

getting
it right
for every child



Draft Children's Services (Scotland) Bill Consultation



one
scotland
SCOTTISH EXECUTIVE



safer
scotland
SCOTTISH EXECUTIVE

getting
it right
for every child

Draft Children's Services (Scotland) Bill Consultation

© Crown copyright 2006

ISBN: 0-7559-5237-5

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B48601 12/06

Published by the Scottish Executive, December, 2006

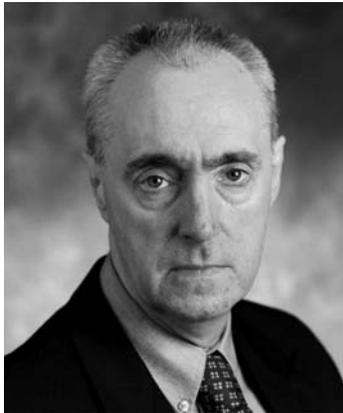
Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

The text pages of this document are printed on recycled paper and are 100% recyclable.

Contents

Foreword	1
Chapter 1 – Introduction and policy background	2
Chapter 2 – The wider project	3
Chapter 3 – Consultation to date	9
Chapter 4 – Outcome of consultation	14
Chapter 5 – Issues for consideration	26
Chapter 6 – Draft Bill and Explanatory Notes	34
Chapter 7 – Regulatory Impact Assessment	67
Chapter 8 – Next steps	80





Foreword

No matter where they live or whatever their needs, children and families need to know where they can seek help, what help is available, that the help is appropriate to their needs and will be delivered to the highest possible standard.

Getting it right for every child is the programme for change that will revolutionise services for children. It gives clear authority and responsibility to agencies and professionals to work with children, families, local communities and each other, in a way that brings practicality and reality to the vision for Scotland's children.

The draft Bill in this consultation document is intended to support the *Getting it right for every child* programme to change children's services.

Services for children in Scotland are changing so that:

- Children and young people get the help they need when they need it and are central to the process of finding solutions.
- Everyone working with children and young people uses a consistent and equitable approach and works more effectively together to improve outcomes for children and young people.
- Everyone is clear of their personal responsibility to do the right thing for each child and how they contribute to the collective responsibility to do the right thing for each child.
- Parents and children benefit from a collaborative approach which results in fewer meetings, requires them to give their information only once, and jointly develop with professionals one plan that will meet all of their needs.
- Agencies and professionals are freed up to get on and respond to children and take appropriate, proportionate and timely action with the minimum of paperwork, bureaucracy and duplication.

Scottish Ministers are committed to reforming the delivery of children's services to place a greater focus on improving outcomes for children and to create a Scotland in which every child matters, where every child, regardless of their family background, has the best possible start in life.

I hope that the proposals put forward in this draft Bill will be carefully considered by all who work with children or their families to ensure the children of Scotland get the help they need, when they need it. Details of how to respond to the draft Bill proposals are set out in Chapter 8 and I hope good use will be made of this opportunity.

A handwritten signature in black ink that reads "Hugh Henry". The signature is written in a cursive, slightly slanted style.

Hugh Henry

1 – Introduction and policy background

Introduction

- 1.1 In June 2006 the Scottish Executive published its implementation plan for *Getting it right for every child*. This set out our approach to reform of services for children in three areas – practice change, removing barriers and legislation. That reform approach is part of our wider public service reform agenda, which seeks to join up services around the needs of services users, strengthen accountability, and drive up quality and efficiency.
- 1.2 Through the Children and Young People Delivery Group, Ministers are already driving forward a series of priority workstreams designed to improve the integration and quality of children’s services – i.e. the Integrated Children’s Services Planning Framework, the Quality Improvement Framework for Integrated Children’s Services, integrated assessment and information sharing, joint inspections and workforce development. Implementation of the child-centred approach set out in *Getting it right for every child* will help develop and reinforce these priorities.
- 1.3 The draft Bill is intended to support this wide programme of reform and to place the child at the centre of service provision in Scotland. It affects all agencies and services who provide care and support for children and their families. This includes local authorities, police, NHS Scotland and voluntary sector organisations. It also impacts on services to adults who are parents where support for the adult may improve outcomes for children.

Contents of this document

- 1.4 Chapter 2 of this document provides more detail on the programme of reform taking place for *Getting it right for every child*. This will allow the draft Bill to be seen in context of these developments.
- 1.5 Chapter 3 of this document discusses in more detail the various consultations which have been undertaken on *Getting it right for every child*.
- 1.6 Chapter 4 sets out the main themes arising from consultation responses and how they have influenced development of the draft Bill. The written comments on these consultations have been lodged with the Scottish Executive library and all – except those submitted in confidence – may be viewed on request.
- 1.7 Chapter 5 identifies aspects of the draft Bill and some other issues on which comment is particularly sought.
- 1.8 Chapter 6 is the draft Bill itself, with Explanatory Notes.
- 1.9 Chapter 7 is the draft partial Regulatory Impact Assessment.
- 1.10 Chapter 8 explains how consultation on the draft Bill and the new proposals will work and how comments should be submitted.



2 – Getting it right for every child – the wider project

Introduction

- 2.1 No matter where they live or whatever their needs, children and families need to know where they can seek help, what help is available, that the help is appropriate to their needs and will be delivered to the highest possible standard. *Getting it right for every child* will enable everyone involved in children's services to deliver on this and improve outcomes whilst involving children and families in finding solutions to their needs.
- 2.2 *Getting it right for every child* is the programme for change that will revolutionise services for children. It gives clear authority and responsibility to agencies, professionals, children, families and local communities, to work together in a way that brings practicality and reality to the vision for Scotland's children.
- 2.3 This draft Bill is only a small part of the wider project to implement *Getting it right for every child*. The project is an ambitious programme and a significant challenge for all those who work with children. It requires a fundamental shift in how children are helped and supported.
- 2.4 In June 2006 the Scottish Executive published its implementation plan for *Getting it right for every child*. This set out our approach to the reform of children's services in three areas:
- **Practice change:** In consultation with parents, children and professionals we will develop the tools professionals need in order to do their jobs better – a child's record and plan involving integrated assessment of need, practice guidance and skills development. We will provide information for parents and practitioners. We will support a number of 'pathfinder' projects that will work differently with families and children, placing their needs at the centre.
 - **Removing barriers:** We will find out what gets in the way of joined-up working and what prevents more timely and appropriate responses. We will undertake change where this is necessary – structural, financial, legislative, cultural. The pathfinder projects will provide an opportunity to identify these barriers and identify those which require changes from the centre and those which can be tackled locally.
 - **Legislation:** We will place new duties on agencies to co-operate with each other and share information. We also plan to place a new duty on professionals to be alert to the needs of children and take action to meet them.
- 2.5 With legislation covered in the draft Bill and other parts of this consultation document, this chapter discusses the other areas of activity taking place to implement *Getting it right for every child*. We hope that this will provide a helpful context to consideration of the draft legislation.
- 2.6 Further detail is provided in the *Getting it right for every child* Implementation Plan (Scottish Executive, June 2006).

Key Messages:

2.7 Services for children in Scotland are changing so that:

- Children and young people get the help they need when they need it and are central to the process of finding solutions.
- Everyone working with children and young people uses a consistent and equitable approach and works more effectively together to improve outcomes for children and young people.
- Everyone is clear of their personal responsibility to do the right thing for each child and how they contribute to the collective responsibility to do the right thing for each child.
- Parents and children benefit from a collaborative approach which results in fewer meetings, require them to give their information only once, and jointly develop with professionals one plan that will meet all of their needs.
- Agencies and professionals are freed up to get on and respond to children and take appropriate, proportionate and timely action with the minimum of paperwork, bureaucracy and duplication.

2.8 Scottish Ministers are committed to reforming the delivery of children's services to place a greater focus on improving outcomes for children and to create a Scotland in which every child matters, where every child, regardless of their family background, has the best possible start in life.

Vision for Children

2.9 Scotland's children and young people should be confident individuals, effective contributors, successful learners and responsible citizens.

2.10 To achieve this, children need to be safe, nurtured, healthy, achieving, active, respected, responsible and included.

What Children Need – The Children's Charter

2.11 As children and young people, we have a right to be protected and be safe from harm from others. When we have difficulties or problems we expect you to:

- Get to know us, speak with us and listen to us
- Take us seriously and involve us
- Respect our privacy
- Be responsible to us
- Think about our lives as a whole
- Think carefully about how you use information about us
- Put us in touch with the right people
- Use your power to help
- Make things happen when they should
- Help us be safe



2.12 Children and young people are central to *Getting it right for every child* which seeks to provide practical support, tools, guidance, and where necessary, legislation, to ensure we all work together for Scotland's children.

What will be different?

2.13 *Getting it right for every child* is for all children and young people and applies to all services that work with children, parents and carers. It promotes a clear vision of services working together and requires agencies and professionals to focus first on improving outcomes for the child, rather than what services a child can get. This means:

2.14 For children, families and communities:

- Children get the help they need it when they need it.
- Help is proportionate, timely and appropriate.
- Action improves each child's situation and reduces risk.
- The approach supports the achievement of good outcomes, demonstrated through Children's Plan targets, for all children.
- Children and families experience a co-ordinated and unified approach to having their needs met.
- Children and families say they know about the services and support available to them, have confidence in using them; believe their needs are being addressed and their views heard.
- Communities are engaged in activities that support and protect children.
- Communities are more confident about the responsibilities of services and how community concerns are being dealt with.

2.15 For staff:

- Staff (at all levels) have more time to spend on activities that will improve outcomes for children, and less in duplication and overlap (including fewer reports, meetings and discrete records).
- Staff know what to do if they have a concern about a child, the response pathways are clear, and they can be confident of the response of others in the child's network.
- Staff are supported by their agency and other professionals and have the skills, knowledge and tools to improve children's lives.
- Staff are alert to all the needs and concerns of children, even if it falls outside their immediate area of expertise.

2.16 For the agency:

- There are effective policies, processes, structures and tools for the delivery of good outcomes. These are integrated into practice all levels and are sustainable beyond the efforts of individuals.
- Agencies individually and collectively know how well they are doing, can account for their performance and there are mechanisms in place to resolve difficulties, improve performance.

Our priorities

2.17 Our priorities are:

- To improve outcomes for all children and fulfil the pledge contained in the Children's Charter.
- To regain the trust and confidence of children and young people and ensure professionals are there for them and will listen to them.
- To value and reward professionals who champion the rights and well-being of children and ensure children get the help they need when they need it.
- To work with communities to help them understand and support young people whilst protecting the safety and peace of local neighbourhoods.

How will we do it?

2.18 *Getting it right for every child* is at the heart of public service reform. Along with a range of other developments in children's services and across the public sector, it will:

- require services to focus on meeting the needs of children, not the needs of professionals or agencies;
- provide tools to assist in the redesign of services to meet the needs of **each child as an individual and find solutions for them**;
- require services to integrate around the child rather than the child having to navigate their way through a number of services;
- ensure parents and children (and other service users such as carers) find their own solutions to problems through the provision of information, education and support;
- ensure and enable parents to take responsibility for their children while protecting those children whose parents cannot or will not do so;
- provide the tools (plans, technology, data standards, guidance, protocols and training materials) for agencies to join up and remove the barriers for doing so;
- remove duplication and create efficiencies that can be ploughed back into direct work with children and families;
- make the best use of modern technology to share information whilst protecting **against** unnecessary sharing;



- 2.19 The *Getting it right* and public sector reform agendas are dependent on a number of key Scottish Executive policies and work streams including information sharing and technology, professional capacity building, service development/improvement and performance scrutiny – not only in children’s services but in adult services too. The *Getting it right* team will work with colleagues across the Scottish Executive, **pathfinder projects and external partners** to ensure a joined up approach to the developments.
- 2.20 The implementation of *Getting it right for every child* is focussed on three areas – practice change, legislation and removal of barriers to implementation.

Practice change

- 2.21 The proposed legislation is an important part of the *Getting it right* agenda. However a number of the proposed improvements do not need to wait on the law changing: they require practice change and agency commitment.
- 2.22 The Scottish Executive is supporting this change in a number of ways:
- Children, parents and practitioners are working together to redesign how agencies support children and respond to concerns about them. The Scottish Executive is supporting these ‘pathfinder’ projects by the provision of expertise in child development, research, IT, project management and changing business processes.
 - Writing up and evaluating findings from the pathfinders so that learning can be disseminated.
 - Developing new practice tools based on what children and families need for national use including the design and creation of data standards and content of agency information systems.

Supporting staff

- 2.23 The Scottish Executive is supporting staff by doing the following:
- The Scottish Executive will provide guidance for professionals and panel members on their new roles, the assessment record and plan, legislation and new ways of working. We will also provide information on how the reform programme is progressing – what works and what does not.
 - We will assist all areas and agencies across Scotland to become ‘change ready’ by disseminating the learning from the pathfinder areas. We are supporting the Pathfinder projects with resources for development and project management.

National implementation and oversight

2.24 There are a number of mechanisms for national implementation and oversight:

- The Scottish Executive has established a Children's Services Steering Group. The membership of this group includes key stakeholders from children's services, health, the voluntary sector and police. This group will have a strategic overview of the implementation of reforms in children's services.
- Working groups and networks, with membership from all sectors, will consider the detail of legislation including work to consider the specific changes proposed to the Children's Hearing system.
- The Scottish Executive will work with community groups, and families and children to ensure that their voices are heard in this process. We wish to build on existing community networks and organisations and we are appointing a young person to work with the Scottish Executive team. We are developing other ways of reaching these groups such as websites and electronic magazines.
- A national communication network is being created to ensure effective two-way communication with stakeholders and the provision of regular updates.

Removal of barriers to implementation

2.25 The Scottish Executive is committed to removing barriers to effective working:

- The Scottish Executive will find out what gets in the way of joined-up working and what prevents more timely and appropriate responses. We will undertake change where this is necessary – structural, financial, legislative, cultural.
- The pathfinder projects will provide an opportunity to identify these barriers and identify those which require changes from the centre and those which can be tackled locally.



3 – Consultation to date

Implementation plan

- 3.1 In June 2006 the Scottish Executive published its implementation plan for *Getting it right for every child*. This set out our approach to reforms in practice change, to removing barriers which stop professionals working effectively and to developing legislation to support these reforms.
- 3.2 The implementation plan was the latest stage in a long line of developments which have led to this draft Bill.

For Scotland's children

- 3.3 *For Scotland's children* (Scottish Executive, 2001) found that agencies did not work together to help children. Children and their families had to negotiate their own way around and between agencies. Agency resources were not aligned according to need or around a child. It recommended greater joining up between agencies at all levels.

It's everyone's job to make sure I'm alright

- 3.4 The audit and review of child protection was published in 2002. The report, *It's everyone's job to make sure I'm alright*, noted that children did not get the help they needed when they needed it. Children's experience of agency intervention was generally poor and actions were often worse than if no action had been taken. It found that the Hearings system could not make decisions quickly and effectively and that the referral to the Hearing was being used as a means of rationing help. The report further highlighted the need for integrated responses to children who require protection. In particular, the report recommended that agencies referring to the Reporter should indicate what action they or their agency has undertaken to achieve change through consent and why compulsory measures are necessary.

Review of the Children's Hearings system

- 3.5 In May 2003 Scottish Ministers set out a Partnership Agreement commitment to:

“Review the Children's Hearing's system to develop and improve the current service. Scotland has led the world in developing a system which puts the child at its centre, involves local people in deciding what is the right thing to do and focuses on the care and welfare of young people. We will hold on to those fundamental principles. It is now, however, time to review the system to ensure that it has the right set up and adequate resources to ensure that it does the best possible job to protect children.”

- 3.6 In April 2004 the Scottish Executive published their consultation on the review of the Children's Hearings system – *Getting it right for every child*. The Scottish Executive also organised a number of events, including a specific event for young people in order to get their views about the Children's Hearings system. This event was attended by over 50 young people from across Scotland.

- 3.7 A full analysis of the consultation was published in October 2004. 732 completed responses had been received. 541 of these responses came from individuals, representing 75% of the total responses received. Responses to this consultation raised fundamental questions, not only about the Children's Hearings system, but also about the services and systems around the Hearings system.
- 3.8 Phase 1 of the consultation found high levels of support for the Children's Hearings system. It also highlighted the need for additional resources for the system and for children's services; the need to remove institutional, procedural and cultural barriers to joint working; the need for more effective arrangements to support, train, recruit and retain Panel members; support for parents and families while remaining fixed on the best interests of the child; and the need for some procedural change in Children's Hearings.

The Scottish Executive

- 3.9 The Scottish Executive decided to develop a wide-ranging programme of reform across a number of agencies and Scottish Executive departments in order to deliver the necessary improvements which had been signalled. The *Getting it right for every child* programme is an integrated programme of action and legislation to reform children's services.

Proposals for action

- 3.10 In June 2005 the Scottish Executive published *Getting it right for every child – Proposals for action*. This asked for views on a wide number of reforms to improve children's services and the Children's Hearings system. 605 completed responses received. 68% of these responses came from individuals and 32% were from organisations. In addition, a total of 41 children and young people participated in a series of events organised by Children in Scotland.
- 3.11 A full analysis and summary analysis of this consultation were published on 22 June 2006. There was widespread support for the proposed changes to children's services. The responses are discussed more fully in Chapter 4.

Children and young people

- 3.12 The Scottish Executive commissioned research from Children in Scotland seeking children and young people's views on the Proposals for action (Scottish Executive 2006). This found support for the Executive's vision of a work force working together for children and young people. It also suggested that there need to be a number of options in services, that children and young people need new structures to be able to say what they think, and that procedures may need to change within Children's Hearings to encourage greater participation. It was also clear that children wanted support from someone they know and can trust.



Research on advocacy in the Children's Hearings system

- 3.13 The Scottish Executive commissioned *Big words and big tables – children and young people's experiences of advocacy support and participation in the Children's Hearings system* (Scottish Executive 2006). This proposed a common advocacy standard for children and young people and a personal advocacy plan. It also suggested review of the advice and information needs of agencies, parents and young people.

Scottish Executive policies

- 3.14 In the future, services for children in Scotland should no longer be dictated by professional, agency or organisational boundaries or categorisation of children designed to ration support. Instead the future of children's services will be centred around the child and their family with professionals empowered to act to ensure every child gets the help it needs when it needs it.
- 3.15 Progress is being made in reforming child protection services and improving the quality and integration of wider children's services through new planning, quality improvement and inspection arrangements. This includes child protection, additional support for learning, universal health services, Hall 4 (Health for All), youth justice improvements, police reforms and Changing Lives (report of the 21st century social work review).
- 3.16 The following policies and documents are broadly aligned with the approach set out in *Getting it right for every child*.
- Guidance Note for Planners *Children and Young People experiencing Domestic Abuse*
 - *Protecting Children and Young People: Framework for Standards* (Scottish Executive 2001) and *Protecting Children and Young People: the Charter*
 - *How Well are Children Protected and their Needs Met? Self Evaluation Using Quality Indicators* (HMIE 2005)
 - *A Guide to Evaluating Services for Children and Young People using Quality Indicators* (HMIE 2006)
 - *Supporting Children's Learning – Code of Practice* (2005)
 - *Delivering for Health* (2005)
 - *Birth to Three: Supporting our Youngest Children* (2005) – *Learning and Teaching Scotland*
 - *Health for all 4 – guidance on implementation in Scotland* (2005)
 - *Action framework for children and young people's health in Scotland*
 - *Emergency care framework for children and young people in Scotland*
 - *Children and young people's mental health – a framework for promotion, prevention and care*
 - *An action plan for improving oral health and modernising NHS dental services in Scotland*
 - *Hidden Harm* (2004)
 - *Community Health Partnerships – Statutory Guidelines* (2004)
 - *Improving Health in Scotland: The challenge*
 - *Supporting Child Witnesses Guidance Pack*

- *Guidance for Integrated Children's Services Plans 2005-08* (2004)
- *Quality Improvement Framework for Integrated Children's Services* (2006)
- The Executive's commitment to the UN Convention on the Rights of the Child and to supporting and protecting the rights of children.
- Curriculum for Excellence
- *Changing lives: The report of the 21st Century social work review* (2006)
- *Guidance on the Scottish Schools (Parental Involvement) Act and the Parents as partners in their children's learning toolkit* (both 2006)
- Community Justice Authorities
- The reducing reoffending agenda for adult offenders
- Joint Future

3.17 All of the above reports, documents and policy statements set the context for the *Getting it right for every child* programme, the principle aim of which is to improve on the response by everyone including the police, local authority, health, the voluntary sector, the Scottish Courts Service, the Crown Office and Procurator Fiscal Service and the Children's Reporter to children. The ultimate aim is to ensure that each child gets the help they need when they need it.

Other Scottish Executive legislation

3.18 A wide range of Scottish Executive legislation supports and interacts with children's services. Some of the most notable pieces of legislation are set out below.

3.19 The Children (Scotland) Act 1995 is a fundamentally important piece of legislation for children's services. A large part of the draft Bill proposes amendment to this Act. These amendments are discussed in much more detail later in this consultation document.

3.20 The Vulnerable Witnesses (Scotland) Act 2004 contains provisions to protect child witnesses and make it easier for them to give the best evidence they can in all criminal proceedings in the High Court and Sheriff Courts, court proceedings relating to Children's Hearings procedures and in all other civil proceedings. Implementation of this Act is being phased in over a period of three years.

3.21 The Education (Additional Support for Learning) Act 2004 sets out how children with additional support needs should be provided for by local authorities, supported, as necessary, by appropriate agencies, namely, Health Boards, Careers Scotland, other local authorities, Further Education Colleagues and Higher Education Institutions. This approach is very much in line with our expectations for all children set out in *Getting it right for every child* that agencies need to work together to meet individual children's needs and to plan for action.

3.22 The Protection for Vulnerable Groups Bill is currently undergoing parliamentary scrutiny in the Scottish Parliament. The rules on sharing information in that Bill are of relevance to *Getting it right for every child*.

3.23 The Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 sets out the legal basis for the inspection of children's services.



- 3.24 The Scottish Schools (Parental Involvement) Act 2006 modernises the framework for involving parents in their children’s education and learning. The definition of ‘parent’ in the Act includes the role of the education authority as corporate parent in respect of looked-after children.
- 3.25 The Adoption and Children Bill has just been passed by the Scottish Parliament and is currently awaiting Royal Assent. It has a number of read-across issues to the Children’s Hearings system.
- 3.26 The NHS Reform (Scotland) Act 2004 gave effect to the proposals in the White Paper *Partnership for care*. The White Paper outlined the direction of travel for the health service in Scotland, with a strong emphasis on partnership, integration and service re-design. It introduced, among other areas, provision by which NHS Trusts were dissolved and Community Health Partnerships, established as committees or sub committees of the statutorily accountable NHS Boards, thus organising the delivery of health care into single systems led by NHS Boards.
- 3.27 The Management of Offenders etc (Scotland) Act 2005 is aimed to improve the integrated management of offenders with the aim of reducing reoffending. There are clear links from this Act to the reforms of Children’s Hearings for young offenders.

Other legislation

- 3.28 In addition, other UK legislation is also relevant. This includes equality legislation on race, disability, religion and belief, gender, sexual orientation and most recently on age. It also includes relevant Human Rights legislation.

4 – Outcome of consultation

General

- 4.1 The consultation document *Getting it right for every child: Proposals for action*, was published on 21 June 2005. 605 completed responses were received. 68% of these responses came from individuals and 32% were received from organisations. In addition, a total of 41 children and young people participated in a series of events organised by Children in Scotland.
- 4.2 This chapter aims to explain our response to the issues raised in *Getting it right for every child – Proposals for action* in terms of legislation and other action. More detail on responses can be found in the analysis of consultation responses published on 22 June 2006. This is available at : <http://www.scotland.gov.uk/Publications/2006/03/13105254/0>

Proposals for Action

Proposal One: Families and children should know what services they can get

- 4.3 The consultation paper proposed that agencies should publish information for children and families about the services and support available and how it can be accessed. The objective is to ensure that all families and children are informed about the services that are available to them and how they can access these services. Local authorities are already under a similar duty through the Education (Additional Support for Learning) Act 2004 to provide information with regard to provision made for children with additional support needs.
- 4.4 There was overwhelming agreement with this proposal with over 97% of respondents who responded to this proposal saying that they agreed with what is proposed. Nearly 60% of respondents suggested further measures and these suggestions were predominantly concerned with ensuring that this proposal is implemented effectively.
- 4.5 **Action we are taking:** We intend to address these issues through publication of tools and resources. Information will be provided through websites and other routes of communication.

Proposal Two: Duty to be alert to the needs of children

- 4.6 The consultation paper proposed that agencies should have a duty and responsibility to be alert to the needs of children, to listen to and record children's views, to identify children in need and to act to improve a child's situation.
- 4.7 Over 90% of respondents agreed with this proposal with individual respondents and organisations being equally likely to be in agreement. However, many respondents said there was a need for further clarification over various aspects of the proposal and that the practical and resource implications of putting it into practice needed to be considered carefully.
- 4.8 **Action we are taking:** Part 1 of the draft Bill provides for a number of duties on agencies to promote the well-being of children and to intervene where this is appropriate. We also intend in due course to provide guidance on this issue, including a list of situations which may indicate where agencies should be alert to the possible need for support.



Proposal Three: Duty to co-operate in meeting the needs of children

- 4.9 The consultation paper proposed placing a new duty on agencies to co-operate with each other in meeting the needs of children and to establish local co-ordination and monitoring arrangements. This proposal is designed to minimise the burden of meetings, referrals, processes, report writing, assessments and plans relating to children, young people and their families, and ensure a coherent and effective response to the needs of each child and young person. The consultation paper suggested that if a child asking for help (or anyone asking for help on their behalf) thinks that an agency has not delivered the agreed help, they should be able to use the local co-ordination and monitoring mechanism to seek a review of the agency's handling.
- 4.10 Over 90% of respondents that responded to this proposal said they agreed with the principle of the proposal. However, many sought further clarification or offered comments about how the principle could be translated into practice.
- 4.11 **Action we are taking:** Part 1 of the draft Bill provides new duties to support agencies working together. We also intend in due course to provide guidance in this issue.

Proposal Four: Single assessment, record and plan

- 4.12 The consultation paper proposed that the Scottish Executive, in consultation with appropriate agencies, will develop an assessment, planning and recording tool for use within a framework of co-ordinated meetings, reviews and planning. It also suggests that in time these arrangements will incorporate the current arrangements for child protection, looked after children, joint assessment, community care, schools and social work, youth offending and any other inter-agency arrangements.
- 4.13 Over 85% of respondents agreed with this proposal. Individual respondents were slightly more likely to agree with the proposal than organisations but organisations were more likely to offer comments about how the proposed framework could be made to work in practice.
- 4.14 **Action we are taking:** Part 1 of the Bill contains provision for assessment and planning. A prototype child's record and plan will be in place by March 2007, with every child who goes to a Children's Hearing having a plan by December 2007. Work on the pathfinder programme for *Getting it right for every child* will inform other developments on inter-agency arrangements.

Proposal Five: Preparation of action plans

- 4.15 The consultation paper proposed that where a child's needs are complex, serious, require multi-agency input or are likely to require compulsory measures, a plan must be agreed by all agencies involved and kept under review. The plan will be the principal source of information for Reporters if the child is subsequently referred to them. Where a parent, child or young person cannot agree the plan or they prevent a plan from being implemented, it is proposed that agencies should refer the matter to the Reporter. If a Children's Hearing is necessary, it would then determine if compulsion is required. Where a plan is agreed, agencies will be required to make it happen under the duties to act to meet the needs of children.

- 4.16 Over 85% of respondents agree with this proposal in principle although, again, individual respondents are more likely to be in agreement than organisations.
- 4.17 **Action we are taking:** Part 1 of the Bill contains provision for assessment and planning. A prototype child's plan will be in place by March 2007. Ministers have announced that by December 2007 a plan must be in place for every child going to a Children's Hearing as a first step to full implementation.

Proposal Six: Appointment of a lead professional

- 4.18 The consultation paper proposed that where there is a need for co-ordinated action, a lead professional from amongst the relevant agencies must be appointed. It argued that a child or young person should know who to speak to about any aspect of their action plan. The role of the lead professional would be to co-ordinate the work of agencies, monitor progress and act as an advocate for the child where necessary.
- 4.19 85% of respondents agreed with the proposal to appoint a lead professional, although again individual respondents were more likely to clearly support this proposal than organisations, who were more likely to offer comments or suggest additional proposals for achieving the objectives outlined in the consultation paper. Children's views were that they wanted support from someone that they know and trust.
- 4.20 **Action we are taking:** Part 1 of the draft Bill contains provision for designating a responsible person to lead collaboration. Pathfinders will develop and explore further the detail of the role of the lead professional.

Proposal Seven: Referral to the Children's Hearings system should meet significant need and compulsion tests

- 4.21 The consultation paper stated that agencies should reserve referral to Children's Hearings for those children with significant need and for whom compulsion is likely to be necessary. This was supported by research evidence that suggests that formal measures put in place to tackle low-level risk offending or low-level concerns about children's welfare can sometimes be counter productive.
- 4.22 Almost two-thirds of respondents (66%) supported the proposal, compared to 12.8% who did not. A further 21% of respondents neither agreed nor disagreed. Almost 40% of respondents offered suggestions as to further or different measures that might be required.
- 4.23 **Action we are taking:** Part 2 of the draft Bill contains provision to change the grounds for referral to the Children's Hearing. This will be supported by related guidance in due course. It is important to emphasise the continued responsibility of the Hearings to produce the right outcomes for those who are involved in persistent or more serious offending.



Proposal Eight: Pattern of behaviour as an indicator of significant need

- 4.24 Under current legislation a specific incident or risk to the child may trigger a referral to the Reporter. However, where a pattern of behaviour causes concern and the individual incident on its own does not merit referral, the underlying need may not be addressed. The consultation paper proposed rewriting the grounds for referral to the Reporter so that significant need will be defined by reference to a list of incidents as indicators of need. This would allow action to be taken over behaviour which may not be significant in itself, but as part of a pattern of behaviour gives rise to concern. This pattern of behaviour may indicate a need for compulsory measures of supervision.
- 4.25 A significant majority of respondents (79%) supported this proposal. A similar proportion of respondents thought that the proposed action would meet the stated objectives. A small minority of respondents (17%) suggested further or different measures are required to meet the stated objectives.
- 4.26 **Action we are taking:** Part 2 of the draft Bill contains provision to change the grounds for referral to the Children's Hearing. We also intend in due course to provide guidance on this issue.

Proposal Nine: Responsibility to implement any action plan agreed at a Hearing

- 4.27 The consultation document states that any supervision requirement will be based on the plan agreed for the child and that the plan will set out the needs, the action required to address these needs, who is going to make sure action is taken and the key milestones. It also stated that the action plan should set out contingency measures and that the Children's Hearing will have the power to amend the plan and set the review date, based on expected milestones. Any agency identified in a supervision requirement as being responsible for action will be accountable for making sure that action is taken.
- 4.28 Over 80% of all respondents agreed with this proposal with only 7% in clear disagreement. A third of respondents made suggestions for further or additional action required.
- 4.29 **Action we are taking:** Part 2 of the draft Bill contains provision to place duties on agencies to implement actions agreed at a Hearing.

Proposal Ten: Power of the Reporter to refer cases to agencies to act on the plans and to seek reports on progress and reviews

- 4.30 The consultation paper proposed that if the referral to the Reporter does not meet the test criteria, the Reporter will refer the case to agencies to act on the plan and will be empowered to seek reports on progress and reviews as necessary.
- 4.31 The majority of respondents (71%) agreed with the proposal compared to 13% who were in clear disagreement. A similar proportion of respondents said they felt the proposal would meet the stated objectives but almost 30% of respondents suggested further or different measures that they felt were required.

4.32 **Action we are taking:** With the significant work taking place in planning for improved outcomes for children and duties on agencies to act positively for children, we intend that inappropriate referrals will decrease dramatically. The need for this proposal should be much less, and it does not fit with the structure proposed by the draft Bill. We have therefore decided not to progress this proposal.

Proposal Eleven: Ability of a Hearing to make an interim supervision requirement

4.33 The consultation paper proposed that pending the implementation of the proposed integrated action plans, the Children's Hearing should have the power to make an interim supervision requirement to ensure that action is taken. This could occur at any point from the Hearing first meeting with the child until a final decision is taken in respect of the referral of that child.

4.34 A majority of respondents (78%) were in favour of this proposal, with only 12.5% against and 9.5% neither in agreement or disagreement. A similarly high proportion of respondents said they felt that the proposal would meet the stated objectives, however, about a quarter of respondents made suggestions for further or different measures which they felt were required.

4.35 **Action we are taking:** Part 2 of the draft Bill contains provision for interim supervision requirements.

Proposal Twelve: The frequency of Hearings

4.36 The consultation document proposed that the frequency of Review Hearings should be determined according to the child's needs and the 'persistence' of the child's behaviour or needs.

4.37 A majority of respondents (80%) supported the proposal, with only 8% disagreeing. A quarter of all respondents suggested further or different measures that they felt would help achieve the objectives outlined in the consultation paper.

4.38 **Action we are taking:** This measure does not require legislation. A detailed project plan is being worked up and following further discussion with interested parties will be implemented in 2007-08.

Proposal Thirteen: Timing of Hearings

4.39 The consultation proposed that children whose behaviour or attendance at school is a cause for concern, should not be taken out of school to attend Children's Hearings. It also proposed that there should be greater flexibility in the timing of Children's Hearings to meet the needs of children and families.

4.40 An overwhelming majority of respondents were in favour of this proposal (82%) as opposed to 9% who were against and a further 9% who were neither in clear agreement or disagreement.

4.41 **Action we are taking:** This measure does not require legislation. We will discuss with interested parties with a view to implementation in 2007-08.



Proposal Fourteen: Ability of Children's Hearing to adapt its procedures

- 4.42 The consultation document proposed that, when a Children's Hearing or other meeting is concerned that help and intervention is not leading to a positive change in a child's behaviour, a Hearing should be able to adapt its procedures as appropriate. In particular it should make sure that the child or young person is fully aware of the concern of the Hearing and the potential consequences of further such behaviour. This might include formally requiring the young person to explain why help or intervention has not resulted in improvements. If appropriate, community representatives or victims might be invited to sit in on the Hearing to reinforce that the behaviour has an impact on others, and to understand better what efforts are being made to address the child's behaviour.
- 4.43 A majority of respondents disagree with the proposal (51%) with just 40% in agreement. Supporters of the proposal welcome anything that empowers the Hearing to bring about change for the child. A number of individual Panel Members commented that that it is good to have a range of options when dealing with a child.
- 4.44 Opposition is based on two main concerns. In the first instance, there is confusion about who would represent 'the community', with many respondents arguing that the community is already represented by Panel Members. Secondly, those who oppose this believe that introducing victims and others into the process would fundamentally change the Hearings system. According to one organisational respondent there would be a "shift in the focus of the system from the child to the victim", while another commented that "the child may end up being a victim themselves". In some circumstances the distinction between "victim" and perpetrator is unclear and shifting.
- 4.45 **Action we are taking:** Combined, the legislative and practice changes in *Getting it right for every child* should result in fewer children going to a Hearing. Those that do will be there for more serious or persistent reasons than at present. We therefore do not intend to legislate on this proposal. Restorative justice approaches are expanding across Scotland aimed at bringing together victims and offenders, addressing the impact of offending behaviour and looking at reparation where appropriate. We are working with potential partners to look at the appropriate effective use of restorative interventions both following referral to the Reporter and in cases where referral for compulsion is unnecessary but a response is required. We shall also seek to develop further the victims information service, to provide Scotland-wide coverage of case-specific information and support. Further, we will explore how the voice of the victim can be heard and reflected in the system at all appropriate stages, but not necessarily in the Hearing room.

Proposal Fifteen: Children's Hearings need to be satisfied that action plans are realistic, likely to be effective and that all available measures to control behaviour have been considered

- 4.46 The consultation paper proposed to strengthen the Hearing system by ensuring that Hearings are satisfied that the plans presented to them are realistic and likely to be effective and also by ensuring that the full range of available measures to control behaviour (where this is the problem) have been considered.

- 4.47 A considerable majority of respondents (82%), were in agreement with this proposal, with only 9% opposed and 9% neither agreeing nor disagreeing. Almost one in five respondents offered alternative or further measures that they felt would help achieve the objectives outlined in the consultation paper.
- 4.48 **Action we are taking:** The draft Bill provides for the plans being presented to Hearings to be much more focused than at present. This should allow Hearings and others to much more effectively assure themselves that action plans are realistic and likely to lead to positive outcomes for the child, as well as to scrutinise what measures were considered for the child and why certain options have been chosen.

Proposal Sixteen: Providing information about Children's Hearings decisions and outcomes

- 4.49 The consultation proposed that Children's Hearings should provide information to communities about the nature of decisions made and their outcomes.
- 4.50 A majority of respondents (62%) were in favour of this proposal. However, a substantial minority of respondents (25%) said they were opposed to the proposal. Of those who answered the second part of the question, 60% agreed that the proposal met the stated objective in comparison to 26% who thought that it did not. 43% of respondents offered suggestions for further or additional action in respect of this proposal. Those that opposed the proposal were opposed to information about individuals being provided.
- 4.51 **Action we are taking:** As part of the *Getting it right for every child reform* programme, outlined in Chapter 2, models and templates for information provision will be developed for use.

Proposal Seventeen: Procedures to streamline the establishment of grounds for referral

- 4.52 The consultation paper states that procedures will be introduced to streamline the establishment of grounds for referral where the child is too young, not sufficiently mature or the child is not able to understand the grounds, but the parents accept them.
- 4.53 The vast majority of respondents (86%) were in favour of the proposal, in comparison with only 5% who disagreed and 9% who neither agreed nor disagreed.
- 4.54 **Action we are taking:** Part 2 of the draft Bill contains provision to expedite procedures for establishing the grounds for referral where the child is too young, not sufficiently mature or the child is not able to understand the grounds, but parents accept them.

Proposal Eighteen: Greater continuity of Panel Members from one Children's Hearing to another

- 4.55 The consultation paper suggests that it would be beneficial if there was some continuity of Panel Members from one Children's Hearing to another.
- 4.56 A majority of respondents (71%) were in favour of this proposal, compared to 21% who were opposed. A further 8% neither agreed or disagreed with the proposal.
- 4.57 **Action we are taking:** This measure does not require legislation. We intend to implement this in 2007-08, following further discussion with interested parties.



Proposal Nineteen: Legal representatives

- 4.58 The consultation paper proposed to place a new duty on the Scottish Children's Reporters Administrator (SCRA) to ensure the provision of legal representation for children, where this is necessary, under current criteria to protect their rights. This proposal would place the Reporter under a duty to identify those cases where a Legal Representative may be appropriate and to initiate the appointment. The business meeting or the Children's Hearing (or both) would still have the power to make an appointment if necessary, but the Reporter, acting under this duty and drawing on legal advice from within SCRA as required, should ensure a timely appointment is made.
- 4.59 Over 85% of respondents were in agreement with this proposal as opposed to only 5% who clearly stated that they were against the proposal. Over a quarter of respondents made comments on further or different measures that they felt were required in relation to this proposal.
- 4.60 **Action we are taking:** Part 2 of the draft Bill contains provision for the appointment of legal representatives.

Proposal Twenty: Withholding information provided by the child

- 4.61 The rights of parents and others involved in a Children's Hearing to full information about a child can potentially lead to the disclosure of information that may place children at risk. The consultation paper proposed to legislate to enable Children's Hearings and Reporters to withhold information provided by the child when its release may place the child's welfare at risk.
- 4.62 Almost 90% of respondents expressed support for this proposal in their response. A similarly high proportion of respondents stated that they felt the proposal would meet the objectives stated in the consultation paper.
- 4.63 **Action we are taking:** Part 2 of the draft Bill contains provision for withholding information in Children's Hearings.

Proposal Twenty One: Remove required link to local authority boundaries

- 4.64 The consultation paper proposed amending the Children (Scotland) Act 1995 to remove the requirements that Children's Panels and Children's Panel Advisory Committees be linked to local authority boundaries. The proposal states Panel Members should continue to work in their own locality as much as possible, but that removing the barriers to Panel Members sitting on Children's Hearings outside their immediate local authority would introduce flexibility into the structure of the Children's Hearings system.
- 4.65 A majority (58%) of respondents expressed their agreement with this proposal. However, there was a significant minority (32%) of respondents that said they were opposed to the proposal and a similar proportion expressed qualifications about their support for the proposal. Support for this proposal was strongest amongst individual respondents (62% in favour) however only a minority of organisations that responded said they were in favour of the proposal (49%). The strongest opposition to the proposal came from Children Panels and CPACs although a number of their responses did recognise the need for greater flexibility.
- 4.66 **Action we are taking:** There are already mechanisms to support the sharing of panel members ("concurrent schemes"). These are bureaucratic in nature and there have been several incidents of arrangements being ignored which has resulted in hearings having to be re-run (because members have not been appointed to the relevant local area). Therefore Part 2 of the draft Bill contains provision to allow panel members not to be restricted to their own local authority area in order to overcome difficulties with existing schemes. However, we would expect that most panel members will continue to sit solely in their home area.

Proposal Twenty Two: Modernisation of the arrangements for panel members

- 4.67 The consultation paper proposed improvements in, and modernisation of, the arrangements for the recruitment, training, support and monitoring of Panel Members through the establishment of either a single national body or a local authority regional structure.
- 4.68 There were mixed views amongst respondents about this proposal. Just over 40% of all respondents state that they would be in favour of the establishment of a national body to manage the support arrangements for Children's Panels. A further 27% of respondents favoured the establishment of a regional structure. However, a substantial minority of respondents favoured the retention of the status quo with individual local authorities maintaining their role in providing support to Children's Panels in their areas, even though this was not an option presented.
- 4.69 **Action we are taking:** This issue, and our approach to it, is discussed in Chapter 5 of this consultation.



Proposal Twenty Three: Keeping the public and communities informed and helping them understand the role of the Children's Hearing system

- 4.70 The consultation paper proposed that agencies keep the public and communities informed about what is being done with their concerns and help them understand that the focus is on effective action and not processing children through Children's Hearings.
- 4.71 There is strong support for this proposal, with 83% of respondents in favour and only 8% opposing.
- 4.72 **Action we are taking:** As part of the *Getting it right for every child* reform programme models and templates for information provision will be developed for use.

Specific Questions

- 4.73 In addition to the proposals for action, the consultation also asked a number of specific questions on aspects of the system. These are outlined below. Again, more information is available in the Analysis of consultation responses (Scottish Executive, 22 June 2006).

The recording and planning framework

Specific question 1: Is there sufficient emphasis and guidance about the child's involvement and are there sections which need strengthening to make sure that the child is at the heart of the process?

- 4.74 The recording and planning framework proposes measures to benefit all children and young people – not just those with additional support needs, those in need or those requiring care and protection. In doing so the Framework tries to emphasise the involvement of children.

The consultation papers asked:

"... is there sufficient emphasis and guidance about the child's involvement and are there sections which need strengthening to make sure that the child or young person is at the heart of the process?"

- 4.75 While a majority of respondents said they felt there is currently sufficient emphasis and guidance about children's involvement, over 40% said that this was not currently the case. A substantial proportion of respondents (almost 40%) offer suggestions about how the framework could be strengthened to ensure that children are at the heart of the process. Almost 70% of respondents commented on the "assessment triangle". While a small majority of respondents did not identify any gaps in the assessment triangle a substantial number of respondents (49%) made suggestions about how the assessment triangle could be strengthened.
- 4.76 **Action we are taking:** Part 1 of the draft Bill contains measures to consider the views of children in the decision making of agencies. In *Getting it right for every child*, planning is based on taking the views of the child and engaging with the child and family at every stage.

Specific question 2: Does the assessment triangle provide a common approach to working with children and their families?

- 4.77 The assessment triangle has been developed to provide a common approach to working with children and their families using similarly defined language and to recognise positive as well as negative factors in a child's life. In doing so it has tried to capture the child's world, and issues such as key transition points for children, and the diversity of children (including mobility, disability, faith, language, culture and ethnicity). The consultation papers asked "how well does the assessment triangle provide a common approach to working with children and their families?"
- 4.78 Some responses raised the question of whether the assessment triangle will provide a common approach to working with children and their families. A common concern is that, although the assessment triangle looks good in theory, the 'one-size-fits-all' model may not be individually suited to each child who comes through the system.
- 4.79 **Action we are taking:** Part 1 of the Bill contains provision for assessment and planning. Since consultation we have been working on how best to integrate assessment in the child's record and plan. A prototype child's record and plan will be in place by March 2007, with every child going to a Children's Hearing having a plan by December 2007. Ministers have announced that plans must be in place for every child by this date as a first step to full implementation.

Safeguarders

Specific question 3: Views on the role of the safeguarder

- 4.80 The consultation paper suggests that the Legal Representative proposal may remove the necessity of a Safeguarder being appointed. The consultation paper invited views on whether the role of the Safeguarder should be maintained and be made available to any service which requires an independent assessment of the child's best interests.
- 4.81 Many respondents note that they welcome the current review and state that any decision on the role of the Safeguarders should be postponed until after the outcome of research on approaches to advocacy and the voice of the child. However, where respondents have given their views, there is widespread support for retaining the role of the Safeguarder. Safeguarders are perceived to be especially useful when agencies fail to agree on an action plan or where there is a conflict between services and the family.
- 4.82 **Action we are taking:** We have concluded that the role of the Safeguarder should be retained as a transitional measure while *Getting it right for every child* is being implemented. We wish to review this position in 4-5 years. In 2002 Ministers gave an undertaking to the Parliament that the role, responsibilities and support for Safeguarders should be reviewed. We do not plan to pursue any substantial review of this type until it is evident whether the role of the Safeguarder is necessary in the long term in the light of development and implementation of *Getting it right for every child*.



Consultation with Children and Young People

- 4.83 Children in Scotland conducted consultation with children and young people independently on behalf of Scottish Ministers. A total of 41 children and young people participated in the events, 26 male and 15 female. The key points of that consultation were:
1. Children and young people fully support the Executive's vision of a work force working together to help children and young people who are having problems.
 2. One structure does not fit all, children and young people have diverse strengths and weaknesses. There needs to be a number of options in all services.
 3. For children and young people to be able to say what they think, structures need to change. Children and young people want to have one adult that they know and trust as their contact point.
 4. Children and young people are not comfortable talking to groups of unknown adults.
 5. Children and young people welcome the suggestion of having panel continuity.
 6. The proposals on information sharing were supported on the condition that children and young people are involved in decisions over who information is shared with.
 7. For those who commented, children and young people did not value the role of the safeguarder. Young people believed this position should be replaced with an adult who would advocate their views.
 8. Children and young people welcomed suggestions to provide information on how the Children's Hearings system works via talks, presentations, video and e-mail, not via leaflets.
 9. The idea of involving victims in the Children's Hearings system was not supported.
- 4.84 **Action we are taking:** Amongst other work, we are developing two projects:
- To involve young people in the selection of panel members
 - To involve young people in the training of panel members

5 – Further issues for consideration

Introduction

- 5.1 The consultation on *Getting it right for every child – Proposals for action* brought forward a wide range of ideas and issues. The majority of these have been reflected in provisions included in the draft Bill, but others could be included in the Bill.
- 5.2 In addition a number of further issues have developed since the publication of the proposals for action in 2005. These are:
- Changes arising from the Vulnerable Witnesses (Scotland) Act 2004
 - Engaging with young people involved in offending
 - Changes to the Scottish Children’s Reporter Administration and procedural changes to the Children’s Hearing system
- 5.3 We also wish to consult further on support arrangements for panel members in view of the mixed response to the proposals.
- 5.4 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. We want to ensure that the draft Bill promotes and supports the rights of children, and this chapter discusses rights issues in the draft Bill.
- 5.5 The Scottish Executive is committed to equality of opportunity for all. This chapter also includes a discussion of our proposals to promote equality in the draft Bill.
- 5.6 In addition, there may be issues around information sharing between agencies. While information sharing for child protection is covered by the Protection for Vulnerable Groups Bill, currently before the Scottish Parliament, it may be that further provision on information sharing is required.
- 5.7 The definition of child ‘in need’ set out in the Children (Scotland) Act 1995 may require updating and clarification. We wish to consult stakeholders on whether any change is necessary.
- 5.8 This chapter discusses these issues and invites comments on whether the additional measures discussed below should be developed for inclusion in the Bill.

Changes arising from the Vulnerable Witnesses (Scotland) Act 2004

- 5.9 The Vulnerable Witnesses (Scotland) Act 2004 (“the 2004 Act”) provides for a number of special measures and other provisions to assist vulnerable witnesses to give their evidence. Part 2 of the Act applies these to civil proceedings including children’s hearings court proceedings. The 2004 Act was commenced in relation to children’s hearings court proceedings in respect of child witnesses from April 2005 and in respect of adult vulnerable witnesses from April 2006 (with the exception of the special measure of taking evidence by a commissioner which was only partially implemented from November 2005 for child witnesses and April 2006 for adult vulnerable witnesses).



5.10 Experience in implementing the Act has brought to light a number of issues which we would now like to take the opportunity to rectify through the Children's Services (Scotland) Bill. We anticipate using the bill in the following 7 areas:

- Section 16(a) of the 2004 Act has the effect that where the vulnerable witness who is to give evidence in children's hearings court proceedings is also party to the proceedings (because the child is also the subject of those proceedings or the vulnerable witness is also a relevant person and therefore party to the proceedings) sections 12 and 13 of the Act are to be read as though references to "party citing or intending to cite the witness" were references to the vulnerable witness. This puts the onus on the child or other vulnerable witness or their representatives to complete, lodge and intimate the child witness notice or vulnerable witness application rather than the party actually citing the witness. The effect of this wording is unintended as it places an onus on the vulnerable witness to lodge a child witness notice or vulnerable witness application. In cases where the child witness who is to give evidence is the subject of proceedings or a person who is party to the proceedings, we wish to make it clear that where the Children's Reporter is the party citing or intending to cite the vulnerable witness, the Reporter is able to lodge the child witness notice or vulnerable witness application.
- Section 68A of the Children (Scotland) Act 1995 ("the 1995 Act") (as inserted by section 23 of the 2004 Act) provides for restrictions on evidence in certain cases involving sexual abuse. We wish to ensure that taking evidence by a commissioner is recognised as an integral part of Children's Hearings court proceedings and that the protections in section 68A apply to the taking of evidence by a commissioner in Children's Hearings court proceedings. This will cover both child and adult vulnerable witnesses in such proceedings.
- Section 68A of the 1995 Act relating to restrictions on evidence in certain cases involving sexual abuse (and the exceptions to these restrictions in section 68B) does not extend to appeals under section 51 of that Act against the decision of a children's hearing or a sheriff. We wish this to apply in such circumstances.
- In addition we would like section 68A to apply where evidence (which tends to show that a witness is not of good character etc.) is presented to the court in the form of hearsay.
- The protection offered by section 68A should be extended to offence-based referrals. These are set out in paragraphs 1 or 4 of Schedule 1 to the Criminal Procedure (Scotland) Act 1995 and cover any other offence in that Schedule where there is a substantial sexual element in the alleged commission of the offence.
- Also we would want the protection afforded by section 68A to be extended to cover the situation in which the child who is the subject of an offence-based application is a witness in the proceedings.

- At present, in criminal proceedings, one of the special measures in the 2004 Act allows prior statements to be admitted as evidence in chief without being adopted by the witness. This special measure is not available in civil proceedings or children's hearings court proceedings because hearsay evidence under the terms of the Civil Evidence (Scotland) Act 1988 is permitted. However, it is not normally permitted in criminal proceedings and because the criminal rules of evidence would apply in children's hearings court proceedings dealing with offences committed by a child, hearsay evidence could not be admitted in such circumstances. We wish to remedy that in respect of vulnerable witnesses in children's hearings court proceedings relating to offence cases by allowing prior evidence given by a vulnerable witness to be used as evidence in chief in such proceedings. In line with the special measure which is currently available in criminal proceedings witnesses using this special measure would still be subject to cross-examination and re-examination.

5.11 We would welcome the views of correspondents on these proposals.

Engaging with young people involved in offending

- 5.12 A small number of young people who offend in either a serious or persistent way will not engage voluntarily with services. When a young person's behaviour is causing serious concern and they are posing a risk to themselves or others, action must be taken. We must ensure that it is clear that engagement with interventions put in place to change behaviour is not optional. Disorderly or offending behaviour is unacceptable and must change.
- 5.13 To make this happen, all agencies must ensure their services are of high quality and can respond to a wide range of abilities and needs. Young people should be in no doubt that, although services are there to help them they will be expected to participate and compulsion will be pursued if they do not respond. We must be clear that changing unacceptable behaviour is not optional.
- 5.14 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.
- 5.15 Those young people who are under the supervision of the Children's hearings system already have a requirement to comply. However, for those young people who are no longer under the supervision of a Children's hearing, after age 16 or 18, and who continue to offend and/or pose a risk to themselves or others, there is currently no mechanism to compel them to engage with services unless they offend again.
- 5.16 The gap which needs to be filled is for those who continue to cause concern, but refuse to engage with services after their supervision requirement is terminated. If there is no locus to intervene where they continue to pose a risk to themselves or others, we are missing an opportunity to reduce the number of victims of crime and the negative impacts that continued offending, including the impact of custody, have on the future life chances of young people.



5.17 To secure continued support and intervention for young people involved in offending we would like to know:

- How can we best ensure that we continue to support young people involved in offending to make the transition into positive adulthood?
- How could we formalise systems to ensure that this happens?
- How best do we respond to the concerns of our communities in dealing with the problem of persistent offending by young people?
- What, if any, legislative requirements would be required to deliver this?

Changes to the Scottish Children's Reporter Administration and procedural changes to the Children's Hearing system

5.18 The draft Bill proposed changes to the Scottish Children's Reporter Administration and some procedural changes to the Children's Hearings system. These are:

- Removal of the Principal Reporter from the Administration (Board) of the Scottish Children's Reporter Administration.
- Simplification of the different warrant provisions available to Children's Hearings in the Children (Scotland) Act 1995.

5.19 Since 2000, one element of the Scottish Executive's corporate governance policy is that a Non Departmental Public Body's (NDPB) Chief Executive should not be a member of the Board. This is intended to provide both parties with a clear demarcation between their respective executive and non executive roles. The Scottish Children's Reporter Administration is a Non-Departmental Public Body sponsored by the Scottish Executive Education Department under the terms of the founding legislation (see below) and an administratively agreed Management Statement and Financial Memorandum. We have therefore introduced this proposal to amend the Local Government etc (Scotland) Act 1994 ("the Act") to remove the Principal Reporter as a member of the Board of the Scottish Children's Reporter Administration.

5.20 Section 11 of the draft Bill proposes changes to schedule 12 to the Local Government (Scotland) Act 1994 to remove the Principal Reporter from the Administration (Board) of the Scottish Children's Reporter Administration. We would welcome correspondent's views on this proposal.

5.21 At present, if a children's hearing is unable to dispose of a case and considers it necessary to detain a child in a place of safety, the appropriate provision under which to grant a warrant is generally determined by the reason why the hearing is unable to dispose of the case. The appropriate provision may therefore vary at subsequent hearings. The reason for a hearing being unable to dispose of a case will often not be known in advance of the hearing.

5.22 The current warrant provisions are complex and can be difficult to manage. *Getting it right for every child* provides an opportunity to simplify the structure of the warrant provisions and ensure that no child in need of detention in a place of safety is disadvantaged because of technicalities around which warrant provision the hearing relied upon.

5.23 Section 20 of the draft Bill contains proposals to amend the warrant provisions in the Children (Scotland) Act 1995. We would welcome correspondents' views on this proposed simplification of warrant procedure.

Children's rights

5.24 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.

5.25 There is much in the draft Bill and the *Getting it right for every child* that will help promote children's rights. For example, section 3 of the draft Bill provides for consideration of children's views which reflects Article 12 of the UN Convention – promoting the voice of the child.

5.26 To ensure that we are effectively promoting and supporting the rights of children, we would like to know:

- Will the Bill as drafted improve children's rights in Scotland?
- 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?

Equality and Equal Opportunities

Introduction

5.27 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.

5.28 The terms of the Scotland Act 1998 mean that that the Scottish Parliament can encourage equal opportunities, and in particular, the observance of the equal opportunity requirements.

5.29 The Scottish Parliament can also impose duties on Scottish public authorities to make arrangements to ensure that functions are carried out with due regard to the need to meet the requirement of the law for the time being relating to equal opportunities.

5.30 These two powers allow the Scottish Parliament, for example, to develop schemes to secure better provision of services to groups who may be the subject of discrimination or to legislate to require certain public authorities and office-holders to have due regard to the equal opportunity requirements

5.31 The Scottish Executive also has a number of legislative duties to promote equality contained in UK legislation. These duties are:

- Promotion of race equality (Race Relations Amendment Act 2000)
- Promotion of disability equality (Disability Discrimination Act 2005)
- Promotion of gender equality (Equality Act 2006)



Children

5.32 All of the policies and legislation outlined in the draft Bill are addressed specifically to the care and protection of children. In the legislation we work with a definition of children of age up to 18. Children's Hearings normally deal with children up to 16 years old, but they can deal with children up to 17 years old. Generally, the child must be referred to a Hearing which takes place before the child is 16. There are exceptions. A child can remain subject to supervision until their 18th birthday, but not beyond.

How are we delivering equality in the draft Bill?

5.33 *Getting it right for every child* is designed to deliver services that focus on the needs of the child, whatever they may be. This moves away from a 'one-size fits all' approach to children's services. We intend that this goes a long way to delivering equality of positive outcome for as many different children as possible.

5.34 The draft Bill contains a section on equal opportunities (In part 1 of the draft Bill) designed to deliver working by children's services agencies.

5.35 We would welcome respondents' views on whether anything in the draft Bill will have a differential impact on equality communities.

Support arrangements for panel members

5.36 As noted in chapter 4, the consultation paper proposed improvements in, and modernisation of, the arrangements for the recruitment, training, support and monitoring of Panel Members through the establishment of either a single national body or a local authority regional structure.

5.37 There were mixed views amongst respondents about this proposal. Just over 40% of all respondents state that they would be in favour of the establishment of a national body to manage the support arrangements for Children's Panels. A further 27% of respondents favoured the establishment of a regional structure. However, a substantial minority of respondents favoured the retention of the status quo with individual local authorities maintaining their role in providing support to Children's Panels in their areas, even though this was not an option presented.

5.38 Given this range of opinion, we wish to consult further on this issue. Ministers are keen to fit proposals with public sector reform **and** respond to the concerns expressed by volunteers that they need more consistent support while maintaining local links and knowledge of those undertaking the functions of panel members and children's panel advisory committee members. The Scottish Executive is currently in discussion with the Convention of Scottish Local Authorities (CoSLA) and other key stakeholders on potential approaches to modernising support arrangements within the Children's Hearings system. We will publish a separate discussion paper on this issue at a later date. This will be available for consultation and comment early in the New Year, well before any legislative proposals are presented to the Scottish Parliament.

Information sharing amongst agencies

- 5.39 Proposals for legislation where information sharing is required to protect a child have been introduced in the Protection of Vulnerable Groups (Scotland) Bill, currently before Parliament. This work above is all proceeding under current legislation. If further provision for information sharing is necessary to deliver the *Getting it right for every child* agenda then this will be considered for introduction with the *Getting it right* legislation.
- 5.40 Through the *Getting it right for every child* pathfinder projects we are developing a child's record. This will have the capacity to share information between agencies according to agreed information sharing protocols. The project includes the identification of the core data every agency will need to collect and the data standards for data collection so that information can be shared. Where agencies are working together, there will be a single multi-agency assessment and plan. Agencies will be able to share information horizontally across children's services and vertically from children's services to adult services. The information will follow the child and young person as they move from childhood to adulthood where this is appropriate. Our aim is at every stage to secure consent from children and families to share information where necessary.
- 5.41 An early 'prototype' of the record will be available from April 2007 and from that point agencies will be able to alter their own information system according to the data requirements and standards set out to accompany the prototype.
- 5.42 Additionally, we expect that by the end of 2007, for every child who appears at a Hearing there will be an inter-agency plan. The plans will follow the young person as they move into adulthood. The roll out of this development from early next year will be accompanied by guidance and training.
- 5.43 Any information sharing provisions would be dependent on the confidence of young people, families and professionals in the use of information, and the impact of any lack of confidence on the willingness to use services. We will work with young people, patient and professional groups to find acceptable approaches to the use of information and confidentiality would strengthen this section.
- 5.44 We would welcome the views of correspondents on these issues.



Definition of a child 'in need' in the Children (Scotland) Act 1995

- 5.45 The Children (Scotland) Act 1995 in section 93(4) defines a child 'in need', for the purposes of that legislation, as:
- (a) being "in need", is to his being in need of care and attention because –
- (i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services of a local authority;
 - (ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;
 - (iii) he is disabled; or
 - (iv) he is affected adversely by the disability of any other persons in his family.
- 5.46 This definition affects the following parts of the Children (Scotland) Act 1995:
- Section 22 – Promotion of welfare of children in need
 - Section 23 – Children affected by disability
 - Section 24 – Assessment of ability of carers to provide care for disabled children
 - Section 24A – Duty of local authority to provide information to carer of disabled child
 - Section 27 – Day care for pre-school and other children
- 5.47 Given the approaches to the needs of children set out in Part 1 of this draft Bill, we would be grateful for the views of respondents to this consultation on whether amending the definition of a child 'in need' would be helpful to the aims of *Getting it right for every child*.
- 5.48 The revised definition of children's needs establishes a bridge between the needs of children to achieve positive outcomes in their lives and the recognition that some children's lives have deficits which indicate a greater obligation on agencies to act. The action should help not only to prevent this child's situation worsening but also wherever possible to achieve more positive outcomes for the child.
- 5.49 The core ethos of *Getting it right for every child* is for agencies to get on and act to help children wherever possible as soon as is appropriate, based not on the categorisation of children but on their needs.
- 5.50 In view of this we are interested in whether the definition of children "in need" could or should be more closely aligned with the recognition of needs as set out in the Bill. The Bill will place obligations on all agencies to be alert to and act on children's needs as best they can. Given these duties and the expanded definition of "need" is there a requirement to have a separate definition of "in need"?
- 5.51 We believe that rationalisation of definitions would both avoid confusion and require those working with children to focus more on the needs of children and action to address them rather than whether they fit a category.

Children's Services (Scotland) Bill

CONSULTATION DRAFT

CONTENTS

Section

PART 1

OVERARCHING PROVISIONS

Functions of relevant agencies

- 1 Well-being of children
- 2 Action as to well-being
- 3 Considering views of children
- 4 Collaborative working
- 5 Joint plans for collaborating
- 6 Extent to which functions are exercisable
- 7 Relevant agencies

Exercise of functions

- 8 Guidance
- 9 Equal opportunities

PART 2

AMENDMENT OF THE PRINCIPAL ACT

- 10 Panel members not restricted to own area
- 11 Membership of the SCRA
- 12 Legal representatives
- 13 Review where child arrested by police
- 14 Disclosure of information
- 15 Grounds for referral
- 16 Procedure for establishing grounds of referral
- 17 Interim supervision requirements
- 18 Duties of agencies regarding supervision requirements
- 19 Placing a child in secure accommodation
- 20 Warrants

PART 3

GENERAL

- 21 Interpretation
- 22 Commencement and short title

CONSULTATION DRAFT

Children's Services (Scotland) Bill

An Act of the Scottish Parliament to confer functions on certain bodies in relation to the well-being of children; to amend the Children (Scotland) Act 1995; and for connected purposes.

PART 1

OVERARCHING PROVISIONS

Functions of relevant agencies

1 Well-being of children

- (1) Every relevant agency must do its best for the purposes of—
 - (a) assessing needs with respect to the well-being of children,
 - (b) identifying children who have unmet needs with respect to their well-being,
 - (c) ensuring that appropriate action is taken to improve the situation of such children.
- (2) Every relevant agency is to—
 - (a) endeavour to be alert to matters adversely affecting the well-being of children,
 - (b) promote the well-being of children.
- (3) A relevant agency must, when acting under this Part, do so—
 - (a) in the best interests of the child concerned, and
 - (b) in accordance with such good practice as applies in the circumstances.
- (4) Reference in this Part to well-being is to be construed with particular regard to the following things—
 - (a) health (whether physical or mental),
 - (b) welfare (including care and neglect),
 - (c) development (whether personal or social),
 - (d) harm, abuse and ill-treatment,
 - (e) emotional and behavioural issues.

2 Action as to well-being

- (1) Where a relevant agency is aware of a child who has (or who may have) unmet needs with respect to well-being, the agency must take such action as it considers appropriate.
- (2) Where a relevant agency is aware that a child poses a risk to the safety of another person, the agency must take such action as it considers appropriate.
- (3) Action under subsection (1) or (2) is to be—
 - (a) directed towards the child or the child's circumstances, and
 - (b) with a view to improving the child's situation.
- (4) A relevant agency which has taken action under subsection (1) or (2)—
 - (a) must monitor the child's situation until satisfied that it is being addressed,
 - (b) may, if appropriate, revise or discontinue that action.
- (5) A relevant agency must record by means suitable for future reference—
 - (a) decisions it takes as to action under subsection (1) or (2),
 - (b) reasons for such decisions,
 - (c) action it takes (or proposes to take) under—
 - (i) subsection (1) or (2),
 - (ii) subsection (4)(a).
- (6) Reference in this section to action by a relevant agency includes action in collaboration with any other relevant agency.

3 Considering views of children

- (1) Every relevant agency is to seek to secure effective means for ascertaining (and recording) the views—
 - (a) of children,
 - (b) in relation to children, of relevant persons,in connection with its decision-making as regards the well-being of children.
- (2) Every relevant agency, in taking any material decision as regards a child's well-being—
 - (a) must have regard to such relevant views—
 - (i) of the child, and
 - (ii) in relation to the child, of a relevant person,
 - (b) may have regard to such relevant views of any other person, as may reasonably be ascertained.
- (3) When acting under subsection (2)(a)(i), the relevant agency must take account of the age, maturity and capacity of the child.
- (4) A child of 12 or more years of age is presumed to be of sufficient maturity and age to form views.

4 Collaborative working

- (1) In exercising their functions under this Part, the relevant agencies are (so far as appropriate) to co-operate with each other.
- (2) Each relevant agency must—
 - (a) secure the making of arrangements for—
 - (i) promoting co-operation under subsection (1),
 - (ii) evaluating co-operation under that subsection,
 - (b) participate (so far as appropriate) in those arrangements.
- (3) Each relevant agency must—
 - (a) secure the making of arrangements for the purpose of resolving disputes between it and other relevant agencies arising from the duty to co-operate imposed by subsection (1),
 - (b) invoke those arrangements in the event of such disputes.
- (4) Arrangements under subsection (2) or (3) may be made by reference to—
 - (a) a local authority area or any other local area,
 - (b) two or more relevant agencies.
- (5) For the purposes of this section, reference to co-operation includes—
 - (a) consulting,
 - (b) exchanging information,
 - (c) providing advice,
 - (d) collaborating, for example through—
 - (i) co-ordinating effort,
 - (ii) providing assistance,
 - (iii) sharing responsibility for action,
 - (iv) joint funding of activities.

5 Joint plans for collaborating

- (1) Where under this Part two or more relevant agencies collaborate with each other, they must—
 - (a) adopt a joint plan for the purpose,
 - (b) designate a person who is to take responsibility for ensuring that the plan is implemented.
- (2) A person designated under subsection (1)(b) as respects a plan must record by means suitable for future reference the steps taken by the collaborating agencies in implementation of the plan.
- (3) Designation of a person under subsection (1)(b) may, having regard to the circumstances of the case, be replaced by a subsequent designation under that subsection.
- (4) Designation of a person under subsection (1)(b) does not relieve a relevant agency from any responsibility it has in relation to the child (including responsibility for the exercise of functions in relation to the child).

-
- (5) But that responsibility may be discharged (and those functions exercised) through implementation of a plan adopted under subsection (1)(a).
 - (6) The collaborating agencies—
 - (a) are to keep under review,
 - (b) may revise or terminate,a plan they adopt under subsection (1)(a).

6 Extent to which functions are exercisable

- (1) An agency function applies to the extent that anything which might be done in exercise of the function would (ignoring the effect of the provision conferring the function) be consistent with the proper exercise of the agency's other functions.
- (2) A requirement for a relevant agency to exercise an agency function in relation to children applies in relation to children residing in the agency's area.
- (3) Subsection (2) does not prevent a relevant agency from doing something (whether in collaboration with another relevant agency or otherwise) in relation to a child who resides in another area.
- (4) In this section, reference to an agency function means a function conferred on a relevant agency by this Part.
- (5) For the purposes of this Part, reference to the area of a relevant agency means—
 - (a) in the case of a public body, its geographical area of operation,
 - (b) in the case of a non-public body, the main geographical area (or areas) in which it carries on activities relating to children.
- (6) This Part is without prejudice to any functions of a relevant agency under the Principal Act or any other enactment.

7 Relevant agencies

- (1) For the purposes of this Part, each of the following is a relevant agency—
 - (a) any local authority, whether in its capacity as—
 - (i) a provider of social work services,
 - (ii) an education authority,
 - (iii) a housing authority,or otherwise,
 - (b) any—
 - (i) Health Board,
 - (ii) Special Health Board,
 - (iii) National Health Service trust,
 - (c) any police force,
 - (d) any public body specified under subsection (3).
- (2) For the purposes of this Part, a non-public body specified under subsection (4) is also a relevant agency.

-
- (3) The Scottish Ministers may by order specify as a relevant agency any public body.
 - (4) The Scottish Ministers may by order specify as a relevant agency any non-public body whose activities are—
 - (a) of a public character, and
 - (b) funded (wholly or partly) at the public expense.
 - (5) Specification by an order under subsection (3) or (4) may be—
 - (a) of a body—
 - (i) by name, or
 - (ii) by description of type (for example, by reference to functions),
 - (b) of a body—
 - (i) as a whole, or
 - (ii) to a particular extent (for example, in so far as its activities relate to the well-being of children).
 - (6) An order under subsection (3) or (4) is to be made by statutory instrument; and a statutory instrument making such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Exercise of functions

8 Guidance

- (1) The Scottish Ministers may issue guidance to the relevant agencies on the exercise of their functions under the Principal Act and this Act.
- (2) Guidance under subsection (1) may include provision as to what is (or is not) good practice in the exercise of those functions.
- (3) Guidance under subsection (1) may relate to—
 - (a) relevant agencies generally or any particular type of relevant agency,
 - (b) any or all functions.
- (4) But guidance under subsection (1) may not be framed by reference to a particular child.
- (5) A relevant agency must have regard to guidance issued under subsection (1) to the extent that it is applicable to it.

9 Equal opportunities

- (1) The relevant agencies must exercise their functions under the Principal Act and this Part in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In subsection (1), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c.46).

PART 2

AMENDMENT OF THE PRINCIPAL ACT

10 Panel members not restricted to own area

- (1) In section 39 (formation of children’s panels and children’s hearings) of the Principal Act—
 - (a) for subsection (3) there is substituted—

“(3) Sittings of members of children’s panels (to be known as “children’s hearings”) are to be constituted as described in subsections (5) and (5A).”
 - (b) after subsection (5) there is inserted—

“(5A) At least one member of a children’s hearing is to be a member of the panel for the area for which the hearing is constituted.”
- (2) In section 41(4)(i) of that Act, for the words from “children’s” in the first place where it occurs to the end there is substituted “relevant children’s hearing was constituted”.
- (3) In section 93 of that Act, in the definition of “relevant local authority”, for the words from “panel” to the end there is substituted “hearing which granted the warrant or imposed the supervision requirement was constituted”.
- (4) In Schedule 1 (children’s panels) to that Act—
 - (a) after paragraph 1 there is inserted—

“1A Appointment as a member of the children’s panel for an area makes the member eligible to be a member of a children’s hearing constituted for any area.”
 - (b) in paragraph 5, the words “as are resident in the local government area for which the panel is appointed” are repealed,
 - (c) in paragraph 12—
 - (i) the existing words become sub-paragraph (1),
 - (ii) at the end there is added—

“(2) That list may include the name and address of any member of any other children’s panel who has been a member, or is likely to be a member, of a children’s hearing for the area to which that list relates.”

11 Membership of the SCRA

In paragraph 3 of Schedule 12 (status, constitution and proceedings of the Scottish Children’s Reporter Administration) to the Local Government etc. (Scotland) Act 1994 (c.39), in sub-paragraph (1), for the words “one of whom shall be the Principal Reporter; the others” there is substituted “who”.

12 Legal representatives

- (1) After section 41 (safeguarding child’s interests in proceedings) of the Principal Act there is inserted—

“41A **Legal representatives**

 - (1) Where a children’s hearing is to be arranged in pursuance of this Part, the Principal Reporter—

-
- (a) must consider if it is necessary to appoint a person as the child’s legal representative to enable the child to participate effectively at the hearing, and
- (b) if the Reporter so considers, is to make the appointment for the hearing (and any continuation of it).
- (2) However, where—
- (a) a children’s hearing is to be arranged as described in subsection (1), and
- (b) it appears to the Reporter that the hearing are likely—
- (i) in making a supervision requirement, to exercise a power mentioned in section 70(9A),
- (ii) in making an interim supervision requirement, to exercise the power mentioned in section 70(9A)(b), or
- (iii) in granting a warrant, to require that a child be kept in secure accommodation,
- the Principal Reporter must appoint a person to act as the child’s legal representative at the hearing (and any continuation of it).
- (3) Where a children’s hearing is arranged in pursuance of this Part, the hearing—
- (a) must consider if it is necessary to appoint a person as the child’s legal representative to enable the child to participate effectively at the hearing, and
- (b) if they so consider, are to make the appointment for the hearing (and any continuation of it).
- (4) However, where—
- (a) a children’s hearing has been arranged as described in subsection (3), and
- (b) the hearing consider it is likely that they will—
- (i) in making a supervision requirement, exercise a power mentioned in section 70(9A),
- (ii) in making an interim supervision requirement, exercise the power mentioned in section 70(9A)(b), or
- (iii) in granting a warrant, require that a child be kept in secure accommodation,
- the hearing must appoint a person to act as the child’s legal representative at the hearing (and any continuation of it).
- (5) A legal representative need not be appointed under this section if the child is already legally represented for the purposes of the proceedings.
- (6) The expenses of a legal representative appointed under this section (except in so far as otherwise defrayed in terms of regulations made under section 101) are, in so far as reasonably incurred by the person in acting as the child’s legal representative, to be borne by the local authority for whose area the children’s hearing to which the appointment relates is constituted.
- (7) Appointment of a legal representative under this section is not precluded by (and does not preclude) appointment of a person under section 41(1).”.

-
- (2) In section 42 (power of Secretary of State to make rules governing procedure at children’s hearing etc.) of that Act—
- (a) in subsection (1), for the words from “constituting” to the end there is substituted “the purposes of and in connection with children’s hearings”,
 - (b) in subsection (2)—
 - (i) before paragraph (a) there is inserted—
 - “(za) constituting and arranging children’s hearings and other meetings of members of the children’s panel,
 - (zb) the regulation of procedure at such hearings and other meetings,”
 - (ii) in paragraph (e), for the words “the disposal of matters arising under section 41(1) of this Act” there is substituted “appointment of—
 - (i) persons under section 41(1),
 - (ii) legal representatives under section 41A,”
 - (iii) in paragraph (f), for the words “appointed by a children’s hearing under section 41(1) of this Act” there is substituted “referred to in paragraph (e)”.
- (3) In section 70 (disposal of referral by children’s hearing: supervision requirements, including residence in secure accommodation) of that Act, in subsection (7B)(c), for the words “of this Act to safeguard the interests of the child in” there is substituted “, or any legal representative appointed under section 41A, in relation to”.
- (4) In section 101 (panel for curators ad litem, reporting officers and safeguarders) of that Act—
- (a) in subsection (1)—
 - (i) the word “and” immediately following paragraph (b) is repealed,
 - (ii) after paragraph (c), there is inserted “, and
 - (d) a panel of persons from which legal representatives may be appointed under section 41A.”,
 - (b) in subsection (4), after the words “(1)(c)” there is inserted “or (d)”.

13 Review where child arrested by police

In section 63 (review of case of child arrested by police) of the Principal Act—

- (a) in subsection (1), for the words “he considers that compulsory measures of supervision are not required in relation to the child” there is substituted “the child is released under subsection (3) or (3A)”,
- (b) after subsection (3) there is inserted—
 - “(3A) Where, in relation to a child of whose detention the Principal Reporter has been informed, the Reporter considers that neither of the conditions mentioned in section 66(2) is met, the Reporter must direct that the child is no longer to be kept in the place of safety.”,
- (c) in subsection (4), after the word “(3)” there is inserted “and (3A)”.

14 Disclosure of information

After section 46 of the Principal Act there is inserted—

“46A Disclosure of information

- (1) A children’s hearing need not, at any time prior to their disposal of the case of a child, disclose to a person any information about the child, or about the child’s case, if disclosure of that information to that person would be significantly against the interests of the child.
- (2) Subsection (1) applies despite any requirement under an enactment or rule of law for the children’s hearing—
 - (a) to give the person an explanation of what has taken place at proceedings before the hearing, or
 - (b) to provide the person with—
 - (i) information about the child or the child’s case, or
 - (ii) reasons for a decision made by the hearing.”.

15 Grounds for referral

- (1) For section 52 (children requiring compulsory measures of supervision) of the Principal Act, and the italic heading immediately preceding it, there is substituted—

“Grounds for referral

52A Grounds for referral

- (1) For the purposes of this Part, any question arising in relation to a child as to whether there are grounds for referral is to be determined by reference to subsection (2).
- (2) Grounds for referral are constituted if (and only if) all of the following conditions are met as respects the child—
 - (a) there is a relevant situation (the “situational condition” for referral),
 - (b) the child has unmet needs with respect to well-being (the “needs condition” for referral),
 - (c) compulsory measures of supervision are necessary in relation to those needs (the “supervision condition” for referral).
- (3) In subsection (2)(b), reference to well-being is to be construed with particular regard to the things listed in section 1(4) of the Children’s Services (Scotland) Act 2007 (asp 00).
- (4) In this Part, reference to supervision, in relation to compulsory measures of supervision, includes (so far as appropriate) measures for the protection, guidance, treatment or control of the child.

52B Situational condition

- (1) For the purposes of section 52A(2)(a), there is a relevant situation as respects a child if at least one of the factors mentioned in subsection (2) applies in the child’s case.
- (2) The factors are that—
 - (a) the child has committed an offence,

-
- (b) the child has without reasonable excuse failed to attend school regularly,
 - (c) the child's behaviour has caused, is causing or is likely to cause—
 - (i) the child to come to harm,
 - (ii) an adverse effect on the child's health or safety, or
 - (ii) an adverse effect on the child's development,
 - (d) the child's behaviour has caused, is causing or is likely to cause—
 - (i) another person to come to harm,
 - (ii) an adverse affect on the health or safety of another person, or
 - (iii) an adverse affect on the development of another person,
 - (e) the way in which the child is cared for (in a domestic context) has caused, is causing or is likely to cause—
 - (i) the child to come to harm,
 - (ii) an adverse affect on the child's health or safety, or
 - (iii) an adverse affect on the child's development,
 - (f) the child has been abused, ill-treated or neglected,
 - (g) the child is, or is likely to become, a member of the same household as a child who has been abused, ill-treated or neglected,
 - (h) the child is a member of the same household as an adult person who is subject (in a domestic context) to abusive behaviour of a third party,
 - (i) the child—
 - (i) is, or is likely to become, a member of the same household as, or
 - (ii) has significant contact with,
a person whose character is such that there is reason to believe that the person might abuse or harm the child.
- (3) For the purpose of subsection (2)(e), reference to care for the child includes support and guidance for, and supervision and control of, the child.
 - (4) For the purpose of subsection (2)(f) and (g), the commission against a child or other person of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (c.46) is conclusive as to the fact that the child or (as the case may be) other person has suffered as described in that subsection.
 - (5) For the purpose of subsection (2)(i), it is to be presumed from the commission by a person of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995, or under sections 1 to 3 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39), that the person is of the character described in that subsection.”.
- (2) In section 53 (provision of information to the Principal Reporter) of that Act—
 - (a) in subsection (1)—
 - (i) for the words “compulsory measures of supervision may be necessary” there is substituted “subsection (2C) applies”,

-
- (ii) in paragraph (b), for the words “such measures may be required” there is substituted “subsection (2D) applies”,
- (b) for subsection (2) there is substituted—
- “(2) A person (apart from a local authority) who has reasonable cause to believe that subsection (2C) applies as respects a child may give to the Principal Reporter such information about the child as the person has been able to discover.
- (2A) A relevant agency (apart from a local authority) which has reasonable cause to believe that subsection (2D) applies in respect of a child must give to the Principal Reporter such information about the child as the agency has been able to discover.
- (2C) This subsection applies where there may be grounds for referral.
- (2D) This subsection applies where—
- (a) the needs condition for referral is met, and
- (b) the situational and supervision conditions for referral may be met.”,
- (c) after subsection (7) there is added—
- “(8) In subsection (2A), reference to a relevant agency is to be construed in accordance with section 7 of the Children’s Services (Scotland) Act 2007 (asp 00).”.
- (3) In section 54 (reference to the Principal Reporter by court) of that Act—
- (a) in subsection (1)—
- (i) for the words from “any” in the second place where it occurs to “satisfied” there is substituted “subsection (1A) applies”,
- (ii) for the word “condition” there is substituted “situational condition for referral with reference to the particular factors involved”,
- (b) after subsection (1) there is inserted—
- “(1A) This subsection applies where—
- (a) the situational condition for referral is met, and
- (b) the needs and supervision conditions for referral may be met.”,
- (c) in subsection (3)—
- (i) in paragraph (b), for the words “compulsory measures of supervision are necessary” there is substituted “there are grounds for referral”,
- (ii) the words from “; and” in the second place where it occurs to the end are repealed,
- (d) after subsection (3) there is added—
- “(4) And, for the purposes of the hearing, section 69(1) applies as if the situational condition for referral (as specified under subsection (1)) were established in accordance with section 68.”.
- (4) In section 56 (initial investigation by the Principal Reporter) of that Act, in subsection (6), for the words “compulsory measures of supervision are necessary” there is substituted “there are grounds for referral”.

-
- (5) In section 65 (referral to, and proceedings at, children’s hearing) of that Act—
- (a) For subsection (1) there is substituted—
 - “(1) The Principal Reporter is to refer to a children’s hearing the case of any child in respect of whom the Reporter is satisfied that there are grounds for referral.
 - (1ZA) Subsection (1) is without prejudice to a requirement to refer the child’s case to a children’s hearing arising by virtue of—
 - (a) another provision of this Act, or
 - (b) section 12(1) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
 - (1ZB) The purpose of referral under subsection (1) is for the case to be considered and determined on its merits.
 - (1ZC) On referral under subsection (1), the Principal Reporter must—
 - (a) state the situational condition for referral with reference to—
 - (i) the particular factors involved, and
 - (ii) the facts or circumstances giving rise to those factors, and
 - (b) do so as required by any rules made by virtue of section 42(2)(c).”
 - (b) subsection (1A) is repealed,
 - (c) in subsection (4)—
 - (i) for the words “grounds stated by the Principal Reporter” there is substituted “situational condition”,
 - (ii) for the words “these grounds are” there is substituted “that condition is”,
 - (d) in subsection (5), for the word “grounds” there is substituted “situational condition”,
 - (e) in subsection (6)—
 - (i) for the word “grounds” in the first place where it occurs there is substituted “situational condition”,
 - (ii) for the words “those grounds which are” there is substituted “that condition in so far as”,
 - (f) in subsection (7)—
 - (i) in paragraph (a), for the word “grounds” there is substituted “situational condition”,
 - (ii) in paragraph (b), for the words “the grounds” there is substituted “that condition”,
 - (iii) for the words “such grounds for the referral as are not accepted by the child and the relevant person are” there is substituted “that condition (in so far as not accepted by the child and the relevant person) is”,
 - (g) in subsection (9)—
 - (i) in paragraph (a), for the word “grounds” there is substituted “situational condition”,

-
- (ii) for the words “any of the grounds of the referral are” there is substituted “that condition is”,
- (h) in subsection (10), for the words “grounds of” there is substituted “situational condition for”,
- (i) After subsection (10) there is added—
- “(11) Reference to the situational condition for referral—
- (a) in this section, or
- (b) in section 68 or 68ZA,
- means that condition as stated in accordance with subsection (1ZC).”.
- (6) In section 68 (application to sheriff to establish grounds of referral) of that Act—
- (a) in subsection (3)—
- (i) for the words from “one” to “52(2)(i)” there is substituted “in an application the situational condition for the referral concerns the factor mentioned in section 52B(2)(a)”,
- (ii) in paragraph (b), for the word “ground” there is substituted “factor”,
- (b) in subsection (5)(a), for the words from “ground” to “Act” there is substituted “situational condition for referral concerns the factor mentioned in section 52B(2)(f), (g) or (i)”,
- (c) in subsection (8)—
- (i) in paragraph (a), for the words “of the grounds” there is substituted “particular factor relevant to the situational condition”,
- (ii) in paragraph (b), for the words “of the grounds for referral to which the application relates” there is substituted “such factor”,
- (iii) for the words “ground and deem the ground” there is substituted “factor and deem that condition (in so far as concerning that factor)”,
- (d) in subsection (9)—
- (i) for the word “grounds” in the first place where it occurs there is substituted “factors relevant to the situational condition”,
- (ii) for the words “those grounds” in each place where they occur there is substituted “that condition (in so far as concerning those factors)”,
- (e) in subsection (10), for the words “any of the grounds for the referral” there is substituted “the situational condition for the referral (in so far as concerning any particular factor)”.
- (7) [Sections 68A, 68B].
- (8) In section 69 (continuation or disposal of referral by children’s hearing) of that Act, in subsection (1), for the word “of” in the first place where it occurs there is substituted “for”.
- (9) [Section 85].
- (10) In the Criminal Procedure (Scotland) Act 1995, in section 48 (power to refer certain children to reporter)—
- (a) in subsection (1), the words from “, and” to the end are repealed,

(b) after subsection (1) there is inserted—

“(1A) Where the court refers a child to the Reporter under subsection (1), it may certify that a situational condition for referral is established (as respects the relevant factor mentioned in section 52B(2) of the Children (Scotland) Act 1995 (c.36)) for the purposes of Chapter 3 of Part II of that Act.”

(11) In section 12 of the Antisocial Behaviour etc. (Scotland) Act 2004, subsections (3) and (4) are repealed.

16 Procedure for establishing grounds of referral

(1) In section 68 (application to sheriff to establish grounds of referral) of the Principal Act, after subsection (12) there is added—

“(13) This section is subject to section 68ZA.”

(2) After that section there is inserted—

“68ZA Expedited procedure to establish grounds of referral

- (1) This section applies to an application under subsection (9) of section 65 if, at a children’s hearing, the relevant person (that is, the relevant person referred to in subsection (4) of that section) has accepted the situational condition for referral.
- (2) The sheriff may determine the application (and deem the situational condition for referral to be established) without a hearing being held for the purpose.
- (3) But a hearing on the application is to be held in the circumstances referred to in subsections (4) to (6).
- (4) The circumstances are that, in considering the application, it appears to the sheriff that it is unlikely that he will find or deem the situational condition for referral to be established.
- (5) The circumstances are that—
 - (a) the child, the relevant person or the Principal Reporter requests that a hearing on the application be held, and
 - (b) the sheriff is satisfied that it is necessary or expedient to hold such a hearing.
- (6) The circumstances are that, in any case, the sheriff is of the opinion that it is not appropriate to determine the application without a hearing being held for the purpose.
- (7) Where a hearing on the application is held under subsection (3), the sheriff may—
 - (a) dispense with the hearing of evidence relating to the situational condition, and
 - (b) deem that condition to be established for the purposes of the application, unless the sheriff is satisfied that, in all the circumstances of the case, the evidence should be heard.
- (8) Where this section applies, the application is to be—
 - (a) where there is not to be a hearing, determined by the sheriff within 7 days of its being lodged,

-
- (b) where there is to be a hearing, heard by the sheriff within 28 days of its being lodged.
 - (9) The provisions of section 68(3) to (7) and (9) to (12) apply in relation to an application to which this section applies as they apply in relation to an application to which section 68 applies.
 - (10) For the purpose of application by subsection (9), the words “, after the hearing of any evidence or on acceptance in accordance with subsection (8) above,” where occurring in section 68(10) are to be disregarded.”.
 - (3) In section 41 (safeguarding child’s interest in proceedings) of that Act, in subsection (5)(b), after the word “68” there is inserted “or 68ZA”.
 - (4) In section 69 (continuation or disposal of referral by children’s hearing) of that Act, in subsection (1), after the word “68” there is inserted “or 68ZA”.
 - (5) In section 85 (application for review of grounds of referral) of that Act, in subsection (1), for the words “such as is mentioned in section 68(10)” there is substituted “made by the sheriff under section 68 or 68ZA”.

17 Interim supervision requirements

- (1) After section 70 (supervision requirements) of the Principal Act, there is inserted—
 - “70A Interim supervision requirements**
 - (1) Subsection (2) applies to a children’s hearing arranged to consider a child’s case under a provision of this Part except section 59(2).
 - (2) Without prejudice to any other power enjoyed by them under this Part, the children’s hearing may make an interim supervision requirement in respect of a child if they are satisfied that the conditions mentioned in subsection (3) are met.
 - (3) Those conditions are that the children’s hearing are—
 - (a) unable to dispose of the case, and
 - (b) satisfied that compulsory measures of supervision are, pending their disposal of the case, necessary in the interests of safeguarding or promoting the child’s welfare.
 - (4) An interim supervision requirement may not be made at a children’s hearing arranged under section 63(1) unless—
 - (a) the Principal Reporter has stated the situational condition for referral, and
 - (b) the chairman of the hearing has explained that condition to—
 - (i) the child, and
 - (ii) in relation to the child, any relevant person present.
 - (5) An interim supervision requirement under subsection (2) is to be made for a period not exceeding 22 days.
 - (6) A children’s hearing may, at any time prior to the expiry of an interim supervision requirement made under subsection (2), make a fresh interim supervision requirement under that subsection (whether or not with the same conditions as previously imposed).

-
- (7) But, where—
- (a) the children’s hearing are unable to dispose of a child’s case pending the making of an application to the sheriff under section 65(7) or (9), or pending the determination of such an application, or
 - (b) such an application having been determined, the case is to be considered at a subsequent children’s hearing arranged (or to be arranged) by virtue of the remittal of the case to the Principal Reporter under section 68(10),
- the child must not be made subject to interim supervision requirements under subsection (2) for a period exceeding 66 days.
- (8) In computing a 66 day limit applying in relation to—
- (a) an interim supervision requirement, or
 - (b) a warrant granted under this Part,
- a period during which a child was subject to one of those things is also to be counted as if a period during which the child was subject to the other of them.
- (9) The provisions of section 70, except—
- (a) subsection (1),
 - (b) subsections (3A) and (3B),
 - (c) subsections (7) to (7E),
 - (d) subsection (9A)(a),
- apply in relation to an interim supervision requirement as they apply in relation to a supervision requirement.
- (10) A requirement included in an interim supervision requirement by reference to section 70(3)(a) may not provide that a child reside otherwise than with a person who is, in relation to the child, a relevant person.
- (11) Reference in—
- (a) section 3(4),
 - (b) section 16(4)(a)(i),
 - (c) section 17(6)(b),
 - (d) section 51(5)(b),
 - (e) section 71,
 - (f) section 73(1) and (3),
 - (g) sections 74, 75A, and 82,
- to a supervision requirement includes reference to an interim supervision requirement.

70B Application to sheriff for further interim supervision requirement

- (1) Subsection (2) applies where either—
- (a) the children’s hearing are unable to dispose of a child’s case pending the making of an application to the sheriff under section 65(7) or (9), or pending the determination of such an application, or

-
- (b) such an application having been determined, the case is to be considered at a subsequent children’s hearing arranged (or to be arranged) by virtue of the remittal of the case to the Principal Reporter under section 68(10).
- (2) Where this subsection applies, the Principal Reporter may, at any time prior to the expiry of an interim supervision requirement made under section 70A(2) or this subsection, apply to the sheriff for a further interim supervision requirement to be made in respect of the child.
- (3) An interim supervision requirement under subsection (2) may only be made on cause shown and—
- (a) shall expire on the earlier of—
- (i) the date specified for the purpose in the interim supervision requirement, or
- (ii) the date of the subsequent children’s hearing arranged by virtue of the remittal mentioned in subsection (1)(b), and
- (b) may contain any conditions as may be contained in an interim supervision requirement made under section 70A(2) (whether or not the same conditions as previously imposed).
- (4) An application under subsection (2) may be made at the same time as, or at the diet fixed for, the hearing of an application which the Principal Reporter has been directed by a children’s hearing to make under section 65(7) or (9).”.
- (2) In section 3 (provisions relating both to parental responsibilities and to parental rights) of that Act, in subsection (4), after the word “Act” there is inserted “or an interim supervision requirement made under section 70A or 70B”.
- (3) In section 51 (appeal against decision of children’s hearing or sheriff) of that Act—
- (a) in subsection (5)—
- (i) after paragraph (a) there is inserted—
- “(aa) where the appeal is against a warrant granted under section 63(5), 66(1) or 69(7)—
- (i) without prejudice to paragraph (a), he shall recall the warrant, and
- (ii) he may make an interim supervision requirement in its place,”
- (ii) in paragraph (b), for the word “under” in each place where it occurs there is inserted “or by reference to”,
- (iii) in paragraph (c)(iii), after the word “70” there is inserted “, 70A or 70B”,
- (b) after subsection (8) there is inserted—
- “(8A) An appeal under subsection (1) in respect of the making of an interim supervision requirement is to be disposed of within 7 days of its being lodged, and, if the appeal is not so disposed of, the requirement ceases to have effect.”.
- (4) In section 93(1) (interpretation of Part II) of that Act, after the entry for “family” there is inserted—
- ““interim supervision requirement” is such a requirement made under section 70A(2) or 70B(2), and includes any condition contained in the requirement or related to it,”.

18 Duties of agencies regarding supervision requirements

- (1) After section 71A of the Principal Act there is inserted—

“71B Duties of other agencies with respect to supervision requirements

- (1) A children’s hearing—
- (a) may impose on any relevant agency the duty, as respects a child subject to a supervision requirement, of giving effect to the requirement in such regards as the hearing considers appropriate,
 - (b) for the purpose of enabling a child to comply with a supervision requirement, may impose other duties on any relevant agency.
- (2) Duties imposed under subsection (1)—
- (a) must be specified in the supervision requirement, and
 - (b) are restricted to that of securing or facilitating the provision for the child of services of a kind normally provided by the relevant agency.
- (3) Where a children’s hearing impose duties on a relevant agency under subsection (1), they must review that imposition of duties if the agency so requests.
- (4) Where (on information received from the Principal Reporter or otherwise) it appears to a children’s hearing that a relevant agency is in breach of a duty imposed on it under subsection (1), the hearing may direct the Reporter to give the agency notice under subsection (5).
- (5) Notice under this subsection is written notice which—
- (a) sets out the breach of the duty,
 - (b) states that, if the agency does not comply with the duty within the period of 21 days of beginning with the day on which it received the notice, an application may be made under subsection (7).
- (6) Where at the end of that period it appears to the children’s hearing that the agency continues to be in breach of the duty, the hearing may authorise the Principal Reporter to make an application under subsection (7).
- (7) An application under this subsection is a summary application by the Principal Reporter, with that authority, for an order under subsection (9).
- (8) In deciding whether to make an application under subsection (7), the Principal Reporter is to take no account of any factor relating to the adequacy of the means available to the relevant agency to enable it to comply with the duty.
- (9) On an application under subsection (7), the sheriff principal may order a relevant agency which is in breach of a duty imposed on it under section (1) to comply with the duty to such extent as the sheriff principal determines.
- (10) An order under subsection (9) is final.
- (11) In this section, reference to a relevant agency—
- (a) excludes a local authority,
 - (b) otherwise, is to be construed in accordance with section 7 of the Children’s Services (Scotland) Act 2007 (asp 00).”.

19 Placing a child in secure accommodation

In section 70 (supervision requirement) of the Principal Act, in paragraph (a) of subsection (9A), the words from “, during” to the end are repealed.

20 Warrants

- (1) In section 66 (warrant to keep child where children’s hearing unable to dispose of case) of the Principal Act—
 - (a) in subsection (2), paragraph (a)(ii) and the words “or” immediately preceding and following it are repealed,
 - (b) for paragraph (a) of subsection (3) there is substituted—
 - “(a) to find the child,
 - (aa) to remove the child to a place of safety,
 - (ab) to keep or (as the case may be) continue to keep the child in a place of safety for a period not exceeding 22 days after the warrant is granted,”
 - (c) in subsection (5), for the words from “its” to the end there is substituted “the expiry of a warrant granted under subsection (1), the children’s hearing may grant a fresh warrant under subsection (1) (whether or not with the same conditions as previously imposed under subsection (4))”,
 - (d) in subsection (6), for the word “they” there is substituted “a warrant under subsection (1)”,
 - (e) in subsection (7), the words “or continue such a warrant under subsection (5) above” are repealed.
- (2) In section 67 (warrant for further detention of child) of that Act—
 - (a) before subsection (1) there is inserted—

“(A1) Subsection (1) applies where—

 - (a) a child is being kept in a place of safety by virtue of a warrant granted under section 66(1) or subsection (1), and
 - (b) either—
 - (i) the children’s hearing are unable to dispose of the child’s case pending the making of an application to the sheriff under section 65(7) or (9), or pending the determination of such an application, or
 - (ii) such an application having been determined, the case is to be considered at a subsequent children’s hearing arranged (or to be arranged) by virtue of the remittal of the case to the Principal Reporter under section 68(10).”
 - (b) in subsection (1), for the words from “Where” to “subsection” in the first place where it occurs there is substituted “Where this subsection applies”,
 - (c) in subsection (2), in paragraph (a), for the words “specify the date on which it will expire” there is substituted “expire on the earlier of—
 - (i) the date specified for the purpose in the warrant,

-
- (ii) the date of the subsequent children’s hearing arranged by virtue of the remittal mentioned in subsection (A1)(b)(ii)”,
 - (d) in subsection (4), for the word “during” there is substituted “at the diet fixed for”.
 - (3) In section 69 (continuation or disposal of referral by children’s hearing) of that Act—
 - (a) in subsection (1), after paragraph (a) there is inserted—
 - “(aa) continue the case to a subsequent hearing in accordance with subsection (2A),”,
 - (b) after subsection (2) there is inserted—
 - “(2A) The children’s hearing may continue the case to a subsequent hearing under this subsection if there is another reason for their being unable to dispose of the case.”,
 - (c) for subsection (4) there is substituted—
 - “(4) Where—
 - (a) there is reason to believe that a child may not comply with a requirement made under subsection (3), or
 - (b) a child has failed to comply with such a requirement,a children’s hearing may grant a warrant under this subsection.”,
 - (d) in subsection (5)—
 - (i) the word “and” immediately preceding paragraph (c) is repealed,
 - (ii) after paragraph (c) there is added—
 - “(d) to bring the child before a children’s hearing at such times as may be specified in the warrant.”,
 - (e) in subsection (7)—
 - (i) after the word “(2)” there is inserted “or (2A)”,
 - (ii) for the words “requiring that the child be taken to and kept in a place of safety” there is substituted “under this subsection”,
 - (f) after subsection (7) there is inserted—
 - “(7A) A warrant under subsection (7) is authority—
 - (a) to find the child,
 - (b) to remove the child to a place of safety and keep the child there,
 - (c) to bring the child before a children’s hearing at such times as may be specified in the warrant.”,
 - (g) after subsection (9) there is inserted—
 - “(9A) A children’s hearing may, at any time prior to the expiry of a warrant granted under subsection (4) or (7), make a fresh warrant under that subsection (whether or not with the same conditions as previously imposed).”.

PART 3

GENERAL

21 Interpretation

- (1) In this Act, the “Principal Act” is the Children (Scotland) Act 1995 (c.36).
- (2) In Part 1, the expressions—
 - “local authority”,
 - “relevant person”, in relation to a child,are to be construed in accordance with section 93 of the Principal Act.
- (3) For the purposes of Part 1, a “child” is a person who has not attained the age of 18 years.

22 Commencement and short title

- (1) The preceding provisions of this Act come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may—
 - (a) appoint different days for different provisions,
 - (b) include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the provisions,
 - (c) make different provision for different purposes or areas.
- (3) This Act may be cited as the Children’s Services (Scotland) Act 2007.

Explanatory Notes

Introduction

- 6.1 These draft Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the draft Children's Services (Scotland) Bill and to help inform the consultation process. They do not form part of the draft Bill.
- 6.2 The Notes should be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill. So where a section, or part of a section, does not seem to require any explanation or comment, none is given.
- 6.3 The draft Bill is in two main parts: stand-alone provisions (Part 1 of the draft Bill) and amendments to the Children (Scotland) Act 1995 (Part 2 of the draft Bill). Other general matters are covered in Part 3 of the draft Bill. Anyone considering the detailed legislative provisions in the consultation will find it easier to understand if read in conjunction with that legislation. Throughout the Bill, the Children (Scotland) Act 1995 is referred to as the 'Principal Act'.
- 6.4 In due course we shall provide on the Scottish Executive website an amended version of the Children (Scotland) Act 1995 which shows the proposed amendments inserted by this draft Bill. This will allow the opportunity for respondents to see the full effect of this proposed legislation.

The draft Bill

- 6.5 The draft Bill seeks to introduce legislation to implement the aims of the *Getting it right for every child* programme by introducing changes to update the duties and responsibilities of relevant agencies who deliver children's services.
- 6.6 The draft Bill contains a number of provisions which confer functions on relevant agencies in relation to the well-being of children and requires them to take action to ensure children get the help they need when they need it.
- 6.7 Key areas covered in the draft Bill include:
- The duties of relevant agencies
 - to assess the well-being of children
 - to take appropriate action to improve a child's situation
 - to consider the views of children and relevant persons
 - to establish arrangements for working together
 - to plan and work together when more than one agency is involved in a child's case
 - to implement supervision requirements set out by Children's Hearings
 - Changes to the grounds for referral to the Reporter and to the Children's Hearing to ensure that children are referred appropriately
 - Changes to procedures for Children's Hearings



Part 1 – Overarching Provisions

Functions of relevant agencies

Well-being of children – Section 1

- 6.8 Section 1 places a range of duties on relevant agencies with regards to the well-being of children. ‘Relevant agencies’ are defined within section 7.
- 6.9 Subsection 1 places a general duty on such agencies to assess the needs of children with respect to their well-being, to identify children who have unmet needs, and to ensure that appropriate action is taken.
- 6.10 Subsection 2 places duties on such agencies in regard to being alert to issues which adversely affect well-being and to promote the well-being of children.
- 6.11 Subsection 3 requires such agencies to act in the best interests of the child concerned and in accordance with good practice (which can be set out by Scottish Ministers within guidance issued by them under section 8).
- 6.12 Subsection 4 provides an illustrative list of things to which reference is to be made in construing what is meant by the term ‘well-being’.

Action as to well-being – Section 2

- 6.13 Section 2 sets out the duties on agencies where they are aware that a child has (or may have) unmet needs.
- 6.14 Subsection 1 sets out a duty on relevant agencies to take action as they consider appropriate when they become aware of a child who has (or who may have) unmet needs with respect to well-being.
- 6.15 Subsection 2 sets out a duty on relevant agencies to take action as they consider appropriate where they are aware that a child poses a risk to the safety of another person.
- 6.16 Subsection 3 provides that any action taken in relation to addressing unmet needs, or in relation to where a child poses a risk to the safety of another person, should be directed towards the child or the child’s circumstances, with a view to improving the child’s situation.
- 6.17 Subsection 4 requires relevant agencies, following the taking of such action, to monitor the child’s situation until satisfied that it is being addressed, and enables them to revise or discontinue the action if appropriate.
- 6.18 Subsection 5 requires relevant agencies to record the decisions they have taken on action and the reasons for those decisions, as well as the action it has taken or proposes to take. This subsection provides part of the framework for action plans.
- 6.19 Subsection 6 provides for action to be single agency or multi-agency.

Considering views of children – Section 3

- 6.20 Section 3 sets out duties on agencies to ascertain and have regard to the views of the child and relevant persons when making decisions as to the well-being of children.
- 6.21 Subsection 1 requires relevant agencies to seek to have means for ascertaining and recording the views of children and relevant persons.
- 6.22 Subsection 2 requires relevant agencies to have regard to the views of the child and relevant persons in taking any material decision for the purpose of the well-being of the child. Relevant agencies may choose to have regard to relevant views of other people.
- 6.23 Subsection 3 requires an agency, when having regard to a child's views, to take account of the age, maturity and capacity of the child. A child of 12 or more years of age is presumed to be able to form views (subsection 4).

Collaborative working – Section 4

- 6.24 Section 4 sets out requirements in relation to agencies collaborating with each other, and details what is to be done in this regard.
- 6.25 Subsection 1 sets out the general duty on agencies to co-operate in discharging their functions under Part 1 of the Bill. These include assessing needs, identifying children who have unmet needs and acting appropriately to improve a child's situation.
- 6.26 Subsection 2 requires agencies to make arrangements for promoting co-operation, evaluating it, and taking part in that process.
- 6.27 Subsection 3 places a duty on agencies to ensure that any arrangements for co-operation have adequate dispute resolution mechanisms.
- 6.28 Subsection 4 sets out the areas with reference to which arrangements for co-operation can be made. It is intended that local co-ordination and monitoring frameworks will be developed locally and are not to be constrained by geographical boundaries. It is envisaged that, for example, a local authority area could have a number of local co-ordination and monitoring frameworks based on geographical configuration of services and other relevant agencies.
- 6.29 Subsection 5 provides an illustrative list of aspects of co-operation.

Joint plans for collaborating – Section 5

- 6.30 Section 5 places duties on agencies when working together to produce joint plans and to appoint a person to take responsibility for implementation of the plan. It is intended that this person will fulfil the "lead professional" role as described in *Getting it right for every child*.
- 6.31 Subsection 1 requires agencies, when working with each other, to adopt a plan. It is intended that this would include a plan for taking action as to the well-being of a child. A person is to be appointed to take responsibility for ensuring that the plan is implemented.



- 6.32 Subsection 2 requires the designated person to record what is done in implementation of the plan.
- 6.33 Subsection 3 allows for the appointment of the designated person to change over time. It is envisaged that the person with such responsibility may change over time according to the needs of the child.
- 6.34 Subsection 4 provides that agencies are required still to meet their responsibilities to a child, notwithstanding designation of a responsible person. Subsection 5 allows these duties to be discharged by means of a joint plan.
- 6.35 Subsection 6 makes provision for review, revision and termination of joint plans.

Extent to which functions are exercisable – Section 6

- 6.36 Section 6 sets out limitations on the duties imposed on agencies in Part 1 of the draft Bill.
- 6.37 Subsection 1 provides that agencies should only do things under these new duties which are consistent with the proper exercise of their other functions.
- 6.38 Subsection 2 provides that agencies' duties extend to children residing in the agency's area. Subsection 3 provides that agencies are not prevented, because of the terms of subsection 2, from acting in relation to children residing in a different area. Subsection 4 defines agency functions for the purpose of section 6. Subsection 5 sets out the geographical limits for various relevant agencies.

Relevant agencies – Section 7

- 6.39 Section 7 defines relevant agencies for the purposes of Part 1 of the draft Bill. Reference is made to public bodies and non-public bodies.
- 6.40 Subsection 1 deals with public bodies. Those which are to be regarded as relevant agencies are local authorities (including their constituent parts), Health Boards, Special Health Boards, National Health Service trusts, and police forces. Subsection 3 allows, by order, Scottish Ministers to specify as a relevant agency any public body.
- 6.41 Subsections 2 and 4 allow, by order, Scottish Ministers to specify as a relevant agency any non-public body whose activities are of a public character and funded wholly or partly at the public expense.
- 6.42 Subsection 5 allows relevant agencies to be specified either individually or by description of type, and either as a whole or to a particular extent.
- 6.43 Subsection 6 sets out the Parliamentary procedure to be followed in relation to any order made by Scottish Ministers under section 7.

Exercise of functions

Guidance – Section 8

6.44 Section 8 makes express provision for Scottish Ministers to issue guidance to relevant agencies on the exercise of their functions under both the 1995 Act and the proposed Children's Services (Scotland) Act. This guidance can include good practice guidance. Subsection 5 obliges such agencies to have regard to guidance issued under this provision.

Equal opportunities – Section 9

6.45 Section 9 requires relevant agencies to exercise their functions in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

Part 2 – Amendment of the Principal Act

Panel members not restricted to own area – Section 10

6.46 Section 10 removes restrictions on panel members sitting outwith their own areas.

6.47 Subsection (1) amends sections 39(3) and (5) of the 1995 Act to allow panel members from another area to sit on a Hearing. It requires that at least one member of the Hearing should be from the area for which the Hearing is constituted.

6.48 Subsections (2) and (3) amend sections 41(4)(i) and 93 of the 1995 Act to reflect these changes.

6.49 Subsection 4 amends Schedule 1 to the 1995 Act so that a children's panel member is eligible to be a member of a Children's Hearing constituted in any area, and makes other administrative provision.

Membership of the SCRA – Section 11

6.50 Section 11 amends the Local Government, etc. (Scotland) Act 1994, removing the Principal Reporter from the Administration (the Board) of the Scottish Children's Reporter Administration.

Legal representatives – Section 12

6.51 Section 12 makes detailed provision concerning appointment of legal representatives, in specified circumstances.

6.52 Subsection 1 introduces a new section 41A to the 1995 Act, setting out the criteria and process for appointment of a legal representative.

6.53 New section 41A(1) places a new duty on the Principal Reporter to consider the need to appoint a person as the child's legal representative to enable the child to participate effectively at the Hearing and, where necessary, to make such appointment.



- 6.54 New section 41A(2) places a new duty on the Principal Reporter to appoint a legal representative where a Hearing decision which includes secure accommodation or a movement restriction condition is likely.
- 6.55 New sections 41A(3) and (4) place a similar duty on the Children's Hearing. The criteria build on the current criteria in the Children's Hearings (Legal Representation) Rules 2002, expanded to include movement restriction conditions and to make reference to warrants and interim supervision requirements as set out above.
- 6.56 In line with existing provision, new section 41A(6) provides that the expenses of a legal representative are to be borne by the relevant local authority.
- 6.57 New section 41A(7) confirms that both a 'safeguarder' (as appointed under section 41(1)) and a legal representative can, if necessary, be appointed for a child. These roles fulfil different functions.
- 6.58 Subsection 2 makes adjustments to Scottish Ministers' power to make rules under section 42 of the 1995 Act, expanding the provision. Other adjustments (subsections 3 and 4) are made to section 70 and section 101 of the 1995 Act to take account of the new section 41A.

Review where child arrested by police – Section 13

- 6.59 Section 13 amends section 63 of the 1995 Act to enable the Reporter to liberate the child from detention in the place of safety while continuing to investigate and decide under section 56 whether to arrange a Hearing.

Disclosure of information – Section 14

- 6.60 Section 14 introduces a new section (46A) to the 1995 Act and enables a Children's Hearing to withhold information about the child where disclosure would be significantly against the child's interests. This applies at any time prior to disposal of the case.
- 6.61 New section 46A(2) provides for the application of this new power relating to disclosure, notwithstanding any requirement obliging an explanation to be given, or information to be provided about the case, or reasons for a decision to be given. In terms of section 46 of the 1995 Act there is a duty on the Children's Hearing to explain the substance of what has taken place to any person who has been excluded from part of the proceedings in order to obtain the views of the child or protect the child from significant distress. The Hearing need no longer provide such information if to do so would be significantly against the interests of the child. When giving reasons for a decision, other than a decision disposing of the case, the Hearing need not include information the disclosure of which would be significantly against the interests of the child.

Grounds for referral– Section 15

- 6.62 Section 15 changes the approach to referral to the Children’s Hearing system. This is primarily set out in new sections 52A (grounds for referral) and 52B (situational condition). The new approach separates the tests for referral (referred to collectively in the Bill as the “grounds for referral”) into three separate elements (referred to in the Bill as “conditions”). These are:
- That the child has unmet need with respect to well-being (“needs condition”)
 - That a relevant situation applies (“situational condition”)
 - That compulsory measures of supervision are necessary in relation to the child’s needs (“supervision condition”)
- 6.63 The needs condition mirrors the duty on agencies in section 2(1) of the draft Bill and is intended to ensure that there is a clear and consistent approach by agencies towards all children.
- 6.64 The new approach is also designed to provide clarity to agencies as to who should be referred by them to the Reporter.
- 6.65 Subsection 1 also introduces new section 52B (situational condition) to the 1995 Act and removes the existing section 52.
- 6.66 New section 52B sets out the 9 factors that can constitute a relevant situation. Some of these factors replicate exactly the existing conditions in section 52(2), for example, 52(2)(b) that the child has failed to attend school. Others have been developed from the existing conditions in section 52(2). They are intended to improve on the existing conditions and to address possible gaps such as self-harm by a child and exposure to domestic abuse. The factors focus on situations where a child may be subject to abuse, harm, ill-treatment, neglect or inappropriate care or supervision and there is a consequent adverse effect on a child’s health, safety or development (section 52B(2)(c), (d), (e) and (f)). Section 52B(2)(g), (h) and (i) focus on where a child is, or may become, part of a household where there is abuse or ill-treatment and (h) explicitly covers the situation of a child being within a household where an adult is subject to domestic abuse.
- 6.67 Section 15(2) of the draft Bill provides for amendment to section 53 of the principal Act. It creates a duty on any relevant agency (as defined in part 1 of the draft Bill) to refer a child to the Reporter where the agency has reasonable cause to believe that the needs condition is met and that the other 2 elements (relevant situation and need for compulsion) may be met. Any other person, including individuals, may refer a child to the Reporter if they have reasonable cause to believe that the three elements of the test may be met. The police retain a duty to refer a child to the Reporter when making a report to the prosecutor.



6.68 Subsections 3 to 9 amend other relevant provisions in the 1995 Act to essentially take consequential account of the changes to the tests for referral described above. The changes will be to sections: 54 (reference to the Principal Reporter by court); 56 (initial investigation by the Principal Reporter); 65 (referral to, and proceedings at, Children's Hearing); 68 (application to sheriff to establish grounds of referral); 68A restrictions on evidence in certain cases involving sexual abuse); 68B (exceptions to restrictions under section 68A); 69 (continuation or disposal of referral by Children's Hearing); and 85 (application for review of establishment of grounds of referral. The markers at subsections 7 and 9 relating to sections 68A, 68B and 85 indicate areas which we know will need to be amended but where finalised drafting has yet to be prepared. Subsections 10 and 11 provide for consequential changes to the Criminal Procedure (Scotland) Act 1995 and the Antisocial Behaviour etc. (Scotland) Act 2004, again to ensure appropriate carry-through of the substantive changes detailed above.

Procedure for establishing grounds of referral – Section 16

6.69 Section 16 provides for an expedited procedure to determine whether the situational condition (see grounds for referral above) is established where the relevant person has accepted the situational condition but where the child is not capable of understanding or has not understood the explanation of the situational condition. The section amends the 1995 Act to introduce new section 68ZA.

6.70 Subsection 2 introduces a new section 68ZA to the 1995 Act. New sections 68ZA(1) and (2) allow the establishment of grounds for referral by the sheriff without a hearing being held for the purpose.

6.71 New sections 68ZA(3) to (6) make provision for when hearings before the sheriff on evidence are to be held. New section 68ZA(7) allows the sheriff, when having a Hearing, to dispense with the hearing of evidence unless satisfied that in all the circumstances of the case the evidence should be heard.

6.72 New section 68ZA(8) sets out time limits for the determination of an application to the sheriff under the expedited procedure. Provision is made for a time limit of 7 days to establish grounds for referral when there is not to be a hearing and if there is to be a hearing for the application to be heard within 28 days. New sections 68ZA(9) and (10) provide for amendments to the 1995 Act apply relevant parts of section 68 of that Act to the expedited procedure.

6.73 Subsections 3 to 5 of section 16 make other adjustments of a technical nature to sections 41, 69 and 85 of the 1995 Act, to include reference to the new section 68ZA.

Interim supervision requirements – section 17

6.74 Section 17 introduces interim supervision requirements as an additional option for the Children's Hearing. This section amends the 1995 Act to introduce a new section 70A.

6.75 New section 70A(2) provides that a Children's Hearing may make an interim supervision requirement provided certain conditions are met. The power to make an interim supervision requirement is without prejudice to any other power under Part II of the 1995 Act.

- 6.76 New section 70A(3) sets out the conditions. The Hearing must be unable to dispose of the case and an interim supervision requirement must be necessary to safeguard or promote the child's welfare.
- 6.77 New sections 70A(1) and (4) provide that the power to make an interim supervision requirement applies at any Hearing other than a Hearing arranged under section 59(2) (Section 59: Initial Hearing of case of child subject to Child Protection Order) and a Hearing arranged under section 63(1) where no situational condition is presented at the Hearing.
- 6.78 The duration of an interim supervision requirement and the making of further interim supervision requirements mirror the provisions for warrants. In terms of new section 70A(5) each interim supervision requirement may last for a maximum of 22 days. Under new section 70A(6) subsequent hearings may issue further interim supervision requirements. Under new section 70A(7) where an application to the sheriff to determine whether a situational condition is established is in process (or has been determined but the Children's Hearing has not yet taken place), the total maximum period for which Hearings may make a child subject to interim supervision requirements is 66 days.
- 6.79 New section 70A(8) provides for the overall maximum 66 day period to take account of any combination of days during which a child is subject to either interim supervision requirement or a warrant.
- 6.80 New section 70A(9) and (11) provide for consequential amendments to the 1995 Act in order to apply to interim supervision requirements some existing provisions relating to supervision requirements.
- 6.81 An interim supervision requirement may include a movement restriction condition under section 70(3)(b). However, new section 70A(10) provides that an interim supervision requirement may not require the child to reside anywhere other than with a relevant person.
- 6.82 New sections 70B(1) to (4) provide for application to the sheriff for a further interim supervision requirement where an application to the sheriff for a finding as to whether a situational condition is established is in process (or has been determined but the Children's Hearing has not yet taken place).
- 6.83 New section 70B(3) provides for amendment to the existing appeal process in section 51 of the 1995 Act. Amendments to section 51(5) expand the options available to the sheriff on appeal to include substituting an interim supervision requirement when an appeal against certain warrants is successful. A new section 51(8A) is added which requires an appeal against an interim supervision requirement to be disposed of within 7 days of lodging.



Duties of agencies regarding supervision requirements – section 18

- 6.84 Section 18 of the draft Bill provides for the insertion of a new section 71B in the 1995 Act creating a new power for a Children’s Hearing to impose duties on any relevant agency.
- 6.85 Section 71B(1)(a) provides that a hearing may impose a duty of giving effect to a supervision requirement in such regards as the Hearing considers appropriate. This provision is based upon the existing provision in section 71(1) of the 1995 Act which places a duty on the relevant local authority to give effect to a supervision requirement, while allowing for an appropriate degree of specification.
- 6.86 Section 71B(1)(b) provides that a hearing may impose other duties for the purpose of enabling a child to comply with a supervision requirement. This provision is based upon the existing provision in section 70(3A) of the 1995 Act which enables a hearing to impose specified duties on the relevant local authority.
- 6.87 Section 71B(2) requires such duties to be set out in the supervision requirement, and details the limits on them.
- 6.88 Section 71B(4) to (11) provide for an enforcement process where an agency appears to be in breach of a duty. The process is based upon that which currently applies in relation to duties imposed on a local authority under section 70(3A) of the 1995 Act.
- 6.89 Section 71B(3) provides for an agency which has had duties imposed on it to be able to request review by a children’s hearing. Further refinement of this subsection and related amendments will take place.

Placing a child in secure accommodation – section 19

- 6.90 Section 19 amends section 70(9A)(a) of the 1995 Act to remove the discretion of the person in charge of the residential establishment, and the chief social work officer of the relevant local authority, where a Hearing specifies that the child is liable to be placed and kept in secure accommodation.

Warrants – section 20

- 6.91 Section 20 of the draft Bill amends sections 66, 67 and 69 of the 1995 Act. It is intended that section 66 should apply where there is an application to the sheriff under section 65 (for a finding as to whether a situational condition is established), with section 69 applying where a situational condition is accepted or established (and no section 65 application is in process). It is intended that warrants under section 45 or 63 should continue to apply in the particular circumstances of those sections.
- 6.92 Section 20(1)(a) amends the conditions for granting a warrant in section 66(2) of the 1995 Act by removing reference to the child failing to comply with a requirement under section 69(3). This reference is moved to section 69(4) by section 20(3)(c).
- 6.93 Section 20(1)(c) removes the requirement in section 66(5) of the 1995 Act for the Principal Reporter to show cause for continuation of the warrant. It also removes the concept of continuing the warrant in force and provides for hearings to issue a fresh warrant. Section 20(1)(d) amends section 66(6) in the 1995 Act to clarify that an order in relation to secure accommodation is contained within a warrant.
- 6.94 Section 20(2) amends section 67 of the 1995 Act to reflect the amendments to section 66.
- 6.95 Section 20(3) amends section 69 of the Principal Act to reflect the amendments to section 66. Section 20(3)(b) provides for a new section 69(2A) to address continuation of a hearing under section 69 for reasons other than for further investigation.
- 6.96 Section 20(3)(d) and (f) are provided to ensure each warrant under section 66 or 69 provides the same authority for action in relation to the child. Section 20(3)(g) provides for a new section 69(9A), clarifying that further warrants may be granted by a hearing.

Part 3 – General

Interpretation – section 21

- 6.97 Subsection 3 defines children, for the purposes of Part 1 of the draft Bill, as persons under 18.

Commencement and short title – section 22

- 6.98 Provision is made for Scottish Ministers to bring the Act into force by order made by statutory instrument and allows for transitional provisions and savings to be made in that order.



7 – Regulatory Impact Assessment

Introduction

- 7.1 This draft Bill seeks to implement the legislation required to deliver *Getting it right for every child*. The draft Bill proposes new duties on agencies and also significant amendment to the Children (Scotland) Act 1995. In summary the following changes are proposed:
- Changes in the criteria for referring children to the Children’s Hearings system.
 - Providing duties for a wide range of agencies to address the needs of children and supporting these agencies to work together in planning to address the needs of children in local co-ordination and monitoring frameworks.
 - Strengthening the Children’s Hearings system.
- 7.2 The draft Bill seeks to improve the outcomes and experience of children who need help. The intention is to deliver improved outcomes for individual children, with resultant reductions in bureaucracy and process for the agencies involved. We also propose changes to the way Children’s Hearings work to ensure that they only take place for the right reason – to consider whether compulsion is necessary.
- 7.3 The following key objectives are intended: children get the help they need when they need it, agencies work effectively together locally to deliver for children in their area, and Children’s Hearings concentrate on those cases where compulsion is necessary.
- 7.4 The Scottish Executive is co-ordinating five pathfinder projects: one regional project in Highland, and four domestic abuse projects in Dumfries and Galloway, Edinburgh, Falkirk and West Dunbartonshire. A key aim of these projects is to identify how *Getting it right for every child* will work in practice. An added benefit is that the information collected via the pathfinder projects on the practical implications of *Getting it right for every child* will provide valuable information on the resource implications of the approach and subsequently inform both the final Regulatory Impact Assessment and the Financial Memorandum.
- 7.5 The pathfinder projects will also provide information about the support that agencies will need from the Scottish Executive in order to deliver the new duties and resultant ways of working proposed in the draft Bill. Gathering this information will allow the Scottish Executive to facilitate and support the large and complex organisational development and transformation agenda that will be required to help ensure that all of the agencies affected by the programme take the necessary steps to improve outcomes for children and young people.
- 7.6 The pathfinder process has been put in place because the *Getting it right for every child* agenda is both broad and ground-breaking, meaning that it is difficult at this stage to accurately quantify the impact of proposals, legislative and otherwise. For this reason, a number of the proposals discussed in this Partial Regulatory Impact Assessment will rely heavily on the pathfinder projects to inform a more detailed cost and benefit analysis in time for the final Bill.

- 7.7 In consultation, many professionals have intimated that there will be resource issues to delivering this project, and these issues have been recently voiced by service users and voluntary sector organisations as well.
- 7.8 *Getting it right for every child* is a long-term agenda of at least five to ten years, which will require support and funding decisions to be made over a period of years in order to deliver fully. The proposed draft Bill is the first step in this process.
- 7.9 In the long term, the intention is for the programme to be cost neutral. However, there are likely to be transition costs in the short to medium term, because the programme will change the way agencies operate and this will be likely to incur costs for these agencies. Over time, resources should rebalance to reflect changing workloads but this will not happen immediately.
- 7.10 Consideration has already been given to the support required to realise the potentially complex organisational changes required to implement *Getting it right*. Key elements already identified are:
- Support for organisational change to deliver the new systems across all agencies.
 - Support and leadership to deliver multi-agency training across the children's workforce.

Consultation to date

- 7.11 As set out in chapter 3, the proposals contained in the draft Bill have already been subject to wide ranging consultation including:
- *Getting it right for every child: The review of the Children's Hearings system (2004)* identified the need for strengthening of the Children's Hearings system and reform of children's services.
 - *Getting it right for every child: Proposals for action (2005)* set out our detailed proposals for reform and was welcomed by those working in children's service and involved in the Children's Hearings system.
- 7.12 The Executive is now taking forward the proposals set out in these documents as explained in Chapter 4, as well as consulting on further change in Chapter 5 of this consultation document.
- 7.13 The work of *Getting it right for every child* is overseen by the a number of mechanisms for involving stakeholders, including the Children's Services Steering Group.

Issues for discussion

- 7.14 The Executive is now consulting on the detail of the draft Children's Services (Scotland) Bill and this Partial Regulatory Impact Assessment (RIA) is part of the consultation. Comment on this partial RIA should therefore also be provided by 31 March 2007.
- 7.15 The purpose of a Partial Regulatory Impact Assessment is not to debate the merits of the draft Bill but rather a preliminary attempt to identify and analyse the benefits, risks, costs and compliance issues arising from alternative options for taking forward proposals that may have implications for resources.



- 7.16 This Partial Regulatory Impact Assessment seeks views on the Executive's provisional conclusions on the nature and extent of additional burdens on agencies that will or might arise from the draft Bill. Views on likely cost implications would be welcomed as would the identification of other aspects of the draft Bill which might create burdens or costs for agencies that have not been identified in this document.

Changes in the criteria for referring children to the Children's Hearings system

Issue

- 7.17 Processing children, young people and their families through criminal justice, Children's Hearing and child protection systems does not necessarily lead to good outcomes. Research evidence suggests that formal measures put in place to tackle low risk offending or low level concerns about children's welfare can sometimes be counter productive. They can lead to alienation of young people and their families from those agencies designed to help them. There is therefore a lack of clarity about when formal systems are needed.
- 7.18 *It's everyone's job to make sure I'm alright: The audit and review of child protection* (Scottish Executive, 2002) found that the original principles underpinning the Hearing system had, to some extent, become diluted by the routine referral of particular types of case and by its use as a perceived alternative route to services.
- 7.19 The key issue is that in many instances children are being referred to the Children's Hearings system when they would be better served by agencies, where possible, not referring them and instead taking action themselves. In the last financial year, over 90% of all children referred to the Principal Reporter do not proceed to a Children's Hearing. There are a wide range of reasons why: there is insufficient evidence to justify grounds for referral; work is already underway with the children and no additional action is merited; the needs of the child do not require compulsory measures of supervision. Inappropriate referrals result in additional processes being activated which require separate reports and bureaucracy, yet no change in the action which might be required to be taken. Resources are being diverted away from the children who need them most, and being absorbed in bureaucratic process rather than directly helping children.

Objective

- 7.20 The objective is that the Children's Hearings system should deal only with cases which meet two tests, focusing on needs and a need for compulsion. This will help to focus resources on those children that need them most.

Risk Assessment

7.21 Potential risks arising from this change are:

- Changes to an established set of criteria for tests for referral may, in the short term, lead to confusion amongst agencies as to where referrals to the Children's Hearings system would be appropriate.
- Agencies and professionals may have difficulties in adapting to the changes, and in particular to getting on and acting when they would previously have referred to the Children's Hearings system. There may be skill, resource or practice issues.

Options

7.22 Options to deal with this issue would be to:

- (1) Continue with the current tests for referral as set out in the Children (Scotland) Act 1995.
- (2) Change the legislative framework to frame tests for referral to reflect more clearly the needs of the child.
- (3) Change guidance and make efforts to influence professional practice to take greater account of the needs of the child (rather than focus on an incident or incidents) in referring to the Children's Hearings system.

Benefits

7.23 As it is the current position, option 1 would have minimal benefits.

7.24 Option 2 provides an opportunity to concentrate on the needs of a child and the appropriate action to produce a positive outcome, rather than on the incident or incidents which have lead to a child coming to the attention of agencies (a Hearing). A number of key benefits will result from this:

- Inappropriate referrals to the Children's Hearings system will be drastically reduced, allowing the Children's Hearings system to focus on children who most need help.
- The new tests for referral will provide clarity about when it is appropriate to refer to the Children's Hearings system. This will result in agencies being clear about when they can get on and take action in the interests of the child, rather than needing to make a referral. This, in turn, will mean that many children will get the help they need more quickly.
- Any reduction in the volume of cases referred to Hearings ought to result in a reduction in the volume of cases being referred to or appealed to the sheriff (an analysis of cases referred or appealed will be required to determine whether this represents a *pro rata* reduction in the courts' workload).

7.25 Option 3 would result in some success in tackling the issue identified in the audit and review of child protection, and would lead to some of the benefits outlined for option 2.



Costs

- 7.26 There are significant opportunity costs associated with option 1. With no change, inappropriate referrals will continue and this will mean that resources continue to be diverted from those children who need them most. From 1996/97 to 2005/06, the number of children being referred to the Children's Reporter rose from 46,497 to 97,607, an increase of more than 100%. However, in the same period, the number of children referred to a Children's Hearings by the Children's Reporter increased by just 9% (up from 13,112 to 14,282). Meanwhile, the number of children made subject to Supervision Requirements – the principal outcome of a Children's Hearings – over the same ten year period rose only by 5%, from 10,743 in 1996/97 to 11,296 in 2005/06 (These figures are taken from SCRA's Annual Report 2005/2006). This demonstrates that there is a lack of clarity amongst agencies as to the nature of compulsion and what is required in a referral to trigger a Reporter to refer a case to a Hearing. Further, it demonstrates a trend over time that increasingly diverts resources away from children who most need help through a Children's Hearing.
- 7.27 There are likely to be short to medium-term costs associated with option 2. The new tests are likely to require agencies to change how they operate, requiring them to commit more resources than previously (eg, to get on and act when previously a referral would have been made). Over time, this should be balanced out by savings within other agencies seeing a reduction in workload – for example, the Children's Hearings system will experience fewer referrals – but there will be a period of adjustment for the whole system before this can happen.
- 7.28 Option 3 would in some respects combine some of the costs of options 1 and 2. Most significantly, it is highly likely that there would be inconsistency between agencies and across regions of the country. There would therefore still be inappropriate referrals to the Children's Hearings system, resulting in the inefficient use of resources. Equally, the lack of uniformity in adopting a new approach is likely to lead to inefficiency, with resultant costs associated not just with adjusting to new tests for referral but also with differing ways of interpreting and responding to the guidance.

Consultation

- 7.29 These new duties have been consulted on in *Getting it right for every child: Proposals for action*. They received strong support, with 66.8% of respondents giving either a clear or qualified yes.

Equality, Equity and Fairness

- 7.30 While there are no direct implications for the issues of equality, equity and fairness, agencies will need to ensure that any referrals which they make to the Children's Hearings system effectively respond to cultural and social differences within different communities, while continuing to act in the best interests of the child.

Monitoring and Review

- 7.31 A number of mechanisms are in place to monitor and review the impact of the proposals. As mentioned in the introduction to this section, the pathfinder projects will provide information about how *Getting it right* will work in practice. Methods to evaluate the programme have been set up, which will be augmented by ongoing research.
- 7.32 In addition, useful data will be provided by the Scottish Children's Reporters Administration, who collect and report information on referrals to the Children's Hearings system.

Summary and Recommendation

- 7.33 As stated in section 7.21, the objective is that the Children's Hearings system should deal only with cases which meet two tests, focusing on needs and a need for compulsion. The only way that this can be satisfactorily achieved is to change the legislative framework, as proposed in option 2.
- 7.34 Though there may be some resource costs in the short to medium term, these will be compensated for by the fact that this option will provide clarity to agencies regarding when to refer and when not to refer to the Children's Hearings system. This, in turn, will:
- Allow the Children's Hearings system to focus on children who most need help.
 - Help ensure that children who do not need to be referred to the system are not referred and instead receive the help they need earlier in the process than may previously have been the case.

References in the Draft Bill

- 7.35 Part 2 of the draft Bill contains proposals to alter the tests for referral to a Children's Hearing.

Review

- 7.36 As mentioned previously, *Getting it right for every child* is a long term programme. Review of these proposals will therefore take place over a 10 year period, in order to fully assess their impact.

Providing duties for a wide range of agencies to address the needs of children and supporting these agencies to work together in planning to address the needs of children in local co-ordination and monitoring frameworks



Issue

7.37 There are a number of issues to be addressed:

- There is a lack of clarity in the system because currently there are only limited and disjointed duties on agencies to address the needs of children. These include the duties on local authorities in the Children (Scotland) Act 1995, duties on education authorities in the Education (Additional Support for Learning) Act 2004 and the NHS Reform (Scotland) Act 2004. These duties do not allow for a wide range of agencies to become involved with the child.
- There is a lack of a coherent framework for co-operation between agencies.
- The current system is not sufficiently explicit regarding multi-agency planning at an early stage in the process, resulting in unnecessary referrals to the Children's Hearings system being made. The current system lacks a consistent process for identifying an individual to co-ordinate and monitor planning, which can lead to barriers to joint working and information sharing.
- Inefficiencies in the current system can lead to unnecessary meetings, referrals, processes, report writing, assessments and plans relating to children, young people and their families.

Objective

7.38 The objective is to maximise and support the role of a wide range of mainstream services (for example nurseries, schools, family centres, primary care services and youth centres) as the front line providers of children's services.

Risk Assessment

7.39 Potential risks arising from this change are:

- The new duties could prove to cover too wide a range of agencies, making them unworkable.
- The duties place too heavy a burden on agencies (particularly but not exclusively small agencies), and specifically on voluntary sector agencies delivering a public function.
- The duties and related enforcement and sanction provisions could produce a blame culture. This could lead to volunteers withdrawing from the system and others being reluctant to take responsibility, for fear of being blamed for 'bad' outcomes.

Options

7.40 In broad terms the options here would be to:

- (1) Do nothing.
- (2) Change the legislative framework to introduce duties on solely public sector agencies.
- (3) Change the legislative framework to introduce duties on all relevant agencies.
- (4) Change guidance and attempt to influence professional practice.

Benefits

- 7.41 As option 1 is the status quo, there will be minimal benefits associated with this option.
- 7.42 Option 2 would allow for positive change and involve the key agencies working towards a common framework. It would address the issues identified above and realise the objective of creating a coherent set of duties. It would create clarity in the system and make mainstream services the frontline providers of children's services. This, in turn, will produce better outcomes for children – with agencies better able to work together earlier and take action earlier to meet their needs. This proposal would reduce the burden on local authorities while focussing on those agencies already geared up (eg, with sufficient resources) to deliver.
- 7.43 Option 3 would produce a range of benefits:
- It would address the issues identified above and realise the objective of creating a coherent set of duties.
 - Like option 2, it would create clarity in the system and make mainstream services the frontline providers of children's services. Again, this would lead to better outcomes for children – with agencies better able to work together earlier and take action earlier to meet children's needs.
 - This proposal would allow for working towards this common framework and would also ensure that a wider and richer range of agencies are involved in delivering a positive outcome for the child removing some of the burden from local authorities as at present.
 - An additional related benefit is that it supports the momentum for the state to provide more services through non-statutory sectors. In the absence of this option, they would not be covered by the same legislation.
- 7.44 Option 4 would provide a mechanism to encourage front line services to become the main providers of children's services. A voluntary arrangement would also, to a large extent, allay any fears about a culture of blame developing.

Costs

- 7.45 The principal cost of option 1 is that the failings of the current system would continue. Too much onus would remain specifically on local authorities to act to meet the needs of children, and inconsistencies would continue in the way agencies work.
- 7.46 Option 2 represents additional duties on public sector agencies and as such may well incur additional costs. This option also fails to pay cognisance to the increasing role of the non-statutory sector.
- 7.47 As with option 2, Option 3 represents additional duties on agencies (in this case all relevant agencies) and as such may well incur additional costs.
- 7.48 Option 4 would not necessarily create a coherent, consistent set of duties across a wide range of agencies. Some agencies would be more willing to voluntarily adopt the proposed new duties than others, leading to inconsistencies and confusion. In addition, the lack of sanction and enforcement powers would make these 'duties' somewhat toothless.



Consultation

7.49 These new duties have been consulted on in *Getting it right for every child: Proposals for action*. They received significant support, with 90% of respondents giving a clear or qualified yes to the proposals.

Equality, Equity and Fairness

7.50 The duties talk about children and the needs of the children. While there are no direct implications for the issues of equality, equity and fairness, agencies will need to ensure that any actions they take to deliver on these duties are compliant with their duties under equality, information sharing and other relevant legislation.

Enforcement and Sanctions

7.51 Enforcement should be by application to the Sheriff Principal where duties are imposed on an agency by a Hearing. There is also the possibility of the Reporter being allowed to take account of the means of a voluntary agency when deciding whether to proceed. Other options are judicial review for public bodies and contractual negotiations for other agencies.

Monitoring and Review

7.52 There will be central guidance around the principles and objectives of local co-ordination and monitoring frameworks. This should be useful in setting up local frameworks and indicating the principles against which ongoing monitoring and review should be tested. Ongoing monitoring and review of these duties will be the responsibility of the accountable officers of the relevant agencies, and also the relevant local co-ordination and monitoring framework.

Summary and Recommendation

7.53 Options 2 and 3 are those most likely to result in a coherent set of duties on a wide range of agencies, making mainstream services the front line providers of children's services. Changing the legislative framework as proposed in options 2 and 3 is necessary to ensure that agencies are given clarity about their functions (including clarity in terms of working with other agencies), are compelled to deliver certain functions and to act consistently when discharging these functions. Neither option 1 nor option 4 will achieve this. Though options 2 and 3 potentially involve some additional costs on a range of agencies, this should be offset against savings for others and most importantly against the improved outcomes for children.

7.54 Of these two alternatives, option 3 would realise most benefits. This option would create a consistent framework for all agencies involved in delivering positive outcomes for the child. As noted in section 7.44, this is particularly important given the increasing emphasis on providing children's services through non-statutory bodies and sectors.

7.55 Work is ongoing to assess the cost implications of these proposals. A number of mechanisms are in place to help achieve a fuller understanding, including the pathfinder projects, discussions with key stakeholders and the draft Bill consultation itself.

References in the Draft Bill

7.56 Part 1 of the draft Bill contains proposals for these recommendations.

Review

7.57 *Getting it right for every child* is a long term programme. Review of these duties will therefore take place over a 10 year period, in order to fully assess their impact.

Strengthening the Children's Hearings system

Issue

7.58 There are several issues to be addressed:

- Phase 1 of the review of the Children's Hearings system identified that there is a lack of public confidence in the system.
- The system lacks a mechanism to ensure that decisions made at a Children's Hearing are enforced, and there is a public recognition that this is the case.
- There is a lack of flexibility in terms of the decisions a Children's Hearing can make.
- There is unnecessary bureaucracy in the system.

Objective

7.59 The overall objective is to introduce a coherent package of measures which will strengthen the Children's Hearings system, providing new and increased options. This is with a view to enabling children to receive the help they need when they need it. This package of measures should, over time, help increase the level of public confidence in the system.

7.60 There are a number of ways in which we wish to strengthen the Children's Hearings system. These are:

- Ensuring that action is taken when a child's plan is agreed at a Hearing.
- Providing a mechanism for a Hearing to make a decision when a final dispositive decision cannot be made.
- Introducing procedures to streamline the establishment of grounds for referral where the child is too young, not sufficiently mature or not able to understand the grounds for referral but the parents accept them.
- Providing a mechanism for the Principal Reporter to consider the provision of legal representation for children, where this is necessary, under current criteria to protect their rights.
- Giving the Children's Hearings the ability to withhold information provided by the child when its release may place the child's welfare at risk.



Risk Assessment

7.61 Potential risks arising from these changes are:

- Lack of accountability for agreeing and implementing the child's plan.
- Confusion over the status of any interim measures made available to Hearings.
- Overuse of the legal representation provision could place a strain on the pool of legal representatives able (in terms of specialist skills and availability of time) to take on this role.
- The overuse (or under-use) of the legal representation provision could undermine the informality of the Hearings system and therefore prevent effective discussion with the child or family at a crucial stage where decisions are being made about the child's rights.
- Lack of clarity about what information could be withheld.

Options

7.62 Options to deal with this issue would be to:

- (1) Do nothing.
- (2) Strengthen the Children's Hearings system by introducing a package of measures in legislation.
- (3) Opt for an arrangement which is somewhere between options 1 and 2 – ie, not all or nothing. This could involve progressing proposals on a voluntary basis (with supporting guidance) in relation to the Principal Reporter to ensure the provision of legal representation and/or in relation to the Children's Hearings withholding information when its release may place the child's welfare at risk.

Benefits

7.63 As it is the status quo, there are minimal benefits associated with option 1.

7.64 There are a number of benefits associated with the option 2 – introducing a package of measures in legislation:

- This would strengthen the Children's Hearings system, with more options and flexibility available.
- Enshrining a coherent package of measures in legislation would provide a strong basis for the new and increased options available to the Children's Hearing, meaning that these would have the weight necessary to be applied consistently and ensuring that relevant agencies would be tasked to deliver what is agreed at a Hearing for children.
- The system would be improved from the perspective of a child and the child's family. There would be less unnecessary bureaucracy and more options to get the child the help and protection they need when they need it.
- Some cost savings are likely in certain areas. For instance, it would seem likely that some saving would be generated by a move to considering cases without the need for a hearing.

7.65 Option 3 would lead to some of the benefits of option 2, with the Children's Hearings system somewhat strengthened as a result.

Costs

7.66 With no change, option 1 will not lead to any of the desired benefits sought from strengthening the Children's Hearings system – and the issues in the current system will remain.

7.67 There will be costs associated with implementing option 2. For instance, there will be resource issues for agencies as a result of the requirement to implement an action plan agreed at a Hearing. There may also, particularly in the short term as the new measures bed in, be an increase in the appointment of legal representatives and/or an increase in the volume of cases appealed to the sheriff as a result of the introduction of interim supervision requirements.

7.68 Option 3 will incur some of the costs of option 2, as there will be the same need for adjustment. There will, additionally, be particular costs to the system if some of the measures outlined in section 7.60 are not taken forward in legislation. There will potentially be inconsistencies across regions and across and within agencies. For instance, there may be variance in practice in terms of children in different areas receiving legal representation. Without legislation, such inconsistencies are likely to persist.

Consultation

7.69 The proposals which have led to the package of measures designed to strengthen the Children's Hearings system have been consulted on in *Getting it right for every child: Proposals for action*. They received significant support, with each proposal receiving a clear or qualified yes from at least 75% of respondents.

Equality, Equity and Fairness

7.70 While there are no direct implications for the issues of equality, equity and fairness, Children's Hearings will need to ensure that the decisions they make effectively respond to cultural and social differences within different communities, while continuing to act in the best interests of the child. This will also be true for agencies in respect of carrying out the actions which have been agreed at a Hearing based on their legal obligations proposed in the draft Bill and under equality obligations.

Monitoring and Review

7.71 A number of mechanisms are in place to monitor and review the impact of the proposals. As mentioned in the introduction to this section, the pathfinder projects will provide information about how *Getting it right* will work in practice. Methods to evaluate the programme have been set up, which will be augmented by ongoing research.



Summary and Recommendation

- 7.72 Strengthening the Children's Hearings system is necessary to give a hearing new decision making options, to reduce bureaucracy and ensure that a Hearing's agreement of an action plan leads to that action plan's implementation. There is significant support for all of these measures.
- 7.73 Legislating on these proposals is the most appropriate way to strengthen the Children's Hearings system. This option is efficient and fair. Anything done on a more voluntary basis would lead to inconsistencies. Option 2 is therefore the most appropriate option as it would create a coherent package of measures to strengthen the Children's Hearings system by introducing new duties and providing new and increased options.
- 7.74 Despite the higher costs associated with this option, it is felt that the benefits in terms of efficiencies, consistency and particularly in outcomes for children would be far greater than would be the case for any of the other options.

References in the Draft Bill

- 7.75 Part 2 of the draft Bill contains provisions to strengthen the Children's Hearings system.

Review

- 7.76 *Getting it right for every child* is a long term programme. Review of these proposals will therefore take place over a 10 year period, in order to fully assess their impact.

Summary

- 7.77 The three recommendations in this Partial RIA fit together to form a coherent framework for children's services and the Children's Hearings system. In isolation, each of the three recommendations would make a positive difference to the system and to outcomes for children. We believe, though, that the recommendations taken in conjunction will create synergies which will have a significant impact, producing a strengthened and streamlined system in which children get the help they need when they need it.

8 – Next steps

The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general, Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Executive consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Executive consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Next steps for the draft Bill

All comments received on these proposals will be carefully considered. They will help the Scottish Executive to prepare the Bill so that it can be introduced early in the next Parliamentary Session, should the incoming administration wish to do so.

A responsee information form is provided at the back of this document. Responses should be completed and returned by 31 March 2007.

Details of how the Bill might progress through consultation, the Parliamentary process and into law are set out below. There is to be an election in May 2007, and the responses to the consultation will be presented to the new Scottish Executive for decision on how to proceed with this proposed legislation. If the legislation is to be taken forward then the Parliament and its Committees have wide discretion, and thus timings for the Parliamentary process cannot be given at this stage.

- The consultation period lasts twelve weeks.
- The Bill is revised in light of the consultation on the draft Bill and additional policies.
- A revised Bill and supporting policies is provided to the new Scottish Executive after the May 2007 election for decision on the way forward.
- If to be taken forward, the revised Bill together with accompanying papers is provided to the Parliament.
- The Bill is then passed to the chosen lead Committee for consideration of the general principles of the Bill. The Committee prepares a report for Parliament.
- Parliament then debates the general principles of the Bill in plenary. The Parliament can approve or reject the Bill at this stage.
- If the Bill is approved, it is then referred to the lead Committee for detailed examination and for the consideration of amendments.
- The Bill as amended is then considered in plenary by the Parliament. It may be further amended at that time. The Parliament may approve or reject the Bill.
- If the Bill is approved it then goes to receive Royal Assent and becomes law.



RESPONDEE INFORMATION FORM

Getting it right for every child: Consultation on the draft Children's Services (Scotland) Bill

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately.

Name: _____

Organisation: _____

Postal Address: _____

Consultation Title: Draft Children's Services (Scotland) Bill

1. Are you responding as: (please tick one box)

- | | |
|--|---|
| (a) an individual | <input type="checkbox"/> (go to 2a) |
| (b) on behalf of a group or organisation | <input type="checkbox"/> (go to 2d) |
| (c) both as an individual and on behalf of a group or organisation | <input type="checkbox"/> (answer 2a to d) |

2a. **Confidentiality: Individuals:**

Do you agree to your response being made available to the public (in the Scottish Executive library and/ or on the Scottish Executive website)?

- | | |
|-----|---|
| Yes | <input type="checkbox"/> (go to 2b) |
| No | <input type="checkbox"/> (go to 3) |

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes):

- | | |
|--|--------------------------|
| Yes, make my response, name and address all available | <input type="checkbox"/> |
| Yes, make my response and name available, but not my address | <input type="checkbox"/> |
| Yes, make my response available, but not my name or address | <input type="checkbox"/> |

2c. It would be useful for us to know your professional background and whether you are a young person. You do not need to provide this information, but it may help us respond to issues which are raised by different professional groupings. If you wish to provide information, please tick all that apply.

Is your professional background in (not compulsory):

- | | |
|------------------|--------------------------|
| Health | <input type="checkbox"/> |
| Education | <input type="checkbox"/> |
| Social Work | <input type="checkbox"/> |
| Voluntary Sector | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

Are you (not compulsory):

- Under 18 years of age
18-25 years of age
26 or over

2d. Confidentiality: On behalf of groups or organisations:

Your name and address as a respondent organisation *will be* made available to the public (in the Scottish Executive library and/ or on the Scottish Executive website). Are you content for the text of your response to be made available also?

- Yes
No

3. We would find it helpful to share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

- Yes
No

Children's Services (Scotland) Bill

Consultation will last until **31 March 2007**. We welcome all contributions to help us produce more effective legislation. Please fill in the form below to record your views. Other views (in addition to the questions) would also be welcome. Please continue on a separate sheet if necessary. Copies of the completed form should be sent to:

Children's Services (Scotland) Bill team
Scottish Executive
2B (South)
Victoria Quay
Edinburgh
EH6 6QQ

Responses can be emailed to: gettingitrightforeverychild@scotland.gsi.gov.uk

Or an online response form is available at www.scotland.gov.uk/childrenservicesbill

Part 1: The draft Bill

Q1 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?

Yes No

Do you have any comments?

Q2 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 to so that children get the help they need when they need it?

Yes No

Do you have any comments?

Q3 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?

Yes No

Do you have any comments?

Q4 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?

Yes No

Do you have any comments?

Q5 Are you content with the definition of relevant agencies (including parts of the voluntary sector) in section 7?

Yes No

What characteristics should make an agency a relevant agency?

If you are responding on behalf of an organisation, should your organisation be included within the definition of relevant agencies?

Q6 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?

Yes No

If your answer is no, please explain why.

Q7 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?

Yes No

If your answer is no, please explain why.

Q8 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?

Yes No

If your answer is no, please explain why.

Q9 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?

Yes No

If your answer is no, please explain why.

Q10 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?

Yes No

Q11 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?

Yes No

Do you have any comments?

Q12 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?

Yes No

Do you have any additional comments on these changes?

Q13 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?

Yes No

Do you have any additional comments on interim supervision requirements?

Q14 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?

Yes No

Do you have any comments?

Q15 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?

Yes No

Do you have any additional comments on the proposed simplification of warrant procedures?

Part 2: Issues for consideration

Q16 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?

Yes No

Do you have any further comment?

Q17 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:

- 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?
- How we could formalise systems to ensure that this happens?
- 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?
- What, if any, legislative requirements do you believe would be required to deliver this?

Comment

Q18 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:

- The Bill as drafted is intended to improve children's rights in Scotland. Do you feel it will do so effectively?
- 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?

Q19 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?

Yes No

If yes, please could you explain why you think this might be the case

Q20 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.

Comment

Q21 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?

Yes No

Comment

Q22 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.

Yes No

Comment

Q23 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.

Comment

Further information on implementation of *getting it right for every child*, can be obtained by contacting
CHRteam@scotland.gsi.gov.uk

© Crown copyright 2006

This document is also available on the Scottish Executive website:
www.scotland.gov.uk

Astron B48601 12/06

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

Telephone orders and enquiries
0131 622 8283 or 0131 622 8258

Fax orders
0131 557 8149

Email orders
business.edinburgh@blackwell.co.uk

