

GCVS Members' Briefing

Children and Young People (Scotland) Act 2014

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Glasgow
Council
for the
Voluntary
Sector

Summary

The Children and Young People (Scotland) Act¹ was passed by MSP's on 19th February 2014 and will now become law. While there have been threats of legal challenges to the Act, the Scottish Government is progressing with its implementation in the belief that it is fully compliant with human rights law, which would be the proposed basis of any legal action.

This briefing provides a summary of the main provisions in the Act, including links to the Act itself, other sources of useful information relating to it, and reference to the proposed outline of statutory guidance to accompany its Getting it Right for Every Child elements.

Background

The Scottish Government's intended aim of the Bill is to make Scotland the 'best place to grow up in' and its introduction makes provisions across a wide range of children's services policy, while also providing a legislative basis for the Scottish Government's Getting it Right for Every Child agenda. The Bill will increase the influence of children's rights in the design and delivery of services; improve cooperation between services that support families; increase early years support through funded early learning and childcare and improve the lives of looked after children and care leavers. It also includes a number of measures to amend and strengthen existing legislation in areas affecting children and young people.

¹ Children and Young People (Scotland) Act 2014

[http://www.legislation.gov.uk/asp/2014/8/contents/enactedScottish Government Children and Young People Scotland Bill policy memorandum](http://www.legislation.gov.uk/asp/2014/8/contents/enactedScottish%20Government%20Children%20and%20Young%20People%20Scotland%20Bill%20policy%20memorandum)

http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20%28Scotland%29%20Bill/b27s4-introd-pm.pdf

Scottish Government Children and Young People policy pages

<http://www.scotland.gov.uk/Topics/People/Young-People>

The Act has 13 parts which are briefly summarised below.

Part 1: UN Convention on the Rights of the Child

Part 1 of the Bill relates to the rights of children and the duties of Scottish Ministers in relation to the UN Convention on the Rights of the Child²; the duties of public authorities in relation to the UNCRC; whom the duties apply to; and the interpretation of the provisions set out in part 1.

Part 2: Commissioner for Children and Young People in Scotland

This part of the Bill relates to the Commissioner for Children and Young People in Scotland³ and amends the Commissioner for Children and Young People (Scotland Act) 2003. The amendments relate to allowing investigations by the Commissioner in certain circumstances. The commissioner may investigate whether a service provider has had regard to the rights, interests and views of children and young people in making decisions that affect them. Investigations could relate to children in general, a specific group of children, or an individual child, depending on the context. The Bill places a duty on public authorities to respond to recommendations made by the Commissioner stating what they will do, or if they intend to take no action, explaining why.

Part 3: Children Services Planning

Part Three of the Bill requires local authorities and health boards to produce a children's services plan every 3 years and to do this they must work jointly with other public bodies and the third sector in their design and delivery, while ensuring that the focus is on the improvement of children and young people's wellbeing in their area as defined in the Act. This part of the Bill also places a duty on local authorities and health boards to report to the Scottish Government on the extent to which they have achieved the aim of improving wellbeing in their area and requires other service providers to participate in this process.

Part 4: Provision of Named Persons

The Bill here requires health boards to provide a Named Person for each child of pre-school age and for local authorities to provide one for each child of school age. The purpose of the Named Person is to ensure the wellbeing of each child under their care and to provide a single point of contact for children and their families to assist them with problems or to access services. They will also be in a position to identify any difficulties a child may be experiencing at an early stage and to prevent them escalating by putting in place measures of support. If a child requires additional support, or if there are any concerns about a child's wellbeing, then this person will be the point of contact for public bodies to share relevant information and will coordinate the support required from different services for the wellbeing of the child concerned.

² UN Convention on the Rights of the Child http://www.unicef.org/crc/index_understanding.html
http://www.unicef.org/crc/files/Guiding_Principles.pdf

³ Commissioner for Children and Young People in Scotland <http://www.sccyp.org.uk/>

Part 5: Child's Plan

This area of the Bill requires that if there are concerns about a child's wellbeing that cannot be met without a targeted intervention then it is incumbent upon the responsible authority to create a Child's Plan. The Child's Plan will contain a statement of their wellbeing need and explain the type of targeted intervention which requires to be carried out in order to meet it. It will also set out who will provide the intervention, how it is to be provided and which outcome, in relation to the child's wellbeing need, the intervention should achieve.

The responsible authority must have regard to the views of the child and their parents "in so far as is practicable" when deciding on the necessity and content of such a plan.

Part 6: Early Learning and Childcare

This section places a duty on an education authority to provide a mandatory 600 hours of early learning and childcare for each preschool child aged 2 or over living in its area (pro rata for which part of a year for which a child is eligible).

Part 7: Corporate Parenting

This part of the Bill relates to the duties of authorities as corporate parents and creates a statutory regime of corporate parenting. The aim is to improve wellbeing and outcomes for looked after children, young people and care leavers and to ensure that the corporate parenting role becomes more "parent" like. Corporate parenting is defined as follows: "Corporate parenting means the formal and local partnerships which are responsible for working together to meet the needs of looked after children and young people and care leavers". The Bill lists which bodies are considered to be corporate parents and places a duty on them to collaborate with each other when performing their corporate parenting role to ensure that those in their care experience services which are positive, outcomes-focused and aspirational.

Part 8: Aftercare

This section of the legislation extends the responsibility of corporate parents for young care leavers from age 21 to 25. Care leavers will have the right to ask their local authority for advice, guidance and assistance and should they do so, the local authority will be under a duty to conduct an assessment of their needs. Should, this assessment identify eligible needs, the local authority must provide support to meet these needs.

Part 9: Provision of Counselling Services to Parents and Others

The legislation here requires that a local authority must make arrangements to secure counselling services for families seeking assistance in the early ages of distress, where due to their situation, a child's wellbeing may be at risk of becoming impaired and they are at risk of becoming looked after.

Part 10: Support for Kinship Care

The Bill places a duty on local authorities to provide assistance to kinship carers residing in their area. This may include the provision of counselling, advice or information; the provision of financial support (or support in kind); or the provision of any service provided by a local authority on a subsidised basis. Scottish Ministers may make specific orders in relation to these provisions in future.

Part 11 Adoption Register

Part 11 of the Bill places a duty on Scottish Ministers to establish Scotland's Adoption Register. The register will include children who are available for adoption, those who wish to adopt in Scotland and are considered to be suitable to be adoptive parents; children out with Scotland who may be available for adoption and prospective adoptive parents outside Scotland. This register will not be open to the public.

Part 12: Other Reforms

Here, there are a number of amendments to existing legislation, including the Children's Hearing's (Scotland) Act 2011, the Schools (Consultation) (Scotland) Act 2010, the Criminal Procedure (Scotland) Act 1995 and the Children (Scotland) Act 1995.

Part 13: General

Part of this section of the Bill relates to the assessment of wellbeing, placing a duty on Scottish Ministers to produce guidance** on how the SHANARRI* indicators will be used to assess wellbeing and for them to consult with local authorities, health boards, and others in doing so.

There are a number of other provisions made in this section, mainly to do with the interpretation, modification and enactment of the Bill.

GIRFEC Elements of Children and Young People Act**

The Scottish Government is now consulting on the proposed outline of statutory guidance⁴ that will support the Getting it Right for Every Child (GIRFEC) elements of the Children and Young People (Scotland) Act. Full statutory guidance that will support all elements of the Act is to be published in due course.

The aim of the guidance framework document is to provide some contextual background to the legislative provisions, in relation to GIRFEC approach, and its implementation across Scotland. In general, this document indicates the areas which will be covered by the full statutory guidance, which will also be subject to consultation when published early in 2015.

The areas of the act that the proposed guidance framework is intended to support are:

- Part 4 (Provision of Named Persons),
- Part 5 (Child's Plan) and
- Part 18 (General)

*Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.

⁴ Proposal for the development of guidance to support the GIRFEC provisions in the Children and Young People (Scotland) Act <http://www.scotland.gov.uk/Publications/2014/04/5745>

The guidance framework gives information on how a number of the provisions in the Act are to be interpreted, for example, in relation to the Named Person role - the responsible authority, the duty to publish information, child privacy, breaches of confidentiality, and when the sharing of information is and is not appropriate.

It includes reference to how wellbeing is to be defined and an expansion of what should be considered under each of the SHANARRI indicators – Safe, Healthy, Active, Nurtured, Achieving, Respected, Responsible, Included when assessing wellbeing.

The proposals also explain in more detail what should be considered in the preparation, content and delivery of a child's plan and who should be consulted in its planning. Included are examples of targeted interventions, types of services that could provide these interventions and when they would be appropriate to instigate.

More detailed information on the GIRFEC aspects of the Act will be covered in the full statutory guidance, but for practitioners who would like more information on how the various provisions in the Act related to GIRFEC are to be interpreted and implemented this is a useful guide.

The GIRFEC provisions of the Act will commence on 01 August 2016, however, many local authorities are already in the process of implementing GIRFEC.

Additional Information

If you would like more information about any of the issues covered in this briefing please contact:

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