

T: 0131-244 0239  
E: Elisabeth.campbell@scotland.gsi.gov.uk

Clerk to the Education and Culture Committee  
Room T3.40  
Scottish Parliament

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Dear Terry,

Thank you for the letter from the Education and Culture Committee on 2 October about the Children and Young people (Scotland) Bill. Responses to each of the questions are below:

### **Part 1 – Rights of children**

#### **What parts of the UNCRC could not be incorporated into Scots law because they are outwith devolved competence?**

The Scottish Government considers that the following provisions of the UNCRC ('the Convention') fall within the category of provisions that are outwith devolved competence:-

- (i) article 2 – equalities/equal opportunities
- (ii) article 3 – insofar as the actions concerning children relate to reserved matters;
- (iii) article 7 – insofar as relating to nationality;
- (iv) article 8 – insofar as relating to nationality;
- (v) article 10 – entry to/exit from a State;
- (vi) article 11 - insofar as this provision relates to the establishment of bilateral or multilateral agreements;
- (vii) article 17 – in part;
- (viii) article 22 - insofar as concerned with the granting of refugee status. It would be competent to take certain measures in relation to individuals who are seeking asylum;
- (ix) article 26 – social security;
- (x) article 35 – insofar as this provision concerns the establishment of national, bilateral or multilateral measures;
- (xi) article 38 – insofar as the issues concern membership of the armed forces.

The Scottish Government is of the view that the terms of the Convention do not readily translate into legal obligations that are directly enforceable in the domestic courts but recognises that insofar as within devolved competence it would be possible to pass legislation that gives effect to the principles outlined in the Convention.

The obligations imposed upon State Parties in terms of Part II of the Convention do not appear to the Scottish Government to be compatible with the legislative competence of the Scottish Parliament hence the limited definition of the term “the UNCRC requirements” which focuses on only Part I of the Convention, not Parts II or III.

**Which parts of the UNCRC are not in Scots law but could be incorporated within devolved competence? For each part, why has the Scottish Government chosen not to incorporate?**

Insofar as the provisions of the Convention relate to matters falling within the legislative competence of the Scottish Parliament, it is the Scottish Government’s view that Scots law is compatible with the principles underlying the Convention. However, it must be remembered that domestic legislation does not, in our view, always necessarily represent the best way to further the Convention’s principles and that is why our approach to implementation focuses not only on changes to the law where that is appropriate but also on changes in policy as well as improvements in frontline practice.

**How will the reports produced under Part 1 of the Bill differ from the reports that the Scottish Government already provides as part of the UN committee process?**

The reports prepared under Part 1 of the Bill will be prepared by Scottish Ministers and the authorities listed in Schedule 1 to the Bill. The report by Scottish Ministers will be submitted to the Scottish Parliament and will specify what steps the Scottish Ministers have taken to secure in Scotland better or further effect of “the UNCRC requirements”. The report by other authorities will contain similar provisions. Scottish Ministers must also report on what they have done to promote public awareness and understanding of the rights of children. There is a requirement to report every 3 years. The Scottish Ministers, and in practice also the relevant authorities, will be answerable to the Scottish Parliament for the fulfilment of the duties specified in the report.

Article 44 of the UNCRC places an obligation on State parties, which in this case means the United Kingdom, to report to the Committee on the Rights of the Child, on the measures adopted in the relevant State to give effect to the rights recognised in the UNCRC, and the progress made on the enjoyment of these rights. Such a report is made to the UN Committee, not the Scottish Parliament, and concerns measures adopted in the United Kingdom, either by the UK Government or the relevant Devolved Administrations where appropriate. This report is therefore broader in scope, covering both devolved and reserved matters, than what is proposed in Part I of the Bill. Although Devolved Administrations contribute for their interests to the UK

report, and may seek to influence its content, it is the United Kingdom Government in its capacity as the State party that determines the final terms of the Report.

## **Part 2 – SCCYP**

**Whether the Scottish Government agrees that section 5(2) (regarding 7(5)) would allow the Commissioner to undertake a general complaints handling function in the manner described by Tam Baillie on 1 October, or whether it should be interpreted more narrowly?**

The Scottish Government has consistently stated that the new powers being extended to the Children’s Commissioner are not intended to replace or duplicate the function of any other organisation involved in responding to concerns raised by or on behalf of a child, whether at local or national level.

In terms of current practice, we know through our discussions with the Children’s Commissioner that approximately 400 enquiries for support are made to his office each year, most of which are dealt with through the provision of information, guidance and signposting to the relevant complaints process. On occasion, the Commissioner may also support the child in raising their issue with a local service provider. It is then for the service provider to work with the child and their family to respond to the issue raised. Clearly, it is in the best interests of children if such issues can be resolved swiftly through relevant local complaints processes.

We accept that the proposed new power linked to individual investigations is likely to result in an increase in this type of enquiry and we agree it is important that this service continues to be delivered to those children and families who approach the Commissioner’s office. We must also recognise the resource implications associated with an increase in enquiries.

I am aware that the Children’s Commissioner has shared with the Committee his view that the Bill provides new powers to intervene in cases prior to local complaints processes being exhausted. In his evidence, Mr Baillie cited section 5(2)(c) of the Bill as being of relevance in this respect. The explanatory notes which accompany the Bill describe the purpose of section 5(2)(c) as follows:

*Subsection 2(c) amends section 7 of the 2003 Act to provide for the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.*

This provision is designed to offer the Commissioner some flexibility in dealing with a case which could otherwise be dealt with through an investigation. Paragraph 16 of the Explanatory Notes makes clear that the Commissioner may not undertake such an investigation where that would duplicate the work of any another complaint handling body. We would therefore not foresee there being a role for the Commissioner to have extensive, ongoing involvement in a case prior to local processes being exhausted and it is not our view that the Commissioner should take on any mediation-type role.

With regards to the types of cases which might reasonably be covered by an individual investigation, we understand that this is still the subject of some consideration by the Commissioner and his office. However, we have been assured by the Commissioner and other complaints handling bodies that there are instances where the new power could usefully add value. Our own view, as stated in the Financial Memorandum, is that investigations will be relatively few and far between. They may consider aspects of practice in the public, private and third sector so long as this would not duplicate the functions of another body. Whilst difficult to predict in the abstract, we would suggest that there may be scope for the Commissioner to intervene in instances where, for example:

- A public authority is under no statutory obligation to take account of a child's views and has failed to do so when reaching a decision that will affect them. It may be reasonable for the Commissioner to highlight in such circumstances that, as a matter of best practice, the child's views should be heard and taken account of in all decisions affecting them. Such an investigation could set a useful precedent for future practice.
- A private company delivering services to the public (perhaps for profit) has failed to take account of a child's rights. One example may be a company involved in the delivery of public transport services.
- A third sector organisation which is delivering an independent, unregulated service to children or families in the community has failed to take account of a child's rights. A service could cover, for example, parenting and family support, advice and information services, substance misuse projects, advocacy and a wide range of other community based initiatives.

Ultimately it will be left to the Commissioner to determine the matters which require investigation. The Parliament will of course have oversight of investigations as part of their sponsorship responsibilities in respect of the Commissioner.

Whilst the financial estimates linked to these provisions may seem disproportionate to the number of investigations, it is important to remember that the outcome of such investigations could potentially influence broader practice and ultimately prevent other children from having their rights infringed in future.

### **Part 3 – Children's services planning**

**The Committee has received a petition ([PE1440](#)) calling for the Bill to place a duty on local authorities to provide sufficient and satisfying play opportunities for children of all ages and abilities. Could Part 3 of the Bill be used to take the provision of play opportunities into account?**

'Play' is a key part of a child's wellbeing, and the Scottish Government would see it covered by the definition of wellbeing set out in the Bill. This includes reference to 'Active', 'Achieving' and 'Inclusive', all issues that involve 'play' and so remain at the heart of the Children and Young People (Scotland) Bill. Moreover, we would anticipate that the children's services planning duties, set out in Part 3 of the Bill, would encompass the contributions that Local Authorities, Health Boards and other relevant service providers can make to supporting play opportunities for children.

This will be addressed in the guidance associated with the planning duties, particularly in the description of the 'children's services' to be covered by the Bill.

#### **Part 4 – Provision of named persons**

**In the course of its two previous inquiries, the Committee has heard considerable concerns about the ability of different public bodies to share information electronically. What plans does the Scottish Government have to improve electronic sharing of information across all those services relevant to GIRFEC?**

The Scottish Government has encouraged and supported Local Authorities, Health Boards and other partners to form the Information Sharing Board. The Board's priorities include supporting the Children and Young People Bill and Getting it Right for Every Child.

The Board is funding local information sharing initiatives to help improve the sharing of information across services delivering GIRFEC. The budget is in excess of £1.5m in 2013-14 and £2m in 2014-15. It is also funding a project specifically to deal with sharing information across partnership boundaries.

National minimum data sets for a child's plan are currently being agreed to improve consistency in recording and storing information

**Can you clarify whether, under section 19(3), a named person could be drawn from the voluntary and private sector on the basis that they provide a function on behalf of the health board or local authority?**

Section 19(3) means that an individual can be identified to act as Named Person if they are an employee of a person who exercises any function on behalf of the service provider (i.e. Health Board, Local Authority or directing authority). That could include voluntary/private sector organisations who exercise such functions. This provision is necessary because, for example, in the Highland Council area, where the Named Person service is already operating, the Health Visitor service is now provided by the Local Authority, rather than the Health Board. Health Visitors are normally the Named Person in respect of pre-school children. But the duty to provide the Named Person service in respect of pre-school children lies with the Health Board, who remains the "service provider" for such children. As such, it is necessary to have a specific provision in the Bill which allows the Named Person to be someone other than a direct employee of the service provider. In addition, there are instances where private midwives and nurses are contracted to provide health services and the provision is also required to cover this situation.

**If so, how does this connect with section 26, which appears only to allow information to be provided to the service provider by a service provider or relevant authority – would this mean that if a named person was in a contracted-out service then there would be no duty to share information with them?**

Section 26(7) of the Bill caters for such circumstances:

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

Section 26(7) aims to ensure that, where provision of the Named Person service is contracted out, the provisions related to information sharing which apply in respect of Local Authorities, Health Boards and directing authorities would also apply to contracted-out bodies exercising functions on their behalf.

**One of the stated advantages of having a named person is that it would be much clearer who needs to be contacted where there is a concern about a child. How will that advantage be ensured if the named person changes during the school holidays?**

When the Named Person is not contactable during the school holidays, the Local Authority will be required to make arrangements for the Named Person service to be provided. This means that there will always be a member of Education Services staff available to deal with any concerns from families or others.

For example, the process for handling concerns during school holidays in Highland is:

Where there are child protection concerns during the school holidays, the person with the concern should alert the Social Work department or the Police, who will then take action as appropriate.

Where new concerns for a child’s wellbeing arise during the school holidays, these can be passed on to a member of staff in the Area Education Office who will note the concern, access the child’s education record and consider whether immediate action is required. If no immediate action is required, the information relating to the wellbeing concern will be passed to the Named Person on their return.

For those children who have an Education single agency plan, a discussion will be held at the last review before the school holiday about how the plan will be continued after the holiday. Education plans will relate to concerns that exist in the Education setting, and there will not usually be a need for contact with the Named Person during the school holidays.

**How is the named person an improvement on the current situation where a lack of continuity exists for families that have frequent home moves?**

Section 23 of the Bill applies to the movement of children and young people. Section 23(2) places a duty on the outgoing service provider (i.e. the Health Board or Local Authority in the original area) to inform the incoming service provider (i.e. the new Health Board or Local Authority) with information that is relevant to enable the new Health Board or Local Authority to provide a service, including the Named Person service. Moving from one Local Authority to another and one Health Board to another would therefore initiate the appointment of a new Named Person. This would not require the parents’ consent but they would be informed that they have a new Named Person, and how to contact them. Good practice would be that the

outgoing Named Person would discuss with the parents the information that they plan to share with the new Named Person. The effect of this provision will be that the new Named Person will be given relevant information about the child that will enable them to support the transition to the new area. Where a child has a Child's Plan, the plan will be shared with the new Named Person and Lead Professional, and will be reviewed following the move.

**What is the rationale for providing for a named person for each child/young person after school-leaving age?**

Most young people who have left school will have the skills and knowledge to express their views and reach decisions. Some, especially those with complex needs, will still require help and support. The Bill will ensure that appropriate arrangements are in place at Local Authority level for children who have left school before the age of 18. The role of the Named Person in these circumstances will be a point of contact for the young person; to provide information and advice; and where appropriate, link the young person into resources and support networks which currently exist for those young people who have left school but need further assistance.

**In evidence to the Committee, Bill Alexander suggested that “the named person would support early interventions but as soon as more than one agency got involved the co-ordinating role would move to a lead professional”. What would be the criteria for when a lead professional would be expected to take over responsibility from the named person?**

Where concerns about a child or young person's wellbeing require to be addressed by co-ordinated intervention from more than one service or agency, then a Lead Professional can be identified to take on that co-ordinating role. The Named Person will either take on the role of Lead Professional themselves, or will agree with the partners involved in supporting the child / young person, who is most appropriate to take on the lead professional role to manage the multi-agency Child's Plan. The Lead Professional may be drawn from any of the services or agencies who are partners to the Child's Plan. The choice of Lead Professional will be dependent on the needs of the child and the interventions and outcomes identified within the child's plan.

**Bill Alexander also stated that “if we are legislating for the child's plan why can we not legislate for the lead professional who prepares the more complex child's plans?” Why has the role of the lead professional not been included in the Bill?**

The Named Person is located within the universal services of health and education and we can place a statutory responsibility on those bodies to make arrangements to provide a Named Person. The Lead Professional will be the person who is best placed to address the more complex needs of the child, and so can be drawn from any service; they will not necessarily be located within health or education. It is, therefore, difficult to place a duty on an individual body to make the arrangements for the Lead Professional.

The duty to cooperate and arrangements around the Child's Plan provides a statutory backing to sort out protocols across agencies in a Community Planning Partnership to ensure local arrangements are agreed. What is important is that public bodies agree the arrangements and make sure they work well. This is an area where guidance is more appropriate alongside legislation.

## **Part 5 – Child's plan**

**A targeted intervention is defined as an intervention provided by a relevant authority (section 31(4)). Does this mean that the child's plan will not be able to provide for support that is delivered by third sector organisations?**

Third parties will be able to deliver targeted interventions where these are part of arrangements entered into with either the Local Authority, Health Board or directing authority (as it is technically that body that is 'providing' the targeted intervention, albeit through commissioned arrangements).

**In relation to the child's plan, how will any disputes between families and professionals be resolved?**

Disputes between professionals should be resolved locally whenever possible using existing Health Board and Local Authority dispute resolution procedures. Guidance will set out the need to have these in place and the requirement that they are visible and accessible to children and parents.

If disputes cannot be resolved locally, we want redress for children/young people and families to be accessible, clear and quick and are currently considering how best to achieve that. Using legislation is one of the ways that may be appropriate.

## **Part 6 – Early learning and childcare**

**It has been suggested, for example by Children in Scotland, that the commencement of three year olds entitlement for free childcare means, in practice, that a child can receive less than their full entitlement depending on their birthdate. Can you respond to these concerns and indicate whether the Scottish Government intends to take any action on the matter?**

Current entitlement to pre-school education is set out in the Provision of School Education for Children under School Age (Prescribed Children) (Scotland) Order 2002 (SSI 2002/90). This Order prescribes the starting points for entitlement as the Autumn, Spring or Summer term following a child's third birthday until the end of the term immediately before they are first eligible to attend primary school. Children starting their first year of pre-school education will therefore receive one, two or three terms depending upon when their birthday falls. All children will receive 3 terms during their second year of pre-school education.

Those children born in January or February (who may only receive one term in their first year of pre-school education) will remain entitled to an extra year after their second year of pre-school education if their parents wish. Those children will

generally be starting primary school younger (around 4 1/2) than others without this extra year.

Those children born between September to December and who start their pre-school education in the Spring term following their third birthday will potentially receive two terms in their first year of pre-school education. Those children will be closer to 5 years in age at the time of starting school (4 ¾ to 4 years and 11 months) and it is unlikely that those children would want to be held back from starting primary school with an extra year of pre-school education following their second year of pre-school education.

The policy intention is to continue this entitlement through secondary legislation made under the Bill. Local Authorities can and do deliver beyond the minimum statutory hours and the minimum eligible children. Some Local Authorities already commence entitlement closer to the child's third birthday, e.g. from their third birthday; or, within a month of the child's third birthday. Even where a child receives their entitlement closer to their third birthday, there will be slight variations in the amount.

We would encourage Local Authorities to use this power to commence closer to the child's third birthday where they have the capacity to do so; or, where expansion or increased flexibility within the system allows. The immediate priority of this Bill is to build on the high quality system of early learning and childcare that we have; expand those hours and improve flexibility; and introduce an entitlement for our most vulnerable 2 year olds. This is a first step towards the development of a wider early learning and childcare system that meets the needs of **all** children, parents and families; and, provides a consistent learning journey through early learning and childcare, primary school and beyond.

## **Part 7 – Corporate parenting**

**Can the Scottish Government explain the interaction between the corporate parenting duties of the local authority under section 52 of the Bill with their duties to looked after children under the Children (Scotland) Act 1995 and the duty in section 73 of the Bill to promote the wellbeing of looked after children?**

Section 73 of the Bill seeks to insert a new section 23A into the Children (Scotland) Act 1995 ("the 1995 Act") so that where a Local Authority is exercising a function under or by virtue of section 17 of the 1995 Act (in relation to looked after children) or section 22 of that Act (in relation to children in need) they must have regard to the general principle that those functions should be exercised in a way which is designed to safeguard, support and promote the children's wellbeing.

The Corporate Parenting duties set out in the Bill are wholly complementary to existing provisions in the 1995 Act and new section 23A to be inserted by the Bill. They strengthen the existing person-centred approach to address concerns quickly and effectively to improve the wellbeing of looked after children and formerly looked after young people. The provisions clarify the role and empower the wider public sector to provide looked after children and formerly looked after young people with support that closes the gap in outcomes between them and their non-looked after

peers. It further underpins the objective of having a single system of service planning and delivery across children's services. At the heart of this is the responsibility of all corporate parents to collaborate.

All measures setting out corporate parenting duties are consistent with the GIRFEC approach; with the child at the centre, encouraging streamlining and cooperation to eliminate unsatisfactory delays that can occur when services work in isolation from each other.

**Schedule 4 sets out a wide range of public bodies that would become corporate parents. Why has the list of bodies been drawn so widely, and is there a risk that, as the Scottish Children's Reporter Association suggests, this could dilute the concept of corporate parenting and the role of local authorities in its delivery?**

Schedule 3 sets out the list of corporate parents, which was purposely drawn widely from the public sector to encompass as many organisations as possible that have a key role in the decision making processes that affect our looked after children and formerly looked after young people. The policy preference is not to create different tiers of corporate parent but to unify the level of responsibility placed on these organisations - no matter what their role is - in collaborating to ensure the highest level of service planning and delivery is attained by all corporate parents and the third sector organisations who deliver services for them.

We have confidence in the organisations currently identified in schedule 3 to effectively discharge their responsibilities under the provisions in the Bill without compromising their core statutory functions. Section 52 states that these duties are to be exercised by corporate parents "in so far as consistent with the proper exercise of its other functions". We continue to engage with all organisations who have feedback to offer on the corporate parenting duties as the Bill progresses through Parliament.

Section 50(2) of the Bill allows the Scottish Ministers to, by order, modify schedule 3 to add, remove or vary the entries listed so that, for example, if it turns out that an organisation no longer has a legitimate role as a corporate parent then they can be removed from the schedule. We hope all Corporate Parents can be reassured in this regard.

## **Part 9 – Counselling services**

**The use of the term counselling has been said to refer to specific professional practices. Why has this term been used, and what is it taken to include?**

'Counselling' means helping people to adjust or deal with personal problems, etc, by enabling them to discover for themselves the solution to the problems while receiving sympathetic attention from the counsellor. The Scottish Government does not consider that this is limited to counselling by those holding particular professional qualifications. The types of services that will be available will be set out in secondary legislation, following consultation with stakeholders and will make it clear the range of services that will be made available to families and the Scottish Government will

also publish guidance on the subject. The Scottish Government is of course happy to reflect on any concerns that there are services which should be capable of being included within Part 9 but which might not properly fall within the term 'counselling'.

**Is it the Scottish Government's intention that the regulations under this Part of the Bill will restrict the eligibility to counselling services to situations where kinship care is a possibility?**

No. The intention of counselling services is to ensure families in the early stages of distress who seek help are provided with appropriate forms of counselling. This will be available where a child's wellbeing would be at risk of being impaired – in particular where the child is at risk of coming into care. It is intended to act as an early and effective intervention to support parents and where appropriate, can promote the role of a kinship carer.

**Part 10 – Support for kinship care**

**Can you respond to the concerns raised by kinship carer organisations in evidence to the Committee on 24 October that the provisions in the Bill will not adequately support kinship carers?**

The kinship proposals within the Bill are intended to support **a specific group** of kinship carers who have, or go on to, obtain existing residence and parental responsibilities and rights orders, where the child is eligible. The Kinship Care Order provides an additional option in terms of securing permanence for children who can't live with their birth parents and for the first time, makes statutory provision in relation to support, thereby offering more support than is currently available in these circumstances.

The precise balance of new rights and needs-based support will be determined in secondary legislation following consultation with key stakeholders including Local Authorities and groups representing kinship carers of which the Scottish Kinship Care Alliance is one. We consulted on the following forms of assistance:

- Financial and practical support with the court petition;
- A start-up grant of £500;
- Transitional support where a kinship care order leads to a child ceasing to be looked after and financial, practical or in-kind support to meet the requirements of a section 11 Contact Order;
- Free Early Learning and Childcare provision for any 2 year old subject to a kinship care order.

Support for kinship carers of **looked after children** is being looked at separately through the Kinship Care Financial Review, which is looking at tailoring support and tackling inconsistencies in the provision of support across Scotland. Recommendations from this review are likely to be announced by the end of the year.

**Much of the detail in Part 10 will be provided in regulations. Are you able to provide details of what would constitute an eligible child, and the type of assistance that will be prescribed under regulations? What are the Government's plans for consulting on the regulations?**

Engagement with stakeholders on secondary legislation for Parts 9 & 10 has already started. Kinship carers, kinship care groups and other key stakeholders such as Local Authorities and third sector organisations have an opportunity to feed into shaping this secondary legislation. The intention is that an eligible child will be one whose wellbeing would be at risk of being impaired – in particular where they are at risk of coming into care, if the kinship care assistance is not made available. We anticipate that assistance will include financial & practical support with court applications, start-up grants, transitional support for children coming out of a care setting and Early Learning and Childcare from the age of 2.

**Will families who currently have a section 11 order automatically receive a kinship care order, or will they need to reapply?**

Kinship carers that currently have a section 11(1) order, which gives them the right to have the child living with them & those who have a residence order, if they are a qualifying person (i.e. related to the child, a friend or acquaintance of a person related to the child or such other relationship as may be specified by order), will automatically have a Kinship Care Order. Assistance will then need to be sought from the Local Authority by the kinship carer and will be provided if the child is an eligible child.

**Could you clarify what support would be available under the regulations to a kinship carer who already has a section 11 order?**

Currently there is no specific statutory support for kinship carers with an existing section 11 order. However, kinship carers with existing residence orders and parental responsibilities and rights orders (section 11 orders) will automatically be deemed to have a Kinship Care Order and will be able to access support from their Local Authority as any other kinship carer who applies for a Kinship Care Order would.

Support available under the Kinship Care Order for those with existing section 11 orders will be set out in Secondary Legislation, consultation for which has already started. We anticipate that support will include access to help and support from social work services, who will be able to determine the best form of therapeutic intervention for the circumstances of the family, Early Learning and Childcare from the age of 2 and access to counselling services, if the child is an eligible child.

**Can you clarify whether local authorities will be expected to continue to make payments under current discretionary routes (s.22 and s.50) and, if so, could this provide an ongoing financial allowance irrespective of any support provided under this Bill?**

There is no specific expectation that local authorities will make payments to kinship carers under s22 or s50. The Kinship Care Order provides the carer with some or all

parental responsibilities and rights and will be recognised as any parent would be within the benefits system. Therefore, the kinship carer can claim the same benefits such as Child Benefit and Child Tax Credit as any parent would.

However, s22 and s50 place a duty on a Local Authority to safeguard, promote and maintain a child, regardless of legal status, within their area who is in need. Assistance from s22 and s50 can also include goods and services, as well as discretionary payments. Therefore, assistance may be provided through s22 and s50 to eligible children under a kinship care order irrespective of any other support being provided.

The Kinship Care Order does not alter formal carers' existing entitlements to allowances – these are subject of a separate review by the Scottish Government.

**Will there be a requirement placed on local authorities to provide financial support for families with a kinship care order or will that be based on an assessment? If so, how will that assessment take place?**

There will be a requirement on Local Authorities to make sure kinship care assistance is made available for kinship carers in their area if the child they are caring for is eligible. Secondary legislation will specify the description of the child that is eligible, it will specify when or how a Local Authority is to consider whether a child is eligible and it will specify the types of assistance that will be available.

It is anticipated that transitional support, including financial support, will be provided for a period 3 years to kinship carers when the child they care for ceases to be looked after and they move onto a kinship care order. After the 3 year transitional period, the kinship carer can continue to seek assistance under their kinship care order from the Local Authority if the child remains an eligible child.

## **Part 11 – Adoption register**

**What evidence is there for the need for an element of compulsion in the statutory adoption register?**

Whilst the Scottish Government is pleased with the initial progress of the current non-statutory adoption register, we are clear that it must be designed and built to help find the maximum number of opportunities for every child for whom adoption is in their best interest. If a child cannot be matched locally, it is important to ensure that there is no unnecessary drift and delay in a child being potentially matched to adopters outside the Local Authority. This means every adoption agency must refer both children and approved adopters in a timely way.

We are aware from engagement with adoption agencies, BAAF and other stakeholders that some adoption agencies are reluctant to refer their prospective adopters to the Register (even though they cannot currently match them with any children locally). This was explicitly recognised by BAAF (in their Scotland's Adoption Register's submission) where they recognised that "there may be some benefits to mandatory referral in relation to the availability of adoptive families as a resource for all children waiting for a new family" and they acknowledged they were aware that

“some local authorities have not been keen to allow their waiting adopters to access opportunities afforded them through Register services preferring to hold on to them ‘just in case’ they need them for a local child”. We envisage that the statutory requirement on adoption agencies to use the Register will address this issue and increase the Register’s effectiveness.

Both England and Wales are also currently pursuing separate legislative routes for establishing their respective Adoption Registers in statute in recognition that this will help to increase their Registers’ effectiveness.

I hope this response fully answers the questions from Committee. Please let me know if there is any further information required.

Yours sincerely,

**Elisabeth Campbell**

Bill Team Leader

Children and Young People (Scotland) Bill