

Children and Young People (Scotland) Bill

CELCIS Briefing for Stage 3 Debate

February 2014

About Us

CELCIS is the [Centre for Excellence for Looked after Children in Scotland](#), based at the University of Strathclyde. We work to improve outcomes for looked after children and care leavers through a collaborative and facilitative approach, informed by the latest academic research and evidence from practice. The rights of looked after children and care leavers are central to the work we undertake.

Children and Young People (Scotland) Bill at Stage 3

The Scottish Government's aim for the Children and Young People (Scotland) Bill is to 'create a programme of change in the culture and practice of all services that affect the lives of children, young people and their families'. We feel that the current Bill goes a significant way towards achieving this, particularly with regard to the Aftercare provisions in Part 8.

At the start of the Bill's final parliamentary stage we wish to thank the Education and Culture Committee for their long-standing commitment to improving outcomes for looked after children and care leavers. Their collaboration with the sector, and willingness to listen and respond to the views of looked after children, young people and care leavers, has helped to secure positive changes to this Bill. With many details left to be resolved in guidance and regulations we hope the Committee will continue to advocate for Scotland's most vulnerable children, and we look forward to working with MSPs to ensure Scotland becomes the best place in the world to grow up in care.

We have restricted this briefing to the areas of the Bill most relevant to looked after children and care leavers. We note that significant amendments have been tabled by MSPs at Stage 3, developed in collaboration with the children's sector, and we urge MSPs to give a number of them consideration.

Key points

- We are pleased to see amendments furthering implementation of the United Nations Convention on the Rights of the Child (UNCRC) in Scotland and urge MSPs to consider these at Stage 3. We support the idea of the establishment of a National Commission to consider whether the UNCRC should be given legislative effect and to progress the discussion on UNCRC incorporation.
- Provisions around corporate parenting will help to clarify roles and responsibilities, but the concept still causes confusion in many areas. More needs to be done to raise awareness of organisations responsibilities and how to implement them, ensuring a consistency of approach across Scotland.
- Maintaining sibling contact is an important issue for looked after children. We support MSP Jayne Baxter's Stage 3 amendment to the Bill to this effect.
- The 'continuing care' provisions are welcome, but effective allocation of resources is paramount to ensuring their success. These changes are complex, and it is important that information is disseminated about how they interact with current legislation and regulations. Plans must also be put in place to enable children and young people to be informed about their rights.
- We welcome the new requirements on public bodies to report on the death of a care leaver. However we feel that this should be extended to cover all care leavers up to the age of 26.
- We support the provisions allowing all two year olds subject to a kinship care order to be eligible for early learning and childcare. We also welcome the changes introduced at Stage 2 which allow for a guardian to be eligible for kinship care assistance.
- We remain committed to working with Scotland's Adoption Register to secure nurturing permanent placements for looked after children.
- We support an amendment at Stage 3 to amend and improve the Additional Support for Learning (Scotland Act) 2004 with regard to children under the age of three.

Part 7: Corporate Parenting

We believe that public bodies have a responsibility for promoting the wellbeing of looked after children and young people. We therefore welcome the Bill's provisions which place Corporate Parenting on a statutory footing. We are particularly pleased to see the inclusion of Health Boards in the Schedule of Corporate Parents, as they have a critical role in securing positive outcomes for this vulnerable population. The current Bill provides clarity around the list of corporate parents (in Schedule 3), removing some bodies and exempting others from the duty to comply with directions issued by Scottish Ministers. This is helpful and appropriate. There is further flexibility should Ministers wish to add a new body to the list, and the means with which to exempt some from Ministerial direction where required. The Bill provides for adjustment to the list of Corporate Parenting duties, and modification of their application to particular Corporate Parents. This should enable specific duties to be applied to an individual or groups of Corporate Parents, allowing Government to refine the responsibilities of specific organisations.

However, despite the availability of guidance and training on what it means to be a Corporate Parent, the concept is still inconsistently understood across Scotland. The Bill will go some way towards clarifying organisations' roles and responsibilities, but success will depend on continued effort over the next coming years. The Throughcare and After Care National Survey (due for publication in March 2014) confirms that strong leadership and an explicit acknowledgement of corporate parenting responsibilities is essential to improving outcomes for looked after young people and care leavers. Many local authorities and Community Planning Partnerships are already demonstrating their commitment to this through investment in the 'Family Firm' model (ensuring that dedicated employment and training opportunities are made available to young people) and provision of post-care supported accommodation options. The Scottish Government's [Staying Put Scotland](#) approach stresses that relationships formed between a young person and their carer should be continued and maintained wherever possible and desirable. This should be seen as central to the corporate parenting function. To help explore these issues further, CELCIS will host a national round table discussion on corporate parenting in early March; the outcome of which should make a positive contribution towards future guidance.

Sibling contact

In the [CELCIS response to the Scottish Government's consultation on the Bill](#) (Sept 2014), we called for the promotion of sibling contact by corporate parents. An amendment on this issue from Jayne Baxter MSP fell at Stage 2. This amendment would have extended the Section 17 duty in the Children Scotland Act (1995) (regarding the promotion of personal relations and

contact between a looked after child and their parents) to include siblings accommodated elsewhere. We recognise that such a duty may be too specific to apply to all corporate parents, but we urge MSPs to consider the relevant Stage 3 amendment, which will apply solely to local authorities. When children and young people are removed from their family environment it can be a traumatic experience. Maintaining relationships with siblings becomes extremely important. Facilitation of sibling contact, although not without its complications, can help to provide children in care with the consistent attachments on which positive development and good outcomes are based.

Part 8: Aftercare

We welcome the changes made to Part 8 of the Bill, introduced by the Government at Stage 2. These helpfully clarify the age at which a young person can qualify for aftercare provision, and ensure that young people can continue in their care placement up to 21, if their needs require it and they wish to do so. The issue of recording and reporting on the death of care leavers is also addressed.

At present some 16-year-old care leavers are not eligible for aftercare support because they leave care within certain months of the school year. The Bill will redress this anomaly by changing the eligibility criteria to all young people who leave care after their '16th birthday.' Section 60 of the Bill amends the 1995 Act to provide young care leavers with the opportunity to receive local authority support up to and including the age of 25. Care leavers will have a right to request advice, guidance and assistance from a local authority, and that authority will be under a duty to conduct an assessment of the individual's needs. If he/she is found to have eligible needs, the local authority will have to provide support to meet those needs. It is important to note that the care leavers will still have to request this assistance, and be assessed as eligible. Local authorities will still retain discretion as to what is eligible and then provide what they deem necessary.

Part 8 A: Continuing Care

We welcome this new entitlement for young people who cease to be formerly looked after aged 16 or above. This change, which introduces a new Section 26A to the Children (Scotland) Act 1995, will allow (from 2015) a new cohort of 16 year olds in foster, kinship or residential care to remain in their placements until 21 years. The intention is to roll out entitlement to additional cohorts of young people over coming years. We have always maintained that effective aftercare is built on young people's opportunity to 'stay put' in the placements they feel comfortable and secure in, until such time as they are ready to move on. The transition to independence is challenging for many care leavers and Corporate Parents must ensure that the right support is in

place. It is important therefore that these provisions link into new guidance on Corporate Parenting.

The Scottish Government has committed £5 million a year up to 2020 to enable providers to implement the 'continuing care' provisions of the Bill. While we welcome the additional investment, we share the concerns of many local authorities that this underestimates the resources needed for effective implementation. We urge the Government and Scottish Parliament to monitor these reforms as they are rolled out, particularly with regard to their impact on workforce capacity. Furthermore, it may be the case that not all care settings can provide formerly looked after young people with the kind of support they need to make the graduated and extended transition to interdependence.

We look forward to working with the Scottish Government and other partners on the Expert Group, set up to consider and address such implementation issues. This group will also have an important role in developing proposals around a 'right to return to care'. With our detailed understanding of the evidence from both research and practice, CELCIS is well placed to provide expert support throughout this process.

Reporting the death of a care leaver

We welcome the introduction (in Section 60) of the requirement on local authorities to notify Scottish Ministers and the Care Inspectorate about the death of a young person in receipt of aftercare services. However, we believe this should be extended to include the deaths of care leavers up to the age of 26. We propose that a new requirement is placed on the Procurator Fiscal to ascertain whether or not that child was a 'care leaver' (ceasing to be 'looked after' at the age of 16 or above, or any other eligibility criteria), and if so, to inform the local authority. The importance of recording and notification around the deaths of care leavers lies in the fact that it is only when we know of and understand the tragedies that we can design improvements that will safeguard the lives of future care leavers.

Part 10: Kinship Care

In our original submission to the Parliament we raised concerns around the kinship care order, stating that it was unclear what this would add to current provisions. We still have these concerns. We must ensure that local authority support provided under the Bill's kinship care order is based on the needs of the child, not resources or a child's legal status. The assistance to be provided under the Order will be prescribed by Ministers in secondary legislation, and we hope that all kinship carer groups are fully involved in discussions before decisions are made. Much will depend on the detail of the regulations, and how the provisions are turned into reality

by local authorities. CELCIS will be monitoring implementation and will seek to ensure that children and young people's rights are fully reflected in his process.

Part 11: Scotland' Adoption Register

We are committed to working with Scotland's Adoption Register to secure nurturing permanent placements for looked after children. The changes in the Bill may help to speed up the process by which a young person can be adopted. We also appreciate the clarity provided at Stage 2 on the issue of when consent from a parent is appropriate when information is provided about a child.

Amendment to the Additional Support for Learning (Scotland) Act 2004

CELCIS is part of the 'Putting the Baby IN the Bath Water' coalition, and was supportive of amendments put forward at Stage 2 to promote the 'prevention' agenda. We wish to lend our support to the Part 12A amendment lodged by Liam McArthur MSP, which would remove a legislative obstacle to prevention and early intervention from birth to age two. By amending the Education (Additional Support for Learning) (Scotland) Act this amendment would help to end the discrimination against our youngest children and their families, by ensuring them equal treatment under this legislation (i.e. applying the same eligibility criteria and support already available to all older children, young people and their parents). We hope that MSPs will look favourably on this amendment.

Concluding comments

We are delighted that the Scottish Government has committed itself to developing measures which would allow care leavers to return to supportive care placements. Many care leavers choose to return home or move into independent living when they cease to be looked after, but this transition can be extremely challenging. The Government's proposals will offer these vulnerable young people the opportunity to return to carers and homes in which they are safe and secure. This is a vital in building successful transitions to independent living.

However these proposals will clearly have major implications for both resources and practice, and will need careful consideration before being implemented. The composition of the Expert Group set up to develop the measure will be very important, as these individuals and organisations will have a responsibility to get this right not only for care leavers, but for families, carers and professionals.

The Children and Young People (Scotland) Bill is an important piece of legislation and one which has found widespread support across the sector. We have been delighted by the commitment to improving the outcomes of looked after children and care leavers, shown by civil servants, MSPs, local government and the third sector. This legislation has encouraged organisations to work collaboratively, bringing together a wide range of agencies and public bodies. We hope that this collaborative approach continues through the Bill's next stages, such as the drafting of guidance and implementation of its provisions. For looked after children and care leavers, the key to success lies in embedding a philosophy of care which empowers and enables practitioners and operational managers to build relationships, and deliver genuinely person-centred care. This Bill helps take us forward towards that aim, but we must acknowledge that there is much still left to do. We look forward to working with Parliament and Scottish Government on the next steps.