

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

BRIEFING NOTE

The Children and Young People (Scotland) Bill was introduced to Parliament in April 2013. It was passed on 19 February 2014. It will come into force in stages, with most of the provisions coming into effect in either 2015 or 2016.

The Act is wide ranging in its effect. It places several of the key policy aspects of GIRFEC on a statutory footing, as well as updating and expanding the legal obligations of local authorities and other public bodies in many other areas.

1. GIRFEC

The Act will place some key aspects of GIRFEC on a statutory footing, with these provisions expected to come into force in 2016.

Whilst much progress has been made in implementing GIRFEC across the country through guidance, the Government identified that implementation was inconsistent in some areas. One of the main aims of the Children and Young People (Scotland) Act is to encourage greater progress and achieve greater consistency in the implementation of GIRFEC by creating statutory duties in relation to certain elements of it.

Wellbeing

The concept of wellbeing underpins GIRFEC. It is a key aim of GIRFEC that all agencies should be working with a common interpretation of what wellbeing is. Therefore the Act introduces a statutory definition of wellbeing to assist in achieving that consistency.

At present most legislation relating to children talks about their “welfare”, which is not defined anywhere. The new Act does not replace the concept of welfare with wellbeing. Instead, the two concepts will sit alongside each other.

“Wellbeing” is defined in the Act using the SHANARRI indicators (safe, healthy, achieving, nurtured, active, respected, responsible and included).

There is an obligation to take account of those indicators when assessing whether the wellbeing of a child would be safeguarded, promoted, supported or affected under the 2014 Act. So, in relation to the duties placed on public authorities under the Act, where these require any “assessment” of a child (e.g. an assessment of whether the child needs a child’s plan) or children more generally, this must be done using the wellbeing definition.

The Act also brings the assessment of wellbeing into parts of the Children (Scotland) Act 1995. Where the Council is fulfilling its duties to looked after children, assessing children who may be in need, and providing services to children in need, there will now be a duty to have regard to the need to support wellbeing as well as welfare.

Named Person

Probably the most controversial aspect of the Bill was the decision to place the “named person” on a statutory footing. The Act sets out:

- Who is responsible for providing a named person service for different categories of child:
 - The Health Board for pre-school children;
 - The local authority for school age children (unless they attend independent school, are in secure accommodation or in custody, in which case the school, secure accommodation provider, or Prison Service, as the case may be, are required to provide the named person service);
- What the named person’s responsibilities will be:
 - Advising and supporting
 - Helping to access services
 - Raising/discussing concerns about children for whom they are responsible;
- That other named public bodies (the main ones being local authorities, health agencies, police) will have a duty to help the named person fulfil their functions if asked to do so.

Information Sharing

There are provisions in relation to information sharing to underpin the named person responsibilities. These suggest a shift in the threshold for sharing information towards permitting sharing if that is going to benefit the child’s wellbeing (rather than to prevent significant harm). Whilst the requirements of the Data Protection Act apply, there is helpful Guidance available from the Information Commissioner’s office in relation to information sharing and GIRFEC.

Child’s Plan

The Act requires that a child’s plan be developed for a child who is identified as having a wellbeing need which requires a targeted intervention. A “targeted intervention” is one which is required because the child’s need cannot be met from the usual universal services.

A child’s plan is to be outcome focused, and must identify who is going to provide the intervention to meet the child’s wellbeing need/s.

Except where agencies agree otherwise in an individual case, the Health Board is responsible for preparing the child's plan for pre-school children, and the local authority for all other children. There are also special rules about who is to prepare plans for children who are schooled outwith their home area or in the independent sector and those who are subject to forms of compulsory supervision.

The obligations in relation to the child's plan sit alongside existing legal requirements to have plans for looked after children, and co-ordinated support plans for some children with additional support needs under education legislation. More detail in relation to child's plan will be provided in Regulations and through Guidance.

Children's Services Planning

At present there is a statutory duty on the local authority to prepare a Children's Services Plan. As part of that, consultation with the Health Board and other agencies must take place.

The Act widens out the duties in relation to Children's Services Planning. It contains fairly extensive provisions which regulate both the aims of Children's Services Planning and the process for development, implementation and review.

There is a duty on the local authority and the Health Board to produce a joint Children's Services Plan every 3 years. The Plan must cover all children's services but also what are called "related services". These are services which although not children's services, are capable of having a significant impact on the wellbeing of children. This encompasses not just local authority and health services but also services which are provided by police, fire, Children's Reporter, Children's Hearings Scotland and the Scottish Court Service. These other agencies must therefore be involved in the planning process and be consulted in relation to the development of the Plan.

The Plan must be prepared with a view to securing the following aims:

- That children's services are provided in a way which
 - Best safeguards and promotes children's wellbeing
 - Ensures action is taken at earliest appropriate time and where appropriate is also preventative
 - Is most integrated from the point of view of the public
 - Constitutes the best use of available resources
- That related service are delivered in a way that safeguards, supports and promotes children's wellbeing (subject to that being consistent with the objects and proper delivery of that service).

2. Corporate Parenting

The Act introduces the concept of Corporate Parenting to legislation for the first time, and it is expected that these provisions will come into force in 2015.

Local authorities have always had a duty to safeguard and promote the welfare of looked after children. Other public bodies have no such duty. In 2009 Guidance was issued which described how community planning partnerships could approach the idea of corporate parenting (“These are our Bairns”). The Act will now significantly extend the number of public bodies subject to a legal duty in relation to looked after/formerly looked after children.

A range of public bodies will become “Corporate Parents” under the Act. This will include local authorities, Health Boards, SCRA, Children’s Hearings Scotland, the Principal Reporter, Chief Constable and the various inspection bodies. Scottish Ministers are also included, as are a range of other national agencies whose work directly or indirectly affects children (e.g. Mental Welfare Commission, Creative Scotland, SQA, Scottish Legal Aid Board).

Which Children and Young People are affected?

The Corporate Parenting duties will apply in relation to children and young people who:

- Are looked after; or
- Who are between 16 and 26 and were looked after at their 16th birthday

There is scope for the Scottish Ministers to add to the categories of children and young people (under the age of 26) who will be covered by the duties.

The Corporate Parenting Responsibilities

The Act sets out a number of duties on Corporate Parents, which are:

- To be alert to matters which might adversely affect the wellbeing of children and young people covered by the duties;
- To assess the needs of those children and young people for services and support the Corporate Parent provides;
- To promote the interests of those children and young people;
- To seek to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing;
- To take action to help those children and young people access those opportunities and to make use of services and support the Corporate Parent provides;
- To take such other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to children and young people.

There is also a duty on Corporate Parents to collaborate with each other when exercising their corporate parenting responsibilities.

Planning and Reporting by Corporate Parents

A Corporate Parent will have to prepare a plan showing how it proposes to exercise its corporate parenting responsibilities. That plan must be kept under review. Corporate Parents will also have to consult prior to preparing or revising plans. Plans will also have to be published.

Corporate Parents will have to report on how they have exercised their responsibilities. Reports will be expected to include information about performance and outcomes.

3. Early Learning and Childcare

The Act extends the provision of early learning and childcare provided by local authorities through a number of measures:

- An increase in the minimum provision of free pre-school education for 3-5 year olds from 475 hours to 600 hours per annum. This will take effect from August 2014;
- A duty to provide this over no less than 38 weeks of the year by way of sessions which are between 2.5 and 8 hours duration;
- A duty to have regard to the desirability of ensuring that provision is flexible enough to allow parents an appropriate degree of choice when deciding how to access the service;
- Extension of the provision of free pre-school education provision to children aged 2 who are looked after or subject to a kinship care order;
- A duty to consult and plan on the delivery of early education and childcare.

4. Services in relation to children at risk of becoming Looked After

There is a new duty on local authorities to make “relevant services” available in cases where children are at risk of becoming looked after, which is expected to come into force in 2015.

Whilst there is already a duty to provide services to children identified as in need, this is a general duty and does not create any specific right to receive particular services. This new duty to provide relevant services creates a duty to provide specific services to certain people.

“Relevant services” is fairly widely drafted and means the provision of information, advice, counselling or any other action.

The duty to provide relevant services arises in relation to

- Children who are at risk of becoming looked after;
- Parents/carers and relatives of such a child;
- Pregnant women and their partners where the child will be at risk of becoming looked after when born.

5. Aftercare and Continuing Care

Councils already have duties to provide aftercare to young people who were “looked after” at school leaving age. The current duties are also underpinned by Guidance and Regulations which specify the level and type of support to be provided to children falling into certain categories.

The 2014 Act significantly impacts on the current provisions.

- The most significant change is that the age limit for the provision of aftercare is to be raised from 21 to 26.
- More robust obligations to provide advice, guidance and assistance for 19-26 year olds. Currently, a local authority must provide after care for 16-18 year olds who were looked after at school leaving age or subsequently. There is a separate power to provide aftercare for 19-21 year olds but the local authority has discretion about whether to use that power. The new Act changes that significantly. Where a young person aged 19-26 has asked for assistance, the local authority will have to assess that person’s needs and then must provide the young person with such advice, guidance and assistance as it considers necessary to meet “eligible” needs.
- Powers to make grants to formerly looked after young people for education and training purposes have also been similarly amended so they apply to those between 16 and 26.

The Act also creates a completely new legal duty to provide “continuing care” to formerly looked after children in certain circumstances. This is a significant new duty and will have financial and operational consequences for the Council. The duty to provide continuing care will arise in relation to young people aged between 16 and 21 when they cease to be looked after. In such cases, the Council will have a duty to provide “continuing care” for the young person.

“Continuing care” means the same accommodation and other assistance as was being provided for the person by the Council immediately before the person ceased to be looked after.

A specialist group is being established by the Scottish Government to consider the impact of this new duty and how it might work in practice. There is also an opportunity for Regulations to be made which modify the various legal tests, and this may be a vehicle which is used to further clarify the scope of the duty.

It is expected that these provisions will come into effect in 2015.

6. Support to Kinship Carers

There is already a clear statutory framework which regulates support to kinship carers where children are looked after. In relation to children who are not looked after, local authorities have power to provide assistance and support, but no duty to do so.

The Act introduces a duty on local authorities to provide “kinship care assistance” in some cases where the child is not looked after, but is at risk of becoming looked after. The duty will apply where the child is at risk of becoming accommodated and the child is subject to court orders relating to parental responsibilities and rights or where someone is intending to apply for such an order.

Kinship care assistance is to be provided to the child, a person who has an order, a person who intends to apply for an order or a legally appointed guardian.

“Kinship care assistance” has yet to be defined but may include provision of

- Counselling, advice or information
- Financial support
- Subsidised services

This is one of the aspects of the Act where there has been significant disagreement about the likely financial impact on local government. Until Regulations are published which further define kinship care assistance, the full impact will likely remain unclear. It is expected that these provisions will come into effect in 2015.

7. Rights of Children and Children's Commissioner

The Act contains provisions about the rights of children and young people. The UN Convention on the Rights of the Child does not have direct effect in Scots Law. However the Act seeks to give it wider recognition by

- Obliging the Scottish Ministers to keep under consideration whether there are any steps which could be taken to give the Convention better effect in Scotland;
- Obliging the Scottish Ministers to promote public awareness of the rights of children;
- Obliging the Scottish Ministers and public bodies (local authorities, Health Boards, police and many others) to report on what steps they have taken to secure better effect of the Convention's requirements.

The Act also extends the powers of the Children's Commissioner by enabling him to conduct investigations into the cases of individual children. At present he can only undertake investigations into issues affecting children in general.

8. Scotland's Adoption Register

The Act introduces a new national Adoption Register. Local authorities will be obliged to use the Register for the purposes of facilitating adoption of children where that has been identified as the permanence route for a child. It will not be a public register, but one accessed by adoption agencies (which includes local authorities). Both children and prospective adopters will be placed on the Register.

9. Other Measures

The Act also contains a number of other changes to existing legislation. These include:

- Changes to the statutory consultation process in relation to closure of schools. This will particularly impact on rural schools, and the changes give effect to some of the recommendations from the Rural Schools Commission;
- Changes to the Children's Hearings (Scotland) Act 2011 which in the main tidy up issues identified following implementation of that Act in June 2013. There is one significant change for local authorities. There are already arrangements in place whereby local authorities provide support in relation to Children's Panel members to the National Convener of Children's Hearings Scotland. The 2011 Act is amended to

place a duty on local authorities to provide such support “as the National Convener considers appropriate” which may have resource implications;

- Changes to the legislation relating to school meals to pave the way for the introduction of free school meals for P1-3 pupils;
- Some amendments to the rules which regulate performances by children.

Aberdeen City Child Protection Committee acknowledges the assistance of Perth and Kinross Child Protection Committee (CPC) in relation to this document.