

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

**Scottish Child Law Centre**

**INTRODUCTION**

1. The Scottish Child Law Centre (SCLC or the Centre) is an independent charity, based in Edinburgh which provides services to the whole of Scotland. The aim of the Centre is to promote knowledge and use of Scots law and children's rights for the benefit of children and young people in Scotland. SCLC provides free legal advice and support on all aspects of Scots law relating to children and young people. In addition the Centre provides publications on a range of subjects as well as providing training, conferences and seminars. SCLC also has a consultative and advisory function for local and central government and through this seeks to improve the content and practice of the law as it relates to and affects children. The Centre employs qualified solicitors to carry out its legal work.

**RESPONSE**

2. The SCLC has had the opportunity to read the response by the Family Law Committee of the Law Society of Scotland and adopts that response. We have only brief additions to that response.
3. While the Centre supports the government's aim to ensure the best possible services and outcomes for Scotland's children, we are concerned that much of this Bill attempts to make policy into statute. For legislation to be effective it must be clear, unambiguous and enforceable. We are concerned that significant parts of this Bill do not meet those criteria.
4. Over recent years Scotland has seen a significant amount of new legislation introduced which concerns children and young people. Where there are a number of statutes which must work together it is essential that the language be consistent. Inconsistencies lead to confusion, and can have unforeseen consequences.

Rights of children and young people

5. We support the government's aim of promoting the UNCRC, but are concerned that the duties proposed in the Bill are actually weaker than existing obligations under the UNCRC. To introduce a weaker duty will have the opposite effect of that intended. We agree with the LSS that the reporting duty should be consistent with that under the existing duty under the UNCRC.

Commissioner of Children and Young People in Scotland

6. We support the proposals for the extension of the powers of Scotland's Commissioner for Children and Young People to include investigations in individual cases. This is entirely appropriate and very welcome.

### Wellbeing and Getting it Right for Every Child (GIRFEC)

7. The SCLC shares the concerns of the LSS with regard to the introduction of the term “wellbeing”. Welfare is the term used throughout child law in Scotland and in the UNCRC. It is well understood in legal terms and has a consistent use and application. To introduce a new and less clearly defined concept which is not consistent is not likely to contribute positively to this important area of law.
8. The SCLC is concerned that the Bill would introduce the assessment tool SHANARRI into law. SHANARRI is a useful practical tool for practitioners, but it is inappropriate to enshrine it in statute. The constituent parts of SHANARRI (safe, healthy, achieving, nurtured, active, respected, responsible, included) are not easily given clear statutory definitions. As we stated above, legislation must be clearly applied and including SHANARRI in legislation is not appropriate. We are also concerned that tools such as SHANARRI tend to be replaced fairly quickly and if enshrined in law, are not easily changed as practice and policy evolve.

### Named person

9. We share the serious concerns of the Law Society of Scotland with regard to the named person and adopt their response here.
10. A child who has multi-agency involvement would benefit from a named person, and the SCLC supports the provision of a named person for such children. However, to require that every child in Scotland has a named person risks unwarranted and unjustified intrusion into the private life of that child and family. We are also concerned that there are serious implications under the provisions of the Data Protection Act for children who do not have multi agency involvement or a need for a child’s plan. We share the concerns of the LSS. We recommend that consideration be given to the following:
  - there appears to be no provision for the child to object to the choice of named person, or to nominate a preferred person
  - the requirement that information be shared with the named person for all children risks a serious article 8 breach. It is likely to place serious constraints on agencies and organisations who work in sensitive areas; for example sexual health. Children are entitled to protection with regard to the sharing of personal and sensitive information under the provisions of the Data Protection Act. Exemption is made where there are child protection concerns. This does not in any way justify the sharing of sensitive information with a named person as a routine measure.
  - if the named person is to be a head teacher or other person at a school, school staff are not normally available 12 months of the year and there are questions as to the availability of help during the holidays

Aftercare

11. The SCLC welcomes the extension of the right to request assistance to the age of 25.

Other Reforms

12. We share the concerns of the LSS. The SCLC is concerned that the insertion of “wellbeing” into Scottish Child Law, will introduce a lack of consistency and will risk weakening existing law.

**Scottish Child Law Centre**  
**26 July 2013**