a child’s plan. After hearing the responses from the minister, I decided not to press the amendments on the ground that she was similarly committed to introducing a clear route of redress for families, parents and children.

I appreciated that sentiment and I was grateful to the minister for some engagement. She knows from my email of 5 February that although I am...
content with the spirit of the Scottish Government amendments 101, 102, 112 and 113. I still have some concerns about whether there will be a sufficiently robust appeals process, as distinct from just a complaints process. Before I accept the amendments in full, I would be grateful if she would guarantee that she will consider the matter further and engage with the Muir Maxwell Trust, which has been extremely diligent in addressing the issue.

Likewise, it would be very helpful if the minister would indicate the timeframe for consultation on the new mechanism and say how its independence will be assured.

Liam McArthur: As I said earlier, after initial misgivings I have been persuaded by the case for the development of a system of “named persons”. That said, it does not require a crystal ball to see that there are likely to be points at which how that operates in practice will not be acceptable to those involved, including children, young people and their parents or guardians.

I raised similar concerns about the lack of an appeals process with regard to the child’s plan provisions that are set out in part 5 of the bill. However, it was the efforts of Liz Smith at stage 2 that secured the concession from the minister in relation to part 4. I congratulate her on that not inconsiderable achievement, given the fate of every other Opposition amendment at stage 2.

Nevertheless, I can give only a cautious welcome at this stage to the minister’s move in amendments 101 and 102 to take order-making powers that would allow a complaints procedure to be introduced for parts 4 and 5. As Liz Smith suggested, the Muir Maxwell Trust has made some interesting observations in that respect. It suggests that what is set out looks a little like a tick-box exercise, with the cards stacked against the child and/or their parents. It also questions the need or justification for time limits. I have some sympathy with that, because any case would, I presume, be dealt with on its merits.

The minister will have seen the Muir Maxwell Trust briefing and the call for a firm commitment to continue working with the trust and others to create an appeals system that is fair and which genuinely works for all—especially children and young people with profound learning disabilities. I assume that she will confirm that she is happy to do that.

Stewart Maxwell: I thank the minister for taking on board the discussion that took place in the Education and Culture Committee, particularly at stage 2 on the amendments that Liz Smith mentioned earlier. I am delighted that the minister has moved on the matter and has lodged the amendments in group 10, which are welcome. We all look forward to the consultation process to ensure that we get in place a transparent and speedy complaints procedure as soon as possible.

Aileen Campbell: I am grateful to Liz Smith for her engagement on the matter and for not pressing her amendments at stage 2 in order to allow us to work together on what we have proposed at stage 3. I am also grateful to Liam McArthur and Stewart Maxwell for their comments.

I have said that GIRFEC will not be implemented until 2016, so we will be able to work until then to ensure that robust complaints procedures are in place before it is implemented. We will commit to working with the Muir Maxwell Trust to ensure that we have managed to capture all views, not least those of parents and families, as we develop the approach to raising complaints. We will also ensure that we can use affirmative procedure to allow Parliament to scrutinise he provisions more widely.

I hope that the spirit in which we have approached the matter and our continued commitment to engage with parliamentarians and other interest groups will ensure that we will, by the point at which GIRFEC comes into action, have a robust process by which families can raise any concerns they have.

Amendment 101 agreed to.

The Presiding Officer: I suspend the meeting for 10 minutes to allow a short comfort break.

16:42
Meeting suspended.

16:52
On resuming—

The Presiding Officer: We move to group 11, on the meaning of relevant and listed authorities et cetera. Amendment 77, in the name of the minister, is grouped with amendments 77A, 78 to 82, 84, 86, 86A, 87, 176, 90, 91 and 198 to 200.

Aileen Campbell: Amendments 77 and 86 specify that the Commissioner for Children and Young People in Scotland and post-16 education bodies are not relevant authorities for the purposes of section 29 in relation to directions on the named person functions and section 40 in relation to directions on child’s plan functions. The amendments remove those bodies from being subject to ministerial direction because that conflicts with their established status of being independent from ministers, the Scottish Government and Parliament.

It is conceivable that bodies that are to be added to schedules 2 and 2A in the future may
have similar concerns about their independent status and being subject to ministerial direction. Therefore, the changes that are proposed by amendments 77 and 86 allow the duty to comply with ministerial directions to be disappplied in relation to those bodies should that be appropriate. Amendments 90 and 91 provide that those order-making powers should be subject to the affirmative procedure.

Amendments 78 to 82 and 84 are minor technical amendments that are made in consequence of amendments 77 and 86.

Amendment 87 is a minor technical amendment to section 50(1) to provide that the definition of corporate parents for the purposes of part 7 is made subject to subsection (3A) as well as subsection (3). That change is made in consequence of the addition of subsection (3A) at stage 2 to provide that the children’s commissioner and post-16 education bodies are not corporate parents for the purposes of section 58, thereby exempting them from ministerial direction under the powers set out in that section. Those bodies are, however, corporate parents for all other purposes in part 7.

Amendments 198 to 200 would have the effect of removing the children’s commissioner from schedules 2, 2A and 3—effectively, they remove the requirement for him to provide information and assistance with regard to the named person and child’s plan functions and to take on corporate parenting responsibilities.

Amendments 77A, 86A and 176, in Liam McArthur’s name, seek to remove the references to the children’s commissioner in the provisions on directions in parts 4, 5 and 7 in consequence of amendments 198 to 200, also in Liam McArthur’s name. We do not support these amendments in Liam McArthur’s name, and I will explain why.

At stage 2, we lodged an amendment to remove the requirement that the children’s commissioner and his officers must comply with ministerial directions relating to part 7, on corporate parenting responsibilities, on the ground that that conflicted with their established independence from ministers and the Parliament. For similar reasons, we have lodged stage 3 amendments to disapply ministerial direction-making powers in respect of the children’s commissioner in parts 4 and 5. However, the removal of the children’s commissioner from schedules 2, 2A and 3 completely goes too far.

If the children’s commissioner holds relevant information about a child that meets the tests introduced in section 26 at stage 2, and that information is not known to the named person, our policy intention is that that information should be shared. The provisions are designed to promote, support and safeguard children’s wellbeing. Sharing relevant and proportionate information relating to wellbeing concerns with the named person need not compromise the commissioner’s ability to exercise his functions, including any investigatory function.

The duties to help the named person with regard to section 25, and to provide information, advice or assistance in relation to a child’s plan under section 38, do not apply where that would be incompatible with any of the children’s commissioner’s duties or unduly prejudice the exercise of any of his functions. That would give the commissioner a safeguard if he felt that his position would be compromised in providing the requested information, advice or assistance.

On amendments 176 and 200, I acknowledge Liam McArthur’s concerns about the role of the children’s commissioner and his proposal to remove the commissioner as a corporate parent. Our stage 2 amendment to disapply the section 58 ministerial direction-making power met the substance of the commissioner’s concerns at that time but importantly retained the commissioner as a corporate parent with the same broad duties as the wider public sector.

The children’s commissioner is a leading advocate of children’s rights and plays a key role in improving outcomes for looked-after children. It therefore sits uncomfortably that we should consider giving the commissioner a special exemption when his role in meeting that aim is so important.

In summary, we cannot support Mr McArthur’s amendments. I ask the Parliament to support my amendments in the group.

I move amendment 77.

Liam McArthur: In speaking to the amendments in her name in the group, the minister has set out the steps that the Government is taking to remove the children’s commissioner from the lists of relevant and listed authorities, effectively, as she said, thereby lifting the threat of the commissioner being subject to ministerial powers of direction. I very much welcome that move, following on from the earlier steps that the minister took at stage 2.

However, concerns remain, arising from the continued inclusion of the commissioner’s office in schedules 2, 2A and 3. According to the commissioner, that could result in “unprecedented executive interference with the model that Parliament chose and reaffirmed for bodies such as the Commissioner.”

As a result of the schedules, the commissioner would be inevitably involved in a network of close institutional relationships with statutory children’s
services providers. On the face of it, that appears desirable, but there is the chance that such providers could be the subject of investigation by the commissioner, in which case the perception of independence could be compromised. The problem would be all the more acute where the commissioner owed a duty to share information about individual children with statutory services acting as named persons, as the minister acknowledged. The commissioner explains:

“It is only a question of time until the Commissioner will be required under this duty to disclose sensitive information about a child complainant to the service provider under investigation, which also provides the named person service to the child, thereby giving the service provider a degree of power over the Commissioner in terms of the investigation—precisely what Parliament sought to avoid by choosing the institutional setup of the 2003 Act.”

In addition, it has been pointed out that its inclusion in schedules 2A and 3 of the bill would appear to require the commissioner’s office to actively participate in care planning for individual children—something that quite demonstrably would be inappropriate, not least given the importance of the commissioner maintaining, and being seen to maintain, a level of independence.

Without my amendments 198 to 200—and the other consequential changes—we could end up needlessly limiting the effectiveness of the commissioner and his office. In so doing, we risk closing off avenues of complaint and appeal that are open to some of the most vulnerable children and young people in our society. That is not the intention, but I fear that it could be the effect. Therefore, I urge Parliament to support my amendments.

17:00

Aileen Campbell: The amendments in my name in the group strike a good balance between respecting the role of the children’s commissioner and understanding his position in relation to maintaining the independence that he requires.

I explained why we need to retain the commissioner in the lists in schedules 2 and 2A. If we are to achieve our policy of getting it right for every child, we need to ensure that everyone who holds relevant information about children’s wellbeing can share that information. I am confident that the safeguards to which I referred, which recognise circumstances in which it would not be appropriate to share information, will give the commissioner the reassurance that he requires that his independence and investigations will not be compromised.

On schedule 3, we do not consider that a special exemption from the corporate parenting duty would be appropriate, given the commissioner’s key role in achieving the aims of

part 7. The disapplication of the duty to comply with directions, which we have achieved in respect of part 7 and which we are proposing in respect of parts 4 and 5, enables us to strike the right balance between protecting the commissioner’s independence and ensuring that the bill’s important policy aims in respect of promoting, supporting and safeguarding children’s wellbeing are met.

We hope that the children’s commissioner, in recognition of the unique position that he holds, will want to engage with other services to address issues that relate to children’s wellbeing, wherever they arise. We hope that the commissioner is keen to play a part in improving outcomes for looked-after children. That seems to be in the best interests of the child. The bill as drafted and as we are proposing to amend it will not require the commissioner to act in a way that is inconsistent with the proper exercise of his functions.

I therefore ask members to support the amendments in my name and not to support the amendments in Liam McArthur’s name. We think that we have struck the right balance and protected the commissioner’s role in respect of his functions.

The Presiding Officer: I call Liam McArthur to wind up.

Liam McArthur: Oh, am I winding up on this group, Presiding Officer?

I heard what the minister said about the amendments in my name. I still think that there is an issue to do with, if not the compromising of the commissioner’s independence, a perception that his independence will be compromised. I intend to move the amendments in my name.

I move amendment 77A.

The Presiding Officer: The question is, that amendment 77A be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For:

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patrick (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Amendment 77A disagreed to.

Amendment 77 agreed to.

Section 30—Interpretation of Part 4
Amendments 40 to 43 not moved.

Amendment 78 moved—[Aileen Campbell]—and agreed to.

Amendments 44 to 48 not moved.

Amendment 79 moved—[Aileen Campbell]—and agreed to.

Section 38—Assistance in relation to child’s plan
Amendment 80 moved—[Aileen Campbell]—and agreed to.

Amendment 171 not moved.

Amendment 81 moved—[Aileen Campbell]—and agreed to.

Section 39—Guidance on child’s plans
Amendments 82 and 83 moved—[Aileen Campbell]—and agreed to.
Section 40—Directions in relation to child’s plans

Amendments 84 and 85 moved—[Aileen Campbell]—and agreed to.

After section 40

Amendment 102 moved—[Aileen Campbell]—and agreed to.

Amendment 86 moved—[Aileen Campbell].

Amendment 86A moved—[Liam McArthur].

The Presiding Officer: The question is, that amendment 86A be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baille, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Ferry, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (Central Scotland) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McIntyre, Alison (North East Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McManus, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biągi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McCillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
The Presiding Officer: The result of the division is: For 53, Against 63, Abstentions 0.

Amendment 86A disagreed to.
Amendment 86 agreed to.

Section 43—Duty to secure provision of early learning and childcare

The Presiding Officer: Group 12 is on the provision of early learning and childcare.

Kezia Dugdale: Presiding Officer, I raise a point of order under rule 9.3.2 of standing orders. I do so as section 43 is the first part of the bill that involves capital costs.

I ask you to look again at rule 9.3.2. This issue was first raised by the distinguished convener of the Finance Committee and I draw your attention to the letter that he sent to the minister earlier today, in which he said:

“The Committee is very concerned that a best estimate has not been provided for the capital costs as required by Rule 9.3.2 of the Parliament’s Standing Orders.”

Furthermore, I draw your attention to the childcare section of the supplementary financial memorandum to the bill, which states clearly, in paragraph 13, on page 5:

“Capital costs have not been explicitly estimated. It is not possible to provide an accurate estimate of the level of infrastructure investment required at this stage. Further work will be required to explore the need for any additional capital funding.”

Given that, essentially, we are being asked to sign a blank cheque, do standing orders provide scope for business to be suspended until the Government can offer an explanation and, indeed, an apology? We believe that for it to proceed without giving an explanation is discourteous to parliamentarians to scrutinise and vote on what is involved in our nurseries, as a result of which discrimination in our nurseries, as a result of which further evidence will be taken prior to our voting on these particular amendments.

The Presiding Officer: Thank you, Ms Dugdale, and thank you for giving me prior notice of your point of order.

As was said earlier when a similar point of order was raised, under rule 9.12, a financial resolution was passed by the Parliament at stage 1. A supplementary financial memorandum was lodged, as is required under rule 9.7.8B, as a result of amendments that were agreed to at stage 2.

I am aware that the Finance Committee and its distinguished convener took advice on the supplementary financial memorandum this morning and that, in the light of that scrutiny, the committee’s convener has written to the minister to raise concerns about the information in the supplementary financial memorandum. The convener has also invited the minister to give further evidence to the committee.

As the Deputy Presiding Officer said earlier, standing orders make it clear that a financial resolution must be passed, which has happened, and a supplementary financial memorandum has been put forward in relation to the amendments in question.

I understand the point that the member has made. It is, of course, open to any member to write to the Standards, Procedures and Public Appointments Committee to ask whether the issue might be looked at in future. For the moment, however, a financial resolution has been passed and the Parliament’s standing orders have been met.

Amendment 51, in the name of Liz Smith, is grouped with amendments 103, 172, 104, 173, 105, 174, 52 to 54, 114, 115, 115A and 197.

Liz Smith: Just before I speak to amendment 51, Presiding Officer, I seek clarification of whether you are indicating that further evidence will be taken prior to our voting on these particular amendments.

The Presiding Officer: That is entirely a matter for the Finance Committee and the minister.

Liz Smith: At stage 2, I lodged amendments that were designed to end the practice of birthday discrimination in our nurseries, as a result of which children born between 1 September and 29 February receive significantly less provision than those born at other times of the year. Indeed, that anomaly was acknowledged by Angela Constance in her response to, I think, question 13 from Malcolm Chisholm at this afternoon’s education question time. The anomaly itself derives from the Scottish Government’s practice of funding nursery provision from the term after a child turns three. As Reform Scotland has shown, that means that nursery provision can vary by up to 317 hours or by more than £1,000 within the cost of nursery partnership provision.

A child born between 1 March and 31 August is entitled to the full two years’ nursery provision before beginning school, but a child born between 1 September and 31 December will get only 18 months’ provision and a child born between 1 January and 28 February receives just 15 months. Evidently, the situation is grossly unfair and amendments 51 to 54 would rectify it by introducing a fixed start point for all children, as is common practice in primary schools. That would end the present shortcoming and would place nursery provision on an equal basis. Although the plans were supported by the Liberal Democrats and Labour at stage 2, Scottish National Party
members seem, for some reason, intent on blocking the measures, despite their commitment to what they describe as transformational policies to support young children.

At stage 2, Colin Beattie talked about

"30,000 additional two-year-olds entering the system."—[Official Report, Education and Culture Committee, 14 January; c 3287.]

That is wrong. Amendments 51 to 54 would not extend childcare to new groups; instead, they would ensure equality of access across the board by accelerating uptake. We are very well aware that that would incur a cost. The Conservatives have not shied away from that fact but we would prefer to see this policy in place rather than, for example, the universal free school meals policy.

Furthermore, the minister argued at stage 2 that the amendments were “unnecessary” because commencement dates can be set via secondary legislation. However, she made no commitment to make such a change; indeed, the SNP has said on the record that it has no plans to make such changes. That is why amendments 51 to 54 are necessary—the status quo is simply unacceptable.

By removing an unwelcome anomaly from the nursery system, amendments 51 to 54 would place all children on an equal footing. The suggestion is entirely reasonable and I hope that the Scottish Government will accept the amendments.

I move amendment 51.

Aileen Campbell: By proposing a move to a system in which all children would receive two years of funded early learning and childcare, amendments 51 to 53 would result in significant numbers of children taking up their entitlement, some from the age of two and a half. Amendment 54 would make the order-making power in amendment 51 subject to the affirmative parliamentary procedure.

Although we accept the need to build on the bill’s provisions, the priority at this stage must be to build additional hours and flexibility into our high-quality universal provision, increasing the entitlement to around 16 hours a week, and, as we expand, focusing on our more vulnerable two-year-olds. We have demonstrated our commitment to do that with the announcement on additional two-year-olds by the First Minister on 7 January.

17:15

Amendments 51 to 54 are unnecessary, as any further expansion of or changes to the commencement dates for entitlement to early learning and childcare for two or three-year-olds can be achieved through secondary legislation made under the bill.

On the start date for three-year-olds to take up the funded entitlement, local authorities can and do deliver provision beyond the minimum number of hours and the minimum eligible children. A number of local authorities already start children from their third birthday, or the month after their third birthday, where they have capacity to do so.

The youngest children—those born in January or February—who may get less provision when they are three, will continue to be entitled to an additional year after they are four, where parents wish. In addition, increasing entitlements to two-year-olds will result in a significant decrease in the number of children who are impacted by the issue of third birthday start dates.

We share the ambitions within amendments 172, 173 and 174 to deliver early learning and childcare to significantly more two-year-olds in greater need. We know that children from more disadvantaged backgrounds benefit most from high-quality early learning and childcare and we were absolutely delighted when the First Minister announced on 7 January that from August 2015 we will increase the entitlement to those two-year-olds set out in amendments 172, 173 and 174. I am pleased that Neil Bibby agrees with our timescales, but we do not need amendments to the bill to do that.

I have said that the bill is a starting point and that we will expand entitlement through secondary legislation where it is affordable. We have demonstrated our commitment to that approach by allocating consequential funding that was confirmed to us in December 2013.

Amendments 115A and 197 seek to ensure that those two-year-olds who would be eligible by virtue of meeting free school lunches criteria, whom Neil Bibby wants added on the face of the bill, are commenced separately in or by August 2015.

Amendments 172, 173, 174, 115A and 197 are all unnecessary, as we have made clear our commitment to commence children by virtue of meeting the free school lunch criteria through secondary legislation, for implementation from August 2015. Those amendments would overcomplicate the issue by introducing additional children and dates on the face of the bill. There are clear advantages to defining children through secondary legislation, as we always set out to do, especially through the affirmative procedure agreed at stage 2, affording an appropriate level of parliamentary scrutiny and discussion—indeed, more discussion than would be possible through an amendment at stage 2 or 3.

The purpose of amendments 103, 105 and 114 is to ensure that the arrangements for stopping early learning and childcare to start school are the
same for all children. Currently, children whose fifth birthdays are in September to December, and so who are not quite five in August when they are eligible to start school, can be deferred for a year by their parents so that they are over five when they start school. However, they are not automatically entitled to an additional year of early learning and childcare. Children whose birthdays are in January and February, who would only be around four and a half if they started school the August before, when first eligible, can be deferred by their parents for a year so that they are over five when they start school. They are also entitled to an additional year of early learning and childcare. Those starting and stopping arrangements are all set out in secondary legislation, which will be replaced by new secondary legislation enabled by the bill at section 43(2)(c)(ii).

The children who are defined on the face of the bill—two-year-olds who are looked after, are under a kinship care order or have a parent-appointed guardian—have their start dates set out on the face of the bill. However, they are not currently covered by the secondary legislation enabled by section 43(2)(c)(ii) and therefore have no stopping dates.

For all children born in September to December, regardless of whether they are specified on the face of the bill or through secondary legislation, whose parents or carers decide to defer entry to school for a year until after they are five, there is scope for an additional year of early learning and childcare at the discretion of the local authority. That is based on the needs of the child and informed by appropriate professional assessment, which could be by educational psychologists, early years staff or teachers.

Amendments 103, 105 and 114 are technical amendments to enable the same end dates to be specified by secondary legislation made under the bill for those children specified on the face of the bill as for all other children specified by secondary legislation under the bill. That will ensure consistent arrangements for all children and is important in determining eligibility for an additional year of early learning and childcare before starting school.

Amendment 104 will provide that children who have guardians appointed under section 7 of the Children (Scotland) Act 1995—guardians appointed as such in a parent’s will or similar—are also eligible for funded early learning and childcare provision from the age of two. That is to bring them in line with children who have guardians appointed by the court under section 11 of the 1995 act. Those children were deemed at stage 2 to be subject to a kinship care order and therefore eligible for funded early learning and childcare from the age of two. The amendment will ensure that two-year-old children who have a guardian, no matter how that guardian was appointed, will be eligible for funded early learning and childcare.

The purpose of amendment 115 is to provide for the commencement of the non-substantive provisions in sections 43(2) to 43(4), which define the children who are eligible for early learning and childcare provision, and of the power to make secondary legislation to describe further eligible children, including when their entitlement starts and stops.

We have worked closely with our key delivery partners on our policy intentions as regards defining eligible children and we have used the opportunity of the consequential funding that was confirmed in December to announce further eligible children to be defined through secondary legislation. I am pleased that my amendment to make the order-making power subject to the affirmative procedure, which was recommended by the Delegated Powers and Law Reform Committee, was agreed, as that will allow greater parliamentary scrutiny. It is essential that we set out at the earliest possible opportunity who the eligible pre-school children are, to enable local authorities to plan and work towards implementation.

We share the ambitions of local authorities and key stakeholders to contribute to Scotland’s social and economic development, improve attainment, support parents to find or sustain employment and, first and foremost, see our young children happy and benefiting from early learning and childcare. I am grateful to local authorities and all our delivery partners for the tremendous amount of work that is under way to plan and prepare for the delivery of the early learning and childcare provisions. I want to continue the pace and engagement on the aspects of provision that are subject to secondary legislation. The bill is the first step in achieving our ambition to transform childcare and to do more for children in the earliest years. In the white paper “Scotland's Future”, we set out our ambitions to do even more and to help families to balance work and life more ably.

I ask the Parliament to support my amendments in the group and not to support Liz Smith’s and Neil Bibby’s amendments.

Neil Bibby: I welcome the opportunity to speak to my amendments 172 to 174, 115A and 197, which are quite simple. They would put the Scottish Government’s recent commitments on early learning and childcare for two-year-olds in the bill, and are supported by Children in Scotland, Save the Children and many other organisations. We all know the importance of providing quality childcare. It helps a child’s learning and
development and helps to put money in the pockets of families. When targeted at the poorest, it helps to reduce child poverty and it is good for the economy generally.

As members will know, Labour and other Opposition parties have pushed for an extension of early learning and childcare for two-year-olds. We welcome the fact that, from next year, 15,000 vulnerable two-year-olds will get early years provision who were not going to get it previously. That is not as many as we would like, but it is welcome all the same. However, members will forgive me for being a bit sceptical. I want to ensure that the Scottish Government cannot go back on its word and cut back that commitment at a later date. Members might ask why the Government would do that. Well, let us not forget that Fiona Hyslop and the SNP Government cut nursery provision for vulnerable two-year-olds when the SNP first came to power in 2007, so the SNP has form on the issue. That is why I want the entitlement to be in the bill.

The original childcare entitlement for 3 per cent of two-year-olds is in the bill, so why not go further and put the additional two-year-olds in it, too? I am not sure why the Government does not support its own policy and put its recently stated childcare commitments in the bill. If the minister refuses to do so, will she therefore confirm that, as it stands, other than the commitment on looked-after two-year-olds, there will be no commitment to childcare in the bill?

Aileen Campbell: We have made it clear from the start of the bill process that we will subsequently extend and expand childcare through secondary legislation.

Neil Bibby: As I said, I am concerned because that comes from the Government that cut nursery provision for two-year-olds when it first came to power.

So far, Labour and other Opposition parties have lodged dozens of amendments to the bill but, unfortunately, not one of them has been supported by a single SNP member of the Education and Culture Committee or by the Scottish Government. I am surprised that the SNP Government will not support the inclusion of its own childcare policy in the bill, as I propose should happen. However, perhaps that should not be surprising as, at stage 2, the SNP members of the committee voted against their own childcare policy in the white paper of 600 hours of early learning and childcare for half of Scotland’s two-year-olds. We said that the bill was unambitious on childcare, and it still is.

Despite the partial U-turn of last month, as of September this year, 40 per cent of two-year-olds in England will get the nursery provision while only 15 per cent of two-year-olds in Scotland will get it, and even when the figure goes up to 27 per cent the SNP Government will still be lagging behind England. The SNP keeps saying that we need independence to improve childcare, despite having done next to nothing on it over the past seven years.

Labour has supported, does support and will continue to support more childcare under devolution. The SNP could go further now on childcare, but it has chosen not to this year and in every other year that it has been in power. The bill really is a missed opportunity. It is the childcare bill with next to no childcare commitments written in it. The least that the SNP Government could do is to put its recent stated commitments on the face of the bill.

The Deputy Presiding Officer (Elaine Smith): Several members wish to speak. I call Christian Allard, to be followed by Liam McArthur.

Christian Allard (North East Scotland) (SNP): I speak in support of the minister’s amendments. I listened carefully to the minister and found what she said a very welcome clarification of what children are entitled to. I wish that it had been as clear when I was a single working parent many years ago.

On Friday, the Equal Opportunities Committee will visit Dads Care Aberdeen, a fathers support group. I will explain to them the minister’s welcome clarification through her amendments and that we need them to make sure that the bill’s provisions are as clear as possible.

On Liz Smith’s and Neil Bibby’s amendments, I note that the minister said that we would be using secondary legislation. I share Neil Bibby’s ambition in his amendments, but I disagree with his point. I think that we are going in the right direction and I think that the Scottish Government and the Parliament have been at the forefront of childcare. This morning, I was at a committee that was talking about Scotland’s future, but we heard only about the currency. It is refreshing that we are spending all afternoon—and even the evening—in the Parliament speaking about Scotland’s future through the childcare that the Parliament and Government will pursue. That is why I support the minister’s amendments.

Liam McArthur: For nearly two years, my esteemed colleague Willie Rennie has repeatedly and consistently made the case for a major expansion of free nursery and childcare provision for two-year-olds in this country, starting with those from the poorest backgrounds. Initially, those calls were rejected by ministers, who said that that was not the Government’s priority. We were then told that any such expansion would require the powers of independence. Finally, last month, we had a change of tack from the First
minister—let us call it a plan B—which was confirmed in the budget a fortnight ago. Again, I put on record my welcome and that of my party for that move.

Although 27 per cent of two-year-olds stand to benefit from this extension in provision by the summer of next year, that figure falls short of the figure of 40 per cent for those who will be covered south of the border this summer. It is nevertheless a major advance on what was originally proposed and could bring real benefits to some of the most disadvantaged two-year-olds in our country. However, that will be the case only if adequate capital funding is put in place. The minister has regularly questioned what is being delivered now in England and Wales, where adequate capital funding has been allocated. However, given the events in the Finance Committee meeting earlier today, she may be better advised to focus more attention on what is being delivered in Scotland and how.

Understandably, there is a desire and ambition among all of us to go further, which is reflected in the amendments in this group. Liz Smith’s amendments seek to address an anomaly, which was first highlighted by Reform Scotland, in the way in which the additional early learning and childcare provisions in the bill would benefit some children but not others. At stage 2, similar amendments were rejected by the Government, though not, it must be said, on the basis of any point of principle. In the absence of any principled objection, I urge the minister to think again, accept the proposed changes and provide a more level playing field.

Neil Bibby’s amendments seek to go considerably further. Obviously, the Government has so far insisted that that is not possible and, in some cases, not desirable. However, given recent dramatic changes in the Government’s policy on provision for two-year-olds, it is perhaps worth all of us keeping the minister’s feet to the fire.

We all accept that the bill is simply a step along the way to delivering our longer-term ambitions in relation to early learning and childcare. We all wish to go further, although only some of us recognise that that does not require us to break away from the rest of the UK but requires us rather to learn, if and where appropriate, from where they are doing things rather better.

George Adam (Paisley) (SNP): This is an aspirational and ambitious bill. In particular, the provision of 600 hours of nursery care will make a difference in young people’s lives. It offers flexibility for families and will affect initially 120,000 young people. As the minister has noted, in January the First Minister said that nursery care would be extended to two-year-olds in workless households, which will benefit another 8,800 children—15 per cent of all two-year-olds.

17:30

As the minister rightly said, the bill is a starting point and, if we are to make a difference through transformational change, we must have the powers of independence to gain the 1,140 hours of childcare that families will need. The bill will release people and enable more of them to get back to work, which will help families to make a difference in their own lives, particularly for women who are in a family situation, although I take on board what Christian Allard said as well. Those are some of the reasons why I am backing the bill. It is ambitious and aspirational for the people of Scotland.

It has already been mentioned that Mr Bibby’s amendments 115A, 172, 173, 174 and 197 could be covered by secondary legislation. Mr Bibby’s contribution would therefore have more credibility if the Labour Party had not voted for the budget a couple of weeks ago, because it covers the issue. When he comes to the chamber at this stage and starts talking about the issues that were covered in the budget, he shows that he is completely lost with nowhere to go. However, that is not unusual for that particular individual.

These amendments are in a very important part of the bill. The bill is ambitious and it is building the foundations of the type of Scotland that we all want by ensuring that Scotland can be the best place in the world for children to grow up in.

Joan McAlpine: I will be brief, but I felt that it would be wrong to let this part of the bill pass without talking about the quality of childcare, particularly the quality of the training of childcare workers. We should be very pleased that Professor Iram Siraj is leading the Scottish childcare review of the training of early learning teachers. The legislation that will be passed today is ambitious and will increase the amount of free childcare for three-year-olds and four-year-olds and vulnerable two-year-olds, and the review will ensure also that that care is of the very best quality. We should all be pleased about that.

Liz Smith: I add the Conservatives’ very strong support for the improvements in childcare. There is no doubt that there is substantial evidence about the benefits of providing childcare for health and wellbeing as well as education, and we are very supportive of that. However, it is deeply regrettable that it has formed part of the referendum debate, because it is quite clear that the Scottish Government has these powers already.

If the Scottish Government is truly aspirational and if it wants to have a transformational policy, I
hope that it will agree to the amendments that will end the birthday discrimination when it comes to nursery provision. I will press amendment 51.

The Deputy Presiding Officer: The question is, that amendment 51 be agreed to. Are we all agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Fte) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Alileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelehouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 52, Against 65, Abstentions 0.

Amendment 51 disagreed to.
Amendment 103 moved—[Aileen Campbell]—
and agreed to.

Amendment 172 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is,
that amendment 172 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumfartoon) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Finn, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Edinburgh South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Alian, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-
shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dorris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
Macdonald, Angus (Falkirk East) (SNP)
Macdonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse)
(SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine)
(SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of
the division is: For 37, Against 80, Abstentions 0.

Amendment 172 disagreed to.
Amendment 104 moved—[Aileen Campbell]—
and agreed to.

Amendment 173 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Renfrewshire North and West) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McKenzie, Mike (Highlands and Islands) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Patterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (Con)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (Con)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Baird, Rachel (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)

Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Mid Scotland and Fife) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabi, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hebburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Neill, Alex (Ardrie and Shotts) (SNP)
Patterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (Con)

The Deputy Presiding Officer: The result of the division is: For 36, Against 79, Abstentions 0.

Amendment 173 disagreed to.

Amendment 105 moved—[Aileen Campbell]—and agreed to.
Amendment 174 moved—[Neil Bibby].

The Deputy Presiding Officer: The question is, that amendment 174 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Hammond, Neil (Clydebank and Milngavie) (SNP)
Hendry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dundemline) (Lab)
Johnstone, Alison (Midlothian) (Lab)
Kelly, James (Rutherglen) (SNP)
Lamont, Johann (Highlands and Islands) (Lab)
Macdonald, Lewis (Aberdeen South and North Kincardine) (SNP)
March, Donald (Glasgow Pollok) (Lab)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Liz (Mid Scotland and Fife) (SNP)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (Midlothian North and Musselburgh) (SNP)
Beattie, Colin (Midlothian South and Musselburgh) (SNP)
Bianchi, Marco (Edinburgh Western) (SNP)
Browne, Gordon (Glasgow Shettleston) (SNP)
Browne, Paul (Perthshire South) (SNP)
Burke, John (Glasgow Cathcart) (SNP)
Carr, Dean (Dundee West) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross- shire) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mills, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 37, Against 78, Abstentions 0.

Amendment 174 disagreed to.

Amendments 52 and 53 not moved.
Before section 49

The Deputy Presiding Officer: Group 13 is on duty to provide a mandatory amount of out-of-school care. Amendment 175, in the name of Neil Bibby, is the only amendment in the group.

Neil Bibby: I have already spoken this afternoon about some areas of the bill that need to be strengthened. Amendment 175 seeks to address an area that was initially altogether absent from the bill. To improve access to and the availability and affordability of out-of-school care is crucial if we are to develop a model of childcare that supports children and helps parents. My Labour colleagues and I have consistently raised that issue in the chamber and the Education and Culture Committee.

Amendment 175 is important because it seeks to address the issue by enabling ministers to specify a minimum amount of out-of-school care when resources allow, in a way that is similar to the bill’s current provisions for pre-school care.

We all know that councils are suffering significantly as a result of budget cuts. Although councils want to improve childcare, they need the funds to do so, and there is increasing concern that out-of-school care and holiday care are vulnerable to those budget pressures.

Scottish children are already at a disadvantage in comparison with English children with regard to out-of-school care. There is an existing duty on local authorities in England to secure for working parents sufficient childcare for children up to the age of 14. There is therefore a strong case for putting the provision of childcare for school-age children on a statutory footing in Scotland. There is no doubting the importance of childcare for the early years, but working parents, who may be working from 9 to 5—or in some cases until 8 o’clock—need help with care for school-age children.

Amendment 175, which has support from a number of children’s organisations, would allow the current Government—or future Governments, which may place a greater priority on out-of-school childcare than the current Administration does—to introduce a minimum amount of out-of-school care and increase its availability when resources allow.

Ed Miliband and the UK Labour Party have already proposed to introduce a primary school guarantee of childcare from 8 am to 6 pm. I ask the SNP Government to consider seriously what its policies and plans are on childcare for children of primary school age.

George Adam: Will the member take an intervention?

Neil Bibby: I am just closing.
parents, and for many it is just too full of hurdles and they have no choice but to stay at home.

The issue is not just fitting in working hours and the school day—members should try fitting 12 weeks’ school holiday a year into an average five weeks’ annual leave entitlement. Some employers have gone out of their way to offer more family-friendly hours and school-run contracts, but jobs that would allow parents to fit work around the school day, never mind around the school term, are just not out there. It is vital that we remember that childcare is not just about babies, toddlers and pre-schoolers—

Bruce Crawford (Stirling) (SNP): Will the member give way?

Cara Hilton: No.

Childcare is about schoolchildren too. At UK level, as Neil Bibby mentioned, Ed Miliband has pledged to guarantee wraparound childcare for primary school children if Labour should win next year.

Here in Scotland, the Scottish Government has promised parents a childcare revolution if Scotland should vote yes, and yet it is making no promises to deliver a better deal for parents of schoolchildren either now or after the referendum. Whether the result is yes or no, the Scottish Parliament has the power to lead the way and give mums and dads the right to out-of-school childcare now.

Stewart Maxwell: Will the member take an intervention?

Cara Hilton: No—I have no time now. [Interruption.]

The Deputy Presiding Officer: Order, please.

Cara Hilton: Amendment 175 would ensure that mums and dads in Scotland were better able to combine work and family life—[Interruption.]

Stewart Maxwell rose—

The Deputy Presiding Officer: Mr Maxwell, the member has said no.

Cara Hilton: That would be a boost to families, to our economy and to equality—[Interruption.]

The Deputy Presiding Officer: Order in the chamber, please.

Cara Hilton: It would make life less of a juggling act for working parents. I urge members to support amendment 175.

17:45

Bruce Crawford: I want to follow up on that contribution, in terms of where we are. I find it quite astonishing that we have just had that speech from Cara Hilton—delivered with passion, I concede—just a week after the member voted to close Pitcorthie primary school in her constituency, despite the fact that she campaigned for that school all the way through the Dunfermline by-election—[Interruption.]

The Deputy Presiding Officer: Order, please.

Bruce Crawford: It is absolute hypocrisy.

Cara Hilton: I ask the member to withdraw his remarks.

The Deputy Presiding Officer: Order, please.

Cara Hilton: I ask the member to withdraw his remarks.

The Deputy Presiding Officer: Order, Ms Hilton. Please resume your seat.

Aileen Campbell: The Scottish Government has consistently indicated that the provisions in the bill are a first—but significant—step towards developing a system of childcare that meets the needs of all children, parents and families. [Interruption.]

The Deputy Presiding Officer: Order in the chamber, please. We cannot hear the minister’s response on the amendment.

Aileen Campbell: Out-of-school care and holiday care are essential to the wellbeing of our children, as well as providing support for families to work and provide economic security for their children.

The resource implications of introducing statutory requirements for the provision of out-of-school care are hugely significant. The priority at this stage is to build additional hours and flexibility into our high-quality universal early learning and childcare provision—increasing the entitlement to about 16 hours a week—and to focus initial expansion on our most vulnerable two-year-olds.

However, I am aware that the need for high-quality childcare does not end when a child hits primary school age. That is why the Government is also driving forward a range of measures to improve our out-of-school care: I announced that our early years task force would review our out-of-school care provision and recommend what more could be done; I supported amendments at stage 2 to broaden the requirement on local authorities to consult on their duties and power to deliver and support out-of-school care. That will contribute to those longer-term aims to develop comprehensive systems of early learning and childcare and out-of-school care. It will also enable local authorities to co-ordinate consultation and planning of all mandatory provision of early learning and childcare, alongside non-mandatory provision, which local authorities have the powers to deliver or support. That will inform delivery, expansion or
support for delivery of out-of-school care by local authorities. We have also provided funding to—
and regularly engage with—key organisations that can support or deliver out-of-school care, in
particular the Scottish Out of School Care Network and the Scottish Childminding Association.

Given the range of actions that I have outlined, which the Scottish Government is driving forward
to increase and improve early learning and childcare, the steps that we are taking in relation
to out-of-school care, and the need to prioritise resources to make the biggest impact, we are
taking action now to ensure that we can do our best to support families.

On whether we need independence to achieve our transformational aim for childcare, we have no
access to the increased revenues that will be generated by enabling more parents to get back
into work. We do not get that tax increase. If we were to emulate what they do in Sweden, it would
generate £700 million-worth of revenue that we could then reinvest back into childcare. We cannot
do that because we have one arm tied behind our back. That is why we need independence and that
is why our aspirations are set out in the white paper.

Ken Macintosh (Eastwood) (Lab): On a point
of order, Presiding Officer. Is it in order, after a
member has made one of the most powerful, passionate and eloquent contributions to the
debate—[Interruption.]

The Deputy Presiding Officer: Order, please. I
must hear the point of order.

Ken Macintosh: Is it in order for another
member, particularly a former Minister for
Parliamentary Business, to make a rebuttal that
has nothing to do with the amendment but is a
personal and entirely inaccurate attack on that member? [Interruption.]

The Deputy Presiding Officer: Order. I chose
to call Mr Crawford to make a contribution on that
point in the debate. He made his contribution. I did
not thereafter hear any point of order from Cara
Hilton. I cannot call a member back to make any
point in the chamber. I therefore asked Ms Hilton
to resume her seat at that point. It is not a point of
order, Mr Macintosh. It may well be a debating
point but you know that it is not a point of order.

Neil Bibby: As I said in my opening remarks,
out-of-school care is important to families. It is
clearly not that important to Bruce Crawford,
because he completely neglected to mention it in
his contribution.

We have consistently said that, despite the
obvious importance of childcare in the early years,
childcare should not just be about that age group.
It is regrettable that the white paper says
absolutely nothing about out-of-school childcare
and that, until recently, the bill said nothing either.
That is a gaping hole and a clear omission in the
SNP's childcare policies. Labour gets that this is a
real issue for families. Cara Hilton gets that this is a
real issue for working families—that is why she
won the Dunfermline by-election by 3,000 votes
in October. That is why we continue to raise out-of-
school care as an issue. That is why we want to
do something about it, and that is why I will press
the amendment.

The Deputy Presiding Officer: The question is,
that amendment 175 be agreed to. Are we
agreed?

Members: No.

The Deputy Presiding Officer: There will be a
division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macleod, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
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**Abstentions**

- Finnie, John (Highlands and Islands) (Ind)

**The Deputy Presiding Officer:** The question is, that amendment 176 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

- Bailie, Jackie (Dumbarton) (Lab)
- Baker, Claire (Mid Scotland and Fife) (Lab)
- Baker, Richard (North East Scotland) (Lab)
- Baxter, Jayne (Mid Scotland and Fife) (Lab)
- Beamish, Claudia (South Scotland) (Lab)
- Bibby, Neil (West Scotland) (Lab)
- Boyack, Sarah (Lothian) (Lab)
- Brown, Gavin (Lothian) (Con)
- Carlaw, Jackson (West Scotland) (Con)
- Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
- Davidson, Ruth (Glasgow) (Con)
- Dugdale, Kezia (Lothian) (Lab)
- Fee, Mary (West Scotland) (Lab)
- Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
- Ferguson, Alex (Galloway and West Dumfries) (Con)
- Finnis, John (Highlands and Islands) (Ind)
- Fraser, Murdo (Mid Scotland and Fife) (Con)
- Goldie, Annabel (West Scotland) (Con)
- Grant, Rhoda (Highlands and Islands) (Lab)
- Griffin, Mark (Central Scotland) (Lab)
- Harvie, Patrick (Glasgow) (Green)
- Henry, Hugh (Renfrewshire South) (Lab)
- Hilton, Cara (Dunfermline) (Lab)
- Johnstone, Alex (North East Scotland) (Con)
- Johnstone, Alison (Lothian) (Green)
- Kelly, James (Rutherglen) (Lab)
- Lamont, Johann (Glasgow Pollok) (Lab)
- Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
- Macdonald, Lewis (North East Scotland) (Lab)
- Macintosh, Ken (Eastwood) (Lab)
- Marra, Jenny (North East Scotland) (Lab)
- Martin, Paul (Glasgow Provan) (Lab)
- McArthur, Liam (Orkney Islands) (LD)
- McCulloch, Margaret (Central Scotland) (Lab)
- McGrigor, Jamie (Highlands and Islands) (Con)
- McInnes, Alison (North East Scotland) (LAB)
- McMahon, Michael (Uddingston and Bellshill) (Lab)
- McMahon, Siobhan (Central Scotland) (Lab)
- McNeil, Duncan (Greenock and Inverclyde) (Lab)
- McTaggart, Anne (Glasgow) (Lab)
- Milne, Nanette (North East Scotland) (Con)
- Mitchell, Margaret (Central Scotland) (Con)
- Murray, Elaine (Dunmrfries) (Lab)
- Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabian, Linda (East Kilbride) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Robert (Caitness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 53, Against 63, Abstentions 0.

Amendment 176 disagreed to.

Section 57—Guidance on corporate parenting

Amendment 88 moved—[Aileen Campbell] and agreed to.

After section 59

The Deputy Presiding Officer: Group 14 is on sibling contact: duty on local authority in relation to looked-after children. Amendment 177, in the name of Jayne Baxter, is the only amendment in the group.

Jayne Baxter (Mid Scotland and Fife) (Lab): As the minister knows, I raised the issue of sibling contact at stage 2. Unfortunately, too many looked-after children are separated from their siblings and accommodated outwith the parental home. If sibling contact is not prioritised by the local authority, siblings can lose contact with each other entirely, leading to the loss of a crucial close family relationship.

Section 17 of the Children (Scotland) Act 1995 places a duty on local authorities with regard to promoting contact between looked-after children and those adults with parental responsibilities. Amendment 177 would extend that to cover contact between looked-after children and their separated siblings. Unfortunately, at present, if a local authority does not choose to prioritise such contact between looked-after children and their siblings, there is little or no way in which that can be challenged by those looked-after children.

I am grateful to Clan Childlaw—the community law advice network, which exists to provide specialist legal advice to children and young people—for drawing to my attention this omission in our existing provisions for some of our most vulnerable young people. I hope that amendment 177 will be supported, as we have tried to take on board the minister's comments in relation to sibling contact and the duties on corporate parents by narrowing the focus of the amendment to just local authorities.

I move amendment 177 and look forward to hearing from the minister.

The Deputy Presiding Officer: There has been one request to speak. Can I ascertain whether the
member wishes to contribute to this part of the debate?

Cara Hilton: No.

The Deputy Presiding Officer: In which case, I call the minister.

Aileen Campbell: I genuinely thank Jayne Baxter for bringing this important issue to stage 3. I recognise that promoting and facilitating sibling contact is a good idea in principle but only where it is in the best interests of the children involved. We need to remember that in such scenarios, we are dealing with the interests of two children: the looked-after child and the sibling. That raises two concerns about how this measure could work in practice.

First, amendment 177 seems to focus only on the assumed best interests of the looked-after child. We need to recognise that the sibling may have good reasons for not wanting to maintain contact with the looked-after child. It seems wrong in principle to impose a duty to promote contact in circumstances in which that contact may not be wanted. Further, where siblings are not resident together there may be good reasons for that, in particular on welfare grounds. It would seem to contradict such professional decision making to use the law to force a local authority to facilitate such contact when that might not be in the best interests of one or both of the children.

Secondly, the amendment seems incomplete. For the amendment to work effectively, someone needs to be under an obligation to keep the local authority informed of any changes of address for the sibling. That would require section 18 of the 1995 act to be amended.

Nevertheless, the intention behind amendment 177 is laudable. Looked-after children should usually have the opportunity to maintain contact with their siblings. I suggest that local authorities should be encouraged to facilitate that, where the children concerned want it and it is appropriate. I would be happy to consider how we can further improve our guidance and good practice on what can be done to ensure appropriate and good-quality contact between siblings, in the interests of all the children that we have in question.

Finally, it is important to note that there has been little consultation on this proposal. Many stakeholders would have views on it, so it would be good to embrace those views, including those that have been expressed consistently by Jayne Baxter, to ensure that we have good-quality guidance on enabling contact between siblings that is beneficial for the looked-after child and the sibling.

Jayne Baxter: I am disappointed that the minister has indicated that she does not support the amendment. However, I am grateful to her for taking the time to provide the reasoning behind that difficult decision. I welcome her comments and hope that she will look into the matter further. I urge her to meet Clan Childlaw and other experts in this area to consider ways in which sibling contact between looked-after children can be secured. I will not press amendment 177.

Amendment 177, by agreement, withdrawn.

Section 60—Provision of aftercare to young people

The Deputy Presiding Officer: Group 15 is on aftercare and continuing care: minor amendments. Amendment 89, in the name of the minister, is grouped with amendment 178.

Aileen Campbell: Amendment 89 is a minor technical amendment to repeal the opening words of section 30(2) of the 1995 act, which are now redundant given the provision to repeal subsection (3) of section 30 that is made at section 60(3)(b).

Amendment 178 was lodged in response to a recommendation by the Delegated Powers and Law Reform Committee in its report on the bill as amended at stage 2. It seeks to amend new section 26A of the Children (Scotland) Act 1995 as inserted by new section 60A of the bill, which relates to the duty of local authorities to provide continuing care. That section was added to the bill at stage 2 with the full support of the Education and Culture Committee. The amendment seeks to require ministers to consult each local authority and such other persons as they consider appropriate before making an order under the various powers in that section.

18:00

We fully agree with the Delegated Powers and Law Reform Committee's comments after stage 2 that the subject matter is of such importance that prior consultation with affected persons should be required before the powers in section 26A are exercised. In that regard, ministers have already committed to setting up a working group consisting of sectoral representatives, service providers, young people, local authorities and other relevant stakeholders to develop the detail of the policy of continuing care and how the new duty will roll out over the coming years.

In addition to that commitment, we are content to include an explicit requirement for ministers to consult local authorities and such other persons as they consider appropriate before they exercise the delegated powers. In addition to the planned working group to develop the proposals in detail, the consultation requirement will ensure that all those with an interest are formally consulted before any order is made.
Therefore, I ask members to support both of my amendments in this group. In the provisions in the bill for Scotland’s looked-after care leavers more generally, we have created—with the support of the Parliament, I hope—an approach that will have long-lasting benefits for that group of young people, who need our support. The bill is a product of young care leavers’ courage and diligence in articulating how it should deliver for them and I am proud that we have worked across the chamber to enable us to deliver it today.

I move amendment 89.

Kezia Dugdale: I said at stage 1 that there had been 17 reports in the existence of the Parliament about the experiences of kids in care and that a care leaver called Ashley had told me that each and every one of them read like an apology note—an apology for the lack of action.

We have made significant progress throughout the passage of the bill and it is vastly better for care leavers as a consequence. I pay tribute to all the care leavers who have been actively involved in the political process over the weeks and months that we have been through. For many of them, we have lit a political fire that will mean that they ensure that no child will have the life experience that they did.

Although the minister has already done so, I draw attention to amendment 178, which concerns the duty to consult. That is critical if we are to build on the work that she has done today with regard to kids in care because, ultimately, care leavers are looking for a right to return to care until the age of 25. If that is ever to be realised in Scotland, we have to do it in conjunction with local authorities, which are at the forefront of service delivery and the transition in and out of care.

I thank the minister for amendment 178, recognise that, although we have made significant progress, there is a long way to go yet and hope that she will commit to further action around kids who live in care throughout Scotland.

Liam McArthur: I simply echo Kezia Dugdale’s comments. At stage 1, the bill reflected a real advance in aftercare for those going through the care system but, in the stage 1 debate, there was a feeling across the chamber that more could, and should, be done.

The evidence that the committee took from Who Cares? Scotland, the Aberlour Child Care Trust, Barnardo’s and—as Kezia Dugdale rightly identified—those with direct experience of the care system provided compelling evidence and the basis on which the minister has been able to act. It is an aspect of the bill of which the Parliament and, in particular, the Education and Culture Committee, which has dedicated the best part of two years to considering issues in the policy area, can feel justifiably proud.

Aileen Campbell: I appreciate the comments that Kezia Dugdale and Liam McArthur made. We can be proud of what the bill delivers for our looked-after young care leavers. Others, not necessarily in the Government—I think that it was Who Cares?—described the provision as having the potential to make the way that Scotland looks after its young looked-after care leavers world leading.

There will be a working group to ensure that we can extend the support for young looked-after care leavers. It will include young looked-after children themselves. I particularly echo what Kezia said about the role that looked-after care leavers have played in developing the provision in the bill. They have left a lasting legacy for future generations of looked-after children and should feel proud of what they have achieved in the bill. They are absolutely our bairns and we need to do what we can for that group of young children and young care leavers. We are proud that we are able to help them and future generations to have better outcomes in life.

The Deputy Presiding Officer: I remind all members to use full names.

Amendment 89 agreed to.

Section 60A—Continuing care: looked after children

Amendment 178 moved—[Aileen Campbell]—and agreed to.

Section 64—Assistance in relation to kinship care orders

The Deputy Presiding Officer (Elaine Smith): Group 16 is on the eligibility for kinship care and the assistance to be provided. Amendment 180, in the name of Jayne Baxter, is grouped with amendments 180A, 180B, 181, 202, 202A, 182, 183, 203, 203A, 184, 185, 204, 204A, 186, 205, 187 to 190, 206 and 195.

Jayne Baxter: There is no doubt that the kinship care landscape in Scotland has changed significantly since 2007. We have seen legislation introduced to provide support for kinship care families, but it is clear that we need to do more.

It is probably helpful to highlight that the amendments in the group follow three main strands. The intention behind amendments 180 and 206 is to end the postcode lottery of funding that kinship carers face across the country. There can be no justification for the extent and degree of variance in kinship care allowances that local authorities pay across Scotland. As anyone who went out at lunch time to speak with kinship carers will know, the system of funding that is available to
people to support them in their vital role of supporting, caring for and nurturing many of our children and young people is hugely complicated, confusing and variable. I put on record my thanks to the Scottish kinship care alliance and Children 1st for the huge amount of work that they have put in throughout the passage of the bill to try to improve the situation for kinship carers in Scotland.

Amendment 180B and amendments 202 to 205 seek to extend the availability of financial support for kinship carers to those who still care for a young person who is over the age of 16 but has not yet reached 18. The other amendments in the group seek to change the eligibility criteria as defined in section 64(4), as we are concerned that they present too restricted a definition of the eligibility of the children who end up being looked after by kinship carers.

Finally, amendment 206 seeks to address the concerns of those who continue to care for looked-after children. The minister has powers to set the levels of kinship care allowances for those carers but currently does not choose to do so. The amendment seeks to end the postcode lottery of funding and ensure that there is a minimum rate of financial support for formal kinship carers, no matter where they live.

The costs of supporting children in foster care, residential care, and formal and informal kinship care vary enormously. Kinship carers often see themselves as the poor relations as a result of the funding and support that are available to them in their crucial role of caring for children in our society.

It is worth noting that it is extremely disappointing that the Scottish Government’s financial review of kinship care has not been published in time for the bill. The Scottish Government promised to bring before the Parliament the outcome of its financial review of kinship care during the passage of the bill, but it has failed to do so. I sincerely hope that, when it is published and the minister is drawing up the regulations, there will be significant and careful consultation with kinship carers and organisations with an interest in the area.

I look forward to hearing the minister’s response to the amendments and would welcome any commitments that she can give to supporting kinship carers in the future.

I move amendments 180 and 180A.

Bob Doris (Glasgow) (SNP): I consistently see the outstanding work that kinship carers do on a long-term and enduring basis across Glasgow, which I represent. I have always sought to work across parties to advance their rights and entitlements. Indeed, I acknowledge that Glasgow City Council, which previously had no kinship care allowance, began to provide one following constructive representations from me. However, the allowance can be subject to a postcode lottery across Scotland, and that is wrong.

Amendment 206 and associated amendments seek to address that problem in relation to looked-after children. However, given that, as previously mentioned, an independent financial review intends to build consistency and fairness into the system, I am unsure why, at this time, amendment 206 should be included in the bill. I hope that the minister can give us an update on that financial review and very much hope that it will specify minimum rates and be age related.

I will also comment on amendment 180 and related amendments. Amendment 180 seeks to specify minimum payments for those on a kinship care order. I will make three brief points, if I may.

First, kinship care orders are progress, because some local authorities offer no support at all when a child loses looked-after status. That will be changed. Those children will be given a statutory footing for the first time in the system.

Secondly, young people on kinship care orders will have varying levels of need, some of which will be more informal than others. Some will have moved from the looked-after process on to a kinship care order. Therefore, I remain unconvinced that, as a rule, there should be exactly the same levels of support and a national rate.

Although I cannot accept amendment 180 today, my third point is to ask the Scottish Government to ensure that there are no unintended consequences from kinship care orders, particularly in relation to those who currently get payments under section 11 orders or guardianship under section 7 of the 1995 act. Perhaps it is for the minister to examine that matter another day.

As a result of my experience of working with the minister on the issue, I know that none of this has been intended to cut support for kinship carers—if that impression has been given, it is completely and fundamentally wrong. The bill improves support for kinship carers, putting it on a further statutory footing. The Parliament cannot do this just now but, in the future, kinship care payments should be a benefit that is integrated with the wider social security and benefits system. The Parliament does not have the power to do that today, but I hope that, after September, that situation will change.

Liz Smith: I add the Scottish Conservatives’ strong support for many of the amendments that Jayne Baxter has lodged. There are several issues around kinship care, and we have
previously let kinship carers down by not providing the care and support that they require.

Bob Doris sensibly made the point that there is a need to get rid of the postcode lottery, particularly when it comes to the minimum rate of support. However, I entirely accept that we do not want to pay everybody exactly the same, as that would raise issues about the effectiveness of the support.

Broadly speaking, we will support Jayne Baxter’s amendments but not those that seek to change the eligibility definition, as we think that that might have some unintended consequences.

Aileen Campbell: Amendment 180, as amended by amendment 180B, seeks to provide that kinship care assistance is the provision of financial assistance at a minimum rate and “additional assistance of such description” as ministers specify by order. That assistance would be payable to those who apply for or who have a kinship care order and to guardians who have been appointed under section 7 of the Children (Scotland) Act 1995 in relation to children who have not yet attained the age of 16, as well as those who have attained the age of 16 but not the age of 18. The amendment also introduces an order-making power that would require ministers to specify “the minimum rate of financial support” payable and that would require “the rate to be the same” across all authorities in Scotland. Such an order could also allow for rate rises, depending on the age of the child.

We think that amendment 206 seeks to achieve a similar effect to amendment 180 by amending the Adoption and Children (Scotland) Act 2007 to require the Scottish ministers to make regulations specifying a “minimum rate of financial support” to be provided across all local authorities in relation to looked-after children in formal kinship care arrangements who are placed by authorities with “qualifying persons”, as defined in part 10 of the bill.

We accept that there is concern among stakeholders that there is a wide variation in the allowances that are paid to formal kinship carers across the 32 local authorities. Some people feel that a similar situation may arise for families with a kinship care order or for those who seek to obtain one. We are sympathetic to those concerns and agree that there is merit in providing financial assistance to holders of a kinship care order when it is required. Indeed, the bill already provides for that. Kinship care assistance will cover a wide range of support, reflecting the fact that financial assistance is not the only type of assistance needed by kinship carers and the children whom they care for. Subsections (1)(b) and (3)(a) of section 66 of the bill provide the Scottish ministers with an order-making power to allow provision to be made regarding the payment of financial support and “when or how” such assistance is to be provided. We therefore do not consider that any additional powers are required over and above the provisions in the bill.

Kezia Dugdale: I acknowledge that it is a very complicated area. Given that fact, it was important that the minister promised that a financial review of kinship care would be published during the bill process. That has not happened. Can the minister explain why she has not kept her promise and published that review during the bill process?

Aileen Campbell: The reason why we have the financial review is that we absolutely understand and have sympathy with the concerns that have been expressed to us about the 32 different varieties of financial assistance packages that kinship carers get. It is a complex and very time-consuming piece of work and its complexity is added to by the interaction with benefits. We are currently reviewing the support that is available to both formal and informal kinship carers with a view to reducing those inconsistencies and improving fairness across Scotland. I will ensure that the Parliament is made aware of the review’s publication.

Kezia Dugdale: I do not mean to labour the point, but the minister promised that we would have the information as we considered the issues. The minister has not kept that promise and we deserve an explanation as to why that is the case.

18:15

Aileen Campbell: I have explained that we intend to publish the kinship care financial review because we are absolutely determined to ensure that the inconsistencies expressed by kinship carers are not felt and that we deal properly and adequately with them. I have explained the complexities around the issue and the need to get the policy absolutely right, because doing so is in the best interests of kinship carers.

Amendments 180A, 180B, 181 to 187 and 190 all seek to ensure that kinship care assistance should be provided to qualifying persons with regard to all children and not just those who would be eligible in terms of the test provided for in section 64(4). However, the circumstances of those children who are looked after by kinship carers and guardians will vary widely and we believe that kinship care assistance should only be
targeted at, and available for, those children in informal kinship care arrangements who are at risk of becoming looked after if kinship care assistance is not provided by the local authority.

The remaining amendments seek to extend the requirement on local authorities to provide kinship care assistance to qualifying persons in relation to children who have attained the age of 16 but not the age of 18. Kinship care orders subsist only until the child reaches the age of 16 and, at that point, it is possible that the child who was formerly the subject of the kinship care order may leave the carer’s home and their care. Given that and the fact that a child who was subject to a kinship care order or who has a guardian is still eligible to receive assistance until they are 18, we do not consider it to be appropriate or necessary to extend the entitlements in that way.

We will work with all those advocating on behalf of kinship carers as implementation progresses. We are grateful to all who have had an input into the bill, including the Health and Social Care Alliance Scotland, Children 1st, Citizens Advice Scotland, Mentor UK and the many others that have articulated very strongly the need for us to ensure that we get support for kinship carers absolutely right.

Today, the Cabinet Secretary for Education and Lifelong Learning met the Scottish kinship care alliance. We have consistently valued the work of kinship carers, which is why the kinship care order provides additional assistance to kinship carers who may never have received such support before. Indeed, the bill improves the supports available to them and I hope that that commitment gives comfort to Bob Doris on the points that he made eloquently and consistently through the course of not just this parliamentary session but the previous one.

**Jayne Baxter:** I am disappointed that the minister will not support the amendments in group 16. As she will be aware, there is considerable concern among many kinship carers about the changes to section 64 of the bill. Should my amendments not be agreed to, I repeat my hope that there will be thorough engagement with kinship carers and their representative organisations when the Scottish Government draws up the regulations.

I am also keen to see the outcome of the financial review of kinship care. I once again record my disappointment that it has not been published in time for the bill’s final stage. I press amendment 180A.

**The Deputy Presiding Officer:** There will be a division.

**For**

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

**Against**

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
The Deputy Presiding Officer: The result of the division is: For 41, Against 78, Abstentions 0.

Amendment 180A disagreed to.

Amendment 180B moved—[Jayne Baxter].

The Deputy Presiding Officer: The question is, that amendment 180B be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
Amendment 180B disagreed to.

The Deputy Presiding Officer: The result of the division is: For 56, Against 63, Abstentions 0.

The Deputy Presiding Officer: There will be a division.

The Deputy Presiding Officer: The question is, that amendment 180 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Ferguson, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahom, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (Lothian) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Dundee East) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
The Deputy Presiding Officer: The result of the division is: For 56, Against 63, Abstentions 0.

Amendment 180 disagreed to.

Amendment 181 moved—[Jayne Baxter].

The Deputy Presiding Officer: The question is, that amendment 181 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North Scotland) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constable, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
The Deputy Presiding Officer: The result of the division is: For 41, Against 78, Abstentions 0.

Amendment 181 disagreed to.

Amendment 202 moved—[Jayne Baxter].

Amendment 202A not moved.

The Deputy Presiding Officer: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The result of the division is: For 46, Against 72, Abstentions 0.

Amendment 202 disagreed to.

Amendments 182 and 183 not moved.

Amendment 203 moved—[Jayne Baxter].

Amendment 203A not moved.

The Deputy Presiding Officer: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
The Deputy Presiding Officer: The question is, that amendment 206 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Urquhart, Jean (Highlands and Islands) (Ind)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Amendment 191, in my name, addresses long-standing concerns that section 5 of the Schools (Consultation) (Scotland) Act 2010 is ineffective in requiring an education authority to act to correct inaccuracies or omissions that are discovered in its proposal paper for a school closure. The amendment requires an education authority to be more transparent in its consideration of allegations of inaccuracy or omission and, if there is any such inaccuracy or omission, requires the authority to take action where it relates to a material consideration relevant to the decision. If nothing else, such a provision should help to remove the perception that authorities can dismiss legitimate concerns and makes it clearer that all allegations of inaccuracy or omission must be investigated and reported on. I hope that, as a result, communities’ confidence in the process might be more readily safeguarded.

If communities continue to be dissatisfied with the authority’s response under section 5, they can make further representations to the authority, which must be included in the consultation report that the authority prepares. Amendment 191 was disagreed to.

The Deputy Presiding Officer: The result of the division is: For 46, Against 73, Abstentions 0.

After section 68C

The Deputy Presiding Officer: Group 17 is on school closures. Amendment 191, in the name of Liam McArthur, is grouped with amendments 106 to 111.
therefore makes the whole process more transparent with regard to how an authority deals with allegations of omissions and inaccuracies and makes it easier for those who have made allegations that are not ultimately corrected by the authority to raise their concerns with ministers in seeking to have a proposal called in for consideration by a school closure review panel. Although I still have some reservations about how the call-in process and referral to the panel will operate, I recognise that that battle was perhaps fought and lost at stage 2.

I do not think that any of us will pretend that these and earlier changes will remove the controversy or anxiety that is created by the threat of a rural school closure. However, I think that if we improve the process and make it more transparent and balanced while providing appropriate support at key stages, we should be confident that we can keep that upheaval to a minimum and limit the number of cases that are ultimately required to be called in for review. That would certainly seem to be a measure of success.

I am happy to move amendment 191.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Like Liam McArthur, I have a long-standing involvement in this issue. It has not been without its difficulties—and, sometimes, controversy—but my very strong view is that the health of rural communities is, to a greater or lesser extent, closely attached to the health of the services that are provided and that one core service is a rural school.

Those of us who know rural Scotland well and represent rural communities know the great importance of rural schools and the many benefits that they bring to pupils. I am not arguing, I have never argued and the chamber would never argue that rural schools do not have to close sometimes. Often rural schools close themselves as a result of population changes. However, if there is to be community confidence in the school closure process, the process has to be transparent and open and provide a level playing field for all the partners.

The 2010 act, which was passed unanimously by the chamber, was a big step forward, but it has not operated quite how this Parliament intended. The commission on the delivery of rural education did sterling work, and I pay tribute to the Convention of Scottish Local Authorities for the partnership that resulted in its establishment. All the commission’s members worked very hard to look at the issue in the round and I pay tribute to them and to the commission’s chair, Sheriff David Sutherland. It is a tribute to their work that the Scottish Government accepted and is implementing 37 out of the 38 recommendations. That is a pretty good—in fact, remarkably good—average for any commission.

I say at the outset that this has been a contentious area in which, after a difficult period, we might be moving towards completing Parliament’s role. I hope that our amendments will be treated in that manner and supported across the chamber.

As well as Government amendments 106, 107 and 109 to 111, I welcome and, as Liam McArthur has suggested, actively support amendment 191 from Liam McArthur and amendment 108 from Liz Smith. It is important that we join together to finish the job that we started when Parliament passed unanimously the Schools (Consultation) (Scotland) Act 2010.

Government amendments 106 and 107 are minor drafting changes to the amendments made to the 2010 act at stage 2.

Government amendments 109 and 110 address a similar issue to that of amendment 108, in the name of Liz Smith. All three amendments seek to improve the transparency of local authorities’ decision making. First, amendment 109 will require an authority, when explaining in its proposal paper why it considers, in the light of its assessments, that implementation of the proposal to close the rural school is the most appropriate response to the reasons for the proposal, to give the reasons why that is the case. That transparency will help ensure that parents and communities can better understand why the authority considers that closure is the most appropriate way to proceed.

Secondly, amendment 110 will impose an additional requirement on authorities to explain in consultation reports on rural school closure proposals why it considers implementation of the proposal to be the most appropriate response to the reasons for the proposal. The authority will also have to set out its reasons in the consultation report. That will ensure that councillors have a clear understanding of the recommendation that they are receiving and the reasons for that recommendation.

I welcome amendment 108, which addresses the third and critical point at which it is right to require an authority to set out its reasons for proceeding with a rural school closure. Section 11A of the Schools (Consultation) (Scotland) Act 2010, which the Government brought forward at stage 2, sets out the clear test that we expect authorities to meet before they can decide to implement a closure proposal in relation to a rural school. It will ensure that authorities will not be able to proceed with a closure proposal unless they have complied with the additional statutory requirements imposed on them and there is no
more appropriate means of addressing whatever problem a rural school is experiencing. Section 11A of the 2010 act will be further strengthened by amendment 108, which will require an authority to publish the reasons why it is satisfied that closure is the most appropriate response to the problems that the school has been facing.

Amendment 111 will require that that information is supplied to the Scottish ministers and will require the authority to publish on its website notice of the fact that it has notified ministers of the decision and of the opportunity for consultees to make representations to ministers in relation to the decision. That will ensure that the reasons given in the authority’s notice are made public, which is clearly desirable, are published within six days of the decision being taken and are able to be taken into account by those making representations to ministers, and by ministers themselves when considering whether to call in the decision.

Those requirements will help to increase the overall transparency of the decision-making process, which can only serve to increase the confidence of the communities that are affected by the decisions reached. That transparency and clarity is already successfully delivered by many authorities—that is to be welcomed; I commend them for it. Unfortunately, however, we have found that, since 2010, consultation has not always reached the high standards that communities deserve. That is why the provisions are necessary.

No one should be asked to support a decision—least of all one that affects the education of their children—on the basis of poor, incomplete or, in some cases, plain wrong information. That is why I support amendment 191, which will require an authority to correct an inaccuracy or omission that it has confirmed when it relates to a material consideration relating to the proposal. All allegations of inaccuracy and omission must be determined by the authority, with reasons given to the person who raised the issue, if it is proposed that no action is going to be taken in relation to the allegations. The person who raised the issue will then be entitled to make further representations to the authority and the authority will then be able to make a new determination on the matter. Finally, the authority will be required to include in its consultation report information on all allegations of inaccuracies and what action is taken in relation to those allegations.

We all know that school consultations are highly charged and it is essential that a fair debate is promoted, based on reliable information. Errors do occur, for a variety of reasons, and amendment 191 provides a clear process to address and resolve them in as transparent a way as possible. That has to be welcomed.

Scotland’s schools and the school estate are not set in stone and a policy that no school should ever close is divorced from reality. Schools, in both urban and rural communities, must change and develop to respond to the needs of the 21st century and provide our young people with the best opportunities. A great deal of that change is very much for the better, for example the delivery of impressive buildings and the bringing together of communities around sustainable, high-achieving schools. However, it does no one any good to rush into those decisions on false premises.

We need to start with the problem in order to find the solution, rather than the other way round. Therefore, communities need and deserve authorities to be subject to robust and comprehensive processes to ensure that proposals can pass scrutiny. Only in that way will we ensure that higher standards in decision making are reached and maintained.

In summary, I ask the Parliament to support amendments 191 and 106 to 111.

Liz Smith: I begin by thanking the cabinet secretary for his constructive and helpful approach when formulating the amendments relating to rural school closures, which is an issue on which I believe it is essential that we secure cross-party support. I also acknowledge the unstinting efforts of Sandy Longmuir, who has campaigned passionately on behalf of the Scottish rural schools network to change the 2010 act for the better. His diligence and advice have been much appreciated.

Over the years, we have had far too many instances of a failure to provide the necessary information that is an essential part of making a judgment about whether a school should close. As the cabinet secretary rightly said, no parent should be put in that position. In some cases, there has been a failure to provide complete information, in others, there has been a failure to provide fully accurate information and, in others again, there have been allegations of deliberate attempts to mislead interested parties or relevant committees. None of those situations is acceptable, so it is essential that we do everything possible to ensure that they cannot happen again.

Amendment 108 will strengthen the duties that are placed on local authorities so that a council must publish on its website the notice of its decision and the reasons why it is satisfied that such action is the most appropriate way forward. Councils will no longer be able to say that they are simply satisfied. That goes significantly beyond the initial proposals and will introduce much tighter language that is designed to furnish communities with fuller knowledge of the decision-making process and, crucially, the logic behind it.
Given the sensitivities that are at play, it is paramount that stringent checks are in place to ensure that all relevant information is disclosed and is presented in a clear and neutral manner. A school closure proposal can often be a fraught and controversial process, so it is important that high standards of transparency are adhered to throughout. Amendment 108 will strengthen the duties on local authorities to secure just that and will give parents, pupils and staff much greater confidence in the process through which decisions are reached. I hope that the Parliament will support amendment 108 and all the other amendments in the group.

Neil Bibby: The amendments on the issue appear to be minimal and do not fundamentally add to or detract from the current proposals. They appear to improve the process that must be followed when a school closure is considered and the transparency of the decision, and they make the process more accessible to parents. Those are positive steps. I agree with the cabinet secretary that proposals should come with complete information, but perhaps he could have ensured that the financial memorandum had complete information.

Members might be aware that, at stage 2, I raised concerns about Mike Russell’s proposals on this issue. There are still a number of points of concern, particularly on the new unelected quango that will decide on rural school closures. For example, who will the members be accountable and responsible to, who will pay them and how much will the new quango cost?

It is regrettable but, unfortunately, far too typical that the Scottish Government ignored the views of local government and COSLA on recommendation 20 from the commission on the delivery of rural education. I recognise that we should try to get cross-party support on such issues, but surely it is also important to have agreement between national and local government, as local authorities are responsible for running primary and secondary education. Members should not just take my word for it; they should take the word of SNP councillor Douglas Chapman, the COSLA education spokesperson, who said:

“By not implementing recommendation 20 the Government has altered the balance brought in by the Commission, and we are now concerned it will be actually far harder for local authorities to take necessary decisions on the school estate.”

He also said that he had written to the cabinet secretary to express concern that

“This is the impact that amended legislation could have on improving educational outcomes”

and

“because of this local government’s job will be made all the harder”.

Mark McDonald (Aberdeen Donside) (SNP): Surely the member accepts that, for example, the case in my constituency of Bramble Brae and Middleton Park primary schools, where the educational benefit statements and the response to them by Education Scotland proved that the process was a complete guddle, shows the need to measure against educational benefit to avoid schools being closed for purely spurious reasons.

Neil Bibby: I am not aware of the case that Mr McDonald raises, but the process needs to proceed by consensus with local authorities.

I turn to the key issue, which I hope Mr McDonald agrees on. Of course nobody wants to close schools, whether they are rural or urban. If Mike Russell wants to keep schools open not just in his own constituency but in the other 72 constituencies in Scotland whose schools he is responsible for as education secretary, then he needs to ensure that our education system and local authorities are properly resourced. However, rather than changing council budgets, he has chosen to change the law. The only new budget that has been created is a limitless one for a new, unelected quango that will let him abdicate from the responsibility for making difficult decisions on school closures.

18:45

Fiona McLeod: Some members may be surprised that, as the MSP for Strathkelvin and Bearsden, I rise to talk about rural schools, but I actually have three rural schools in my constituency. However, I believe that the debate is also important because we can learn from the standards that we are going to apply for rural school closures and use them for urban school closures. The cabinet secretary used words such as “clarity” and “transparency” with regard to the process in the future. I know that that will be welcomed by campaigners but, given my experience in my constituency, I wonder whether it will be welcomed by local authorities.

The cabinet secretary talked about having higher standards for decision making, but he also said that no false premises must be used when decisions are made about school closures. Liz Smith talked about there perhaps being sometimes deliberate attempts to mislead. I am not making such a charge against East Dunbartonshire Council in the current, divisive campaign that we are going through in closing and merging local primary schools, but I know that local campaigners have had to dig deep and spend long hours forensically going through documents from the council. They have had to use freedom of information requests to try to get
behind what the council called facts and find out whether they were really the case.

That closure process has resulted in a ministerial call-in. Local people await the decision on that with bated breath. However, the local council does not await the decision with bated breath because, just last week, East Dunbartonshire Council at its budget meeting preempted the decision of the ministerial call-in by changing the parameters of how it will make decisions on closing and merging schools.

I absolutely welcome Liam McArthur’s amendments and all the other amendments in this area and I hope that they mean that no other local school campaigners have to go through what the campaigners in my constituency have had to go through.

Liam McArthur: I thank Fiona McLeod, Liz Smith, Neil Bibby and the education secretary for their comments on the amendments. The cabinet secretary was right to set the scene by talking about the importance that rural schools play in the wider community. I know that the argument will be made in much the same way by those in urban communities, but I think that, as I am a member from Orkney, members would not expect me to do anything other than acknowledge the specific status that schools in rural communities play.

As the cabinet secretary said, the 2010 act was unanimously supported, but it quickly became evident that it was being applied inconsistently, which gave rise to concerns that it was having unintended consequences or that local authorities were applying it inappropriately. Liz Smith made some excellent points in that regard.

The responsibility for school closures must lie with local authorities, which are best placed to act in the best interests of the communities that they represent. I do not believe that any council does or should enter the process of consulting on a school closure lightly. Nevertheless, I think that there is sufficient evidence that there are inadequacies in the way in which the current legislation is being interpreted. I think that we all acknowledge that this is not about saying that no rural school should ever or will ever close, but a school should certainly not close on what Fiona McLeod referred to as a false premise or on the basis of inaccurate or incomplete information.

What we will have as a result of the amendments passed at stage 2 and the group of amendments that we are considering is an opportunity to make the process more transparent, better balanced and subject to proper, effective and well-informed consultation. I share some of Neil Bibby’s concerns about the review panel, but I think that that battle was fought and lost at stage 2. Nevertheless, the stage 2 amendments and the amendments in the group that we are considering will make a good bill better and clearer. I encourage the Parliament to support all the amendments in the group. I will press amendment 191.

Amendment 191 agreed to.

Section 68D—Special provision for rural school closure proposals

Amendments 106 and 107 moved—[Michael Russell]—and agreed to.

Amendment 108 moved—[Liz Smith]—and agreed to.

Amendments 109 and 110 moved—[Michael Russell]—and agreed to.

Section 68E—Call-in of closure proposals

Amendment 111 moved—[Michael Russell]—and agreed to.

After Section 71A

The Deputy Presiding Officer: Amendment 192, in the name of Adam Ingram, is grouped with amendment 201.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): There was a warm welcome last month for the First Minister’s announcement of the extension of free school lunches to all primary 1 to 3 children in Scotland from January 2015. That welcome came not least from long-time campaigners for free school meals such as the Child Poverty Action Group. The Children and Young People (Scotland) Bill is an opportunity for us to make sure that we have a fit-for-purpose legislative foundation for the provision of free school lunches, so that we can deliver on that commitment. The amendments that I propose reach a compromise between the wishes of some to use primary legislation to compel local authorities to honour the First Minister’s commitment and the desire of ministers to work with COSLA to negotiate implementation of the commitment.

Amendment 192 has two purposes. First, it gives education authorities the power to provide school lunches free of charge to pupils who satisfy such conditions as the authority thinks fit to choose; and secondly, it imposes a duty on education authorities to provide certain pupils, as prescribed through regulations, with school lunches free of charge.

The first purpose removes the anomalous duty on education authorities in most circumstances to charge for school lunches. They will be able to choose conditions, as they see fit, in which they will provide free school lunches. It also allows
flexibility and is consistent with other legislative provisions on food or drink in schools.

The second purpose—the enabling power—will allow Government to ensure that local authorities provide free school lunches to children in primaries 1 to 3. It goes beyond but complements the existing benefit-centric enabling powers that allow ministers to prescribe what benefits a parent or carer, or a pupil themselves, must receive to be eligible for a free school lunch. It gives ministers the required powers to prescribe circumstances in which a free school lunch must be provided.

Amendment 201 primarily amends two important duties on education authorities, as introduced by the Schools (Health Promotion and Nutrition) (Scotland) Act 2007. The first is the duty, set out in section 53A(2) of the Education (Scotland) Act 1980, on authorities to take reasonable steps to ensure that every pupil who is entitled to receive school lunches free of charge receives them. The second is the duty, set out in section 53B of the 1980 act, on authorities to take reasonable steps to protect the identity of a pupil who receives school lunches free of charge.

It is right that those provisions extend to free school lunches that are provided under the changes that are proposed in amendment 192. However, the effect of the amendments may be that free school lunches will be provided to more than those pupils who receive, or whose parents receive, certain benefits. For example, with the implementation of free school lunches for all primary 1 to 3 pupils, the potential stigma that can be associated with free school lunches will not arise. In such cases, it will be neither necessary nor possible to protect the identity of pupils who receive free school lunches, so it would be inappropriate for the duty to continue to apply to education authorities. I therefore propose that ministers have the power to prescribe through regulations the circumstances in which the duty in section 53B of the 1980 act to protect pupils’ identity will not apply.

I move amendment 192.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I will be very brief because of the time.

I make it clear that I and, I know, my colleagues warmly welcome and support the amendments that we are discussing, as indeed we support the bill. I know that nobody in the chamber today is going to misrepresent our position on the matter, although a few weeks ago, our position was misrepresented because of our passion for childcare for two-year-olds. Clearly, we thought that that was a higher priority, but I am sure that every member in the chamber can grasp the concepts of “good” and “better”. We thought that

that would have been a better policy, but we certainly think that this is a good policy.

I will make two points. First, I have raised with the cabinet secretary in other contexts that there is a bit of an issue about capital provision for the policy, because some schools—I can think of at least one in my constituency—will not be able to accommodate the increased numbers in existing dining room facilities. That issue will have to be looked at, and according to John Swinney it is being discussed with COSLA.

Secondly, I note that the main discussion on the policy has been about the financial relief that it will give parents, but it is potentially an important health policy, and I believe that an even greater focus on nutritional guidelines would make this good policy even better.

Bob Doris: I support the amendments in the name of my colleague Adam Ingram. I am delighted to note the political conversion by some in the chamber to free nutritious school meals. This is a pro-health, anti-poverty and pro-social-equality measure.

I put on the record my firm personal view that the end point in the medium term should be to extend provision to primary 7. I have said over the years that there are no rich children or poor children—there are just children, and every child should be guaranteed a free nutritious school meal, regardless of parental income. That is the right thing, no matter what others have said in the past.

Although there are no rich children or poor children, there can be poor political commitment, and that is why we must entrench in the bill the ability to compel local authorities, should they choose to flout the Parliament’s will.

I finish by saying that the Labour Glasgow City Council has been calling for free school meals for P1 to P3. The SNP opposition group on the council has found the money to deliver those free nutritious school meals early, from August this year. I hope that, in the spirit of unity and that political conversion, the Labour Glasgow City Council will now support the SNP in Glasgow and deliver early on our important and significant free school meals commitment.

I urge members to support Adam Ingram’s two amendments.

19:00

Kezia Dugdale: Consensus breaks out and then Bob Doris speaks. [Laughter.]

We are happy to support Adam Ingram’s amendments. The points that he made about flexibility are important.
However, I remind members that we have seen no capital assessment of the cost of providing free school meals. The Government’s inability to produce the correct financial memorandum for us to assess matters not only in the context of today’s debate, but in relation to the reality of how the policy is delivered.

That point is important for two reasons. First, I know from schools in Edinburgh that—as Malcolm Chisholm pointed out—there will be capacity issues with seating all children at one time to have a school meal. Even getting close to giving 75 per cent of children a free school meal would be incredibly difficult.

Secondly, the capacity issue affects not just school halls and assembly rooms, but kitchens. We know that kitchens in schools throughout Scotland cannot accommodate the facilities required to cook so many meals from scratch. If the meals are not to be cooked from scratch, we will simply end up contracting out the production of free school meals to private companies, which thrive in a low-wage economy and would produce poor food that would only just meet the nutritional standards for free school meals. We would then have to ask ourselves what we had actually achieved during the bill process.

Legitimate concerns remain with regard to the degree to which the policy is resourced, particularly in terms of capital investment. Having said that, we are pleased and happy to support Adam Ingram’s amendments 192 and 201.

Liam McArthur: I welcome the Scottish Government’s decision to follow the lead that the UK coalition Government has set in delivering what Bob Doris described as a progressive, anti-poverty and pro-health measure.

It is unfortunate that the committee had no opportunity to scrutinise the proposals in detail, but I understand the reasons for that, which are considerably more justified than those that applied to the substantive changes to the childcare provisions that arrived well past the 11th hour.

Nevertheless, as with the extension of childcare for two-year-olds, the Parliament and the Education and Culture Committee will want to keep a close eye on how the proposals are rolled out in order to ensure that they are properly funded, as Kezia Dugdale and others have said, and delivered to children in P1 to P3 throughout the country.

In that respect, Adam Ingram was very fair in setting out the issues and choices that we face as a Parliament, and his amendments in group 18 offer a pragmatic and flexible way of proceeding. On that basis, we are happy to support the amendments.

Michael Russell: I welcome the sensible position that the Labour Party is now taking. It was nice to hear Malcolm Chisholm on form; I always think that he is at his most convincing when he is arguing for what he believes in; unfortunately, he has not been doing that very often in recent days. It is clear that he believes in the policy, so it is good to see that today.

Malcolm Chisholm raised the issue of capital provision—which he did pleasantly; Kezia Dugdale was not quite so constructive. There is a great deal of experience in relation to the capital provision that is required. The SNP pilot that took place in 2007-08, along with its subsequent report, offers an interesting indication of how the policy can be implemented. Together with COSLA, we will work our way through to ensure that that can be done.

Neil Bibby rose—

Michael Russell: No. I would like to make some progress on this point; I heard the point that the member made. [Interuption.]

It has been a long day, and although Duncan McNeil is still shouting, Presiding Officer, the rest of us would like to finish debating the bill and make it happen. Labour has already tried to stop the bill today—why do we not just complete it?

I thank Adam Ingram—[Interuption.]

It is a pity that the outbreak of goodwill is finished so soon, but there we are.

The Deputy Presiding Officer: A little bit of calm, please. Calm down everyone.

Michael Russell: Thank you, Presiding Officer.

I thank Adam Ingram for his amendments, which follow and support the First Minister’s recent announcement on extending entitlement to free school lunches to children in P1 to P3 in Scotland from January 2015. There are—

Kezia Dugdale: Will the cabinet secretary give way?

Michael Russell: No, thank you—I would like to make some progress.

There are many benefits of extending the provision of a healthy school lunch free of charge—

Neil Bibby: Go home—put your feet up.

Michael Russell: Do not tempt me, Mr Bibby.

The policy will not only save families throughout Scotland approximately £330 a year for each child who takes up their entitlement to a free lunch every day, but remove any possibility of free school lunches being a source of stigma and encourage healthy eating habits.
As Adam Ingram outlined, his amendment 192 would do two things. First, it would give Scottish ministers the power to place local authorities under a duty to provide school lunches free of charge to certain pupils as prescribed in regulations, whether that is by reference to their yearly stage of education or to another description.

With regard to the First Minister’s announcement, I made it clear from the start that I fully intend to implement the extended eligibility to free school lunches in partnership with local government. Provided that agreement can be reached to ensure full implementation, there will be no need to call on the power that the amendment would provide, and I can happily say that I have no intention of invoking it if we can get a clear partnership agreement to progress the policy’s implementation within the timescale that we are talking about.

Dialogue is taking place with COSLA to agree on how the commitment can be delivered without having to put a duty on local authorities. Although it is both sensible and timely to put the power in place, I am quite sure, given that the Labour Party is showing such strong backing for the policy now, that an outbreak of sense will also take place in COSLA.

The amendment also gives education authorities the power to provide school lunches free of charge to pupils who satisfy such conditions as the authority sees fit. Although the provisions would replace existing powers to meet the commitment to provide free school lunches to children in primaries 1 to 3 through the Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2008, they also go further—they allow education authorities the flexibility that they do not currently have to provide free school lunches to children whom they identify as those who would benefit from free school lunches.

Consequential amendment 201, which relates to the duties to ensure that every pupil who is entitled to school lunches free of charge receives those lunches and to protect the identity of pupils who receive free school lunches, is appropriate. To get the full benefit, it is important that schools promote free school lunches and take reasonable steps to ensure that those who are entitled to them take them. That is particularly important when the reasons for entitlement arise from a circumstance that may disadvantage the child. Equally, it is important—where appropriate—to reduce the burden on local authorities. I welcome the amendment, which will allow ministers to disapply the education authority duty to protect the identity of those receiving school lunches when there is no benefit in doing so.

The amendments future proof the legislative framework. They allow local authorities the freedom to meet the needs of the children and young people for whom they are responsible through the provision of a healthy lunch at school, and they allow the Government to amend or extend—I note that point—entitlement to a healthy free school lunch.

I repeat that the purpose of amendment 192 is to provide a power, but there is neither a requirement nor a need to use that power provided that we can work together in partnership. That is what I wish to do with local authorities and—to be fair—the indication from local authorities is that that is what they wish to do with the Government, in which case we will all be happy. Even the Labour Party is happy now—what more could be called for?

The Deputy Presiding Officer: Many thanks. I now call Adam Ingram to wind up—briefly, if you can, Mr Ingram, please.

Adam Ingram: There seems to be an outbreak of consensus—there are repentant sinners everywhere—so I am quite happy to leave the debate there and urge members to support the amendments.

The Deputy Presiding Officer: The question is, that amendment 192 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (SNP)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (SNP)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Mcapline, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robinson, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Urguhart, Jean (Highlands and Islands) (Ind)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against
Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

The Deputy Presiding Officer: The result of the division is: For 98, Against 15, Abstentions 0.
Amendment 192 agreed to.

After section 71B

The Deputy Presiding Officer: Group 19 is on the functions of the education authority in relation to pre-school children with additional support needs. Amendment 193, in the name of Liam McArthur, is the only amendment in the group.

Liam McArthur: At stage 2, I moved various amendments prompted by recommendations from “Putting the Baby in the Bath Water”, an excellent report that was prepared by a wide-ranging group of expert organisations and individuals.

All the amendments had one thing in common—over and above the fact that not one of them was accepted by the Government—which was the need for a ruthless focus on preventative action and the earliest possible identification of support needs. That again is the rationale behind amendment 193.

As I made clear at stage 2, I firmly believe that the Education (Additional Support for Learning) (Scotland) Act 2004 is an act of which this Parliament and all the parties within it can feel rightly proud. However, 10 years ago, our understanding of the crucial importance of the earliest years to later success at school and more generally was less robust. Prevention was only starting to guide Scottish public policy.

As the authors of the “Putting the Baby in the Bath Water” report identified, there now appears to be a case for addressing shortcomings in the ASL act that would not be picked up through revisions to the ASL code of practice. Although children are officially covered by that legislation from birth, its implementation has not equally benefitted children below the age of three. That is both unwise and unfair.
Two things make the ASL act stand out. One is that children who need extra help “for whatever reason” have a legal right to receive it. The other is its broad definition of the types of extra help that can be provided. Both of those excellent features of the act apply to all children and young people across Scotland—unless they are under school age. The ASL act can help our youngest children only if they qualify under the Disability Discrimination Act 1995. Why deny access to assessment and additional support during the first 1,001 days of life, which is when young children—and their parents—could be most effectively and inexpensively helped by genuinely early intervention? Why make them wait until they reach school age to become eligible?

Amendment 193, therefore, would remove the subsection that has proven to be a major obstacle to some very young children getting the help that they need and to which they would be entitled if they were older.

Let us not forget that many ASL needs, such as those associated with communications difficulties, autism and foetal alcohol harm, emerge between the age of two months, when universal health visiting usually ends, and 27 to 30 months, when the new universal health checks will start. A waiting period of more than two years is a long time in the life of an under-school-age child. As a result, some preventable problems are not being prevented, and some ASL needs that could have been identified—and met through early intervention—instead are overlooked and grow worse.

Given the fate of my earlier amendments on behalf of the “Putting the Baby in the Bath Water” coalition, I am realistic about the prospects for amendment 193. However, although the minister rejected the amendments at stage 2, she offered some assurances that their policy intentions would be incorporated into secondary legislation, regulation or statutory guidance. I hope that that is the case and that the minister will reaffirm her intention to engage directly with this diverse coalition to assist in the development of all relevant guidance. The devil is in the detail, and the input of this group of experts can help to translate good intentions into detailed policy implementation.

For now, I look forward to the comments from the minister and other colleagues.

I move amendment 193.

Aileen Campbell: I thank Liam McArthur for the points that he has raised, and I thank the “Putting the Baby in the Bath Water” campaign for the amendment. However, we believe that the proposed amendment to the Education (Additional Support for Learning) (Scotland) Act 2004 is unnecessary. I will outline why before closing my remarks by providing the comfort that Liam McArthur indicated that he would like to hear.

Amendment 193 seeks to extend the current duties on education authorities under the ASL act to apply to all children under school age and not receiving school education.

As I indicated at stage 2, the Scottish Government absolutely supports the principle of prevention and early intervention, especially where it might prevent an additional support need from developing or worsening. That is why the bill already contains a number of provisions that focus on early intervention and prevention. A child’s wellbeing is assessed from birth during the contacts that are set out in the child health programme, which now includes a 27 to 30-month universal health review. Where a child’s wellbeing needs require it, their named person will initiate a child’s plan in partnership with the child, their family and relevant professionals. That child’s plan will take account of learning needs. That will ensure that the learning needs of children under school age are met alongside any other needs that might affect their wellbeing. Indeed, a crucial part of the named person’s role is to promote, support and safeguard children’s wellbeing.

As a result of those provisions in the bill, it is not necessary to extend the ASL act in the way that has been proposed. The provisions in the bill provide the necessary protection for those vulnerable children.

As I said at stage 2, the advisory group for additional support for learning has agreed that prevention and early intervention through the early years are very important issues. I indicated that the revision of the statutory code of practice for additional support for learning is already under way, and committed to the code of practice specifically including a focus on prevention and early intervention and to including representatives of the “Putting the Baby in the Bath Water” campaign in the process.

As I also said then, the revised code of practice will be subject to full consultation and parliamentary scrutiny, as required by section 27 of the ASL act. The code of practice will also be closely aligned with statutory guidance on the child’s plan and on early learning and childcare to ensure that all related guidance is clear and consistent.

I believe that amendment 193 is unnecessary and that the provisions in the bill already take account of the issues that it seeks to address. Therefore, we do not support the amendment. However, in this, the penultimate group of amendments, I reiterate my thanks to the coalition responsible for “Putting the Baby in the Bath
“Water” for its work, not just on this set of amendments but more generally throughout the bill’s progress. Its experience, knowledge and expertise will enable us to get guidance right.

I also thank Liam McArthur for allowing the committee and Parliament to discuss what is a very important issue.

19:15

Liam McArthur: I thank the minister for her comments and for the assurances at the end of her contribution. I welcome the restated commitment to prevention and, indeed, the confirmation that the coalition behind the “Putting the Baby in the Bath Water” report will be involved in the on-going review.

I was intrigued by earlier comments that the minister made in response to Siobhan McMahon’s amendments on the rights of children and young people with disabilities. The point that was being made, I think, was that we should not make a distinction between different types of children and young people. The anomalies that the coalition has highlighted in the operation of the ASL act appear to suggest that a distinction is made between the treatment of those of school age and the treatment of those in the first 1,000 days of life. I acknowledge the point about the universal health review at 27 to 30 months, but it appears to me as if that gap remains. I am sure that the review group will return to that as part of its work. However, for the time being, I thank the minister for her commitment and will not press amendment 193.

Amendment 193, by agreement, withdrawn.

Amendment 179 moved—[Siobhan McMahon].

The Deputy Presiding Officer: The question is, that amendment 179 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Rowley, Alex (Cowdenbeath) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clara (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Alileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabelle (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (Aberdeen Donside) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Neil, Alex (Airdrie and Shotts) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 39, Against 75, Abstentions 0.

Amendment 179 disagreed to.

The Deputy Presiding Officer: Group 20 is on the national speech, language and communication strategy. Amendment 194, in the name of Siobhan McMahon, is the only amendment in the group.

Siobhan McMahon: The minister’s commitments at stage 2 to

“ensuring that the distinctive needs of children with speech, language and communication issues will be addressed by guidance”—[Official Report, Education and Culture Committee, 17 December 2013; c 3199.]

and to “work with appropriate organisations” are welcome. In making those commitments, the Scottish Government has, it seems, already accepted the irrefutable link between speech, language and communication and improving outcomes for all of Scotland’s children and young people.

Indeed, key policies and initiatives such as the early years collaborative and GIRFEC identify speech, language and communication development and capacity as fundamental to ensuring that Scotland is the best place to grow up for all children and young people.

The Children and Young People (Scotland) Bill aims to secure equality of outcomes for all children and young people, regardless of where they live or their home circumstances. Optimising the speech, language and communication development of every child in Scotland must be at the heart of that process.

Significantly, although many Scottish Government policies and initiatives recognise the fundamental importance of speech, language and communication development and capacity, Scotland, unlike other parts of the UK, has no comprehensive strategy that focuses local authorities, health boards and other key agencies on ensuring that SLC development and capacity are optimised for all children and young people.

A national speech, language and communication strategy would provide clear direction, cohesion and focus for all responsible authorities on how to optimise speech, language and communication development and capacity for Scotland’s children and young people.

Currently, local authorities and health boards throughout Scotland pursue different approaches to speech, language and communication development. For example, in some parts of Scotland, health, education and other professionals—from prenatal services to secondary school—work effectively together to optimise speech, language and communication development and capacity. However, in other parts of the country, that evidence-based approach is less apparent. A national speech, language and communication strategy would drive consistent, quality-assured, evidence-based approaches to speech, language and communication development and capacity, and would help to improve outcomes for all children and young people in Scotland.

Linked to that inconsistent approach are significant variations in the levels of shared ownership of, and investment in, speech, language and communication development throughout Scotland. For example, some local authorities have withdrawn funding for speech and language therapy provision, arguing that investment in those key areas of children’s and young people’s development represents additionality or is simply unaffordable.

A national speech, language and communication strategy would also help to drive multi-agency ownership of and investment in this fundamental life skill. Independent evidence tells us that such effective investment partnerships would be able to enjoy their share of the estimated annual £58 million preventative spend savings that arise out of quality speech, language and communication services.

The bill aspires to equality of outcomes for all children and young people. A national speech, language and communication strategy would act
as a key foundation for the realisation of that aspiration.

I call on the minister to make a commitment to developing a national speech, language and communication strategy or to enter into a dialogue with interested parties as soon as possible about the need for, and benefit of, such a strategy and how it can be taken forward.

I move amendment 194.

Mark McDonald: The commitment that the minister made at stage 2 on guidance followed on from amendments on speech, language and communication that I and Jayne Baxter lodged. Amendment 194 reproduces one of them. At stage 2, I said that I had sympathy with the thrust of the amendment but did not feel that the bill was the place for it to be.

As somebody who has personal experience of the role that speech, language and communication assistance can play in a family’s life, I recognise the points that Siobhan McMahon has made and agree entirely on the importance of effective speech, language and communication therapy where possible and necessary.

We need to have further discussion—possibly on a cross-party basis—about the issue. I made that point at stage 2 and it still stands at stage 3. I am more than happy to sit down with Siobhan McMahon, Jayne Baxter and others from parties across the chamber to talk about what the best way to proceed is.

We have had success with, for example, the national autism strategy, which has perhaps formed some of the thinking on amendment 194. However, perhaps other means could be pursued. Some of what we want to do could be captured in guidance and some of it could be pursued through other methods. Perhaps a broader cross-party discussion among interested parties would yield more than would including the amendment in the bill at this stage.

I am interested to hear the minister’s views, but I see indications that members find that suggestion broadly agreeable.

Liam McArthur: I congratulate Mark McDonald, Jayne Baxter and Siobhan McMahon on their efforts on the issue at stages 2 and 3. I hope that those efforts will be rewarded with a firm commitment from the minister to produce either a strategy encompassing speech, language and communication or, at least, as Mark McDonald indicated, a process for taking the issues forward.

I recognise that amendment 194 is intended to probe and is not necessary for incorporation in the bill. However, it is relevant to some of the issues that were highlighted in discussion about earlier amendments.

As I said at the outset, the bill should be about putting children’s rights front and centre and making children’s voices heard. Self-evidently, that is influenced by a child or young person’s capacity to communicate—to understand information and to express views. Moreover, that ability can also have a bearing on assessments of maturity and capacity, which are key to the amendments that I moved on information sharing. Therefore, although the issues that Siobhan McMahon, Jayne Baxter and Mark McDonald have raised are not appropriate for the face of the bill, they are highly relevant to it, and I look forward to seeing a proper strategy being developed and emerging in the near future.

Malcolm Chisholm: I will be brief.

It would be very helpful if the minister made a statement of intent. If that is done, I am sure that members will not mind if the proposal is not on the face of the bill.

As Siobhan McMahon said, there has been a lot of mention in policy of the matter, but there is no strategy. I do not need to remind the minister that the stretch aim of the early years collaborative is that all children reach their developmental milestones, including age-appropriate communication skills, by 27 to 30 months. In fact, communication and language needs are the most common developmental difficulty that children and young people experience. The issue is therefore central to the agenda that we are discussing. It is also very much a social justice and inequality issue, because those speech and language difficulties are often related to current social disadvantage and disadvantages in later life. Therefore, I hope that there will be a statement of intent today.

Aileen Campbell: My comments on Siobhan McMahon’s amendment 194 are similar to those on Jayne Baxter’s amendment 254 at stage 2. The bill has been drafted to ensure that the needs of any particular group of children will be supported by the different sets of provisions. Those include speech, language and communication needs. The creation of additional specific statutory duties and provisions for communication is not, as Mark McDonald and others have suggested, for the face of the bill. In this context, the specific needs of different groups of children are best addressed through guidance, and we have committed to ensuring that the distinctive needs of children with speech, language and communication issues are addressed by guidance as appropriate.

We have taken on board the important points that Siobhan McMahon has raised around consistency and other issues. I certainly remember her talking about consistency.
In constructing the guidance, we will draw on the expertise and experience of the Royal College of Speech and Language Therapists, for instance, and will ensure that others can contribute. We can also draw on the expertise that has been articulated in the debate so far by Mark McDonald, Jayne Baxter, Malcolm Chisholm, Liam McArthur and others to ensure that we get the guidance absolutely right.

I make a commitment that we will speak to others to ensure that the guidance can be influenced on a cross-party basis given others’ clear desire to get things right in speech and language support.

Siobhan McMahon: I thank the members who have supported my probing amendment.

I agree with Mark McDonald that, if we can get cross-party support for the strategy going forward and for discussion not only across the parties but with the organisations that asked for the amendment, that will benefit all young children. That is all that we want, of course. I welcome the minister’s assurance and therefore seek to withdraw my amendment 194.

Amendment 194, by agreement, withdrawn.

Section 75—Interpretation
Amendment 49 not moved.

Section 77—Subordinate legislation
Amendment 195 not moved.

Amendments 112, 90, 113 and 91 moved—[Aileen Campbell]—and agreed to.

Amendment 54 not moved.

Amendment 114 moved—[Aileen Campbell]—and agreed to.

Amendment 196 not moved.

Section 79—Commencement
Amendment 115 moved—[Aileen Campbell].

Amendment 115A not moved.

Amendment 115 agreed to.

Amendment 197 not moved.

Schedule 2—Relevant authorities
Amendments 50 and 198 not moved.

Schedule 2A—Persons listed for the purposes of section 38
Amendment 199 not moved.

Schedule 3—Corporate parents
Amendment 200 not moved.

Schedule 4—Modification of enactments
Amendment 201 moved—[Adam Ingram].

19:30
The Deputy Presiding Officer: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Buchanan, Cameron (Lothian) (Con)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing,ergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Amendment 201 agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. The other piece of good news is that the Scottish men’s curling team are through to the Olympic final. [Applause.]

Before we start the next item of business, I advise Parliament that, as a consequence of the earlier decision to extend the debate on amendments by 30 minutes, decision time will be moved by 30 minutes and will now be at 8.30.

Malcolm Chisholm: On a point of order, Presiding Officer. A point of order has already been raised concerning rule 9.3.2 of the standing orders, but I think that it is important that, before the end of stage 3, we have a statement from the cabinet secretary on the issue that was raised by the convener of the Finance Committee this morning. Under rule 9.3.2, the best estimates of the capital costs of the bill should have been provided, but they have not been provided. I hope that we can get from the cabinet secretary, in his speech in the next debate, at least some indication of why that information has not been provided and when it will be provided.

The Deputy Presiding Officer: I thank Mr Chisholm for his point of order, but I refer him to what was said previously. Parliament passed a financial resolution on the bill on 21 November 2013, which stated:

“That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Children and Young People (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.”

The Deputy Presiding Officer: The result of the division is: For 115, Against 0, Abstentions 0.
Children and Young People (Scotland) Bill

The Deputy Presiding Officer (John Scott): The next item of business is a debate on motion S4M-09050, in the name of Aileen Campbell, on the Children and Young People (Scotland) Bill.

19:34

The Minister for Children and Young People (Aileen Campbell): Presiding Officer, thank you for the update on the curling—that was welcome news.

I am pleased to open this stage 3 debate. I start by thanking everyone who has been involved in the development and scrutiny of this landmark piece of legislation. In particular, I thank the three parliamentary committees for their detailed examination of the bill—not least, the Education and Culture Committee, following four three-hour stage 2 meetings and a five-hour stage 3 meeting. Its careful and balanced consideration of the proposals has resulted in a bill that captures better the principles that Parliament endorsed at stage 1. I am genuinely appreciative of committee members' work.

I also thank everyone who responded to our consultation and all who have been involved in the bill's development—especially the 2,400 children and young people and the 1,500 parents who shared their views. I also record my thanks and gratitude to all the Government officials who have worked absolutely tirelessly and with dedication on the bill. I sincerely appreciate their very hard and fine work.

We have listened carefully to all that has been said. Since day 1, that collaborative approach has allowed the bill to evolve into an extraordinary piece of legislation that will convey our aspirations to improve the wellbeing of our children and to help make Scotland the best place to grow up.

The legislation will place our commitment to the early years on a statutory basis. It will do that as much through our proposals to transform early learning and childcare as it will through requiring children's services plans to demonstrate early intervention and primary prevention.

Through the named person provision, the bill will put in place a universal approach to promoting, supporting and safeguarding every child's wellbeing by working with families. The named person—albeit that the provision is not supported by everyone—will be the single point of contact that parents told us they wanted, and whose job will be to ensure that children, young people and their families get the support they need when they need it.

The bill will, through our care and aftercare provisions, change how our most vulnerable children and young people make the very difficult transition through and out of care when the time is right for them, by ensuring that there is appropriate support at every stage on the way.

We are placing a duty on local authorities to provide services to families where there is a risk that a child will become looked after. We are also supporting the invaluable work of kinship carers by requiring authorities to provide assistance to carers of a child who is at risk of becoming looked after. We are strengthening the impact that corporate parenting can make and we are helping the children who need to proceed to adoption by making use of the national adoption register compulsory. The bill puts children's rights at the heart of the public sector and government for the first time. It will ensure that ministers assess all future decisions against the rights of children, and will require public bodies to embed rights in the front-line services that our children and families rely on day in, day out.

Those overall intentions have not changed during the bill's progress; what has changed is how the bill can achieve the intentions. We welcomed and put forward many suggestions for improvement at stage 2; that was the result of a shared recognition of the importance of the legislation and our common ambitions.

As I have always said, the bill is a starting point for the expansion of early learning and childcare. This is the first time that flexibility and choice have been put on a statutory footing. The bill sets the stage for our longer-term aim to develop high quality flexible early learning and childcare that are accessible and affordable for all children, parents and families.

We have always intended, through secondary legislation, to open out entitlement where it is affordable to do so. Therefore, I was absolutely delighted that the First Minister announced on 7 January that we will from August this year increase the entitlement of free early learning and childcare to two-year-olds in families that are workless or seeking work, which is 15 per cent of that age group. That will be followed in August 2015 by extension to two-year-olds who meet the free school meals criteria, which is 27 per cent of two-year-olds, or more than 15,000 children. That is a phased sustainable expansion of early learning and childcare to more vulnerable two-year-olds. We are focusing first on families who are most in need and who will benefit most from the expansion of funded hours. That will not only improve the life chances of children, but will provide opportunities for parents and families to benefit from support into training or sustainable employment.
In the Scottish Government’s white paper, “Scotland’s Future: Your Guide to an Independent Scotland”, we have set out phased plans to achieve 1,140 hours a year for all children aged between one and five, starting with an increase to half of all two-year-olds. The expansion that is set out in the bill will be a significant step towards realising that vision.

In addition, on 7 January the First Minister announced that all schoolchildren in primary 1 to primary 3 will from January 2015 receive free school meals. The benefits to children and families will be significant and have been commented on.

Gil Paterson (Clydebank and Milngavie) (SNP): I congratulate the minister and Parliament on coming to a sensible decision on free school meals—in particular, on the decision to make provision universal. I can talk from experience about how that will benefit children. A child whose family cannot afford school meals but who receives a meal anonymously will eat the meal, rather than withdrawing and going away because they are likely to get bullied. Children who really need good square meals will get them, and they will be healthy for the rest of their lives, because of Parliament’s decision to act in this way.

Aileen Campbell: I thank Gil Paterson for his intervention. The benefits to children and families are significant, not least because the approach will tackle issues to do with stigmatisation of children who access free school meals, as he said. It will improve the health and wellbeing of children and it will mean a saving of around £330 a year per child for the families who will benefit. Through today’s amendments in the name of Adam Ingram, who has been committed to the policy, we intend to give ministers the power to place a duty on local authorities to provide free school lunches.

The bill’s positive impact on young people who are or who have been in care has grown. We were mindful of the Education and Culture Committee’s request that we give further consideration to aftercare. We worked closely with key organisations—in particular Who Cares? Scotland, the Aberlour Child Care Trust and Barnardo’s Scotland—and we introduced a suite of new measures in support of continuing care.

Members will be aware that on 6 January I announced that, starting in 2015, 16-year-olds in foster care, kinship care or residential care will have the right to stay in care up to the age of 21, before receiving aftercare. The changes will give young people in care the same opportunities that their non-looked-after peers enjoy. We have been delighted with the positive feedback that we have received since I announced the package of measures. Duncan Dunlop, the chief executive of Who Cares? Scotland said that the number of “young care leavers who will benefit from these changes is significant and I don’t know of any other country in the world that has made a commitment like this”.

It is good to hear that we are in the vanguard when it comes to improving the life chances of young care leavers.

I pay tribute to the looked-after care leavers who, from the start, articulated their desire to make things better for future generations of care leavers. Their positive mark has been left on the bill for ever and they should feel incredibly proud of what they have achieved.

Some amendments to the bill have helped us to realise our goals more effectively, not least as we place on statute key elements of the getting it right for every child approach. Working closely with key stakeholders, we listened and gave careful consideration to concerns around the provisions on the named person and information sharing. On the basis of feedback from a wide range of stakeholders, the provisions have been amended so that professionals will be clearer about when and how to share information in a way that will always put the child’s best interests at heart, working with parents. The Law Society of Scotland and the Information Commissioner’s Office wrote to the Education and Culture Committee to give broad support to the amendments in my name.

New measures have also been introduced to reflect needs that have arisen since the bill was introduced. Existing legislation on school closures has been strengthened through a number of amendments to the school closure proposals consultation process under the Schools (Consultation) (Scotland) Act 2010. A school closure can be significant and incredibly disruptive for the children, parents and communities who are affected. It is clear that the 2010 act has not been operating satisfactorily for the people who have been affected or for education authorities. For that reason, and in response to recommendations from the commission on the delivery of rural education, amendments were agreed to that will benefit all who are involved in and affected by school closures.

Fundamentally, the bill will bring about transformational change for Scotland’s children and young people. We should be proud that we will today pass legislation that will improve the lives of our children.

Beyond the individual elements of the bill, perhaps its most important achievement lies in its title: it is a bill for the children and young people of Scotland. Over the past year, Parliament has given the whole wellbeing of children and young people its full intense consideration. We have demonstrated that we are not complacent when it comes to finding ways of improving the lives of all children and young people, and that we will
continue to put their rights and wellbeing at the centre of Scottish political life.

We may not agree on all aspects of how best to promote, support and safeguard the wellbeing of children and young people, but in a year in which the people of Scotland are being asked to consider the nation’s future, it is a mark of our national maturity that we place such a high priority on the next generation. For those reasons, it gives me enormous pleasure to move the motion.

I move,

That the Parliament agrees that the Children and Young People (Scotland) Bill be passed.

The Deputy Presiding Officer: Unsurprisingly, we are extraordinarily tight for time, so less would be more.

19:45

Kezia Dugdale (Lothian) (Lab): I was struck by the fact that Aileen Campbell said that the bill would bring about “transformational change for Scotland’s children”.

Her back benchers have been telling us for weeks and months that we need independence if we are to deliver transformational change.

Aileen Campbell: Aw!

Kezia Dugdale: Those are the words that the minister used. She admitted that devolution can bring about such change.

At the beginning of the process, Labour set out to improve the bill in three key areas. We believe that we have worked positively and constructively throughout the process. We said that we wanted to improve the provisions on care leavers, on childcare and on kinship care.

I will start with the good stuff. I have been profoundly moved by the experiences of care leavers whom I have met during the bill’s passage. I have been moved not only by the stories of their lives, what they have had to live through and what they have seen with eyes so young, but by their resolute determination to ensure that no child will ever again have a life like the one that they have had. The Government has moved quite considerably on aftercare and support for care leavers, and we have taken many steps towards providing a more equal Scotland for care leavers.

However, as I said during consideration of amendments, more needs to be done. The minister talked about a working group, but I would like an independent cross-party commission to be set up. I believe that it could look at the root causes of children ending up in care and at why doing nothing costs the state. It could examine how much doing nothing costs our criminal justice system and our health service. It could look specifically at the mental health, drug and alcohol problems that care leavers suffer from, and it could investigate the number of premature deaths in the care-leaver population.

Such a commission could also investigate education—more specifically, the educational attainment of care leavers and their progress into tertiary education. It could consider wider economic issues, such as the percentage of the more choices, more chances group who are care leavers and the number of care leavers who are economically inactive.

I mention all that with the support of the whole of the care-leaver sector. I am referring to all the organisations that have an active interest in the issue, which include Barnardo’s, the Aberlour Child Care Trust and Who Cares? Scotland. The children whom we are talking about are Scotland’s children—our children. There are no politics in this; we need a cultural shift and a national debate about the scandal of the life expectancy and the life chances of care leavers in Scotland today.

Regardless of who is in power and what the constitutional settlement is, the problems remain. We should unite across Parliament and commit to addressing the issue together. I would welcome it if the minister did not respond to my request now. I ask her to think about it, and I will write to her to outline exactly what could be involved in the process that I have proposed. I will provide her with details of the support that exists across the sector for such work.

I turn to childcare. We welcome the increased support that is to be provided for two-year-olds. We also welcome the provision for three and four-year-olds, although we simply cannot forget the fact that the Scottish National Party first promised such provision back in 2007. There are thousands of children who were not born when the SNP first made its promise and who are now too old to benefit from it.

That takes me to after-school care. Labour pushed its amendment because we understand the challenges that families face in accessing good-quality affordable childcare outside of school hours. That problem has been worsened by the SNP Government’s failure to fully fund local authorities, which has led to non-statutory services such as breakfast clubs and after-school clubs being the first services to go.

All those points were made by Cara Hilton in excellent remarks at the amendment stage. Cara Hilton is still counting the weeks for which she has been a member of the Parliament; she is still learning and is still familiarising herself with the standing orders, while Bruce Crawford has years of experience at the highest level of parliamentary
business. I therefore took great exception to what he said. He knows better than anyone that he was expected to address the amendment in question. To make such a direct and personal attack on Cara Hilton for merely speaking the truth was ugly and a real low point in this afternoon’s debate.

Stewart Maxwell (West Scotland) (SNP): That was the real low point right there—slagging off someone who is not in the chamber.

Kezia Dugdale: I hear a sedentary comment that I am

“slagging off someone who is not in the chamber.”

I am afraid that it is Mr Crawford’s choice not to be here just now, and I have to say that I really took exception to the point that he made.

Today dozens of people were outside Parliament, very angry because seven years on from when the UK Government gave the Scottish Government money to address the disparity in the kinship care system, they are still waiting. There is undoubtedly a postcode lottery with regard to kinship care in Scotland. There are different definitions of what it means to be a kinship carer, different eligibility criteria and different systems of recompense and financial support for people who are looking after children whose parents are simply unable to look after them themselves. Those people are doing a great act of public service every single day and all they are asking for is the money to make ends meet. I really do not think that is too much to ask. I regret that we have not been able to address the issue today, but I am sure that we will return to it in the future.

Although the Labour Party supported the named person principle at stages 1 and 2, we were not uncritical of it and raised serious points that people in the sector had made about the degree to which it will be resourced. I believe very strongly that the Scottish National Party Government has failed to advocate its own policy effectively enough; it could have done a much better job in that respect. It has failed to justify the policy in the months up to today, and I am afraid to say that today it has failed again to do so, which is a real shame. It means that the guidance on implementation of the named person provisions will really matter, so I urge the Government in the strongest terms to take considerable care over that.

In the minute that I have left, I want to say that this has been a day of promises unkept, with a real failure to tell us the bill’s true costs. Despite its promises to do so, the Government has failed to provide details of the financial review of kinship care. The Government has so far had seven years to deliver on its promise of 600 hours of childcare; we are still waiting for it to happen.

The Government has also failed to say what all of the bill’s provisions will cost. There has been no attempt to quantify the costs of expanding nurseries to deliver on the childcare commitments, or the costs of free school meals and what that will mean for the policy’s delivery in schools. There is an arrogance and incompetence about the Government this afternoon. It has been arrogant in its justification or explanation for what it is doing with regard to the named person provisions. After all, it has the votes, so why should it tell the people about what it is trying to do? It has been incompetent in its failure to detail what all this will cost. If the Government cannot provide the figures for what it plans to do now, how can we expect any of its figures for an independent Scotland to balance or add up?

In my remaining seconds, I want to thank all the organisations, in particular Children in Scotland and Barnardo’s, for everything that they have done to support Labour members in preparing for this process. After the robust discussions that we have had today, I am very glad to support the bill.

19:52

Liz Smith (Mid Scotland and Fife) (Con): I think that the chamber is very well versed on the Scottish Conservatives’ approach to the bill.

From the outset, we have been very supportive of the majority of intentions in the bill, most especially those that will improve care for our most vulnerable children, those that will expand childcare and kinship care, and those that address the failings within the existing school closures legislation. We have been very happy to ensure that, and I hope, very diligent in ensuring—that those aspects of the bill have been improved and, as such, will deliver better opportunities and support for our young people. We were particularly supportive of measures to expand a collaborative approach across most aspects of children’s services and measures to ensure more effective delivery.

We have been very methodical and consistent in our approach to the bill, critically examining each aspect against important criteria: the likely practical changes on the ground when it comes to the best way of improving the chances of young people across Scotland; cost; and what we see as the most important priorities in an economic environment in which resources are constrained. I will come back to those criteria in a minute.

Our judgments have been part of a process that covers so many related but nonetheless very diverse topics and the fact that, as with the Post-16 Education (Scotland) Bill, we have
sometimes had to cope with less than perfect drafting, which has held us up at times.

From the very first evidence session, key sections of the bill were given a very tough time by legal experts, stakeholders concerned about some of the bill’s practicalities and those, such as the Scottish Conservatives, who objected to a certain centralising approach in some key sections. It is clear even now that, as far as the practical application of some aspects of the bill are concerned, there is still uncertainty about its provisions, most especially about its costs. Indeed, that is one reason why we could not accept a number of amendments earlier this afternoon.

Let me deal with the three sets of criteria against which we have judged the bill. First, when it comes to making a real, practical difference on the ground that we can be sure will improve the chances of young people, we were very conscious of the desire to look at the main principles of the bill under the term “wellbeing” rather than “welfare”, which is the usual terminology in law. The expectation was that that would bring a more holistic meaning to policy making, which I think has been accepted in theory, but I remain a little concerned as to how that will work in practice.

Several witnesses made the valid point that to really change the way that we operate we require a change of culture, not overly burdensome legislation. A few worries remain about some of the bill’s implications for professionals who work on the ground. Liam McArthur’s amendments on data sharing were designed to tackle that issue, as were some of Neil Bibby’s amendments and most certainly the Conservative ones on the named person.

Secondly, there was an important issue relating to cost. It is our firm belief that some of the costs inherent in the bill are sizeable and, as the Finance Committee observed, are not as the Government would intend. I will cite some comments from the Finance Committee.

I referred earlier to Kenny Gibson’s point that beyond year 1 the bill’s provisions have not been properly costed. The implication is that there will be some funding shortfalls. Gavin Brown said that it seems counterintuitive that the training can just be squeezed into existing training with absolutely no cost, including materials or other expense. He also made the very good point that, although the Education and Culture Committee took evidence from Highland region, we cannot necessarily compare that to areas of Glasgow or other parts that perhaps have a higher incidence of deprivation. Michael McMahon also said:

“From the evidence that we have received, the best estimates from NHS boards, children’s charities, local government bodies and foster care organisations all say that your best estimates are wrong.” —[Official Report, Finance Committee, 18 September 2013; c 2994.]

It therefore seems to me that some serious questions remain about the funding of the bill and that we still have some problems to resolve regarding the revised financial memorandum.

Thirdly, and not unrelated to the cost issue, there is the matter of priorities. Everyone accepts that tough choices have to be made and that it is impossible to do everything that we might like. Instead, we must weigh up the costs and benefits of different options and, indeed, the opportunity costs of not pursuing something. We have seen party lines split on that issue.

I will not go back over all our arguments about our two fundamental objections regarding the named person policy and the fact that the Government seems very unwilling to address the anomalies in the provision of nursery care.

The Children and Young People (Scotland) Bill will do many good things, but it has some seriously misplaced priorities. The Scottish Conservatives have been frustrated and disappointed that the Scottish Government has made no efforts to address those concerns. It has not engaged particularly well with some of the stakeholders and Opposition parties.

As a result of that, our considered approach is that we will not give the bill our whole-hearted support. We will make a principled abstention this afternoon. We do not want the bill to fall, but nonetheless we cannot support a bill that includes the named person and does not address the issue of nursery provision.

The Presiding Officer (Tricia Marwick): We now move to open debate. Time is extremely tight and speeches should be no more than four minutes.

19:58

Stewart Maxwell (West Scotland) (SNP): This is a good bill and a positive contribution to Scottish society. It is positive for families and particularly positive for children and young people, so I am rather disappointed by some of the contributions so far.

I thank all those who gave evidence to the Education and Culture Committee, particularly the young people who did so, and I thank my fellow committee members for their efforts and the clerking team and the Scottish Parliament information centre for their very able assistance during the passage of the bill.

The Children and Young People (Scotland) Bill is comprehensive, and I would like to focus on several important parts of it in my short speech. Like many MSPs, I have had a number of people
contact me about the named person provision. I am disappointed that the provision has been somewhat misrepresented and misunderstood, and I am grateful to the minister for taking the time to write to MSPs to clarify what the Scottish Government hopes to achieve through the bill.

The named person provision will ensure that vulnerable children are better protected and that families and carers are given greater support if required. I strongly refute any suggestion that the provision will result in a snooper’s charter that undermines the role of parents. In fact, the majority of evidence that the committee received showed support for the measure, which will provide a clear point of contact for parents and carers. The named person provision builds on the getting it right for every child approach, which was introduced by the previous Executive and which has already been implemented in some parts of the country.

Evidence from the Highland Council pathfinder model shows that the named person approach can work well. More than a dozen children’s charities and organisations back the proposals. The fact that so many charities that are committed to improving the lives of children strongly support the introduction of the named person approach suggests to me that it is the right thing to do. The proposal does not mean having a social worker for every child, and it is in no way intended to usurp the role of parents and carers. If it was usurping the role of parents and carers, I believe that nobody in the chamber would support it, and I certainly would not. That is not what is happening; instead, the named person will provide support when needed by a family and will assist with early recognition of where children are at risk in order to prevent them from coming to harm.

The fact is that most children will never need the named person, and the majority of families will be unaffected by the change. However, the measure will ensure that a point of contact is available to provide support to families that need it. I welcome the minister’s assurances that parents who do not want to engage with the named person will be under no obligation to do so. I believe that the Scottish Government has worked well with stakeholders and has struck the right balance in the bill between protecting privacy and ensuring a child’s safety and wellbeing. It is clear to me that the implementation of GIRFEC across Scotland is a positive step forward that will help to ensure that child welfare continues to be prioritised and that no child who needs support is left without it.

I want to talk a little about data sharing. Highland Council’s written evidence highlighted that the named person role has put in place a clear process by which information about a child is passed to the right person. Improved information sharing between health, education, justice and social work services for vulnerable youngsters is to be welcomed. Better co-ordination of public services will help to ensure that relevant information is shared in a more targeted way and only under the right circumstances, when an appropriate need is identified. Because of that, it is expected that less information will be passed around, rather than more, as has been demonstrated by the pathfinder in Highland. The minister has also clarified that, contrary to what has been reported, there is no plan to introduce a national database of children’s personal information—that is yet another scare story that has been spread about the bill.

I am delighted that the bill will deliver a positive change for care leavers by allowing young people in care to receive support for longer. Martin Crewe, the director of Barnardo’s, has said that the changes represent “the biggest shake-up” in the sector for two decades and will help to “transform the lives” of some of Scotland’s most vulnerable young people.

I am delighted that we will pass the bill today, as it will have a positive impact on Scotland’s children and young people. All members really should support the bill at decision time.

The Presiding Officer: I call Alex Rowley, to be followed by Liam McArthur. Members will wish to note that this is Mr Rowley’s first speech in the chamber.

20:02

Alex Rowley (Cowdenbeath) (Lab): Thank you, Presiding Officer.

This is my first speech since being elected to the Scottish Parliament. I begin it by saying that it is with great sadness that I am here today, for it was the untimely death of Helen Eadie MSP that caused the by-election in the Cowdenbeath constituency. During that by-election, it was clear in all the towns and villages that make up the constituency that Helen was held in the highest regard and that everyone knew someone whom Helen had helped. Helen spent her life fighting injustice and inequality, and I make it my aim to continue that work.

I speak in this debate on the Children and Young People (Scotland) Bill because I am convinced that, in the Cowdenbeath area and across the country, we must focus more support and resources on the early years of a child’s life if we want that child to have the best chance of good health, prosperity and success throughout their life.

The bill includes provision on free school meals. In my constituency, free school meals entitlement
is used as a robust indicator of poverty and deprivation. Under the current entitlement, which is based on low income, it is stark that at one end of the Cowdenbeath constituency we have Aberdour, where 1 per cent of primary 1 to 3 pupils qualify for free school meals, while at the other end we have Ballingry, where more than 50 per cent of such children qualify. Since 2007, across the constituency, there has been an increase of 7 per cent in the number of children of that age group who are entitled to free school meals.

Although I support free school meals, what I really believe is more important for the health and wellbeing of children in Cowdenbeath and elsewhere is to tackle the underlying causes of poverty, social inequality and deprivation. One key way out of poverty is employment, and a key barrier to employment for many families is a lack of affordable childcare.

Although the bill makes progress with an additional 125 hours of nursery education, which in the Cowdenbeath constituency amounts to half an hour a day extra for each child, it is far short of a comprehensive childcare strategy that will meet the needs of children and families. However, that is what we need to put in place.

In Fife, we have seen an increase in the number of looked-after children in the care of the council, which went from 626 in 2006 to 855 in 2012—a 38 per cent increase. Today, the figure is over 900. It is a fact that there is a clear correlation between deprivation and children being taken into the care of the council. Last year, Fife Council set aside £7.8 million to focus on early years and family support for those families in the greatest need of that support. I am told that educationists, health visitors and social workers can identify children at an early age who are most likely to end up in the care system and in the most difficulty.

I support the bill because there are good things in it, but I am not sure that it will go far enough to address the major issues that I have outlined. Therefore, the message today must be that we need to be more ambitious for every child and to tackle at root the problems that hold back too many children and families across Scotland.

20:06

Liam McArthur (Orkney Islands) (LD): I have put on record my admiration for Helen Eadie and said how the Parliament is the poorer for her absence, but that should not be taken as a reflection on Alex Rowley’s obvious talents. I am sure that he will be an effective and assiduous advocate for his Fife constituents. I congratulate him on a very forceful maiden speech.

Like the convener, I put on record my thanks to the witnesses who gave evidence, provided briefings and supported the preparation of amendments to the bill. I thank the clerks and SPICe for their support and thank my colleagues on the Education and Culture Committee who, as the minister alluded to, put in a pretty herculean effort over the past few months.

The bill is wide ranging, and I have supported its principles from the outset, albeit that, like probably most members, I had concerns at the outset. Many of those have been addressed, but some perhaps less so. There have been considerable advances since stage 1, particularly in the provisions relating to aftercare for care leavers; the expansion of childcare for two-year-olds, which proves that we do not have to await the outcome of the vote on 18 September; and a more transparent and balanced system for dealing with possible rural school closures. Those are positive developments since stage 1.

An element of the process has felt somewhat unsatisfactory though. The minister talked of a collaborative approach, but at times it has been difficult to see the evidence for that, given that Opposition amendment after Opposition amendment was rejected. That was disappointing for those of us moving the amendments, but I think that it also struck many third sector organisations as somewhat surprising. I think that that has given rise to concerns about certain aspects of the bill, and I will touch on a couple of those.

I said earlier this afternoon that I still do not feel that we have made the advances in children’s rights that we should have made. The Law Society of Scotland and the Faculty of Advocates have pointed to that and even to the suggestion that there has been a dilution of children’s rights. The rejection of the incorporation of specific rights under articles 3 and 12 of the United Nations Convention on the Rights of the Child, the rejection of any reporting duties and the rejection of children’s rights impact assessments have not helped in that respect and probably help explain the view of Scotland’s Commissioner for Children and Young People that the bill represents a missed opportunity for children’s rights.

As I said earlier, I was initially sceptical about the named person policy, but the evidence that we received in committee, not least that on the Highland pathfinder experience, persuaded me of the benefits of the approach. However, concerns remain about resources. Education unions, the Royal College of Nursing and, indeed, the Finance Committee have expressed concerns about that. The named person policy has practical implications as well, and I pointed to those when moving amendments earlier in stage 3, particularly in relation to the exchange of information and the
lack of explicit consent. The Government rejected amendments on the limiting of universality of the named person provision to those aged 16 and under and on the presumption in favour of explicit consent for information sharing, so we do not have the bill that we could have had, and I think that it has suffered as a result.

Notwithstanding those concerns, and despite an unduly dismissive attitude to any amendment that was not of Government origin, I firmly believe that the legislation will help to deliver real and significant benefits.

I will dwell on a couple of those benefits now. In relation to aftercare, during the stage 1 debate I welcomed the bill’s provisions on the support that will be available to those leaving the care system, but I emphasised where I felt that the Government could go further in extending aspects of aftercare and improving ways in which—

The Presiding Officer: I need to ask you to close Mr McArthur.

Liam McArthur: —the eligibility for access to that would be determined. This is the area in which I feel most justifiably proud of what the bill has achieved. The committee can take justifiable pride in that, as can Parliament.

I cannot speak about the early years, but I think that that is another significant achievement of the bill, which we will support at decision time.

The Presiding Officer: We move to the last two speakers in the open debate. I say to Joan McAlpine and George Adam that I cannot give them any more than three minutes.

20:10

Joan McAlpine (South Scotland) (SNP): I congratulate Alex Rowley on his maiden speech. I did not agree with everything that he said, but I welcome the tone in which he said it, and I share his commitment to comprehensive childcare. I suggest that the bill is only the start and that we need independence to cross the finishing line.

The bill has been widely praised for its ambition and commitment to improving the lives of children and families in Scotland. The briefing from Children 1st alone singles out seven key measures in the bill that it wanted to highlight and commend: the definition of wellbeing; the furthering of the UNCRC; the named person service as a universal service; the legislative entitlement to free childcare for three-year-olds, four-year-olds and vulnerable two-year-olds; continuing care for care leavers after 16; the duty on early intervention in the lives of vulnerable children to prevent them from becoming looked-after children; and the measures to help kinship carers and the children for whom they care.

If our foremost children’s welfare charity can single out seven key measures in the bill for praise and commendation, the bill is far from being a missed opportunity. In fact, Children 1st describe it as a significant milestone, and it is in that context that I wish to single out one of those significant measures that Children 1st praised, which is the creation of the named person as a universal service for all our children. We have all had emails from a vociferous lobby who oppose that. I said earlier that the point about usurping parents’ rights was put directly in committee to Clare Simpson of parenting across Scotland when she gave evidence to the committee, and she flatly denied it and said that the measure was necessary, not to usurp the rights of parents and families but to support them and to protect children.

Those who have written to us about their fears of some kind of Orwellian dystopia should read the bill, not the hysterical hyperbole of the Daily Mail. Better still, they should read the evidence that was given by dozens of child welfare charities that support the universal service. I will quote one of those. Alex Cole-Hamilton of the Aberlour Child Care Trust said:

“In the vast majority of cases, there will be very little interface between the child and the named person, or between the family and the named person.”

He went on to say that anxiety

“is fuelled by some unhelpful tabloid headlines about there being a social worker for every child. That is not what we are talking about here.”

When Liz Smith asked Jackie Brock from Children in Scotland why a formalisation of the existing policy was needed, she replied:

“Having the duties in statute will ensure that it is the responsibility of universal services to respond and take action where necessary, where it is in the child’s best interest that they do so.”—[Official Report, Education and Culture Committee, 10 September 2013; c 2722, 2724, 2720.]

The Presiding Officer: You must wind up.

Joan McAlpine: Far from the named person being a state guardian who undermines the family, the universal provision of a named person will strengthen and underpin the family and most crucially of all—

The Presiding Officer: I call George Adam. No more than three minutes.

20:14

George Adam (Paisley) (SNP): Like Stewart Maxwell, I believe that this is a good bill, not just because it is bold and ambitious and is paving the way to making the type of Scotland that we all want for our children but because it will make a difference to the lives of children and young people, and that is what we are all here for. That is
the reason why we all get involved in politics in the first place.

I would also like to talk about the named person provision. The idea can make such a difference to a lot of children and young people, including the tragic cases that we have heard about in the past. It will provide support to the young men and women who are involved, and their families.

Towards the end of last year, I visited Barnardo’s outside in project, which works in Polmont and Cornton Vale. The young men and women I met there told me about some of the situations that they had got themselves into. Would a named person have helped the young man whose pregnant girlfriend was abused, who believed that violence was the only way to deal with the situation, or the young woman whose mother had died, who ended up feeling that she had to be violent to someone else when they gave her a difficult time at school? I believe that a named person would help in such situations, and the support may ensure that such young people do not end up in places such as Cornton Vale or Polmont. I saw how the young people I met have developed through being given support and opportunities through the outside in project. I believe that the named person can make that difference.

I am also pleased that care leavers will be supported until the age of 21. The Education and Culture Committee has held two inquiries into looked-after children and young people, and we heard from young people about how they have been affected and what has happened to them. That had a dramatic effect on every single member of the committee. We heard how being looked after made a difference in their lives and how they felt when they left care and were left out in the cruel adult world. That measure alone shows—after a year and a half of evidence taking as part of the committee’s work programme—that the committee system works. We managed to influence the bill and ensure that we make a difference for young people. That will be those young people’s legacy.

I close by saying that I believe in the bill and that this is about making a difference to young people’s lives.

The Presiding Officer: I call Mary Scanlon. Ms Scanlon, you have three minutes.

20:16

Mary Scanlon (Highlands and Islands) (Con): In the three minutes that I have, I first congratulate Alex Rowley on his maiden speech. I sat beside Helen Eadie on the Health and Sport Committee for four years—2007 to 2011—and from what I knew of her, I think that she would be very proud of the speech that Alex Rowley made today.

I turn to an issue that Kezia Dugdale mentioned when she spoke passionately about care leavers. I am not a member of the Education and Culture Committee so I did not hear all the information, but I add that many families cry out for support at early stages of their problems with children; in some cases, adequate and appropriate support that is given at the right time could prevent children from going into care. Perhaps that has been looked at, but it is something for the future. I met Bill Alexander last week with a parent of a child in care to discuss that.

Many good speeches have been made today. I congratulate my colleague Liz Smith and indeed all the other members of the Education and Culture Committee on their extensive work on the bill. I welcome many of its provisions, particularly the extension of the support that is provided to kinship carers. Jayne Baxter spoke very well and in a measured and considered way about that. It is a significant step forward, as is the extension to the upper age limit for aftercare support from 21 to 26.

It is a shame that so much of the media coverage of the bill has been about the named person. I was not totally aware of the excellent amendments and provisions in the bill in relation to rural schools. The fact that a school closure proposal may not be revisited for five years will enable many parents, pupils and staff to commit to a school with much greater enthusiasm, safe in the knowledge that they are not facing another closure.

I move quickly on to Highland, which has been mentioned quite a few times in the debate. I remind members that in Highland, uniquely, we have a lead agency of the council looking after children and NHS Highland looking after adults, so to use that example and assume that it applies to the rest of Scotland is not appropriate.

I see that I have about 20 seconds left. I very much welcome the extension of childcare as well. However, as I said at stage 1, I would like to know what consultation has been carried out with colleges—

The Presiding Officer: You need to close, please.

Mary Scanlon: —in relation to lecturers being named persons.

20:19

Neil Bibby (West Scotland) (Lab): It is customary when stage 3 of a bill reaches its conclusion to thank the legislation team, the committee clerks and anyone else who has been
involved in drafting the bill, and I certainly thank them all today. However, I also thank all the organisations and charities for the evidence and briefings that they have submitted throughout the bill process.

I pay tribute to my newly elected colleague for Cowdenbeath, Alex Rowley, for his powerful and insightful maiden speech and his eloquent tribute to the late Helen Eadie. I am sure that his vast experience and expertise in the area will lead him to be a great asset in the chamber.

Cara Hilton, as Labour’s new MSP for Dunfermline, also made a passionate and committed speech on the bill during the stage 1 debate in the chamber. The fact that both new Labour MSPs chose to speak on this particular bill in two chamber debates ably demonstrates the importance and commitment that the Labour Party and its representatives place on improving life chances for our children and young people.

Labour will vote for the bill at decision time because there are some positive elements to it. However, as Labour members have said, the bill is good only as far as it goes. We on the Labour side of the chamber are certainly not blind to its many failings, and we believe that it will be viewed as a missed opportunity in a number of respects.

We, and a number of organisations, have serious concerns about the resource and practical issues that the Government has not addressed—none more so than the incompetent financial memorandum—and we still believe that the bill lacks ambition.

As my new Labour colleagues and I have said throughout the bill process, we share the SNP Government’s ambition to make Scotland the best place for our children to grow up, and we want to make that ambition a reality. The Scottish Government has often said—too many times to count—that it wants to fulfil that ambition, and at stage 1 the minister said that it was the first principle that guided the bill.

My Labour colleagues and I enthusiastically share that ambition, but the minister and the Scottish Government need to match all their rhetoric with a bit more reality. The Children and Young People (Scotland) Bill will not do that—if I am being honest, it will not even come close. I am not saying that it could not do that, but—as Alex Rowley said—big challenges still lie ahead for the Government and the Parliament, and I do not believe that the bill will provide the transformational change that Aileen Campbell suggests that it will.

There are welcome measures in the bill. I very much welcome the extension of support for care leavers, and I thank Who Cares? Scotland and the care leavers themselves for advocating those changes forcefully and powerfully. It is clear that we have more to do to help looked-after children in the months and years ahead, and there are big challenges with regard to implementing the named person role. We all acknowledge that the named person role was the most controversial part of the bill, and I hope that the Government is right about the improvements that such a statutory role will bring, but it cannot say that it has not been warned about the practical and resource issues, which we discussed earlier.

If the named person role has been misrepresented or misunderstood, as Stewart Maxwell said, the Scottish Government should look at itself and reflect on the reason: it failed to make a proper and coherent case for the policy.

On kinship care, there are big challenges ahead. Kinship carers have been sceptical about the proposals, and they await the outcome of the financial review.

We are pleased that the Scottish Government has finally got around to implementing its 2007 commitment to provide 600 hours of childcare, but—as I said at the outset—it will not solve the childcare problems of 2014 with a seven-year-old policy.

The Presiding Officer: You need to bring your remarks to a close, Mr Bibby.

Neil Bibby: On early learning and childcare, and on out-of-school care, the bill is a missed opportunity. It will be regarded not as a landmark piece of legislation, but as a landmark opportunity missed. Labour looks forward, in the years ahead, to progressing the issues that the SNP Government has not addressed in the bill.

20:24

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): I start with some traditional, and some slightly untraditional, thanks. I certainly thank the bill team, the committee and the members who have been in the chamber today, but I also thank all those organisations and individuals—some of whom are in the public gallery today—who have been most influential in shaping this landmark piece of legislation.

The Government has engaged with 2,400 young people, 1,500 parents and 150 organisations. I say to them that this is a good bill—it is a very good bill—and we should commend everybody who has taken part in the process of shaping it.

What we should not do is run down the work that those organisations and individuals have done. We should work together and celebrate, because that is traditionally what we do at the end of a bill process—we celebrate the progress that
has been made. Liz Smith said, quite correctly, that not everything is perfect, but when I hear that a bill has taken so much time and so much effort—including from my colleague Aileen Campbell, whom I really want to commend—I want to celebrate that.

Aileen Campbell has been formidable in shaping the bill. She has argued and fought for the bill with everybody, including me, and she has produced a wonderful piece of work. [Interruption.] It is very sad that Labour members want to laugh at that work, because I want to commend Alex Rowley’s maiden speech. I thought that it got the tone right. I do not want to embarrass Alex Rowley but he and I have form. We worked together—sometimes against each other—when he was Labour general secretary and I was SNP chief executive. We proved, despite our differences, that we could on occasion work together for Scotland.

That is what this bill has been: a process of working together for Scotland. Neither Alex Rowley nor I want to demonise our opponents but, alas, that is what we have heard this afternoon. That is a very sad thing because when it happens, we do not make progress. However, we have made progress today.

What have we achieved? From 2015, teenagers in residential, foster or kinship care who turn 16 gain new rights. They have worked hard to get those and the Parliament has listened. New duties have been placed on ministers and on the wider public sector to promote children’s rights—something that I have argued for since I came into this Parliament in 1999.

Kinship carers are getting enhanced legal entitlements and involvement in the process. I met kinship carers this morning to talk to them about it. Scotland’s national adoption register is being placed in statute and counselling and other support is being provided for vulnerable children and their families. There is improved provision of advice and help when needed, strengthened legislation on school closures and the school meals provision. Those are all significant achievements and we should say well done to everybody who is involved in them. What we should not do is demonise our opponents.

When I first came into this chamber in 2009, I learned a lot of lessons. One lesson I learned is from the man who is now First Minister. During a debate, he said to me that there was an old maxim at Westminster—the vote follows the voice. That means that if someone believes in something and they think that it is right, they speak for it and then they vote for it.

I believe that the named person provision is right. I did not originally believe that; I needed some persuading by others, including Aileen Campbell. Then I went to that hotbed of revolution, Forfar, and saw the provision in operation there. It was profoundly moving to speak to a young man who had been enormously helped by having a named person. I therefore want to say, “Well done,” to those who have supported and argued for the named person legislation. When I listened to Neil Bibby this afternoon, I could not decide whether he was for it or against it. The vote follows the voice: have some courage to speak up for what you believe in.

I know that Liz Smith profoundly disagrees with the provision, and I am sorry about that. If I had time, I would repeat the commitments that Aileen Campbell has made, because I believe that the provision will be helpful and useful. I do not for a second believe that it will interfere with family life or subordinate the rights of parents, otherwise I would not have supported it. With respect, I think that the Tories are wrong about it. If they could nudge their way from a principled abstention to support, they would be helping the young people of Scotland.

This has been an important step forward for Scotland and for this chamber. It has been particularly important for all those organisations and individuals who have engaged with the Parliament, helping to build a piece of legislation and make it even better than it was when it started. We should say thank you to them. What we should not do is take the dismal, negative approach that we have heard, alas, from Mr Bibby and Kezia Dugdale. That approach does not demean the chamber; it demeans them.
Decision Time

The Presiding Officer: The next question is, that motion S4M-09050, in the name of Aileen Campbell, on the Children and Young People (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Allard, Christian (North East Scotland) (SNP)
Bailie, Jackie (Dundumarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Baxter, Jayne (Mid Scotland and Fife) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (Ind)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)

Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hilton, Cara (Dunfermline) (Lab)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alison (Lothian) (Green)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McArthur, Liam (Orkney Islands) (LD)
McCulloch, Margaret (Central Scotland) (Lab)
McDonald, Mark (Aberdeen Donside) (SNP)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
Mahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeen North) (SNP)
Robison, Shona (Dundee City East) (SNP)
Rowley, Alex (Cowdenbeath) (Lab)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (Ind)
Watson, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Abstentions

Brown, Gavin (Lothian) (Con)
Buchanan, Cameron (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
The Presiding Officer: The result of the division is: For 103, Against 0, Abstentions 15.

Motion agreed to,

That the Parliament agrees that the Children and Young People (Scotland) Bill be passed.

[Applause.]

Meeting closed at 20:32.
Children and Young People (Scotland) Bill
[AS PASSED]

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Children and Young People (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children’s hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

PART 1
RIGHTS OF CHILDREN

1 Duties of Scottish Ministers in relation to the rights of children

(1) The Scottish Ministers must—

(a) keep under consideration whether there are any steps which they could take which
would or might secure better or further effect in Scotland of the UNCRC
requirements, and

(b) if they consider it appropriate to do so, take any of the steps identified by that
consideration.

(1A) In complying with their duty under subsection (1)(a), the Scottish Ministers must take
such account as they consider appropriate of any relevant views of children of which the
Scottish Ministers are aware.

(2) The Scottish Ministers must promote public awareness and understanding (including
appropriate awareness and understanding among children) of the rights of children.

(3) As soon as practicable after the end of each 3 year period, the Scottish Ministers must
lay before the Scottish Parliament a report of—

(a) what steps they have taken in that period to secure better or further effect in
Scotland of the UNCRC requirements,

(b) what they have done in that period in pursuance of subsection (2), and

(c) their plans until the end of the next 3 year period—

(i) to take steps to secure better or further effect in Scotland of the UNCRC
requirements, and
(ii) to do things in pursuance of subsection (2).

(3A) In preparing such a report the Scottish Ministers must take such steps as they consider appropriate to obtain the views of children on what their plans for the purposes of subsection (3)(c) should be.

(4) In subsection (3), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

(5) As soon as practicable after a report has been laid before the Scottish Parliament under subsection (3), the Scottish Ministers must publish it (in such manner as they consider appropriate).

2 Duties of public authorities in relation to the UNCRC

(1) As soon as practicable after the end of each 3 year period, an authority to which this section applies must publish (in such manner as the authority considers appropriate) a report of what steps it has taken in that period to secure better or further effect within its areas of responsibility of the UNCRC requirements.

(2) In subsection (1), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

(3) Two or more authorities to which this section applies may satisfy subsection (1) by publishing a report prepared by them jointly.

3 Authorities to which section 2 applies

(1) The authorities to which section 2 applies are the persons listed, or persons within a description listed, in schedule 1.

(2) The Scottish Ministers may by order modify schedule 1 by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) varying an entry listed in it.

(3) An order under subsection (2)(a) may—

(a) add a person only if the person falls within subsection (4),

(b) add a description of persons only if each of the persons within the description falls within subsection (4).

(4) A person falls within this subsection if the person—

(a) is part of the Scottish Administration,

(b) is a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or

(c) is a publicly owned company.
(5) In subsection (4)(c), “publicly owned company” means a company that is wholly owned by—

(a) the Scottish Ministers, or

(b) a person listed, or a person within a description listed, in schedule 1.

(6) For the purpose of subsection (5), a company is wholly owned—

(a) by the Scottish Ministers if it has no members other than—

(i) the Scottish Ministers or other companies that are wholly owned by them, or

(ii) persons acting on behalf of the Scottish Ministers or of such other companies,

(b) by a person listed, or a person within a description listed, in schedule 1 if it has no members other than—

(i) the person or other companies that are wholly owned by the person, or

(ii) persons acting on behalf of the person or of such other companies.

(7) In this section, “company” includes any body corporate.

4 Interpretation of Part 1

(1) In this Part—

“the rights of children” includes the rights and obligations set out in—

(a) the UNCRC,

(b) the first optional protocol to the UNCRC, and

(c) the second optional protocol to the UNCRC,

“the UNCRC” means the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989,

“the first optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

“the second optional protocol” means the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,

“the UNCRC requirements” means the rights and obligations set out in—

(a) Part 1 of the UNCRC,

(b) Articles 1 to 6(1), 6(3) and 7 of the first optional protocol, and

(c) Articles 1 to 10 of the second optional protocol.

(2) A reference in subsection (1) to a UNCRC document is to be read as a reference to that document subject to—

(a) any amendments in force in relation to the United Kingdom at the time, and

(b) any reservations, objections or interpretative declarations by the United Kingdom in force at the time.

(3) In subsection (2), “UNCRC document”—
(a) means the UNCRC or any optional protocol to the UNCRC, and
(b) includes provision of a UNCRC document.

(4) Where subsection (5) applies, the Scottish Ministers may by order modify subsection (1) as they consider appropriate to take account of—
(a) an optional protocol to the UNCRC, or
(b) an amendment of a document referred to in subsection (1) at the time.

(5) This subsection applies where the protocol or amendment is one which—
(a) the United Kingdom has ratified, or
(b) the United Kingdom has signed with a view to ratification.

(6) No modification may be made by an order under subsection (4) so as to come into force before the protocol or amendment is in force in relation to the United Kingdom.

PART 2
COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

5 Investigations by the Commissioner

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 7—
(a) for subsections (1) and (2), substitute—
‘(1) The Commissioner may carry out an investigation into—
(a) whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (such an investigation being called a “general investigation”),
(b) whether, by what means and to what extent a service provider had regard to the rights, interests and views of a child or young person in making a decision or taking an action that affected that child or young person (such an investigation being called an “individual investigation”).
(2) The Commissioner may carry out a general investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to—
(a) children and young people generally, or
(b) particular groups of children and young people.
(2A) The Commissioner may carry out an investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.”,
(b) in subsection (3), omit paragraph (b),
(c) after that subsection, add—
“(4) Subsection (5) applies in relation to a matter about which the Commissioner may carry out an individual investigation.

(5) Where the Commissioner considers that the matter may be capable of being resolved without an investigation, the Commissioner may with a view to securing that outcome take such steps as the Commissioner considers appropriate.”.

(3) In section 8—
(a) in subsection (1), for paragraph (b) substitute—
   “(b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.”;
(b) in subsection (2), for “An” substitute “A general”;
(c) after that subsection, add—
   “(3) An individual investigation is to be conducted in private.”.

(4) In section 11—
(a) in subsection (1), for “lay before the Parliament” substitute “prepare”,
(b) in subsection (3), for “laid before the Parliament” substitute “finalised”,
(c) after that subsection, add—
   “(4) The Commissioner must lay before the Parliament the report of a general investigation.
   (5) The Commissioner may lay before the Parliament the report of an individual investigation.”.

6 Requirement to respond to Commissioner’s recommendations

(1) The Commissioner for Children and Young People (Scotland) Act 2003 is amended as follows.

(2) In section 11—
(a) after subsection (2), insert—
   “(2A) In relation to any such recommendation, the report may include a requirement to respond.
   (2B) A requirement to respond is a requirement that the service provider provides, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out—
   (a) what the service provider has done or proposes to do in response to the recommendation; or
   (b) if the service provider does not intend to do anything in response to the recommendation, the reasons for that.”,
(b) after subsection (5) (as inserted by section 5 of this Act), add—
   “(6) Where a report of an investigation includes a requirement to respond, the Commissioner must give a copy of the report to the service provider.”.

(3) After section 14, insert—
“14AA Publication of responses to recommendations of investigations

(1) The Commissioner must publish any statement provided in response to a requirement to respond to a recommendation arising out of a general investigation.

(2) Subsection (1) does not apply if, or to the extent that, the Commissioner considers publication to be inappropriate.

(3) The Commissioner may publish any statement provided in response to a requirement to respond to a recommendation arising out of an individual investigation.

(4) The Commissioner must ensure that, so far as reasonable and practicable having regard to the subject matter, the version of the statement which is published under subsection (1) or (3) does not name or identify any child or young person, or group of children or young people, referred to in it.

(5) The Commissioner may, in such manner as the Commissioner considers appropriate, publicise a failure to comply with a requirement to respond.”.

PART 3
CHILDREN’S SERVICES PLANNING

7 Introductory

(1) For the purposes of this Part—

“children’s service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which is provided wholly or mainly to, or for the benefit of—

(a) children generally, or

(b) children with needs of a particular type (such as looked after children or children with a disability or a need for additional support in learning),

“other service provider” means—

(a) the chief constable of the Police Service of Scotland,

(b) the Scottish Fire and Rescue Service,

(c) the Principal Reporter,

(d) the National Convener of Children’s Hearings Scotland,

(e) the Scottish Court Service,

“related service” means any service provided in the area of a local authority by a person mentioned in subsection (2) which though not a children’s service is capable of having a significant effect on the wellbeing of children,

“relevant health board” means—

(a) if the area of the local authority is the same as that of a health board, that health board,

(b) if the area of the local authority is not the same as that of a health board, the health board within whose area the area of the local authority falls.
(2) The persons referred to in the definitions of “children’s service” and “related service” in subsection (1) are—
(a) the local authority,
(b) the relevant health board,
(c) any other service provider,
(d) the Scottish Ministers (but only in relation to a service provided by them in exercise of their functions under the Prisons (Scotland) Act 1989).

(3) The Scottish Ministers may by order specify—
(a) services which are to be considered to be included within or excluded from the definition of “children’s service” or “related service” in subsection (1),
(b) matters in relation to services falling within either of those definitions which are to be considered to be included within or excluded from those services.

(4) Before making such an order, the Scottish Ministers must consult—
(a) each health board,
(b) each local authority, and
(c) where the service concerned is provided by one of the other service providers, that person.

(5) The Scottish Ministers may by order modify the definition of “other service provider” in subsection (1) by—
(a) adding a person or a description of persons,
(b) removing an entry listed in it, or
(c) varying an entry listed in it.

(6) A function conferred by this Part on a local authority and the relevant health board is to be exercised by those persons jointly.

8 Requirement to prepare children’s services plan

(1) A local authority and the relevant health board must in respect of each 3 year period prepare a children’s services plan for the area of the local authority.

(2) In subsection (1)—
“3 year period” means—
(a) the period of 3 years beginning with such date after the coming into force of this section as the Scottish Ministers specify by order, and
(b) each subsequent period of 3 years,
“children’s services plan” means a document setting out their plans for the provision over that period of all—
(a) children’s services, and
(b) related services.
9  **Aims of children’s services plan**

(1) A children’s services plan is to be prepared with a view to securing the achievement of the aims in subsection (2).

(2) Those aims are—

(a) that children’s services in the area concerned are provided in the way which—

(i) best safeguards, supports and promotes the wellbeing of children in the area concerned,

(ii) is most integrated from the point of view of recipients, and

(iii) constitutes the best use of available resources,

(b) that related services in the area concerned are provided in the way which, so far as consistent with the objects and proper delivery of the service concerned, safeguards, supports and promotes the wellbeing of children in the area concerned.

10  **Children’s services plan: process**

(1) In preparing a children’s services plan a local authority and the relevant health board must—

(a) give each of the other service providers and the Scottish Ministers an effective opportunity (consistent with the extent to which the services they provide are to be the subject of the children’s services plan) to participate in or contribute to the preparation of the plan, and

(b) consult—

(i) such organisations as appear to fall within subsection (2),

(ii) such social landlords as appear to provide housing in the area of the local authority, and

(iii) such other persons as the Scottish Ministers may by direction specify.

(2) The organisations falling within this subsection are organisations (whether or not formally constituted) which—

(a) represent the interests of persons who use or are likely to use any children’s service or related service in the area of the local authority, or

(b) provide a service in the area which, if it were provided by the local authority, the relevant health board, any of the other service providers or the Scottish Ministers, would be a children’s service or a related service.

(3) In subsection (1)(b)(ii), “social landlords” has the meaning given by section 165 of the Housing (Scotland) Act 2010.

(4) A direction under subsection (1)(b)(iii) may be revised or revoked.

(5) Each of the other service providers is and the Scottish Ministers are to participate in or contribute to the preparation of the children’s services plan in accordance with the opportunity given to them under subsection (1)(a).
(6) The persons to be consulted under subsection (1)(b) are to meet any reasonable request which the local authority and the relevant health board make of them—
   (a) to participate in the preparation of the children’s services plan for the area,
   (b) to contribute to the preparation of that plan.

(7) As soon as reasonably practicable after a children’s services plan has been prepared, the local authority and the relevant health board must—
   (a) send a copy to—
       (i) the Scottish Ministers, and
       (ii) each of the other service providers, and
   (b) publish it (in such manner as the local authority and the relevant health board consider appropriate).

(8) Where the Scottish Ministers or any of the other service providers disagrees with the plan in relation to any matter concerning the provision of a service by them, they must prepare and publish (in such manner as they consider appropriate)—
   (a) a notice of the matters in relation to which they disagree, and
   (b) a statement of their reasons for disagreeing.

11 Children’s services plan: review

(1) A local authority and the relevant health board—
   (a) must keep the children’s services plan for the area of the local authority under review, and
   (b) may in consequence prepare a revised children’s services plan.

(2) The following provisions apply to a revised children’s services plan as they apply to a children’s services plan—
   section 9,
   section 10, and
   subsection (1) of this section.

12 Implementation of children’s services plan

(1) During the period to which a children’s services plan relates, the persons mentioned in subsection (2) must, so far as reasonably practicable, provide children’s services and relevant services in the area of the local authority in accordance with the plan.

(2) Those persons are—
   (a) the local authority,
   (b) the relevant health board,
   (c) the Scottish Ministers,
   (d) the other service providers.

(3) The duty in subsection (1) to provide services in accordance with the plan—
   (a) does not apply to the extent that the person providing the service considers that to comply with it would adversely affect the wellbeing of a child,
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(b) does not apply in relation to the Scottish Ministers or the other service providers to the extent of any matter within a notice published by them under section 10(8) in relation to the plan.

13 Reporting on children’s services plan

(1) As soon as practicable after the end of each 1 year period, a local authority and the relevant health board must publish (in such manner as they consider appropriate) a report on the extent to which—
(a) children’s services and related services have in that period been provided in the area of the local authority in accordance with the children’s services plan, and
(b) that provision has achieved—
(i) the aims listed in section 9(2),
(ii) such outcomes in relation to the wellbeing of children in the area as the Scottish Ministers may by order prescribe.

(2) In subsection (1), “1 year period” means—
(a) the period of 1 year beginning with the date specified under section 8(1), and
(b) each subsequent period of 1 year.

14 Assistance in relation to children’s services planning

(1) A person mentioned in subsection (2) must comply with any reasonable request made of them to provide a local authority and the relevant health board with information, advice or assistance for the purposes of exercising their functions under this Part.

(2) Those persons are—
(a) any of the other service providers or the Scottish Ministers (but only in so far as the information, advice or assistance relates to a children’s service or a related service which it is a function of the person to provide),
(b) any of the persons mentioned in section 10(1)(b).

(3) Subsection (1) does not apply where the person considers that the provision of the information, advice or assistance concerned would—
(a) be incompatible with any duty of the person, or
(b) unduly prejudice the exercise of any function of the person.

15 Guidance in relation to children’s services planning

(1) A person or the persons mentioned in subsection (2) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 12).

(2) Those persons are—
(a) a local authority and the relevant health board,
(b) each of the other service providers.

(5) Before issuing or revising guidance, the Scottish Ministers must consult—
(a) any person to which it relates, and
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(b) such other persons as they consider appropriate.

16 Directions in relation to children’s services planning

(1) A person or the persons mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part (other than the function of complying with section 12).

(2) Those persons are—
   (a) a local authority and the relevant health board,
   (b) each of the other service providers.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
   (a) any person to which it relates, and
   (b) such other persons as they consider appropriate.

17 Children’s services planning: default powers of Scottish Ministers

(1) This section applies where the Scottish Ministers consider that a local authority and the relevant health board—
   (a) are not exercising a function conferred on them by this Part (other than the function of complying with section 12), or
   (b) are in exercising such a function not complying with section 15(1).

(2) The Scottish Ministers may direct that the function—
   (a) is to be exercised in a particular way, or
   (b) is to be exercised instead by such of the persons mentioned in subsection (3) as the Scottish Ministers consider appropriate.

(3) Those persons are—
   (aa) the local authority,
   (ab) the relevant health board,
   (b) another local authority or health board.

(4) A direction under subsection (2)(b) may include such provision as the Scottish Ministers consider appropriate as to the making by a person who is not to be exercising the function of payment to a person who is to exercise the function by virtue of the direction.

(5) Before issuing, revising or revoking a direction under subsection (2) the Scottish Ministers must consult—
   (a) the local authority and relevant health board whose failure is to be, or is, the subject of the direction, and
   (b) such other persons as they consider appropriate.

(5A) The persons to whom a direction under subsection (2) is addressed must comply with the direction.
18 Interpretation of Part 3

In this Part—

“children’s services plan” has the meaning given by section 8(2),

“service” means any service or support—

(a) which must be provided by the person concerned, or

(b) which the person concerned has power to provide.

PART 4

PROVISION OF NAMED PERSONS

19 Named person service

(1) In this Part, “named person service” means the service of making available, in relation to a child or young person, an identified individual who is to exercise the functions in subsection (5).

(2) An individual may be identified for the purpose of a named person service only if the individual falls within subsection (3).

(3) An individual falls within this subsection if—

(a) the individual—

(i) is an employee of the service provider, or

(ii) is, or is an employee of, a person who exercises any function on behalf of the service provider, and

(b) the individual meets such requirements as to training, qualifications, experience or position as may be specified by the Scottish Ministers by order.

(4) An individual does not fall within subsection (3) if the individual is a parent of the child or young person.

(5) The functions referred to in subsection (1) are—

(a) subject to subsection (5A), doing such of the following where the named person considers it to be appropriate in order to promote, support or safeguard the wellbeing of the child or young person—

(i) advising, informing or supporting the child or young person, or a parent of the child or young person,

(ii) helping the child or young person, or a parent of the child or young person, to access a service or support, or

(iii) discussing, or raising, a matter about the child or young person with a service provider or relevant authority, and

(b) such other functions as are specified by this Act or any other enactment as being functions of a named person in relation to a child or young person.

(5A) The function in subsection (5)(a) does not apply in relation to a matter arising at a time when the child or young person is, as a member of any of the reserve forces, subject to service law.

(6) The named person functions are exercised on behalf of the service provider concerned.
(7) Responsibility for the exercise of the named person functions lies with the service provider rather than the named person.

20  **Named person service in relation to pre-school child**

(1) A health board is to make arrangements for the provision of a named person service in relation to each pre-school child residing in its area.

(2) A “pre-school child” is a child who—
   (a) has not commenced attendance at a primary school, and
   (b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child’s commencement at primary school being delayed.

(3) For the purposes of this section—
   (a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,
   (b) references to attendance at a primary school do not include attendance at a nursery class in such a school,
   (c) references to the relevant local authority are to the local authority for the area in which the child concerned resides.

21  **Named person service in relation to children not falling within section 20**

(1) A local authority is to make arrangements for the provision of a named person service in relation to each child residing in its area, other than—
   (a) a pre-school child, or
   (b) a child falling within subsection (2) or (3).

(2) A child falls within this subsection if the child is—
   (a) a pupil at a public school which is managed by a different local authority,
   (b) a pupil at—
      (i) a grant-aided school, or
      (ii) an independent school,
   (c) kept in secure accommodation, or
   (d) in legal custody or subject to temporary release from such custody.

(2A) For the purposes of subsection (2)(d), a child is in legal custody—
   (a) while confined in or being taken to or from any penal institution in which the child may be lawfully confined,
   (b) while working, or for any other reason, outside the penal institution in the custody or under the control of an officer of the institution, a constable or a police custody and security officer,
   (c) while being taken to any place to which the child is required or authorised to be taken by virtue of the Prisons (Scotland) Act 1989, or
   (d) while kept in custody in pursuance of such a requirement or authorisation.
(3) A child falls within this subsection if the child is a member of any of the regular forces.

(4) During any period when a child falls within subsection (2)(a), the local authority which manages the school concerned is to make arrangements for the provision of a named person service in relation to the child.

(5) During any period when a child falls within subsection (2)(b) or (c), the directing authority of the establishment concerned is to make arrangements for the provision of a named person service in relation to the child.

(6) During any period when a child falls within subsection (2)(d), the Scottish Ministers are to make arrangements for the provision of a named person service in relation to the child.

22 Continuation of named person service in relation to certain young people

(1) A person mentioned in subsection (5) is to make arrangements for the provision of a named person service in relation to each young person.

(2) A “young person” is a person who—

(a) attained the age of 18 years while a pupil at a school, and

(b) has since attaining that age, remained a pupil at that or another school.

(5) The person referred to in subsection (1) is—

(a) where the young person is a pupil at a school managed by a local authority, that authority,

(b) where the young person is a pupil at a grant-aided school or an independent school, the directing authority of the establishment concerned.

23 Communication in relation to movement of children and young people

(1) This section applies where a person ceases to be the service provider in relation to a child or young person.

(2) The person (“the outgoing service provider”) must as soon as is reasonably practicable—

(a) inform any other person which has become or which it considers may be the service provider in relation to the child or young person (“the incoming service provider”) that the outgoing service provider has ceased to be the service provider in relation to the child or young person, and

(b) provide the incoming service provider with—

(i) the name and address of the child or young person and each parent of the child or young person (so far as the outgoing service provider has that information), and

(ii) all information which the outgoing service provider holds which falls within subsection (3).

(3) Information falls within this subsection if the outgoing service provider considers that—

(a) it is likely to be relevant to—

(i) the exercise by the incoming service provider of any functions of a service provider under this Part, or
(ii) the future exercise of the named person functions in relation to the child or young person,

(b) it ought to be provided for that purpose, and

(c) its provision would not prejudice the conduct of a criminal investigation or the prosecution of any offence.

(4) In considering for the purpose of subsection (3)(b) whether information ought to be provided, the outgoing service provider is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(5) In having regard to the views of a child under subsection (4), an outgoing service provider is to take account of the child’s age and maturity.

(6) The outgoing service provider may decide for the purpose of subsection (3)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.

(7) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

24 Duty to communicate information about role of named persons

(1) Each service provider must publish (in such manner as it considers appropriate) information about—

(aa) the operation of the named person service provided in pursuance of the arrangements made by it, including in particular—

(i) how the named person functions are, generally, exercised, and

(ii) the arrangements, generally, for contacting named persons,

(d) how the service provider generally exercises its functions under this Part, and

(e) such other matters relating to this Part as it considers appropriate.

(2) The service provider in relation to a child or young person must provide the child or young person and the parents of the child or young person with information about the arrangements for contacting the named person for the child or young person—

(a) as soon as reasonably practicable after it becomes the service provider in relation to the child or young person, and

(b) as soon as reasonably practicable after there is any change in those arrangements.

25 Duty to help named person

(1) Subsection (2) applies where it appears to the service provider in relation to a child or young person that another service provider or a relevant authority could, by doing a certain thing, help in the exercise of any of the named person functions for a child or young person.

(2) The other service provider or relevant authority must comply with any request for such help which is made of it, unless subsection (3) applies.

(3) This subsection applies where the other service provider or relevant authority considers that the provision of the help would—
(a) be incompatible with any duty of the other service provider or relevant authority, or
(b) unduly prejudice the exercise of any function of the other service provider or relevant authority.

26 Information sharing

(1) A service provider or relevant authority must provide to the service provider in relation to a child or young person any information which the person holds which falls within subsection (2).

(2) Information falls within this subsection if the information holder considers that—

(a) it is likely to be relevant to the exercise of the named person functions in relation to the child or young person,
(b) it ought to be provided for that purpose, and
(c) its provision to the service provider in relation to the child or young person would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

(3) The service provider in relation to a child or young person must provide to a service provider or relevant authority any information which the person holds which falls within subsection (4).

(4) Information falls within this subsection if the information holder considers that—

(a) it is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person,
(b) it ought to be provided for that purpose, and
(c) its provision to the service provider or relevant authority would not prejudice the conduct of any criminal investigation or the prosecution of any offence.

(4A) In considering for the purpose of subsection (2)(b) or (4)(b) whether information ought to be provided, the information holder is so far as reasonably practicable to ascertain and have regard to the views of the child or young person.

(4B) In having regard to the views of a child under subsection (4A), an information holder is to take account of the child’s age and maturity.

(4C) The information holder may decide for the purpose of subsection (2)(b) or (4)(b) that information ought to be provided only if the likely benefit to the wellbeing of the child or young person arising in consequence of doing so outweighs any likely adverse effect on that wellbeing arising from doing so.

(5) The service provider in relation to a child or young person may provide to a service provider or relevant authority any information which the person holds which falls within subsection (6).

(6) Information falls within this subsection if the information holder considers that its provision to the service provider or relevant authority is necessary or expedient for the purposes of the exercise of any of the named person functions.

(7) References in this section to a service provider or a relevant authority include any person exercising a function on behalf of a service provider or relevant authority.
(8) Other than in relation to a duty of confidentiality, this section does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

27 Disclosure of information

(2) This section applies—

(a) where by virtue of this Part, a person provides information in breach of a duty of confidentiality, and

(b) in providing the information, the person informs the recipient of the breach of duty.

(3) The recipient is not to provide the information to any other person, unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

28 Guidance in relation to named person service

(1) A person mentioned in subsection (1A) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Part.

(1A) Those persons are—

(a) a local authority,

(b) a health board,

(c) a directing authority,

(d) a relevant authority.

(4) Before issuing or revising guidance, the Scottish Ministers must consult—

(a) any person to which it relates, and

(b) such other persons as they consider appropriate.

29 Directions in relation to named person service

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by this Part.

(2) Those persons are—

(a) a local authority,

(b) a health board,

(c) a directing authority,

(d) a relevant authority.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—

(a) any person to which it relates, and

(b) such other persons as they consider appropriate.
29A Complaints in relation to Part 4
(1) The Scottish Ministers may by order make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part.
(2) The provision which may be made under subsection (1) includes provision about—
(a) matters which may, or may not, be the subject of a complaint,
(b) who may make a complaint,
(c) how a complaint may be made,
(d) time limits for making complaints,
(e) steps which require to be taken before a complaint may be made,
(f) who is to consider a complaint,
(g) the procedure for the consideration of a complaint,
(h) the obtaining of information for the purpose of considering a complaint,
(i) the keeping of records in relation to complaints or their consideration,
(j) the making of findings, and reporting, following the consideration of a complaint.
(3) An order under subsection (1) may modify any enactment.

29B Relevant authorities
(1) The persons listed, or within a description listed, in schedule 2, are “relevant authorities” for the purposes of this Part (subject to subsection (3)).
(2) The Scottish Ministers may by order modify schedule 2 by—
(a) adding a person or description of persons,
(b) removing an entry listed in it, or
(c) varying an entry listed in it.
(3) The following persons are not relevant authorities for the purposes of section 29—
(a) the Commissioner for Children and Young People in Scotland,
(b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.
(4) An order under subsection (2) which adds a person, or a description of persons, to schedule 2, may modify this section so as to provide that the person is not a relevant authority, or the persons within the description are not relevant authorities, for the purposes of section 29.

30 Interpretation of Part 4
In this Part—
“constable” has the same meaning as in section 13(b) of the Prisons (Scotland) Act 1989,
“directing authority” means—
(a) when used generally, each of the following—
(i) the managers of each grant-aided school,
(ii) the proprietor of each independent school, and
(iii) the local authority or other person who manages each residential establishment which comprises secure accommodation,

(b) when used in relation to a particular establishment—

(i) in relation to a grant-aided school, the managers of the school,
(ii) in relation to an independent school, the proprietor of the school,
(iii) in relation to secure accommodation, the local authority or other person who manages the residential establishment,

“named person” means the identified individual made available in pursuance of a named person service,

“named person functions” means the functions to be exercised by way of the named person service,

“parent” has the same meaning as in the 1980 Act,

“penal institution” means any—

(a) prison (other than a naval, military or air force prison),
(b) remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or
(c) young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

“pre-school child” has the meaning given by section 20(2),

“regular forces” has the meaning given by section 374 of the Armed Forces Act 2006,

“reserve forces” has the meaning given by section 374 of the Armed Forces Act 2006,

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

“service provider” means—

(a) when used generally, each of the following—

(i) each health board,
(ii) each local authority,
(iii) each directing authority, and
(iv) the Scottish Ministers,

(b) when used in relation to a child or young person, the person which has the function of making arrangements for the provision of a named person service in relation to the child or young person,

“subject to service law” has the meaning given by section 374 of the Armed Forces Act 2006,
Part 5

Child’s plan

(1) For the purposes of this Part, a child requires a child’s plan if the responsible authority in relation to a child considers that—

(a) the child has a wellbeing need, and

(b) subsection (3) applies in relation to that need.

(2) A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter.

(3) This subsection applies in relation to a wellbeing need if—

(a) the need is not capable of being met, or met fully, by the taking of action other than a targeted intervention in relation to the child, and

(b) the need, or the remainder of the need, is capable of being met, or met to some extent, by one or more targeted interventions in relation to the child.

(4) A “targeted intervention” is a service which—

(a) is provided by a relevant authority in pursuance of any of its functions, and

(b) is directed at meeting the needs of children whose needs are not capable of being met, or met fully, by the services which are provided generally to children by the authority.

(4A) The references in subsection (4) to services being provided by a relevant authority include references to services provided by a third person under arrangements made by the relevant authority.

(5) In deciding whether a child requires a child’s plan, the responsible authority—

(a) is, where the child’s named person is not an employee of the responsible authority, to consult the child’s named person, and

(b) is so far as reasonably practicable to ascertain and have regard to the views of—

(i) the child,

(ii) the child’s parents,

(iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

(iv) such other persons as the responsible authority considers appropriate.

(6) In having regard to the views of the child, the responsible authority is to take account of the child’s age and maturity.

(7) Subsection (1) does not apply in relation to—

(a) a child who already has a child’s plan,
(b) a child who is a member of any of the regular forces.

(8) In subsection (7)(b), “regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

32 Content of a child’s plan

(1) A child’s plan is to contain a statement of—

(a) the child’s wellbeing need,

(b) the targeted intervention which requires to be provided, or the targeted interventions which require to be provided, in relation to the child, and

(c) in relation to each such targeted intervention—

(i) the relevant authority which is to provide the targeted intervention,

(ii) the manner in which the targeted intervention is to be provided, and

(iii) the outcome in relation to the child’s wellbeing need which the targeted intervention is intended to achieve.

(1A) A child’s plan may contain a targeted intervention only where the relevant authority which would provide it, or under whose arrangements it would be provided, agrees.

(1B) If that relevant authority is not to prepare the plan, it must provide to the person who is to prepare the plan a statement of its reasons for not agreeing.

(2) The Scottish Ministers may by order make provision as to—

(a) other information which is, or is not, to be contained in child’s plans,

(b) the form of child’s plans.

33 Preparation of a child’s plan

(1) This section applies where a child requires a child’s plan.

(2) Subject to subsections (3) and (5A), the responsible authority is to prepare such a plan as soon as is reasonably practicable.

(3) Where the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare a child’s plan, the relevant authority is to prepare the plan as soon as is reasonably practicable.

(5) A relevant authority which declines to give its agreement as mentioned in subsection (3) must provide a statement of its reasons.

(5A) Subsection (2) does not apply where, by virtue of section 32(1A), there are no targeted interventions which may be contained in a child’s plan.

(6) In preparing a child’s plan, an authority—

(a) is, where the child’s named person is not an employee of the authority, to consult the child’s named person, and

(b) is so far as reasonably practicable to ascertain and have regard to the views of—

(i) the child,

(ii) the child’s parents,
(iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

(iv) such other persons as the authority considers appropriate.

(7) In having regard to the views of the child, the authority preparing the child’s plan is to take account of the child’s age and maturity.

(8) The Scottish Ministers may by order—

(a) make further provision as to the preparation of child’s plans,

(b) make provision requiring or permitting the authority which prepared a child’s plan to provide a copy of it to a particular person or to the persons within a particular description.

(9) An order under subsection (8)(b) may include provision to the effect that a copy of a child’s plan is to be provided to a person, or to persons within a particular description, only—

(a) in circumstances described in the order, or

(b) where the authority considers it appropriate.

34 Responsible authority: general

(1) For the purposes of this Part, the responsible authority in relation to a child is—

(a) where the child is a pre-school child, the health board for the area in which the child resides,

(b) where the child is not a pre-school child, the local authority for the area in which the child resides.

(2) Subsection (1) is subject to section 35.

(3) A “pre-school child” is a child who—

(a) has not commenced attendance at a primary school, and

(b) if the child is of school age, has not commenced attendance at a primary school because the relevant local authority has consented to the child’s commencement at primary school being delayed.

(4) For the purposes of this section—

(a) the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant local authority,

(b) the references to attendance at a primary school do not include attendance at a nursery class in such a school, and

(c) the references to the relevant local authority are to the local authority for the area in which the child concerned resides.

35 Responsible authority: special cases

(1) Where in pursuance of a decision of a local authority or health board a pre-school child resides in the area of a health board which is different to that in which the child would otherwise reside, the health board for the area in which the child would otherwise reside is the responsible authority in relation to the child.
(2) Where the child is a pupil at a public school which is managed by a local authority other than the one for the area in which the child resides, that other authority is the responsible authority in relation to the child.

(3) Where the child is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the child.

(4) Subsection (3) does not apply where the child is such a pupil by virtue of a placement by a local authority.

(4A) Where—
   (a) the child falls within subsection (4B), and
   (b) in consequence the child resides in the area of a local authority which is different to that in which the child would otherwise reside,

the local authority for the area in which the child would otherwise reside is the responsible authority in relation to the child.

(4B) A child falls within this subsection if—
   (a) in pursuance of the duties of a local authority under the 1980 Act the child—
      (i) is a pupil at a grant-aided school or an independent school, and
      (ii) resides in accommodation provided for the purpose of attending that school by its managers,
   (b) by virtue of Chapter 1 of Part 2 of the 1995 Act, the child is placed in a residential establishment (within the meaning of section 93 of that Act),
   (c) by virtue of an order under the Children’s Hearing (Scotland) Act 2011, the child resides at a residential establishment (within the meaning of section 202 of that Act), or
   (d) in pursuance of an order under the Criminal Procedure (Scotland) Act 1995, the child is detained in residential accommodation provided under Part 2 of the 1995 Act.

(5) The Scottish Ministers may by order modify this section so as to make further or different provision as to circumstances in which section 34(1) does not apply in relation to a child.

36 Delivery of a child’s plan

(1) A relevant authority is so far as reasonably practicable—
   (a) to provide any targeted intervention contained in a child’s plan which is to be provided by it in accordance with the plan,
   (b) to secure that any targeted intervention contained in a child’s plan which is to be provided by a third person under arrangements made by the authority is provided in accordance with the plan.

(2) Subsection (1) does not apply to the extent that the authority considers that to comply with it would adversely affect the wellbeing of the child.

37 Child’s plan: management

(1) The managing authority of a child’s plan is to keep under review whether—
(a) the wellbeing need of the child stated in the plan is still accurate,

(b) in relation to each targeted intervention, it or the manner of its provision, is still appropriate,

(c) the outcome of the plan has been achieved, and

(d) the management of the plan should transfer to another relevant authority.

(2) In reviewing a child’s plan, the managing authority—

(a) is to consult—

(i) each other relevant authority to which subsection (2A) applies,

(ii) where it is neither the managing authority nor consulted under subparagraph (i), the responsible authority in relation to the child, and

(iii) where the child’s named person is not an employee of the managing authority, the child’s named person, and

(b) is so far as reasonably practicable to ascertain and have regard to the views of—

(i) the child,

(ii) the child’s parents,

(iii) such persons, or the persons within such description, as the Scottish Ministers may by order specify, and

(iv) such other persons as the managing authority considers appropriate.

(2A) This subsection applies to a relevant authority if—

(a) it is providing a targeted intervention contained in the plan, or

(b) a targeted intervention contained in the plan is being provided by a third person under arrangements made by the authority.

(3) In having regard to the views of the child as mentioned in subsection (2)(b)(i), the managing authority is to take account of the child’s age and maturity.

(4) The managing authority of a child’s plan may in consequence of the review—

(a) amend the plan so as to revise—

(i) the wellbeing need of the child,

(ii) a targeted intervention,

(iii) the manner in which a targeted intervention requires to be provided, or

(iv) the outcome which the plan is intended to achieve,

(b) transfer the management of the plan to another relevant authority, or

(c) end the plan.

(5) The Scottish Ministers may by order make provision about the management of child’s plans, including provision about—

(a) when and how a child’s plan is to be reviewed in accordance with subsection (1),

(b) who is to be the managing authority of a child’s plan,

(c) when and to whom management of a child’s plan is to or may transfer under subsection (4)(b),
(d) when and how a new targeted intervention may be included in a child’s plan,
(e) the keeping, disclosure and destruction of child’s plans.

(6) Subject to provision made under subsection (5)(b), the managing authority of a child’s plan is—

(a) the relevant authority which prepared it, or

(b) where management of the child’s plan has been transferred under subsection (4)(b), the relevant authority to which the management of the child’s plan was so transferred (or where there has been more than one such transfer, last so transferred).

38 Assistance in relation to child’s plan

(1) A person mentioned in subsection (1A) must comply with any reasonable request made of the person to provide a person exercising functions under this Part with information, advice or assistance for that purpose.

(1A) Those persons are—

(a) a relevant authority,

(b) a listed authority.

(2) Subsection (1) does not apply where the person to whom the request is made considers that provision of the information, advice or assistance concerned would—

(a) be incompatible with any duty of the person, or

(b) unduly prejudice the exercise of any function of the person.

(3) Other than in relation to a duty of confidentiality, subsection (1) does not permit or require the provision of information in breach of a prohibition or restriction on the disclosure of information arising by virtue of an enactment or rule of law.

(4) Subsection (5) applies—

(a) where, by virtue of subsection (1), a person provides information in breach of a duty of confidentiality, and

(b) in providing the information, the person informs the recipient of the breach of duty.

(5) The recipient is not to provide the information to any other person unless the provision of information is permitted or required by virtue of any enactment (including this Part) or rule of law.

39 Guidance on child’s plans

(1) A person mentioned in subsection (1A) must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 36).

(1A) Those persons are—

(a) a relevant authority,

(b) a listed authority.

(4) Before issuing or revising guidance, the Scottish Ministers must consult—
Children and Young People (Scotland) Bill

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(a) any person to which it relates, and
(b) such other persons as they consider appropriate.

40 Directions in relation to child’s plans

(1) A person mentioned in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by or under this Part (other than the function of complying with section 36).

(2) Those persons are—

   (aa) a relevant authority,
   (ab) a listed authority.

(5) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—

   (a) any person to which it relates, and
   (b) such other persons as they consider appropriate.

40A Complaints in relation to Part 5

(1) The Scottish Ministers may by order make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part.

(2) The provision which may be made under subsection (1) includes provision about—

   (a) matters which may, or may not, be the subject of a complaint,
   (b) who may make a complaint,
   (c) how a complaint may be made,
   (d) time limits for making complaints,
   (e) steps which require to be taken before a complaint may be made,
   (f) who is to consider a complaint,
   (g) the procedure for the consideration of a complaint,
   (h) the obtaining of information for the purpose of considering a complaint,
   (i) the keeping of records in relation to complaints or their consideration,
   (j) the making of findings, and reporting, following the consideration of a complaint.

(3) An order under subsection (1) may modify any enactment.

40B Listed authorities

(1) The persons listed, or within a description listed, in schedule 2A, are “listed authorities” for the purposes of this Part (subject to subsections (3) and (4)).

(2) The Scottish Ministers may by order modify schedule 2A by—

   (a) adding a person or description of persons,
   (b) removing an entry listed in it, or
   (c) varying an entry listed in it.
(3) The Scottish Ministers are not a listed authority for the purposes of sections 39 and 40.

(4) The following persons are not listed authorities for the purposes of section 40—
   (a) the Commissioner for Children and Young People in Scotland,
   (b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

(5) An order under subsection (2) which adds a person, or a description of persons, to schedule 2A, may modify this section so as to provide that the person is not a listed authority, or the persons within the description are not listed authorities, for the purposes of section 40.

41 Interpretation of Part 5

In this Part—

“child’s named person” means the individual who is the child’s named person by virtue of Part 4,

“directing authority” means—

(a) when used generally—
   (i) the managers of each grant-aided school,
   (ii) the proprietor of each independent school,

(b) when used in relation to a particular establishment—
   (i) in relation to a grant-aided school, the managers of the school,
   (ii) in relation to an independent school, the proprietor of the school,

“parent” has the same meaning as in the 1980 Act,

“relevant authority” means any—

(a) health board,

(b) local authority, or

(c) directing authority,

“service” includes support,

“targeted intervention” has the meaning given by section 31(4).

PART 6

EARLY LEARNING AND CHILDCARE

42 Early learning and childcare

In this Part, “early learning and childcare” means a service, consisting of education and care, of a kind which is suitable in the ordinary case for children who are under school age, regard being had to the importance of interactions and other experiences which support learning and development in a caring and nurturing setting.
Children and Young People (Scotland) Bill
Part 6—Early learning and childcare

43 **Duty to secure provision of early learning and childcare**

(1) An education authority must, in pursuance of its duty under section 1(1) of the 1980 Act, secure that the mandatory amount of early learning and childcare is made available for each eligible pre-school child belonging to its area.

(2) An “eligible pre-school child” is a child who—
   
   (a) is under school age,
   
   (b) has not commenced attendance at a primary school (other than at a nursery class in such a school), and
   
   (c) either—

   (i) falls within subsection (3), or

   (ii) is within such age range, or is of such other description, as the Scottish Ministers may by order specify.

(3) Subject to subsection (3A), a child falls within this subsection if the child is aged 2 or over and is or has been at any time since the child’s second birthday—

   (a) looked after by the authority concerned or by any other local authority, or

   (b) the subject of a kinship care order or a child falling within section 64(3)(f).

(3A) The Scottish Ministers may by order provide that a child aged 4 or over does not (or is no longer to) fall within subsection (3) in such circumstances as may be specified in the order.

(4) An order made under subsection (2)(c)(ii) may provide that a child is to be an eligible pre-school child only if the education authority concerned is satisfied as to any matter relating to the child which is specified in the order.

(5) In subsection (3)(b), “kinship care order” has the meaning given by section 65(1).

44 **Mandatory amount of early learning and childcare**

(1) The “mandatory amount”, for the purposes of section 43(1), means—

   (a) 600 hours in each year for which a child is an eligible pre-school child, and

   (b) a pro rata amount for each part of a year for which a child is an eligible pre-school child.

(2) The Scottish Ministers may by order modify subsection (1) so as to vary the amount of early learning and childcare which is to be made available in pursuance of section 43(1).

(3) Such an order may, without prejudice to section 77(1)(a), make different provision in relation to different types of eligible pre-school children.

45 **Looked after 2 year olds: alternative arrangements to meet wellbeing needs**

(1) Subsection (2) applies where—

   (a) an authority’s duty under section 43(1) applies in relation to a child only by virtue of the child falling within section 43(3)(a),

   (b) the authority, after assessing the child’s needs, considers that making alternative arrangements in relation to the child’s education and care would better safeguard or promote the child’s wellbeing.
(2) Where this subsection applies, the authority—
   (a) need not comply with its duty under section 43(1) in relation to the child, but
   (b) must make such alternative arrangements in relation to the child’s education and
care as it considers appropriate for the purposes of safeguarding or promoting the
child’s wellbeing.

(3) Subsection (2) does not apply in relation to a child who is not being looked after by the
authority if a parent of the child objects to the authority making alternative
arrangements.

(4) The authority may, at any time, review any alternative arrangements it makes in relation
to a child in pursuance of subsection (2)(b) (and must do so on becoming aware of any
significant change in the child’s circumstances) and may, following such a review, alter
those arrangements.

(5) The authority must seek to ensure that a record of—
   (a) the outcome of any assessment of a child’s needs that it undertakes in pursuance
   of subsection (1)(b), and
   (b) any alternative arrangements that it makes in relation to the child’s education and
care in pursuance of subsection (2)(b),
is included in any child’s plan which is prepared for the child under Part 5.

46 Duty to consult and plan on delivery of early learning and childcare

(1) An education authority must, at least once every 2 years—
   (a) consult such persons as appear to it to be representative of parents of children
   under school age in its area about how it should make early learning and childcare
available in pursuance of this Part, and
   (b) after having had regard to views expressed, prepare and publish a plan for how it
intends to make early learning and childcare available in pursuance of this Part.

(2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the regularity
within which an education authority must consult and plan in pursuance of that
subsection.

47 Method of delivery of early learning and childcare

(1) An education authority must ensure that it makes early learning and childcare available
in pursuance of this Part by way of sessions—
   (a) which are provided during at least 38 weeks of every calendar year, and
   (b) which are each of more than 2.5 hours but less than 8 hours in duration.

(2) The Scottish Ministers may, by order, modify subsection (1) so as to vary the method of
delivering early learning and childcare which it describes.

48 Flexibility in way in which early learning and childcare is made available

In exercising functions under sections 46 and 47, an education authority must have
regard to the desirability of ensuring that the method by which it makes early learning
and childcare available in pursuance of this Part is flexible enough to allow parents an
appropriate degree of choice when deciding how to access the service.
Interpretation of Part 6
In this Part—
“early learning and childcare” has the meaning given by section 42,
“eligible pre-school child” has the meaning given by section 43(2),
“parent” has the same meaning as in the 1980 Act.

PART 6A
POWER TO PROVIDE SCHOOL EDUCATION FOR PRE-SCHOOL CHILDREN

49A Duty to consult and plan in relation to power to provide school education for pre-school children
In section 1 of the 1980 Act, after subsection (2A) insert—
“(2B) An education authority must, at least once every two years—
(a) consult such persons as appear to be representative of parents of pre-school children within their area about whether and if so how they should provide school education for such children under subsection (1C) above; and
(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of such education for such children under that subsection.

(2C) The Scottish Ministers may by order modify subsection (2B) above so as to vary the regularity within which an education authority must consult and plan in pursuance of that subsection.

(2D) An order made under subsection (2C) above is subject to the negative procedure.”.

PART 6B
DAY CARE AND OUT OF SCHOOL CARE

49B Duty to consult and plan in relation to day care and out of school care
(1) Section 27 of the 1995 Act is amended as follows.
(2) After subsection (1) insert—
“(1A) A local authority must, at least once every two years—
(a) consult such persons as appear to be representative of parents of children in need within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above about how they should provide day care for such children in pursuance of that subsection; and
(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide day care for such children in pursuance of that subsection.

(1B) A local authority must, at least once every two years—
(a) consult such persons as appear to be representative of parents of children within their area who satisfy the conditions mentioned in paragraphs (a) and (b) of subsection (1) above but are not in need about whether and if so how they should provide day care for such children under that subsection; and

(b) after having had regard to the views expressed, prepare and publish their plans in relation to the provision of day care for such children under that subsection.”.

(3) After subsection (3) insert—

“(3A) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children in need within their area who are in attendance at a school about how they should provide appropriate care for such children in pursuance of subsection (3) above; and

(b) after having had regard to the views expressed, prepare and publish their plans for how they intend to provide appropriate care for such children in pursuance of that subsection.

(3B) A local authority must, at least once every two years—

(a) consult such persons as appear to be representative of parents of children within their area who are in attendance at a school but are not in need about whether and if so how they should provide appropriate care for such children under subsection (3) above; and

(b) after having had regard to the views expressed, prepare and publish plans in relation to the provision of appropriate care for such children in their area under that subsection.

(3C) The Scottish Ministers may by order modify subsection (1A), (1B), (3A) or (3B) above so as to vary the regularity within which a local authority must consult and plan in pursuance of that subsection.

(3D) An order made under subsection (3C) above is subject to the negative procedure.”.

P A R T 7

C O R P O R A T E P A R E N T I N G

50 Corporate parents

(1) The persons listed, or within a description listed, in schedule 3 are “corporate parents” for the purposes of this Part (subject to subsections (3) and (3A)).

(2) The Scottish Ministers may by order modify schedule 3 by—

(a) adding a person or description of persons,

(b) removing an entry listed in it, or

(c) varying an entry listed in it.

(3) The Scottish Ministers are not corporate parents for the purposes of sections 55 to 58.

(3A) The following persons are not corporate parents for the purposes of section 58—

(a) the Commissioner for Children and Young People in Scotland,
(b) a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

(3B) An order under subsection (2) which adds a person, or a description of persons, to schedule 3, may modify this section so as to provide that the person is not a corporate parent, or the persons within the description are not corporate parents, for the purposes of section 58.

(4) In this Part, references to the “corporate parenting responsibilities” of a corporate parent are to the duties conferred on that corporate parent by section 52(1).

51 Application of Part: children and young people

10 (1) This Part applies to—

(a) every child who is looked after by a local authority, and

(b) every young person who—

(i) is under the age of 26, and

(ii) was (on the person’s 16th birthday or at any subsequent time) but is no longer looked after by a local authority.

15 (2) This Part also applies to a young person who—

(a) is at least the age of 16 but under the age of 26, and

(b) is not of the description in subsection (1)(b)(ii) but is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

52 Corporate parenting responsibilities

(1) It is the duty of every corporate parent, in so far as consistent with the proper exercise of its other functions—

(a) to be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom this Part applies,

(b) to assess the needs of those children and young people for services and support it provides,

(c) to promote the interests of those children and young people,

(d) to seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing,

(e) to take such action as it considers appropriate to help those children and young people—

(i) to access opportunities it provides in pursuance of paragraph (d), and

(ii) to make use of services, and access support, which it provides, and

(f) to take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

(2) The Scottish Ministers may by order—

(a) modify subsection (1) so as to confer, remove or vary a duty on corporate parents,
(b) provide that subsection (1) is to be read, in relation to a particular corporate parent or corporate parents of a particular description, with a modification conferring, removing or varying a duty.

53 Planning by corporate parents

(1) A corporate parent must—

(a) prepare a plan for how it proposes to exercise its corporate parenting responsibilities, and

(b) keep its plan under review.

(2) Before preparing or revising a plan, a corporate parent must consult such other corporate parents, and such other persons, as it considers appropriate.

(3) A corporate parent must publish its plan, and any revised plan, in such manner as it considers appropriate (and, in particular, plans may be published together with, or as part of, any other plan or document).

54 Collaborative working among corporate parents

(1) Corporate parents must, in so far as reasonably practicable, collaborate with each other when exercising their corporate parenting responsibilities or any other functions under this Part where they consider that doing so would safeguard or promote the wellbeing of children or young people to whom this Part applies.

(2) Such collaboration may include—

(a) sharing information,

(b) providing advice or assistance,

(c) co-ordinating activities (and seeking to prevent unnecessary duplication),

(d) sharing responsibility for action,

(e) funding activities jointly,

(f) exercising functions under this Part jointly (for example, by publishing a joint plan or joint report).

55 Reports by corporate parents

(1) A corporate parent must report on how it has exercised—

(a) its corporate parenting responsibilities,

(b) its planning and collaborating functions in pursuance of sections 53 and 54, and

(c) its other functions under this Part.

(2) Reports may, in particular, include information about—

(a) standards of performance,

(b) the outcomes achieved in pursuance of this Part.

(3) Reports are to be published in such manner as the corporate parent considers appropriate (and, in particular, reports may be published together with, or as part of, any other report or document).
Duty to provide information to Scottish Ministers

(1) A corporate parent must provide the Scottish Ministers with such information as they may reasonably require about how it is—
   (a) exercising its corporate parenting responsibilities,
   (b) planning, collaborating or reporting in pursuance of sections 53, 54 or 55, or
   (c) otherwise exercising functions under this Part.

(2) Information which is required may, in particular, include information about—
   (a) standards of performance,
   (b) the outcomes achieved in pursuance of this Part.

Guidance on corporate parenting

(1) A corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers.

(2) Guidance may, in particular, include advice or information about—
   (a) how corporate parents should—
      (i) exercise their corporate parenting responsibilities,
      (ii) promote awareness of their corporate parenting responsibilities,
      (iii) plan, collaborate or report in pursuance of sections 53, 54 or 55, or
      (iv) otherwise exercise functions under this Part,
   (b) outcomes which corporate parents should seek to achieve in exercising functions under this Part.

(5) Before issuing or revising guidance, the Scottish Ministers must consult—
   (a) any corporate parent to which it relates, and
   (b) such other persons as they consider appropriate.

Directions to corporate parents

(1) A corporate parent must comply with any direction issued by the Scottish Ministers about—
   (a) its corporate parenting responsibilities,
   (b) its planning, collaborating or reporting functions under sections 53, 54 or 55, or
   (c) its other functions under this Part.

(4) Before issuing, revising or revoking a direction, the Scottish Ministers must consult—
   (a) any corporate parent to which it relates, and
   (b) such other persons as they consider appropriate.

Reports by Scottish Ministers

(1) The Scottish Ministers must, as soon as practicable after the end of each 3 year period, lay before the Scottish Parliament a report on how they have exercised their corporate parenting responsibilities during that period.
(2) In subsection (1), “3 year period” means—

(a) the period of 3 years beginning with the day on which this section comes into force, and

(b) each subsequent period of 3 years.

PART 8
AFTERCARE

PROVISION OF AFTERCARE TO YOUNG PEOPLE

(1) The 1995 Act is amended as follows.

(2) In section 29—

(ya) in subsection (1)—

(i) for “over school age” substitute “who is at least sixteen”,

(ii) for the words from first “at” substitute “either—

(a) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or

(b) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.”,

(za) after subsection (1) insert—

“(1A) An order made under subsection (1)(b) above is subject to the affirmative procedure.”,

(a) in subsection (2)—

(i) for “twenty-one” substitute “twenty-six”,

(ii) the words from third “and” to the end of the subsection are repealed,

(b) in subsection (3), for “or (2) above” substitute “above or (5A) or (5B) below”,

(ba) in subsection (4), for “over school” substitute “who is at least sixteen years of”,

(c) after subsection (5) insert—

“(5A) After carrying out an assessment under subsection (5) above in pursuance of an application made by a person under subsection (2) above, the local authority—

(a) must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs, and

(b) may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person’s welfare,

(5B) A local authority may (but is not required to) continue to provide advice, guidance and assistance to a person in pursuance of subsection (5A) after the person reaches the age of twenty-six.”,

(d) in subsection (6), for “(5)” substitute “(5B)”,

(e) after subsection (7) insert—
“(8) For the purposes of subsection (5A)(a) above, a person has “eligible needs” if the person needs care, attention or support of such type as the Scottish Ministers may by order specify.

(9) An order made under subsection (8) is subject to the affirmative procedure.

(10) If a local authority becomes aware that a person who is being provided with advice, guidance or assistance by them under this section has died, the local authority must as soon as reasonably practicable notify—

(a) the Scottish Ministers, and

(b) Social Care and Social Work Improvement Scotland.”.

(3) In section 30—

(a) in subsection (2)—

(zii) in the opening words, for “Subject to subsection (3) below, a” substitute “A”,

(i) in paragraph (a)—

(A) for “over school” substitute “at least sixteen years of”,

(B) for “twenty-one” substitute “twenty-six”,

(ii) for paragraph (b) substitute—

“(b) he either—

(i) was (on his sixteenth birthday or at any subsequent time) but is no longer looked after by a local authority; or

(ii) is of such other description of person formerly but no longer looked after by a local authority as the Scottish Ministers may specify by order.

(2A) An order made under subsection (2)(b)(ii) above is subject to the affirmative procedure.”,

(b) omit subsections (3) and (4).

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PART 8A
CONTINUING CARE

60A Continuing care: looked after children

(1) After section 26 of the 1995 Act insert—

“26A Provision of continuing care: looked after children

(1) This section applies where an eligible person ceases to be looked after by a local authority.

(2) An “eligible person” is a person who—

(a) is at least sixteen years of age, and

(b) is not yet such higher age as may be specified.

(3) Subject to subsection (5) below, the local authority must provide the person with continuing care.
(4) “Continuing care” means the same accommodation and other assistance as was being provided for the person by the authority, in pursuance of this Chapter of this Part, immediately before the person ceased to be looked after.

(5) The duty to provide continuing care does not apply if—

(a) the accommodation the person was in immediately before ceasing to be looked after was secure accommodation,

(b) the accommodation the person was in immediately before ceasing to be looked after was a care placement and the carer has indicated to the authority that the carer is unable or unwilling to continue to provide the placement, or

(c) the local authority considers that providing the care would significantly adversely affect the welfare of the person.

(6) A local authority’s duty to provide continuing care lasts, subject to subsection (7) below, until the expiry of such period as may be specified.

(7) The duty to provide continuing care ceases if—

(a) the person leaves the accommodation of the person’s own volition,

(b) the accommodation ceases to be available, or

(c) the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.

(8) For the purposes of subsection (7)(b) above, the situations in which accommodation ceases to be available include—

(a) in the case of a care placement, where the carer indicates to the authority that the carer is unable or unwilling to continue to provide the placement,

(b) in the case of a residential establishment provided by the local authority, where the authority closes the establishment,

(c) in the case of a residential establishment provided under arrangements made by the local authority, where the arrangements come to an end.

(9) The Scottish Ministers may by order—

(a) make provision about when or how a local authority is to consider whether subsection (5)(c) or (7)(c) above is the case,

(b) modify subsection (5) above so as to add, remove or vary a situation in which the duty to provide continuing care does not apply,

(c) modify subsection (7) or (8) above so as to add, remove or vary a situation in which the duty to provide continuing care ceases.

(10) If a local authority becomes aware that a person who is being provided with continuing care has died, the local authority must as soon as reasonably practicable notify—

(a) the Scottish Ministers, and

(b) Social Care and Social Work Improvement Scotland.

(11) An order under this section—

(a) may make different provision for different purposes,

(b) is subject to the affirmative procedure.
Before making an order under this section, the Scottish Ministers must consult—
(a) each local authority, and
(b) such other persons as they consider appropriate.

In this section—
“carer”, in relation to a care placement, means the family or persons with whom the placement is made;
“care placement” means a placement such as is mentioned in section 26(1)(a) of this Act,
“specified” means specified by order made the Scottish Ministers.

(2) In section 29 of the 1995 Act, after subsection (2) insert—
“(2A) Subsections (1) and (2) above do not apply to a person during any period when the person is being provided with continuing care under section 26A of this Act.”.

PART 9
SERVICES IN RELATION TO CHILDREN AT RISK OF BECOMING LOOKED AFTER, ETC.

61 Provision of relevant services to parents and others

(1) A local authority must make arrangements to secure that relevant services of such description as the Scottish Ministers may by order specify are made available for—
(a) each eligible child residing in its area,
(b) a qualifying person in relation to such a child,
(c) each eligible pregnant woman residing in its area,
(d) a qualifying person in relation to such a woman.

(1A) A “relevant service” is a service comprising, or comprising any combination of—
(a) providing information about a matter,
(b) advising or counselling about a matter,
(c) taking other action to facilitate the addressing of a matter by a person.

(2) An “eligible child” is a child who the authority considers—
(a) to be at risk of becoming looked after, or
(b) to fall within such other description as the Scottish Ministers may by order specify.

(3) A “qualifying person” in relation to an eligible child is a person—
(a) who is related to the child,
(b) who has any parental rights or responsibilities in relation to the child, or
(c) with whom the child is, or has been, living.

(4) An “eligible pregnant woman” is a pregnant woman who the authority considers is going to give birth to a child who will be an eligible child.
(5) A “qualifying person” in relation to an eligible pregnant woman is a person—
(a) who is the father of the child to whom the pregnant woman is to give birth,
(b) who is married to, in a civil partnership with or otherwise related to the pregnant woman,
(c) with whom the pregnant woman is living, or
(d) who does not fall within any of paragraphs (a) to (c) but who the authority considers will, when the pregnant woman gives birth to the child, become a qualifying person in relation to the child.

(6) The references in this section to a person who is related to another person (“the other person”) includes a person who—
(a) is married to or in a civil partnership with a person who is related to the other person,
(b) is related to the other person by the half blood.

(7) This section is without prejudice to section 22 of the 1995 Act.

62 Relevant services: further provision

(1) The Scottish Ministers may by order make provision about—
(a) when or how relevant services specified in an order under section 61(1) are to be provided,
(b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 61(2),
(c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 61(2),
(d) such other matters about the provision of relevant services specified in an order under section 61(1) as the Scottish Ministers consider appropriate.

(2) An order under subsection (1)(d) may include provision about—
(a) circumstances in which relevant services specified in an order under section 61(1) may be provided subject to conditions (including conditions as to payment), and
(b) consequences of such conditions not being met.

63 Interpretation of Part 9

The following expressions have the same meaning in this Part as they have in Part 1 of the 1995 Act—

parental responsibilities
parental rights.
PART 10

SUPPORT FOR KINSHIP CARE

64 Assistance in relation to kinship care orders

(1) A local authority must make arrangements to secure that kinship care assistance is made available for a person residing in its area who falls within subsection (3).

(2) "Kinship care assistance" is assistance of such description as the Scottish Ministers may by order specify.

(3) A person falls within this subsection if the person is—

(a) a person who is applying for, or considering applying for, a kinship care order in relation to an eligible child who has not attained the age of 16 years,

(b) an eligible child who has not attained the age of 16 years who is the subject of a kinship care order,

(c) a person in whose favour a kinship care order in relation to an eligible child who has not attained the age of 16 years subsists,

(d) a child who has attained the age of 16 years, where—

(i) immediately before doing so, the child was the subject of a kinship care order, and

(ii) the child is an eligible child,

(e) a person who is a guardian by virtue of an appointment under section 7 of the 1995 Act of an eligible child who has not attained the age of 16 years (but this is subject to subsection (3A)),

(f) an eligible child who has a guardian by virtue of an appointment under section 7 of the 1995 Act.

(3A) Subsection (3)(e) does not include a person who is also a parent of the child.

(4) An "eligible child" is a child who the local authority considers—

(a) to be at risk of becoming looked after, or

(b) to fall within such other description as the Scottish Ministers may by order specify.

65 Orders which are kinship care orders

(1) In section 64, "kinship care order" means—

(a) an order under section 11(1) of the 1995 Act which gives to a qualifying person the right mentioned in section 2(1)(a) of that Act in relation to a child,

(b) a residence order which has the effect that a child is to live with, or live predominantly with, a qualifying person, or

(c) an order under section 11(1) of the 1995 Act appointing a qualifying person as a guardian of a child.

(2) For the purposes of subsection (1), a "qualifying person" is a person who, at the time the order is made—

(a) is related to the child,
(b) is a friend or acquaintance of a person related to the child, or
(c) has such other relationship to, or connection with, the child as the Scottish Ministers may by order specify.

(3) But a parent of a child is not a “qualifying person” for the purposes of subsection (1).

(4) The references in subsection (2) to a person who is related to a child include a person who is—
(a) married to or in a civil partnership with a person who is related to the child,
(b) related to the child by the half blood.

66 Kinship care assistance: further provision

(1) The assistance which may be specified as kinship care assistance includes—
(a) the provision of counselling, advice or information about any matter,
(b) the provision of financial support (or support in kind) of any description,
(c) the provision of any service provided by a local authority on a subsidised basis.

(2) An order under section 64(1) may specify assistance by reference to assistance which a person was entitled to from, or being provided with by, a local authority immediately before becoming entitled to assistance under that section.

(3) The Scottish Ministers may by order make provision about—
(a) when or how kinship care assistance is to be provided,
(b) when or how a local authority is to consider whether a child is within paragraph (a) or (b) of section 64(4),
(c) when or how a local authority is to review whether a child continues to be within paragraph (a) or (b) of section 64(4),
(d) such other matters about the provision of kinship care assistance as the Scottish Ministers consider appropriate.

(4) An order under subsection (3)(d) may include provision about—
(a) circumstances in which a local authority may provide kinship care assistance subject to conditions (including conditions as to payment for the assistance or the repayment of financial support), and
(b) consequences of such conditions not being met (including the recovery of any financial support provided).

67 Interpretation of Part 10

In this Part—
“kinship care assistance” has the meaning given by section 64(2),
“parent” has the same meaning as it has in Part 1 of the 1995 Act.
PART 11
ADOPTION REGISTER

68 Scotland’s Adoption Register

After section 13 of the Adoption and Children (Scotland) Act 2007, insert—

“CHAPTER 1A
SCOTLAND’S ADOPTION REGISTER

13A Scotland’s Adoption Register

(1) The Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register for the purposes of facilitating adoption (referred to in this Chapter as “the Register”).

(2) The Scottish Ministers may by regulations—

(a) prescribe information relating to adoption which is, or types of information relating to adoption which are, to be included in the Register, which may include information relating to—

(i) children who adoption agencies consider ought to be placed for adoption,

(ii) persons considered by adoption agencies as suitable to have a child placed with them for adoption,

(iii) matters relating to such children or persons which arise after information about them is included in the Register,

(iv) children outwith Scotland who may be suitable for adoption,

(v) prospective adopters outwith Scotland,

(b) provide for how information is to be retained in the Register,

(c) make such further provision in relation to the Register as they consider appropriate.

(3) The Register is not to be open to public inspection or search.

(4) Information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

13B Registration organisation

(1) Arrangements made by the Scottish Ministers under section 13A(1) may in particular—

(a) authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation),

(b) provide for payments to be made by the Scottish Ministers to an organisation so authorised.

(1A) The Scottish Ministers must publish arrangements under section 13A(1) so far as they authorise an organisation as mentioned in subsection (1)(a).
(2) An organisation authorised in pursuance of subsection (1) (a “registration organisation”) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

13C Supply of information for the Register

(1) An adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about—

(a) children who it considers ought to be placed for adoption or persons who were included in the Register as such children,

(b) persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons.

(3) Regulations made under section 13A(2) may—

(a) provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers,

(b) provide for how and by when information is to be provided in pursuance of subsection (1),

(d) prescribe circumstances in which an adoption agency, despite subsection (1), is not to disclose information of the type prescribed for the purposes of that subsection.

13D Disclosure of information

(1) It is an offence to disclose any information derived from the Register other than in accordance with regulations made under section 13A(2) in pursuance of this section.

(2) Regulations made under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register—

(a) to an adoption agency for the purposes of helping it—

(i) to find persons with whom it would be appropriate to place a child for whom the agency is acting, or

(ii) to find a child who is appropriate for adoption by persons for whom the agency is acting,

(b) to any person (whether or not established or operating in Scotland) specified in the regulations—

(i) for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter,

(ii) for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption or prospective adopters,

(iii) for the purpose of enabling or assisting that person to perform any functions which relate to adoption,
(iv) for use for statistical or research purposes, or
(v) for any other purpose relating to adoption.

(3) Regulations made under section 13A(2) may—

(a) set out terms and conditions on which information may be disclosed in pursuance of this section,

(b) specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2),

(c) authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption.

(4) Subsection (1) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.

(5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

13DA Fees and other payments

Regulations made under section 13A(2) may prescribe—

(a) a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1),

(b) a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4),

(c) such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.

13E Use of an organisation as agency for payments

(1) The Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.

(2) A registration organisation or other person authorised under subsection (1) is to perform the functions exercisable by virtue of that subsection in accordance with any directions (general or specific) given by the Scottish Ministers.

13F Supplementary

Nothing authorised or required to be done by virtue of this Chapter constitutes an offence under section 72(2) or 75(1).
68A References to the Schools (Consultation) (Scotland) Act 2010

In this Part, references to the 2010 Act are to the Schools (Consultation) (Scotland) Act 2010.

68B Restriction on closure proposals

After section 2 of the 2010 Act, insert—

“2A Restriction on closure proposals

(1) This section applies where a decision is made not to implement a closure proposal in relation to a school.

(2) For the purposes of subsection (1)—

(a) a decision not to implement a closure proposal is—

(i) a decision not to implement the proposal made by the education authority following the publication of a consultation report in relation to the proposal (whether or not the proposal was called-in under section 15),

(ii) a decision of a School Closure Review Panel in relation to the proposal under section 17C(1)(a),

(b) such a decision is made by a School Closure Review Panel on the day on which the Panel notifies the decision to the education authority in pursuance of section 17C(5).

(3) The education authority may not publish a proposal paper concerning a further closure proposal in relation to the school during the period of 5 years beginning with the day on which the decision is made unless there is a significant change in the school’s circumstances.”.

68C Financial implications of closure proposals

In section 4 of the 2010 Act (proposal paper), after subsection (2) insert—

“(2A) Where a proposal paper relates to a closure proposal, it must also contain information about the financial implications of the proposal.”.

68CA Correction of proposal paper

(1) Section 5 of the 2010 Act (correction of the proposal paper) is amended in accordance with subsections (2) to (4).

(2) In subsection (2)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) after that paragraph insert—

“(aa) inform the notifier of its determination under paragraph (a), and the reasons for that determination,”,

(c) in paragraph (b), for “subsection (3)” substitute “subsection (4) and of the reasons why it is, or is not, taking such action”,
(d) after paragraph (b) insert “, and

(c) invite the notifier to make representations to the authority if the notifier disagrees with the authority’s determination under paragraph (a) or its decision as to whether to take action under subsection (4).”.

(3) After that subsection insert—

“(2A) Where the notifier makes representations to the authority in pursuance of subsection (2)(c), the authority may—

(a) make a fresh determination under subsection (2)(a),

(b) make a fresh decision as to whether to take action under subsection (4).

(2B) The authority must inform the notifier if it takes a step mentioned in subsection (2A)(a) or (b).”.

(4) For subsection (3) substitute—

“(3) Subsection (4) applies—

(a) where, in a situation mentioned in subsection (1)(a), the education authority determines that—

(i) relevant information has (in its opinion) been omitted from the proposal paper, or

(ii) there is (in fact) an inaccuracy in the proposal paper,

(b) in a situation mentioned in subsection (1)(b).

(4) Where—

(a) the information that has been omitted or, as the case may be, the inaccuracy relates to a material consideration relevant to the education authority’s decision as to implementation of the proposal, it must take action as mentioned in subsection (5)(a) or (b),

(b) that information or inaccuracy does not relate to such a material consideration, the authority may—

(i) take action as mentioned in subsection (5)(a) or (b), or

(ii) take no further action (except by virtue of section 10(3)).

(5) The action referred to in subsection (4)(a) and (b)(i) is—

(a) to take the following steps—

(i) publish a corrected proposal paper,

(ii) give revised notice in accordance with section 6, and

(iii) send a copy of the corrected paper to HMIE,

(b) to issue a notice to the relevant consultees and HMIE—

(i) providing the omitted information or, as the case may be, correcting the inaccuracy, and

(ii) if the authority considers it appropriate, extending the consultation period by such period as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction.
Where the education authority issues a notice mentioned in subsection (5)(b) after the end of the consultation period—

(a) the notice may, instead of extending the consultation period, specify such further period during which representations may be made on the proposal as is reasonable by reference to the significance of the information provided or, as the case may be, the nature of the correction, and

(b) any such further period is to be treated as part of the consultation period for the purposes of sections 8, 9 and 10.”.

(5) In section 10 of the 2010 Act (content of the consultation report), in subsection (3)—

(a) in the opening text, after “applies,” insert “including any alleged omission or inaccuracy notified to the education authority,,”,

(b) in paragraph (a), after “inaccuracy” insert “, or (as the case may be) the alleged omission or inaccuracy,”,

(c) in paragraph (b), after “inaccuracy” insert “, or (as the case may be) the alleged omission or inaccuracy,”,

(d) after that paragraph insert—

“(c) any representations made to the authority in pursuance of section 5(2)(c).”.

68D Special provision for rural school closure proposals

(1) Before section 12 of the 2010 Act (factors for rural school closure proposals), insert—

11A Presumption against rural school closure

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The education authority may not decide to implement the proposal (wholly or partly) unless the authority—

(a) has complied with sections 12, 12A and 13, and

(b) having so complied, is satisfied that such implementation of the proposal is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).

(3) The authority must publish on its website notice of—

(a) its decision as to implementation of the proposal, and

(b) where it decides to implement the proposal (wholly or partly), the reasons why it is satisfied that such implementation is the most appropriate response to the reasons for formulating the proposal identified by the authority under section 12A(2)(a).”.

(2) In that section—

(a) subsection (3)(a) is repealed,

(b) in subsection (4), after “(3)(b)” insert “and sections 12A(2)(c)(ii) and 13(5)(b)(ii),”,

(c) in subsection (5), after “(3)(c)” insert “and sections 12A(2)(c)(iii) and 13(5)(b)(iii).”.
(3) After that section, insert—

“12A Preliminary requirements in relation to rural school closure

(1) This section applies where an education authority is formulating a closure proposal as respects a rural school.

(2) The authority must—

(a) identify its reasons for formulating the proposal,

(b) consider whether there are any reasonable alternatives to the proposal as a response to those reasons,

(c) assess, for the proposal and each of the alternatives to the proposal identified under paragraph (b) (if any)—

(i) the likely educational benefits in consequence of the implementation of the proposal, or as the case may be, alternative,

(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,

(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(3) For the purposes of this section and section 13, reasonable alternatives to the proposal include (but are not limited to) steps which would not result in the school or a stage of education in the school (within the meaning of paragraph 12 of schedule 1) being discontinued.

(4) The authority may not publish a proposal paper in relation to the proposal unless, having complied with subsection (2), it considers that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(5) In this section and section 13, the references to the reasons for the proposal are references to the reasons identified by the education authority under subsection (2)(a).”.

(4) For section 13 of the 2010 Act substitute—

“13 Additional consultation requirements

(1) This section applies in relation to any closure proposal as respects a rural school.

(2) The proposal paper must additionally—

(a) explain the reasons for the proposal,

(b) describe what (if any) steps the authority took to address those reasons before formulating the proposal,

(c) if the authority did not take such steps, explain why it did not do so,

(d) set out any alternatives to the proposal identified by the authority under section 12A(2)(b),

(e) explain the authority’s assessment under section 12A(2)(c),
(f) explain the reasons why the authority considers, in light of that assessment, that implementation of the closure proposal would be the most appropriate response to the reasons for the proposal.

(3) The notice to be given to relevant consultees under section 6(1) must—

(a) give a summary of the alternatives to the proposal set out in the proposal paper,

(b) state that written representations may be made on those alternatives (as well as on the proposal), and

(c) state that written representations on the proposal may suggest other alternatives to the proposal.

(4) In sections 8(4)(c), 9(4) and 10(2)(a), the references to written representations on the proposal include references to written representations on the alternatives to the proposal set out in the proposal paper.

(5) When carrying out its review of the proposal under section 9(1), the education authority is to carry out—

(a) for the proposal and each of the alternatives to it set out in the proposal paper (if any), a further assessment of the matters mentioned in section 12A(2)(c)(i) to (iii), and

(b) an assessment, in relation to any other reasonable alternative to the proposal suggested in written representations on the proposal, of—

(i) the likely educational benefits in consequence of the implementation of the alternative,

(ii) the likely effect on the local community (assessed in accordance with section 12(4)) in consequence of such implementation,

(iii) the likely effect that would be caused by any different travelling arrangements that may be required (assessed in accordance with section 12(5)) in consequence of such implementation.

(6) The consultation report must additionally explain—

(a) the education authority’s assessment under subsection (5)(a),

(b) how that assessment differs (if at all) from the authority’s assessment under section 12A(2)(c),

(c) the authority’s assessment under subsection (5)(b),

(d) whether and, if so, the reasons why the authority considers that implementation of the proposal (wholly or partly) would be the most appropriate response to the reasons for the proposal.”.

(5) In section 1 of the 2010 Act (overview of key requirements), after subsection (4) insert—

“(4A) In the case of a closure proposal in relation to a rural school, the education authority must also comply with—

(a) the preliminary requirements set out in section 12A when it is formulating the proposal,

(b) the additional consultation requirements set out in section 13.”.
68E Call-in of closure proposals

(1) In section 15 of the 2010 Act (call-in of closure proposals)—

(za) in subsection (2), after paragraph (b)(ii) insert—

“(iii) where the decision relates to a rural school, the notice published under section 11A(3),”.

 zb) after that subsection insert—

“(2A) At the same time as it notifies the Scottish Ministers of the decision under subsection (2)(a), the education authority must publish on its website notice of—

(a) the fact that the Scottish Ministers have been so notified, and

(b) the opportunity for making representations to the Scottish Ministers in connection with subsection (4), including the date on which the 3 week period referred to in that subsection ends.”,

(a) in each of subsections (3), (4) and (6) for “6” substitute “8”,

(b) subsection (5) is repealed.

(2) Section 16 of the 2010 Act is repealed.

(3) In section 17 of the 2010 Act (grounds for call-in etc.)—

(a) in subsection (3)—

(i) the word “or” immediately following paragraph (a) is repealed,

(ii) paragraph (b) is repealed,

(b) after that subsection insert—

“(3A) HMIE must provide the Scottish Ministers with such advice as to the educational aspects of a closure proposal as the Scottish Ministers may reasonably require of HMIE for the purpose of the Scottish Ministers’ consideration of whether to issue a call-in notice.”.

(4) After section 17 of the 2010 Act insert—

“17A Referral to the Convener of the School Closure Review Panels

(1) This section applies where a call-in notice is issued as respects a closure proposal.

(2) The Scottish Ministers must refer the proposal to the Convener of the School Closure Review Panels.

(3) The Convener must, within the period of 7 days beginning with the day on which the call-in notice is issued, constitute a School Closure Review Panel to review the proposal under section 17B(1).

(4) The education authority may not implement the proposal (wholly or partly)—

(a) unless the Panel grants its consent to it under section 17C(1), and

(b) until—

(i) the period mentioned in section 17D(2)(c) has expired without any appeal to the sheriff being made, or
(ii) where such an appeal is made, it is abandoned or the sheriff confirms the Panel’s decision.

(5) Schedule 2A makes further provision about the Convener and School Closure Review Panels.

(6) In this Act—

(a) “the Convener” is the Convener of the School Closure Review Panels,

(b) a “School Closure Review Panel” is a School Closure Review Panel constituted under subsection (3).

17B Review by Panel

(1) A School Closure Review Panel must consider both of the following in relation to a closure proposal—

(a) whether the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,

(b) whether the education authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(2) The education authority must provide the Panel with such information in connection with the proposal as the Panel may reasonably require of it for the purpose of subsection (1).

(3) HMIE must provide the Panel with such advice as to the educational aspects of the proposal as the Panel may reasonably require of them for the purpose of subsection (1).

(4) The Panel may request such other information and advice from any other person as it may reasonably require for the purpose of subsection (1).

(5) The Scottish Ministers may by regulations make further provision as to the procedures to be followed by the Panel when carrying out a review under subsection (1).

17C Decision following review

(1) Following a review of a closure proposal under section 17B(1), the School Closure Review Panel may—

(a) refuse to consent to the proposal,

(b) refuse to consent to the proposal and remit it to the education authority for a fresh decision as to implementation,

(c) grant consent to the proposal—

(i) subject to conditions, or

(ii) unconditionally.

(2) The Panel must give reasons for its decision.
(3) Where the Panel remits the proposal to the education authority under subsection (1)(b), the Panel may specify any steps in the process provided for in sections 1 to 11 and (in relation to a closure proposal as respects a rural school) 12A that the authority must take again in relation to the proposal before making a fresh decision.

(4) The Panel may refuse to consent to the proposal under subsection (1)(a) or (b) only if the Panel finds either or both of the following—

(a) that the education authority has failed in a significant regard to comply with the requirements imposed on it by (or under) this Act so far as they are relevant in relation to the proposal,

(b) that the authority has failed to take proper account of a material consideration relevant to its decision to implement the proposal.

(5) The Panel must notify the education authority of its decision within the period of 8 weeks beginning with the day on which the Panel is constituted unless (before the end of that period) the Panel issues a notice to the education authority—

(a) stating that the Panel does not intend to notify the decision within that period,

(b) specifying the reason why that is so, and

(c) indicating the likely date for notifying the decision.

(6) Where the Panel issues a notice under subsection (5), it must notify the education authority of its decision within the period of 16 weeks beginning with the day on which the Panel is constituted.

(7) After the Panel notifies the education authority of its decision, the Panel must—

(a) notify the Scottish Ministers of the decision, and

(b) publish notice of the decision in such manner as it considers appropriate.

(8) Where the Panel grants consent to the proposal subject to conditions, the education authority must comply with the conditions.

17D Appeal against decision of the Panel

(1) An appeal may be made to the sheriff against a decision of a School Closure Review Panel under section 17C(1) by—

(a) the education authority,

(b) a relevant consultee in relation to the closure proposal.

(2) An appeal under subsection (1)—

(a) may be made only on a point of law,

(b) must be made by way of summary application,

(c) must be made within the period of 14 days beginning with the day on which the Panel publishes notice of the decision under section 17C(7)(b).

(3) In the appeal, the sheriff may—

(a) confirm the decision, or
(b) quash the decision and refer the matter back to the Panel.

(4) The sheriff’s determination of the appeal is final.”.

(5) After schedule 2 to the 2010 Act, insert—

“SCHEDULE 2A
(introduced by section 17A)

SCHOOL CLOSURE REVIEW PANELS

Convener of the School Closure Review Panels

1 (1) There is established the office of the Convener of the School Closure Review Panels.

10 (2) The Scottish Ministers must appoint a person to hold that office.

(3) A person so appointed—

(a) is not to be regarded as a servant or agent of the Crown and does not have any status, immunity or privilege of the Crown,

(b) subject to any provision made in regulations under sub-paragraph (9), holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(4) The Convener—

(a) may delegate a function conferred on the Convener by this Act,

(b) must delegate such a function if required to do so by directions issued under paragraph 4.

(5) Nothing in sub-paragraph (4)(a) prevents the Convener from carrying out any function delegated under that sub-paragraph.

(6) Sub-paragraph (7) applies during any period when—

(a) the office of the Convener is vacant, or

(b) the person holding that office is unable to perform the functions conferred on the office because the person is incapacitated.

(7) The Scottish Ministers may appoint a person to act as Convener during that period.

(8) A person appointed to act as Convener under sub-paragraph (7)—

(a) is to be appointed on such terms and conditions as the Scottish Ministers may determine,

(b) while acting as such, is to be treated for all purposes, except those of any regulations made under sub-paragraph (9), as the Convener.

(9) The Scottish Ministers may by regulations make provision for or about—

(a) eligibility for, and disqualification from, appointment under sub-paragraph (2),

(b) tenure and removal from office of a person appointed under sub-paragraph (2),

(c) payment of—

(i) salary, fees, expenses and allowances to such a person,
(ii) pensions, allowances or gratuities (including by way of compensation for loss of office) to, or in respect of, such a person,

(d) such other matters in relation to the appointment of the Convener as the Scottish Ministers consider appropriate.

Panel members

2 (1) The Convener is to appoint such number of persons as the Convener considers appropriate to be eligible to serve as members of a School Closure Review Panel.

(2) Each Panel is to consist of 3 of the persons appointed under sub-paragraph (1).

(3) It is for the Convener to select—

(a) the members of the Panel,

(b) one of those members to chair the Panel.

(4) The Convener is to make appropriate arrangements for the training of persons appointed under sub-paragraph (1).

(5) The Scottish Ministers may by regulations make provision for or about—

(a) eligibility for, and disqualification from, appointment under sub-paragraph (1),

(b) tenure and removal from office of persons so appointed,

(c) the process for the selection of Panel members under sub-paragraph (3),

(d) payment of expenses, fees and allowances to persons selected under that sub-paragraph,

(e) such other matters as the Scottish Ministers consider appropriate in relation to—

(i) the appointment of persons under sub-paragraph (1),

(ii) the selection of Panel members under sub-paragraph (3).

Property, staff and services

3 (1) The Scottish Ministers may—

(a) provide, or ensure the provision of, such property, staff and services to the Convener as they consider necessary or expedient in connection with the exercise of the Convener’s functions,

(b) pay grants to the Convener for the purposes of enabling the Convener to employ staff and obtain services in connection with the exercise of the Convener’s functions.

(2) The Convener is to provide a School Closure Review Panel with such staff and services as the Convener considers necessary or expedient in connection with the exercise of the Panel’s functions.

Directions

4 (1) The Scottish Ministers may issue directions to the Convener as to the exercise of the Convener’s functions (and the Convener must comply with them).
(2) Directions under sub-paragraph (1) may vary or revoke earlier such directions.

(3) The Scottish Ministers must publish any directions issued under sub-paragraph (1) in such manner as they consider appropriate.

Reports

5 (1) As soon as practicable after the end of each calendar year, the Convener must prepare a report on—

(a) the exercise of the Convener’s functions during that year, and

(b) the exercise of the functions of any School Closure Review Panel which has carried out a review under section 17B during that year.

10 (2) A report prepared under sub-paragraph (1) must be—

(a) submitted to the Scottish Ministers, and

(b) published in such manner as the Convener considers appropriate.”.

(6) In section 4 of the 2010 Act (proposal paper), in subsection (2) for “17” substitute “17D”.

(7) In section 19 of the 2010 Act (guidance)—

(a) the existing text becomes subsection (1),

(b) after that subsection insert—

“(2) The Convener, and a School Closure Review Panel, must have regard to any such guidance in exercising their functions under this Act.”.

(8) In section 20 of the 2010 Act (regulations)—

(a) in subsection (3) for “17” substitute “17D”,

(b) after subsection (6) insert—

“(7) Regulations under section 17B(5) and paragraphs 1(9) and 2(5) of schedule 2A—

(a) may make different provision for different purposes,

(b) may make supplemental, incidental, consequential, transitional, transitory or saving provision,

(c) are subject to the negative procedure.”.

(9) In section 21(2) of the 2010 Act (definitions)—

(a) after the definition of “consultation period” insert—

““the Convener” is defined in section 17A(6),”

(b) after the definition of “rural school” insert—

““School Closure Review Panel” is defined in section 17A(6)”.

(10) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), before paragraph 21C insert—

“21ZC The Convener of the School Closure Review Panels.”.

(11) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
(a) before paragraph 62C insert—

“62ZC  The Convener of the School Closure Review Panels.”,

(b) after paragraph 76 insert—

“76A  A School Closure Review Panel constituted under section 17A(3) of the Schools (Consultation) (Scotland) Act 2010.”.

(12) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (the specified authorities), before the cross-heading “Executive bodies” insert—

“the Convener of the School Closure Review Panels”.

PART 12

CHILDREN’S HEARINGS

68F Safeguarders: exceptions to duty to prepare report on appointment

In section 33 of the 2011 Act—

(a) in subsection (1)(a), after “(2)” insert “or (3)”;

(b) after subsection (2), insert—

“(3) This subsection applies where the children’s hearing was arranged under section 45, 46, 50, 96, 126 or 158.”.

68G Maximum period of child protection order

In each of paragraphs (c) and (d) of section 54 of the 2011 Act, after “day” insert “after the day on which”.

68H Power to determine that deeming of person as relevant person to end

(1) The 2011 Act is amended as follows.

(2) In section 79—

(a) in subsection (1), for “This section applies” substitute “Subsections (2) to (5) apply”,

(b) after subsection (1), insert—

“(1A) Subsection (5A) applies (in addition to subsections (2) to (5)) where the children’s hearing is—

(a) a subsequent children’s hearing under Part 11, or

(b) held for the purposes of reviewing a compulsory supervision order.”,

(c) after subsection (5), insert—

“(5A) The Principal Reporter—

(a) must refer the matter of whether an individual deemed to be a relevant person by virtue of section 81 should continue to be deemed to be a relevant person in relation to the child for determination by a pre-hearing panel if requested to do so by—

(i) the individual so deemed,
(ii) the child, or

(iii) a relevant person in relation to the child,

(b) may refer that matter for determination by a pre-hearing panel on the Principal Reporter’s own initiative.”.

(3) After section 81, insert—

“81A Determination that deeming of person as relevant person to end

(1) This section applies where a matter mentioned in section 79(5A)(a) is referred to a meeting of a pre-hearing panel.

(2) Where the matter is referred along with any other matter, the pre-hearing panel must determine it before determining the other matter.

(3) The pre-hearing panel must determine that the individual is no longer to be deemed to be a relevant person if it considers that the individual does not have (and has not recently had) a significant involvement in the upbringing of the child.

(4) Where the pre-hearing panel makes a determination as described in subsection (3), section 81(4) ceases to apply in relation to the individual.

(5) Where, by virtue of section 80(3), the children’s hearing is to determine a matter mentioned in section 79(5A)(a), references in subsections (2) to (4) to the pre-hearing panel are to be read as references to the children’s hearing.”.

68I Grounds hearing: non-acceptance of facts supporting ground

In section 90 of the 2011 Act—

(a) in subsection (1), for paragraph (a) substitute—

“(a) explain to the child and each relevant person in relation to the child—

(i) each section 67 ground specified in the statement of grounds, and

(ii) the supporting facts in relation to that ground,”,

(b) after subsection (1) insert—

“(1A) In relation to each ground that a person accepts applies in relation to the child, the chairing member must ask the person whether the person accepts each of the supporting facts.

(1B) Where under subsection (1A) any person does not accept all of the supporting facts in relation to a ground, the ground is taken for the purposes of this Act to be accepted at the grounds hearing only if the grounds hearing considers that—

(a) the person has accepted sufficient of the supporting facts to support the conclusion that the ground applies in relation to the child, and

(b) it is appropriate to proceed in relation to the ground on the basis of only those supporting facts which are accepted by the child and each relevant person.

(1C) Where a ground is taken to be accepted for the purposes of this Act by virtue of subsection (1B), the grounds hearing must amend the statement of grounds to delete any supporting facts in relation to the ground which are not accepted by the child and each relevant person.
(1D) In this section, “supporting facts”, in relation to a section 67 ground, means facts set out in relation to the ground by virtue of section 89(3)(b).”.

68J Failure of child to attend grounds hearing: power to make interim order

In section 95 of the 2011 Act, after subsection (2) insert—

“(3) Subsection (4) applies where under subsection (2) the grounds hearing requires the Principal Reporter to arrange another grounds hearing.

(4) If the grounds hearing considers that the nature of the child’s circumstances is such that for the protection, guidance, treatment or control of the child it is necessary as a matter of urgency that an interim compulsory supervision order be made, the grounds hearing may make an interim compulsory supervision order in relation to the child.

(5) An interim compulsory supervision order made under subsection (4) may not include a measure of the kind mentioned in section 83(2)(f)(i).”.

68K Limit on number of further interim compulsory supervision orders

In section 96(4) of the 2011 Act, for the words from “the effect” to the end substitute “it would be the third such order made under subsection (3) in consequence of the same interim compulsory supervision order made under section 93(5)”.

69 Area support teams: establishment

(1) The 2011 Act is amended as follows.

(2) In schedule 1—

(a) in paragraph 12—

(i) in sub-paragraph (1), omit “and maintain”,

(ii) for sub-paragraph (3), substitute—

“(3) The National Convener—

(a) must keep the designation of areas under sub-paragraph (1) under review, and

(b) may at any time revoke a designation or make a new one.

(3A) In exercising the powers to make and revoke designations, the National Convener must ensure that at all times each local authority area falls within an area designated under sub-paragraph (1).

(3B) Revocation of a designation under sub-paragraph (1) has the effect of dissolving the area support team established in consequence of the designation.

(3C) Before deciding to make or revoke a designation under sub-paragraph (1), the National Convener must consult each affected local authority.

(3D) In sub-paragraph (3C), “affected local authority” means—

(a) in the case of making a designation, each local authority whose area falls within the area proposed to be designated,

(b) in the case of revoking a designation, each constituent authority for the area support team established in consequence of the designation.
(3E) On making or revoking a designation under sub-paragraph (1), the National Convener must notify each local authority which was consulted under sub-paragraph (3C) in relation to the decision to make or revoke the designation.

(b) in paragraph 13—

(i) in sub-paragraph (1), the words “the National Convener establishes an area support team under paragraph 12(1)” become sub-sub-paragraph (a),

(ii) after that sub-sub-paragraph insert “, and

(b) the area of the area support team consists of or includes a new area.”,

(iii) in sub-paragraph (4)(a), for “area of the area support team” substitute “new area concerned”,

(iv) in sub-paragraph (7), after the definition of “Children’s Panel Advisory Committee” insert—

““new area” means an area which has never previously been the area (or part of the area) of an area support team.”.

(3) An area support team established before this section comes into force continues in existence as if it were established under paragraph 12(1) as amended by this section.

70 Area support teams: administrative support by local authorities

(1) The 2011 Act is amended as follows.

(2) In schedule 1, in paragraph 14, after sub-paragraph (8) insert—

“(9) A constituent authority must provide an area support team with such administrative support as the National Convener considers appropriate.

(10) In sub-paragraph (9), “administrative support” means staff, property or other services which the National Convener considers are required to facilitate the carrying out by an area support team of its functions.”.

70A Interpretation of Part 12

In this Part, “the 2011 Act” means the Children’s Hearings (Scotland) Act 2011.
(b) two or more relevant persons in relation to the child.

1B) An appeal must not be held in open court.

(2) The sheriff may determine an appeal by—

(a) confirming the decision to detain the child in secure accommodation; or

(b) quashing that decision and directing the local authority to move the child to be detained in residential accommodation which is not secure accommodation.

(3) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).

(4) Regulations under subsection (3) may in particular—

(a) specify the period within which an appeal may be made;

(b) make provision about the hearing of evidence during an appeal;

(c) provide for appeals to the sheriff principal and Court of Session against the determination of an appeal.

(5) Regulations under subsection (3) are subject to the affirmative procedure.

(6) In this section—

“relevant person”, in relation to a child, means any person who is a relevant person in relation to the child for the purposes of the Children’s Hearings (Scotland) Act 2011 (including anyone deemed to be a relevant person in relation to the child by virtue of section 81(3), 160(4)(b) or 164(6) of that Act);

“secure accommodation” has the same meaning as in section 44 of this Act.”.

Children’s legal aid

25 71A Power of Scottish Ministers to modify circumstances in which children’s legal aid to be made available

(1) The Legal Aid (Scotland) Act 1986 is amended as follows.

(2) The title of section 28L becomes “Power of Scottish Ministers to extend or restrict types of proceedings before children’s hearings in which children’s legal aid to be available”.

(3) After section 28L, insert—

“28LA Power of Scottish Ministers to provide for children’s legal aid to be available to other persons in relation to court proceedings

(1) The Scottish Ministers may by regulations modify this Part so as to—

(a) provide that children’s legal aid is to be available, in relation to a type of court proceedings under the 2011 Act, to a person to whom it is not available by virtue of section 28D, 28E or 28F;

(b) vary any availability provided by virtue of paragraph (a), or

(c) remove any availability provided by virtue of paragraph (a).
(2) If regulations are made making children’s legal aid available to a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (3) are met before children’s legal aid is made available.

(3) The conditions are—

(a) that it is in the best interests of the child that children’s legal aid be made available,

(b) that it is reasonable in the particular circumstances of the case that the child should receive children’s legal aid,

(c) that, after consideration of the disposable income and disposable capital of the child, the expenses of the case cannot be met without undue hardship to the child, and

(d) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the child has substantial grounds for making or responding to the appeal.

(4) If regulations are made making children’s legal aid available to a person other than a child, the regulations must include provision requiring the Board to be satisfied that the conditions in subsection (5) are met before children’s legal aid is made available.

(5) The conditions are—

(a) that it is reasonable in the particular circumstances of the case that the person should receive children’s legal aid,

(b) that, after consideration of the disposable income and disposable capital of the person, the expenses of the case cannot be met without undue hardship to the person or the dependants of the person, and

(c) if the proceedings are an appeal to the sheriff principal or the Court of Session under Part 15 of the 2011 Act, that the person has substantial grounds for making or responding to the appeal.”.

### Provision of school meals

(1) Section 53 of the 1980 Act is amended as follows.

(2) Subsection (2) is repealed.

(3) In subsection (2A), after “lunches” insert “which the authority are required to provide by virtue of subsection (3)”.

(4) In subsection (2C)(b), the words “(other than in the middle of the day)” are omitted.

(5) In subsection (2D), the words “(2) or” are omitted.

(6) In subsection (3), after paragraph (b) insert—

“(c) who is in such yearly stage of primary or secondary education, or is of such other description, as the Scottish Ministers may by regulations prescribe.”.
Children and Young People (Scotland) Bill
Part 13—General

Licensing of child performances

71B Extension of licensing of child performances to children under 14
Section 38 of the Children and Young Persons Act 1963 (licences for performances by children under 14 not to be granted except for certain dramatic or musical performances) is repealed.

Wellbeing under 1995 Act

73 Consideration of wellbeing in exercising certain functions
After section 23 of the 1995 Act, insert—

“23A Sections 17 and 22: consideration of wellbeing
(1) This section applies where a local authority is exercising a function under or by virtue of section 17, 22 or 26A of this Act.
(2) The local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing.
(3) For the purpose of subsection (2) above, the local authority is to assess the wellbeing of a child or young person by reference to the extent to which the matters listed in section 74(2) of the 2014 Act are or, as the case may be, would be satisfied in relation to the child or young person.
(4) In assessing the wellbeing of a child or young person as mentioned in subsection (3) above, a local authority is to have regard to the guidance issued under section 74(3) of the 2014 Act.
(5) In this section, “the 2014 Act” means the Children and Young People (Scotland) Act 2014.”.

PART 13
GENERAL

74 Assessment of wellbeing
(1) This section applies where under this Act a person requires to assess whether the wellbeing of a child or young person is being or would be—

(a) promoted,
(b) safeguarded,
(c) supported,
(d) affected, or
(e) subject to an effect.

(2) The person is to assess the wellbeing of the child or young person by reference to the extent to which the child or young person is or, as the case may be, would be—

Safe,
Healthy,
Achieving,
Nurtured,
Active,
Respected,
Responsible, and
Included.

(3) The Scottish Ministers must issue guidance on how the matters listed in subsection (2) are to be used to assess the wellbeing of a child or young person.

(4) Before issuing or revising such guidance, the Scottish Ministers must consult—
(a) each local authority,
(b) each health board, and
(c) such other persons as they consider appropriate.

(5) In measuring the wellbeing of a child or young person as mentioned in subsection (2), a person is to have regard to the guidance issued under subsection (3).

(6) The Scottish Ministers may by order modify the list in subsection (2).

(7) Before making an order under subsection (6), the Scottish Ministers must consult—
(a) each local authority,
(b) each health board, and
(c) such other persons as they consider appropriate.

75 Interpretation

(1) In this Act—

“the 1980 Act” means the Education (Scotland) Act 1980,
“the 1995 Act” means the Children (Scotland) Act 1995,
“child” means a person who has not attained the age of 18 years,
“health board” means a board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978.

(2) References in this Act to a child being or becoming “looked after” are to be construed in accordance with section 17(6) of the 1995 Act.

(3) The following expressions have the same meaning in this Act as they have in the 1980 Act—
education authority
grant-aided school
independent school
managers
nursery class
primary school
proprietor
public school
pupil
school age.

76 Modification of enactments

Schedule 4 (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

77 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order under this Act includes power to make—

(a) different provision for different purposes,

(b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

(2) An order made under any of the following sections is subject to the affirmative procedure—

section 3(2)
section 7(5)
section 29A(1),
section 29B(2)
section 35(5)
section 40A(1),
section 40B(2)
section 43(2)(c)(ii)
section 43(3A),
section 44(2)
section 47(2)
section 50(2)
section 51(2)(b)
section 52(2)
section 61(2)(b)
section 64(4)(b)

(3) An order made under section 78 containing provisions which add to, replace or omit any part of the text of this or any other Act is subject to the affirmative procedure.

(4) All other orders made under this Act are subject to the negative procedure.

(5) This section does not apply to an order made under section 79(2).
77A  **Guidance and directions**

(1) Any power of the Scottish Ministers to issue guidance or directions under this Act may be exercised—

(a) to issue guidance or directions generally or for particular purposes,

(b) to issue different guidance or directions to different persons or otherwise for different purposes.

(2) The Scottish Ministers must publish (in such manner as they consider appropriate) any guidance or directions issued by them under this Act.

(3) In subsection (2)—

(a) the reference to guidance includes revision of guidance,

(b) the reference to directions includes revision and revocation of directions.

78  **Ancillary provision**

The Scottish Ministers may by order make—

(a) such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act, and

(b) such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

79  **Commencement**

(1) This Part (apart from sections 74, 75 and 76) comes into force on the day after Royal Assent.

(1A) Subsections (2) to (4) of section 43 also come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.

80  **Short title**

The short title of this Act is the Children and Young People (Scotland) Act 2014.
SCHEDULE 1
(introduced by section 3)

AUTHORITIES TO WHICH SECTION 2 APPLIES

1. A local authority
2. Children’s Hearings Scotland
3. The Scottish Children’s Reporter Administration
4. A health board
5. A board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978
6. Healthcare Improvement Scotland
7. The Scottish Qualifications Authority
8. Skills Development Scotland Co. Ltd (registered number SC 202659)
9. Social Care and Social Work Improvement Scotland
10. The Scottish Social Services Council
11. The Scottish Sports Council
12. The chief constable of the Police Service of Scotland
13. The Scottish Police Authority
14. The Scottish Fire and Rescue Service
15. The Scottish Legal Aid Board
16. The Mental Welfare Commission for Scotland
17. The Scottish Housing Regulator
18. Bòrd na Gàidhlig
19. Creative Scotland

SCHEDULE 2
(introduced by section 29B)

RELEVANT AUTHORITIES

2. NHS 24
3. NHS National Services Scotland
4. Scottish Ambulance Service Board
5. State Hospitals Board for Scotland
5A. The National Waiting Times Centre Board
6. Skills Development Scotland Co. Ltd (registered number SC 202659)
7. Social Care and Social Work Improvement Scotland
8. The Scottish Sports Council
9. The chief constable of the Police Service of Scotland
Schedule 2A—Listed authorities

10 The Scottish Police Authority
11 The Scottish Fire and Rescue Service
13 The Commissioner for Children and Young People in Scotland
16 A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005

SCHEDULE 2A
(introduced by section 40B)

LISTED AUTHORITIES

1 The Scottish Ministers
10 2 NHS 24
3 NHS National Services Scotland
4 Scottish Ambulance Service Board
5 State Hospitals Board for Scotland
6 The National Waiting Times Centre Board
15 7 Skills Development Scotland Co. Ltd (registered number SC 202659)
8 Social Care and Social Work Improvement Scotland
9 The Scottish Sports Council
10 The chief constable of the Police Service of Scotland
11 The Scottish Police Authority
20 12 The Scottish Fire and Rescue Service
13 The Commissioner for Children and Young People in Scotland
14 A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005

SCHEDULE 3
(introduced by section 50)

CORPORATE PARENTS

1 The Scottish Ministers
2 A local authority
3 The National Convener of Children’s Hearings Scotland
30 4 Children’s Hearings Scotland
5 The Principal Reporter
6 The Scottish Children’s Reporter Administration
7 A health board
35 8 A board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978
9 Healthcare Improvement Scotland
10 The Scottish Qualifications Authority
11 Skills Development Scotland Co. Ltd (registered number SC 202659)
12 Social Care and Social Work Improvement Scotland
13 The Scottish Social Services Council
14 The Scottish Sports Council
15 The chief constable of the Police Service of Scotland
16 The Scottish Police Authority
17 The Scottish Fire and Rescue Service
19 The Scottish Legal Aid Board
20 The Commissioner for Children and Young People in Scotland
21 The Mental Welfare Commission for Scotland
22 The Scottish Housing Regulator
23 Bòrd na Gàidhlig
24 Creative Scotland
26 A body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005

SCHEDULE 4
(introduced by section 76)

MODIFICATION OF ENACTMENTS

Social Work (Scotland) Act 1968

1 In section 5 of the Social Work (Scotland) Act 1968—
   (a) in subsection (1)—
       (i) for “1995 and” substitute “1995,”,
       (ii) after “2013 (asp 1)” insert “Part 6 (in so far as it applies to looked after children) and Parts 9 and 10 of the Children and Young People (Scotland) Act 2014 (asp 00),”,
   (b) in subsection (1B), after paragraph (s) insert—
       “(t) Part 6 (in so far as it applies to looked after children) of the Children and Young People (Scotland) Act 2014 (asp 00),”,
   (c) after subsection (1B) insert—
       “(1C) In subsections (1) and (1B) of this section, the references to looked after children are to be construed in accordance with section 17(6) of the Children (Scotland) Act 1995.”.

Education (Scotland) Act 1980

2 (1) The 1980 Act is amended as follows.
(2) In section 1—
   (a) in subsection (1A), for the words from first “as” to “order” substitute “to the extent required by section 43(1) of the Children and Young People (Scotland) Act 2014”;
   (b) omit subsections (1B) and (4A),
   (c) in subsection (5)(a), for sub-paragraph (i) substitute—
      “(i) early learning and childcare;”.

(2A) In section 53A(2), for “53(3)” substitute “53”.

(2B) In section 53B—
   (a) in subsection (1)—
      (i) after “applies” insert “, subject to subsection (1A),”,
      (ii) for “53(3)” substitute “53”,
   (b) after subsection (1), insert—
      “(1A) This section does not apply in such circumstances as the Scottish Ministers may by regulations prescribe.”,
   (c) in subsection (5)(b), for “53(3)” substitute “53”.

(2C) In section 133—
   (a) in subsection (2), for “(2ZA)” substitute“(2YA)”,
   (b) after subsection (2), insert—
      “(2YA) Subsection (2) above shall not apply to any regulations under section 53(3)(c) of this Act; and such regulations shall be subject to the affirmative procedure.”.

(3) In section 135—
   (a) after the definition of “dental treatment” insert—
      “‘early learning and childcare’ has same meaning as in Part 6 of the Children and Young People (Scotland) Act 2014;”;
   (b) for the definitions of “nursery school” and “nursery class” substitute—
      “‘nursery schools’ and ‘nursery classes’ are schools and classes which provide early learning and childcare;”.

Legal Aid (Scotland) Act 1986

2A(1) The Legal Aid (Scotland) Act 1986 is amended as follows.
   (2) In section 28F(1)(b), after “deemed” insert “, or is no longer to be deemed,”.
   (3) In section 37(2), after “28L(1) or (8),” insert “28LA(1),”.

Children (Scotland) Act 1995

3 (1) The 1995 Act is amended as follows.
   (2) Section 19 is repealed.
   (3) In section 20, for subsection (2) substitute—
“(2) In subsection (1) above, “relevant services” means services provided by a local authority under or by virtue of—
  (a) this Part of this Act;
  (b) the Children’s Hearings (Scotland) Act 2011;
  (b) Part 9 or 10 of the Children and Young People (Scotland) Act 2014; or
  (c) any of the enactments mentioned in section 5(1B)(a) to (n), (r) or (t) of the Social Work (Scotland) Act 1968.”.

(4) In section 44—
  (a) for subsection (1) substitute—
  “(1) No person shall publish any matter in respect of proceedings before a sheriff on an application under section 76(1) of this Act which is intended to, or is likely to, identify—
  (a) the child concerned in, or any other child connected (in any way) with, the proceedings; or
  (b) any address or school as being that of any such child.”,
  (b) in subsection (5)—
  (i) omit paragraphs (b) and (c),
  (ii) in the full-out, omit “, the Court or the Secretary of State as the case may be”.

Criminal Procedure (Scotland) Act 1995

4 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 44(11), in the definition of “secure accommodation” for “2000 Act” in each place where it occurs substitute “Care Standards Act 2000”.

(3) In section 57A(16), in the definition of “relevant services” for “19(2)” substitute “20(2)”.

Education Act 1996

4A Paragraph 11 of Schedule 37 to the Education Act 1996 is repealed.

Standards in Scotland’s Schools Act 2000

5 In section 34 of the Standards in Scotland’s Schools Act 2000—

(a) in paragraph (a), after “Act” insert “and Part 6 of the Children and Young People (Scotland) Act 2014”;

(b) in paragraph (b), for “that Act” substitute “those Acts”.

Regulation of Care (Scotland) Act 2001

6 In section 73(2)(a) of the Regulation of Care (Scotland) Act 2001—

(a) after first “provided” insert “under subsection (1) or (5A)(a) of that section”,
(b) for “the subsection in question” substitute “subsection (5A)(b) or (5B) of that section”.

**Mental Health (Care and Treatment) (Scotland) Act 2003**

7 In section 329(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003, in the definition of “relevant services” for “19(2)” substitute “20(2)”.

**Education (Additional Support for Learning) (Scotland) Act 2004**

8 (1) The Education (Additional Support for Learning) (Scotland) Act 2004 is amended as follows.

(2) In section 1(3)—

(a) in paragraph (a), for “a prescribed” substitute “an eligible”,

(b) in paragraph (b), for “a prescribed” substitute “an eligible”.

(3) In section 5(3)(a), in paragraph (a), for “a prescribed” substitute “an eligible”.

(4) In section 29(1)—

(a) after the definition of “co-ordinated support plan” insert—

“eligible pre-school child” has the same meaning as in Part 6 of the Children and Young People (Scotland) Act 2014,”,

(b) omit the definition of “prescribed pre-school child”.

**Adoption and Children (Scotland) Act 2007**

9 (1) The Adoption and Children (Scotland) Act 2007 is amended as follows.

(2) Section 4 is repealed.

(3) In section 6(1), omit “or 4”.

(4) The title of section 6 becomes “Assistance in carrying out functions under section 1”.

(5) In section 117(5)(a), after sub-paragraph (i) insert—

“(ia) section 13A(2),

(ib) section 13E(1),”.

(6) In section 119(1), in paragraph (b) of the definition of “adoption agency”, after “sections” insert “13A, 13D, 13E,”.

**Children’s Hearings (Scotland) Act 2011**

10 (1) The Children’s Hearings (Scotland) Act 2011 is amended as follows.

(2) In section 80(1), after “(2)” insert “or (5A)”.

(3) In section 81—

(a) in subsection (2), after “must” insert “, unless that other matter is a matter mentioned in section 79(5A)(a),”,

(b) in subsection (5)(b), after sub-paragraph (iv) insert—

“(iva) section 81A,”.
(4) In section 94(3), for the second “of” substitute “given in compliance with section 90(1) in relation to”.

(5) In section 105, after subsection (1) insert—

“(1A) The reference in subsection (1)(b) to the ground being accepted is, in relation to a ground which was not accepted by virtue of section 90(1B), a reference to all of the supporting facts in relation to the ground being accepted.”.

(6) In section 106, after subsection (1) insert—

“(1A) The reference in subsection (1)(b) to the ground being accepted is, in relation to a ground which was not accepted by virtue of section 90(1B), a reference to all of the supporting facts in relation to the ground being accepted.”.

(7) In section 142, after subsection (1) insert—

“(1A) But this section does not apply where the matter of whether the individual should continue to be deemed to be a relevant person in relation to the child—

(a) has been determined by a meeting of a pre-hearing panel held in relation to the children’s hearing, or

(b) is, by virtue of section 80(3), to be determined by the children’s hearing.”.

(8) In section 160, for subsection (1)(a) substitute—

“(a) a determination of a pre-hearing panel or a children’s hearing that an individual—

(i) is or is not to be deemed a relevant person in relation to a child,

(ii) is to continue to be deemed, or is no longer to be deemed, a relevant person in relation to a child.”.

(9) In section 202(1), after the definition of “super-affirmative procedure” insert—

““supporting facts” has the meaning given by section 90(1D),”.

(10) In schedule 6, in the entry for the 1995 Act—

(a) at the end of the reference to sections 39 to 74 insert “, except section 44”,

(b) in the reference to section 105, omit “44,”.
Children and Young People (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about the rights of children and young people; to make provision about investigations by the Commissioner for Children and Young People in Scotland; to make provision for and about the provision of services and support for or in relation to children and young people; to make provision for an adoption register; to make provision about children’s hearings, detention in secure accommodation and consultation on certain proposals in relation to schools; and for connected purposes.

Introduced by: Alex Neil
Supported by: Aileen Campbell
On: 17 April 2013
Bill type: Government Bill
Ministear airson Óigrídh agus Clann
Minister for Children and Young People
Aileen Chalmbeul BPA
Aileen Campbell MSP

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Kenneth Gibson MSP
Convener
Finance Committee
Room T3.60
Scottish Parliament
Edinburgh
EH99 1SP

11 March 2014

Dear Mr Gibson

Thank you for your letter of 19 February in which you ask for an explanation as to why a best estimate of capital costs was not provided within the supplementary Financial Memorandum on the Children and Young People (Scotland) Bill which your committee considered on 19 February. You were seeking an assurance that these costs will be provided to the Committee at the very earliest opportunity; and, you invited me to give evidence on these costs once they are available. These capital costs are associated with implementing early learning and childcare for 15% of 2 year olds with parents who are not working or seeking work, as defined through secondary legislation to be laid following Royal Assent.

The First Minister announced an expansion of the funded early learning and childcare entitlement to 2 year olds from workless or jobseeking households on 7 January. The Supplementary Financial Memorandum was prepared at the end of January, as required by Parliamentary rules. The limited period between formulating the policy announcement on 7 January and delivering the supplementary financial memorandum did not allow sufficient time to develop a robust analysis of the existing capacity within local government, and therefore the additional estimated cost estimates (best or otherwise) of additional infrastructure were not available at that time.

Work is underway to generate and test those estimates. We are working closely with COSLA and local authorities to determine the capacity and capital implications of our commitment to deliver funded early learning and childcare to around 15% of 2 year olds from households where parents are not working or seeking work from August 2014; and, to around 27% of 2 year olds where their parents would meet free school meal qualifying criteria, from August 2015; and, to identify additional capital costs. Capacity is complex, but we are addressing these issues as swiftly as we can.
These costs will be provided to the Finance Committee at the very earliest opportunity and I am happy to give evidence to the Finance Committee on those costs once they are available.

Aileen Campbell

AILEEN CAMPBELL
Present:

Gavin Brown  Malcolm Chisholm
Kenneth Gibson (Convener)  Jamie Hepburn
John Mason (Deputy Convener)  Michael McMahon
Jean Urquhart

Children and Young People (Scotland) Act 2014: The Committee took evidence from—

Michael Russell, Cabinet Secretary for Education and Lifelong Learning, Stuart Robb, Head of Policy Delivery, and Scott MacKay, Finance Business Partner, Scottish Government.
Children and Young People (Scotland) Act 2014

09:30

The Convener: Our second item of business is to take evidence on the Children and Young People (Scotland) Act 2014 from the Cabinet Secretary for Education and Lifelong Learning. He is accompanied today by Stuart Robb and Scott Mackay from the Scottish Government.

I intend to allow around an hour for this part of the meeting. I welcome Mr Russell to the meeting and invite him to make a short opening statement.

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Thank you, convener. As you may have noticed, I am not Aileen Campbell. I proffer her apologies; she has, unfortunately, been taken ill. I look forward to answering the committee’s questions today, to the best of my ability.

I thank you for the opportunity to give evidence on the additional capital costs that are associated with implementing the early learning and childcare commitments for additional two-year-olds, in relation to the supplementary financial memorandum for the Children and Young People (Scotland) Act 2014.

My colleagues and I appreciate the need to provide the Finance Committee with that information, and I know that Aileen Campbell would like to have got it to you sooner. Unfortunately, in the very short period between the new provisions being put forward and the date by which the supplementary financial memorandum was required, it was not possible to secure the essential information that was required for making a robust estimate, nor even to provide the committee with a best estimate.

We want to make sure we get the information right in order properly to inform parliamentary consideration and to deliver the policy properly. That has meant our going through a complex process that has required close engagement with local authorities, through the Convention of Scottish Local Authorities, to produce what I believe is now a robust estimate.

The Scottish Government is committed to funding fully the agreed costs of the policy. We have already committed more than a quarter of a billion pounds—£280 million, in fact—to local authorities to support implementation of our early learning and childcare commitments. That includes significant capital funding, £59 million over the next two years in revenue costs for the expansion for two-year-olds and £3.5 million of funding to strengthen the capacity and skills of
staff. That demonstrates how seriously we take the policy and how committed we are to delivering it.

With regard to capital costs, we have already made significant funding available. In the original financial memorandum, we provided £90 million in capital over three years for additional capacity for three-year-olds and four-year-olds. The Cabinet Secretary for Finance, Employment and Sustainable Growth reaffirmed that commitment with a further allocation of £31 million to the capital funding requirement of local authorities for the financial years 2014-15 and 2015-16, specifically in relation to the expansion of early learning and childcare to additional two-year-olds.

The method for estimating the capital costs that are associated with the provisions is not straightforward and has required close engagement with COSLA and local authorities. We have analysed data from local authorities, which includes their estimates of required investment, and recent examples of capital that has been spent on the nursery estate for new builds or adaptations.

The work has been underpinned by data on location and numbers of eligible children, along with estimates of likely uptake rates, availability of existing capacity and distribution of children among local authorities and partner providers. That work has shown huge variations in the costs that are applied by local authorities and in the delivery models.

We have not yet been able to reach a final agreement with COSLA on the figures, although we intend to do so. However, we have produced a proposal, which is detailed in the paper that members have in front of them. It suggests an overall capital cost of £61 million for the extension of early learning and childcare to 27 per cent of two-year-olds. I believe that that represents a fair allocation that is drawn from clear evidence from the data that were submitted by local authorities on new build and adapted accommodation, linked to the latest available statistical information on uptake rates and existing capacity.

The process has necessarily been complex, and although we have not yet been able to reach final agreement with COSLA, we will continue to engage with it and with local authorities, and we expect to reach agreement.

I am, of course happy to take questions.

The Convener: Thank you very much for your opening statement. As is normal on the Finance Committee, I will ask some opening questions before I open out the meeting to colleagues.

Paragraph 4 of annex A of your submission states that

"Twenty returns have been received and analysed by the Scottish Government."

It adds that there has been

"wide variation in costs per child being applied from £1,000 to £23,000."

How can you give such a definitive figure of £61 million when it seems that the figure is not based on all 32 local authorities?

Michael Russell: The answer to your question is in the detailed information that we have provided to the committee, in particular the metric that we applied. Paragraphs 14 to 16 and table 1 indicate the overall calculations and the following paragraph shows how the metric was developed based on the local authority examples. I ask Scott Mackay to expand on that, but I think that the figure is based on very firm information and experience from, for example, the well-advanced work of the Scottish Futures Trust.

Scott Mackay (Scottish Government): Not all local authorities sent us data on new build and estimates of future build. We analysed what was available in order to underpin an average, which was generated in the metric that is displayed in the submission.

The Convener: One of the issues about which COSLA has raised concerns in its submission is the 60:40 split in provision between the public and private sectors. It states:

"this is by far the most significant issue and this aspect needs to be reconsidered."

COSLA’s submission states that

"Private providers have been approached but in the vast majority of Council areas they are unable or unwilling to offer places for 2 years olds."

The submission goes on to say that

"Two Councils in the west of Scotland are needing to work on a 100% local authority provision, with one of these Councils finding that only 1 of 70 private providers is willing to place 2 year olds from families seeking work. ... As an average, COSLA considers the true split of local authority provision will be between 80-100%.”

It suggests that that means that the figure of £61 million is somewhat optimistic.

Michael Russell: We do not believe that it is, and I will tell you why, convener.

The latest pre-school statistics show that, on average across Scotland, 60 per cent of early learning and childcare provision is delivered by a local authority, and 40 per cent is delivered through partner providers. The pre-school statistics show that 5,700 two-year-olds receive funded early learning and childcare, of which 50 per cent is delivered in local authority settings and
50 per cent by partner providers. Where such provision already exists, 60:40 is a favourable split for local authorities. COSLA has given examples of a number of councils that are using up to 100 per cent local authority provision. I do not deny that, but we have seen a number of examples of councils using partner providers to deliver in excess of 60 per cent of provision and, in some cases, 100 per cent.

There is a variation in current practice and in plans around the use of partner providers. We propose that the acceptable split needs to draw on current experience and what is happening. That leads us to the 60:40 split. I am not saying that negotiations cannot continue and, of course, in a negotiation both partners take robust positions in discussing the matter. However, the evidence that we have is that the 60:40 split is an accurate split and is based on actual activity now. Of course, we will continue to discuss the issue.

The Convener: COSLA’s submission states:

“The information obtained from Councils has been shared with Scottish Government officials during our discussions, and we had agreed a process to seek further clarification from Councils to help in the discussions with the metric. However, before this process could be completed we received an updated copy of the metric”, which basically said that the figure had been set at £61 million. If negotiations are continuing with COSLA, how flexible are you about the figure?

Michael Russell: There was an obligation on Aileen Campbell to come to the committee and give it further information. It is quite right that she did so. The metric that we have been working on is the information that you required. The metric leads us to the figure of £61 million. The COSLA figure is very substantially higher, but we have moved from earlier discussions of a lower figure. We will continue to discuss the issue, but we are confident in our robust calculations. Of course, there will be flexibility, but in terms of our estimate of what is taking place, the calculations that are laid out before you are very robust.

The Convener: I have one more question before I open the discussion out to colleagues. We are talking about a policy that will have to start being delivered from August, although discussions are still on-going with local authorities and COSLA. How confident are you that we will be able to commence the policy from August, as intended?

Michael Russell: I am entirely confident that we can do that, but we are also offering local authorities as much help as we can, which is the right thing to do. I do not question COSLA’s commitment; from the beginning, COSLA has shown a strong commitment to the policy. In turn, we have said that we will fully fund it — there has been no question about that. We are now talking about the detail.

Let us remember the numbers that are involved. Roll-out will start in August with a comparatively small number, which will rise over the next year and a bit from the 15 per cent that is to be achieved at the end of the first year to the 27 per cent that is to be achieved at the end of the second year. In those circumstances, what requires to be spent now can be spent now. Further discussions will have to take place, but I am confident that authorities can deliver.

Members will understand that delivery will be most difficult in rural areas because of the need to provide for small or very small numbers. I represent a rural area, so I understand that. We will give COSLA every assistance. We are trying to deliver the policy as partners and we are confident that we will do so.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): You could have chosen a legislative instrument other than the Children and Young People (Scotland) Bill to implement the policy, which could have been in a stand-alone bill. What might have been the effect of that?

Michael Russell: A stand-alone bill would have delayed implementation. The timeline on which we decided shows that we are trying to achieve as much as possible as early as possible. It is important to consider that timeline and how we got here.

We introduced the bill on 17 April 2013. On 5 December 2013, the Chancellor of the Exchequer made the autumn budget statement, which included consequential funding. On 7 January, the First Minister said that we would use consequential funding to expand provision to 15 per cent of two-year-olds in 2014-15, which will rise to 27 per cent in 2015-16: we said only in January this year that we would try to do that. There was a lot of parliamentary interest in that and we believed that we should try to do it.

On 19 February, stage 3 took place and the committee had its final discussion of the financial memorandum. On 19 March, the chancellor’s United Kingdom budget included consequentials. On 1 April, John Swinney announced the use of the entire £31 million of capital consequentials as a down payment on the capital costs. It was accepted that that would not be the final position. What he said was important. I quote:

“We will continue to work with our partners at the Convention of Scottish Local Authorities to fully understand the capital cost implications of the expansion of childcare services, but the initial investment of £23.6 million in 2014-15 and £7.7 million in 2015-16 will emphasise our determination to properly resource our early learning and childcare services within the constraints of devolution.” — [Official Report, 1 April 2014; c 29606.]
We have moved quickly to deliver something that is required and desirable, but the negotiations will take longer. If we had not done what we did, we would not have been able to deliver the policy this year and we would have had to use a special legislative vehicle or part of another bill. The earliest we could have done that would probably have been next year. If we had had to wait for a bill to be passed next year, that might well have meant a delay not of a single year but of two years. We did not want that.

Jamie Hepburn: So, 15 per cent of two-year-olds would not have been getting the provision by the end of 2014-15—that could have been delayed until 2016-17 or later.

Michael Russell: Yes. You put it more succinctly than I did.

Jamie Hepburn: You estimate that the average capital cost per child will be £6,900, which is lower than the schools for the future metric. Will you explain the difference? Is it down to the fact that the approach differs slightly from the schools for the future programme, which involves new build?

Michael Russell: Scott Mackay will talk about the metric, which is complex. It covers new build, reconstruction and other actions, and it also involves sessions. We calculate the cost per pupil, but the new metric involves the cost per two pupils, because there are two sessions a day.

Scott Mackay: The detail of the metric and the variation from the standard Scottish Futures Trust metric result from the interaction with COSLA and the acknowledgment that different types of build have different costs.

Based on the returns that we received, we factored in an adjustment for the costs of adaptations to existing provision, we included a standard cost—an approximation of the costs of a new build was accepted—and we adjusted for a slightly higher cost of extensions to existing build. After factoring in all those costs, we came to the revised figure in the table. That was an attempt to reflect the information that we had received from COSLA on cost variations based on the type of provision that is needed in particular areas.

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09:45

Jamie Hepburn: Thank you for that. COSLA’s paper makes the point on discussions that the cabinet secretary made. It says:

“COSLA has had a number of discussions with Scottish Government officials around the capital costs and the use of a metric was first proposed by Scottish Government in early May. Through discussions some of our concerns have been taken on board.”

That is COSLA’s view, but will you respond and set out how the Scottish Government has moved towards taking on board COSLA’s concerns?

Michael Russell: It is probably for the officials who were involved in those discussions to respond to your question.

Stuart Robb (Scottish Government): The main shift in our position to meet COSLA’s concerns has been on full-time equivalent places. We have moved to two children per space on the basis that local authorities deliver sessions in the morning and the afternoon. Our previous estimates had a slightly higher figure.

Scott Mackay mentioned the cost per child metric. We have looked at the data from local authorities and we have adjusted our capital expenditure costings in the original financial memorandum based on that information. We have increased the cost for extensions, as Scott said. We have also adjusted the split between the adaptations, new build and extensions that local authorities are expecting to deliver, and we have factored all that into the calculations, which has resulted in a higher figure.

Jamie Hepburn: In the process of dialogue and negotiation, has the Government taken on board what COSLA has said?

Stuart Robb: Yes.

Michael Russell: We will continue to do so. We are having a positive debate. We think that we have a robust metric, but we are listening.

Jamie Hepburn: Thank you.

Gavin Brown (Lothian) (Con): Cabinet Secretary, you explained that it was not possible to give capital costs in the supplementary financial memorandum because of the lack of time between 7 January, when the new provisions were presented, and the supplementary financial memorandum’s publication at the end of January. Why has it taken almost five months to get any details on capital costs to the Finance Committee?

Michael Russell: As I tried to indicate with the timeline, the process has been fast moving. The original bill had only a tiny inclusion on two-year-olds, but in January it was decided that they would be a major feature. Capital money was allocated only in March, which was followed by discussion of the metric process.

On 1 April, John Swinney announced the allocation of the money. The reality is that we should look at the process only from 1 April until now which, by my calculation, means that we have been looking at the matter for only two months and a few days. Since that time, following the down payment of the full amount of the consequentials and how we took that on, a complex series of...
discussions have taken place about how to progress the work.

We have reached a position whereby the discussion is meaningful, but we have not finished the debate, I suppose that, in a sense, Aileen Campbell, on whose behalf I speak, would have preferred to have come here with a final agreement with COSLA. We are not in that position, but we are in a position to share substantial information and to show, if I may put it this way, the workings.

**Gavin Brown:** The policy was announced in January, the supplementary financial memorandum was published at the end of January and the legislation was passed in February. Why are you saying that we should count only from 1 April?

**Michael Russell:** We have a situation whereby, on 1 April, the first scoping out of the money that would be made available was announced by the cabinet secretary. I quoted his words when I said that we had

> "an initial investment of £23.5 million in 2014-15 and £7.7 million in 2015-16."—[Official Report, 1 April 2014; c 29606.]

From then on, it has been a matter of negotiation.

We are where we are—we are having a detailed discussion, and that is useful. The alternative would be to say that we could not implement the policy this year, that we should put the issue away, that we should not address it in legislation and that we should not put the money aside for it. In that case, as Mr Hepburn has pointed out, there would be a delay in implementation. That would not benefit the children whom we are trying to benefit.

**Gavin Brown:** The alternative would be to have done the scoping before announcing the policy.

**Michael Russell:** The policy was something that we wished to pursue. When the money became available, we tried to find a way to do that. It is a positive and ambitious thing that we have been trying to do, and we are getting there.

**Gavin Brown:** I understand that a Scottish statutory instrument, the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, was laid on 19 May this year, with a figure of £31 million attached to it. How was that £31 million figure reached?

**Michael Russell:** I have just explained to you that it was the entire capital consequentials that were available from the budget. John Swinney said:

> "We will continue to work with our partners at the Convention of Scottish Local Authorities to fully understand the capital cost implications of the expansion of childcare services, but the initial investment of £23.5 million in 2014-15 and £7.7 million in 2015-16 will emphasise our determination to properly resource our early learning and childcare services within the constraints of devolution."—[Official Report, 1 April 2014; c 29606.]

That is what was available, and that is what we were starting with. I think that it was the right thing to have a discussion and debate with COSLA to see what the final figure would be.

**Gavin Brown:** To be clear, that was based on what was available in consequentials, as opposed to what you thought would be needed.

**Michael Russell:** As John Swinney put it, it was an “initial investment”. We were listening, and we should be listening. We continue to listen, debate and discuss.

**Gavin Brown:** COSLA is saying that its estimate, from what it calls a “bottom-up” exercise, is £114 million. You are now saying that the amount is going to be £61 million. You said earlier that both parties take a robust position and then discuss and negotiate. Is your £61 million basically you taking a robust position for discussion and negotiation?

**Michael Russell:** No. As I am sure you are aware—I am sure that you have read the paper—

**Gavin Brown:** Of course.

**Michael Russell:** The £61 million is based on the metrics. That is a provable figure, and it is the figure that we are discussing. Sparing my officials’ blushes, I think that the set of calculations were well worked out as regards what we believe to be the right approach.

I am not going to indicate an inflexibility, as there is no inflexibility. We are working as partners on the matter, and we will continue to do so.

**Gavin Brown:** We heard evidence from the Scottish Government on 19 February. In response to our questioning about the capital costs, the Government said:

> "we have shared our working and calculations with COSLA ... and concerns have not been raised".—[Official Report, Finance Committee, 19 February 2014; c 3665.]

At that point, workings had been shared and concerns had not been raised. How do you explain that statement, given what COSLA has said in its written submission to us, where it is clearly raising what it describes as “significant concerns”?  

**Michael Russell:** Considerable work has been done since then on both sides. No indication was given that there was an agreement, and we have continued to proceed in a very positive way. However, there was no final agreement—there was not even an interim agreement. A lot of work has been done since that time, and that will continue.
Gavin Brown: But it remains the Scottish Government’s position that there were no concerns from COSLA in February this year.

Michael Russell: It depends on the interpretation of “no concerns”. There was a good mutual relationship, and that continues. There is clearly a discussion to be had about the fine detail of paying for something.

Gavin Brown: With respect, it is not—

Michael Russell: Does Scott Mackay wish to say anything about that?

Scott Mackay: I was not at the evidence session on 19 February, but I think that that statement was made in the expectation that we would continue to engage positively with COSLA until we achieved a resolution.

Gavin Brown: You are saying that it is a matter of interpretation. Either COSLA had raised concerns at that stage, or it had not. Which was it?

Michael Russell: The evidence that an official gives is the evidence that the official gives. They obviously have a good, positive relationship, and they have been discussing the matter. We continue to discuss it. Figures have been worked on and have varied since that time. We are trying to deliver the policy in partnership in a way that benefits two-year-olds. It is a positive approach from both sides.

Gavin Brown: Okay. In relation to timescales, obviously the pace needs to accelerate somewhat if the policy, or at least a portion of it, is going to be delivered in 10 weeks’ time. How many children will be eligible as of August 2014 for the first cohort?

Michael Russell: The figure is 3,440—well, that is the anticipated take-up figure.

Gavin Brown: How many will be eligible?

Michael Russell: That figure is 70 per cent of the total eligibility figure. Is that correct, Stuart?

Stuart Robb: Yes.

Michael Russell: So we will get the figure for 100 per cent by adding to the 70 per cent figure of 3,440.

The total eligibility figure is roughly 8,000 for the 15 per cent target. The anticipated take-up is 70 per cent, which would give an anticipated take-up for the 15 per cent target in the first year of 6,800. The anticipated figures have been broken down for the phasing timetable, of which you are aware. The exact anticipated figures—which I fortunately now have in front of me—are 3,440 in August 2014, 2,293 in January 2015 and 1,147 in March 2015. Therefore, the estimate for August is 3,440.

Gavin Brown: Thank you. That is cohort 1, and time is tight, as we are only weeks away from the August start. Assuming that the 3,440 figure is correct, how do you know definitely that they can all be accommodated?

Michael Russell: I know that local authorities wish to ensure that that happens and that that is their intention. I am therefore sure that they will be able to make that provision. I would like to have that resolved as soon as possible, but we would expect local authorities to make that provision and we are continuing to work with each local authority to help them to do so. We will go on doing that right up until the first day of term—although there will not of course be a universal first day of term, as it varies from place to place.

Gavin Brown: I get that, but do you see what I am driving at here?

Michael Russell: I do.

Gavin Brown: The local authorities are raising concerns about whether that can be delivered. I am asking you how you know that it can be delivered.

Michael Russell: I believe that the local authorities want to deliver it as much as the Scottish Government does, because we are doing it for the benefit of two-year-olds. We believe that the policy is right. It has been challenging from the beginning, but we are going to continue to work together with the local authorities to deliver it. That is our firm intention, that is what we want to do, and that is what we are working together to do.

Gavin Brown: How many of the 3,440 will require some form of building work or adaptation to happen?

Michael Russell: I do not think that it is possible to say whether that is the situation. We must remember that COSLA applies a formula, so I do not think that it is possible to say how many of those will require additional build places.

I think that we can apply some logic to this. Given that we are talking about 3,440 and that the ultimate total—once the 27,000 is in—will be 12,971 minus the ones already in the system, we are really talking about something like a quarter of the total. I would have thought that it would be much easier to accommodate those in existing space, if that were required, than it would be, for example, to accommodate the total after the two-year process. I think that there will be the good will to do so.

Gavin Brown: I guess that that is my question: can they be accommodated in existing space?

Michael Russell: The local authorities wish to do so, we wish to do so, and our intention is to do so. Mr Brown, I am doing my very best to indicate
to you that there is a strong commitment to the policy on both sides and that we intend to deliver it.

Gavin Brown: Thank you.

Michael McMahon (Uddingston and Bellshill) (Lab): Again, the issue comes down to some of the figures that have been used. You have been very specific in terms of the number that currently exists, which is 12,971 minus the 1,983. I suppose that it is easy to be specific when you already know that those children exist and you can count them.

You then have to project, but the figures become a bit less clear. I understand that. However, according to the financial memorandum, the figure that you used would suggest that an additional 10,988 places are going to be required, whereas the supplementary financial memorandum suggested that the additional figure for two-year-olds from August 2014 would be 8,400 and would rise to 15,400 from August 2015. There is therefore a question because, no matter how you do those sums, they do not come out to the same figure. Can you explain that to us?

Michael Russell: I was myself concerned when I saw those figures. Let me explain them to you, because I had to ask for an explanation. If I fail to explain them adequately to you, I shall ask the person who explained them to me—Mr Robb—who will then explain them to you.

10:00

The figure for total eligibility at the end of the second year—which is the 27 per cent—equates to the 15,400. That is the total eligibility at the end of year 2. The assumed take-up rate in year 2 is 84 per cent, which is higher than the assumed 70 per cent in year 1. That is because experience elsewhere tends to show that the take-up rate for the first group will be lower than the subsequent take-up rate. There is also a particular issue in the group that is eligible in relation to the first take-up rate. Parents from workless households paradoxically may already have made some arrangements, because they themselves often do the care.

Therefore, the assumption for year 1 is a take-up rate of 70 per cent and the assumption for year 2 is a take-up rate of 84 per cent. The eligibility figure goes from 15 per cent in year 1 to 27 per cent in year 2. The figure for the end of year 2 is 15,400. If I am correct, an 84 per cent take-up rate is 12,971. When we take away from that the children who are already in the system, we come to 10,988.

In year 1, the eligibility figure is lower, as we are dealing with 15 per cent. The 8,400 figure relates to the total entitlement in year 1, which is a lower figure. The assumed take-up rate of that total entitlement is 70 per cent. That gets us down to the expectation that the figure will be around 6,800 in the first year, which is further subdivided by the phasing of the take-up. The first phase will involve 3,440. That is the phase that comes in this August, and it builds up to 15,400 at the end of year 2.

That is how it plays out. I had to have that explained to me this morning. I hope that I have explained it adequately.

Michael McMahon: You certainly have. The difficulty is that that answer must have been known when the SFM was drawn up, so why could you not give us that answer and explanation at that time? If you did, we would not have had to speculate on why those figures do not add up and it might have helped the misunderstandings about affordability and deliverability between COSLA and the Government.

Michael Russell: Perhaps Stuart Robb can explain that.

Stuart Robb: We did not know those figures at that time. The initial announcement was based on annual statistics that related to the number of children in workless households. Since then, we have had to work with COSLA and the Department for Work and Pensions. Members will have seen the criteria that we set out in the eligibility order that has been laid. We had to identify the qualifying benefits that would allow us to identify the right number of children, and it took a bit of time to get to that stage. We therefore did not know the exact numbers at the time.

Michael Mcmahon: I understand that you might not have known the exact numbers, but there was a disparity between the financial memorandum and the supplementary financial memorandum. Those figures were in the SFM, so you knew them. The explanation about why there was a difference was missing.

Michael Russell: That is a fair point, and I am glad to have been able to provide an explanation today. You are absolutely right to say that it would have been better to have provided that earlier.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I want to look at the two basic reasons why COSLA is in disagreement with you. The convener has already touched on one of them, but I want to ask further about it.

Your response to COSLA’s objection to the 60:40 split was to quote current percentages. Are you confident that the composition of the two-year-old cohort that currently has childcare will be identical or even similar to that of the new cohort? I suppose that many two-year-olds who are
currently in private provision get all-day provision, as their parents work, for example.

I will quote just one sentence from COSLA’s submission—I do not know whether it is right, but it possibly makes some sense. COSLA said:

“private providers can be reluctant to provide the service for 2 year olds from workless households due to the expectation that the parents would be unlikely to buy additional further hours from the provider.”

I suppose that it is true that the majority of the new cohort of two-year-olds will not necessarily be from workless households, but they will certainly be from households that will not pay for extra hours for one reason or another. I wonder whether the percentages that you quoted are directly relevant to the new situation.

Michael Russell: That is a fair point, but we have not seen that evidence from COSLA. Equally, we believe that there is no evidence that a local authority will have to provide all of that provision itself or that it would do so where there is not already some existing capacity. We have not been inflexible in that discussion, but we have seen no evidence that suggests that. The evidence that I have quoted shows that provision for two-year-olds is provided by private providers, and there is no evidence that they will stop providing that.

We are not inflexible in the discussion and, because the policy is fully funded, the actual revenue cost of meeting that policy aim—were it to fall more extensively upon local authorities—would be reflected. I do not think that we are seeing the evidence from COSLA that proves the point, and the evidence that I have quoted shows that private providers will continue to play a major role. There is a capacity question as to whether local authorities would be able to provide in that way without fairly major changes, so I think that the Government’s assumptions are reasonable.

Malcolm Chisholm: The second point that COSLA makes—it makes only two major points—appears to be more objectively provable, because it questions your estimate of the cost per square metre of new build. COSLA says that it should not be an estimate, because

“the cost per metre for a new build provided for in the metric is £2,400, however figures obtained by COSLA suggest that £2,800 per square metre is more realistic”.

One would think that that could be proved one way or the other.

Michael Russell: Mr Chisholm, I share your hope in physical fact, but I have found, having dealt with the Scottish Futures Trust funding for school buildings, that there is often a huge debate that rages over a long period of time about what the actual costs will be. I shall ask Scott Mackay to address that, because it is a debate that arises especially in the provision of school buildings.

Scott Mackay: We have drawn the figures on the basis of the data that was provided to us by individual local authorities, as the COSLA paper says. Because of the timing of our commitment to appear before the committee, we had to submit the paper to you before we really had a chance to engage fully on the detail of that metric. I expect to be able to resolve that with further discussion. We are perfectly willing to share the details of information that we have based our figures on and how we have arrived at them, and I hope that that discussion will allow us to arrive at some consensus.

Stuart Robb: I can add a bit of detail about how we have reached the £2,400 figure and how that has fed through into the calculations.

The figure of £2,400 is based on the metric used for the schools of the future programme, which we agreed with COSLA for the previous allocation of capital. For that reason, we used it as a starting point. However, it is clear from the information submitted by local authorities that the costs per square metre vary depending on the type of capital programmes that are being considered. For example, adaptations are cheaper than new build and extensions are more expensive than new build.

Accordingly, as set out in table 2 of the proposal, we adjusted the cost per square metre to reflect the different kinds of capital costs that local authorities have told us will be involved. From a new build figure of £2,400, we are down to £1,700 for adaptations, because they are cheaper, and up to £3,100 for extensions. Based on local authority returns, we have estimated a split of 30 per cent adaptations, 30 per cent new build and 40 per cent extensions.

John Mason (Glasgow Shettleston) (SNP): Since we are talking about square metres, are we clear about whether all the councils are on a level playing field when it comes to how much space is needed for each child? There is mention of areas from 2.8m² up to 7.5m² but, if I understand the figures correctly, that is because we are sometimes talking just about the play area that the kids are in most of the time, not including office space, changing space, cloakrooms and all those things. Is it all the same when you boil it down?

Michael Russell: It is, from a wider educational perspective. Those are exactly the issues that are addressed in the new build and replacement of primary schools and in questions of school closures when considering what the space occupied by a child would be.

Stuart Robb is better placed to talk about the issue in this context, but it is a common problem in
the negotiation that takes place about any educational establishment or building and in determining how to reach an agreement on the total space occupied and how that space is used.

**Stuart Robb:** In the returns that we had from local authorities, some used the Care Inspectorate metric, which involves a figure of 2.3m² to 2.8m²; some used a different measurement, which comes out at about 5m²; and others used the schools for the future programme figure, which is 7.5m². Other authorities have used slightly different figures. On average, we have come out with the figure of 7.5m² as the right one. There is huge variation in the returns from local authorities.

**John Mason:** Is it the case that some councils are more optimistic, or do some just want more space than others?

**Stuart Robb:** You were right when you said that the lower cost metric includes just the play space. That is perhaps what some authorities have used for their costings, whereas others have done that by including all the other facilities. That is what is included in our metric—it covers a wider area.

**Scott Mackay:** The figure of 7.5m² is in essence the highest figure. In the calculation, we make a full estimation of all the additional space that is required to support the provision.

**Michael Russell:** It is significant that we have not accepted the lower figure. That was done after some thought and because we have seen circumstances in other school building processes in which lower figures were accepted. That is not really what we are trying to aspire to.

**John Mason:** That is helpful. As long as that is all being looked into, I am content. I know that, with primary school buildings, councils have had different ideas as to what is required.

On the point about private providers, I assume that the word “private” includes both the voluntary sector and what we would normally think of as private providers. Are we convinced that the councils are supporting, helping and approving the private providers? Historically, I have found that some councils have been a bit resistant to using private providers. Are we convinced that it is really the private providers and want to do everything themselves. Are we convinced that it is really the private providers that are not willing, or is it the councils that are not willing to use those providers or to pay them properly?

**Michael Russell:** We have to be careful about our involvement in that issue. The delivery of the policy is an issue for local authorities—they choose how they will deliver it. Some local authorities believe that it is best to deliver that substantially through their own efforts; others believe that it is better and more cost effective to deliver it through the use of private providers; and there is a mix between the two.

I do not think that it is or should be our position to tell local authorities how to do that. The decision is rightly made by the local authority. There are national standards that have to be met, and we expect them to be met—indeed, they are enforceable. However, I would not intrude on that any further.

A local authority will have its own reasons for making a decision. Nobody would want us to second-guess a local authority’s decisions in that regard. We need to know the balance of provision across Scotland, and we think that our estimate of that, from what we know of the sector, is correct.

**John Mason:** So if a family in one part of a council area had no provision near them and the council said that they should just travel to the other side of the council area to get the council provision, that would really be an issue between the family and the council and is not something that the Government would get involved in.

**Michael Russell:** Yes.

**John Mason:** My final point is to seek clarification on the figure of £61 million that we have touched on. In negotiations, one party starts at one end and another party starts at the other, and there is a movement towards the middle. Has the £61 million figure been reached after some movement towards the middle, or is it the starting point?

**Michael Russell:** It is not the starting point, but we are in the process of negotiation. We are talking about £61 million not only because it is our obligation in talking to the Finance Committee but because we believe that it is robust and well founded. We have laid out our workings, and that is the strong position that we find ourselves in, but we are discussing the figure. COSLA has talked about £114 million, but we do not agree with that figure, for reasons that we have given to COSLA. That is the position that we are in.

**John Mason:** Are you implying that you have already moved from a lower figure?

**Michael Russell:** Yes. I think that we were at £41 million some time ago. I am absolutely not ruling out there being a different figure at the end of the day, but I am saying that we believe that the figure of £61 million is well founded and well established and we stand by the metric that we are presenting to you.

**The Convener:** That concludes questions from members. Before you charge off, cabinet secretary, I still have some questions to ask, as is usual—I always have one or two wind-up questions.
I want to go back to the private sector issue. COSLA said in its submission:

"the location of the private providers is usually not in the same location as the eligible children from workless households targeted by the policy."

How will the policy be delivered in areas in which a disproportionate number of children have to go to private providers, given the issues that we have talked about, such as the apparent resistance from the private sector and capacity in the public sector?

10:15

Michael Russell: That is a delivery issue for the local authorities, which, in Scotland, are charged with the responsibility of delivering education at those levels. If a local authority believes that there is not adequate provision in an area and is under an obligation to deliver, it will have to find the way so to do.

I do not entirely accept that there is no provision in some areas. That is a very broad-brush approach to take. The third sector is involved in delivery in a variety of places in Scotland and might well deliver in areas where there is a high percentage of workless households.

We want to support local authorities to be able to deliver the policy in all the places where it is needed—the places where there is any demand at all, not just the places where demand is highest. That is the purpose of our negotiations. We will provide the revenue support that is required, in its entirety, and we will provide the capital support for delivery, in its entirety. Ultimately, local authorities will make the delivery decisions themselves. That is what they are charged to do.

The Convener: As a result of the negotiations, you have increased the amount of capital from the £31 million that was announced on 1 April to £61 million. In relation to the private sector, if the issues to do with delivery that we touched on arise, will additional funding potentially be available to individual local authorities?

Michael Russell: No, I would not expect that to be the case. The allocation that we are making is for local authorities to deliver the policy; it would not be normal for local authorities then to fund private providers to expand their services. That is a decision that local authorities could make, but it would not be dealt with through the provision that we are talking about.

The Convener: Sorry, I was not clear. I was thinking about what would happen in an area if the private sector was unable to provide services and the burden fell disproportionately on the local authority, in the context of what had been estimated. Would there be additional funding for the local authority?

Michael Russell: There would be no disproportionate burden, because the local authorities should be aware of what it will take to implement the policy in their areas. Education is delivered through local authorities because they know their areas and understand the best way to deliver education at every level. That is the system that we have in Scotland from early years and right through the education system.

We would not second-guess local authorities and say, “You must deliver it in this way.” The only area in which there is that sort of relationship is school closures, which is a complex area that is governed by legislation. In the circumstances that we are talking about, the current arrangement is that local authorities are keen on and will deliver the policy, and they are being fully funded to deliver the policy, but how they do so within that framework will be for them. I am sorry to keep stressing that, but it is absolutely the situation.

We do not interfere in the way that has been suggested. I think that members of the Parliament—indeed, members of this committee—might criticise us if we interfered in the decisions that local authorities rightly take on how they deliver policy.

The Convener: Okay. You emphasised that the Scottish Government will fully fund the policy. There is, of course, a disparity between what the Scottish Government says it will cost and what COSLA says it will cost, which we have discussed. Negotiations are still going on in that regard. If, after a year, it is clear that there is a funding gap, will the Scottish Government re-assess the figures and ensure that the gap is effectively plugged?

Michael Russell: Yes, and I have made that clear to COSLA. We want to get this right, and we think that the best time to get it right is before we start, or in the process of setting things up, which is why discussions are taking place.

If COSLA comes back in a year or 18 months’ time and says that it has discovered 10 things that it did not know about delivering for two-year-olds, we will of course have a serious conversation, because this is about ensuring that two-year-olds, progressively, get the early years education that we hope ultimately—through the powers of independence, if I may make that point—to deliver for all two-year-olds in Scotland. This is a growing service, and we would not want it to be adversely affected.

We have made a commitment to full funding and we will meet that commitment, but that does not mean that full funding is simply decided on by someone saying, “This is the figure; take it or
leave it.” There has to be negotiation based on robust fact, which is what we are trying to get to.

**The Convener:** Okay. Thank you. Is there anything else that you want to bring to the committee’s attention?

**Michael Russell:** I will just say thank you for the opportunity to give evidence. I hope that we have clarified the issues that required to be clarified.

**The Convener:** I thank the cabinet secretary and his officials.

10:19

*Meeting suspended.*