



WE LISTEN, WE SUPPORT,
WE TAKE ACTION
For Scotland's vulnerable
children and families

Children and Young People Bill

Response to call for written evidence

At CHILDREN 1ST, we listen, we support and we take action to secure a brighter future for Scotland's vulnerable children. Our work is built on over 125 years experience as the RSSPCC. By working together with, and listening to children, young people, their families and communities, and by influencing public policy and opinion; we help to change the lives of vulnerable children and young people for the better. We work to safeguard children and young people, to support them within their families and to help them to recover from abuse, neglect and violence.

CHILDREN 1ST has 52 local services and four national services across Scotland, and we work closely with many local authorities as well as working in partnership with other organisations. All our services are child centred. The children, young people and families we support are key partners in all aspects of our work.

We welcome this Bill and believe it is a real opportunity to effect positive change for Scotland's children and young people. We do, however, believe it could and should go much further.

Part 1 – Children's rights

CHILDREN 1ST strongly believes that in order to achieve its policy objective to 'make rights real', the UNCRC must be fully incorporated into Scots Law. We fully support Together's call to strengthen the rights provisions included in the Bill and for full incorporation of the UNCRC into Scots law.

We called for full incorporation in our response to the initial consultation on this Bill, and understand that 40% all responses from children's organisations also did so, despite there being no question about full incorporation in the consultation paperⁱ.

If the Scottish Government were to take this opportunity to fully incorporate the UNCRC into Scot's Law, this would lead to:

- The development of an overarching children's rights framework that influences all areas of policy and practice – this would avoid the inconsistent implementation of the UNCRC we currently see in Scotland across local and national government and a range of public bodies. International experience shows that in countries where there has been incorporation of the UNCRC, politicians, public officials and non-governmental organisations who wanted to advance children's rights had more leverage that helped them ensure the integration of the principles in domestic law and policy. The value of full incorporation is the message that it conveys about the status of children and the knock-on effects for implementation of children's rights principles into domestic law and policy.
- A culture of respect for children and their rights - we know that legislation is an important factor in achieving step change in attitudes and behaviour, and full incorporation would send a clear and important message to everyone in Scotland about how we should value and respect children. This will have a very real impact on the everyday experiences of Scotland's children and young people.
- Effective realisation of the policy objectives in the Children and Young People Bill - the policy memorandum states that 'it is the aspiration of the Scottish Government for Scotland to be the best place to grow up in'ⁱⁱ. This is an admirable and appropriate ambition but we believe that without full incorporation of the UNCRC this will not be possible.
- Fulfilment of the strategic objectives of the Council of Europe's programme "Building a Europe for and with children"ⁱⁱⁱ, something which the Bill in its current form does not do.

We believe that a Child's Rights Impact Assessment (CRIA) should be a statutory requirement to ensure that children's rights are integral in all policy-making at local and national level. CRIs provide a valuable tool for looking at legislation and identifying and measuring its effect on children and young people and permit impacts to be predicted, monitored and, if necessary, avoided or mitigated. CRIs should be used across national and local government in order for policy-making to be meaningful. It is disappointing that the Scottish Government has not carried out a CRIA on this flagship Bill for children and young people.

Part 4 – Named person

CHILDREN 1ST supports the idea of the named person, as we believe it could offer a way to avoid children ‘slipping through the net’ when they are at their most vulnerable, and a useful point of contact for families so they can access advice and services without having to deal with excessive delay or red tape.

We do, however, have concerns about how this would work in practice, and would encourage the committee to consider the following questions:

1. Who are the best people to be named persons, and how will the task be practicable in reality?

Teachers, headteachers and health visitors all experience high caseloads and significant other responsibilities. In order for the role to work, there will need to be significant extra resources allocated.

In addition, consideration must be given to what will happen in the school holidays if a school-based professional such as a headteacher is going to take on the role. If a named person is not available for protracted lengths of time such as the summer holidays or Christmas, when many families experience the most difficulty, this makes the role of the named person nonsensical as it would negate the purpose of creating a safety net for every child.

For some of Scotland’s most vulnerable children it will make little sense for a headteacher to be their named person. These children may have difficulties at school and often be in conflict with the headteacher. Some children and young people may not have a consistent school or may be in and out of secure units or residential care. Life for these children may be chaotic and there may be little consistency in terms of education. In order to be truly child centred, there must be flexibility in terms of who the named person is for each child. It may not always be suitable for this to be a member of school staff for the reasons outlined above. We know the Bill itself allows this flexibility^{iv} but are keen to ensure this is understood at practice level.

We understand that the manager of a secure unit would be the named person for some children. This could be problematic, as many children and young people who go to secure units do not stay for one prolonged period, but move in and out throughout their lives, staying sometimes for just weeks at a time. This would result in transferrals of named persons and there is a worry that some children may fall through the gaps. Frequent changes of named person would not allow the child, young person or family to build a trusting relationship with this adult. In many ways these most vulnerable children are the ones for whom the concept of the named person should be the most useful. As it stands, these children are largely ignored in the Bill.

Evidence presented by the Children’s Parliament highlighted concerns about the named person. Children said: “Everyone is so individual it would be difficult to look after everyone.”, “they’ll be very busy because there’s a lot of people to look after.” Children were concerned about who the named person would be, because “there is no point in picking someone you barely see.” They felt that it should be the same person throughout, and asked if it was possible to change the named person. Concerns were also highlighted about the lack of choice children would have in identifying who would be the named person, because of the private, challenging and potentially upsetting aspects of a child’s life the named person would be involved in.

2. How will ‘ordinary people’ understand the role?

If the named person is really to be the person to whom people pass on any wellbeing concerns, as is our understanding from consultation events we have been involved in, then this needs to be very clear to those who engage with children. This includes members of the community and volunteers such as sports coaches. Guidance will need to make it very clear – in a way which is accessible to everybody - what is expected of volunteers and community members in terms of liaison with the named person and, where appropriate, direct referrals to social services regarding child protection concerns.

We believe it is everybody’s responsibility to protect children, and several of our services work with members of the community and local organisations to encourage and enable them to deal with low level concerns about children and child protection issues in an appropriate manner. We have already been made

aware of confusion among professionals and the public about which person a child protection concern should be raised with. We would be very concerned if ordinary people become confused about who to contact and when about an issue concerning a child, or felt that the role of the named person required them simply to pass on any low level concerns rather than dealing with the issue as it came up. We are very aware that in the current economic climate caseloads are unlikely to become smaller, so if individuals pass their low level concerns to the named person, the named person is unlikely to be able to act on these concerns until they become several and serious. We must ensure that ordinary members of the public understand their responsibilities and feel capable of intervening where appropriate.

It would be helpful when looking at the development of secondary legislation and guidance around the named person to look to where it is already working e.g. Highland for examples of good practice.

Part 4 - Information sharing

We understand the intention behind the information sharing provisions in the Bill, and that in order to make GIRFEC work professionals need to be sharing appropriate information. There has been no consultation on this aspect of the Bill, as it wasn't included in the original consultation paper, which, given the radical change to existing information sharing provisions, is very concerning.

We have some serious concerns about the new information sharing duty for public bodies and service providers, which are outlined below:

1. **Impact on confidential services** - many children and young people use confidential services, to explore their worries and work through their ideas about an issue before they decide to disclose formally about abuse or other problems in their lives. Without these services, many children may never disclose, or this may be delayed, during which time the child is still suffering the abuse. In addition, we know children often retract disclosures if they were not really ready to share in the first place, which puts them in further danger. If the proposed changes are made to the existing information sharing provisions, this could have major consequences for services which currently enable children to speak confidentially.
2. **Child rights** - children have a right to privacy and the same right to confidentiality as adults. We have concerns that the provisions currently outlined in the Bill do not take these rights into account, and could lead to systems driven by compulsion to share information at all times, with very little thought or understanding of the need and reasons for maintaining or breaching confidentiality.
3. **Training needs** - serious case reviews very often point out that relevant information was not shared appropriately, contributing to the harming or death of a child. This is a very serious problem and, in our view, not one that can be solved legislatively. This is an issue for training and staff development – current law does allow the relevant and proportionate sharing of information; the issue is not with the law, but with some professionals' understanding of it, and willingness or otherwise to act on it.
4. **Family involvement** - we are very concerned that there is no duty in the Bill to involve the child, young person or family concerned in decisions to share information. There is thus no balance between children's rights and the need to share information. We feel very strongly that the involvement of children, young people and families in information-sharing decisions should be sought wherever possible.
5. **White noise** – the current proposals would undoubtedly lead to higher levels of information sharing. Because this information would be about wellbeing concerns rather than children at risk of serious harm, there would naturally be more of it, and it would be about a wider range of children. People may want to pass information on to the named person in order to protect themselves, which we know from experience does not protect children. This could lead to 'white noise', whereby information shared about children at risk of harm may be lost in a maelstrom of unnecessary information. Once children realise how much is to be shared about them they may be even more reluctant to talk about 'lower level' concerns, further denying them the supports they need.

Part 5 – Child’s plan

CHILDREN 1ST supports the intention to move to a single planning approach but would suggest that by itself, it will be insufficient to improve outcomes for children. The plan is only one part of the process which is required to help deliver improved outcomes for children. We would also like to see enshrined in statute a duty on public bodies to act on recommendations in a child’s plan. Moreover, there should be a right of legal redress, creating a corporate responsibility on public bodies, for children and young people if or when public bodies do not meet their statutory requirements in terms of creating a single plan.

In order to achieve a real cultural change in which children really are placed at the centre, we would ask that consideration be given to embedding in legislation initial training requirements for key professionals who work with children so that they are trained in attachment theory, child development, the impact of trauma, sexual abuse and in the GIRFEC approach. A key way to begin this cultural shift is through early adoption and immersion of the ‘Common Core of Skills, Knowledge & Understanding and Values for the Children’s Workforce in Scotland’^v which was published by the Scottish Government recently.

CHILDREN 1ST feels that if we are truly trying to take a child centred approach, we should be seeking and taking into account the views of children, young people and their families when putting plans together. We would like to see a duty on local authorities to involve children, young people and families in preparing the child’s plan. There should also be a corresponding duty to support families to enable them to be involved in the planning process. This could include Family Group Decision Making and other activities.

Part 6 – Early learning and child care

We very much welcome the inclusion of a statutory right to pre-school provision for children. We particularly welcome the inclusion of a commitment ensuring two year olds on a Kinship Care Order will be entitled to 600 hours of free early learning and childcare. We do, however, feel that there are some important factors to take into consideration.

We know, from the work we do with children in their early years, and their families, that the most vulnerable families often need more specific supports, including work addressing parenting skills, family relationships, attachment and child development, and substance misuse. This support needs to be flexible, delivered in the home if needs be, and available on a one to one basis. It needs to be asset based and allow the parents to learn and develop from it. For many vulnerable families, these are the kind of services which children need to continue accessing if they are to be “school ready” and just as importantly, have a better start in life.

This kind of more specialist and intensive early years support for vulnerable families is essential. CHILDREN 1ST welcomes universal, increased access to early learning and childcare but this should not come at the cost of more specific services desperately needed by Scotland’s most vulnerable families.

Any proposals around childcare should take into account the need for a truly flexible, family focussed approach. This may well involve early learning and childcare outwith the home (for example in a state-run nursery), but for the most vulnerable families it will often also need to include support for families within their own homes.

In addition, parents and carers who call ParentLine Scotland tell us that the need to improve availability of age-appropriate and affordable childcare for older children is also a major issue; childcare is important throughout childhood and is not limited to early years. This also requires policy attention.

Part 7 – Corporate parents

CHILDREN 1ST welcomes this attempt to improve the standard of corporate parenting across Scotland. We do, however, feel that if the aim of corporate parenting is to ensure that looked after children have the same life chances as those who are not looked after, then the Bill does not achieve this, as it mentions nothing about safety, security, happiness, love or relationships. In short, the corporate parenting responsibilities listed in the Bill do not include many of the expectations we would hope a child should have of his or her parents. Missing from the Bill is any acknowledgement of the need to:

- help children and young people to have key reliable people in their life and develop healthy relationships
- not do things that cause children and young people harm (for example lots of unplanned moves or big changes while they are in care)
- work with children and young people to seek their views on how they are looked after, and caring about and acting on what they think
- work with birth families to ensure children and young people are given every realistic opportunity and necessary support to return home
- be aspirational and have high expectations
- promote and support the physical, emotional, social and cognitive development of a child from infancy to adulthood

Clearly some of these things would be for secondary legislation but we feel it is important to be clear about the definition of corporate parenting at this stage.

We also believe that the list of bodies considered corporate parents is too wide. Some of those on the list, such as SCRA, do not have any day-to-day responsibility for the care of looked after children, or opportunity to carry out the list of corporate parenting responsibilities included in the Bill, so their inclusion on the list makes the concept of good corporate parenting meaningless.

Part 8 – Looked After Children leaving care

CHILDREN 1ST welcomes the provision to extend the age to which care leavers can receive support from their local authority. However, we believe that the bill can and should go further. We would like to see the assessment process in Part 8 being removed altogether; the responsibility should not be on the young person to present as being in need, but for the local authority to provide for the vulnerable young people in its care.

Outcomes for looked after children are very poor in Scotland, and if this Bill is to achieve its aim of being aspirational for Scotland’s children and young people, this must include those in or leaving care. This Bill could represent an opportunity for Scotland to become a global leader in care, but current provisions do not go far enough. We support Who Cares? Scotland’s proposal which calls for the Bill to allow for children and young people who have been looked after to be able to remain in care, or to return to care, up to 26 years of age. This means that the relationships which they held whilst in care up to 16 or 18 years of age could continue, instead of them being severed abruptly in the way they are just now.

We therefore recommend that the inclusion of the following principle for the Bill and detailed guidance to outline what this means should be included: ‘all children and young people are supported to develop long-term, sustainable and nurturing relationships with their families and/or professionals’. We believe that this is the only way to properly tackle and redress the ridiculously poor outcomes which care leavers across Scotland experience.

Part 9 – Counselling services

CHILDREN 1ST welcomes the inclusion of the provision for support services for eligible families, however would like to see this section re-named as Early Intervention services. We believe that the word “counselling”, to describe the relevant services, is confusing and inappropriate. These types of services are not counselling services, but services that support families to ensure beneficial outcomes for the child, such as Family Group Decision Making. We recommend that this section would be better placed to sit in between the Named Person and the Child’s Plan section of the Bill.

Part 10 – Kinship Care

CHILDREN 1ST welcomes the intention of Part 10 to put kinship care on a statutory footing and legislate for the supports and services which local authorities must make available to kinship care families. We are glad that Ministers listened to the concern highlighted by the consultation process and are proposing to incorporate the kinship care order within existing s.11 legislation.

We know from working with and supporting kinship carers through the National Kinship Care Service that there is a need for a broad range of assistance from the local authority. Our engagement activity tells us that kinship carers need:

- Respite from caring; advice, information and support around caring for children; access to free school meals/clothing grants to ease financial pressure; access to leisure facilities; advocacy to navigate through housing, legal, health and educational systems; and advice and support around dealing with contact arrangements between the children and their parents.
- For the older grandparents in particular, knowing what will happen to the child/children should they become ill or pass away is a particular issue. Family Group Decision Making is the obvious support that could be put in place for such families to plan for the future.

For the children, kinship carers tell us they need:

- Counselling/therapeutic services and supports; help to understand and manage relationships with their parents; peer support from other children living in kinship care; access to mental health services; and help to understand the impacts and effects of drug and alcohol misuse.

One of the key issues raised by kinship carers on an on going basis is the need for increased and consistent access to financial support. CHILDREN 1ST is aware, through the role we played in the Financial Review of kinship care, that the Scottish Government hopes to be able to announce recommendations from this review by the end of the year. We would urge Ministers to ensure that those recommendations are considered as part of the wider Bill process and not in isolation. Kinship carers need financial support.

CHILDREN 1ST understands that the detail surrounding the types of support, eligibility for support and the way in which support will be provided will be contained within secondary legislation. We would urge Ministers to have due regard to the outcome of the consultation being undertaken with kinship carers and ensure that the secondary legislation places a duty on local authorities to provide universal services and supports to all kinship carer families in need across Scotland, including those who have existing s.11 residence orders.

We would like to draw the committee's attention to s.65(2)(b) of the Bill. CHILDREN 1ST consider the current definition contained within this section wide and question why it differs from the working definition of kinship carer contained within Regulation 10 of the Looked After Children Regulations 2009. We urge Ministers to ensure that there is consistency across the various forms of legislation relating to kinship care.

Other concerns:

Section 30 "interpretation of Part 4"

CHILDREN 1ST is concerned that the bill uses the Education (Scotland) Act 1980 definition of "parent". This definition excludes some fathers and other carers such as kinship carers. We propose that the term "parent" should be replaced with "relevant person" in accordance with the Children's Hearings (Scotland) Act 2011. It must be noted that if "parent" is changed to "relevant person", then subsequently the kinship care provision should be reviewed, as this section disqualifies parents and guardians from applying for a kinship care order.

For more information about CHILDREN 1ST or any of our national or local services, contact the policy team at policy@children1st.org.uk or on 0131 446 2310.

ⁱ <http://www.scotland.gov.uk/Publications/2012/02/8619/downloads> (accessed July 2012)

ⁱⁱ Para 2. Scottish Parliament (2013) Children & Young People (Scotland) Bill Policy Memorandum

ⁱⁱⁱ http://www.coe.int/t/dg3/children/strategyconferencemonaco/Strategy150512_en.pdf

^{iv} [http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20\(Scotland\)%20Bill/b27s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20(Scotland)%20Bill/b27s4-introd.pdf) s20(1), s21(1)

^v <http://www.scotland.gov.uk/Publications/2012/06/5565>