

getting  
it right  
for every child



The Summary Report on the Consultation Responses  
The Draft Children's Services (Scotland) Bill

19 December 2006 – 31 March 2007



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## Introduction

The draft Children's Services (Scotland) Bill, consulted on before the Election, contained 2 Parts. Part 1 proposed new legal provisions to define at a high level the roles and responsibilities of all agencies (not just social work or local authorities) to identify need and to act to help children. Part 2 proposed changes to the statutory basis for referring children to the Children's Hearings system and various changes to the operation of the Children's Hearings system.

This is a summary report on the consultation responses, the full report can be found [www.scotland.gov.uk/gettingitright/publications](http://www.scotland.gov.uk/gettingitright/publications)

## Summary of the consultation responses on the draft Children's Services (Scotland) Bill

This summary identifies some of the key themes emerging from the responses and provides an overview of levels of support for the proposals.

### Common themes

The following overarching or common themes emerged from the consultation:

- o most respondents were very supportive of the intentions behind Part 1 of the draft Bill
- o most respondents to Part 2 of the draft Bill were very supportive of the provisions, other than those relating to secure accommodation
- o some respondents queried the need for, or benefit of, the new duties in Part 1
- o many respondents were of the view that costs would increase
- o some respondents saw benefit in waiting for more information from the pathfinder projects
- o some respondents indicated a need for clarity on information sharing, with particular concerns that the Part 1 duties could lead to 'over-sharing' of information
- o many respondents highlighted the need to ensure a clear fit with existing legislation, processes and policies

### Detailed summary by question

**Question 1:** "Do you think that the concept of well-being in relation to the duties on agencies set out in sections 1 and 2 of the draft Bill is helpful?"

87% of those who indicated a yes or no response felt that the concept of well-being was helpful. The key themes emerging from comments were:

- concerns about the effect that introducing the concept of 'well-being' might have on existing statutory terminology, particularly 'welfare'
- concerns about the 'looseness' of the concept of 'well-being' and the scope this provided for differing interpretations and expectations
- concerns about the possibility of too low a threshold for agencies
- suggestions for amendments to the concept of well-being, for example



replacing it with reference to the elements in the Vision for Children

- suggestions for fine tuning the elements contained within the definition of well-being, for example to include a specific educational element

**Question 2:** “Do you feel that the duties on agencies proposed in sections 1 and 2 of the draft Bill will ensure that all relevant agencies can and will act so that children get the help they need when they need it?”

58% of those who indicated a yes or no response felt that the duties on agencies in sections 1 and 2 of the Bill would help in this way. The key themes emerging from comments were:

- views that the language used to express the duties was too ‘vague’ or ‘loose’ and would allow an inappropriate degree of discretion and scope for differing interpretation
- concerns about the possibility of too low a threshold for agencies
- suggestions for amendments or additions to the detail of the proposed duties
- views that there was a need for clear dispute resolution processes and sanctions
- questions about the likely effect of the provisions, and views that the proposed legislation would not make much difference in practice and particularly that limited resources would restrict the impact of the duties

**Question 3:** “In your view, do the proposals in sections 2(5) and 5 of the draft Bill for recording agency decisions and actions and for a multi-agency action plan provide enough of a framework to deliver effective planning across agencies for the child and their family?”

72% of those who indicated a yes or no response felt that the proposed framework would help delivery. The key themes emerging from comments were:

- views that greater clarity was needed on how the joint plan would fit with other statutory plans, such as those for looked after children and children who needed additional support for learning
- views that the duties were too flexible
- suggestions for different or additional duties, for example in relation to assessment
- views that the process for dispute resolution needed to be clearer and

for there to be sanctions

- views that the role of the child and his or her family in developing the plan needed to be expressly addressed
- views that the role of the lead professional as set out in the legislation was insufficiently clear
- concerns about possible increase in bureaucracy

**Question 4:** “It is the intention that the proposals in sections 4 and 5 of the draft Bill for collaboration of agencies will provide a robust but simple framework for agencies to work together locally. In your opinion, do you think that the framework will enable this to happen?”

69% of those who indicated a yes or no response felt that the proposed framework was helpful. Generally the comments made were similar to those made in relation to question 3. Particular issues raised were:

- duties too flexible
- need for dispute resolution process and sanction
- difficulties around joint funding
- information sharing and possible over-sharing
- equality of agencies
- lack of clarity on the fit with other statutory processes

**Question 5:** “Are you content with the definition of relevant agencies (including parts of the voluntary sector) in section 7?”

73% of those who indicated a yes or no response were content with the proposed definition. The key themes emerging from comments were:

- suggestions that particular types of agencies or services should be covered by the definition, for example housing associations and independent providers of certain services
- views that ‘relevant agency’ should be defined by functions
- views that ‘relevant agency’ should be defined by other characteristics, for example registration as a care provider or providing a service through a contract or service level agreement with a public body
- concerns about the impact on voluntary sector organisations

Question 5 had a supplementary question which asked: “If you are responding on behalf of an organisation, should your organisation be included within the definition of relevant agencies?”



58% of those who provided a yes or no response to this question answered 'yes'.

**Question 6:** “With regards to section 11, do you agree that the Principal Reporter should not be a member of the Administration (the Board) of the Scottish Children’s Reporter Administration?”

84% of those who indicated a yes or no response were content with the proposed amendment. The key themes emerging from comments were:

- the role of the Principal Reporter and
- comparison with other public sector organisations

**Question 7:** “The new power in section 12 for the Principal Reporter to appoint a representative if certain criteria are met is meant to safeguard the rights of those children who need such representation. Are you content with the introduction of this new power?”

87% of those who indicated a yes or no response were content with the introduction of this new power. The key themes emerging from comments were:

- concerns that Children’s Hearings might become more adversarial
- views that legal representation should be placed in the context of other representation or advocacy options for children and that other options should be more available than at present
- views that children should have a say in who is appointed as their legal representative
- suggestions on training or quality standards for legal representatives
- concerns about the resource issue for local authorities
- reservations that the proposals would make much difference
- reservations that the reporter should be able to appoint a legal representative and specific concerns where the ‘effective participation’ criterion was the basis for appointment

**Question 8:** “In section 12 the criteria for legal representation is expanded to include the appointment of a legal representative where a Children’s Hearing is likely to make a movement restriction condition. Are you content



with the introduction of this new criteria?”

91% of those who indicated a yes or no response were content with the introduction of this new criteria. Comments generally reflected the themes identified for Question 7.

**Question 9:** “Section 14 introduces new provision to withhold information about the child where disclosure would be significantly against the child’s interests. Are you content with this new provision?”

90% of those who indicated a yes or no response were content with this new provision. The key themes emerging from comments were:

- concerns about possible legal challenge to the provisions, particularly in relation to compatibility with Article 6 of the ECHR
- views that guidance and training on the provisions would be required

**Question 10:** “Are you content with the proposals in section 15 of the draft Bill to change the grounds for referral to the reporter and the Children’s Hearing to reflect the needs of a child and the need for compulsion?”

80% of those who indicated a yes or no response were content with these proposals. The key themes emerging from comments were:

- concerns that the nature of the language and format of the provisions in the draft Bill were too complicated, and particularly the term ‘situational condition’
- concerns that the proposed provisions would raise the threshold for referral and allow children to ‘slip through the net’
- concerns that the proposed provisions would lower the threshold for referral and could bring about an increase in referrals

**Question 11:** “The relevant situations in section 15 are intended to improve on the existing conditions in section 52(2) of the 1995 Act and to address possible gaps such as self-harm by a child and exposure to domestic abuse. Do you feel that the relevant situations are appropriate?”

92% of those who indicated a yes or no response were content that the relevant situations were appropriate. The key themes emerging from



comments were:

- views that the language and format of the provisions were difficult
- concerns about 'losing' existing case law, particularly in relation to the current 'lack of care' condition
- concerns that some of the factors were too broad and were lacking in specificity
- suggestions to retain some existing specific conditions (as factors)
- suggestions to include other factors, for example parental misuse of alcohol or drugs
- suggestions to raise the threshold in certain factors by amending 'harm' and 'adverse effect' to add the word 'significant' or 'serious'

**Question 12:** "In your opinion, do the provisions in section 16 of the draft Bill to expedite the establishment of the situational condition where the relevant person accepts the condition but the child has not understood or is not able to understand provide adequate and appropriate protection for the rights of the child?"

97% of those who indicated a yes or no response were content with these proposals. The key themes emerging from comments were:

- some views that the proposal was particularly welcome
- reservations about the need for such cases to be referred to the sheriff at all

**Question 13:** "In your opinion, do you feel that the proposals in section 17 for interim supervision requirements provide an appropriate additional option to a Children's Hearing when they are unable to dispose of a case?"

94% of those who indicated a yes or no response were content with these proposals. The key themes emerging from comments were:

- views that interim supervision requirements were not appropriate where grounds for referral were not yet established, with some concerns about breach of rights
- concerns about the frequency of use of interim supervision requirements and the possibility of causing unnecessary drift or delay
- some suggestions on the appropriate duration of an interim supervision requirement, generally longer

**Question 14:** “In relation to section 18, it is intended that any agency which is taking, or is expected to take, action in accordance with a supervision requirement should have a duty to take such action. It is also intended that a Children’s Hearing may impose specific duties on an agency. A formal enforcement process will apply to breach of duties as is currently the case in relation to duties imposed on a local authority.

The provisions in relation to duties set out in section 18, together with existing duties of a local authority, are intended to adequately and appropriately provide for duties to act in relation to a child subject to a supervision requirement. Do you think that they do so?”

85% of those who indicated a yes or no response felt that the proposed duties were helpful. The key themes emerging from comments were:

- concerns about resource implications for agencies and the impact on capacity
- concerns about the likely effect on prioritisation, and prioritising resources to children subject to compulsory measures of supervision
- concerns about reducing the availability of services through creating a reluctance to deliver services for children
- concerns about the effect on small or voluntary agencies
- views on the knowledge, skills and understanding required to make the provisions work

**Question 15:** “In relation to section 20 on warrants, it is intended that section 66 will apply where there is an application to the sheriff under section 65. It is intended that section 69 will apply where the situational condition is accepted/established (and there is no current section 65 application). Section 45 and section 63 will continue to apply in their own particular circumstances. Further refinement to ensure this effect is intended. In your opinion or in the opinion of your organisation, will such an approach simplify warrant procedures?”

90% of those who indicated a yes or no response were content with the proposed approach. The key themes emerging from comments were:

- views that any simplification of the existing warrant provisions was welcome
- suggestions that there should be further simplification



**Question 16:** “The consultation document sets out a number of proposed changes to the Children (Scotland) Act 1995 arising from the Vulnerable Witnesses (Scotland) Act 2004. Are you content with these proposals?” 94% of those who indicated a yes or no response were content with these proposals. The key themes emerging from comments were:

- suggestions that the bill should include provision for the visual recording of investigative interviews
- suggestions that in children’s hearings court proceedings there should be maximum flexibility to allow the court to decide who a commissioner should be
- suggestions on some of the detail

**Question 17:** “For the small group of young people who continue to pose a risk to themselves or others, and who cannot or will not engage with services who are working to change their behaviour, we wish to explore further options to compel them to change their behaviour. To secure continued support and intervention for young people involved in offending we would like to hear your opinions on:

- o How we can best ensure that children’s services continue to support young people who offend to cease offending and make a successful transition into positive adulthood?
- o How could we formalise systems to ensure that this happens?
- o How we might respond to the concerns of our communities in the best way to deal with the problem of persistent offending by young people?
- o What, if any, legislative requirements do you believe would be required to deliver this?”

The key themes emerging from comments were:

- legislation is not required
- focus on early intervention
- more parental/family involvement and more/better support for parents and families
- an expanded role for Children’s Hearings
- more investment in services for young people
- more political and financial support for multi-agency strategies and

resources

- need for a range of services flexible enough to meet the individual needs of young people
- availability of residential and secure accommodation
- investment in the workforce
- involvement in community projects/placements
- more formal links between children's hearings/children's services and the adult criminal justice system
- effective use of risk and needs assessments
- community projects/placements
- involvement of the community in developing services
- promoting positive images of young people

**Question 18:** "The Scottish Executive is committed to promoting and supporting the rights of children and to reflecting the provisions of the UN Convention on the Rights of the Child in the development of policy and legislation. To ensure that we are effectively promoting and supporting the rights of children we would like your views on the following:

- o The Bill as drafted is intended to improve children's rights in Scotland. Do you feel it will do so effectively?
- o Should we also consider a general duty on agencies working to meet the needs of children to also promote and support the rights of children?"

The key themes emerging from comments were:

- views that the draft Bill and its intentions are positive developments
- views that implementation of the whole *Getting it right for every child* reform programme is key
- suggestions to build closer links to the terminology and spirit of the UNCRC on specific issues
- mixed views on introducing a general duty
- views that there should be improved availability of advocacy in all its forms at all stages of agency intervention and in Children's Hearings

**Question 19:** "The Scottish Executive is committed to equality of opportunity for all regardless of race, religion or belief, disability, sexual orientation, age or gender, language, social origin or political opinion. Do you have any views on whether anything in the draft Bill will have a



differential impact on equality communities?”

87% of those who indicated a yes or no response felt that there would be no differential impact on equality communities.

The key themes emerging from comments were:

- views that the focus in the draft Bill on the needs and well-being of each individual child was the best means to deliver equality of outcome
- concerns about the possibility of little improvement, or even disadvantage, for certain groups of children if there is no particular focus on them
- suggestions that all agencies, courts and Children’s Hearings should be under the same duties to have regard to a child’s religious persuasion, racial origin and cultural and linguistic background

**Question 20:** “We would be grateful for views on what further legislative provision for information sharing beyond that proposed in the Protection for Vulnerable Groups (Scotland) Bill may be necessary to deliver the *Getting it right for every child* agenda.”

The key themes emerging from comments were:

- support for the quick introduction of information sharing provisions, generally the provisions which were dropped from the Protection of Vulnerable Groups Bill
- reservations about the need for legislation
- concerns about the possibility of ‘over-sharing’ information

**Question 21** “Would amending the definition of a child ‘in need’ in the Children (Scotland) Act 1995 be helpful to the aims of *Getting it right for every child* without causing unwanted consequences?”

66% of those who indicated a yes or no response felt that amending the definition would be helpful. The key themes emerging from comments were:

- some support for rationalisation of definitions to create clarity of meaning, avoid confusion and create a common language/terminology
- links or compatibility with ‘well-being’ and the Education (Additional Support for Learning) (Scotland) Act 2004 seen as important
- some support for widening the definition in order to benefit the greatest

number of children

- concerns that widening the definition would further stretch limited resources
- concerns that widening the definition could result in the needs of certain groups of vulnerable children and young people being subsumed
- support for retaining the profile of disability through retention of the definition of 'in need' or including reference in the definition of 'well-being'
- suggestions for specific amendments

**Question 22:** “We would be grateful for informed comment on any or all of the matters discussed in the partial Regulatory Impact Assessment including views on any matters arising from the draft Bill which may (in your view) have cost implications.”

The key themes emerging from comments were:

- views that the changes to be made under *Getting it right for every child* would result in increased costs
- views that the training costs associated with legislative change and the costs of transition to new systems would be significant
- concerns about the proposed power for children’s hearings to impose duties on agencies without taking resources into account
- views that it may be unrealistic to expect to address all unmet needs of children, with or without a very significant increase in funding provisions
- views that sufficient time be allowed to learn from the Highland pathfinder

**Question 23:** “We are interested in any other views you have on both the content of the draft Bill consultation and on ways which we could make this type of exercise more accessible to a wider range of people in the future.\*”

The key themes emerging from comments were:

- views that the consultation was not sufficiently accessible to children and young people
- the complexity of the draft Bill consultation documents
- some views that consultation with panel members had been poorly handled
- some views that the consultation did not reach front-line staff within agencies



- some specific suggestions on ways to support the consultation process

### **Other issues raised in response to the consultation**

The main additional issues raised were:

- strengthening the proposed duty to have regard to the views of children
- ensuring the presumption that a child aged 12 or more is of sufficient maturity to form views does not operate as a barrier to children under 12
- the implications of *Getting it right for every child* for community nursing roles
- ensuring clarity on the links to integrated assessment frameworks and related IT issues
- ensuring that changes to restrictions on panel members sitting outwith their own areas do not over-dilute the local link
- strong concerns about the proposed changes to the secure accommodation provisions



Further information on implementation of *Getting it right for every child*, can be obtained by contacting  
[CHRteam@scotland.gsi.gov.uk](mailto:CHRteam@scotland.gsi.gov.uk)

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