

**Education and Culture Committee
Children and Young People (Scotland) Bill**

British Association for Adoption and Fostering Scotland

1. The British Association for Adoption and Fostering is the leading UK membership organisation and charity for all those concerned with adoption, fostering and child-care social work, and operates on an inter-disciplinary basis. In Scotland, all local authorities and adoption agencies and almost all fostering agencies are members. BAAF Scotland works closely with member agencies and other voluntary organisations, groups and individuals to:
 - promote and develop high standards in adoption, fostering and child placement services;
 - promote public and professional understanding of adoption, fostering, and the life-long needs of children separated from their birth families;
 - ensure that the developmental and identity needs of looked after children are respected and addressed by social work, health, legal and educational services;
 - inform and influence policy makers and legislators, and all those responsible for the welfare of children and young people.
2. BAAF Scotland generally welcomes the Bill. We recognise that many of the details of the wide-ranging proposals will be in subsequent regulations and guidance. The effectiveness of many of the Bill's intentions will depend on the details in such secondary legalisation and guidance
3. However, BAAF Scotland has concerns about the considerable extension of duties on public authorities, particularly on local authorities. We are concerned about the resource implications of many of the proposed duties.
4. We would also wish a clear definition of 'local authority' for the general duties on them. It is crucial that duties such as those in s.8 are clearly put on the local authority as a whole and are not treated as being only the responsibility of social services departments. The 1995 Act has such a definition – s.93(1). It is also important that such a general definition is distinguished within the Bill from 'responsible authority', 'relevant authority', 'managing authority', 'directing authority' and other similar terms which need to specify, as appropriate, various services and agencies, including education and health.

Comments on the provisions of the Bill

Acts referred to:

1995 Act: Children (Scotland) Act 1995

1998 Act: Data Protection Act 1998

2007 Act: Adoption and Children (Scotland) Act 2007

Part 1, Rights of Children, ss.1 to 4 and Part 2, Commissioner for Children and Young People in Scotland, ss.5 and 6

5. We are in agreement with the proposed general duties in **s.1** on the Scottish Ministers, generally to improve the effects of the UNCRC in Scotland. In practice, the efficacy of these duties will depend on how they are implemented and how they could be challenged. So far as the duties in **s.2** are concerned, again the benefits will depend on how they are implemented by the various different authorities. We continue to have concerns about how effective these duties will be and what real difference they will make for children.
6. We are content with the provisions in **ss.5 and 6**, assuming that the Commissioner is satisfied with them

Part 3, Children's Services Planning, ss.7 to 18

7. We agree with the policy intention of strategic planning for children, set out in **s.8** of the Bill, and that s.19 of the 1995 Act and s.4 of the 2007 Act will be repealed, to avoid unnecessary duplication of duties. We await the regulations to be made under **s.7(3)**, as the specific details of what constitutes 'children's services' is crucial for these provisions. We welcome the fact that the list will be in new regulations, as opposed to the current list for services referred to in s.19 of the 1995 Act, which list is in the Social Work (Scotland) Act 1968 as amended, but is not up-to-date. There must be consultation on what services are to be included in the new list.
8. We have concerns about the resource implications of the duty in **s.13** on local authorities and health boards to publish annual reports. It is crucial that reporting duties do not get in the way of effective delivery of the services.

Part 4, Provision of Named Persons; ss.19 to30

9. We understand the underlying policy intention of these provisions but we have reservations about successful implementation. While it is very important for vulnerable children easily to be able to access support, the universality of this provision may get in the way of ensuring that those who really need support actually receive it. The provisions risk diluting the aspirations of GIRFEC.
10. We are also concerned about how the universality of named persons will sit with individual professionals who have responsibilities for looked after children.

Part 5, Child's Plan, ss.31 to 41

11. These provisions are about plans for individual children. While we welcome the policy intention, we have serious concerns about how these duties will fit into the existing systems for plans for children, whether statutory or informal – see SPICe Briefing, pg 5.
12. We are particularly concerned about how these duties will fit into the existing ones placed on local authorities for all looked after children, at home or away from home, in terms of s.17 of the 1995 Act and regs.3-5 (and especially reg.5)

and Schedules 1 and 2 of the Looked After Children (Scotland) Regulations 2009, SSI 2009/210. Over the years, much unnecessary work and bureaucracy has developed when there has been no attempt to co-ordinate different pieces of primary and secondary legislation. While the details of such co-ordination may be left to regulations, it would be helpful to insert a provision in the Bill which states that a **s.31** plan is not required when the child is looked after or about to be looked after and a plan has been made or is in the process of being made under reg.5 of the 2009 Regulations.

Part 6, Early Learning and Childcare; ss.42 to 49

13. Early learning and childcare services are not part of our core areas of detailed expertise. However, we are in agreement with the provisions, particularly as they affect looked after children at home or away from home. We would, however, like to see those provisions extended beyond looked after children to children 'in need' under s.22 of the 1995 Act, to include them as children who are prioritised. In this way, a number of children who are not looked after, but are vulnerable because of their circumstances, could be included. This would extend the application to e.g. children placed with kinship carers and to children with disabilities.
14. The increased duties on education authorities must come with increased funding and resources. There also need to be very clear provisions about inter-authority arrangements and duties. It is crucial that these are clearly provided for in primary or secondary legislation, for the avoidance of doubt and to prevent litigation about which authority has which duty and to whom. Guidance will not be sufficient.

Part 7, Corporate Parenting, ss.50 to 59

15. We recognise and agree with the importance of 'corporate parenting' for all looked after children. However, we have serious concerns about the resource implications of these provisions, particularly for local authorities themselves. As well as the duties on all corporate parents in **s.52**, there are new reporting and information duties, which of themselves will require additional work, particularly for local authorities.
16. **Section 52** is supported by the description of 'wellbeing' in **s.74** of the Bill, which in turn reflects the GIRFEC principles. While the impact of the **s.52** duties on all but one of the 'corporate parents' listed in **Schedule 3** may seem to be in general terms, the effect on local authorities will be much more considerable. The terms of **s.52**, taken with s.17 of the 1995 Act and local authorities' responsibilities to individual children, introduce another set of considerations which local authorities will have to take into account when planning for looked after children. They already have a duty for all looked after children, to 'safeguard and promote his welfare (which shall, in the exercise of their duty to him be their paramount concern)', s.17(1)(a) of the 1995 Act. We are not clear how **s.52** will sit with this. In many ways, it simply adds detail to what local authorities should already be doing for all looked after children. This sort of provision would be better, for local

authorities, as an amendment of the Looked After Children (Scotland) Regulations 2009, or in statutory guidance.

17. A further issue arises in relation to the exercise of corporate parent duties and of parental responsibilities and rights as between local authorities, the other bodies listed in **Schedule 3**, children's parents and other people who have parental responsibilities and/or rights. The parental responsibilities and rights of some looked after children are held by their birth parents; the parental responsibilities and rights of looked after children subject to permanence orders are held by local authorities, parents and/or others (each order is different); and for some looked after children, no-one, including local authorities, has parental responsibilities and rights or is available to exercise them, if parents are dead or have disappeared.

18. It is unclear how the duties in **s.52** will impact for each individual child on these already complex arrangements.

19. We also think that the list of corporate parents in **Schedule 3** is too wide.

Part 8, Aftercare, s.60

20. We welcome the extension of duties towards young people who have left the care system. However, there are significant resource implications for the provision of these services. There are difficulties for many young people in accessing the existing Aftercare system, and an extension of duties must be accompanied by sufficient resources and clear direction to ensure that all eligible young people are able to access and obtain the support they need.

Part 9, Counselling Services, s.61 to 63

21. This section imposes a very wide-ranging duty on local authorities. Those eligible will be set out in regulations and we are concerned about another possibly onerous duty being placed on local authorities. It is not clear where such duties will fit with existing support duties such as those under s.22 of the 1995 Act (children 'in need') and adoption support duties under the 2007 Act.

Part 10, Support for Kinship Care, ss.64 to 67

22. We welcome increased support for kinship carers. We are pleased that there is no new court order in the Bill, as we consider that orders under s.11 of the 1995 Act, or for some kinship carers, permanence orders under the 2007 Act, provide a good existing range of options. We look forward to seeing the details of the secondary legislation which will underpin these sections.

23. It is appropriate that parents are excluded from receiving kinship care assistance, as they are eligible for other support when caring for their children. The definition of parent for **Part 10** should be any genetic parent – see s.15 of the 1995 Act, as amended.

Part 11, Adoption Register, s.68;

24. This section of the Bill proposes to amend the 2007 Act by inserting six new sections, **ss.13A to 13F**. These proposed sections are all concerned with the Scottish Adoption Register, SAR.
25. BAAF Scotland is currently responsible for administering SAR on behalf of the Scottish Ministers. We understand that the regulations to be introduced under the proposed **s.13A(2)** will, among other matters, require agencies to refer children to the SAR in certain circumstances. We do not consider that it is necessary to require mandatory referral of children to the SAR, as the current system operates satisfactorily without compulsion.
26. However, we are extremely concerned about the proposed **s.13C(2)(a)**. This states that an adoption agency cannot disclose information (effectively 'refer' children) to the Scottish Ministers (i.e. SAR) without the permission of children's parents or anyone else with parental responsibilities and rights. The effect of this provision would be that many fewer children would be able to be referred. If parents' consent is required for referral and parents are not in favour of plans for adoption, they will usually and understandably not be willing to consent to such a disclosure/referral. In other situations, the whereabouts of parents may be unknown, and therefore no consent will be obtainable.
27. While obtaining parental consent for referral is good practice, it will not normally be forthcoming when adoption plans are not agreed to. It is our view that such consent is not legally necessary, although it is good practice, in terms of the 1998 Act. Schedule 2 of the 1998 Act lists the conditions for processing data, one of which must be met in most cases. Consent of the subject is only one of these conditions, para 1. The condition in para 5 is that the processing is necessary for administering justice, or for exercising statutory, governmental, or other public functions. When local authorities are looking after children, they are required to plan for when the children will no longer be looked after, under s.17 of the 1995 Act. They are also adoption agencies and have statutory duties for planning under the 2007 Act. Therefore, the consent of the parents (Condition 1) is not essential, as Condition 5 may be used instead.
28. If our view of the data protection provisions is incorrect, there is, in any case, no need for specific consent provisions in the Bill. The 1998 Act will apply anyway. There are no equivalent provisions about consent in the Adoption and Children Act 2002 or the Children and Families Bill currently under consideration at Westminster, both dealing with Adoption Registers for other parts of the UK.
29. In addition, the proposed **s.13C(2)(a)** requires consent from parents or any other person with parental responsibilities and rights, and this is a wider group of people than those whose consent to adoption must be given or dispensed with under s.31 of the 2007 Act.
30. Overall, we consider that this provision is not only unnecessary but also counter-productive to the policy intention of encouraging the referral of children to the SAR.

Other matters

31. As we have pointed out in some of our answers, there are serious resources issues for local authorities and other public bodies arising from many of the provisions. Implementation must be supported by sufficient resources.
32. We would wish the Scottish Government to take the opportunity of new legislation to amend ss.95 and 96 of the 2007 Act. These provisions cover the interface between the hearing system and the courts, when children are the subject of compulsory supervision requirements **and also** of applications for permanence orders. They are causing considerable difficulties for children, families and public authorities. We would be happy to provide further details and proposals.
33. We would also wish the Scottish Government to take the opportunity of new legislation to address the difficulties in the system for curators and reporting officers who must be appointed in all permanence and adoption court cases. Despite recommendations in a number of reports, notably the Adoption Policy Review Group's Phase II Report in June 2005 and the Scottish Civil Courts Review Report (the Gill Review) in September 2009, there have been no real improvements in the overall system for appointment, management and monitoring of curators, etc, in over 20 years. This contrasts with the establishment of a National Safeguarders Panel under the Children's Hearings (Scotland) Act 2011 – safeguarders have a similar role in the hearing system. .Again, we would be happy to provide further details and proposals.

Barbara J Hudson
Director, BAAF Scotland
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