

A Scotland for Children

A Consultation on the Children and Young People Bill

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MINISTERIAL FOREWORD



We want Scotland to be the best place in the world for children to grow up.

It is a huge ambition. Yet just as any parent has huge ambitions for their child, so our goals for the children and young people of Scotland must be equally great. This is a time when we are asking ourselves demanding questions about the future of our nation. We must also think about what we want for the future of our children and young people, and what steps we need to take now to achieve it.

We want a Scotland where the rights of children and young people are not just recognised, but rooted deep in our society and our public services. A nation that strives to make these rights real in our everyday lives.

We want a Scotland that treasures the whole wellbeing of a child. If we want our children and young people to become the successful, confident, effective and responsible individuals our nation needs, we must nurture every element of their wellbeing. We should not focus on their health, their education, their safety or any element in isolation, but on how all these elements work together to make our children and young people thrive.

And we want a Scotland where public services support children and young people in a different way. A strong, caring family is the best environment to grow up, but we know the pressures families face and the consequences when those pressures are overwhelming. We realise the value of strong, flexible help to children in their earliest years and throughout their whole lives. We need services that are child-centred, responsive and effective at every stage in a child's life.

Right now we have a unique opportunity to ensure our services are fit for a 21st century Scotland. The Christie Commission has reported on the future delivery of Scotland's public services in a challenging world. It highlighted how services must better meet the needs of the people and the communities they serve. In welcoming the report, we set out a vision of reform through early intervention and preventative spending, greater integration and partnership at a local level, workforce development and a sharper, more transparent focus on performance.

Last year we announced our intention to develop legislation to achieve this ambition in children's rights and services. The Children and Young People Bill is a fundamental step towards putting Scotland at the forefront of services which give children, young people and their families what they need and what they deserve, one that finds better ways to offer better life chances to each and every child in Scotland.

We have an opportunity to make the most important changes to public services in a generation. I encourage you to take part in the consultation and the wider debate on the future of children's rights and services.

Aileen Campbell

EXECUTIVE SUMMARY

We are committed to addressing the challenges faced by children and young people who experience poor outcomes throughout their lives. To do this, we need services that are child-centred, responsive and joined up. Children and young people deserve services that can intervene more effectively and earlier in their lives and that listen and take full account of their views. Achieving this involves a programme of change that is not limited to any one service, but embraces a change in the culture and practice of all services that affect the lives of children, young people and their families.

There is no one policy or initiative that can bring about this kind of change. But there is a key role for legislation: in accelerating the progress we have already made; bringing about a step-change in the way all services support children and young people; and inspiring renewed debate and ambition for what our children and young people can expect of us. For that reason, we are introducing a Children and Young People Bill in the term of this Parliament.

This consultation paper sets out our vision and how we propose to achieve that vision through legislation. Our proposals are based on the following key ideas:

- a more rapid shift to the early years and early intervention is essential if we are to improve the outcomes for the most vulnerable children and young people;
- such a shift cannot be restricted to particular services, but must be part of a comprehensive shift in how services can work together to support all children and young people at all stages of their lives; and
- the heart of our approach is the aim of making real the rights of children and young people.

From these principles, we set out a range of proposals for taking forward our ambitions for children's rights and services. Children and young people should have high expectations about how they will be supported, wherever they are in Scotland. To ensure the principles are in place to govern how all services are designed, delivered and reviewed across Scotland, we propose the following legislative changes.

- We want to embed the rights of children and young people across the public sector in line with the United Nations Convention on the Rights of the Child (UNCRC). We believe there should be duties on Scottish Ministers to take steps to further the rights of children and young people and promote and raise awareness of the UNCRC. The wider public sector should be required to report on what they are doing to take forward realisation of the rights set out in the UNCRC. Lastly, there is a key role for Scotland's Commissioner for Children and Young People and we believe the powers should be extended to undertake investigations on behalf of individual children and young people.
- Services should work to support the *whole* wellbeing of a child or young person. We want to set out an approach to welfare that puts an understanding of wellbeing based on the *Getting it right for every child* approach at the heart of the design and delivery of services.

- We propose placing duties on public bodies to work together to design, plan and deliver jointly their policies and services so they focus on improving children's and young people's wellbeing. We also believe that they should report on what this means for children and young people in their area through a common set of high level outcomes for children and young people.

We understand the crucial role that early learning and childcare can have: high quality, flexible, integrated early learning and childcare is a major factor in supporting healthy development in the early years of a child's life. Through the Children and Young People Bill, we intend to:

- increase the funded annual provision from 475 hours pre-school education for 3- and 4-year olds to a minimum annual provision of 600 hours early learning and childcare for 3- and 4-year olds and looked-after 2-year olds; and
- make early learning and childcare more flexible and seamless for the child and better suited to the needs of families.

We propose to do this by placing a duty on local authorities to increase the flexibility and expand the provision of early learning and childcare provision for children and families, including our most vulnerable 2-year olds.

We believe that consistent and full implementation of the *Getting it right for every child* approach across Scotland will have huge benefits for children and young people. *Getting it right for every child* creates a single system of service planning and delivery across children's services. It is rooted in cooperation between services with the child at the centre, encourages streamlining and collaboration, and prevents services working in isolation from each other. We will put in place legislation that ensures:

- all children and young people from birth up to leaving school have access to a Named Person;
- all relevant services cooperate with the Named Person in ensuring that a child's and young person's wellbeing is at the forefront of their actions; and
- a single planning process should be in place to support those children and young people needing the involvement of a range of services, through a single Child's Plan.

Finally, we need a care system that provides effective, rapid support for children and young people, centred on their long-term as well as their short-term needs and focused on securing healthy, caring permanence. At present, we have a care system that provides different options for children and young people in difficult family circumstances, but the options, and the system as a whole, needs to change if it is to do justice to a child's and young person's overall wellbeing. Through legislation, we propose that:

- the right of young people leaving care to ask for help from a local authority is raised from the age of 21 to 25;
- a clear definition of corporate parenting is put on statute;
- a new 'order' is put on statute to support the parenting role of kinship carers; and

- use of Scotland's Adoption Register by local authorities is made compulsory.

This consultation on the Children and Young People Bill provides an opportunity for stakeholders, practitioners, parents and carers, and children and young people to have their say on the future shape of children's services and our approach to delivering change. We welcome your views on how this Bill can bring about the necessary improvements for our children and young people and urge you to take part in this consultation.

INTRODUCTION: A CONSULTATION ON THE CHILDREN AND YOUNG PEOPLE BILL FOR SCOTLAND

Our ambition

1. In June 2010, Scottish Ministers hosted a Children's Summit in Edinburgh, bringing together key policy-makers to make a clear and resounding commitment to improve the lives of children and young people in the face of financial challenge. At that event agencies from across the public sector and across Scotland signed a pledge articulating the need to make support for children and young people a priority. Most importantly the summit provided the mandate for the public sector to work together for better outcomes for children and young people. The pledge read:

*We, the undersigned, **believe**...*

... that there is no higher priority than the safety and wellbeing of our children and young people

... that every child and young person should be safe, healthy, achieving, nurtured, active, responsible, respected and included

... that Scotland's services can lead the way and be even better at meeting the needs of children and young people if we remain committed to working together

... that by investing in early years and early intervention services now, we can both build the assets that children and young people need to succeed in life and save for the future

... that improving outcomes for children and young people must remain a priority, especially in the face of financial and resource pressures.

*We, the undersigned, **pledge**, on behalf of our organisations ...*

... to provide strong leadership on behalf of Scotland's children and young people

... to work together and share resources and expertise to improve the life chances for children, young people and families at risk

... to think radically about the services we provide and the way we provide them, in the context of financial constraints ahead

... to engage children, young people and their families in decisions that affect their lives

... to increase the focus on early intervention and early years in our service provision and take forward Getting it right for every child as the delivery mechanism for children's services.

2. These aspirations are the foundations not just for this Children and Young People Bill, but for our approach to government. Scotland is in a defining period. The Scottish Government has great ambitions for the country in terms of economic development, international profile and self-determination. We also have great ambitions for the people of Scotland: to live in a thriving country, within a fair and cohesive society characterised by strong and safe communities. We want to ensure that everyone in Scotland, regardless of status or location, shares in that future.

3. Public services, communities and parents all have roles in supporting children, young people and families, strengthening resilience and providing

opportunities for them, and encouraging and enabling children and young people to participate fully whatever their background. Scotland's culture needs to shift to make their lives as a whole better. We are not content just to identify problems and maintain the status quo, or to wait until Scotland has more powers to bring about more fundamental change. Inevitably we are limited by the constraints of the constitution, which prevent us from using the full set of economic and fiscal levers to tackle issues such as child poverty and early learning and childcare as comprehensively as we would wish. Full independence would allow us to coordinate all aspects of government towards improving the wellbeing of Scotland's children and young people. Nevertheless, there is much we can, and should, do with the powers that we have.

4. Our ambitions for children and young people have been clearly set out in our framework of National Outcomes. We want:

- our young people to be successful learners, confident individuals, effective contributors and responsible citizens;
- our children to have the best start in life; and
- to have improved the life chances for children, young people and families at risk.

These are not just goals for the Scottish Government, but a collective aspiration for the whole of the public sector. Achieving this means ensuring that our shared values for children and young people permeate every decision and action taken on their behalf. Consequently, in setting out the Children and Young People Bill, we believe that legislation must not simply change how services operate, but change how children's and young people's rights are realised. Rights are not simply rhetoric, but fundamental to creating a public sector that constantly acts in the best interests of children and young people.

What needs to be done

5. The will to improve and the urge to innovate that runs through Scottish society and history has driven change in the way we support our children and young people. Through the Kilbrandon report in 1964, we took the first steps to establishing the Children's Hearings System, unique in that it puts a child's and young person's welfare at the centre. With the Children (Scotland) Act 1995, we put in place the principles of a system of care and welfare for children and young people based on the UNCRC and set out the responsibilities and rights for children and young people, parents and carers, and the state – all in a firmly Scottish context. These building blocks remain central to the services currently in place. It is a structure that we believe still holds strong.

6. But we must build further. While our approach to supporting children and young people has been founded on their fundamental rights, we need to set out how we can make those rights more 'real' through the services they receive. We are moving from a system where services are primarily reactive to one focused on early intervention – a system where taking small steps early on pre-empts the need for big actions later on and replaces the reactive 'crisis' approach. We are shifting away from a view of a child's and young person's 'welfare' that treats their health,

education and safety in isolation towards a more rounded view of their 'wellbeing', where services are sensitive to all the factors that affect how well children and young people grow and develop.

The need to improve the lives of children and young people

7. This approach is essential if we are to address the myriad challenges that many children and young people continue to face.

- While child poverty has fallen markedly over the past decade, 210,000 children and young people in Scotland still live below the poverty threshold (21 percent of all children and young people).¹ Children and young people who grow up in poor households are more likely to have low self-esteem, play truant, leave home earlier, leave school earlier and with fewer qualifications, and be economically inactive as adults.²
- On current estimates, 10-20,000 children live with at least one parent who is using drugs, while around 65,000 children in Scotland may be affected by parental alcohol misuse.³
- Three-quarters of families experiencing high adversity have low parenting skills.⁴
- There were 2,571 children on the Child Protection Register in Scotland as of July 2011. Scotland has a lower proportion of children on the Child Protection Register than other parts of the UK, but the share of the wider children's population on the Register has not changed greatly over the past decade.⁵
- In Scotland, in 2010, over 16,000 children were looked after (1.5 percent of the under-16 population). The figure has risen by 46 percent since 2001. Although recent years have seen a sustained fall in new referrals into care and an increase in young people leaving care, Scotland has a higher proportion of looked-after children than other parts of the UK.
- Children and young people who need to come into care are more likely to have poorer outcomes than their peers. Health⁶ and educational attainment⁷ outcomes for most looked-after children are significantly worse than for other children and young people.

8. Of course, children's and young people's future lives are not just shaped by their backgrounds. Nevertheless, the potential impact that a care environment marred by poverty, neglect, substance misuse and domestic abuse can have on a

¹ Scottish Executive (2007) Scottish Households Below Average Income 2005-06.

² Ermisch, J, Francesconi, M and Pevalin, D (2001) The Outcomes for Children of Poverty.

³ Scottish Government (2008) The Road to Recovery: A New Approach to Tackling Scotland's Drug Problem and Scottish Government (2008) Changing Scotland's Relationship with Alcohol: A Discussion Paper on Our Strategic Approach.

⁴ Scottish Government (2011) Growing Up in Scotland.

⁵ Scottish Government (2012) Children's Social Work Statistics, No.1: 2012 Edition.

⁶ Scottish Government (2010) Health and Care Series: Looked After Children Statistics 2009-10.

⁷ Scottish Government (2010) Educational Outcomes for Scotland's Looked After Children 2009-10.

child's development is clear. The scale of these challenges, and the economic and social costs to our society, is daunting. They require the focus of our efforts on early intervention, on tackling these problems at the earliest opportunity, particularly in the first years of a child's life, and where possible, preventing these problems before they arise in the first place.

The need for early intervention

Infants who develop a secure attachment can be distinguished from others at one year by their ability to show greater positive interactions during play. Insecurely attached infants are at greater risk of problems in emotional development, and children with very poor attachment experiences are at greatest risk of failure to thrive in early years and behaviour problems, lowered self-esteem and schooling difficulties in childhood and adolescence. Children who have had poor attachment experiences are overrepresented in social services referrals and youth justice systems.

Dr Sir Harry Burns
Chief Medical Officer Annual Report
2006

9. Early intervention is easy to grasp: it is Benjamin Franklin's old adage that an ounce of prevention is worth a pound of cure. The rationale is simple: disadvantages experienced from birth can harm the life chances of our children, no more so than in the earliest years of a child's life. Indeed, by the time they reach their third birthday, children from difficult family and care backgrounds are already behind their peers in cognitive development and these gaps remain at age 5.⁸ Over the last few years, the evidence of what can happen when children do not experience a good start in life has mounted up in reports by Graham Allen MP⁹, Frank Field MP¹⁰ and Professor Eileen Munro¹¹, all testifying to how children who experience poor, unstable care environments often face greater challenges in later life as a result.

10. The scientific evidence is also clear that the foundations for a successful society can be built in early childhood.¹² The brains of children develop at an astonishing rate before birth and in the first few months of life. If their experiences are supportive and consistent in response to the child's expressed needs, the child learns that the world is a safe, nurturing place with opportunities to learn and grow. If, on the other hand, the child experiences inconsistency of response to its signals for attention, the brain develops in a different way that sacrifices growth in centres associated with learning, memory and judgement in favour of those involved in the responses to threat. Moreover, as the diagram below and the following examples show, the evidence is clear about the impact of a child's earliest years on both their later development and society more widely.

⁸ Scottish Government (2011) Growing Up in Scotland.

⁹ Allen, G (2011) Early Intervention: The Next Steps.

¹⁰ Field, F (2010) The Foundation Years: Preventing Poor Children Becoming Poor Adults.

¹¹ Munro, E (2010) The Munro Review of Child Protection.

¹² Schweinhart, L et al (2005) Lifetime Effects: The HighScope Perry Preschool Study through Age 40.



Diagram showing brain development in 3-year old child subject to extreme neglect compared to normal development, emphasising the smaller size resulting from neglect. (Source: The Margaret McCain lectures series, Inaugural Lecture by Bruce D. Perry, *Maltreatment and the Developing Child*, 2004).

- The low birth weight of a child has been associated with a range of poor health outcomes for children. The benefits of preventing one baby from being born with low birth weight have been estimated as high as \$580 (approximately £370).¹³ Low birth weight is strongly associated with environmental factors, such as poverty and domestic violence, and health behaviour, such as poor nutrition, smoking during pregnancy and the use of alcohol and drugs by the mother.
- Adverse events in childhood have been associated with higher risks of alcohol and drug misuse and teenage pregnancy among children and young people in later life.¹⁴
- In the US, one 2007 study has estimated the annual costs of child abuse and neglect – both in terms of direct costs in supporting victims and the longer-term economic costs – at \$103.8 billion (approximately £66.2 billion).¹⁵

¹³ Behrman, J, Alderman, H and Hoddinott, J (2004) 'Malnutrition and hunger' in Lomborg, B (ed) *Global Crises, Global Solutions*.

¹⁴ Dube, S et al (2002) 'Adverse childhood experiences and personal alcohol abuse as an adult', *Addictive Behaviours*. Dube, S et al (2003) 'Childhood abuse, neglect and household dysfunction and the risk of illicit drug use', *Pediatrics*. Hillis, S et al (2001) 'Adverse childhood experiences and sexual risk behaviours in women', *Family Planning Perspectives*.

¹⁵ Wang, C-T and Holton, J (2007) 'Total estimated cost of child abuse and neglect in the United States', *Prevent Child Abuse America*, September.

- Poor parenting and other forms of adversity in early life lead to poor outcomes. There is a wealth of evidence emerging – through the Effective Provision of Pre-school Education (EPPE) programme, the Abecedarian programme, Triple P, Incredible Years, and Family Nurse Partnership – that demonstrates the effectiveness of interventions supporting children in the earliest years.

11. Intervening early not only improves outcomes for individuals, their families and communities but it can save the costs of expensive interventions in health, social care, justice and welfare over several decades. The Scottish Government examined the costs of failing to make the right interventions in the early years of a child's life in a 2010 study, *The Financial Impact of Early Years Interventions in Scotland*. The work highlighted the true cost of failing to act to prevent problems emerging and worsening for children at developmental risk. Investing in early years/early intervention support from pre-birth to aged 5 led to short-term net savings of up to £37,400 each year per child in severe cases and approximately £5,100 per year for a child with moderate difficulties. Potential medium term net savings to the public sector can be realised 10 years after the early years period. Fully effective interventions early in life (pre-birth to aged 8) could initially result in a total potential saving of up to £131 million each year in the medium term. In the longer term, a failure to intervene effectively in early childhood can result in a nine-fold increase in direct public costs.

12. But early intervention is not just a way of addressing risk and reducing costs: it focuses on the positive development and wellbeing of children and young people, considering how comprehensive support can help them to have the skills, opportunity and encouragement to fulfil their potential. It should be as enabling as it is preventative.

The need to improve services for children and young people

At their best, [public services] protect the vulnerable, extend opportunities, strengthen our communities and bind us together as a society. They are a key cornerstone of a fair and civilised society, and provide the hallmark of the kind of Scotland we want to see.

Campbell Christie CBE

Report on the Future Delivery of Public Services
2011

13. Public services have a critical role in early intervention. This was one of the key messages in the report of the independent Commission on the Future on Public Services, led by the late Dr Campbell Christie CBE and set up by the Scottish Government in 2010.¹⁶ The report set out a compelling case for change, driven by:

- unprecedented cuts in public spending imposed by the UK Government leaving current service provision unsustainable;
- changing patterns in the demand for public services as a result of demographic trends across Scotland; and

¹⁶ Christie Commission (2011) Report on Future Delivery of Public Services.

- failure to tackle the root causes of disadvantage and inequality in Scotland.

14. In our response to the report,¹⁷ we put forward an approach to renewing Scotland's public services built around four pillars:

- a decisive shift towards preventative spending;
- greater integration of public services at a local level driven by better partnership, collaboration and effective local delivery;
- greater investment in the people who deliver services through enhanced workforce development and effective leadership; and
- a focus on improving performance, through greater transparency, innovation and use of digital technology.

15. Within children's services, other evidence has echoed how we must shift to a preventative approach. A report by Her Majesty's Inspectorate of Education (HMIE)¹⁸ saw the need for improvement in child protection services across Scotland because of:

- under-developed strategic and coordinated approaches to providing consistent support to vulnerable children, young people and families in some areas; and
- delayed interventions in meeting the needs of vulnerable children and young people who were not on the Child Protection Register or experiencing neglect in a significant number of areas.

16. Similarly, in its 2011 report, Care and Permanence Planning for Looked After Children in Scotland, the Scottish Children's Reporter Administration found that:

"For the majority of children it took more than two years from their first involvement with services to when they achieved permanence through Adoption or Parental Responsibilities Order. The shortest time was 12.5 months and the longest 10 years and 10 months."

For children who were assessed for risk at birth or prior to birth:

"None of the children were adopted before they were one year old. For most the overall process, from birth and first contact with services to the Order being made, took between two and four years before they were adopted."

17. What comes over in all of these reports is recognition that services must not be something that is done to people. All our public services should work with service users in the development, delivery and review of services to meet people's needs. In children's services, the key element here is the voice of the child and young person: what they require, what they think of the actions being taken. A principle increasingly mainstreamed into the way child protection is conducted across Scotland, we believe it should underpin all services in how they engage with children, young people and their families.

¹⁷ Scottish Government (2011) Renewing Scotland's Public Services – Priorities for Reform in Response to the Christie Commission.

¹⁸ HMIE (2009) How Well Do We Protect Scotland's Children?

What we are doing

18. Our approach to improving the early years of a child's life is set out in the Early Years Framework.¹⁹ Published jointly with COSLA in 2008, the Framework enshrines:

- the importance of transformational change at local level;
- early intervention by moving from crisis management to prevention;
- support for parents to be the best parents that they can be for their children;
- ensuring that when parents and children need support and services that these are delivered in an integrated way; and
- ensuring that we have a well-trained and well-supported workforce.

19. To make the kind of difference this requires, we have been taking action across all services and have already achieved the following for children and young people:

- early learning and childcare opportunities for vulnerable 2-year olds have been expanded following an investment of £1.5 million a year over the Parliamentary term from April 2012;
- we have established a £4.5 million Communities and Families Fund to support community-based solutions to family support and early learning and childcare;
- we are making a decisive shift to preventative spending through creating an Early Years Change Fund of over £270 million;
- an Early Years Task Force has been set up to coordinate policy across Government and the wider public sector so that early years spending is prioritised;
- we are supporting the delivery of efficient, effective and person-centred health services for pregnant women, babies, children and young people with the roll-out of the Maternity Services Framework, Maternal and Infant Nutrition Framework and Health for All Children;
- class sizes are at a record low – across Scotland, average class sizes in primary schools have fallen to 23.1;
- Curriculum for Excellence is being implemented and we have halted the decline in Scotland's international educational performance²⁰;
- the National Domestic Abuse Delivery Plan for Children and Young People in 2008-11 is being rolled out with a budget of £10 million;
- the share of school-leavers in Scotland going on to further education, training or a job has increased to over 85 percent;

¹⁹ For the purposes of this Framework, we are defining early years as pre-birth to 8 years old, recognising the importance of pregnancy in influencing outcomes.

²⁰ Organisation for Economic Cooperation and Development (2010) PISA 2009 Results.

- free school meal entitlement has been extended to more children and young people in Scotland than ever before; and
- 20,000 apprenticeships in 2010-11 have been supported with a commitment to support 25,000 in 2011-12.

20. We need to go further. To fulfil our ambition to make Scotland the best place to grow up in, we are committed to improving services for all children and young people by:

- putting children's rights at the centre of public services;
- focusing on the whole wellbeing of our children and young people.
- supporting the early years of a child's life; and
- embedding an early intervention approach.

Putting children's rights at the centre

21. Recognising, respecting and promoting rights is essential if we are serious about improving the life chances of children and young people. As part of the UK's obligations under the UNCRC, we have been taking forward a range of measures to ensure that these rights are at the forefront of policy and service delivery for children in Scotland. On 11 May this year, we published our Do the Right Thing progress report, setting out the steps we have taken in response to the UN Committee on the Rights of the Child's last set of concluding observations. At the same time, we committed ourselves to taking further action in support of rights through, for example:

- developing a Child Rights Impact Assessment process for use by the Scottish Government in its policy-making;
- delivering a programme of activity to raise awareness and understanding of the UNCRC;
- reviewing whether the age of criminal responsibility should be increased from 8 to 12 during the course of this Parliament; and
- increasing learning opportunities for children and young people focusing on children's rights and the UNCRC.

Focusing on the whole wellbeing of children and young people

22. Children's needs are often difficult to disentangle: concerns about health, safety and how well they are nurtured can influence each other. While different services may focus on specific targeted sets of needs, it is essential that they take into account the wellbeing of the child and young person as a whole. Creating an integrated, holistic approach to supporting children and young people has been at the heart of our programme for changing service delivery: *Getting it right for every child*. This way of working seeks to improve outcomes for all children and young people through a single system of service planning and delivery across children's services, encouraging streamlining, collaboration and improved standards of practice. Among its key principles are:

- putting the child at the centre;

- building on strengths and promoting resilience;
- providing additional help that is appropriate, proportionate and timely; and
- ensuring services work collaboratively and share information, where appropriate.

23. Highland Council and partners across the Highland area supported the development of the *Getting it right for every child* approach through the Pathfinder project. Services working together in Highland agreed: new governance and financial mechanisms; ways of working so that services flowed around families; and ways to reduce duplication and bureaucracy. Based on an independent evaluation of this approach, a number of performance improvements were identified.

- Reports to the Children's Panel. The changes implemented in Highland meant that concerns about children were dealt with differently: for example, greater use of enhanced support through universal services or immediate involvement by social work if their needs were complex. As a result, the numbers of referrals of non-offence concerns about children made by the police fell by 70 percent.²¹
- Children placed on the Child Protection Register. Highland Council and its partners reported an initial 50 percent reduction in the number of children and young people placed on the Child Protection Register.
- Costs. The approach led to a 75 percent saving in time needed for meetings, a 50 percent reduction in social work caseload and a 10 percent decrease in total administrative activity.

24. Since the Pathfinder, the *Getting it right for every child* approach has been increasingly taken up across Scotland. Results are beginning to be seen, but implementation has not been consistent or rapid, reflecting the competing demands on children's services at a time of financial constraint. The limited progress is a key driver for the *Getting it right for every child* proposals in this consultation paper.

Supporting the early years

25. Under the Early Years Framework, we have already done much to improve services. However, we have already set out our intentions to do more. A key area for action is parenting – not just parenting for the most vulnerable children and young people, but how parenting characterises our whole society, what parents do for their children and what parents and families can expect of the public sector. That is why we are committed to developing a National Parenting Strategy that encourages agencies to work together to support new parents and help them develop their parenting skills.

26. Action is also being taken in health services. As a universal service for all pregnant women and children in their earliest years, the NHS has a pivotal role to

²¹ Scottish Government (2009) Changing Professional Practice and Culture to Get it Right for Every Child.

play in the early years. Our Healthcare Quality Strategy²² aims to ensure that healthcare services delivered in Scotland are focused on improving quality of care. We have taken action in two key areas: the provision of high quality person/child-centred safe and effective health services; and the effective collaboration with other public services to ensure that those pregnant women and children who need additional support receive the integrated services that they need. In January 2011, in recognition of this pivotal role, the Minister for Public Health and Sport launched a series of action frameworks and guidance focused on improving child and maternal health and reducing health inequalities, including:

- A Refreshed Framework for Maternity Care In Scotland;
- Reducing Antenatal Health Inequalities;
- A Universal Pathway of Care for Vulnerable Families; and
- A New Look at Hall 4 – the Early Years – Good Health for all Children.

27. We have also been taking forward the Family Nurse Partnership programme for first-time teenage parents. This innovative programme improves maternal health and child health and development, and the economic self-sufficiency of the family. It is delivered from early pregnancy until the child reaches 2, and works with the intrinsic motivation of the mother to get the best outcomes for her child. Offered to all pregnant teenagers within the pilot areas, the programme is delivered in Scotland by highly-trained nurses through a one-to-one home visiting service. Cost savings from the programme are substantial with savings of around £3-5 for every £1 invested, for high risk groups.²³

Embedding an early intervention approach

28. Taking effective action in the early years of a child's life must be part of a wider approach to early intervention that can help children and young people at all ages and in all circumstances. Good examples of how we are turning these principles into practice are our approaches to looked-after children and to young people in the criminal justice system.

29. As already noted, there is a high number of looked-after children in Scotland and they often have poorer outcomes than other children. Our goal has been to support early, effective permanence decisions for these children. To do this, our actions have included:

- setting up and leading the Looked After Children Strategic Implementation Group to identify key 'sticking points' in the looked-after child's journey;
- launching the Centre for Excellence for Looked After Children in Scotland (CELCIS) in September 2011, expanding the remit for the Scottish Institute for Residential Child Care to cover all looked-after children – CELCIS provides direct support for those who work with looked-after children and young people, to help them implement best practice through consultancy,

²² Scottish Government (2010) Healthcare Quality Strategy.

²³ Washington State Institute for Public Policy (2011) Return on Investment: Evidence-Based Options to Improve Statewide Outcomes.

qualifications and CPD opportunities, (inter)national research and policy implementation work;

- establishing the first National Advice and Support Service for all kinship carers; and
- since January 2012, distributing 4,000 copies of 'Mentor UK' to local authorities, support groups and support agencies to support kinship carers.

30. Each year approximately 10,000 16- and 17-year olds end up in the criminal justice system and courts with little thought as to how they could be diverted from the judicial procedure and whether they can fully engage in the process.²⁴ Too many young people who have been through the care system end up in the criminal justice system and prison. For example:

- prisoners are 13 times more likely to have been in care as a child;
- 70 percent of young people admitted to prison have substance misuse issues; and
- 70 percent of young people in prison have difficulties with literacy and numeracy.²⁵

31. To tackle this challenge, we have been developing a Whole System Approach for young people who offend. This approach involves putting in place streamlined and consistent planning, assessment and decision-making processes for young people throughout Scotland. It diverts young people – where appropriate – from statutory measures, prosecution and custody by intervening early and providing intensive support in the community. The pilot in Aberdeen has already led to:

- speedier disposal: before, it took anywhere between 72 and 148 days from when a crime was reported to a disposal decision being reached through the Children's Hearing System, while afterwards, it only took around 28 days to reach a disposal decision through early and effective intervention;
- reduction in appropriate referrals to the Children's Reporter; and
- increase in the number of 16- and 17-year olds diverted from prosecution.

What we need to do next – the Children and Young People Bill

32. There is no one policy or initiative that can bring about this kind of change. We believe that the programme of action set out above needs to be wide-ranging, reflecting the diversity of services that support children and young people. However, there is a fundamental role for legislation: to accelerate the progress we have already made; to bring about a step-change in the way that all services support children and young people; and to inspire renewed debate and ambition for what our children and young people can expect of us. For that reason, we are introducing a Children and Young People Bill in the term of this Parliament.

²⁴ Scottish Government (2009) Reducing Reoffending Programme, Young People Who Offend.

²⁵ Scottish Prisons Commission (2008) Scotland's Choice – Report of the Scottish Prisons Commission.

33. This consultation on the proposals for the Bill provides an early opportunity for stakeholders, practitioners, parents and children and young people to have their say about the future shape of children's services. Our proposals are based on the following key ideas:

- that a more rapid shift to the early years and early intervention is essential if we are to improve the outcomes for the most vulnerable children and young people;
- that such a shift cannot be restricted to particular services, but must be part of a comprehensive shift in how services can work together to support all children and young people at all stages of their lives; and
- that the heart of our approach is the aim of making real the rights children and young people have.

34. The proposals are set out over the following chapters.

- Chapter 1 presents our proposals on how a child-centred and rights-focused approach can be embedded in how services are planned and designed.
- Chapter 2 describe our proposals for ensuring that: we help children, families and communities to secure outcomes for themselves and use the strength of universal services to deliver more effective and earlier intervention; the needs of each child and young person are better identified and acted upon early by services through the *Getting it right for every child* approach to childcare and early learning; and we improve the support that looked-after children and young people receive.

35. The proposals complement the consultation that took place on how legislation could deliver children's rights between September and December 2011. The Government Response to that consultation was published on 11 May 2012.

36. At the same time, we are consulting on an Adult Health and Social Care Integration Bill. The timing of both consultations is helpful: both take forward our public service reform with the services experienced by the Scottish people; both need input from the same set of stakeholders; and the proposals to both have implications that we are keen to see reflected in service provider and user comments. The Adult Health and Social Care Integration Bill has several objectives:

- that health and social care services are fully integrated to meet the needs of individuals, their carers and other family members.
- that they are characterised by strong, consistent and professional clinical and care leadership;
- that the providers of services are held to account jointly and effectively for improved delivery; and
- that services are underpinned by flexible, sustainable financial mechanisms that give priority to the needs of the people they serve - rather than the organisations through which they are delivered.

This approach fully complements the one we have set out for children's services.

Equalities Impact Assessment

37. The public sector equality duty requires the Scottish Government to consider as appropriate the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

38. These three requirements apply across the “protected characteristics” of: age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; sex (gender) and sexual orientation. In effect, this means that equality considerations are integrated into all the functions and policies of Scottish Government Directorates and Agencies. The Equalities Impact Assessment (EQIA) enables us to consider how our policies (by policy we mean activities, functions, strategies, programmes and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

39. We would appreciate your assessment of the equalities impact our proposals may have on different sectors of the population. A draft EQIA has been published on the Scottish Government website alongside this consultation document and we would welcome your comments and feedback on it. As such we have asked some specific questions in the consultation respondent information form.

Business and Regulatory Impact Assessment

40. The Scottish Government is committed to consulting with all parties potentially affected by proposals for new regulation, or where any regulation is being changed significantly. All policy changes, whether European or domestic, which may have an impact upon business or the third sector should be accompanied by a Business and Regulatory Impact Assessment (BRIA).

41. The BRIA helps policy makers to use available evidence to find proposals that best achieve the policy objectives while minimising costs and burdens. Through consultation and engagement with business, the costs and benefits of the proposed legislation can be analysed. It also ensures that any impact on business, particularly small enterprises, is fully considered before regulations are made.

42. Partial BRIAs should accompany the consultation document for a new piece of legislation. These partial BRIAs are designed to inform and assess the impact on and encourage comment from those who may be affected by the proposals. We have published a partial BRIA on the Scottish Government website along with this consultation document and we would welcome your comments and feedback on it. As such we have we have asked some specific questions in the consultation respondent information form about the BRIA.

43. A final BRIA will be produced, building on the partial BRIA in light of the consultation and further information and analysis, and published once the Bill is introduced to Parliament.

Who should respond to this consultation?

44. The scope of the Bill will cover every child, young person and family in Scotland, so there will be widespread public interest. Its focus on how support for children is planned and delivered means that we expect it to be of particular interest to those practitioners who work with children and young people and their senior managers. In considering what we want for our children and young people going forward, we welcome views across this wide range of interest.

45. The consultation closes on **25 September 2012**. Please see the How To Respond section below on how to take part.

CHAPTER 1 – A SCOTLAND FOR EVERY CHILD

This Government considers that our public services must remain focused on our greatest asset – our people. We want to empower not only the citizens who ultimately benefit from public services, but also the workers who devote their lives to delivering them.

Campbell Christie CBE

Report on the Future Delivery of Public Services
2011

46. If Scotland is to be the best place to grow up, every one of our children and young people should have the support and opportunities they need to realise their potential. Children's services are critical to this, whether they are universal such as education and health or the more specialist support needed by some, not least the most vulnerable. Whatever the need – and each individual's needs will be unique – our children and young people deserve services that are sensitive enough to identify and understand what will help them, flexible enough to provide support that fits their specific circumstances, and effective enough to do this against a background of limited resources. In short, they must be child-centred, responsive and efficient.

47. Our public services understand this – but delivering these services consistently and effectively across Scotland has been a challenge. Children and young people should have high expectations about how they will be supported, wherever they are in Scotland. That is our starting point with legislation: to ensure that the principles that govern how all services are designed, delivered and reviewed across Scotland will be in place to achieve this. This chapter describes proposals that will:

- take forward and embed our approach to children's and young people's rights;
- recognise the need for a new understanding of what services should aim to achieve for children and young people in terms of their whole *wellbeing*;
- ensure service providers work more closely together, irrespective of bureaucratic boundaries, to deliver better outcomes for our children and young people; and
- be much clearer about how well our children and young people are being supported through new reporting requirements.

1.1 More effective rights for children and young people

48. On 7 September 2011 the First Minister announced his intention to bring forward children's rights and services legislation as part of the Programme for Government. It included a commitment to enshrine in law Scottish Ministers' duties with respect to the UNCRC when exercising their responsibilities. It went on to suggest that legislation would act to "*ensure that all of the Scottish Government's policies and legislation take account of and promote the rights of children and young people and ensure it sets an example for the wider public sector to follow.*"

49. A consultation paper containing proposals for children's rights legislation was published on 8 September and closed on 1 December. The Scottish Government

issued its response to the consultation responses on 11 May. The consultation responses contained a diversity of views on our original proposals on children's rights. Where there was a clear direction from the responses was that rights should be made more 'real' for children and young people and they should be better able to see, and challenge, how those rights are translated into actions that affect their everyday lives. Bearing all of this in mind, we believe the following will significantly advance children's rights:

- a duty would be placed on Scottish Ministers to take appropriate steps to further the rights of children and young people;
- Scottish Ministers would promote and raise awareness of the rights of children and young people;
- Scottish Ministers and relevant public bodies would report on how they are implementing the rights of children and young people; and
- the powers of Scotland's Commissioner for Children and Young People would be extended to undertake investigations on behalf of individual children and young people.

What exists now

50. We have made a clear commitment to recognising, respecting and promoting children's rights in Scotland. We seek to achieve this through the development and implementation of legislation and policy which is consistent with the UNCRC. The UNCRC was adopted by the General Assembly of the United Nations in 1989 and sets out the basic human rights of children. It consists of 54 Articles which encompass civil, political, economic, social and cultural rights. These Articles form a framework against which to evaluate legislation, policy and decision-making structures.

51. The UNCRC already underpins the key legislation governing children's services, including the Children (Scotland) Act 1995. It has shaped the policies which affect children's and young people's lives, as set out in the Scottish Government's progress report, *Do the Right Thing*. Nevertheless, we believe that legislative steps are essential to recognise formally how these rights must be at the heart of the design and delivery of policy and services. The proposals set out in this document form a unique package of provisions that will improve the promotion and awareness of rights, how they are reported and accounted for, and mechanisms for challenging how they have been implemented.

What we propose

Furthering the rights of children and young people

52. We propose 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 UNCRC whilst allowing them to pursue the progressive realisation of UNCRC rights. The duty would, for the first time, explicitly in legislation:

- be a clear statement of Ministerial commitment to – and responsibility for – the

rights and duties set out in the UNCRC; and

- require Ministers to identify specific measures to further the rights set out in the UNCRC.

53. The duty is complemented by the other duties set out here, particularly the duty to report on the UNCRC and the extension to the powers of Scotland's Commissioner for Children and Young People.

Promoting and raising awareness of the rights of children and young people

54. If rights are to be made more 'real', there should be a greater understanding of what those rights are and how important they are for improving the lives of children and young people. In the course of the consultation on children's rights legislation, stakeholders asked for inclusion of a duty on Scottish Ministers to promote and raise awareness of the rights of children and young people. Such a duty would not only raise the profile of children's rights more generally among the public, but reinforce how other public bodies are embedding a rights-based approach in their own decisions and the services they deliver. We believe that such a duty on Scottish Ministers could have a major impact on how rights are respected across Scotland.

55. A similar duty can be found in the recently passed Rights of Children and Young Persons (Wales) Measure 2011, as well as in the Commissioner for Children and Young People Act 2003 in Scotland. To support consistency within our domestic legislation, we propose a duty similar to the latter is placed on Scottish Ministers, complementing the extensive work already done by Scotland's Commissioner.

Reporting on implementing the rights of children and young people

56. Understanding and knowing more about rights is one important step. It is just as important that the key bodies that can deliver these rights set out what they are doing to advance rights. For that reason, Ministers are keen to increase transparency and accountability about the UNCRC in Scotland and ensure that a collective responsibility for delivering rights for children and young people should be at the forefront of public services. In order to achieve this, we propose a duty is established which requires both Ministers and relevant public bodies to report on the steps they have taken which further the rights set out in the UNCRC. A list of proposed relevant public bodies is given at Annex B, but we welcome your views on which bodies should be included.

57. It seems right to us that this reporting should be done on the basis of regular, published reports that set out progress, potentially as part of other documents set out by individual public bodies or potentially by Community Planning Partnerships as a whole. Such a legislative obligation would achieve the transparency, scrutiny and accountability which are necessary if we are serious about progressing the rights of children and young people. For that reason, reports should be published on a 3-yearly basis. The initial consultation on children's rights legislation suggested a 5-year interval for reporting but respondents considered this to be too long. Moreover, stakeholders were clear of the need for Parliament to play a role in scrutinising compliance with any duty being introduced. Accordingly, we suggest that the

Children and Young People Bill requires that all reports prepared by Scottish Ministers be laid before Parliament at the time of publication.

Extending the powers of Scotland's Commissioner for Children and Young People to investigate infringements of the rights of individual children and young people

58. The role of Scotland's Commissioner for Children and Young People in embedding children's rights is critical. As seen most recently in the 'Big Blether', the Commissioner has a powerful, public role in drawing attention to rights and pointing out where public bodies are failing to implement them fully. In the consultation on children's rights legislation, respondents called for an extension to the powers of the Commissioner.

59. There is a powerful argument for extending the Commissioner's power to undertake investigations on behalf of individual children and young people. The 2003 Act currently provides for the Commissioner to undertake investigations on behalf of *groups* of children and young people (section 7). Any investigation must focus on whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect them. However, many stakeholders believe that the Commissioner's powers should be extended to allow them to undertake investigations on behalf of *individual* children. This change would introduce an important mechanism for children to seek redress in response to perceived violations of their rights. Indeed, the nature of the Commissioner's work would make this avenue more child friendly than a judicial process.

60. The process could be strengthened further by requiring any organisation involved in the delivery of public services to respond formally to the Commissioner's findings. Both the request and response should be made public unless considered inappropriate by the Commissioner.

Consultation questions

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

1.2 A new focus on wellbeing

61. At the heart of the child-centred approach to children's services is the focus on their welfare. 'Welfare' can mean different things in different settings. For health services, the key consideration would be the health of the child or young person; for

child protection services, their safety; for education services, their ability to achieve. We believe it is essential that services take a holistic approach to a child's welfare. It is the core of the *Getting it right for every child* approach, underpinning the duties of the Named Person and the Child's Plan set out in the next chapter, enabling children and young people to receive services that are sensitive and respond to their needs in the round. For that reason, we propose that the Bill makes clear this approach to welfare through the concept of 'wellbeing'.

62. 'Wellbeing' is a term commonly used about a child's development. It can mean different things, ranging from mental health to a wider vision of happiness, but the term captures the idea that a child's and young person's condition depends on a range of different factors. Wellbeing reflects the fact that different aspects of a child's and young person's quality of life will affect what they can achieve as they grow and develop and how well they are able to address any difficulties they may encounter. Wellbeing is not just about a child's and young person's economic status, health or educational attainment. It is about how they take responsibility for their actions, their inclusion in the wider community and whether their views and voices are respected and heard.

63. Consequently, we propose setting out a specific definition of 'wellbeing' to apply to the duties in the Bill. In addition, we propose a set of selective amendments to specific parts of the Children (Scotland) Act 1995 to ensure consistency with this approach.

What exists now

64. Legislative provisions have existed for many years to ensure that local authorities promote and safeguard the welfare of children in need, as set out in the Children (Scotland) Act 1995 in section 22, and with respect to looked-after children in section 17. Additional duties have been put on public bodies to make the welfare of the child paramount in court or children's hearings processes – notably section 25 of the Children's Hearings (Scotland) Act 2011 (not as yet, in force). There is no definition of 'welfare' in either the Children (Scotland) Act 1995 or the Children's Hearings (Scotland) Act 2011, so it is to be interpreted according to its ordinary meaning. As a result, the welfare provisions and approach supported by the Act have in practice become associated with decisions by local authorities, the courts and children's hearings as well as the support by local authorities of children in need or who are looked after by local authorities.

65. As a term, 'wellbeing' is widely used. For example, the Local Government in Scotland Act 2003 (section 20) gives powers to local authorities to promote wellbeing in their area. There is no definition of wellbeing, which again takes its ordinary meaning. Similarly, section 181 of the Children's Hearings (Scotland) Act 2011 (again, not yet in force) requires reports to the National Convenor on the effect on the overall wellbeing of the children subject to compulsory supervision orders. As before, there is no definition of 'wellbeing'.

66. In other parts of the UK, there is a precedent for defining wellbeing. For England and Wales, the Children Act 2004 makes provision for action to improve wellbeing. Wellbeing is set out for several provisions to include:

- physical and mental health and emotional wellbeing;
- protection from harm and neglect;
- education, training and recreation;
- the contribution made by them to society; and
- social and economic wellbeing.

What we propose

67. In Scotland, *Getting it right for every child* puts this wider understanding of wellbeing at the heart of its approach. Wellbeing is defined through eight Wellbeing Indicators, often known by the acronym, ‘SHANARRI’, that capture the full range of factors that affect a child’s and young person’s lives.

S	SAFE	Protected from abuse, including emotional, physical and sexual abuse, neglect or harm at home, at school and in the community
H	HEALTHY	Having the highest attainable standards of physical, emotional and mental health, access to suitable healthcare, and support in learning to make healthy and safe choices
A	ACHIEVING	Being supported and guided in their learning and in the development of their skills, confidence and self esteem at home, at school and in the community
N	NURTURED	Having a nurturing place to live, in a family setting with additional help if needed or, where this is not possible, in a suitable care setting
A	ACTIVE	Having opportunities to take part in activities such as play, recreation and sport which contribute to healthy growth and development, both at home and in the community
R	RESPECTED	Having the opportunity, along with carers, to be heard and involved in decisions which affect them
R	RESPONSIBLE	Having opportunities and encouragement to play active and responsible roles in their schools and communities and where necessary, having appropriate guidance and supervision and being involved in decisions that affect them
I	INCLUDED	Having help to overcome social, educational, physical and economic inequalities and being accepted as part of the community in which they live and learn

68. We propose that this understanding of wellbeing underpins the provisions in the Children and Young People Bill. As set out in the next chapter, many of the proposals put forward duties that depend on addressing a child’s and young person’s wellbeing. To ensure that these duties take a holistic view of what a child or young person needs, we propose to make it clear that wellbeing in this context is based on SHANARRI and should apply to how the duties in the Bill should be implemented. Consequently, we are considering:

- including a definition of wellbeing in the Bill based on the SHANARRI framework; and
- empowering Scottish Ministers to supplement the definition through Guidance.

69. In addition, we propose that selected amendments are made to the Children (Scotland) Act 1995 to support this definition of wellbeing. The relevant sections all refer to the way that services support children and young people. Specifically, we are considering amending the duties in sections 17 and 22 to reflect the intention of promoting wellbeing along SHANARRI lines.

Consultation questions

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?

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

1.3 Better service planning and delivery

70. In recent years there has been increasing integration in the way public bodies develop, plan and operate services in support of children and young people. Many of a child's and young person's needs can be addressed through the dedicated work of individual practitioners, such as public health nurses, or single services, such as schools and education services. However, at a strategic level, unless those services systematically work together there is a danger that something important may be missed and a child's and young person's wellbeing suffers.

71. What children and young people need are services that are not simply coordinated, but share this holistic approach towards wellbeing and early intervention. What they deserve are services – across all parts of Scotland – that routinely and consistently consider the spectrum of their needs. It should become the basic design principle in how the public sector supports all children and young people and their families including, where appropriate and necessary, the provision of consistent, high quality and coordinated advice and information.

What exists now

72. Existing legislation already embeds the importance of joint working and cooperation across specific services.

- In section 19 of the Children (Scotland) Act 1995 and the Concordat between the Scottish Government and COSLA, every local authority has a legal duty to publish an Integrated Children's Services Plan, in consultation with other relevant organisations on a three-yearly basis. However, reporting on services is not the same as systematic planning of services between all relevant bodies in an area.
- Section 15 of the Local Government in Scotland Act 2003 requires local authorities to initiate and maintain a community planning process for the delivery of public services.
- Section 23 of the Education (Additional Support for Learning) (Scotland) Act 2004 requires other bodies, upon request, to help education authorities to identify, plan and review additional support needs.
- In exercising their respective functions, health boards and local authorities are required to cooperate with one another to secure and advance the health of the Scottish people (section 13 and 13 A of NHS Act 1978).

73. Each of these legal requirements is linked to the agencies' statutory functions. Consequently, cooperation is linked to the responsibilities of these bodies in delivering those functions rather than considering how all relevant public services can support the whole wellbeing of children and young people in an area. With respect to section 21 of the Children (Scotland) Act 1995, neither guidance nor regulations specify the range of people who may be authorised by Scottish Ministers to comply with local authorities' requests for help. Lack of clarity about who may be asked to do what can compound practical difficulties in cooperation.

What we propose

74. There is scope for a new duty that brings together, clarifies and firmly embeds this joint working approach across the public sector, taking account of the legislation already in place to ensure an appropriate fit. The intended effect will mean that those bodies responsible for expenditure, planning and delivery of services should work together in considering how to improve the whole wellbeing of all children and young people in their area. It will also mean that the roles of frontline staff, who work most closely with children and young people and their families, will be set in a clear context of improving wellbeing.

75. We propose placing duties on public bodies to work together to design, plan and deliver jointly their policies and services to ensure that they focus on improving children's and young people's wellbeing. The bodies that could be included are set out in Annex B of the consultation paper, and we welcome views on which bodies should be set out in the Bill. In practical terms, this could include areas such as joint service design, joint financial planning and joint professional training and development. One option we are considering to achieve this is to amend the planning and cooperation duties in the Children (Scotland) Act 1995 to make it clear that all relevant public bodies will have a duty to design and plan jointly services that will improve the wellbeing of children in the area of the local authority.

Consultation questions

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 focused on improving children's wellbeing?

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

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

1.4 Improved reporting on outcomes

76. In keeping with our response to the Christie Commission Report, we have set a priority on collective performance management. Single Outcome Agreements (SOAs) between the Scottish Government and Community Planning Partnerships set out how each will work towards improving outcomes for local people in a way that reflects local circumstances and priorities. The current joint Scottish Government/COSLA review of community planning is considering how SOAs can be strengthened to deliver better outcomes. There are also in place systems for measuring our progress towards service improvement in health through the Healthcare Quality Strategy and the use of Quality Outcome Indicators and Health Improvement, Efficiency, Access and Treatment (HEAT) targets.

77. Greater transparency and consistency in the information provided on shared outcomes for services will:

- make a direct, accountable link for the public between local services and outcomes for children and young people; and
- support service planning and monitoring for local services by giving them a useful set of information on how the collective duty to design and deliver services to support the wellbeing of children and young people is being met.

What exists now

78. There are currently no requirements for public bodies to report collectively on how well children and young people are doing. *Individual* bodies have specific duties: most notably, section 20 of the Children (Scotland) Act 1995 places a duty on local authorities to publish information about certain services for children. A number of sections of the Education (Scotland) Act 1980 are used for gathering education data from local authorities.²⁶ Section 23 of the Education (Additional Support for Learning) (Scotland) Act 2009 places a duty on the Scottish Ministers to collect information on children and young persons with additional educational support needs. There are also Official Statistics publications on the education, health and care of children and young people: there is provision in section 87 of the Local Government (Scotland)

²⁶ Sections 28B, 28I, 28J, 28K and 82.

Act 1973 for a Scottish Minister to require a local authority to provide information relating to the exercise of any power conferred by or under any enactment.

79. What legislation does not currently set out is a duty on public bodies to report collectively on how the lives of children and young people are improving. Focusing on specific elements of a child's or young person's wellbeing or the contributions of a particular service does not give the public, let alone children and young people themselves, a full picture of their wellbeing at local level. A duty to report on outcomes for children and young people would enhance implementation of *Getting it right for every child* and the other duties set out in this paper, not least the duty on joint planning outlined above.

What we propose

80. We want to place a duty on relevant public bodies to assist the local authority in reporting on a common set of high level outcomes for children and young people. The duty would include the ability for the Scottish Government, working in partnership with stakeholders, to set consistent indicators across Scotland. We believe that a common national set of indicators should reflect our approach to wellbeing as a whole, but we are not proposing a specific data set here, nor how reporting should take place. However, reporting would be within the SHANARRI framework of the Wellbeing Indicators and would be set out in regulations to be made by Scottish Ministers. Before making such regulations Scottish Ministers would need to consult with the public bodies on which the reporting duties would be placed. As part of the consultation, we welcome views on the public bodies that should be covered by the duty, particularly those set out in Annex B of this paper.

81. We want reporting to fit with existing reporting requirements as far as possible, and believe the existing SOA process may offer the best way of doing this. Similarly, the reporting under this duty should be combined with the duty to report on the implementation of the UNCRC, outlined above. Together, they will present a substantial picture of how children and young people are being served by services in their area. We propose that the arrangements for reporting, including the frequency and format of how the information is to be provided, should be set out by regulations.

Consultation questions

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?

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

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

CHAPTER 2 – A SCOTLAND FOR EACH CHILD

Getting it right for every child requires a positive shift in culture, systems and practice from the managers and practitioners who work in frontline services for children, young people and families. By working together in an integrated and consistent way where appropriate, we can expect significant benefits to accrue to organisations as well as children and young people.

Adam Ingram MSP

A Guide to implementing *Getting it right for every child*
2010

82. Services are moving towards more child-centred, holistic approaches to supporting children and young people – but we want the pace of change to quicken. Our starting point is *Getting it right for every child*. It creates a single system of service planning and delivery across children’s services rooted in cooperation between services with the child at the centre, encouraging streamlining and collaboration, and preventing services working in isolation from each other. Moreover, it puts the voice of the child at the heart of service delivery, rather than pushing it to the margins.

83. We need children’s services that are joined up, not just at individual points in a child’s development, but across their whole lives. Central to this is putting in place a new professional role, one that builds on the existing responsibilities of different practitioners but makes sure that children’s and young people’s wellbeing is being supported at all stages of their lives. That role is the Named Person, supported by the Child’s Plan for those children and young people requiring the involvement of different services to support their needs.

84. At the same time, there are certain stages in children’s lives where service support is critical. We understand the crucial role that early learning and childcare can play: high quality, flexible early learning and childcare are major factors in supporting healthy development in the early years of a child’s life. The Children and Young People Bill not only signals the importance we place on this key service as a driver of early years change, but a major shift in how these services should be delivered to support parents and children.

85. For some children and young people, some stages in their lives are marked by family breakdown and uncertainty in their care. For these most vulnerable children and young people, we have a duty to make the systems of support for care and adoption as effective, sensitive and seamless as possible. In this Bill, we set out provisions that are designed to make substantial improvements in the lives of looked-after children and young people.

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

86. Care and learning starts and resides with parents, but formal early learning and childcare is an essential part of the learning journey. The Early Childhood Education and Care Communication from the European Commission, February 2011 stated that:

Early Childhood Education and Care (ECEC) is the essential foundation for successful lifelong learning, social integration, personal development and later employability. Complementing the central role of the family, ECEC has a profound and long lasting impact, which measures taken at a later stage cannot achieve. Children's earliest experiences form the basis for all subsequent learning. If solid foundations are laid in the early years, later learning is more effective and is more likely to continue life-long, lessening the risk of early school leaving, increasing the equity of educational outcomes and reducing the costs for society in terms of lost talent and of public spending on social, health and even justice systems.

87. The Scottish Government is committed to improving and increasing high quality, flexible and integrated early learning and childcare which is accessible and affordable for all, matching the best in Europe. The benefits are wide ranging socially, economically and educationally. We want to support better outcomes for our children; and through universal services, our most disadvantaged children. We also want to support employability for parents and economic security for families as well as a better work-life balance, which is crucial for the wellbeing of children.

88. We are setting out the steps needed over the next decade to achieve this ambition. We do not currently have all the levers to do this: the tax and benefits system plays a crucial role in shaping how services are funded, organised and delivered and the powers for this remain with the UK. But despite the current limitations, the Bill gives us the opportunity to make fundamental changes to our early learning and childcare provision. It allows us to increase:

- the amount of funded hours children are entitled to;
- the flexibility of how those hours are delivered to support parents' working patterns, support parents into work and provide greater consistency for children; and
- the financial support parents receive for early learning and childcare costs through access to an additional 125 funded hours.

89. The proposals and consultation will also set the stage for more fundamental, long-term consideration of how we provide high quality, integrated early learning and childcare that meets the needs of all children, families, parents and employers in the future.

90. A major step towards this ambition is to extend the flexibility and expand the provision of funded early learning and childcare. Our intention is to:

- increase the funded annual provision from 475 hours pre-school education for 3- and 4-year olds to a minimum annual provision of 600 hours early learning and childcare for 3- and 4-year olds and looked-after 2-year olds; and
- make early learning and childcare more flexible and seamless for the child, and better suited to the needs of families.

The term *early learning and childcare* emphasises the holistic and seamless provision of nurture, care and development of social, emotional, physical and cognitive skills, abilities and wellbeing, whatever formal provision the child is receiving. Further integration of early learning and childcare including workforce, regulation, funding and delivery across all sectors could form part of a future, wider vision of universal high quality early learning and childcare for all.

What exists now

91. Local authorities are:²⁷

- required to secure school education (nursery school or classes) for prescribed pre-school children from the school term following their third birthday, should their parents wish a place;
- required to provide 475 hours over the school year commencing 1 August for 12 months, or a proportion of that according to the child's birth date;
- required to have regard to guidance issued by Scottish Ministers when exercising their functions in relation to pre-school education²⁸;
- required to endeavour to secure improvement in all pre-school education centres, including partner providers;
- empowered to secure pre-school education beyond their statutory duties, for example, additional education for 3- and 4-year olds or earlier than the first term after the child's third birthday; and
- entitled to charge for services, which are provided outwith their statutory duty.

92. The introduction of 412.5 hours annual funded pre-school education in 2002 was defined in guidance in general terms as 12.5 hours/week over three terms, totalling 33 weeks, with the aim of providing a broad range of planned learning opportunities in line with Curriculum for Excellence. This was subsequently increased to 475 hours annually as 12.5 hours/week over 38 weeks in 2007. In practice, this has translated into five 2.5 hour sessions each weekday during term time, embedded in the education system. Uptake of pre-school entitlement is near universal at 99.5%.²⁹

²⁷ Under the Education (Scotland) Act 1980 (amended by the Standards in Scotland's Schools etc Act 2000) and the Provision of School Education for Children Under School Age (Prescribed Children) (Scotland) Order 2002 and Amendment Order 2007.

²⁸ Original guidance, Standards in Scotland's Schools etc, Act 2000 Section 34 Guidance on Pre-school Education (2002), is no longer regarded as current.

²⁹ Scottish Government (2010) Pre-school and Childcare Statistics, September 2010, National Statistics Publication for Scotland.

93. However, we are currently not providing a universal coherent system of early learning and childcare, and the majority of parents are ‘topping up’ their pre-school education through multiple forms of formal early learning and childcare and informal arrangements. By the age of 3 or 4, Growing Up in Scotland longitudinal research³⁰ found that around 60 percent of families were using two or more forms of childcare: around a third were using 9-16 hours a week; a third, 17-30 hours a week; and a further third, more than 30 hours. ‘Topping up’ with ‘childcare’ can be perceived as something different or less than pre-school education, with a lack of continuity and consistency of early learning and childcare for the child, while parents are left to juggle a range of formal and informal arrangements for their children. Parents have identified that the free pre-school education hours need to be more flexible and potentially extended for those who need it.³¹

94. The division between early learning and childcare, embedded in current legislation, does not give our children the best start in their lives. It contradicts a prevailing view that: the learning journey begins when, and is influenced before, a child is born; pre-birth–3 is the most important time in a child’s life for shaping that child’s life chances; and Curriculum for Excellence from the early level at 3 years is a holistic approach to children’s wellbeing and development. Many nurseries from the public, private and third sector provide longer sessions of early learning and childcare with more seamless integration of care, nurture and learning; we want this to become the core model, providing more consistent support for children and more flexible support for parents.

95. In addition, the integration of early learning and childcare is a step towards the development of a universal early learning and childcare system with high quality and consistent provision for children from 1 to 5. The Organisation for Economic Co-operation and Development (OECD) noted in Starting Strong III: A Quality Toolbox for Early Childhood Education and Care (2012) that:

The separation of “education” and “care” can, in some cases, undermine the delivery of quality goals. The result can be a lack of coherence for children and families, with a confusing variation in objectives, funding streams, operational procedures, regulatory frameworks, staff training and qualifications... If childhood is seen as an important stage of life, countries are more likely to integrate “child care” and “early education”, which contributes to more holistic child development and greater clarity in objectives for centres, practitioners, parents, and other stakeholders.

The most successful ECEC systems have managed to integrate broad based goals for “child care” with specific “early education” aims.

We already have the powers now to increase the amount of funded support, but what we cannot do without legislation is change the nature of the support that can be funded.

³⁰ Scottish Government (2011) Growing Up in Scotland.

³¹ Scottish Government (2008) Perspectives on Early Years Services: Qualitative Research with Service Users.

96. Average costs of early learning and childcare UK-wide are estimated at around £100 per week, £5,000 per year for a part-time (ie. 25 hours/week) place.³² Costs are currently supported by Child Tax Credit, Working Tax Credit and in particular, the childcare element of Working Tax Credit. Research from the Institute of Fiscal Studies suggests that the proposed changes to the welfare system will increase the number of children in absolute poverty across the UK by 500,000 by 2015 with a total increase of 800,000 by 2020. We do not have control over those changes, but can support families through the funded early learning and childcare provision.

97. The Scottish Government is committed to improving and increasing early learning and childcare for all, with an initial focus on the most vulnerable. Through this Bill we will also seek to provide an additional specific priority for our most vulnerable 2-year olds. There is evidence, most notably from the EPPE study (2004), to suggest that high quality, early learning provision is particularly effective in improving outcomes for the most vulnerable young children.

98. From April 2012, we invested an additional £1.5 million per annum in local authorities in their role as corporate parent to deliver early learning and childcare for looked-after 2-year olds. Our aim is to build on existing provision using an individualised approach that could include: work with parent/s; work in the home; work in groups; or work on specific programmes, including transition periods for children moving away from or returning home.

What we propose

99. Through the Bill, we propose to:

- provide more flexibility in the provision of funded early learning and childcare to meet parent and work-life balance needs and greater consistency of early learning and care for children;
- increase the amount of funded early learning and childcare to a minimum of 600 hours contributing to supporting the costs of more consistent early learning and childcare;
- guarantee a minimum provision for the most vulnerable 2-year olds (and work with parents) within settings appropriate to the age and needs of the child;
- improve outcomes for children as evidenced through increasing access to formal early learning and childcare;
- signal an important shift from the traditional divide of childcare and early education; and
- 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.

³² Daycare Trust (2012) Childcare Costs Survey 2012.

100. Consequently, we propose that the legislation should require local authorities to:

- secure a minimum provision of 600 hours per annum early learning and childcare for 3- and 4-year olds;
- offer a range of uptake options to parents – these could include options such as compressed hours over 2 or 3 days, hours outwith term times, or longer sessions of early learning and care;
- consult locally on the needs of parents and demand for places; and
- provide a minimum provision of 600 hours per annum early learning and childcare for looked-after 2-year olds, including joint work with parents or carers where appropriate.³³

101. It will be important that local authorities consult locally on the needs of parents and local demand, but it will also be important that parents are offered a range of agreed options so that they are guaranteed consistency across different local authority areas. There are a number of ways this expanded provision could be delivered. For example:

- 12.5 hours/week extended to 48 weeks to cover non-term times (600 hours pa)
- 15 hours/ week extended over 40 weeks (600 hours pa)
- 16 hours/week delivered through 2 compressed days (9:00-5:00) (608 hours pa)
- 16 hours/week delivered through 5 longer sessions of 3 hours and 20 minutes, including breakfast, or lunch, or at the end of the afternoon session (608 hours pa)
- 6.5 hours/day (9:00-3:30) over 5 days a fortnight, e.g. Monday, Tuesday, alternate Wednesdays; or alternate Wednesdays, Thursdays and Fridays (617.5 hours pa)

102. Cross-border local authority placements will require further consideration, either through the need to legislate to ensure that where a cross-boundary placement is requested, costs are met by the home authority; or the need to develop an agreement between local authorities through guidance.

103. Local authorities have a number of stand-alone early learning and childcare services, but would also need to adapt and increase current delivery of their 2.5 hour sessions. Local authorities could also continue to secure a range of delivery options through partner providers.

104. Scottish Government, local authorities, Education Scotland and the Care Inspectorate will continue to develop and evolve the concept, frameworks and delivery of early learning and childcare to drive up standards, quality, and consistency for the benefit of all children in formal early learning and childcare.

³³ The meaning of 'looked-after children' is as described in section 17 of the Children (Scotland) Act 1995.

Education Scotland and the Care Inspectorate will continue to cooperate and coordinate the regulation and inspection of early learning and childcare.

Consultation questions

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

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

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?

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?

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?

2.2 The Named Person

105. Different services will address the needs of children and young people at different stages of their lives. However, where children and young people face issues that are not easily addressed by the practitioners with whom they and their families are in regular contact, it is not always clear where they can turn to for help. When practitioners working with children, young people and their families come across something that lies outside their responsibility and ability, it is not always simple for them to identify who they should speak to, and how the issue should be addressed. Put simply, a child's or young person's development is not only about how the different elements of their wellbeing are addressed – whether it is ensuring they are healthy, or safe, or achieving, for example – but how services can ensure that all of their needs are recognised and acted upon. In Chapter 1, we set out a definition of wellbeing that covered all the factors that can affect every child's and young person's development. Here we set out the practical steps to ensure that factors adversely affecting individual children's and young people's wellbeing can be identified and acted upon.

106. *Getting it right for every child* aims to have in place a network of support to promote wellbeing so that children and young people get the right help at the right time. This network will always include family and/or carers and it will include a role that we believe should be put into legislation: the Named Person. The Named Person is a practitioner who can monitor what children and young people need, within the context of their professional responsibilities, link with the relevant services that can help them and be a single point of contact for services that children and families can use if they wish. The Named Person is in a position to intervene early to prevent difficulties escalating. The Named Person offers a way for children and young people to make sense of a complicated service environment as well as a way

to prevent any problems or challenges they are facing in their lives remaining unaddressed due to professional service boundaries. Their job is to understand what children and young people need and make the connection to those services that can help.

What exists now

107. The responsibility of practitioners to look after the welfare of children and young people is set out in different legislation. The duties on health boards are set out in the National Health Service (Scotland) Act 1978. In terms of health boards' general duties, section 2A(1) of that Act states that it is the duty of every health board and special health board to promote the improvement of the physical and mental health of the people of Scotland. Section 2B(1) provides that it is the duty of every health board and special health board to ensure the public are involved and consulted on the planning, development and significant operational changes to services. A comparable set of duties is provided for educational services in the Education (Scotland) Act 1980 and the Standards for Scotland's Schools etc. Act 2000.

108. Within these overall duties, specific roles have been defined for the care and welfare of children in different contexts. The key role in health services is the public health nurse and health visitor for children up to school age. Thereafter, education becomes the universal service with the most significant contact with children and young people and the role of teachers becomes critical in their overall development.

109. Despite these relatively long-established roles, there is evidence that coordination between different services, particularly in cases where it is not clear where responsibility for a child's overall welfare lies, has not worked as well as it should. In the report, *For Scotland's Children in 2001*, children and families criticised:

- the need to repeat the same information to different agencies with which they may be involved;
- the absence of mutual awareness between service providers of what each were doing in support of a child or young person; and
- services not being coordinated and sometimes pulling in different directions.

The report concluded: "It would be helpful to have one point of entry to services".

110. Similarly, every inquiry into a child's death in the UK over the last 20 years has demonstrated clearly that effective sharing of information within and between agencies is fundamental to improving the protection of children and young people. The appropriate sharing of information is integral to acting early to improve outcomes for children and their families and preventing tragedy. It is essential that information is shared not only in response to a crisis or serious occurrence but, in many cases, information should be shared about relevant changes in a child's and young person's life so that any patterns of more serious concerns would come to light. There is no commonly agreed process for routine information sharing about concerns about wellbeing with universal services, leading to a fragmented approach to dealing with concerns about a child.

111. The role of the Named Person was developed to address these problems. As a core element of *Getting it right for every child*, the role is already in operation in some areas, and there is evidence of good practice in its adoption across the country. It was a key element in the success of the Highland Pathfinder in improving outcomes for children and young people and increasing efficiencies in services, as already set out in the Introduction.

112. In health services, the role of midwives, public health nurses/health visitors and family nurses is set out in guidance: for example, the Pathways for Maternity Care, the Universal Pathways for children, women, young people and families and Pathway of Care for Vulnerable Families identifies the midwife as the Named Person throughout pregnancy and hands this over to the public health nurse shortly after birth. The Pathways are applied with a degree of personalisation depending on needs and preferences. Similarly, in schools, many senior staff already take responsibility for the wellbeing of children in line with the responsibilities of the Named Person. Curriculum for Excellence means that they will have regard to, and will support, the child's wellbeing.

113. Overall, some parts of Scotland have the Named Person role in place but it has not been implemented consistently across the whole country or across all services. We believe the time is right to consider a comprehensive approach to providing a Named Person for all children and young people, one based on a set of legislative duties. Such a universal approach would:

- recognise that all children and young people could benefit greatly from the role;
- make clear to children and young people that the Named Person is a role that they should have by right wherever they live across Scotland;
- ease the implementation by encouraging national approaches across different areas and across different services; and
- ensure that when information is to be shared across service and geographical boundaries, it can be directed to the right person with the minimum of delay.

What we propose

114. We intend for every child to have a Named Person from birth up to leaving school, with provisions made for children and young people in special circumstances. The role of Named Person will build on and strengthen the existing roles in the universal services of public health and school education. It will clarify the responsibility of other agencies to monitor wellbeing and help them know what to do and who to contact if a child needs extra help or there are concerns about a child's wellbeing that they cannot themselves meet.

115. The Named Person is a key role in how collective cooperation and responsibility can deliver what children and young people need as part of early intervention and their core duties within universal services. Building on what practitioners do in the course of their day-to-day work – whether public health nurses working with younger children or members of school staff with management responsibility for pupil support – the Named Person has a number of distinctive roles.

- The Named Person would be a key point of contact for the child or young person and their parents/carers when seeking information or advice, and for any practitioners wishing to discuss a concern about the child or young person. They would be the person who makes sure children, young people and their families understand what is happening and that they are fully engaged in decisions that affect them when it comes to the involvement of services.
- The Named Person would make sure that the views of children, young people and their families are sought and recorded as part of the planning process and that, when information needs to be shared with another agency, they know why this information is to be shared and what will happen as a result of that sharing. The Named Person would ensure that consent has been given and recorded, unless, in exceptional circumstances, there is good reason not to seek consent.
- The Named Person would aim to be aware of risks and needs and identify concerns that suggest a child or young person may be at risk in the longer term if wellbeing is not being addressed now.
- The Named Person would lead on implementing and keeping under review the outcome and effectiveness of the Child's Plan within their own service (the Child's Plan is discussed in more detail in the following section). For the services provided by their agency, the Named Person will normally be responsible for coordinating the help children and young people receive.

We propose that the role would be set out in legislation and potentially supplemented by more detailed guidance by Scottish Ministers.

116. Through the Children and Young People Bill and, where appropriate, existing legislation, we propose to place the responsibility on different public bodies at different stages in a child's and young person's life for ensuring the Named Person is in place:

- from birth up to school age, health boards would be responsible for ensuring all children and young people have a Named Person and for the conduct of the duties set out in the Bill; and
- from school age up until 18, local authorities would be responsible for the Named Person and the accompanying duties.

117. In practice, this would most likely result in the pattern set out below. However, legislation would not prescribe which practitioners should perform the duty, only which public bodies have responsibilities for ensuring the Named Person is in place. In practice, the following might have roles at the following stages.

- Birth. At this early stage, the most appropriate Named Person for the child is the midwife who currently records personal information for use within her own agency, to be shared with other agencies when appropriate.
- Shortly after birth ▶ School age. The midwife would transfer any record to the public health nurse or health visitor who would then take on the role of Named Person. He or she would remain as the Named Person until the child reaches school age (typically at 5) and would be the point of contact for any person who may have a concern about the child pre-school.

- At school. Once the child starts school, the role of Named Person would transfer to education. In primary schools, this may be at Head or Depute level. In secondary school, it might be a member of the Senior Management team who has lead responsibility for pupil support, and then delegated to a member of staff with a pastoral remit for the child, such as a guidance/pastoral care teacher.

118. There will be circumstances when the above arrangements would not work. For certain groups of children and young people whose pattern of involvement with educational services would make the above arrangements difficult to implement, the Bill would set out alternative arrangements, to be supplemented in guidance issued by Scottish Ministers.

- Children and young people in independent or grant-aided schools. For children and young people attending independent or grant-aided schools, the intention would be for these schools to designate staff to fulfil the responsibility of the Named Person in the same way as in public schools. Consequently, the duty to ensure a Named Person is in place would be placed as follows: in independent schools, on the proprietors; and in grant-maintained schools, on the managers.
- Children and young people who are educated at home. Where a child has been in public school but has been withdrawn to be educated at home, the duty would remain with the local authority to provide a Named Person – in practice, through a link officer within the educational services. For those children and young people who have never attended public school, the public health nurse would make enquiries with the family as to their intentions regarding the education of their children when the child becomes of school entry age and advise the local authority should home education be the choice. The local authority should record that decision. There would be no further duties on the local authority, unless the child or family wanted help or another agency reported concerns that needed a response from the family.
- Children and young people in gypsy/traveller communities. Due to their family's lifestyle, children and young people in traveller communities often do not have regular access to health services or attend school regularly. The role of the Named Person would be the responsibility of the health board until the child would normally enter primary school and become the local authority responsibility. Within the local authority in practice, this might fall to the designated officers within Councils responsible for traveller education issues. Within the health board, arrangements will need to be agreed at local level.
- Young people who leave school before 18. Those young people who leave school at 16 would be entitled to have a Named Person provided by the local authority. Local authorities would need to make arrangements for the provision of a Named Person. Scottish Ministers may be empowered to issue guidance to set out how this might work in practice.

119. The Bill also proposes that the public bodies responsible for the Named Person put in place arrangements for the following issues:

- telling children, young people and families who their Named Person is, any changes in the Named Person (particularly how to access alternative individuals if the Named Person is absent and temporarily unable to perform their duties) and the transition between different public bodies responsible for the Named Person;
- ensuring other relevant public bodies who would have a significant role in the wellbeing of children and young people can identify the Named Person for a particular child quickly; and
- providing children, young people and families with a means of complaining about the conduct of their Named Person, in line with the existing systems in place for that profession.

Scottish Ministers would be able to provide more detailed guidance about these issues.

120. In addition to the duty on specific public bodies to put the Named Person in place, there would be a more wide-ranging duty on all relevant public bodies to cooperate with the Named Person in the conduct of their duties. This will be of particular importance in the following areas.

- Information sharing. The role of the Named Person depends on the successful sharing of information between services where there are concerns about individual children and young people. Information sharing can be a complex and, at times, confusing legal environment for practitioners. Scottish Ministers will consider issuing guidance that would help to clarify the circumstances under which information about the risks to the wellbeing of a child or young person can be shared with or through the Named Person, but the intention is that such information sharing would occur within existing legal frameworks.
- Planning. In developing a Child's Plan or coordinating support for individual children and young people, the Named Person can require significant cooperation from a range of services. This is particularly true where a child's and young person's needs require the involvement of many different services. In such circumstances, the Named Person may not be the right person to take forward the coordination of support for that individual. Within the *Getting it right for every child* approach, this multi-agency coordinator responsibility would typically be performed by a separate role: the Lead Professional.³⁴ Alongside the provisions of the Bill, we are taking forward our plans for developing the Lead Professional role. Scottish Ministers would also be able to issue guidance about how the duty to cooperate with the Named Person on service planning for individual children should be conducted.

³⁴ More information on the Lead Professional can be found in Scottish Government (2009) *Changing Professional Practice and Culture to Get it Right for Every Child*.

- The role of adult services. Concerns about individual children and young people may often not come from children's services, but from practitioners working with adults who may have dependent children, or who live in households with dependent children. For example, addiction workers may have information about the capacity of their clients to ensure the wellbeing of their dependent children, or housing officers may be aware of an important change in the housing circumstances of vulnerable families. We want the duty to cooperate with the Named Person to extend across all services provided by the relevant public bodies, so that those in adult services understand their duty to share concerns with the Named Person, and other services as appropriate, about risks to children and young people. Guidance by Scottish Ministers could set out clear expectations.

The relevant public bodies to which this duty would apply are set out in Annex B, but we welcome your views on the bodies identified.

Consultation questions

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?

18. Are the responsibilities of the Named Person the right ones? Are there 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?

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?

2.3 The Child's Plan

121. Where children and young people are getting different services, they will be part of different planning systems. That can be bewildering to the children, young people and their families, particularly when the planning for these services is not joined up and they are repeatedly being asked for the same information by different services. There is a risk that children and young people will experience a public sector that operates in an uncoordinated way towards their needs. Services should not work in isolation, so their planning should not either. We believe legislative steps can be taken to ensure that planning is more coordinated.

122. Assessment and planning are part of the everyday processes practitioners in health, education and social work and some third sector organisations employ to help children and their families. Practitioners work with children and families to ensure they are linked to the most appropriate help to meet their needs. Other agencies, such as the police will share relevant information to help assist others

working with the child and family to understand what is going on in a child's life in order for appropriate help to be organised.

123. A single planning approach was introduced in the Highland Pathfinder, with a Child's Plan that brought together the key information about a child's or young person's development, the activities to support that development and the individuals responsible for delivering those activities. It led to more consistency in the process of gathering information and an improvement in the quality of information shared across services.

What exists now

124. The Children (Scotland) Act 1995 sets out the requirement on local authorities to safeguard and promote the welfare of children in their area who are in need and, insofar as is consistent with that duty, to promote the upbringing of such children by their families by providing a range and level of services appropriate to the child's needs (section 22). A child is 'in need' if disabled or adversely affected by a family member's disability or, in order to have the opportunity of achieving or maintaining a reasonable standard of health or development, local authority services are required to be provided to that child in terms of Part II of the 1995 Act. Section 17 imposes a duty on local authorities to safeguard and promote the welfare of looked-after children.

125. The Looked After Children (Scotland) Regulations 2009 requires the local authority to prepare a plan for a child (section 5) after undertaking a detailed assessment of the child's needs in terms of section 4. Part XII of these Regulations also sets out review timescales if agreement on timescales cannot be reached.

126. Similarly, personalised health plans built on universal pathways might record:

- pregnancy and post-natal care;
- support (core and additional) delivered from infancy to school age;
- immunisations; and
- any specialist health care being provided.

It is important to note that although health boards all use the national guidance of the Pathway for Maternity Care and the Universal Pathways for Children as a basis for developing local pathways and care planning processes there are significant differences across Scotland. This is driven by local priorities often developed with partners in Community (Health) and Care Partnerships and can result in inconsistencies between neighbouring health boards.

127. Further assessment and planning requirements for children and young people with very specific and complex needs are set out in a range of legislation, particularly:

- The Adoption Agencies (Scotland) Regulations 2009 (regulation 12);
- The Intensive Support and Monitoring (Scotland) Regulations 2008 (regulation 4);
- The Adoption and Children (Scotland) Act 2007 (section 9);

- The Education (Additional Support for Learning) (Scotland) Act 2004 (section 8);
- The Mental Health (Care and Treatment) (Scotland) Act 2003 (section 62); and
- The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 (regulation 7).

128. An education plan might arise because of the need for:

- classroom support;
- an individualised educational programme that sets out support for short- and long-term learning targets; and
- a coordinated support plan where the child has long-term difficulties (lasting over a year and requiring two or more agencies to work together) that are affecting their ability to meet their educational objectives.

129. Typically, children and young people who have more complex needs requiring multiple agencies to work together may have a plan because:

- they are looked after and/or accommodated;
- they are at risk of harm and need a child protection plan;
- they are affected by disability which has an impact beyond their learning objectives;
- they have complex health needs; or
- they have complex family situations that are having an impact on their wellbeing.

130. All the plans outlined above will be subject to review processes and some will have statutory or procedural timescales attached to them. As a result of the plethora of plans and the variety of processes within which they are managed, children and their families, particularly where there are complex issues in their lives, often have to attend a range of meetings to address several plans that the child may have.

Practitioner experience is that children and their families are confused about why they have to go to meetings, and find the discussions repetitive. For practitioners, there are workload challenges in that reports need to be provided for each meeting, and they have to attend a range of different meetings to address various specific issues.

131. For example, a child may be looked after at home, and may be considered to be at risk of harm, so their name may be on the Child Protection Register. Each of these processes currently demands meeting their own timescales. *Getting it right for every child* seeks to rationalise this. From the Highland Pathfinder, there is evidence that the approach produces better outcomes, reduces bureaucracy, releases resources to concentrate on more vulnerable children and increases trust within and across agencies and with children and their families. Most importantly, the child and family have a better understanding of what is to be done by whom, when and for what purpose; what the responsibilities are of each of the partners to the plan (including their own responsibilities) and what the desired outcome is.

What we propose

132. We propose to introduce a duty on public bodies to ensure that all statutory planning and assessment relating to a child or young person's wellbeing is appropriately integrated into a single framework and that all relevant planning activity in regard to individual children is brought together into a Child's Plan. Each child and young person who is assessed as needing help, over and above that delivered through the core support received from health and educational services, will have that support coordinated and recorded within a single plan. Consequently, not all children and young people would have a Child's Plan, but we propose that the duty is aligned with section 22 in the Children (Scotland) Act (which may be amended along the lines suggested in Chapter 1 above) to establish a duty on the local authority to safeguard and promote the wellbeing of children in their area who are in need up to the age of 18.

133. No matter what the presenting problem, the Child's Plan should address all circumstances that are getting in the way of improving the child's or young person's wellbeing. The Child's Plan will identify whether help is needed from a single agency or from a group of agencies working together to deliver the help. In introducing a statutory requirement for a Child's Plan, we do not propose altering the specific statutory duties placed on agencies for particular purposes (as indicated above). These other plans have placed specific responsibilities on agencies and their employees for particular purposes, and for that reason, should be considered as part of a broader framework of support for the wellbeing of the individual child or young person

134. The Bill would not set out the content or format of the Child's Plan, nor how it should specifically relate to the other statutory plans for children and young people. We propose that this will be detailed in guidance to be issued by Scottish Ministers. However, it is likely that the Child's Plan would contain the following information:

- the assessment of the child's or young person's needs including an assessment of risks;
- what is to be achieved in the long and short term;
- any additional existing considerations relevant to the child's or young person's particular circumstances, such as specialist assessments or statutory arrangements;
- who will be involved and what their role will be;
- what actions are to be taken to improve wellbeing;
- the views of the child or young person;
- any relevant transition arrangements;
- timescales for review; and
- contingency arrangements.

135. The duty to produce, maintain and, where appropriate, transfer the responsibility for the Child's Plan should be aligned with the responsibilities for

ensuring that the child or young person has a Named Person. As already noted, the Named Person has responsibility for producing a Child's Plan within their own agency or to transfer responsibility should the plan need to be coordinated by another agency because the child's predominant needs no longer lie in universal services. Other public bodies have the responsibility for cooperating as required in the production of a Child's Plan and its maintenance. Responsibility for maintaining and reviewing Child's Plans should transfer with any change in the Named Person.

136. Children and their families should have the right to be involved in the development of the plan and to have their views sought and recorded by the person who is coordinating the plan. They should always be able to understand what is being said and be supported in contributing to decisions and understanding what is happening. They should always be given a copy of the plan in a suitable format and should help to review the plan.

Consultation questions

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

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

2.4 Getting it right for every looked-after child and young person and care-leaver

137. The role of the care system has changed greatly over time. For some looked-after children and young people, it means short-term accommodation away from a family home while behavioural or parenting and family issues are tackled; for others it means moving to a new long-term carer. The care system deals with children and young people who have experienced a difficult start to life, many of whom have experienced abuse or neglect and who themselves may have challenging behaviours. Many children or young people who come into care experience long-term 'supervision' at home with their parents before reaching a crisis point which sees them come into accommodated care. The time taken to support parents to overcome difficulties can take a long time – often running into years. Some children return home successfully after receiving family support. But when decisions are made to accommodate a child permanently elsewhere, the time spent rightly trying to improve the family environment can also undermine a young child's essential brain development. This, in turn, can lead to what is commonly referred to as 'attachment difficulties' – when a child has a partial and problematic attachment to the birth parent (influenced often by substance misuse and a chaotic environment) and this makes it difficult to re-home a child without sustained, intensive therapy. Finally, this can lead to a child being seen as disruptive or difficult to place, and can prolong the process of finding them a safe, stable, permanent and nurturing home.

138. We need a care system that provides effective, rapid support for children and young people, centred on their long-term as well as their short-term needs and

focused on securing healthy, caring permanence. We have a care system that provides different options for children and young people in difficult family circumstances, but the options, and the system as a whole, needs to change if it is to do justice to a child's and young person's overall wellbeing. Through legislation, we are proposing changes in the following areas:

- right to support for looked-after children;
- corporate parenting;
- kinship care; and
- adoption and permanence.

In addition, we are proposing regulatory changes to improve foster care on which we wish to consult, although we are not proposing legislative changes in this area.

Right to support for looked-after children

139. Local authorities have a statutory duty to prepare young people for when they will stop being looked after (known as 'throughcare') and to provide advice, guidance and assistance for young people who have ceased to be looked after (or 'aftercare') over school age up to 18 and a power to do so up to 21.

140. The statutory duties on local authorities to provide throughcare and aftercare are set out in the Children (Scotland) Act 1995 in sections 17, 29 and 30.

- Section 17 provides that the local authority has a duty to provide assistance with a view to preparing a child for when he or she is no longer looked after by a local authority.
- Under section 29(1) there is a duty to advise, guide and assist those who left care over school age and who are under 19 unless the local authority is satisfied that the young person's welfare does not require it. Under section 29(2) there is a power to provide advice, guidance and assistance to young people between 19 and 21 who left care over school age, where they apply to the local authority, unless the authority is satisfied that the young person's welfare does not require it.
- Under section 30 there is a power for local authorities to provide financial assistance to young people under the age of 21 who were looked after by a local authority, and who left care over school leaving age. This financial assistance can be directed towards expenses of education, training and accommodation.

141. The primary reason for legislative change is that the current cut-off age of 21 for leaving care support is out of step with ordinary families. There is a case to increase this particularly in light of compelling research from the United States showing that, while care-leavers continue to develop after leaving care, they do so often a few years behind their peers who have not needed to experience care.

142. We, therefore, seek to amend section 29 of the Children (Scotland) Act 1995 to extend the right of young people leaving care to request help from a local authority up to the age of 25. We also seek to amend section 30 in line with this change, to

extend the opportunity to provide financial assistance to young people leaving care up to the age of 25.

143. This change will provide young people with the opportunity to continue to receive support beyond the current cut-off age, up to the age of 25. This will be more in step with ordinary families who provide support to their children throughout their early adult lives. The change will not affect a young person's right to opt out of receiving support if they do not want it, nor the local authority's right to decline the application if it is satisfied that the young person's welfare does not require it.

Consultation question

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)?

Corporate parenting

144. Corporate parenting means the formal and local partnerships needed between all local authority departments and services, and associated agencies, which are responsible for working together to meet the needs of looked-after children and young people and care-leavers. Guidance on Corporate Parenting is set out in *These Are Our Bairns: A Guide for Community Planning Partnerships on Being a Good Corporate Parent* (Scottish Government, 2008). Corporate parenting operates at the strategic, operational and individual level. The three key elements are:

- the statutory duty on all parts of a local authority to cooperate in promoting the welfare of children and young people who are looked after by them, and a duty on other agencies to cooperate with councils in fulfilling that duty;
- coordinating the activities of the many different professionals and carers who are involved in a child or young person's life, and taking a strategic, child-centred approach to service delivery; and
- shifting the emphasis from 'corporate' to 'parenting' – the local authority delegates this function to those providing day-to-day care for the child or young person.

145. The statutory duties of local authorities to children looked after by them are set out in section 17 of the Children (Scotland) Act 1995. Section 21 also sets out the requirement for local authorities to work together, and to request help from Health Boards if required.

146. Looked-after young people tend to be younger when they move to adult living than their non-care peers; however, this guidance is clear that young people should continue to be looked after until 18, if that is in their best interest. Care-leavers should be supported to make a successful transition to independent living when they are ready to do so and there should be mechanisms in place to allow them to return to their last care placement in times of difficulty. The transition to independence is one where young people are particularly vulnerable and councils, as their corporate parents, need to ensure that the right supports are in place.

147. The primary reason for legislative change is that corporate parenting is implemented inconsistently across Scotland. There is a lack of shared understanding about the definition of corporate parenting, a lack of clarity about how the concept translates to professionals working within health, housing and education, and a lack of clarity around powers to ensure partners are working together.

148. We are, therefore, seeking to make a legislative change which firstly defines corporate parenting, and secondly clarifies the public bodies to which this definition applies. This will enable the Scottish Government to clarify the corporate parenting roles for various professionals, and to issue guidance to support them in their role.

Consultation questions

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?

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?

Kinship care

149. Since 2007 we have emphasised the principle of 'family first' when considering the needs of children who cannot live with their birth parents, as outlined in our strategy *Getting It Right For Every Child In Foster And Kinship Care*. The *Looked After Children (Scotland) Regulations 2009* now underpin this by defining kinship care as a distinct group of carers and placing duties on local authorities to ensure that their procedures explicitly address the needs of kinship care and that they have appropriate processes in place.

150. For children who cannot return home, there are three options available to kinship carers in planning for permanence.

- Residence Order: This is an order under section 11 of the 1995 Act. A residence order regulates the arrangements about where a child under 16 should live. An order under section 11 can also grant parental responsibilities and rights and take parental responsibilities and rights away. Although it is possible for a child to be subject to a residence order and a supervision requirement simultaneously, in general, residence orders can provide for the semi-permanent and safe care environment needed to deem a supervision requirement unnecessary. Under a residence order, there is no statutory requirement for a local authority to provide support.

- Permanence Order: The child will remain looked after. Parental responsibilities and rights can be removed or conferred on individuals, such as foster carers, including the local authority. Permanence Orders are obtained by local authorities and often follow a period where a child has been in care, usually on a supervision requirement. They are designed in part to provide a stable, long-term placement option. Depending on how parental rights and responsibilities are allocated, the local authority may provide some support to a long-term carer.
- Adoption: All parental responsibilities and rights are passed to the adoptive parent.

151. The rationale for legislative change is to provide an alternative option for a child whose long-term wellbeing is best served by being with kinship carers and who does not need regular supervision or corporate parenting. Our intention is to provide an alternative to being in care (for those children at risk of becoming looked after or already looked after in kinship care) and, in so doing, improve the support available for kinship carers. This boils down to two key areas.

- Legal status. Kinship carers, in particular those caring for looked-after children, may have no parental responsibilities and rights, unless they have obtained an order under section 11 of the Children (Scotland) Act or unless the local authority applies for a permanence order. In practice, therefore, kinship carers face daily difficulties taking decisions about a child they are caring for and face a significant risk of being challenged by a parent. This uncertainty undermines the stability of care.
- Assessment of and need for support. There is no statutory requirement for a local authority to support an informal kinship care arrangement. This follows the long-held tradition of family members helping each other at times of great difficulty. But for the many children who need to live longer term with a kinship carer and for whom formal care is not or is no longer necessary, additional help can be difficult to access when the child is in an informal placement. There is clear evidence that kinship carers need better access to support, particularly from local authorities but also wider public services.

152. We wish to recognise the parenting role of kinship carers in legislation. We seek to provide a new route to permanence for kinship carers that reflects the close bonds between the child and the carer and the different expectations and circumstances compared with other forms of care, such as foster care. This provides a missing option which could positively help families to act to avoid a child coming into care, or to help a child leave formal care, with the necessary support to provide a safe and stable long term care environment.

153. We propose to create a new order that will:

- be legally secure;
- provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer *but* preserving the basic link between the child and their birth family;

- give the carer clear responsibility for all aspects of caring for the child and for taking the decisions to do with their upbringing; and
- offer an alternative to formal care and provide a right to request an assessment of need by the carer, and a right to appropriate financial and non-financial support.

154. The new order will be a court order that appoints a person or persons to be the child's carer. A parent of a child could not apply but the following could:

- any guardian of the child;
- a foster carer;
- anyone who holds a Residence Order with respect to the child;
- anyone who has a pre-existing relationship with the child; and
- anyone else who has parental responsibilities and rights for the child.

Anyone wishing to apply for the new order would have to notify their local authority.

155. The aim of the new order is to ensure that the carer will have clear responsibility for all the day-to-day decisions about caring for the child and their upbringing. If the court considered it necessary, the new order could remove parental responsibilities and rights from others or could limit the involvement of others in relation to decisions about the child.

156. We propose that local authorities will be required when asked by a prospective kinship carer to help facilitate the application for a new order to a court. Support may take the form of information, advice, practical assistance and financial support.

157. In addition, with any transfer of parental responsibilities and rights to the kinship carer, it is possible the order could provide the basis for carers to access any wider support already available to parents to help them stay in, or find work and access appropriate benefit entitlements. Where appropriate, carers may be eligible to receive additional allowances from the local authority to offset specific additional costs of care.

Consultation questions

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?

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

Adoption and permanence

158. There is clear evidence that timescales for making decisions about a looked-after child's permanent future home can take too long. As noted in the Introduction, the report by the Scottish Children's Reporter Administration showed that it takes on average over two years to secure an adoption from first involvement with state services, and in extreme cases, has taken up to 10 years. While this report looked at the legislative environment before the Adoption and Children (Scotland) Act 2007 came fully into force in September 2009, the new Act has not yet had a transformative effect on permanence and stability.

159. Scotland's National Adoption Register (the Register) is a non-statutory service which was set up in 2011 and is designed to increase the numbers of adoptions and speed up the adoption process for children, once adoption is identified as the best way to secure a permanent home. The British Association of Adoption and Fostering in Scotland runs and maintains the service and we wish to require local authorities to sign up to it. The Register already has a number of members and is used to match children with families on a national basis (rather than the current, more localised arrangements) and its aim is to increase, diversify and speed up adoptions for children for whom adoption is the best option for a permanent home.

160. To support the moves to achieve effective permanence more quickly, we propose to take powers to put Scotland's Adoption Register on a statutory footing, to make its use compulsory by local authorities and to regulate the way local authorities and relevant other agencies interact with it.

Consultation question

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

Better foster care

161. Our vision for formal care is to focus ever more on fostering and residential care as intensive, therapeutic interventions which effectively address issues linked to early childhood trauma and neglect – building resilience and supporting a child's wellbeing. The Scottish Government seeks to drive change in all forms of care to create a better fit with early permanence, avoiding drift and delay. We propose to reform foster care to reflect the increasing expectations on foster care to heal, as well as care for children.

162. To achieve this we need to enhance the capacity of foster carers from a number of different angles. Firstly, we seek to improve the ability of local authorities and agencies to recruit foster carers by standardising recruitment requirements and by introducing a simple national register of foster carers designed in part to improve matching of children with available carers and to hold in one place information on people deemed unfit to be foster carers. To support the increasing proportion of

foster carers asked to care for a child with early trauma and challenging behaviour, we propose to introduce training and qualification standards.

163. We propose to introduce limits on the numbers of children who can be accommodated together, to improve the quality of care possible for a given child; and we will explore whether statutory minimum allowances for foster carers can help improve the way authorities are able to strategically commission foster care, while ensuring appropriate financial support for children in foster care. We think that these objectives can be achieved using existing legislative powers and to a shorter possible timescale than the wider Bill, but as part of this package of reform for looked-after children, we are seeking views on these proposals.

164. The effect of these provisions could positively evolve foster care from a system that varies greatly in each local area to one where clear, national standards exist. The fixing of placement limits could reduce burdens on foster carers and this could help make more time to focus on the needs of each child. Categorising foster carers by their skills and abilities can help support the matching process, to promote continuous professional development and help tailor remuneration and fees payable by commissioners of foster care.

Consultation questions

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

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

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?

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?

HOW TO RESPOND

We are inviting written responses to this consultation paper by **25 September 2012**.

Please send your response with the completed Respondent Information Form (see "Handling your Response" below) to:

childrenslegislation@scotland.gsi.gov.uk

or

Paul Ingram
The Scottish Government
Area 2B North
Victoria Quay
Edinburgh
EH6 6QQ

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library and will also be on the Scottish Government consultation web pages. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us progress the development of the Bill.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the Scottish Government at the above address.

SUMMARY OF QUESTIONS

Chapter 1: A Scotland for every child

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?
2. On which public bodies should a duty to report on implementing children's rights be applied?
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?
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?
5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?
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 focused on improving children's wellbeing?
7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?
8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?
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?
10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?
11. On what public bodies should the duty for reporting on outcomes be placed?

Chapter 2: A Scotland for each child

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

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?
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?
18. Are the responsibilities of the Named Person the right ones? Are there 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?
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?
21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?
22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?
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)?
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?
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?
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?
27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?
28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?
29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?
30. Do you agree foster carers should be required to attain minimum qualifications in care?
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?
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?

ANNEXES: MEANING OF KEY TERMS

A: Meaning of ‘child’

Article 1 of the UNCRC identifies a child as being anyone up to the age of 18 unless under the law applicable to the child, majority is attained earlier. The age of majority is attained at 18 in Scotland unless prescribed otherwise. It is our intention that the provisions included in the Children and Young People Bill recognise the definition set out in Article 1 of the Convention.

B: Meaning of ‘public bodies’

For the purposes of the Bill, we anticipate that ‘public bodies’ would be drawn from the following list:

- Local authorities
- Police
- Health boards
- Scotland’s Commissioner for Children and Young People
- Scottish Children’s Reporter Administration
- Children’s Hearings Scotland
- NHS Health Scotland
- NHS 24
- NHS Education for Scotland
- Disclosure Scotland
- Education Scotland
- Healthcare Improvement Scotland
- Care Inspectorate
- Scottish Prison Service
- Scottish Social Services Council
- Bord na Gaidhlig
- Creative Scotland
- Scottish Enterprise
- Scottish Funding Council
- Scottish Legal Aid Board
- Scottish Legal Complaints Commission
- Scottish Police Services Authority
- Scottish Qualifications Authority
- Skills Development Scotland
- SportScotland

- Additional Support Needs Tribunal for Scotland
- Mental Health Tribunal for Scotland
- Parole Board for Scotland
- Scottish Futures Trust
- Mental Welfare Commission for Scotland
- Transport Scotland
- Scottish Court Service
- Scottish Housing Regulator
- Scottish Information Commissioner
- Scottish Public Services Ombudsman
- Scottish Fire and Rescue Service

C: Meaning of ‘United Nations Convention on the Rights of the Child’

The UNCRC consists of 54 Articles, 43 of which set out the social, civil, political and economic rights of children (Part 1 of the Convention). The other 11 Articles in the Convention set out the administrative structures and practices which support the practical operation of the Convention. Given that the primary aim of the Bill is to improve transparency and scrutiny of the measures Ministers and public bodies are taking to further the rights set out in the UNCRC, there is no need for the 11 Articles focussing on administrative structures and practice to be covered by the Bill.

Separately, it would seem appropriate for the Bill to recognise the 2 Optional Protocols to the Convention which currently exist and to which the UK State Party has signed up:

- *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.*
- *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.*

It is likely that there will be points in the future where either amendments to the Convention or additional Optional Protocols will be brought forward. Indeed, a third Optional Protocol has recently opened although the UK Government has not yet acted to sign or ratify. It is important that the Bill can be amended in light of any future revisions to the Convention as well as any additional Optional Protocols should this be considered appropriate. Such an amendment could be expected in those instances where the UK Government chooses to accept an amendment to the Convention or takes steps to sign a new Optional Protocol.

Compliance with the UNCRC is overseen by the UN Committee on the Rights of the Child. The Committee consists of a group of independent experts and was created in accordance with Article 44 of the Convention. As part of its work, the Committee publishes its interpretation of the content of human rights provisions, known as General Comments on thematic issues. To date, the Committee has published 13 such Comments.

Compliance with the UNCRC is an obligation in international law which Ministers have a duty to observe.



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