

Children in Scotland

every child - every childhood

Children's Hearings (Scotland) Bill

Education and Lifelong Learning Committee

Children in Scotland – written evidence

General comments

For over forty years, the Children's Hearings system has served Scotland's children and communities well. It has enabled many children who were troubled and in trouble to get the help and support they needed; and thereby, to have more positive and optimistic life chances. Children in Scotland has been a long-standing supporter of, and advocate for, the Children's Hearings system.

We welcome the redrafted Bill and commend the Government's speedy and sensitive response to the comments received. We see this Bill as a positive contribution to promoting child well-being, particularly for those children who will need the support of public services to overcome difficulties. Its general presentation is coherent and logical and in this respect represents an improvement, not just on the previous Bill, but also on the existing legislation.

Over the years, the profile of the children who have needed the help of the Hearings has changed in quite significant ways. Children in Scotland therefore welcomed the Government's introduction, in 2008, of a proposal to reform and strengthen the system. In our response to the consultation paper, we highlighted the importance of ensuring that Hearing decisions actually resulted in delivery of the appropriate service. We also stressed that knowledge of the impact of the service upon child well-being was vital, and that the Hearings should have a critical role in maintaining oversight of this. We are pleased that the present Bill contains provision for recourse should local authorities fail to give effect to a Hearing decision.

We see in the Bill the potential both for building on the strengths of the Hearings system and for improving the quality of decision-making and outcomes. The establishment of a national body, and the leadership role of the National Convener, should result in greater consistency in appointment, training, support and advice for Panel members. This should in turn lead to more consistent decision making across Scotland. This is a positive step.

At the same time, we value the explicit retention of the locality dimension in Panel composition. We generally support the introduction of provisions that comply more fully and effectively with human rights legislation, such as representation rights. We are reassured that the significant contribution of the Reporter to the effective operation of the Hearings is not affected in any major way by compliance with human rights law.

Despite our support for the direction of travel, we believe that there is scope for the Bill to deliver even greater benefit for children. As this is the first major reform of the Hearings system for fifteen years, and this legislation is therefore likely to be in force for the foreseeable future, we believe the opportunity to make the Bill as robust as possible in actually meeting children's needs should not be missed.

Specific changes

We know from consultation with our members that there are a number of specific concerns about the wording of some sections, as they are unclear, ambiguous and potentially confusing. If children are to be at the heart of the Hearings process, and their rights within it safeguarded, it is essential that the law that governs the Hearings system are clear and understandable. Children in Scotland does not propose to address this issue in detail, as we are aware that some of our members will provide detailed, specific and informed commentaries on this matter.

There are, however, a few specific changes or points of clarification that we ask the Committee to consider. Firstly, in Section 65 (2) (f), we would urge some clarification of the phrase 'person who has carried out domestic abuse'. It is not clear what would be sufficient proof of having 'carried out' domestic abuse. Clearly, if someone has been *convicted* of an offence of this nature, then there would be no ambiguity. But, it is well known that many cases of domestic abuse, particularly where they do not involve physical violence, go unreported, or, if reported, do not result in formal proceedings. Where the well-being of a child is at stake, it is important that the standard of proof required does not result either in children adversely affected slipping through the net, nor adults being unjustly accused. In the context of this section, we also recommend that the phrase 'close connection with', is more specifically defined; although it may be possible to do this through guidance accompanying the legislation.

A further change we would encourage, in Section 102 (1) (iv), is to delete the words 'a police station, police cell or other', and replace with the word 'an'. The sub-section would thus read 'to detain the child in an appropriate place'. We do not believe that, other than in very exceptional circumstances, a child should ever be detained in a police station or cell and that such an explicit reference should therefore be removed.

Our main evidence focuses on two issues fundamental to ensuring that the Hearings system remains child-centred and effective. The first of these concerns the actual experience of a child attending a Hearing, and what the impact of the Bill is likely to be upon the child's well-being. The second is the implementation of, and evidence-gathering about, Hearing decisions, including how the Bill proposes to deal with these key matters.

Through the eyes of the child

When first introduced, the Children's Hearings system normally involved a relatively small number of key people coming together over each specific case. The setting of the Hearing was generally relatively informal. Though children and families no doubt often experienced the process as anxiety provoking and stressful, its relative informality and comparatively low number of participants served to reduce rather than intensify tension.

As highlighted earlier, the nature of referrals to the Hearings has changed over time. Around ten years ago, the number of children referred on welfare grounds began to outstrip those on offence grounds; a situation that has persisted ever since. This change affected the age profile of children referred, with more younger children coming within the Hearings' remit. This has necessarily led to changes in the conduct of Hearings to respond to the greater frequency of conflicts of interest and to the differences in capacity of younger children to understand and contribute to this decision-making process.

Of particular interest to us, therefore, are the sections referring to the child's views, Hearing attendance and Hearing procedure. Section 26 replicates the requirements of the 1995 Act in respect of giving the child an opportunity to express a view. While the continued inclusion of this provision is welcome, we regret that the potential for consolidating and improving this requirement has not been fully realised. First, we believe that it is important that **all** children, as far as is practicable, are enabled to express a view and have that taken into account in Hearing decisions. We would suggest that a separate report should routinely be provided to Panel members, outlining the views of the child; irrespective of whether the child wishes to articulate these in the course of the Hearing. Second, while section 26 (4) clearly specifies that children over twelve are deemed to be of sufficient age and maturity to form a view, **it does not make explicit that many (perhaps most) children under twelve also have a valuable perspective that should be heard and heeded.** An additional sentence clarifying this point would be welcome, either in the Bill or in accompanying guidance.

Of course, we are aware that the Hearings process must be compliant with human rights legislation. This leads to consequent requirements for all parties to be appropriately represented and for separation of certain key processes. We are, however, concerned that the potential number of adults who may be present at some Hearings increases the possibility of the Hearing becoming a confusing and stressful experience for the child. We would urge the Committee to consider how the Hearing process can be optimally managed to ensure that the child remains at the centre of decision-making, and finds the experience, as far as possible, supportive and helpful, rather than distressing.

One key factor here is to ensure that the child is helped to become as clear as possible, in advance, about the purpose of the Hearing; the information that Panel members have been given to assist their understanding and decision-making; and, the respective roles and functions of the various individuals present. As far as possible, any reports supplied to the Hearing should be couched in language understandable to the child. The child should have the opportunity to have the reports explained to them in advance of the Hearing, to: ask questions; understand the options the Hearing will consider; and know who will be present and why. If not contained within the legislation, then this matter should certainly be addressed in guidance.

Good decisions and good outcomes

We endorse the principles underpinning Section 140, namely that there is provision for recourse and enforcement should a local authority fail to implement an order made by a Hearing. As far as the Bill is concerned, we feel that the timescales required for all stages of enforcement to be concluded means that it is possible for several months to elapse between the making of a supervision order and its eventual enactment. This clearly has serious GIRFEC-related implications in terms of the child receiving the help that they

need at the time they need it. If it is possible to reduce the times specified in Sections 140 (3) (b) and 140 (5), we respectfully request the Committee to consider doing so.

Of more importance than the local authority's implementation of the order, however, is the quantity, quality and demonstrable impact of the actual support a child receives (or fails to receive) as a result of going through the Hearings process. It is essential that the actions taken to benefit a child are both purposeful and effective.

This will not be the case unless intervention is based on evidence of what is known to bring about positive and sustainable change. Children's Hearings Scotland will be well positioned to maintain an oversight of research evidence of what works for children, as well as how particular services are performing in improving children's present experience and future life chances.

The Bill should include provision requiring the implementing authority to specify the nature of the support to be provided, and for this to be communicated to Children's Hearings Scotland. This would cover matters such as frequency of contact, roles and responsibilities of the various agencies involved with the child and family (and of the child and family themselves), access to any specialised resource (in particular any resource specifically named by the Hearing). Equally importantly, it would set out the intervention methodology, the rationale and evidence for such an approach, the positive change intended and how progress is to be monitored. As 'Getting It Right For Every Child' progressively underpins all decision-making for individual children, such intervention plans should be able to be readily provided.

Finally, we propose that the circle is completed by requiring implementation authorities to provide specific information to Children's Hearings Scotland of **actual outcomes** of the intervention delivered in response to the supervision order. This will require oversight of the actual impact of the Hearing decision upon the child involved; whether positive change for that child is being achieved; and what to do if that child has not benefited in meaningful and lasting ways. Greater awareness of, and robust evidence about, the nature of intervention and its consequences can only lead to better decision-making on the part of the Hearings. It also is what can lead to better childhoods and better futures.

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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 more than 400 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 Europe.

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 also services groups such as the Cross Party Parliamentary Group on Children and Young People (with YouthLink Scotland). In addition, Children in Scotland hosts Enquire - the national advice service for additional support for learning, and Resolve: ASL, Scotland's largest independent education mediation service.

