



Children and Young People (Scotland) Bill

Bill Number:	SP Bill 27
Introduced on:	17 April 2013
Introduced by:	Alex Neil MSP (Government Bill)
Passed:	19 February 2014
Royal Assent:	27 March 2014

Passage of the Bill

The Children and Young People (Scotland) Bill was introduced on 17 April 2013. It completed stage 1 on 21 November, stage 2 on 21 January 2014 and was passed at stage 3 on 19 February.

Purpose and objectives of the Bill

The purpose of the Bill is to make provision for supporting the wellbeing of children and young people across a range of policy areas. The policy memorandum describes the objective of the Bill as “making Scotland the best place for children to grow up” by “putting children and young people at the heart of planning and delivery of services and ensuring their rights are respected across the sector.”

Provisions of the Bill

The Bill makes changes across a wide range of children’s policy. The main provisions are to:

- give recognition of the UN Convention on the Rights of the Child (UNCRC) in domestic legislation (Part 1) and extend the investigatory powers of the Children’s Commissioner (Part 2)
- provide a statutory basis for Getting it Right for Every Child (GIRFEC) and to make changes to children’s services planning (Parts 3 to 5 and 13). This includes provision for a ‘Named Person’ for everyone under

18, a child's plan for those who need targeted interventions and joint service planning between health boards and local authorities.

- extend provision for early learning and childcare (Part 6)
- extend support for kinship carers (Part 10) and care leavers (Part 8),
- create a statutory definition of corporate parenting (Part 7) and provide for counselling services for families (changed to 'relevant services' at stage 2) (Part 9)
- create a statutory adoption register (part 11) and amend the process for establishing local support structures for the Children's Hearings system (Part 12)
- make changes to the procedures for school closures (part 11A, added at stage 2)

Parliamentary consideration

SPICe briefings SB13/38, SB13/77, SB13/59 and SB14/13 provide more detail on the Bill as introduced and as amended at stage 2.

There were 441 amendments lodged at stage 2 and a further 217 at stage 3. All Scottish Government amendments succeeded without a vote with the exception of some provision on information sharing at stage 2.

Main changes to the Bill

The main additions to the Bill were further extension of the rights of care leavers and changes to the process for school closures. During the passage of the Bill, the Government announced an extension to its policy on early education and care, but this is to be done under regulations and did not require any changes to the Bill.

Care Leavers

The proposals in Part 8 to extend support for care leavers were welcomed, but some wanted them to go further. In oral evidence at Stage 1, Aberlour Childcare Trust explained their proposals for widening the eligibility for aftercare and creating a 'right to return' to care. Successful Government amendments provide for a right to stay in the care placement. Regulations are expected to specify a right to stay until the age of 21. The Scottish Government announced £5m per year up to 2020 and an 'expert group' to consider implementation of the provisions. This group will also consider whether a young person ought to be able to return to continuing care if they leave it.

School Closures

At stage 2, there were significant changes made to legislation on school closures. The Schools (Consultation) (Scotland) Act 2010 is amended following a Court of Session judgement relating to the interpretation of that Act and the recommendations of a commission on the delivery of rural education. As this introduced significant new policy to the Bill, the Education and Culture Committee took evidence on the issue in December 2013.

Changes include the introduction of a 5 year moratorium on repeated closure proposals, a presumption against closing rural schools and the creation of a new 'school closure review panel' to review decisions. At stage 2, the Government agreed to work with opposition members on further changes. This resulted in an amendment from Liam McArthur on how local authorities have to deal with allegations of inaccuracies and from Liz Smith requiring local authorities to publish reasons for proceeding with a rural school closure.

Changes due to non-government amendments

Very few non-government amendments were successful. At stage 2 these covered four policy areas: children's services plans (Joan McAlpine), early learning and childcare planning (Clare Adamson), the definition of counselling services (Colin Beattie) and school closures (Liz Smith). At stage 3 there were successful non-government amendments in three areas – children's services plans (John Wilson), school closures (Liz Smith and Liam McArthur) and school meals (Adam Ingram).

This last amendment is to section 53 of the Education (Scotland) Act 1980. It provides for regulations which could require local authorities to provide free school meals to certain categories of pupils. It would also enable local authorities to extend eligibility if they choose to do so. These amendments relate to a Scottish Government policy of free school meals in the early years of primary school (See [News Release 7 Jan 2014](#)).

Main areas of debate

'Named Person'

Throughout parliamentary consideration of the Bill, the most controversial aspect was the provision of a 'Named Person' service and associated information sharing duties. The Bill requires local authorities and health boards to provide a 'Named Person' for everyone aged 0 to 18. This person will be a point of contact for advice or concern about the child. While there are duties for various public bodies to assist the Named Person and to share information with them, there are no new powers of compulsion. That is, the Bill does not give the Named Person any powers to force a child or family to do anything. If powers of compulsion are required, this can be done under existing child protection and Children's Hearings legislation.

While some were concerned about whether Named Person provisions were necessary and proportionate, others agreed in principle, but were concerned about costs and implementation. At stage 3 Liz Smith said: "We believe that the policy is wrong in principle, that it does not have conclusive supporting evidence and that it has not been properly costed." (col 27791). Liam McArthur noted that: "this in an area that is crying out for post legislative scrutiny" (col 27797).

Unsuccessful amendments tried to limit the Named Person provisions to children under 16 (instead of those up to 18) and to focus the service on

children with serious needs. The Minister argued that the Named Person provision was based on the principle of early intervention and had to be universal “because we do not know when that extra bit of help is needed.” (col 27799).

At stage 2, Liz Smith lodged amendments proposing a mechanism to resolve complaints about the Named Person. Scottish Government amendments at stage 3 allow for this to be done through regulations. The Minister, Aileen Campbell, said that a complaints mechanism will be in place before the GIRFEC elements of the Bill are commenced in 2016 (col 27823).

The Bill also provides for information sharing where there is a concern about a child’s wellbeing. This provoked much debate about the balance between a child’s right to protection and their right to privacy. Government amendments at stage 2 altered the requirement so that information is shared only if:

- it is 'likely to be' relevant (rather than 'might' be)
- the views of the child are considered,
- to do so would benefit the child's wellbeing.

If these conditions are met, information can be shared in breach of a duty of confidentiality. Debate continued at stage 3, with unsuccessful amendments proposing that confidential information is only shared with informed and explicit consent (unless to do so would adversely affect the wellbeing of the child).

Early education and childcare

Another area of considerable debate was the extent to which early education and childcare ought to be expanded. While the Scottish Government announced that they would use regulations under the Bill to further expand provision for two year olds, opposition parties argued for such provision to appear on the face of the Bill.

Unsuccessful amendments related to extending provision for 2 year olds, enabling 3 and 4 year olds to have two full years of pre-school, out of school care and childcare during school holidays.

United Nations Convention on the Rights of the Child

Throughout all three parliamentary stages there was discussion about whether the Bill could go further in recognising the UNCRC. A number of third sector organisations wanted the Bill to go much further, and referred to the initial plan for separate Bills on rights and services. While the Education and Culture Committee rejected calls for full incorporation of the Convention, there were a number of unsuccessful non-government amendments seeking to strengthen its implementation. These included proposals for a child rights impact assessment on every relevant Bill, adopting specific articles into Scottish law and proposing that Ministers have regard to the Convention.