

# Children in Scotland

## **Consultation response to the Scottish Government Consultation The Looked After Children (Scotland) Regulations 2008: Second Consultation**

### ***Question 1.***

**Please consider the definitions and comment as you feel appropriate.**

We support the principle of ensuring that arrangements for assessment and planning for looked after children are consistent with those for other children. We, therefore, wish to emphasise the importance of ensuring that these reflect GIRFEC principles and, equally importantly, GIRFEC-driven practice. We do, however, appreciate that the current status of GIRFEC implies that it is not appropriate make this explicit within the regulations. To reinforce this GIRFEC connection, the term 'child's plan' throughout the regulations would be more helpful than 'care plan'. This helps to make clear, firstly, that data analysis and intervention management should reflect best practice as set out in GIRFEC guidance and, secondly, that each looked after child should have a single holistic plan.

### ***Question 2***

**a) Do you consider that regulations 3 to 7 cover all the necessary and appropriate actions for local authorities in respect of care planning?**

We believe that a *thorough* medical examination should take place whenever a child becomes looked after and that this should not be at the discretion of the local authority. Even when the child has recently been examined there may be important changes such as illnesses that should be identified and treated. This examination also should explicitly be required to include identification and appropriate treatment of the underlying causes of any perceived developmental delays, unhealthy/anti-social behaviours, learning difficulties or additional support needs. For example, Foetal Alcohol Syndrome (or

similar damage from exposure to alcohol or other drugs before birth or during childhood) should be considered and dealt with in this examination.

It is essential to ensure that any child protection concerns also are identified at this initial medical examination, as well as to have accurate medical data at the start of a placement in the event of harm occurring (or being alleged to occur) in the course of a placement. Of course, it is unlikely that local authorities would not have a child medically examined where they had reason to think that the child's medical situation may have changed. There may, however, be instances where an examination discovers previously unsuspected issues; where urgent situations have resulted in 'corners being cut'; or, where errors of judgment occur.

While we value the critical work carried out by looked after children nurses, we would not support the redesignation of the role of the 'registered medical practitioner'.

**b) Do you consider that either regulations, accompanying guidance, or both should be explicit that looked after children should have one child's plan that reflects their range of needs and that fulfils a range of functions?**

Both -- if this is legally competent. It is important that guidance on GIRFEC and on looked after children are consistent and fully compatible.

**c) We welcome comments on the revised structure of the care planning section. Does this fit with good practice?**

Some definition of timescales is needed. The child's plan should also give priority to defining and establishing intended outcomes for the child as a result of this plan (as well as describing inputs and responsibilities). While there is reference to the responsibilities of the local authority, perhaps some elaboration in terms of its 'corporate parenting' duties would be helpful.

**d) The duty to consult with the child and the duty to produce a care plan are new requirements (previous regulations referred to making a care plan "so far as is reasonably practicable"). Are you content with these new duties?**

We are content with the inclusion of these requirements. Guidance on

how to consult children meaningfully (i.e., more than a superficial, 'tick box' exercise) should be developed using evidenced methodologies. There should be a requirement to discuss the plan with the child and the other parties identified (and record their views), as well as to supply them with a copy.

**e) We welcome comments on the contents of Schedule 1 (information relating to the child) and Schedule 2 (matters to be addressed in the care plan): should anything else be included here?**

This is clearly intended to be a statutory minimum and practice should (and often would) go well beyond this minimum. We would emphasise the importance of ensuring that any special health needs are articulated under Schedule 1.9. We also believe that, particularly for very young children, information on normal routines and familiar persons/objects should be included.

In relation to Schedule 2, we would again wish to ensure that local authority input reflects all the relevant component parts of the authority, consistent with its statutory responsibilities of corporate parenting. This should ensure that action is taken to address issues where the looked after child is demonstrably disadvantaged relative to the rest of the population. It is not sufficient, for example, to provide a mainstream school place with no extra support where there is clear evidence that the child's acquisition of literacy and numeracy has fallen behind the norms for her/his age and stage of development.

There is also no recognition in these schedules of the fact that many children are not placed in their authority of origin. This may mean that a different local authority will be involved in providing for the child's educational needs. Potential interface between these regulations and the ASL Act must be considered and made consistent and compatible with each other.

It is also possible that a child may not have had additional educational support in their authority of origin but may be deemed to require this once placed. An example of this would be where a range of supports is part of the standard repertoire of a school serving a deprived city community but the same provision would not be replicated in a more advantaged rural community. It is also possible that the traumatic impact of becoming looked after and indeed the circumstances that led to this may generate a need for additional support for children who did not previously require it.

**f) Successful transition to independent living is a key challenge for looked after young people. Could further provision be made in these regulations to support improvements for the transition process?**

**The focus should be on a successful transition to adult life, not to 'independent living'.** For young people who are not looked after, this process generally takes place over a much longer period and concludes at a much later age. Young people who have been looked after continue to experience the worst outcomes in the population. This is not only damaging in terms of their own lives, but also impacts adversely on the next generation.

There are a number of points that would suggest that present legal provision is not adequately addressing the difficulties faced by many care leavers. The average age of entry to the care system for those who remain there at their statutory school leaving date, particularly in residential care, necessarily implies that they will have been subject to many damaging and dysfunctional experiences. It is, therefore, in most cases an impossible task to rectify this before the school leaving age is reached. Not all young people leaving care have pathway plans in place and not all will voluntarily keep in touch with local authority services after leaving care. A statutory duty that requires the local authority to take all possible steps to maintain contact with and provide appropriate assistance in ways acceptable to the young person would be welcome.

The age at which contact is ended should be flexible at the upper end and there should be a duty of support to young people previously looked after. This should include the duty to plan effectively for a successful transition to adult services and support at the appropriate point (if needed). Young people themselves should play a central role in the development and implementation of transition plans. It is both good practice and the young person's right (under Article 12 of the UN Convention on the Rights of the Child) to be heard and heeded in decisions that will significantly affect that young person's well-being and life chances.

### ***Question 3***

**Do you consider that regulations 9 and 10 cover all the necessary and appropriate actions for local authorities in respect of children cared for by their parents or those with**

**parental rights and responsibilities? Should anything else be included here?**

We believe that intervention that is not specifically focused on improving the capacity of parents to discharge their parental duties more effectively will undermine the value of providing support and therapeutic intervention for the child. Thus, first-rate education and support for parents should be required and provided. Explicit recognition in the regulations of this work with parents would be helpful, possibly as a specified element of the child's plan.

**Question 4**

**a) In relation to regulations 11 to 17, do you consider that all the necessary and appropriate actions and considerations when placing children with kinship carers are covered here?**

These regulations do not adequately address this complex and sensitive area. No clear policy position has been adopted in relation to the status of kinship care vis-à-vis other care options in terms of a requirement to seek or consider a kinship care placement when a child has to become looked after. There is also no clarity about the many different arrangements that kinship care encompasses -- and the relatively few situations where a formally looked after and accommodated child would be placed long-term in a kinship care arrangement.

A consequence of this is that kinship carers will continue to experience confusion about entitlements to training, support, contact, welfare benefits and financial contribution from the local authority. We recommend that the report and recommendations of the National Reference Group on GIRFEC in Kinship and Foster Care be included much more fully in these regulations.

Equally important, these regulations are silent about the reality that many children who are unable to live with their birth parents are in *de facto* long-term placements with unofficial/informal kinship carers. While regulations about children and adults who are outwith the official looked after children system may be impractical, there is an urgent need to address this circumstance, as the great majority of kinship care placements are informal and unofficial. The needs of the children and/or the kinship carers sometimes may be significant, but they remain largely unrecognized (and thus, unaddressed) by government.

**b) These regulations place new requirements on local authorities. Are you content with these new duties?**

No, for the reasons mentioned above. The interim guidance outlines a significantly wider set of duties – and, indeed, several authorities have adopted a more robust approach to approval and support processes.

**c) We welcome your views on the contents of Schedule 3 (matters and obligations in kinship placement agreements).**

While we agree that these matters should be included in any agreement, much of the nature of the content is left to the discretion of the local authority. We believe formal/official kinship carers should have a set of clear entitlements in terms of support, training and financial assistance. They should also be supported to ensure that they receive any welfare benefits to which they are entitled.

***Question 5***

**We welcome your comments on regulations 18 to 21.**

Appropriate ‘qualifications and experience’ are not specified, nor is suitable balance of such required within panels. It may, for example, be desirable to include some educational expertise given the degree of educational disadvantage experienced by many looked after children.

***Question 6***

**a) In relation to regulations 22 to 32, do you consider that all the necessary and appropriate actions and considerations when placing children with foster carers are covered here? Should anything else be included?**

We feel that informed comment on this would be best provided by agencies who are directly involved in this process. We welcome the potential for foster carer approval to hold validity for more than one authority or agency.

**b) We welcome your comments on the contents of Schedule 4**

We were not sure why the term ‘relative carer’ is used when a significant part of the regulations is intended to ensure a more consistent definition of and approach to kinship care. The schedule seems comprehensive, although what is more important is its practical

implementation, e.g., the meaning of good practice in terms of 'analysis of motivation'.

### ***Question 7***

#### **We welcome your comments on regulation 33.**

We were not clear whether 'allowances' covered maintenance payments for the child, remuneration for the carer, or both. If only the first of these is covered, then some consideration should be given to the latter.

### ***Question 8***

#### **We welcome comments on regulations 34 and 35: should anything further be included in this section?**

It may be more useful to incorporate all regulation regarding residential care placements within this document.

### ***Question 9***

#### **We welcome your comments on regulations 36 to 39.**

We are concerned that there appears to be no specified provision for undertaking basic checks where placements are made under Regulation 36 (c). We support the retention of the 72 hour limit.

### ***Question 10***

#### **a) We welcome your comments on Regulations 40 to 45.**

We believe these represent minimum requirements. Clearly, in most cases, this would not be best practice. It is important that appropriate levels of contact are specified in the child's plan. Robust efforts must be made to ensure that consulting with children about reviews takes place in a meaningful and accessible way.

Guidance on this should be developed – building upon examples of good practice and research findings. Planning at reviews should again be consistent with GIRFEC and ensure that the various dimensions are

addressed (safe, healthy, achieving, nurtured, active, respected, included) in every child's plan. Intended outcomes of intervention should be given priority attention in these plans.

**b) Should regulations 42-44 make clear this is a minimum requirement?**

Yes.

***Question 11***

**a) Are you content with Regulations 46 and 47 and the content of Schedule 6?**

We believe it is necessary to cover this in the regulations. It would be important to ensure that such placements were of adequate quality. This could be done through commissioning or spot purchasing contracts. This should be included in the guidance.

Children in Scotland is Scotland's national agency for organisations and professionals working with and for children, young people and their families. It exists to identify and promote the interests of children and their families and to ensure that policies and services and other provisions are of the highest possible quality and are able to meet the needs of a diverse society. Children in Scotland represents over 470 members, including 90% of Scottish Local Authorities, all major voluntary, statutory and private children's agencies, professional organisations, as well as many other smaller community groups and children's services. It is linked with similar agencies in other parts of the UK and the European Union.

The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Government, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland) and the National Voluntary Children's Forum. Children in Scotland also hosts Enquire - the national advice service for additional support for learning, and Resolve:ASL, Scotland's largest independent education mediation service.