

NSPCC Scotland response to the Education and Culture Committee's call for evidence on Stage One of the Children and Young People (Scotland) Bill

July 2013

Introduction

1. NSPCC Scotland welcomes the opportunity to respond to the Committee's call for evidence to inform Stage One of the Children and Young People (Scotland) Bill. We fully support the commendable aspirations of the Bill, particularly those around early intervention and prevention, and welcome efforts to entrench children's rights in public service provision in Scotland. However, we believe that there are areas where the Bill could be strengthened in order to meet better the stated ambitions.

About NSPCC Scotland

2. The NSPCC aims to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfil their potential. We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as ChildLine, the ChildLine Schools Service and our adult Helpline. Based on the learning from all of our services we seek to achieve cultural, social and political change – influencing legislation, policy, practice, attitudes and behaviours so that all children in Scotland have the best protection from cruelty.

NSPCC Scotland evidence

➤ Part 1: Rights of Children

3. We welcome the Scottish Government's stated intention to ensure that children's rights underpin service design and delivery. However, we have concerns about the extent to which relevant provisions in the Bill will achieve this aim.
4. The proposed duty on Ministers "to keep under consideration" how to secure better effect of the United Nations Convention on the Rights of the Child (UNCRC) [s1(1)(a)] is a regression from the original 'due regard' duty proposed by the Scottish Government in the original consultation¹.
5. NSPCC Scotland joins Scotland's Commissioner for Children and Young People (SCCYP), *Together* and others in believing that full incorporation of the UNCRC into Scots law would be the most effective mechanism for fulfilling the Scottish Government's commitment to 'make rights real' for all children in Scotland. Full incorporation would embed children's rights into the planning, implementation and monitoring of all policies and services, and would provide comprehensive

¹ Scottish Government (2011) *Consultation on the Rights of Children and Young People Bill*. Available at: <http://www.scotland.gov.uk/Publications/2011/09/07110058/10>

accountability mechanisms including legal redress for children and young people.

6. Although we are committed to achieving full incorporation of the UNCRC, at the very least the proposed duty on Scottish Ministers should be reworded to strengthen the obligation. The Bill should require that Ministers ‘act compatibly’ with the UNCRC, or give ‘due regard’ to the UNCRC, as was initially proposed. Similarly, the duty on public bodies is insufficient (s2). As currently worded, public bodies are required to report on the steps they have taken to secure better effect of the UNCRC, but there is no direct legal duty for them to take such steps. For the purposes of legal clarity, it would be better if a direct duty on public bodies to *act compatibly* or have *due regard* featured on the face of the Bill. Again, this is notwithstanding our belief that full incorporation of the UNCRC would be the most effective mechanism.
 7. We also support calls from SCCYP, *Together* and others for a Child Rights Impact Assessment to be undertaken. This would enable a systematic consideration of the impact of the Bill on children’s rights – the very principles it seeks to promote. This would help to highlight where provisions could be strengthened (e.g. the duty on Ministers and public bodies, as above) and where there may be potential negative impact (e.g. information sharing [ss25-27], discussed below).
- **Part 3: Children’s services planning**
8. The Bill and supporting documents make few, if any, connections with other pieces of legislation that will impact on children, young people and their families.
 9. While the Bill seeks to create a framework for joint planning of children’s services, this will also be impacted by a number of legislative provisions. In particular, the Public Bodies (Joint Working) (Scotland) Bill, currently being considered by the Health and Sport Committee, seeks to integrate adult health and social care, while allowing local partners discretion about whether to include children’s services in the new processes. Similarly, the recent Social Care (Self Directed Support)(Scotland) Act 2012² and the planned Community Empowerment and Renewal Bill³ will also have implications for the planning and delivery of children’s services. It is unclear whether all of these developments have been considered in the round. There appears to have been little strategic thinking about the position of children’s services and we are concerned that this might lead to confusion and fragmentation.
 10. The impact of this broader legislative landscape on children’s lived experiences must be a central consideration of the Children and Young People (Scotland) Bill. It is arguable whether the disparate nature of the various pieces of

² This Act aims to give services users greater choice and control over the support they receive. See <http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Self-Directed-Support/Bill>

³ This Bill will seek to strengthen community participation and development. See <http://www.scotland.gov.uk/Topics/People/engage/cer>

legislation which affect children's services suggests a lack of coherent vision for how the whole range of services meet the needs of children and young people in Scotland.

11. To gain a fuller picture of developments and enable a more thorough consideration of proposals, we suggest that the Education and Culture Committee considers holding a joint evidence session with the Health and Sport Committee to consider the interaction of relevant provisions contained in both the Children and Young People and the Public Bodies Bills, and their implications for services for children and families.

➤ Part 4: Provision of Named Persons

12. NSPCC Scotland supports the intention behind the Named Person approach which, if clearly defined and properly resourced, could improve the likelihood of early intervention for children and young people; and thus improve their outcomes.
13. It is suggested that the Named Person should be the responsibility of the health board (Health Visitor) for children aged 0-5. However, the evidence is that the staff who work with infants and parents are stretched to the limit; concerns about excessive health visitor caseloads continue to be highlighted.⁴ Such resource constraints may affect the operation of the Named Person function in practice. While the Financial Memorandum which accompanies the Bill outlines a required investment of £16m in health visiting⁵, this does not apply until 2016-17.
14. In addition, we would welcome more detail on the perceived parameters of the Named Person role, including the prescriptive nature of the role as an assigned key point of contact for children seeking support. We would also welcome clarity on how the Named Person function is intended to interact with the role of Lead Professional; the latter being a central feature of the GIRFEC approach which does not feature in the Bill. There is a great deal of uncertainty surrounding the nature of the Named Person function and how it is intended to operate in practice.

Information sharing

15. The Bill also proposes a new information sharing duty for service providers which would introduce a radical new change in the existing information sharing provision (ss25-27).
16. As currently drafted, information must be shared with the Named Person where it **might be relevant** to the exercise of their functions [s26(2)(a)]. As we understand it, this significantly lowers current accepted information-sharing

⁴ Scottish Parliament Finance Committee Scrutiny of Draft Budget 2012-13. Submission from Dr Philip Wilson, Dr Colin Brown, Dr Kerry Milligan and Dr Anne Mullin. Available at:

http://www.scottish.parliament.uk/S4_FinanceCommittee/Dr_Phillip_Wilson.pdf

⁵ Children and Young People (Scotland) Bill - Financial Memorandum (2013), p 53. Available at:

[http://scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20\(Scotland\)%20Bill/b27s4-introd-en.pdf](http://scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd-en.pdf)

thresholds. The proposed duty to share information is not linked to a 'risk of harm'⁶ but instead would appear to apply to anything considered relevant to promoting, supporting or safeguarding the wellbeing of the young person, as defined using SHANARRI⁷ indicators. On the face of the Bill, there are no proposals to link information-sharing requirements to consideration of the best interests of the child or young person, nor any consideration of their views, nor seeking their consent. The proposals do not offer a balance between children and young people's rights and the need to share information.

17. Children and young people have a right to privacy and confidentiality under the UNCRC and the European Convention on Human Rights (ECHR). Confidentiality is of fundamental importance to children and young people⁸. For example, in the year 2012/2013, volunteer counsellors at ChildLine conducted approximately 3,500 counselling interactions with children and young people where confidentiality was a key concern.
18. We are very concerned the information-sharing duty as it stands is too broadly drawn. Sharing information that is *relevant* and *proportionate* about children who are at risk of harm, is fundamental to keeping children safe. However, we are concerned that the current proposals do not achieve sufficient balance and so risk breaching children and young people's rights and may deter them from accessing confidential services, potentially leaving them more at risk.
19. Quite apart from a lack of balance between the requirement to share information and the child's right to privacy and involvement, there is also arguably a risk that the proposed new legislative framework on information sharing may lead to disproportionate sharing and subsequently to Named Persons gathering and/or struggling to assess increasing amounts of information about increasing numbers of children – not just those at risk. This may undermine the effective operation of the Named Person function and could result in information about children at risk of harm being lost in a deluge of inappropriate information.
20. In addition, the Scottish Government has not consulted on these proposals⁹. It is vitally important that we ensure that the voices of children and young people are heard, listened to and respected throughout the Bill process.
21. Given the complexity of this issue, it is vital that the potential conflict between the information-sharing provisions in the Bill, and children and young people's right to privacy and confidentiality, are given full and thorough consideration by the Committee during Stage One. We would be keen to discuss this issue

⁶ Scottish Government (2010) *National Guidance for Child Protection in Scotland*. Edinburgh: SG, p28

⁷ Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included.

⁸ See, for example, Wales, A. and Hill, L. (2011) *Finding the balance: children's right to confidentiality in an age of information sharing*. ChildLine in Scotland / CLiCP

⁹ Indeed, the consultation on the draft Bill proposed that information-sharing "would occur within existing legal frameworks" - A Scotland for Children: A consultation on the Children and Young People's Bill' section 120:43, (2012) <http://www.scotland.gov.uk/Resource/0039/00396537.pdf>

further with the Committee and would be happy to provide oral evidence if the Committee would find that helpful.

➤ **Part 6: Early learning and childcare**

22. In addition to the universal extension of pre-school education for 3-5s, the Bill proposes an extension of early learning and childcare to looked-after two year olds. Child care services for looked after children require high-quality therapeutic input to set children on a healthy trajectory for life. However, our research indicates that there is a limited evidence-base on which approaches work effectively with attachment difficulties in looked after children.¹⁰
23. There is a relatively small number of looked-after two year olds in Scotland. It is not clear why the threshold of two years has been identified as the entry point for services as two years may be too late for children who have experienced significant trauma in their very earliest months and years. It is vital that an extension does not preclude babies and infants from accessing the therapeutic support they need.
24. In addition, the same arguments for additional priority for looked after two year olds may also be valid for other groups, such as children 'in need' [s22, Children (Scotland) Act 1995]. Therefore we would like to see consideration given to extending the duty, for example to all two year olds living in poverty. This would assist in meeting the Bill's policy objective to "increase the universal provision of early learning and childcare to improve outcomes for children, in particular those from disadvantaged backgrounds; to support parents to work, provide economic security for their families and routes out of unemployment and poverty; and to support parents with the costs of early learning and childcare"¹¹.
25. It is vital that child care services for looked-after children are flexible and responsive to the often considerable adversities experienced by this particularly vulnerable group and reflect this by providing high quality, therapeutic care which addresses the significant degree of distress so often experienced in their early lives.

➤ **Part 11: Adoption Register**

26. NSPCC Scotland welcomes the Scottish Government's emphasis on early intervention and the increasing focus on the importance of achieving early permanent care arrangements for maltreated children. However, the main aim of the national register is to improve process efficiency, defined in terms of timescales, whereas, in our view, the main source of delay relates to the detail of decision-making about permanence arrangements. The assumption that systems need to be more efficient rather than adapted are not uncommon among relevant stakeholders but efforts to improve efficiency alone, defined in

¹⁰ NSPCC (2010) *Looked after children scoping report*. Unpublished.

¹¹ Children and Young People (Scotland) Bill - Policy Memorandum (2013), p 22. Available at: [http://scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20\(Scotland\)%20Bill/b27s4-introd-pm.pdf](http://scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd-pm.pdf)

these terms, have not yet been shown to lead to better outcomes for children in the care system, or improved services for birth families.

27. To inform and improve decision-making about permanence, we are piloting the New Orleans Intervention Model, in partnership with Glasgow City Council and NHS Greater Glasgow & Clyde, to provide tailored family support on the basis of assessments of attachment relationships, for children who have been maltreated.
28. It is vital that we balance the efficiency of decision making with the therapeutic and support needs of children, parents and carers. Together these measures can integrate more fully the reality of the child's situation and can potentially lead to healthier outcomes in later life.
29. We hope that recommendations from the final report of the Committee's inquiry into decision-making for looked after children will inform Members' consideration of these provisions.

Additional comments

30. NSPCC Scotland believes that any initiative to protect and promote children's rights must seek to provide children with the same protections as adults under the law against physical abuse. We believe the Children & Young People's Bill presents a real opportunity for the Scottish Government to reconsider full legal protection for children from physical chastisement in the home, or any other setting. This would fulfil the recommendation made by the UN Committee on the Rights of the Child¹².

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¹² UN Committee on Rights of the Child (2008) Concluding observations, United Kingdom of Great Britain and Northern Ireland, p9. Available at: <http://www.crae.org.uk/media/26705/UK-CRC-Final-COs-2008.pdf>