

**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.

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

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

- (a) an individual  (go to 2a)  
 (b) **on behalf of** a group or organisation  (go to 2d)  
 (c) both as an individual and on behalf of a group or organisation  (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  (go to 2b)  
 No  (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   
 Yes, make my response and name available, but not my address   
 Yes, make my response available, but not my name or address

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   
 Education   
 Social Work   
 Voluntary Sector   
 Other

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](mailto:gettingitrightforeverychild@scotland.gsi.gov.uk)

Or an online response form is available at [www.scotland.gov.uk/childrenservicesbill](http://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

**The concept of well-being is helpful. We believe the definition might be improved by including reference to Education and learning opportunities given that Education is one of the major factors which promotes well-being and improved outcomes for children and young people. It would also be useful to try to tie in the definition with that contained in other current legislation, for example The Additional Support for Learning Act. Hopefully the guidance will give detailed examples of definitions to try to ensure consistency nationally across agencies.**

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  Partly

Do you have any comments?

**Although we believe that the intention of these sections is to formalise good practice, whether this proves successful will largely depend on detailed guidance. There is considerable room for interpretation by different agencies and there needs to be clarity about how situations where agencies have differing views of a situation or the needs of a child will be resolved. Relevant agencies also need to be more clearly defined. It is noted that SCRA is not included and it would be important to also include voluntary agencies and the Scottish Courts Service. Agencies whose primary client group are adults but where there is cross-cutting with children's services would also need to be included. The involvement of the voluntary sector is particularly important when duties may now fall to those agencies. This would be an issue for, for example, residential schools.**

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  Partly

Do you have any comments?

**While the integrated assessment framework sets out to provide a framework for formal planning and evidencing the actions taken, there are numerous issues regarding implementation and monitoring which need to be addressed. We expect that these**

**issues will be dealt with in guidance and think that the outcome of the pathfinder pilots should be instructive in this regard.**

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?

**We can see that the Bill is making effort to formalise good practice which would be tested out throughout implementation and monitoring of the Integrated Assessment Framework. However, fundamentally it is flawed by its own complexity and it is to be hoped that guidance will give this the clarity that is required. In particular, the resolution of disputes where there may be different views on responsibility for provision of resources needs to be tackled.**

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?

**Clarification is required on definitions and no doubt respondents will be offering suggestions about other agencies who should be included. For example, private fostering, residential schools, agencies who deal with adults who have responsibilities for the care of children such as Addiction Services.**

**There are still issues for some agencies around information sharing when dealing with "children in need" as opposed to child protection issues.**

**The characteristics of an agency which would make it a relevant agency should be that their staff or representatives (whether paid or not) have contact with children. This contact could be face to face, by telephone, over the internet or any other communication medium. A relevant agency should be one that develops and delivers services to children or to adults who have the care of children or regular contact with them.**

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

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  No view expressed

If your answer is no, please explain why.

**As there is no indication in the material provided for this consultation process which makes a case for or against this proposal we feel unable to comment.**

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.

**There is no doubt that if a child is at risk of being deprived of their liberty then legal representation should be available. However, there are particular practical issues which will need to be resolved, probably requiring a duty legal representation scheme to be set up. It would be particularly concerning if decisions could not be made in respect of a child because of the lack of legal representation. (Perhaps leading to them being held in poorer circumstances than if that decision were made.) There are concerns also that there is a risk of undermining the ethos of the Hearing System if the appointment of legal representatives becomes more common place.**

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.

**We welcome this provision. It should serve to protect children's rights and their best interests.**

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

**We think that this section is a reasonable attempt to clarify the situation and is an improvement on what is currently available.**

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?

As for Q.10

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?

**We consider this to be a positive recommendation and should help to expedite the process of proof hearings.**

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?

**Interim supervision requirements might prove to be a useful additional option. We wondered whether there was a possible conflict in the legislation as drafted. Section 12 2 (b) (ii) states that an interim supervision requirement could be used to exercise the power mentioned in section 70 (9A) (b). However, section 17 (10) states that an interim supervision requirement may not provide that a child reside otherwise than with a person who is, in relation to the child, a relevant person.**

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  Partly

Do you have any comments?

**On the positive side, this is clearly an attempt to standardise duties and responsibilities across agencies.**

**Timescales are different between this proposed legislation and the ASL Act.**

**We are concerned about implications for relevant agencies in fulfilling duties imposed by a condition of a supervision requirement, for example, the impact on waiting lists for access to some services. There is a possibility that this legislative provision could be used to bypass processes which prioritise need and be seen as a "shortcut" to services, potentially to the detriment of other people in need.**

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?

**In general these provisions are welcomed as simplification and clarification of the warrant process will undoubtedly be beneficial.**

**However, we noted that the change in the legislation regarding making a supervision requirement with a secure condition would now not require the agreement of the person in charge of the establishment and the chief social work officer. This is not the position in respect of warrants and it would be useful to know why that difference has been made and also consider the implications of the move away from considering the view of the head of the establishment and chief social work officer.**

**Given that secure accommodation is likely to remain a resource which requires to be allocated against conflicting priorities, there are concerns that this consideration might be lost if the only criterion for admission is the date of making of an order. We think this will lead to the need for such accommodation to be allocated and resourced centrally.**

## **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?

**The proposals contained within the draft legislation are seen as helpful and useful in addressing issues which have arisen.**

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

**We should be looking at the outcome of research and previous pilot initiatives (such as the youth court) and the outcome of the Youth Justice Improvement Programme.**

**The Pathway Planning Model for Throughcare and Aftercare provides a good structure on which to have transitions for this group of young people.**

**The context in which this work should be carried out is effective links and joint working between Children's Services and Adult Criminal Justice Services.**

**It is clear that within this context that work has to be done in extracting the best of both systems i.e. the developmental model that exists within child care and the most structured approach from adult services. Some of the young people in this transition phase are so immature that they will have real difficulties in coping with the expectations of adult services, thereby catapulting them quicker into custodial options.**

**What is needed is some research into a 'what works' agenda for young people in this situation.**

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?

**This might be clearer when guidance is available.**

- 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?

Yes

**It seems unlikely that any legislation will be able to adequately address the balance that needs to be struck between rights and responsibilities but some of the language used in this proposed legislation seems particularly open to challenge.**

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

**There is nothing within the legislation as framed which would seem to impact on equality in any detrimental way.**

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

**We do require legislative provision in respect of duties which would need to be accepted by all agencies, particularly as this is not now contained within the Protection of Vulnerable Groups Bill.**

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

**The definition of a child in need in existing legislation is now rather narrow and we think that this new bill gives a good opportunity to redefine. It would make sense to align the definition of need more closely to that of well-being and to the definitions in other relevant legislation, such as ASL.**

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

**While we welcome actions to ensure that children get the right help at the right time and acknowledge that this is not just about resources, the resource implications cannot be ignored.**

**Our experience of working on early identification and intervention is that although some children have their needs met and the problem is resolved, (leading to savings for other services), this is normally easily outweighed by the opposite effect of identifying more children who require a service thus increasing demands on resources.**

**The Midwinter report highlighted the significant long term under-investment in children's services and the rise nationally in factors which contribute to children being**

**in need, placing increasing demands on service. This must be addressed for the desired outcomes of this legislation to be secured.**

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

**There are a number of general points we would like to make regarding the legislation and how it has been framed. These comments should be used to inform all previous answers.**

**1.The principles upon which this bill has been drafted are welcomed. However, the guidance which will follow on from this legislation is crucial to how these ideas would be put into practice. In responding to individual questions it is clear that only the detail contained in the guidance would offer the opportunity to make more informed comment.**

**2. Some of the language used in the legislation is unusual and we would be concerned that it would be open to challenge. Phrases such as "every relevant agency must do it's best" and "endeavor to be alert" are particular examples of language which would be open to interpretation and potentially open to challenge in law.**

**3.It would have been useful to have discussion informed by the results of the pathfinder projects and we believe that it is still important that lessons learned from the pathfinders be incorporated into future work on the guidance for this legislation.**

**4. The role, responsibilities and powers of the lead officer require clarification in the guidance. Whichever agency that person comes from there is undoubtedly a resource implication in taking on this task and for some agencies there will be very considerable duties not currently undertaken and a training requirement.**