

Consultation Response



Antisocial Behaviour etc. (Scotland) [Act] 2004: Consultation on Draft Guidance on: Local Authority Accountability

Children in Scotland

Children in Scotland is the united voice of over 350 voluntary, statutory and professional organisations and individuals working with children, young people and their families throughout Scotland. It exists to identify and promote the interests of children, young people and families and to ensure that relevant policies, services and other provisions are the highest possible quality and able to meet the needs of a diverse society.

Children in Scotland plays a major role in influencing the enactment and contents of Scottish children's legislation. Children in Scotland aims to promote and enable the exchange of information on all matters relating to Scotland's children and their families, to promote the development of policies which will improve the quality of life for Scotland's children and their families, to facilitate practice development in the services they use, and to press for adequate levels of these services and other provisions and to promote awareness of specific concerns and contributions of voluntary organisations working with children and their families, as well as those concerns which are shared with other sectors.

Children in Scotland believes that: All children are of equal worth, whatever their ability, colour, ethnicity, gender, health, religion, sexual orientation or social class; Children have the right to protection, provisions and participation in decisions affecting them, as outlined in the UN Convention on the Rights of the Child; Families are entitled to support and assistance to fulfil their responsibilities towards their children; Children should be seen as the responsibility of society as a whole, as well as of their families.

1. General comments

1.1 Children in Scotland welcomes the strengthening of local authority accountability in respect of the duty to give effect to supervision requirements and to provide education for pupils excluded from school. As the guidance recognises there are currently shortcomings in both of these areas of local authority responsibility and this must be addressed in order to meet the needs of some of Scotland's most vulnerable young people.

2. Implementation of supervision requirements

- 2.1 It is welcome that Paragraph 11 reiterates the expectation on local authorities to make provision to enable a child to meet their obligations under a supervision requirement.
- 2.2 Children in Scotland also welcomes Paragraph 14 of the guidance which reflects a concern raised by many Children in Scotland members in relation to the Antisocial Behaviour Act. It is vital that supervision requirements are used only where necessary and not seen as the only means of securing services for children. The extent to which this is the case in practice must be monitored.
- 2.3 Children in Scotland is supportive of paragraph 20.
- 2.4 The recommendation that local authorities and partner agencies prepare a “menu” of services and supports available is positive and should assist the hearings system in deciding on the best intervention for each child. Children in Scotland would suggest that where the guidance states that the menu should identify ‘any gender or ethnic minority issues’ this should be widened to include other equalities issues e.g. disability, and sexuality.
- 2.5 Paragraph 26 should state that children and young people themselves must be involved in the drawing up of their care plan.
- 2.6 Paragraph 55 states that ‘failure of a voluntary organisation to provide a service set out in a supervision requirement should not by itself be enough for a hearing to consider action against a local authority’. While the failure of a voluntary organisation may be outwith the control of a local authority the overall responsibility for ensuring that supervision requirements are implemented rests with the local authority. The arrangements for how a service will be delivered is separate from the responsibility of ensuring that it is delivered. Where a voluntary organisation does fail to deliver a service the local authority must make alternative arrangements for the provision of that service.
- 2.7 In Paragraphs 56 and 57 the draft guidance highlights the need for children and families to be fully informed about the hearings process and have an opportunity to express views. Children in Scotland would recommend that Paragraph 57 should echo Paragraph 56 and state that the hearing must ensure that the child and the family fully understand their supervision requirement and in particular what is expected of the child and what support they should expect to receive.

3. Failure to provide education for excluded children

- 3.1 In Paragraph 72 when the draft guidance suggests that local authorities will need to consider whether a child has additional support needs or a disability it would be useful to make reference to the Education (Additional

Support for Learning) (Scotland) Act Code of Practice for further guidance. It would also be helpful for the guidance to mention the legal duty of the education authority to make adequate and effective provision for each child or young person with additional support needs for whose education they are responsible.

- 3.2 Children in Scotland is supportive of the inclusion of time limits in which certain parts of the process should be carried out. However the draft guidance gives no indication of how long Ministers may be expected to take to decide whether a local authority has a case to answer or how long any resultant investigation should take (Paragraph 77). The draft guidance should also include a maximum recommended timescale to be applied to any order made under s70 of the 1980 Act in respect of these duties.

The timescales involved in each part of this process are crucial in terms of outcomes for the child. Some children currently experience significant periods of time when they are not being provided with education and this is not acceptable. If timescales are not set on every part of the process for ensuring that authorities provide education for excluded children then this problem may continue. Even with the process working efficiently a child may have been without education for 10 days before the Reporter becomes involved, there may then be another 10 days while the Reporter makes a referral and then the time it takes Ministers to investigate followed by the time between the Ministers' decision and the date specified in a s70 order. The entire process is likely to be lengthy and it is essential that the amount of time a child is without education is minimised as far as is possible.

For further information or clarification of any of the points raised in this response please contact Shelley Gray (Policy Officer) on 0131 222 2435 or sgray@childreninscotland.org.uk

Prepared December 2004