

Consultation response



Draft Children's Services (Scotland) Bill Consultation ends 31 March 2007

1.0 Introduction

Children in Scotland welcomes the draft Children's Services (Scotland) Bill and this opportunity to respond to the consultation on behalf of our members. Children in Scotland's members include hundreds of voluntary sector organisations throughout the nation that work with or for children and young people, as well as 80% of Scotland's local authorities, private sector children's services providers and interested individuals. This response is based upon two formal consultation events with our members: one in Glasgow and another in Inverness (co-sponsored with the Highlands Council). It also draws upon numerous discussions, meetings and correspondence about this proposed legislation with our members during the consultation period, as well as our own staff analyses.

The draft Children's Service's (Scotland) Bill – and the accompanying materials on Getting it Right for Every Child (GIRFEC) – are a singularly ambitious set of proposals from the Scottish Executive (in terms of both the *scope* of the intended outcomes and the *complexity* of the issues raised at the legislative, regulatory, and implementation levels). Children in Scotland's consultation response represents a distillation and overview of the perspectives, points and recommendations shared with us by a majority of our members during this consultation process. Our hope and expectation is that this Bill and GIRFEC will be given high priority, actively pursued and further refined by the third Scottish Parliament and the Scottish Executive through an on-going dialogue with all parties concerned. We look forward to this Bill's eventual enactment and the subsequent implementation of Getting it Right for Every Child across the country.

2.0 Main Points

This Bill and the GIRFEC initiative elicit both strong support for its aspirations and significant concerns about its eventual implementation. The most prevalent reactions to this Bill among Children in Scotland's members are firm agreement with its goals and direction of travel.

2.1 Aspirations and principles – There was universal approval of the basic concepts upon which this Bill and GIRFEC are based. For instance, we applaud the Executive's intentions that 'children and young people will get the help they need, when they need it' and that 'the well-being of children and young people will take priority over the interests of agencies and providers'. Similarly, there is a strongly positive reaction to the Bill's key overarching provisions that: a) a more comprehensive concept of "well-being" should guide children's services; b) action must be taken to ensure the well-being of children and young people; c) views of children, young people and parents must be solicited, heard and heeded; d) there must be collaborative working across agencies, sectors and areas; and, e) there should be a single, joint plan for every child needing services and a single person coordinating the development and implementation of that joint plan.

These aspirations and principles are welcomed, but with the caution that the expectations need to be realistic. In particular, children's lives and life chances are affected and determined by much more than formal 'children's services' and Getting it Right for Every Child should exercise some restraint as to what it is possible for these services to achieve.

The expectation for children's services to meet these goals and the commitment to joined-up working should be extended to include other, less obvious policy agendas, such as transport and housing. For Getting it Right for Every Child to work, it needs to be acknowledged and supported by all government departments. A first step on this path would be mainstreaming Child Rights Impact Assessments as developed by the Scottish Commissioner for Children and Young People.

2.2 Relationship to existing legislation, regulations, policies and practices

The Bill makes reference to a few existing pieces of relevant legislation and proposes some changes to them, particularly in relation to Children's Hearings. We welcome the general direction of these proposed changes.

However, the cited Criminal Procedures (Scotland) Act, the Antisocial Behaviour (Scotland) Act and the Children (Scotland) Act 1995 are far from the only existing elements of law, regulation and policy with which this Bill and GIRFEC must be harmonised to be effective, non-duplicative and transparent in their effects and implications. The draft Children's Services Bill and related GIRFEC documents do not explicitly provide an explanation of their relationships – legal and practical -- to other recent Acts passed by the Scottish Parliament. These crucially-connected Acts include (but are not limited to) the Additional Support for Learning (Education) (Scotland) Act 2004, the Mental Health (Care and Treatment) (Scotland) Act 2003, Adoption and Children (Scotland) Act 2007 and the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006.

The landmark Additional Support for Learning (Education) (Scotland) Act 2004, for example, already requires joint planning, information sharing and collaboration among agencies and professions. It also already requires the creation and implementation of Coordinated Support Plans (CSPs) for students having complex needs, as well as the expectation that one professional will coordinate the services and support to be provided. What is the expected relationship between the ASL Act and the proposed Children's Services Bill? Will the Coordinated Support Plans in the ASL Act be considered to be the joint plans envisaged in the draft Children's Services Bill or will this draft Bill's provisions supplant the CSPs? And finally, will the GIRFEC "lead professional" replace the ASL Act's local coordinator or become the chief coordinator of existing coordinators?

Beyond the legislative landscape, there is a plethora of government regulation, official guidance, professional standards, assessment criteria and major policies at both the national and local levels relevant to this Bill and to GIRFEC. These primarily have been generated and maintained by key entities in the fields of education, health, social work and youth justice. Together, these frameworks, strategies and patterns of operation shape how children's services in Scotland currently are thought about, planned, funded, implemented, evaluated and held accountable. The connections between (and the future of) the various regulations, policies and guidance documents now in force need to be made apparent within the context of this bill. This will ensure clarity for practitioners and service providers who have to implement the principles of GIRFEC in the current legislative, policy and practice environment.

2.3 Definitions and interpretations

One of the strengths of this Bill and the GIRFEC documents is that they are not overly prescriptive. There is recognition that 'one size does not fit all' and that space must be left for local/regional variations and adaptations. The emphasis is on a set of principles and intended outcomes, rather than a detailed roadmap of the path that each local authority, health board, community or service provider must travel in order to reach the desired destination. This approach emphasises standards, not standardisation. This is a sensible and welcome recognition of diversity, which Children in Scotland fully supports.

On the other hand, we have concerns that this Bill and the GIRFEC documents may be too vague to ensure that their principles, standards and intended outcomes will be understood and acted upon properly. Without crossing the line into unhealthy standardisation, the draft Bill and related documents need to make key sections of the 'big picture' clearer -- and thereby, more likely to result in consistent and meaningful

benefits for children and young people. Terms such as each agency 'must do its best' need to be clarified and tightened. In situations where all agencies agree on how to get it right for a child, the flexibility provided in this term is a positive addition. However, in situations where there is disagreement or miscommunication, either amongst the relevant agencies, or with the parent/carer, a lack of specificity and consistency may cause confusion and frustration. It is also impossible to assert any objective accountability without a clearer and possibly measurable definition that can be understood by all.

'Wellbeing', is another concept that is defined only loosely in the draft Bill and the GIRFEC documents. We agree with broadening the standard from 'welfare' to the more comprehensive term 'well-being'. And, we support the five specific dimensions of well-being noted in the draft Bill. However, we have two recommendations about how to strengthen the Bill's movement toward a holistic understanding of what children need to thrive. We encourage inclusion of two additional aspects of well-being in this Bill (so that there will be seven dimensions included).

The first is to add an explicit recognition of learning and educational development. Much of the 'work' of childhood and adolescence is about learning – and, success in relation to education (formal and non-formal) is central to children's current well-being and future prospects. There also is a very pragmatic reason for adding this aspect of well-being; namely, its continuing exclusion may prevent educators from seeing themselves as an integral part of the children's services world or connected to this legislation.

The second is to add "being in a loving, nurturing family" as a key component (and partial definition) of well-being for children and young people. As long as it is made clear in the Bill that loving, nurturing families come in a wide variety of sizes, shapes and configurations, this aspect should no longer be excluded (while also recognizing the place of public care). The research on the positive impacts of such families on children's lives and life prospects is as wide and deep as the research on the negative impacts of not belonging to such a family. To omit this primary human relationship from the definition of child well-being is not only to weaken the definition considerably, but also to create the misimpression that ensuring well-being is the exclusive province of professionals who deliver services.

Similarly, the World Health Organisation routinely employs a concept of health/well-being that underscores the desirability and importance of healthy *communities* as a means of improving the lives of both children and their families. This Bill would be strengthened by mirroring WHO's emphasis on what is true about communities, as well as about individuals when promoting the well-being of children and young people.

There are several other terms and concepts within the draft Children's Services (Scotland) Bill that would benefit from clearer definitions and more explicit explanations of what is intended (such as the definition of 'significant harm' in the information sharing section). Unless there is a good definition of such threshold terms, there will be too much room for misunderstanding between agencies, across sectors and from one local authority to the next. The meaning and applications of basic terminology is a national task, not a local one. It should be accomplished through this Bill.

Still, the most important missing definition in the Bill is of the 'person who is to take responsibility for ensuring that the [child's joint] plan is implemented.' Even at this early stage, there is confusion over this term/person/role. On the one hand, the draft Bill only refers to "a person." On the other hand, the Scottish Executive's GIRFEC presentations routinely refer to a 'lead professional'.

Whether this person must be a professional (or whether it could just as easily and properly be a parent or grandparent, for example) is only one of many unanswered questions. No clarification has yet been offered about the specific intended roles, responsibilities, resources and powers entrusted to this designated person. For example, by whom will this person be appointed? - Until when -- and replaceable by whom, under what circumstances? What authority will this person hold over the other agencies (e.g., will s/he be the budget holder)? And, how and by whom will this person be held accountable?.

Given that much of the success of this Bill and GIRFEC hinges on getting it right in relation to this lead person, it is imperative that the basic job description, person specification and

powers/resources/accountability be made explicit in the Bill. Without greater clarity within the Bill -- and agreement by relevant parties to this definition -- the chances of successful implementation via this person will diminish markedly. Whoever takes on this role will have considerable 'extra' responsibilities. The Bill needs to recognize this as a cost and provide the necessary financial support to meet these responsibilities.

2.4 Participation of children and young people

Children in Scotland acknowledges and applauds the fact that this draft Bill includes 'Considering views of children' as one of its over-arching provisions – and that the GIRFEC materials also give prominence to seeking and recording children's input. This is a tangible recognition of Article 12 of the UN Convention on the Rights of the Child, which asserts that children and young people must be included (in a manner corresponding to their maturity) in all significant decisions about their own lives and well-being.

What neither the Bill nor the GIRFEC materials takes into account is that *meaningfully* involving children and young people in decision-making rarely is a quick, easy, cheap or simple process. Whilst some people would like to believe that soliciting the perspectives and preferences of children and young people comes naturally to adults in the children's services arena and the Children's Hearings system, there is little evidence to support this belief. Similarly, much recent experience and research refute the idea that speaking their minds clearly and effectively comes naturally to children and young people.

The reality is that meaningful consultation with, and the participation of, children and young people around important life choices are *learned behaviours* for nearly everyone. And yet, our society provides precious few opportunities for adults (let alone children themselves) to actually learn these specific communication skills. Of course, the difficulty of getting consultation and participation right is even greater for those children and young people who are troubled, in trouble or have additional support needs. It also is a more difficult process for the adults working with children having these characteristics.

Accordingly, we recommend that the Bill itself, as well as supplementary guidance and GIRFEC implementation plans make provision for a major investment both in training for children and adults involved with children's services and in the collection and sharing of best practice on consultation and participation. A number of Children in Scotland members – as well as our organisation itself and the Scottish Commissioner for Children and Young People – have successful experience in this arena and have tools/lessons to share with others.

The other crucial, but as yet unexplored and unexplained, element of the Bill involving children and young people has to do with their relationship with the 'person' (lead professional?) supposed to ensure that their one and only service plan is implemented successfully. We recommend that children and young people appropriately be involved in the selection and assessment of this key adult. We also recommend that the Bill state unambiguously that this key adult, first and foremost, is intended to be *an advocate for the child* – and to facilitate the meaningful participation of that child. Without this mandate expressed directly in the Bill, there is a risk that this key adult will be transformed into the "front person" for the agencies and will end up representing their interests, not the child's. This would not be in keeping with the spirit of the Bill or of GIRFEC, which are admirably clear about the interests and well-being of the child being the top priority.

3.0 Other significant points and recommendations

3.1 Information Sharing

There will be a separate Scottish Executive consultation about its forthcoming draft Code of Practice on Child Protection Information Sharing. Children in Scotland plans to convene one or more consultation events with its members and to solicit their views in a variety of other ways. Thus, there are only three points to be made at this time.

First, we suggest that the draft Code of Practice on Child Protection Information Sharing eventually become directly linked with the Children's Services (Scotland) Bill. Effective information sharing is a key feature of children's services that are successful. Collaborative behaviour of this kind will be imperative to the implementation of the joined-up services and joint planning advanced through this Bill and GIRFEC. Conversely, information sharing only makes sense when done in context and toward the fulfillment of specific goals. This Bill provides that context and purpose.

Second, we are convinced that the related issues of confidentiality and young people's right to privacy are fundamental to this Bill and GIRFEC actually reaching their goals of increasing well-being and being child-centred. We think that these issues have been under-emphasised thus far and need to be more fully developed from a children's rights perspective. Unless children and young people are confident and trusting of how, and by/to whom, the information they convey will be shared and used, they simply will withhold vital information that could put them at an additional 'risk of harm'.

Third, we recommend that much more consideration be given to the role of parents/carers/families in the information sharing and service delivery processes anticipated by this Bill and GIRFEC. Depending on the personalities and circumstances involved, there can be major tensions between parents and agencies or between parents and their own children over access to, and the sharing of, information that any one of these parties considers to be sensitive, private or confidential. Whilst we favour a children's rights perspective on information sharing (and many other issues), we fully respect the legitimate rights/needs/wishes of parents to be involved in important decisions about their children. The central role of parents/carers/families in children's lives and well-being needs to be acknowledged and incorporated into this draft Bill more fully, including around information sharing issues and concerns.

3.2 Prevention and early intervention

Because this Bill and GIRFEC take the planning and delivery of children's services as their starting point, they accord scant attention to curtailing the ever-increasing demand for such services. In other words, their focus on meeting the service delivery needs of children and young people diverts their attention away from considering all the ways in which children can be prevented from developing the problems that will require services to be delivered. While understandable, this is a shortsighted approach that could well prove counterproductive in a world of stable or shrinking human and financial resources for these services.

To cite one of many examples, children who are born with preventable brain and/or nervous system damage predictably will become heavy users of children's services and will require expensive, intensive additional support for learning. Indeed, because such medical conditions cannot be cured, the consequences will be life-long and life-limiting. It would be far less costly, in both financial and human terms, to develop an effective campaign to prevent the behaviours that are known causes of such harmful medical conditions.

Similarly, young children who suffer lasting harm from preventable exposure to environmental toxins or who sustain life-altering injuries that were preventable will be among those who require expensive and extensive services and supports for long periods. Actually preventing preventable harm is a cost-effective and life-enhancing strategy, but it is not one that either this Bill or GIRFEC has taken into account or explored. We recommend that this omission be remedied by adding prevention and early intervention strategies to the Bill's overarching provisions.

Similarly, in a recent article for Children In Scotland magazine¹, Professor James Law pointed out that the problems children are initially assessed for, are not necessarily the whole picture, and in fact may not be the primary issue for that child. Thorough assessments are key to meeting children's needs. Where these assessments do take place, communication and language difficulties are often overlooked. This is particularly relevant to the GIRFEC agenda when 40-50% of children referred to the hearing system for

¹Professor James Law 'The Asbo Age' Children in Scotland Magazine January 2007

behavioral problems also have language and communication problems. Early assessment of language and communication skills followed by support and service provision could have a significant effect on the outcomes for a large number of children and its importance needs to be stressed within the context of this Bill. It is also a crucial aspect of ensuring that all children have the ability to make their voices heard in this process.

3.3 Measurement, assessment and accountability

Mention is made in the draft Bill of the need for dispute resolution procedures among relevant agencies as they work on creating and implementing joint plans for each child. There also is the repeated phrase in this proposed legislation that any relevant agency “must take such action as it considers appropriate.” This is a helpful next step to avoid repeating past situations in which a child’s problems are identified and her needs are assessed, but nothing actually happens that directly benefits the child. Sometimes this failure was the result of inadequate resources. Other times, it has reflected failures of communication or leadership. It is commendable that the Bill seeks to eliminate such failures.

However, this Bill is largely silent in relation to how, by whom and to what standard the actual performance of relevant collaborating agencies will be evaluated and held accountable. Stating only that a relevant agency “must monitor the child’s situation until satisfied that it is being addressed” does not settle the assessment issue. On the contrary, it merely creates a large legislative/regulatory loophole that undermines real accountability. It is not sufficient for agencies to be able to decide that they are “satisfied” with their own performance. Equally, it is not good enough for monitoring to end at the point when the child’s needs/problems are being ‘addressed’.

We strongly recommend that there be provisions in this Bill – and in the accompanying regulations and guidance that establish and ensure: a) independent assessment of performance; b) performance measured in terms of actual impacts upon, and benefits achieved by, the child (not merely a record that services were provided); c) meaningful participation in assessment procedures by children and young people themselves (or by a parent/carer or independent advocate, as appropriate, when children cannot participate directly); and, d) tangible serious consequences for agencies/professionals who fail to meet the needs of the children entrusted to them.

3.4 Funding and resources

Children in Scotland would like for the Bill and for GIRFEC documents (plus the accompanying guidance) to be much more explicit about the resource implications of, and the specific resources to be made available for, delivering on this important piece of aspirational legislation for Scotland’s children and young people. There are a host of resource issues that flow from the comments already made in this consultation response, but there is not enough information in the Bill or related documents about how (and by whom) these issues will be resolved.

For instance, it is apparent that the new ways of collaborative working anticipated here will require major amounts of new initial professional education and continuing professional development activities for practitioners, managers and leaders alike. Similarly, since the people who are expected to play the new and challenging role of coordinating multi-agency planning and action cannot be expected to also continue doing all the work for which they currently are employed, major new resources (human and financial) will be required to make this system function properly. We cannot assume that potential cost savings from no longer duplicating certain services will be sufficient to cover all the new expenses.

To discuss any of the points raised in this consultation response, please contact Paula Evans on pevans@childreninscotland.org.uk or 0131 222 2435.

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, 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 450 members, including 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 Executive, local authorities and practitioners. It services a number of groups such as: the Cross Party Parliamentary Group on Children and