

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

Organisation Name

Scotland's Commissioner for Children and Young People

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3. Permissions - I am responding as...an individual or an organisation?

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 X 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?

Please tick as appropriate X Yes No

(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 X 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 type="checkbox"/> |
| Other | X |

Comments

The responsibilities and powers of the Commissioner are laid out in the Commissioner for Children and Young People (Scotland) Act 2003.

The Commissioner has a responsibility to:

promote and safeguard the rights of children and young people;

have regard to the United Nations Convention on the Rights of the Child and act in a manner which encourages equal opportunities;

encourage the involvement of children and young people in the work of the Commissioner and consult relevant organisations.

The Commissioner has the power to:

carry out an investigation into whether a service provider has regard to the rights, interests and views of children and young people generally or to particular groups of children and young people.

CONSULTATION QUESTIONS

1. A SCOTLAND FOR EVERY CHILD

More effective rights for children and young people

General Comment

I broadly welcome the proposals in respect of children's rights. I note, however, that the proposals fall short of incorporating the United Nations Convention on the Rights of the Child in law.

I would strongly encourage the Scottish Government to work towards this as a longer-term goal, as I believe that incorporation will afford all children and young people in Scotland the protection that they deserve.

The United Nations Convention on the Rights of the Child (UNCRC) is an international treaty with the purpose of protecting and promoting the human rights of children. Created in 1989, it was ratified by the UK Government on 16 December 1991 and places binding international obligations on the UK and devolved governments and public authorities¹ to implement its provisions and ensure the realisation of all UNCRC rights for all children in their jurisdiction.

Unlike the European Convention on Human Rights (ECHR) the UNCRC has not (yet) been given direct legal effect in UK or Scots Law, for example by incorporation. Incorporation involves requiring public authorities to comply with the Convention, ensuring that it can be invoked effectively in the courts, and providing child-accessible and effective means of redress for any violations². It has been my long-standing view that the Scottish and UK Governments should work towards full incorporation of the UNCRC. This view is shared by many in the children's sector and beyond, including a significant share of the public authorities which responded to the consultation on proposals for a Rights of Children and Young People Bill last year. Other measures taken in the meantime towards fuller realisation of children's rights should contribute towards achieving that ultimate objective.

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?

Yes. However, I believe there are a number of measures which should be taken prior to the introduction of proposed legislation:

- **the Scottish Government should carry out and publish a full Children's Rights Impact Assessment (CRIA) on the proposed Children and Young People (Scotland) Bill;**

¹ UN Committee on the Rights of the Child (2003), *General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5, paras 40f.

² *General Comment 5*, paras 20 and 24.

- **the Scottish Government should publish further information about how it envisages the proposed duty to ‘take appropriate steps’ will operate in practice as soon as possible;**
- **the Scottish Government should explain whether, in its assessment, a legal challenge to Ministers’ exercise of the proposed duty ‘to take appropriate steps’ (including omissions to take such steps) would have any prospect of success, and under what circumstances;**
- **the Scottish Government should include ‘understanding’ in the duty to promote awareness of the UNCRC.**

In addition, I believe the Scottish Government should take the opportunity to gain meaningful input from children and young people to aid the development and implementation of legislation that will have a profound effect on their lives.

It is worth noting that the publication of the current consultation followed a previous consultation on proposals for a Rights of Children and Young People (Scotland) Bill, which received over 120 responses³. The Scottish Government’s analysis of those consultation responses led to a decision that measures to advance children’s rights should not be proceeded with by means of a free-standing Children’s Rights Bill, but should instead form part of a larger Children and Young People (Scotland) Bill. This would also incorporate proposals previously earmarked for a separate ‘Children’s Services Bill’.

The Scottish Government asserts that this new approach is preferable because it enables those parts of the proposed legislation that deal with children’s services to be properly underpinned by the proposed legislation’s measures to advance children’s rights⁴. However, there are few explicit linkages between the proposed measures on children’s rights and the remainder of the proposals for legislation.

The consultation is neither accompanied by a Children’s Rights Impact Assessment (CRIA), nor is there any reference to any CRIA having been undertaken to ensure that the children’s services proposals are properly informed by a full appreciation of their potential impact on children’s rights. In my opinion, the introduction of the proposed legislation should be accompanied by a Child Rights Impact Assessment.

There are a number of key proposals relating to children’s rights and I offer comment on each of these in turn.

Duty to “take appropriate steps to further the rights set out in the UNCRC”

It is notable that the new proposals no longer include a duty on Scottish Ministers to have ‘due regard’ to the UNCRC in the exercise of all their functions, which was

³ These are available here: <http://www.scotland.gov.uk/Publications/2012/02/8619/downloads>.

⁴ *Consultation on Rights of Children and Young People Bill: Scottish Government Response*, p. 18f.

the centrepiece of the previous set of proposals⁵. It has been replaced with a new proposal for a ministerial children's rights duty which is stated as:

“a duty that requires Scottish Ministers to take appropriate steps to further the rights set out in the UNCRC. Such a duty would explicitly recognise Ministers' responsibilities towards the implementation of the UNCRC whilst allowing them to pursue the progressive realisation of UNCRC rights.”

It is not clear at present what such a duty would look like in statute, how it may be exercised by Ministers, and what its potential effects might be on law, policy and practice. Meaningful analysis of this new proposal is limited by the lack of detail provided by the Scottish Government in the consultation document. Based on the information provided in relation to the proposed duty, a number of issues arise:

Scope and application of the duty

The form of words used in the consultation document may suggest a high-level duty, which may be discharged by means of (for example) a ministerial statement accompanying the legislative programme announcement or the Budget. There would be some value in such an approach forming part of Ministers' engagement with children's rights, but by itself it would be insufficient as it would allow an inconsistent and selective approach to children's rights.

One of the strengths of the duty on Ministers to have 'due regard' to the UNCRC as proposed previously was that it would apply to the exercise of *all* ministerial functions⁶. This would have had the potential to achieve a significant 'mainstreaming' effect, as it would have required all Ministers and officials across all portfolios to consider children's rights in policy and decision making. The duty now proposed does not mention or imply any such reach. Any children's rights duty proceeded with in legislation should apply to the exercise of ministerial functions across all portfolios.

Level of discretion

The new proposal for a duty suggests that Ministers will retain a high degree of interpretative power and discretion: it will be Ministers (and their officials) who will decide what steps to take (or not to take), and it would also be Ministers who decide whether these steps are *appropriate*, and whether they *further* children's rights under the UNCRC.

What actually advances respect for, and the realisation of, children's rights can be contested⁷. The subjective test of 'appropriateness' which appears to be proposed may do little to compel Ministers to take more ambitious steps towards greater realisation of children's rights. Nor would it necessarily limit Ministers' discretion to act in ways which run counter to their obligations under the UNCRC.

⁵ *Consultation on Rights of Children and Young People Bill*, paras 57-72.

⁶ *Consultation on Rights of Children and Young People Bill*, paras 62-65.

⁷The lists of measures included in the *Consultation on Rights of Children and Young People Bill* (paras 48-52) rather illustrate the point: Alongside legislation, strategies, etc which greatly advanced the rights of children and young people in Scotland, it includes others whose relevance to children's rights is unclear, and even legislation and policies that included provisions which clearly ran counter to the UNCRC.

Possibility and prospects of challenge

The consultation document does not discuss avenues for challenges to Ministers' exercise of the proposed duty to 'take appropriate steps'⁸. Legal challenges by way of Judicial Review on common law grounds⁹ would be possible under certain circumstances, but it is not clear what the prospects of success might be for such challenges.

It has been suggested that the duty now proposed is an improvement on the previous proposal for a 'due regard' duty because the former is concerned with the content of policies and ministerial decisions, while the latter was focused narrowly on process. It is not clear at present whether this is a satisfactory improvement; in any event *there is a need for both*.

However, if the duty on Ministers is in fact concerned with the substantive content of policy it may be more difficult to challenge the exercise of the duty by Ministers. It can be questioned to what extent the courts would be able and willing to interfere with the judgement of the democratically legitimate government of Scotland as to what steps to advance children's UNCRC rights are 'appropriate'. This requires further exploration.

Duty on Ministers to Promote and Raise Awareness of the UNCRC

The Scottish Government is to be commended for taking on board the recommendations which I, along with many others, made to the first consultation in respect of a duty on Ministers to promote awareness of the UNCRC. I believe the proposed duty should require the promotion of awareness and understanding of the UNCRC, as is the case in s. 4 (2)(a) of the Commissioner for Children and Young People (Scotland) Act 2003, which is referenced in the consultation document in this context¹⁰.

I believe that my 'a RIGHT blether' and 'a RIGHT wee blether' consultations which I undertook with children and young people demonstrated that there are thousands of teachers, community and youth workers, social care staff, nursery workers, health workers, voluntary sector staff and many others, who are committed to supporting children and young people and helping them to express their views. This confirmed that adults working with children and young people will respond positively and enthusiastically to any request to consult with children and young people, as long as sufficient time, resources and guidance are available to help them do so.

I suggest that the development and implementation of the proposals should ensure Scottish Ministers commit to ensuring the views of children and young people are routinely considered and taken into account in all matters that affect them. I believe that this will assist in the creation of a Scotland where children and young people are able to exercise their rights every day of their lives.

⁸ In contrast to the previous consultation on a Rights of Children and Young People (Scotland) Bill, at para 68.

⁹ These are, broadly, 'illegality', 'irrationality' and 'procedural impropriety'; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, per Lord Diplock at 410.

¹⁰ *A Scotland for Children*, para 54f. This is also the expression used in the presentation given by Scottish Government officials at a series of engagement events on the proposed legislation, see <http://www.scotland.gov.uk/Resource/0039/00398352.pdf>, slide 9.

To achieve this, adults and children require access to opportunities to develop better awareness and knowledge of the articles of the UNCRC. I believe this will help adults recognise their obligations towards children and help children be better prepared to challenge potential violations of their rights.

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

I welcome the duty on public bodies in principle, and suggest that consideration be given to placing such a duty on all public bodies.

I suggest that further information is required from the Scottish Government to be clearer on the detail of the potential impact of the duty.

A number of questions arise about the likely effectiveness of such a reporting duty if it is not accompanied by a duty that requires action to advance children's rights – a measure I would endorse. It is, for example, not clear whether:

- 'relevant public authorities' would be required to undertake a baseline assessment of their structures, processes and outcomes as they relate to children's rights, against which they would then be able to assess progress made in future reporting cycles;
- there will be a role for Children's Rights Impact Assessments in supporting relevant public authorities to achieve progress and increase transparency;
- there will be a responsibility for 'relevant public bodies' to ensure that the views of children and young people are considered and taken into account in these processes;
- any scrutiny mechanism is envisaged in respect of the 3-yearly reports published by 'relevant public bodies', or what action might be taken if a public body's progress is unsatisfactory, and by whom;
- Scottish Ministers will have a role in ensuring progress towards greater realisation of UNCRC rights in respect of functions delegated to public bodies and what it might be.

All of the above require more detail to give clarity as to the potential impact of the duty.

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?

Yes, although this is a complex matter and I believe that a number of issues need to be addressed. These are expanded on under the headings below:

- **context and level of detail provided;**
- **commissioner’s investigations and limitations of ‘redress’;**
- **object of an investigation and extension of the existing power;**
- **levels of engagement for resolution of complaint;**
- **delineation of powers and remits between the Commissioner and other complaints/investigatory processes;**
- **role of the child or young person in investigations;**
- **commissioner decision-making on whether to initiate an investigation;**
- **capacity and infrastructure.**

Context and level of detail provided

A number of responses to the consultation on the Rights of Children and Young People (Scotland) Bill, including my own, raised the need for effective and child-accessible mechanisms offering redress for violations of a child or young person’s rights under the United Nations Convention on the Rights of the Child (UNCRC). Furthermore, some respondents specifically recommended that the Commissioner’s powers be extended to allow my office to conduct investigations relating to violations of individual children and young people’s rights.

I welcome the Scottish Government’s positive response to those calls, which reflects the expectation for national institutions to promote and protect children’s rights formulated by the United Nations Committee on the Rights of the Child¹¹. The Scottish Government proposes extending my investigatory powers to allow for investigations relating to alleged violations of individual children and young people’s rights. I welcome the positive engagement by the Government with my office on this proposal to date.

The consultation document provides little detail regarding the model the Scottish Government has in mind, but the wording of the relevant passage appears to suggest that it is envisaged to simply remove the bar on conducting investigations relating to individual children and young people as it exists in the Commissioner for Children & Young People (Scotland) Act 2003. Furthermore, it is proposed that service providers under investigation may be required to respond formally to the recommendations I have made in my investigation report, and for both the report and the response to be made public (unless I consider this to be inappropriate).

Commissioner’s investigations and limitations of redress

¹¹ UN Committee on the Rights of the Child (2002), *General Comment 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child*, CRC/GC/2002/2, paras 13f, 19a.

I believe that providing me with an investigatory function relating to individual children and young people, which is properly conceived, established and resourced, would be a useful and important mechanism for children and young people to resolve alleged violations of their rights under the UNCRC. However, it should not be seen as an alternative to a judicial process which allows children and young people to *enforce* their rights through a more formal legal process, which could be realised through the incorporation of the UNCRC into domestic law.

I reiterate my call, along with the other UK Children's Commissioners, for the UK Government to allow children and young people access to the new communications procedure to the United Nations Committee on the Rights of the Child, shortly to be established under Optional Protocol 3 to the UNCRC¹²

Object of an investigation and extension of the existing powers

It is proposed that the effect of the extension of my powers would be that individual children and young people would be able to challenge alleged violations of their rights. It is worth noting that my current powers do not refer to *violations of rights*. It will need to be clarified whether under the proposed new power of investigation, the purpose of an investigation by my office would be to establish: (1) whether there has been a *violation of (or non-compliance with)* the UNCRC by a service provider; or (2) whether the service provider *failed to have regard* to the rights, interests and views of the child – this may be a lesser requirement of the service provider. It will also have to be clarified what force a finding of either a violation, or a lack of regard to the UNCRC on the part of a service provider, would have, given that the proposals currently do not require service providers either to comply with, or to have regard to the UNCRC.

My view is that my role should be to investigate alleged violations of (or non-compliance with) the rights of the child or young person as an independent third party with a view to making recommendations to the service provider which would improve compliance with the UNCRC.

Levels of engagement for resolution of complaint

It should be noted that it is generally desirable to resolve complaints about infringements of rights at the local or service level wherever that is possible and is in the child's best interest. This should be an underlying operational principle, regardless of the extent and nature of the extended powers.

The experiences of organisations with broadly similar functions as are now proposed for my office, such as the Children's Commissioners of Wales and Northern Ireland, indicate that the existence of an investigatory power is likely to result in a significant number of complaints about service providers being made to the office by children and young people, and those advocating for them. It should be noted that not all such complaints result in an investigation.

¹² Optional Protocol 3 to the UNCRC of 2011 opened for signature on 28 February 2012. If ratified, it would enable children and young people in the UK to take complaints about alleged violations of their rights under the UNCRC to the UN Committee on the Rights of the Child. More information is available on OHCHR's website: <http://www2.ohchr.org/english/bodies/crc/index.htm>.

I believe that there would be a need for an adequately resourced individual casework function to be established if the proposals to extend my powers are enacted, both in order to assess the merits of each case against clear criteria to determine the appropriate level of engagement by the office, and to ensure that complaints made by children and young people or those advocating for them can be resolved appropriately (e.g. by referring or facilitating access to a more appropriate complaints mechanism).

There is now an opportunity to consider how the investigatory power would best be reconfigured to ensure that both cases falling within the remit of my current investigatory power, and those which would fall within the scope of any power relating to individual cases, could be adequately addressed without the full exercise of the power in every case.

Delineation of powers and remits between my office and other complaints/investigatory processes

If my current investigatory power is to be amended to include individual complaints within its scope, I would continue to be barred from investigating a service provider where doing so would be 'properly the function of another person'. I agree, as I believe it sensible to minimise the potential for duplication and unhelpful overlaps, although this qualification is not as clear as it may at first appear and needs further consideration.

I do not believe that it is 'properly the function' of any other body in Scotland to investigate 'whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people', or indeed to investigate alleged violations of children's rights. However, I would have to take cognisance of the remits of other complaints and investigatory bodies, and their potential locus in a complaint brought by or on behalf of a child. This indicates a need for careful consideration as to how the limits of my powers are defined.

Role of the child or young person in investigations

It is clear that a broader complaints and investigations mechanism provided by my office would need to be accessible to all children and young people to enable them to make complaints about alleged violations of their rights. Adequate support would also have to be available to ensure equal access.

It will need to be clarified whether the child's consent would be required in relation to information-sharing/gathering and other steps that are integral to an investigation. Clarification will also be needed as to the role of parents/carers and others who exercise parental responsibilities and rights (including local authorities – a service provider – for example, under a Permanence Order), and to what extent they may be able to give or withhold consent on behalf of the child.

Commissioner decision-making on whether to initiate an investigation

As the proposed additional investigatory function is based on a power to investigate rather than a duty, I should be able to exercise discretion in deciding whether or not to initiate an investigation. Such decisions would likely be based on whether there is evidence of a children's rights violation within the scope of the power, whether a full investigation would be necessary and appropriate in

the circumstances of the child or young person's case, whether the issue is currently being, or should more appropriately be, considered by another complaints process, and inevitably the availability of resources.

I believe this aspect of the function to be critical to the future operation of the office, and this would require the establishment of a decision-making process which accords with the need to demonstrate fairness, due process, transparency and accountability.

Capacity and infrastructure

The proposed extension of my investigatory powers would have significant resource implications for my office.

It would clearly be inappropriate to be put in a position where the adequate exercise of other statutory functions of the office was jeopardised due to a lack of resources.

I believe that the proposed extension of the investigatory function would require a dedicated and highly skilled complaints-handling and investigations team, adequate legal and professional advice, and additional enhancements to the office's infrastructure, reflecting the nature and requirements of the extended functions.

It is key, therefore, that additional resources are factored into any decision to extend my existing powers.

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?

Yes, but I suggest that the term and concept used should be 'children's rights and well-being'.

I also suggest that the SHANARRI indicators are developed to encompass all children's rights and are accordingly referred to as 'children's rights and well-being indicators'.

I note the positive intent of the above proposals to allow for a holistic approach to the needs of the child. However, to adequately implement Ministers' ambitions to ensure that children's rights are "rooted deep in our society and our public services" and to "embed the rights of children and young people across the public sector", what is needed is a holistic approach to the realisation of children's rights. Such a holistic approach would require a shift in the focus from well-being to children's rights. I would therefore be in favour of an approach in which:

- the use of the term ‘well-being’ is changed to ‘children’s rights and well-being’,¹³
- the SHANARRI indicators are developed to encompass all children’s rights and are, accordingly, referred to as children’s rights and well-being indicators.

In relation to any future secondary legislation on indicators, I would like to offer the following points for consideration:

- all indicators should correspond to the reporting clusters proposed by the UN Committee on the Rights of the Child.¹⁴ This would significantly improve public bodies’ capacity to monitor the implementation of the UNCRC and the capacity of the Scottish Government to fulfil its proposed new children’s rights duty
- in order for the indicators to be children’s rights oriented, the SHANARRI indicators would need to go beyond providing a snapshot of the state of children and young people’s lives. They could usefully take into account the interaction between children and young people, public bodies and wider society on matters concerning children and young people.¹⁵ To allow for fuller consideration of progress, different types of indicators should be developed – structural (to account for developments in legislation and policies), progress indicators (to reflect progress made in the implementation of legislation and policies) and outcome indicators (to account for how children and young people have benefited from the actions taken by public bodies).
- the indicators should be based on the collection of disaggregated data to allow for fuller analysis of progress in the implementation of the rights of different groups of children. In addition, indicators should also collect information based on the subjective perceptions of children and young people regarding their experiences in the realisation of their rights and well-being.¹⁶ This would allow for a direct measure of outcomes and would make the indicators more holistic.

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

¹³ Although the concept of well-being is inherent in the framework of children’s rights, the use of ‘children’s rights and well-being’ would allow maintaining the visibility of the links of the proposals with GIRFEC.

¹⁴ See Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, www2.ohchr.org/english/bodies/crc/docs/CRC.C.58.Rev.2.doc.

¹⁵ Developing indicators for the protection, respect and promotion of the rights of the child in the European Union, Fundamental Rights Agency: http://fra.europa.eu/fraWebsite/attachments/RightsofChild_summary-report_en.pdf

¹⁶ A guide to measuring children’s well-being, Action for Children: http://www.actionforchildren.org.uk/media/94477/action_for_children_a_guide_to_measuring_childrens_well_being.pdf.

See answer to Q4

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. I welcome in principle any measures that would facilitate joint working of public bodies to improve outcomes for children and young people.

I would suggest the following points for consideration in relation to this proposal:

- I am aware that under the Scottish Government's consultation on the Integration of Adult Health and Social Care, the views of some stakeholders were that such integration should cover all services, not only those for adults. I urge the Scottish Government to consider from a very early stage the degree of overlap of the proposals under these two consultations and to reflect its intentions in each of the Bills.
 - In line with my earlier comments, such a duty should be focused not just on well-being, but also on rights. It should require that public bodies work together to design, plan and deliver jointly their policies and services to ensure that they focus on implementing children's and young people's rights and on improving their wellbeing.
 - In a regime of public bodies working together under the proposed new duty, a new approach to scrutinising how this joint working and decision-making takes place may be needed. I would be interested in the Scottish Government's views on the potential need for changes to inspection arrangements.
7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

See answers to Q2 and Q6

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

See answer to Q6

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?

Yes. I welcome the intention to ensure that reporting on Single Outcome Agreements across Scotland meaningfully reflects authorities' progress in improving outcomes for children.

Although improvements were made in the second round of Single Outcome Agreements, there is still some way to go towards achieving this goal.¹⁷ I agree that this would be a good use of the Single Outcome Agreements reports.

There is an apparent link between this duty and the proposals regarding the establishment of a duty on both Ministers and relevant public bodies to report on the steps they have taken to further the rights set out in the UNCRC. I suggest that a reporting arrangement where the analyses of the Single Outcome Agreements annual reports to the Scottish Government should be used in the production of the 3-yearly reports to the Scottish Parliament, which are the sole responsibility of the Scottish Government.

I would again reiterate my view that the Single Outcome Agreements reports should focus on the progress local authorities and other relevant public bodies have made in furthering the rights and well-being of children and young people.

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

See answer to Q4

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

See answer to Q2 and Q6

2. A SCOTLAND FOR EACH CHILD

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

General Comments

I welcome the much needed focus on the challenges faced by children and young people in the earliest years of their lives.

I believe there are additional points which need to be addressed and these are expanded under the headings below:

- **the need for more Health Visitors;**
- **pre-natal care;**

¹⁷ SINGLE OUTCOME AGREEMENTS FOR SCOTTISH LOCAL GOVERNMENT, 2009-10. A thematic analysis by the Children's Voluntary Sector Policy Officers' Network:
http://www.sccyp.org.uk/uploaded_docs/single%20outcome%20agreements.pdf

- **affordable childcare;**
- **commitment to ‘play’.**

What happens pre-birth and in the early years affects a child’s long term mental and physical health and wellbeing as well as their social, emotional and cognitive development.

This chimes with the United Nations Committee on the Rights of the Child’s call for States Parties to construct a positive agenda for rights in early childhood. This would mean that the very youngest children would be respected as persons in their own right and recognised as active members of families, communities and societies, with their own concerns, interests and points of view. The Committee noted that:

“For the exercise of their rights, young children have particular requirements for physical nurturance, emotional care and sensitive guidance, as well as for time and space for social play, exploration and learning.”¹⁸

The Committee on the Rights of the Child General Comment 7 “Implementing Child Rights in Early Childhood”¹⁹ notes that early childhood services have often been fragmented and frequently been the responsibility of several government departments at central and local levels. This has sometimes led to a piecemeal and uncoordinated approach. It also notes that traditional divisions between “care” and “education” services have not always been in children’s best interests. Therefore, I am pleased to see within the proposals, an acknowledgement of the need to shift towards integrated services, heralding a different approach towards how services are delivered to support parents and children. Early childhood education and care have been seen as distinct entities for too long. This conceptual divide has been unhelpful, resulting in different funding mechanisms, access, pay and conditions and training as well as considerable confusion for parents and practitioners.

The proposals signify an important move towards making integrated services a reality. I endorse this approach and am pleased to see within the document numerous references to The European Commission’s “Early Childhood Education and Care Communication²⁰”. Both the Commission and the Scottish Government highlight the desire to support employability for parents and economic security for families as a route out of poverty. It is worth noting that this element of the consultation proposals is very susceptible to influence through the welfare reform programme because of the close connection between early years, childcare responsibilities and participation in the labour market. For this reason, careful attention has to be paid to the interaction of the positive policy intentions, and the potential for these to be undermined by the future impact of the welfare reform proposals. Taking a children’s rights approach to these deliberations

¹⁸ General Comment 7 “Implementing child rights in early childhood: General Comment 7 “Implementing child rights in early childhood: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1GeneralComment7Rev1.pdf>.

¹⁹ As above.

²⁰ http://ec.europa.eu/education/school-education/doc/childhoodcom_en.pdf.

will also ensure that the best interests of the child remain paramount within discussion of policies aimed at supporting parents in work.

The need for more Health Visitors

I believe that we need more Health Visitors to realise the objective of improved services for children and families in the early years.

I believe that there is an opportunity to ensure that public bodies set minimum standards for support offered to all families in the earliest years of a child's life.

While I welcome the Scottish Government's aim of achieving a "coherent, universal system of early childhood education and care" and echo the view that the period from pre-birth to three years of age is crucial to the long-term wellbeing and life chances of children.

I feel that there has been a critical omission from the document. In my opinion, to achieve the ambitions for children in the earliest years, we have to improve our universal health visiting services. This could be achieved through a statutory entitlement to core, additional and intensive services from health visiting teams for all under-fives. In my view this needs to be addressed with urgency and through a consideration of the need for more Health Visitors. This would help to realise the ambitions for the implementation of the Early Years Framework and the National Parenting Strategy.

Pre-natal Support

I believe that pre-natal support should be given a higher priority in the proposals.

Although the life journey begins when the child is born, it is influenced before birth and that is a key period for shaping the child's life chances. I would like to see more of a focus on preventative support and a specific focus towards pre - birth in particular. Antenatal education and support needs to be more explicit and given higher priority within the discussions around a proposed Bill.

Affordable childcare

I believe the issue of high childcare costs needs to be addressed, otherwise it will undermine the objective of improved services in the early years.

I recognise that there are particular difficulties for parents of disabled children in accessing suitable childcare provision.

The high costs of childcare in some areas, along with the variations in costs and gaps in provision²¹ illustrates the extent to which some local authorities have neglected both their childcare provision and the management of their childcare

²¹ The Scottish Childcare Lottery, The Daycare Trust & Children in Scotland, 2012.

markets. I suggest we adopt measures similar to those in England and Wales²² whereby authorities are required to assess “childcare sufficiency” so that they are aware of current provision, can manage gaps in provision and in so doing improve access. This requires robust data collection, analysis and reporting which will help improve provision where it is most needed.

I am also concerned that parents of disabled children often struggle to find affordable childcare. Many of these parents are simply unable to access this, often relying on friends and family to assist as appropriate. It is not unusual to find parents in this situation having to give up work because they have been unable to find a suitable placement for their child, with appropriately trained staff. I feel that ensuring flexible, inclusive early learning and childcare provision for disabled children should be a priority and all necessary funds should be deployed to ensure this happens. Many of these children (and parents) will be hit hard by welfare reforms and in particular by the phasing out of the Disability Living Allowance. Whilst any additional childcare provision should not in any way be seen as mitigating the financial loss of these families, it is, however, practical support which is much needed and wanted.

Commitment to play

I suggest that there should be specific mention of ‘play’ within the indicators in the definition of “children’s rights and wellbeing”.

The UN Committee regularly comments on the lack of attention given to the implementation of article 31 of the UNCRC, which guarantees:

“the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts”.

The UN Committee highlights that play is one of the most distinctive features of early childhood and that through it, children both enjoy and challenge their current capacities, whether playing alone or with others. In the consultation, there is an intention to provide statutory guidance for public services to support the whole wellbeing of a child or young person. In my briefing on the “Getting It Right for Every Child” proposals, I have suggested an approach of “children’s rights and wellbeing” and suggest that indicators are developed within this definition. Including play within the definition of “children’s rights and wellbeing” with accompanying guidance on indicators, would ensure that the child’s right to play is explicit within the duties on public bodies to work together to design, plan and deliver their policies and services to improve children’s rights and wellbeing. This echoes Play Scotland’s call for play to be included within the definition of wellbeing.

²²Statutory Guidance under the Childcare Act (2006) requires 3 yearly childcare sufficiency assessments and annual updates.

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

Yes, I support the inclusion of a further 125 hours of publicly subsidised early learning and care to a minimum of 600 hours for 3-4 year olds and for 2 year olds who are “looked after.”

It is important that the entitlement for extended access to early learning and childcare is universally available. I welcome the Government’s statement that these proposals set the stage for more fundamental consideration of how to provide high quality early learning and childcare that meets the needs of all children, families, parents and employers in the future. I expect that further consideration will be given to school age childcare and that this will also be seen as an essential resource for children and families, promoting the integration of education and care. I am optimistic that the Government will build on this progressively, in line with its stated intention of “matching the best [provision] in Europe”²³.

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

Yes, I support greater flexibility and seamless early learning and childcare in order to promote the best interests of children across Scotland.

Whilst it is vital to provide high quality childcare to every child in Scotland, this should not be at the expense of specialist services for families requiring more intensive support. I would like to see consideration given to the Scottish Out of School Care Network’s call for funded hours for children who start school at 4 - at least until their 5th birthday. The flexibility proposed in the document could mean that this could be used as transitional childcare (e.g. from nursery to primary school), for out of school care or during the holiday periods.

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?

I believe that there should be consistent provision across Scotland.

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?

I believe that the detail on cross boundary placements is best provided for in secondary legislation. The purpose of this should be to provide clarity with the aim of reducing the likelihood of litigation about which authority has which duty and to whom.

This is a particular issue for disabled children where the availability of high quality inclusive provision is limited. There need to be assurances to families who move from one local authority to another that their child’s provision will

²³ A Scotland for Children, para 87.

continue to be funded and that no parent should be out of pocket in securing provision for their child. This is especially important for children with particular impairments where the need for consistency in support is essential.

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?

Yes, although I would not wish to see any involvement in early childcare settings as replacing or leading to a reduction in essential family support.

For instance, young children in foster care placements need sufficient time to develop attachments – an increase in time spent in an early childcare setting may not necessarily be conducive to this.

In my view, additional provision should ideally be progressed alongside other support. High quality childcare is the most effective and cost-beneficial strategy to improve child development outcomes, particularly cognitive development and language / communication skills, but these positive outcomes could be enhanced by combining these with other initiatives such as health visiting or parent education programmes.

There are also many children who are not "looked after" but supported as "children in need" under s. 22 of the Children (Scotland) Act 1995 who would benefit from additional care in a supportive setting and it is essential to consider these children within the proposals. Disabled children in particular should be prioritised. Access to good quality early learning and childcare is vital for this group of children. Not only would this provide support to parents and help them to develop more secure attachments with their children, but it would also help to address issues of social isolation for children and their carers within the community.

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?

I fully support the role envisaged for a Named Person in the structure of GIRFEC. However, I do not believe that now is the time to enshrine this in legislation.

My main concern is that unless the Scottish Government is able to make a significant investment in the Named Person, the role will remain perfunctory. In my view it will not change anything in relation to children who do not have any complex needs and problems, while there is a likelihood that it would fail to perform its functions in relation to children whose needs are more complex, resulting in raised expectations and disappointment. For instance, it is not unusual for a Health Visitor to have responsibility for 350 children and in some cases many more. I do not see how they could meaningfully fulfil the responsibilities envisaged for the role with consistently high numbers of cases. I

believe that a substantial additional resource is required for more Health Visitors to be confident they can fulfil their responsibilities under the Named Person proposal.

At the same time, there is an opportunity to ensure that public bodies can set minimum standards for support offered to all families in the earliest years of a child's life. This would help realise the ambitions for the implementation of the Early Years Framework and the National Parenting Strategy. In my view this should be addressed with the same urgency as the issue of Health Visitors discussed above.

The Scottish Government may also want to consider that the child and their family may not want to engage with this person and may wish to engage with another professional involved in their child's care.

Depending on how the new duties of public bodies envisaged in the proposed Bill are implemented in practice, the Scottish Government may be in a better position to decide on legislating for a Named Person when the issues of Health Visitor availability have been resolved.

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

Yes, I believe that the responsibilities of the Named Person are the right ones, but that they need to be carefully mapped out to ensure that the Named Person does not encounter a conflict of interest.

No. I do not believe that there should be any additional responsibilities that should be placed on the Named Person.

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?

Yes.

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?

It is clear that the proposed arrangements raise a number of questions for children attending school, for example, what support will be in place during the summer holidays? I am also concerned about the cases of informal exclusions of children from school. I believe that more consideration needs to be given to these cases, where the existence in theory of a Named Person at school would not allow for the intended functions of the Named Person to be exercised.

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

Yes, I welcome the proposed single planning approach.

The Child's Plan

The proposals envisaged for co-ordinating the Child's Plan are fully congruent with the proposals for a duty for joint working between relevant public bodies.

In light of the Scottish Government's ambition of embedding the rights of children and young people into legislation on service planning and delivery, it would make sense for a single child's plan to consider and reflect the wider children's rights context rather than to approach it only from the perspective of the specific needs a child exhibits at the point of planning (or reviewing) a plan.

In the context of my comments on the Named Person proposals, I am of the view that any professionals currently responsible for developing and coordinating plans for children within their respective agencies should continue to do that using the proposed single child's plan. If more agencies are to be involved it is not, and it would not, according to the proposals, usually be the role of the Named Person to coordinate these.

Two other matters that would require consideration would be:

- there is a need to simplify and rationalise the different reviewing requirements under the single plan
- ongoing scrutiny of the plan is vital, particularly when a range of agencies are involved in delivering services. This is key to ensuring the best outcome for an individual child or young person.

A GIRFEC pilot in Highland successfully introduced independent Quality Assurance and Reviewing Officers for children with complex needs. The role involves working with children and young people on the Child Protection Register, those subject to compulsory measures and those with Co-ordinated Support Plans to help ensure that the young person's needs are being met by all the agencies involved in their care.²⁴ The approach has shown potential to be applied on a national basis. I would encourage the Scottish Government to undertake further analysis to establish how this could best be rolled out to children and young people across Scotland.

Noting the multitude of plans a child can currently have, I urge the Scottish Government to identify workable ways in which a Single Child's plan can become a reality. This may also require some thought to be given to the different conceptions of the child and childhood that are reflected in current legislation and planning frameworks. For example, children (defined as under-16s) have no

²⁴ Scottish Government (2010),²⁴ *A guide to implementing GIRFEC: Messages from pathfinders and learning partners*. The Scottish Government, 2010.

'active' rights under the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended), while GIRFEC appears to envisage an active role for the child.

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

In line with Article 12 of the United Nations Convention on the Rights of the Child, I believe that all children, who have the capacity to do so, should be involved in and consulted upon the development of their plan. Any consultation should be carried out in an age appropriate and child-friendly way. I believe that children can express their opinions from a very young age and should be given the opportunity to do so (where this is assessed as appropriate and in their best interests). An advocacy worker or Children's Rights Officer may be able to help a child or a young person to express their views.

All relevant adults, professionals, parents and carers must have support and the opportunity to develop awareness and understanding of the rights of children and young people to be involved, for their views to be taken into account and for accessible information to be provided to them. It is important to build and nurture confidence about participation at all levels. This could be achieved through easily accessible information and resources available to inform adults, children and young people.

As is already required by secondary legislation, "parents and children need to be "actively involved where appropriate in assessments, decision-making meetings, care reviews and conferences".²⁵ This should continue to apply with regards to the development and implementation of the Child's Plan. Children and young people and their families may require support to engage in planning processes, and this should be provided to a good standard to enable their participation to the highest possible degree.

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, but it would need to be accompanied by a commitment to increase resources.

I suggest that consideration is given to a proposal which places a duty on local authorities to look after and accommodate young people who leave care at age 16/17 and who become homeless before their 18th birthday.

Given what we currently know about how poorly current powers are being utilised and resourced, I am unsure as to whether this proposal would have any

²⁵ *Scotland's Children: The Children (Scotland) Act 1995 Regulations and Guidance*, Vol 1, Chapter 1, Para 23.

practical effect, unless there was a genuine commitment to an increase in resources. Moreover, even with the right to ask for support, this is not necessarily guaranteed. I would also like to see the emphasis shift from young people being required to approach the local authority for help, towards ensuring that the local authority makes their services accessible to young people. A focus on developing awareness of young people's rights and entitlements is essential.

Research conducted by my office in 2008²⁶ illustrated that not only were young people unfamiliar with their rights, but that there was an expectation and culture of young people leaving care at 16. Many practitioners were unaware of relevant policy and legislation around this e.g. the general principle that young people should continue to be looked after until they are 18 and that local authorities can provide assistance until the age of 21. The latest figures for young people ceasing to be looked after²⁷ show that at the point they left care, 43% did not have a Pathway Plan and 27% did not have a Pathway Co-ordinator.

There is also a need for young people approaching 16 to be given far better preparation and support to enable their transition to independent living. It is worth noting that many of these young people leaving care will have needs which require different types of support and help, for instance, disabled young people, young people who have behavioural difficulties and some young people who are parents. As local authorities currently have a duty under the Children (Scotland) Act 1995 to provide throughcare and aftercare for some formerly looked after children up to the age of 19 and a power to provide guidance and assistance until the age of 21 (S.29. CSA 1995), it would be interesting and beneficial to explore the range of policies and legislation currently available, and assess how these are working in practice.

The current proposal is for a right for the young person to request help, not a duty on the local authority to provide it. The local authority would still have discretion over how to respond to such requests. If local authorities are to be given additional powers to provide discretionary services to over 19s, this has to be taken seriously. The guidance already states that 'the general principle is that young people should continue to be looked after until 18, if it is in their best interests and this guidance should be read with that principle in mind'²⁸. This proposal should be accompanied by clear guidance and additional funding will be essential. This will help to ensure consistency across Scotland. Care must be taken to ensure that any assistance, both in kind and financial, does not negatively impact on a young person's benefit entitlement.

Furthermore, we need to be more pro-active in ensuring that young people do not have to leave care at a young age – and, if they do and it does not work out, local authorities should have a duty to accommodate them once more. This would include all young people who leave care at age 16/17 and who subsequently become homeless before their 18th birthday. There is potentially a significant role here for foster carers, but current pressures make it unlikely that many will

²⁶ Scotland's Commissioner for Children and Young People (2008), *Sweet 16: The Age of Leaving Care*.

²⁷ Scottish Government (2012), *Children's Social Work Statistics Scotland, No1*.

²⁸ Scottish Executive (2004), *Guidance Regulations and Guidance on Services for Young People Ceasing to be Looked After by Local Authorities*, para 1.3.

have the capacity (or indeed space) to provide care for returning young people, despite this being exactly what they need.

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?

Yes, although I believe the emphasis should be on pushing for cultural change. We need to look at how those involved in a looked after child's care are currently interpreting their corporate parenting responsibilities, before we consider enshrining a definition in legislation.

Corporate Parenting is already made explicit through existing and detailed guidance²⁹, but the application of that guidance currently varies amongst sectors and between local authorities. We need to carefully consider what benefits would be gained through defining corporate parenting in legislation and whether there are any circumstances in which it might prove helpful for children and young people. For example, could this enable children and young people to more easily access help and support or act as lever for challenging decisions? Advocacy provision is also key to ensuring children and young people are able to input into any decisions being made by their corporate parents.

The definition in the 2004 regulations and guidance underlines that corporate parenting is:

"...not restricted to the Social Work department of the local authority but applies to all departments and agencies, who should recognise their own responsibility to promote the welfare of looked after [children and] young people and ensure that their needs are adequately addressed..."

'We Can and Must Do Better' underlines

"...the formal and local partnerships needed between all Local Authority departments and services and associated agencies who are responsible for working together to meet the needs of looked after children and young people"

'Corporate Parenting' thus illustrates that the welfare of looked after children and care leavers is the responsibility of everyone in the local authority, rather than being limited to children's services or social services. This was echoed by the Care Inspectorate at the Scottish Parliament Education Committee's recent Inquiry into the Educational Attainment of Looked After Children³⁰.

²⁹ Scottish Executive (2004), *Supporting young people leaving care in Scotland: regulations and guidance*; Scottish Executive (2007), *Looked After Children and Young People: We Can and Must Do Better*; Scottish Government (2008), *These Are Our Bairns: a guide for community planning partnerships on being a good corporate parent*.

³⁰ 6th Report, 2012 (Session 4): *Report on educational attainment of looked after children*, <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/51538.aspx>

“There has to be shared ownership of these kids [looked after children] and a desire to do better by them....we have to get all services to share ownership and to believe that the kids are worth investing and spending time on.”

Further evidence from ADES noted that:

“Overall, staff in schools do not yet have a clear understanding of their corporate parenting responsibilities. Those in leadership positions at authority and establishment level, need to implement more effectively corporate parenting strategies and continue to promote positive attitudes and high expectations for this group.”

My view therefore is that current guidance should be reinforced and a robust assessment made as to why this is failing to permeate all services particularly at an operational level. The guidance could also focus on how disagreements or conflicts across departments are addressed and also explore notable successes, assess how these were achieved and seek to learn from them. I am keen also to explore what works best for children looked after at home, as these children often face particular challenges.

A strong cultural shift needs to accompany any definition and this is where work is urgently needed. This should not be compromised by short term budget pressures.

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.

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?

I am unsure about the overall impact of a new order as it seems well intended, but there may be unintended outcomes. This proposal requires further consideration.

Kinship carers provide an essential and particular form of care and support to some of our most vulnerable children. It is crucial that those who are taking this responsibility should be appropriately supported to do so, whether this be in the form of financial assistance or by other means.

While I welcome the intention to address long standing issues in respect of kinship carers, I would stress that we need to address the difficult issue of the interaction between local authority payments and the benefits system where deductions are made from kinship carers' benefit payments because their role is not formally recognised by the DWP. It is currently unclear whether the proposed order would make a difference in that regard. I would be clearer on my position on the proposed new order if reassurances were given by the Scottish Government that the proposed order would resolve this long-standing issue, which causes real difficulties for kinship carers and the children they care for.

It is worth noting that losing looked after status can also mean the loss of certain entitlements and benefits which flow automatically from having this status³¹. This could be in the form of financial allowances, free school meals or clothing allowances etc. I would be particularly keen to ensure that a looked after and accommodated young person would not lose their entitlement to throughcare and aftercare (where applicable), as this could have a long-lasting negative impact on their future. Consideration should be given as to what additional supports could be put in place to support kinship carers and how local authorities can be adequately resourced to deliver these.

Currently, the options available to kinship carers to provide long term stable care and security for children and young people outside the looked after system are the following:

- S.11 orders under the Children (Scotland) Act 1995 (with or without appointment as guardians)
- Adoption

A new order would simply duplicate much of what currently exists and may cause considerable confusion. Moreover, as with a S. 11 order, a new order would by necessity be obtained by way of a court application and would encounter many of the problems which occur with S. 11 orders such as court delays and difficulties around obtaining legal aid.

I would be happy to discuss the proposal further. The needs of kinship carers are pressing and I am interested to hear how such an order will guarantee the support that kinship carers require, how it fits in with other legislation and the practical effects of such an order. Clearly this will need to be elaborated on in some detail and I would welcome the opportunity to be part of these discussions.

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

See answer at Q26

Adoption and permanence

³¹ N.b.: S. 50 of the Children Act 1975 also allows local authorities to contribute to the maintenance of children under 18 who are living with someone other than their parents and who are not foster children.

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

Not necessarily.

Whilst I agree that we should be encouraging local authorities to register with the SAR, it may be more appropriate to look at developing this through secondary legislation, guidance or as part of the regulation regime. Moreover, the register is still very new and needs to have time to bed down and be allowed to integrate into current practice. It might also be worth investigating why so many local authorities have not registered with SAR and the reasons why they feel this is problematic.

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?

Yes. I agree that consideration should be given to setting limits on fostering placements and believe that a limit of three children per placement is appropriate, subject to some flexibility in the case of sibling groups. I am therefore supportive of this idea in principle.

In assessing the capacity of a foster family, the Scottish Government should factor in other considerations, such as whether there are two full time carers as foster carers. Their capacity may be greater than a single carer to cope with multiple placements. Cases need to be determined on a case by case basis, should be considered at the assessment stage and will ultimately be a matter for professional judgment.

Setting a limit on fostering placements will have ramifications for the availability of placements for children and young people as well as financial implications – more foster carers will need to be recruited and trained to ensure that the otherwise welcome introduction of maximum limits does not impact negatively on the availability of foster carers for children who need this type of placement. I suggest therefore that there should be a presumption of a maximum of three children with the scope to apply for an exemption to the usual fostering limit in exceptional circumstances, for example, in the case of sibling groups. This should be assessed according to the children's needs and the carer's capacity.

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

Yes, but I have concerns around over-professionalising the foster care system, which might prevent potential foster carers with the requisite skills from coming forward.

My view is that there should be accredited training for all carers before they are accepted and then after approval. I do not believe, however, that a college qualification should be a pre-requisite for someone becoming a foster carer.

Basic educational attainment should be sufficient as successful carers are skilled in many ways and not just in formal learning. Any initial training, should be complemented by additional training/learning opportunities, appropriate to the range of children and young people they are working with. Children and young people in Scotland need a broad range of foster carers and I believe a formal qualification, set at too high a bar, is more likely to act as a barrier to others willing to join their ranks, rather than increasing the status of foster carers.

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?

Not necessarily.

I remain unconvinced that a register would increase the chances of a child or young person being matched with an appropriate carer. Many placements need to be local and also may need to be set up quickly (often on the same day). In this regard, a register is likely to have limited use. Councils should be encouraged to share resources and work better across boundaries.

I understand that there are anxieties that a carer from one agency can be de-registered and then apply to another agency without mentioning their history. If every carer were on a register and agencies were required to provide approval along with deregistration and retirement information, this would help to ensure that unsuitable foster carers were not re-applying in different authorities or with different agencies. This would certainly make care safer. If this were to be the purpose, I would support such a register.

I appreciate that the questions relating to foster care do not form part of this Bill, but are still part of the consultation. I would welcome further discussion around these aspects of the consultation and look forward to doing so through the forthcoming review on foster care.

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, I agree that fostering allowances should be determined and set by the Scottish Government at a standard minimum rate. This would help ensure fairness, not just for Foster Carers, but also for the children and young people they look after.

I believe that we need to have an agreed baseline about what it costs to look after a child in foster care as this is currently lacking.

I am well aware of the discrepancies in funding across Scotland and note the survey conducted by the Fostering Network which found that in 2011-12, two out of three local authorities in Scotland (69%) gave their foster carers allowances below the Fostering Network’s recommended fostering rates and that over half (53%) did not increase their allowances at all from the previous year, despite the

rise in the cost of living. Fostered children across many parts of Scotland are potentially missing out on having their basic needs met.

We also need to distinguish between maintenance allowances for the care of the child from the fees that many carers are paid for the tasks they do, the skills they bring and the time they spend looking after the child. Other factors also need to be taken into consideration, e.g. foster carers who do not work a set number of hours and the varying needs of the child. There will also be occasions when foster carers do not have children in their care, so consideration might be given to providing a retainer of some sort. I would wish to see the detail on these proposals before making any definitive comments.

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?

No comment

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?

See answer at Q1, re Child Rights Impact Assessment

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?

I would reiterate my comments on the limitations of the consultation with children and young people. The fact that the consultation for children and young people was launched during the school holidays may have meant that many children and young people missed out on their opportunity to provide an input. I also have concerns about the suitability of some of the materials designed to be used by some disabled children. I believe that not all formats were appropriate to the needs of certain groups of children.

Additional Comments

Equal protection

Protecting children from physical violence in the home is a children's rights issue and until children are given equal protection in law, their rights will continue to be violated. Legislation in Scotland protects everyone from it, but children's protection from violence in the home is weaker than that afforded to anyone else.

Many people and organisations are keen to see equal protection of children from physical violence in the home. In my opinion, this requires the urgent attention of the Scottish Government and Parliament. I understand that introducing equal protection from violence is not necessarily a matter for the Children and Young People Bill, but rather more appropriately for the Criminal Justice Bill, which was also announced in the Scottish Government's Legislative Programme 2012-13. It is my firm opinion that equal protection should be legislated for and that politicians should address this issue – especially as the Government has the laudable ambition to make Scotland the best place in the world for children to grow up.

Interaction with Adult Health and Social Care Consultation

I suggest that the Adult and Social Care proposals and the consultation on the Children and Young People's Bill have to be assessed together. This would allow their potential impacts on children and young people and family services to be taken into account to ensure better results and minimise any potential unintended consequences.

It is worth noting that proposals for the Adult Health and Social Care integration and for a Children and Young People Bill are being consulted on at the same time. In my view both will significantly affect children and young people and there is likely to be considerable interaction between the two. Yet, this is not sufficiently taken into account in either document.

I suggest greater thought needs to be given to the long-term vision of the integration of services, which could potentially include children and families. There is a risk that the Adult Health and Social Care proposals could inadvertently endorse a divide between adult and children and family services, which is inconsistent with the aspiration of seamless service delivery across all age groups. If this was to be achieved, the changes required would be very significant in some areas, although not in others where they already have integrated approaches. I suggest the inclusion (or not), of children and family services requires further consideration and lead in time to ensure consistency across all Local Authority and Health Board areas. Otherwise we may end up with very inconsistent approaches in Scotland in respect of the integration of services for children and families.

It is clear that the integration of Adult Health and Social Care could also have a very major influence on families as the integration proposals will impact on the adults who are caring for children and young people. In many instances, adults who require Health and Social Care services are responsible for our most vulnerable children and young people. In essence, adult services are children's services when they are dealing with families.

Both the Adult Health and Social Care proposals and the Children and Young People Bill proposals will require consideration to be given to the delivery of all services through integration and improvement approaches. If they are not considered together, it could mean similar proposals being enacted differently for different age groups, without this necessarily being the intention. In some areas of Scotland it will be possible for them to be considered together because they have already developed joint integration approaches, however, in other areas this is not the case and it could prove difficult to do so.

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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