

Consultation on a proposal for a Children and Young People Bill



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

Please key F11 to move between fields

1. Name/Organisation

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3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

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(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

4. Background

In analysing your response, it would be helpful to know your background. Please indicate the area which best describes your involvement with children from the options below.

Please tick box as appropriate:

- | | |
|------------------------|-------------------------------------|
| Early Years | <input type="checkbox"/> |
| Education | <input type="checkbox"/> |
| Health | <input type="checkbox"/> |
| Justice | <input type="checkbox"/> |
| Parent/Carer | <input type="checkbox"/> |
| Police | <input type="checkbox"/> |
| Social Work | <input type="checkbox"/> |
| Sport and Leisure | <input type="checkbox"/> |
| Voluntary Organisation | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> |

Comments

CONSULTATION QUESTIONS

1. A SCOTLAND FOR EVERY CHILD

More effective rights for children and young people

1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?

We welcome the commitment in the consultation document to ensuring that a "child-centred and rights-focussed approach" is "embedded in how services are planned and designed" (page 19). Such an approach is crucial in improving outcomes for children and young people, and in realizing the ambition of making Scotland the best place for children to grow up.

However, we are unclear what "a duty on Scottish Ministers to take appropriate steps to further the rights set out in the UNCRC" would actually mean in practice. We would like to see much greater detail on how this would achieve the consistent and cross cutting embedding of children's rights in public services in Scotland. The term "appropriate steps" is highly subjective, and it is not clear whether such a duty would be sufficient to constrain ministers from acting in ways that run counter to the principles of the UNCRC.

We are also unclear why the duty to “take steps” does not apply to public bodies as well as Scottish Ministers, in the same way that the parallel duty to report does. If a public body has a duty to report on the steps it has taken, but no duty to take steps, a report from a public body could quite legitimately indicate no steps had actually been taken, and still meet all the obligations under the proposed Act.

We therefore believe that the proposed three year reporting duty should be complemented by Children’s Rights Impact Assessments on individual policies and programmes. This would allow greater scrutiny and transparency of the likely impacts on children’s rights between reports and would combine well with existing equality impact assessment requirements under the public sector equality duty.

We remain committed to the idea that the process of embedding the UNCRC into policy and practice will only be completed by incorporation, and therefore see these duties as steps in a process, rather than an end point.

2. On which public bodies should a duty to report on implementing children’s rights be applied?

We were surprised that the list of public bodies in annex B (page 59-60) did not include the new statutory regional college boards, given the fact that a significant number of young people who attend colleges in Scotland will be under 18. We have similar concerns about Community Justice Authorities, who also work with significant numbers of 16-18 year olds.

If the existing requirement under the UK Equalities Act to consider the impact of applying a proposed new or revised policy or practice, against the needs of the general equality duty was to be supplemented with a specific children rights impact assessment, as suggested above, was adopted, then the list of public bodies with a duty to carry out assessments set out in schedule 19, part 4 of that act could serve as a useful basis for constructing a wider list of public bodies.

Another option would be, as an alternative to setting out which public bodies the reporting duty should apply to, to apply the duty to report to all public bodies unless specifically excluded. This would better reflect the cross cutting nature of children’s rights.

3. Do you agree that the extension of the Children’s Commissioner’s role will result in more effective support for those children and young people who wish to address violations of their rights?

While we welcome this extension of the role of the Children’s Commissioner, this cannot act as the normal mechanism to address rights violations. We agree with the Children’s Commissioner when he stated in his August 2012 briefing on the rights aspects of the bill that such an extension “should not be envisaged as an alternative to a judicial process which allows children and young people to *enforce* their rights.” While the consultation paper is probably

correct to argue that an individual investigation by the commissioner would be more child friendly than a judicial process (p25), any recommendations made by the commissioner would not be binding.

There needs to be a clear set of routes for redress which are communicated to children and young people as part of work to increase information and understanding of the UNCRC. This would include the internal complaints procedures for the organisations in question, other bodies like the Scottish Public Services Ombudsman as well as the Scottish Commissioner for Children and Young People and any other judicial route.

A new focus on wellbeing

4. Do you agree with the definition of the wellbeing of a child - or young person - based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?

While the emphasis on the 8 wellbeing indicators (abbreviated to SHANNARI), and a general focus on improving the wellbeing of children, are welcome, there needs to be a closer link to an overarching understanding of children's rights.

To give wellbeing meaning, the proposed guidance to supplement the definition should include cross-referencing the SHANARRI indicators with the UNCRC. This will ensure that the SHANARRI indicators can contribute towards an overarching children's rights framework underpinned by the key principles of the UNCRC.

Steps should also be taken to ensure that indicators are consistently understood and applied across agencies. We would want to promote as wide a definition and application as possible to avoid agencies taking a prescriptive approach which focuses only on their core duties within their agency. For this reason we would also suggest that consideration be given to defining wellbeing through subordinate legislation rather than on the face of the bill. Although the use existing wellbeing indicators could then be continued for the foreseeable future, it would help to future-proof the legislation.

Recent work by UNICEF (http://www.unicef.org.uk/Documents/Publications/UNICEFIpsosMori_childwell_being_reportsummary.pdf) has highlighted the links between inequality, materialism and wellbeing, and while the inclusion element of the proposed 8 wellbeing indicators does include social and economic factors there needs to be a stronger link between wider programmes, such as those that aim to tackle child poverty and inequality on the one hand and wellbeing as laid out in this legislation on the other. Articles 26 and 27 of the UNCRC are useful reference point to underpin this activity.

A wider definition of wellbeing, linked to children's rights, would also ensure that other issues that can be central to a child's wellbeing such as mental health issues, domestic abuse within the family, and parental imprisonment are properly recognised. Taking this forward effectively will be dependant on a whole family approach, recognising that the adversities faced by a child or

young person cannot be tackled in isolation..

We believe that a comprehensive Children's Rights led approach would help ensure that services and policies are designed to challenge the adversities and social and economic inequalities faced by children. There is a danger that a more limited approach to wellbeing, without this wider right-based approach, leads to a service response based on mitigating against the impact of these inequalities rather than tackle their causes. There would therefore be an inherent risk of some groups of vulnerable children and young people slipping through the net.

5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?

We are concerned about the apparent confusion between three different frameworks that seek to underpin children and young people's policy: welfare, wellbeing and children's rights.

We note the comments by Kathleen Marshall, in her role as Scotland's Commissioner for Children & Young People, with reference to the then Scottish Executive's Draft Children's Services Bill in March 2007:

Welfare has been very widely construed and includes consideration of the same issues highlighted in the proposal for well-being. Identifying "welfare" as merely a part of "well-being" risks diluting the concept of welfare where it is expressed elsewhere in Scottish law. If the danger of dilution is avoided by having context-specific interpretations, this may give rise to confusion. The question for us is whether the gain is likely to outweigh the pain of introducing such a change without a comprehensive review that identifies linkages with other references to welfare."

Recent legislation, such as the Children's Hearings (Scotland) Act 2011 contains references to welfare, rather than wellbeing, and it is not clear how these two definitions will mesh together in practice.

Barnardo's Scotland believes that a commitment to delivering and extending children's rights must underpin any new legislation. Children's rights, and children's rights-led approaches, should be much more clearly referenced through the rest of the legislation, particularly in areas like the proposed child's plan and named person approach.

The need for services to deliver wellbeing, the need for them to measure wellbeing using the 8 SHANNARI indicators and the paramountcy of the welfare of the child in the decision making process should all be recognised as elements that fit with this general children's rights approach. The Scottish Government will need to be very clear in its communication and training and support approaches to ensure that this structure of linked approaches is recognised and widely understood.

Better service planning and delivery

6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focussed on improving children's wellbeing?

Yes, but there is a danger that this may become in part a box ticking exercise if it is not accompanied by a wider cultural shift. The lessons of Integrated Children's Services Plans need to be learnt – while the quality of these documents has improved, there is still a lack of awareness among staff in local authorities and other public bodies of their existence, and, at times, a lack of commitment to delivering them. Public bodies should work together to deliver services to children because they recognise this is crucial to improving the quality of services, not because they are compelled to.

We also need to learn the lessons of the GIRFEC journey so far. It is not clear from the consultation document that a proper analysis has taken place as to why, despite the best efforts of many individuals and organisations, the kind of joint working envisaged by GIRFEC has been so patchy. A clear understanding of what the existing barriers are to GIRFEC is needed to help ensure appropriate action is taken to remove these barriers.

While this duty rightly only applies to public bodies, there also needs to be recognition of the importance of building better partnerships and more equal working relationships with the local voluntary sector, which will often be very involved in service delivery and increasing wellbeing for children and young people. Our experience is that different local authorities and CPPs have interpreted GIRFEC in very different ways – some have sought to build joint planning structures across all stakeholders, while others have limited joint working to statutory partners. We also recognise that the local voluntary sector has responded to the challenge of participating in joint planning structures and partnerships in different ways, and the voluntary sector should improve its ability to share good practice and develop effective models. We are aware the Scottish government is planning work to support the sector in addressing this, particularly around strengthening the work of local interfaces

The Government also needs to clarify and explore the monitoring and reporting process for this, especially in situations where it appears that these duties are not being met. Clarity is needed on who will take responsibility for ensuring that this joint work takes place and that it is properly focussed. This should link with more general duties to report on progress in furthering children's rights discussed earlier, and with children's rights impact assessment processes. This would help build links between this duty and wider children's rights approaches.

Such a duty must also cover adult services that affect children directly or indirectly, through their parents or guardians, such as criminal justice.

It is also important to recognise that for most children, it is their parents or other care-givers who take the lead in promoting their wellbeing. Therefore any duty on public bodies to improve wellbeing must explicitly recognise the role and contribution of parents, families and the wider community in promoting wellbeing, as well as public bodies.

7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

As highlighted above, we are concerned that some public bodies that deliver services for children and young people, such as statutory regional college boards and Community Justice Authorities are not currently included in the list of potential bodies to be covered in annex B of the consultation.

The consultation document also states that a duty will be placed on public bodies: *"to ensure that all statutory planning and assessment relating to a child or young person's wellbeing is appropriately integrated into a single framework and that all relevant planning activity in regard to individual children is brought together into a Child's Plan"*. It appears that this duty will apply to all public bodies that carry out planning and assessments relating to a child or young person's wellbeing.

There is therefore a danger that some public bodies which would be under a duty toward individual children in terms of planning and assessment would not be under a general duty to take part in joint planning for service delivery. This could be a potential source of confusion, especially around the single child's plan.

8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?

We welcome the recognition of the importance of integrating new duties, especially around children's rights, in the Community Planning Framework. This will require that Community Planning Partnerships develop a clearer understanding of children's rights and children's wellbeing, and in particular those children's rights, welfare and wellbeing are not just delivered by children's services. As discussed above, CPPs need to plan more effectively around the integration of GIRFEC principles into all aspects of their work, and, as mentioned above, improve relationships with local voluntary organisations working with children and families.

We must also recognise that community planning is not the same as community engagement. A greater focus on children's rights will also require better and stronger participatory structures. There is an opportunity to link this legislation more closely to the proposals set out in the Community Empowerment And Renewal Bill consultation document.

Improved reporting on outcomes

9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?

Demonstrating a clear relationship for the public between the services delivered by a local authority, or other public bodies working with the local

authority, and the outcomes for children and young people living in that area could prove to difficult in practice.

As set out in the consultation document, a range of reporting requirements currently exist under the Children (Scotland) Act and the Education (Additional Support for Learning) (Scotland) Act, relevant official statistics and SOA/HEAT targets. In addition new duties will be created by this bill to report on progress on children's rights.

There needs therefore to be clarity about who the desired audience for any new reporting requirements is, and how they would relate to existing requirements. If the audience is Scottish Ministers, then any such reporting needs to be closely linked to existing requirements under the Single Outcomes Agreements model. This should allow for desired outcomes for children and young people to be benchmarked.

If the audience, as suggested in the consultation question, in the wider public the legislation must be clearer how this information can be comprehensible and useful to a broad audience.

10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?

While supporting the principle of effective reporting, before making a judgement on the framework to be used, there needs to be greater clarity about the audience and the use to which it will be put. There is a danger that additional reporting frameworks merely create an additional burden on staff in collecting data without delivering additional benefit.

The current Single Outcome Agreement framework is underpinned by National Indicators, which include a range of indicators including improving levels of educational attainment, reducing children's deprivation, improving children's services and improving children's dental health. It is not clear how existing indicators such as these would relate to additional reporting on wellbeing indicators, as well as requirements to report on progressing children's rights. Would the new wellbeing indicators replace existing SOA indicators, or be additional to them?

11. On what public bodies should the duty for reporting on outcomes be placed?

The consultation document proposes a "duty on relevant public bodies to assist the local authority in reporting on a common set of high level outcomes for children and young people." It is not clear what a duty to assist would amount to in practice. The indicators chosen would also help determine which public bodies would be relevant. It is also not clear, as highlighted in our response to the previous question how a new duty to report would relate to other reporting requirements.

2. A SCOTLAND FOR EACH CHILD

Improving access to high quality, flexible and integrated early learning childcare

12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?

We welcome this increase in paid-for or state-provided childcare hours. However, as the consultation document makes clear this is a proposal that is seen as having a range of different benefits, including supporting employability, parents, increasing economic security for families and better outcomes for children, especially the most disadvantaged.

In terms of employment support, this move is greatly to be welcomed. If the offers available are sufficiently flexible to support for parents who wish to work then the increased hours, especially out of term, or increased financial support for those using private nurseries will be most welcome and may make the difference between working and not working.

However, many of the disadvantaged families we work with have highlighted other areas of early years support as being more critical, including parenting support and support with childcare before a child turns three. Therefore, the bill needs to be clearer in terms of how the desired result of improved outcomes for children will be maximised through this measure.

However, there needs to be greater economic modelling on the impact of this move on the childcare market. A recent report by Childcare in Scotland highlighted the high cost of childcare in Scotland, and there is a danger that increasing the payments made for state funded childcare hours to private providers could simply drive prices.

13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?

Yes, this is very much welcomed, but there needs to be a balance between increasing flexibility in ways that benefit the employment opportunities of parents and increasing flexibility in ways that will support improved early learning and outcomes for children. Positive engagement with parents should be built in to all the options.

The current arrangement of half day nursery placements is difficult for many of the families we work with. For working parents it would be helpful to have full day options. For vulnerable children who have parents with a chaotic lifestyle, there are often issues in maintaining consistent levels of nursery use. Some children in this situation may benefit from longer days as the parents

would be more likely to take their children.

14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?

We would recommend that all local authorities offer a similar range of options. This would rule out the potential for a postcode lottery in the type of provision available. However, we recognise that rural communities, with dispersed populations, there are genuine logistical difficulties. As discussed above, we recognise that whole day placements may have significant advantages for the children of parents with chaotic lifestyles.

15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?

We recognise the issue of cross border placement, and believe that these would best be handled through guidance.

16. Do you agree with the additional priority for 2 - year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?

Given the outcomes for this group of children, we agree that they should be a priority. However, we think there needs to be some flexibility as some "looked after" children will benefit from additional home-based and/or therapeutic work, rather than additional hours of childcare in a local authority/ private nursery. We also need to recognise that there are distinct groups within the looked after population, and there are differences between the kinds of support required by children looked after at home and in kinship care on the one hand and children in foster care on the other.

Greater thought should also be given to the importance of conferring what might be seen as advantages to children who are looked after. There is a danger that looked after status becomes a gateway to accessing parenting and childcare support for children who would otherwise not become looked after.

The Named Person

17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?

We support the principle that a Named Person represents a useful and important point of contact with statutory services for children, young people and their families. If we are to move away from a deficits model of intervention and move towards more empowered children and families helping to co-create services that meet their needs, such a point of contact is crucial

in allowing informed decisions to be made.

However, as detailed below we are concerned that the proposed responsibilities for the named person go beyond those of being simply a point of contact. We are also concerned that, while the separate role of Lead Professional is mentioned in paragraph 120 of the consultation document, and a reference is made to taking forward plans for developing the Lead Professional role, there is still a great deal of confusion about the two roles, especially in a situation where potentially only one is defined in statute.

If the named person is to have a wider role, dealing with the participation of children and young people in decision making processes, a stronger link also needs to be made to children's rights approaches especially around the rights of children to choose who speaks for them.

The proposed wider role of the Named Person may also undermine some of the benefits of a Named Person in supporting the active participation of children and families in co-designing services. By placing responsibilities that would, for many children sit with their parents, into the hands of a professional a power imbalance is created. A more limited role for the Named Person creates a more equitable power balance.

Given the proposed universal role of the Named Person, there should also be a stronger link between the Named Person role and the National Parenting Strategy.

We therefore support the concept of a Named Person as a point of contact for children, young people and families but are concerned at the expansion of the role suggested in this document.

Information sharing

As the consultation document states "The role of the Named Person depends on the successful sharing of information between services where there are concerns about individual children and young people. Information sharing can be a complex and, at times, confusing legal environment for practitioners. Scottish Ministers will consider issuing guidance that would help to clarify the circumstances under which information about the risks to the wellbeing of a child or young person can be shared with or through the Named Person, but the intention is that such information sharing would occur within existing legal frameworks."

It is absolutely appropriate that this should fall within the confines of current legislation which is more than adequate to facilitate the level of information sharing required. We would urge the Scottish Government to issue clear and concise guidance on information sharing in partnership with the Scottish Information Commissioner's office as practitioners still are often unclear what the legislation allows and this often leads them to go against their instinct to share. This would include a set of standard information sharing protocols, creating a clear and consistent set of tools which are also available to voluntary organisations. There are existing examples of good practice at a local level but also within the police service. Information sharing principles should be a core component of training and CPD for those working with

children, and be recognised in documents such as the Common Core.

We also welcome the duty on adult services to cooperate and share information with children's services, but again the Government must ensure clear and appropriate guidance is in place to support professionals to be clear about what they can and should share and when.

All such guidance, training and CPD material must be clearly underpinned by recognition of the child's rights to confidentiality and protection of sensitive information about them and their families. We have considerable concerns about the ability of children, young people and families to keep hold of their own information, and to be able to do so without gaining the reputation of being 'unco-operative'. Children and families should be able to seek and be provided with a confidential service. Some children may legitimately not want to share information with the schools, and a balance therefore must be maintained between making sure information held within children or adult services that needs to be shared is shared, and that information which does not need to be shared is protected.

18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?

As discussed in the previous question, we are concerned at the way the role of the Named Person has expanded beyond being a point of contact for children, young people and their parents seeking information about statutory services. While it is understandable that a role will grow and evolve over time, defining this role so broadly in statute is potentially very problematic.

The role as described includes the responsibility to make sure children, young people and their families understand statutory processes, ensure they are fully engaged in decisions that affect them, ensure their views are sought and recorded, and ensure that they all know how and why information about them will be shared. These participation and engagement roles are quite distinct from the point of contact role.

In addition the Named Person would lead on implementing and reviewing The Child Plan, and act as a point of contact for any practitioner who had a concern about the child or young person.

Given that the suggested normal Named Person would typically be a professional with a patient list or school roll in the hundreds it is not clear how they would in practice deal with potentially very onerous and time-consuming activities for a large number of children in their care. A clearer balance needs to be struck between the potential benefits of the much wider role of Named Person and the additional complexity and bureaucracy it will bring. To perform the kind of engagement and multi-agency co-ordination roles envisaged may also require significant amounts of training and support for some Named Persons.

As argued before, for many children the primary responsibility for improving their wellbeing lies with parents or carers, and for these children the Named

Person responsibilities that go beyond the point of contact role would also normally fall to the parent.

While we recognise that some parents may not be willing or able to take these kinds of roles, and support from statutory services may be required, as a universal solution, very broad Named Person role currently proposed could be potentially disempowering. In addition, there is a danger that the limited capacity of the Named Person for large groups of children could end up being focussed on the needs of children with articulate parents, rather than those with the greatest need.

We would therefore prefer that the Named Person role in statute is limited to a point on contact; other additional roles may attach themselves to this position in individual circumstances.

19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?

There needs to be more clarity about the degree of flexibility around who holds the Named Person role, especially if it is as broad as currently suggested. In particular more information is needed about how this role would relate to existing professional relationships with the child or young person such as an advocacy workers or Lead Professionals, especially if these professionals work for voluntary organisations.

For many of the proposed functions of the Named Person, beyond the point of contact role, an adult who has a positive relationship with, is trusted by and capable of helping an individual child or young person will be required, rather than simply a designated agency or professional role within that agency. It is not clear how this will be addressed by the described allocation of responsibilities. In particular a Head teacher has a role as the ultimate disciplinary authority role within the school, and this may be a difficult role to combine with the more enabling and empowering roles of the Named Person described in the document. Children and parents may find the two different roles hard to reconcile in practice, and this may undermine the ability of the Named person to discharge their functions.

If the Named Person role for school age children lies within education and is given to a teacher, it is currently not clear what would happen when school was closed, particularly over the holidays. Clearly there would also be significant confidentiality issues if information about a large number of children was being transferred from teacher to teacher.

20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?

We are uncertain as to why it is felt that no Named Person would be required for children who have always been educated at home.

The Child's Plan

21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?

Yes. All the research evidence shows that an integrated approach to planning if done well has the following benefits:

- increases trust between professionals
- reduces bureaucracy
- creates efficiencies for families and agencies
- ensures roles and responsibilities are clear and helps to prevent issues "falling down cracks"
- is less stressful for families (so long as it is participative)

Multi-agency approaches to planning are in place in some Barnardo's Scotland services and the experience has been that this does contribute positively to outcomes for children and young people by ensuring that interdependencies are understood and coherently addressed. Barnardo's Scotland services have also found whole family approaches, using techniques such as family group conferencing, crucial in effective planning

The consultation document rightly identifies that common assessment tools are in place across the NHS but recognises that there are still inconsistencies in practice. Further analysis is needed around the causes and consequences of these inconsistencies. We appreciate that legislation is not the place to determine the format and content of the Child's Plan but would prefer to see a commitment to the provision of standard tools with a requirement to use these with appropriate standards alongside them. This is what will improve quality and consistency in practice.

However, we need to be much clearer about how the single plan will operate in practice, and particularly how many children will need one. For many children a detailed Child's Plan would require a great deal of effort to produce for relatively little reward. It would be more appropriate for those children who require additional support beyond that provided by universal services, but it is not clear what the threshold will be for when a Child's Plan is required.

It is also important to clarify how the child's plan will relate to statutory

Coordinated Support Plans.

There is also a danger that in practice this could sometimes turn out to be a rather paternalistic approach to supporting children, written and devised by professionals for other professionals, and not recognise the role of family, parents and other non-state actors in planning a child's future.

Therefore, the plan should be based on a children's rights approach, and the needs of the child rather than the needs of public bodies. Any such document needs to be co-production with children, young people and their families, rather than just inviting consultation. There is a danger that a plan composed by so many different professionals becomes impossible to follow, or for children and families to effectively contribute to.

22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?

As argued above, a children's rights approach would go beyond consultation to ensuring plans were co-created by the children, young people and their families.

A good model could be to base involvement on a set of shared responsibilities around wellbeing between the professional leading on the Child's Plan and the parent, who then seek to engage other professionals who need to be involved. This would be a subtle shift of emphasis from a model where the Named Person has primary responsibility for wellbeing and therefore co-ordinates the plan, the other professionals and the parent. The Named Person and Child's Plan should ensure service co-ordination on behalf of the child, young person or parent, and to assist the parent/child to get the services they need.

Doing this effectively also requires recognition of the power imbalance that can exist in all these relationships between vulnerable families and professionals, and strategies to address this.

Right to support for looked-after children

23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?

Yes. However, we believe that this does not go far enough in supporting care leavers. As currently set out it would require a request to be made and local authorities can refuse requests. It is not clear from the consultation document what mechanisms will be in place to monitor request made by care leavers, and the outcomes of these requests. It is also not clear what will happen if assistance is refused. Will there be a mechanism for care leavers to challenge these decisions?

It is also not clear how the needs of specific vulnerable groups are going to be

considered in this process. For example, looked after disabled young people are often a hidden group, requiring specific support as they make a transition from care and child children's services to adult services.

Barnardo's Scotland therefore supports the introduction of a duty on local authorities to provide help to those care leavers up to the age of 25. That help should not be limited to those care leavers in full time education, but should support them with health, housing, employment and training opportunities as well. The same level and kind of support that their peers would expect from their birth parents.

Current arrangements are inconsistently delivered across Local Authorities. According to written answers to parliamentary questions (SW 08999-09002) the Government does not collect or monitor data centrally. Government must collect and analyse data from all local authorities on the nature, type and length of additional assistance given by local authorities under the proposed law

The Government should consider re-drafting national guidelines, as part of secondary legislation to this Act. In particular we would support calls to amend Regulation 6 of the Looked after Children (Scotland) Regulations 2009 to require reporting of the deaths of young people who have formerly been 'looked after' (at least until the age of 25) to Scottish Ministers, the Care Inspectorate and other relevant agencies. We would expect 'corporate parents' to have this data and be able to report on their actions.

The Government should also consider extending the age that looked after children can be designated foster children from 18 to 21. Currently those foster children in full time education can remain in 'foster care' up until they are 21, but other foster children who need further support are moved into 'supported care'. In our experience supported care isn't always the most appropriate setting for children in foster care to move to and it would be more suitable for them to remain in foster care, for example those children with learning and physical disabilities.

Corporate Parenting

24. Do you agree that it would be helpful to define Corporate Parenting, and to clarify the public bodies to which this definition applies? If not, why not?

This would be helpful. Such a definition should apply to all public bodies, unless specifically excluded. Clear reasons must be given as to why a public body is not covered by the definition. The Government should also define which individuals within those public bodies are responsible for looked after children, both at a strategic and operational level. Any definition of corporate parenting should also tie in with the Scottish Government's proposed National Parenting Strategy, which is due to be published in 2012.

However it may be helpful for any definition not be included on the face of the Bill, but covered in secondary legislation. This would to allow for changes and amendments to be made easily.

25. We believe that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?

Yes. However, there is always a danger that a collective responsibility can become nobody's specific responsibility. There must be clear lines of responsibility to named individuals who must be held accountable for looked after children in their care.

There also needs to be much greater awareness of corporate parenting among public bodies and politicians. The Government document *Everybody's Job* should to be revisited.

Not all *birth* parents are good parents, as implied by the definition proposed in question 25. A reference should be made to good or positive parenting, rather than birth parenting.

Kinship care

26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?

We recognise the concerns raised by kinship carers, and it is welcome that the legislation is seeking to address their issues. However, we feel more time is required to assess the existing options available to kinship carers before we can be confident that the new model proposed in the consultation is appropriate.

27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?

There needs to be clarification of the benefits and support will actually now be available to carers, especially following the introduction of Universal Credit.

Adoption and permanence

28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?

Yes. There should be a statutory requirement that all matches made are

registered. We believe that it should not necessarily be a requirement to go through the register. There should be an initial 3 month period to allow for any local potential matches to be found.

We are aware of delays caused by local authorities not referring to the register, which we understand may be because of the cost of paying another local authority to take responsibility for the child, and this needs to be addressed.

Better foster care

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

We would welcome this. This already operates in England and appears to be working well. It is an anomaly that some foster carers in Scotland can end up with responsibility for more children than would reside in the average residential centre.

30. Do you agree foster carers should be required to attain minimum qualifications in care?

Barnardo's Scotland has considerable concerns with regards to the idea of foster carers needing minimum care qualifications. There is a danger that it would put off potential carers. The fostering resource in Scotland is currently too small and there are not enough foster carers.

For those wishing to become foster carers through Barnardo's there is a rigorous process and only 3-5% of those that show initial interest actually become foster carers. Through this process they receive substantial training and support, including all the necessary safeguarding and child protection training.

There is a need for standards, assessment and training, but this should be part of the application process rather than a pre-requisite to applying.

It is more important that foster care agencies including local authorities, charities and private sector agencies ensure that the foster carers they use meet a nationally defined minimum standard – including, potentially, a nationally developed training programme.

31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?

Barnardo's Scotland would support a National Foster Carer's Register. We would see it having a particular role in support matching across local authority areas. The register would have to work on a best fit for the child model, rather than the first available matching. This should also be built into the system.

We would also support a national list of those that have been de-registered including the reasons why. This would prevent foster carers removed from agency and local authority lists in one local authority applying to another to become carers there.

Barnardo's Scotland has a number of questions regarding how the proposed register would operate in practice. In particular it is not clear how it would be administered and who would be responsible, and fund, this. In order to be effective it would clearly have to be kept up-to-date on a regular basis.

32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role – for example, qualifications of the carer, the type of 'service' they provide, the age of child?

Yes, there should be a minimum allowance and an end to the current postcode lottery of allowances and fees. Barnardo's Scotland would suggest that the Scottish Government should examine the suggested the rates used by the Fostering Network. We understand this is how England currently identifies its rates.

There is also a need to clarify what the allowance should cover and what is covered in the foster carers' fee.

At Barnardo's Scotland there are different levels of fees based on the skill and experience level of the foster carers.

There is also a need to recognise needs of carers working with children with high support needs.

We also believe that there is a case for paying foster carers for 52 weeks of the year, whether they have foster children or not. There are periods when a carer will not have foster children, so will not receive their allowance. This may result in them having to seek paid work. As a result they may not be in a position to take on new children who need foster care.

Assessing Impact

33. In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the legislative proposals in this consultation document may have on any particular groups of people?

Clearly the bill will have major impacts on children and young people. However, given the complex, and in some areas not fully formed nature of the proposals it is difficult to answer this question appropriately.

There appears to have been little consideration of the impact of the proposals outlined in this consultation on children with disabilities. Barnardo's Scotland would urge the Scottish Government to consider children with a disability and other vulnerable groups when moving onto the next stage of the legislative process.

Echoing a recommendation from SCCYP and Together, we would urge the Scottish Government to undertake a child rights impact assessment on all aspects of the Bill to ensure that children's rights underpin its proposals.

34. In relation to the Equality Impact Assessment, please tell us what potential there may be within these legislative proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

Again, these proposals will clearly have an impact on people who are discriminated against on the grounds of age, and firm grounding of the legislation in children's rights will help address this form of discrimination.

35. In relation to the Business and Regulatory Impact Assessment, please tell us about any potential economic or regulatory impacts, either positive or negative; you feel the legislative proposals in this consultation document may have, particularly on businesses?

No comment

Thank you for responding to this consultation.

Please ensure you return the respondent information form along with your response.

The closing date for this consultation is 25 September 2012. Please return to childrenslegislation@scotland.gsi.gov.uk

or

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