

# Consultation on a proposal for a Children and Young People Bill



## CONSULTATION QUESTIONS

### 1. A SCOTLAND FOR EVERY CHILD

#### *More effective rights for children and young people*

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

#### Comments

We endorse the commitment to further the rights of children and young people and promote and raise awareness of these rights.

As the document says the delivery of rights, and ensuring that they feature in the planning and development of policies and services, is as important as understanding and knowing about rights.

We feel that the proposed duty requiring Scottish Ministers to take steps to further rights set out in the UNCRC, and to promote and raise awareness, is important, as this will raise the profile of children's rights across the Scottish Government.

We also welcome the proposed duty requiring ministers and relevant public bodies to report on steps being taken. Children's every-day lives will be directly affected by decisions public authorities make on a day to day basis. We feel that much will be achieved if reporting is done both at a national level, by government, and at a local level, by public authorities.

We think the proposals will provide for improved transparency and scrutiny, and that laying reports before Parliament at the time of publication will strengthen the profile of the UNCRC, and lead to better realisation of rights embodied in the UNCRC.

We are aware that there are reporting commitments on the UNCRC to the UN Committee on the Rights of the Child, and that periodic reports must be submitted every five years. We would agree that a five year interval for reporting is too long, and that reporting on a three year basis would help to demonstrate commitment and progress in Scotland. The current reporting arrangement for the UN Convention also includes input from independent human rights institutions, from the third sector, and from children and young people. We would suggest that the current proposals would be strengthened if the Scottish Government clarifies how the views of children and young people, and the third sector, will be incorporated into the reporting process in Scotland.

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

#### Comments

The MWC is included in the list of proposed relevant public bodies given at Annex B. As an organisation we are happy to be included in this list. We have contact with children and young people with a mental illness or learning disability through our regular visits to specialist in-patient units, and to certain facilities registered and inspected by the Care Inspectorate. We visit a significant proportion of the young people under 18 who are placed on guardianship orders, to look at how powers are being used and at the care and support being provided. We also monitor the admission of young people to non-specialist in-patient wards, for treatment of mental illness or learning disability. Each year we will visit and speak to a number of young people in this group to make sure they are receiving age appropriate services and treatment. We will also visit any young person when issues about possible deficiencies in care and treatment are brought to our attention. Monitoring the care and treatment of young people under 18 is one of our monitoring priorities, and we regularly publish monitoring reports which set out our views about the in-patient care and treatment children and young people are receiving from mental health services. It would be consistent with the role of the MWC for us to report on steps we are taking, in carrying out our statutory duties, to further the rights set out in the UNCRC.

The list of proposed relevant public bodies in Annex B is comprehensive, but we would suggest that the Scottish Human Rights Commission (SHRC) and the Equality and Human Rights Commission in Scotland (EHRC) should be included in this list.

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?

#### Comments

We would agree that the extension of the Children's Commissioner's role should result in more effective support, and we think it is important that this support is easily accessible. However we note that the consultation talks about extending the Commissioner's power to undertake investigations on behalf of individual children, introducing "an important mechanism for children to seek redress in response to perceived violations of their rights." This suggests that this option might only be available if an individual child seeks redress. We think it would be important for the Commissioner to be able to undertake investigations, even in circumstances when, for example, an individual child or young person does not themselves seek redress, or lacks capacity to make a decision to seek redress. In such circumstances when a case is brought to their attention we feel the Commissioner should still be able to undertake an investigation, if it appears there may have been a violation of rights.

It is also important to note that the MWC has the power to carry out investigations when we feel there may have been deficiencies in care and treatment, and this can be in relation to any individual, including a young person with mental illness, learning disability, and related conditions. There may therefore be cases in which both the MWC and the Children's Commissioner have an interest. We would want to work together with the Children's Commissioner in such cases, and it would clearly be helpful to have a Memorandum of Understanding between both organisations in place if the Children's Commissioner's role is extended as

proposed.

### ***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?

#### **Comments**

We would agree with the wide definition of wellbeing which is proposed, and with the reference in the indicators to “having the highest attainable standards of ..... mental health.” We feel this is consistent with the work which has been taken forward over the past five years to progress the Child and Adolescent Mental Health Service (CAMHS) agenda and the key commitments for CAMHS in Delivering for Mental Health.

We think it is important that the indicators refer to children and young people being involved in decisions which affect them. We feel it is fundamental that there is an appreciation of rights, and of the right of participation, in any agency working with children and young people.

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

#### **Comments**

We would agree with this. We feel it is important to promote health, including mental health, and to provide the highest quality care and treatment to children and young people with significant mental health difficulties. We welcome an emphasis on wellbeing and promoting health, including mental health, and think it is also important for this to sit alongside an emphasis on continuing to enhance the level of service delivery for those people who have mental health problems or a learning disability.

### ***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?

#### **Comments**

We would agree with the statement in para 72, that reporting on services is not the same as systematic planning of services. We would also agree with the proposal

that a duty is placed on public bodies to work together jointly as set out above.

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

**Comments**

The main bodies with statutory functions will be local authorities and health boards. We think there should be clarity about the important role the third sector plays in developing and delivering services. We would also want to see a strong emphasis on the active involvement of children and young people in this process.

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

**Comments**

We have no specific comments on this question. We understand that Community Planning is the process by which local authorities and other public sector bodies work together with local communities. While all local authorities have community planning partnerships these structures do vary considerably, and some but not all are legally distinct corporate bodies. The differing structures could be a barrier to effective working in relation to this duty. We recognise though that it is important to build on what already exists, and to integrate any new duty into existing systems.

***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?

**Comments**

We would agree with the proposal to improve reporting on outcomes for children and young people. This would have the potential to encourage more focus on the difference services make to the lives of children and young people.

It should be acknowledged that there are recognised limitations to outcome measurement. Outcomes can take a long time to materialise, particularly if there is to be an increased focus on prevention. There will be issues if new data collection efforts are required, and we would agree that reporting should fit with existing reporting requirements as far as possible. There will also be a need to have consistency in definitions, in what is reported, and the quality of the process for evidencing outcomes will be crucial.

We also think it is important, and consistent with the UNCRC, to emphasise that data gathered must include views from children and young people themselves

about the outcomes.

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

Comments

Yes we would agree with this.

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

Comments

We feel that the duty should be placed on those public bodies with responsibilities for providing and commissioning services which are specifically for children and young people, or which can be accessed by children and young people. This responsibility should cover the range of services which will be commissioned by public bodies but are provided by the voluntary sector.

## 2. A SCOTLAND FOR EACH CHILD

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

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

Comments

No comments

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

Comments

No comments

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?

Comments

No comments

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?

Comments

No comments

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?

Comments

No comments

### ***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?

Comments

The consultation talks about the role of the named person being a key element in the success of the Highland Pathfinder in improving outcomes. We would agree with the need to improve co-ordination and information sharing within and between organisations, and with the proposal to establish the role of Named Person. With regard to children and young people with mental health difficulties we feel that this proposal, in conjunction with the focus on the development of primary mental health work, would help promote early intervention and ensure the provision of

support for emerging problems.

The Commission is aware, through contact with individual cases, that there can be issues about the provision of specialist child and adolescent mental health services, when a young person has complex needs and is looked after and accommodated outwith their own local authority and health board area. Although the consultation talks, at para 113, about a universal role for the Named Person “encouraging national approaches across different areas and across different services” we feel there needs to be more clarity about the role of the Named Person in relation to out of area placements.

There is a national focus on increasing the capacity of CAMH services across Scotland. However at present we know that in a small but significant number of cases, when a young person is placed outwith their home area, there can be issues about the capacity of CAMH services, in the area where they are looked after, to provide specialist care and treatment. We think that often a Named Person may not have the contact links or the knowledge about services in other geographical areas to ensure that appropriate services are delivered.

There is obviously a responsibility on health boards to ensure continuity of care, and there is national guidance for establishing the responsible commissioner for a young person’s care and treatment within the NHS. We would suggest that if the Named Person role is developed and set out in legislation there should be more detailed guidance to cover the placement of looked after children and young people in out of area placements.

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

#### Comments

Our comments immediately above would apply to this question as well. We feel that the responsibilities of the Named Person in relation to out of area placements should be clarified. From our experience we are also aware of issues about the capacity of CAMH services in some areas to provide appropriate care and treatment when a young person has been placed in their area. There will be issues about setting out a role for the Named Person, in ensuring continuity of care and treatment, in such circumstances. We would suggest though that this issue is given consideration, and that the Named Person could have some role clarifying responsibilities with relevant health boards, so that there is a smooth hand-over of clinical care where that is appropriate for a child or young 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?

#### Comments

The proposed allocation seems appropriate.  
Getting it right for every child (GIRFEC) has also established the Lead



Professional role as a second key role in relation to children and young people. We think that the Lead Professional will have a key role at certain transition points, and when multi-agency input is needed, for example when a child or young person has complex mental health needs, and in circumstances described above, when a young person is placed outwith their home area. We think it is important that there is clarity about the link between the Named Person and the Lead Professional roles, to ensure that when people take on these roles this is compatible with their core responsibilities and areas of expertise.

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?

#### Comments

These arrangements seem appropriate. As discussed above we would want arrangements to make sure that children and young people with a mental illness, learning disability, or related condition, and who are looked after and accommodated, receive the best quality care and support. We feel therefore that guidance should clarify the interface between the Named Person and the role of Lead Professional, and how responsibilities are transferred between these two roles where appropriate. Such guidance would help to address the comment made in the UN Committee 2008 Concluding Observations (to the UK as the State Party) that particular attention needed to be paid to the mental health needs of those children and young people at greater risk, including those who are looked after and accommodated, and to strengthening mental health and counselling services for adolescents.

### ***The Child's Plan***

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

#### Comments

We agree that a single planning approach should help improve outcomes. The need for a more integrated approach to meeting the needs of children and young people with mental health problems or learning disability has long been recognised. Commitments have already been made through the CAMHS Framework for Promotion, Prevention and Care, and Delivering for Mental Health, to develop joint working arrangements and multi-agency liason and co-operation. A single planning approach would seem entirely consistent with these developments.



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

**Comments**

We feel that the participation of children and young people in the development of their plan is vital. This is also required under Article 12 of the UNCRC, which focuses on participation and on children and young people being able to voice their opinions and have their views taken into account and given due weight. The Mental Health (Care and Treatment)(Scotland) Act 2003 imposes an absolute duty on people acting under the act to make sure that a person's wishes and views are ascertained, and that they participate fully in decisions about their care and treatment. This act also gives every person with a mental illness, learning disability, or related condition, the right of access to independent advocacy. Our experience is that the availability of specialist independent advocacy services for children and young people differs greatly across Scotland. We would like to see specialist advocacy services being more widely available, and think this would help children and young people articulate their views and participate meaningfully in the development of their own plan.

***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)?

**Comments**

We would agree generally with this proposal. This would acknowledge that many young people who have been looked after by a local authority may have additional needs, and be particularly vulnerable, when they make the transition to their early adult lives. There is also a lot of evidence that young people are more vulnerable to mental health problems at times of important change in their lives, and the transition to early adulthood will be just such a time of change. We are also pleased to see this proposal in the consultation, as it would help to address some of the conclusions in the recent MWC report, "Hard to help", a review of the death of Mr O. Mr O had been a looked after and accommodated young person, and in this report we highlighted the need to improve coordinated care for young people with complex problems.

We think the Scottish Government should also be aware of other groups of young people who may face particular challenges and may be increasingly vulnerable at this stage. This would apply to young people with a mental illness or learning disability, many of whom may not have been looked after young people. Any young adult in this group does have the right, under mental health legislation, to request an assessment of their needs for community care services, and local

authorities and health boards have a duty to consider these requests (although not to undertake an assessment or provide a service) We think there would be potential for some confusion and inequity, if the outcome was that some care-leavers requested and received support, and some other young adults with similar or more significant needs who were not care-leavers did not receive support. We also feel there is a need for clarity about which local authority should take steps to provide support, as young people may well be living in a local authority area, which may not be the local authority which looked after the young person.

### **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?

#### Comments

We agree this would be helpful, especially if there is an issue about duties currently being implemented inconsistently across Scotland.

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?

#### Comments

We would agree with this proposed definition.

### **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?

#### Comments

No comments

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

Comments

No comments

### ***Adoption and permanence***

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

Comments

No comments

### ***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?

Comments

No comments

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

Comments

No comments

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?

Comments

No comments

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?

Comments

No 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?

Comments

We feel the proposed extension of the role of the Scottish Commissioner for Children and Young People should have an important positive impact, furthering the rights of children and young people.

We would agree with the identified need, mentioned at para 16, to explore questions about the interaction between the roles of the named person and the lead practitioner when a child has a disability or has multiple complex needs. As we have said above, in relation to question 19, we think that there are issues about inconsistent access to specialist CAMH services across Scotland, when a young person is accommodated outwith their local area. We think that the named person and lead practitioner need to be fully aware of the needs of children and young people in such situations.

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?

Comments  
No comments

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?

Comments  
No comments

**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](mailto:childrenslegislation@scotland.gsi.gov.uk)**

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