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Consultation on a proposal for a Children and Young People Bill



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

Please key F11 to move between fields

1. Name/Organisation

Organisation Name

East Lothian Council

Title Mr Ms Mrs Miss Dr *Please tick box as appropriate*

Surname

Forename

2. Postal Address

John Muir House

Brewery Park

Haddington

Postcode EH41 3HA

Phone
01620 820118

Email
vmcvie@eastlothian.gov.uk

3. Permissions - I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (d) We will share your response internally with other Scottish Government 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 Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

4. Background

In analysing your response, it would be helpful to know your background. Please indicate the area which best describes your involvement with children from the options below.

Please tick box as appropriate:

- | | |
|------------------------|----------------------------|
| Early Years | X <input type="checkbox"/> |
| Education | X <input type="checkbox"/> |
| Health | <input type="checkbox"/> |
| Justice | <input type="checkbox"/> |
| Parent/Carer | <input type="checkbox"/> |
| Police | <input type="checkbox"/> |
| Social Work | X <input type="checkbox"/> |
| Sport and Leisure | <input type="checkbox"/> |
| Voluntary Organisation | <input type="checkbox"/> |
| Other | <input type="checkbox"/> |

Preliminary Comments:

We welcome the intention behind the direction of travel and support some of the measures contained within the proposed bill. However we do not support the idea of legislating for GIRFEC (as distinct from children's rights) which has always been described as an approach, and which is as much about changing culture and practice as it is about changing systems. We also have a concern that embedding aspirations into legislation could bring about unintended consequences of interpretation and, without due consideration of how they can be resourced, could tie up time and money defending, disputing or justifying actions.

CONSULTATION QUESTIONS

1. A SCOTLAND FOR EVERY CHILD

More effective rights for children and young people

1. Do you feel that the legislative proposals will provide for improved transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children's rights?

We agree that the legislative proposals will provide increased transparency and scrutiny. We welcome the accountability of reporting on a three yearly basis.

2. On which public bodies should a duty to report on implementing children's rights be applied?

Local Authorities, Education Authorities and NHS Trusts and Police

3. Do you agree that the extension of the Children's Commissioner's role will result in more effective support for those children and young people who wish to address violations of their rights?

At present the only challenge for a child is through judicial review. This is a cumbersome procedure involving both solicitors and advocates and often QC's, and is not at all child-friendly. We therefore welcome the idea of the Children's Commissioner being able to take up individual cases, provided this was additionally resourced. However, we wonder whether in the interests of natural justice there should be an independent adjudicator to whom the commissioner could present their case if they felt that the child's rights had been breached. As the proposals stand the Commissioner would be acting as representative of the child, investigator, prosecutor and potentially decision maker.

If we are serious about embedding the implementation of children's rights into the work of public bodies, then it would be important to ensure that routes currently available to adults for redress (such as the work of the Equalities and Human Rights Commission / the Public Services Ombudsman) were made available to children as well.

A new focus on wellbeing

4. Do you agree with the definition of the wellbeing of a child - or young person - based on the SHANARRI Wellbeing Indicators, as set out in the consultation document?

We are wary of legislating so specifically, as distinct from children's rights, which we welcome. We think that the wellbeing indicators are probably as good way of defining wellbeing as any that exist, given that they are based on the UN Convention on the Rights of the Child and are adequate for the current (non-legislative) Getting It Right agenda. The indicators have their limitations, and we have concerns that if they were used as a basis for legislation, this would bring unintended conflicts and consequences.

5. Do you agree that a wider understanding of a child or young person's wellbeing should underpin our proposals?

We cannot argue with wellbeing being an important concept, but have not had a problem with s17 and s22 of the Children (Scotland) Act 1995 and do not see a need for the wording to be changed.

Better service planning and delivery

6. Do you agree that a duty be placed on public bodies to work together to jointly design, plan and deliver their policies and services to ensure that they are focussed on improving children's wellbeing?

Yes

7. Which bodies should be covered by the duties on joint design, planning and delivery of services for children and young people?

From your list we would suggest:

Local authorities
Police
Health Boards
NHS Health Scotland
NHS 24
Care Inspectorate
Scottish Prison Service
Scottish Enterprise
Skills Development Scotland
SportsScotland
Transport Scotland

but see our response to question 8

8. How might such a duty relate to the broader Community Planning framework within which key service providers are expected to work together?

It would make the duty more explicit for those services which are not routinely part of Community Partnership boundaries. The work should reflect recent community empowerment and health and social care consultations

Improved reporting on outcomes

9. Do you agree that we should put in place reporting arrangements making a direct link for the public between local services and outcomes for children and young people?

Yes, provided these are managed via the Integrated Children's Service Plan. The outcomes have to be embedded in the Single Outcome Agreement.

10. Do you think that these reporting arrangements should be based on the SHANARRI Wellbeing Indicators as set out in this consultation paper?

We are very supportive of the idea of a national standard but have reservations about only using the Wellbeing indicators. These are artificial delineations which attempt to cover the whole child but they contain cross-overs and duplications (see the duplications contained within the "outcome signifiers" from the Wellbeing guide to measuring meaningful outcomes published on the Scottish Government website).

11. On what public bodies should the duty for reporting on outcomes be placed?

The reporting arrangements should be made on a joint basis and should mirror the bodies referred to at answer 7, The work should reflect recent community empowerment and health and social care consultations

2. A SCOTLAND FOR EACH CHILD

Improving access to high quality, flexible and integrated early learning childcare

12. Do you agree that the Scottish Government should increase the number of hours of funded early learning and childcare?

We agree in principal with this proposed increase which will assist many families. However, we need to be aware of practical complexities which may arise e.g. difficulties in more rural areas where transport plays a key factor.

13. Do you agree that the Scottish Government should increase the flexibility of delivery of early learning and childcare?

While it may prove difficult to deliver, we agree in principle with the move towards flexibility. Flexibility of provision is a key element to success to ensure that parents/carers have choice and can assess the best provision available to meet their child's needs - this may be in the school holidays and in the local community rather than being limited to term time and based around the schools. We would wish the flexibility to include the possibility of working with the parents where the child is particularly vulnerable.

14. Do you think local authorities should all be required to offer the same range of options? What do you think those options should be?

No – we require local flexibility, to enable us as an authority to be responsive to the needs of our different communities. There is not a one size fits all as each local authority faces and responds to its own challenges, reflecting its own Single Outcome Agreement, locality planning etc.

15. How do you think the issue of cross-boundary placements should be managed, including whether this might be through primary or secondary legislation or guidance?

We would prefer local agreement and guidance for any cross-boundary issues relating to early learning and childcare provision.

16. Do you agree with the additional priority for 2 - year olds who are 'looked after'? What might need to be delivered differently to meet the needs of those children?

We would prefer if the initiative could be widened to include vulnerable children *before* they become looked after – i.e. for those in need under s 22 Children (Scotland) Act 1995 - and thus provide intervention at an earlier stage.

We welcome this initiative for children looked after at home, as these children may be very vulnerable and, as such, benefit from being in an environment which offers socialisation and stimulation. We would however be concerned if the provision of a nursery placement for a two-year old was dependent on the child remaining a looked after child for the whole of that year – we would not want the placement to terminate if they ceased to be looked after at some point during that year, only to start again once they reached the age of three.

We also welcome this initiative for some children accommodated with kinship carers (depending on the nature of the placement) but would not be supportive of it for two-year olds accommodated with foster carers.

The Named Person

17. Do you agree with the proposal to provide a point of contact for children, young people and families through a universal approach to the Named Person role?

We agree with a unified national approach to the division of responsibility for a Named Person between Health for pre-school children and Education for school-age children, building on For Scotland's Children.

18. Are the responsibilities of the Named Person the right ones? Are there any additional responsibilities that should be placed on the Named Person?

We do not think the responsibilities of the Named Person are the right ones. The role appears to us to have strayed rather too much into the territory of Lead Professional particularly in relation to planning. (We suspect this has been caused by the decision to avoid legislating for Lead Professional.) It almost contradicts previous guidance received on Lead Professional and Named Person and is confusing.

We also believe that it is unduly onerous to have to tell every child, young people and their family who their Named Person is. For the majority of children in Scotland, their own parents will successfully fulfil any tasks which only a minority of children will require a Named Person to carry out.

19. Do you agree with the proposed allocation of responsibilities for ensuring that there is a Named Person for a child at different stages in their lives set out in the consultation paper?

We are in general agreement but there needs to be more guidance on what happens in transition stages particularly with disabilities and youth justice work.

As discussed in 18 above, we feel that there is an over-emphasis on the role of the Named Person, and this may lead to confusion with the role of the Lead Professional. Does the Named Person still exist if there is a Lead Professional? And, if so, what is the Named Person's role? Our guidance and training for staff has focussed equally on the role of the Lead Professional at times of transition.

20. Do you think that the arrangements for certain groups of school-aged children as set out in the consultation paper are the right ones? What, if any, other arrangements should be made? Have any groups been missed out?

We have some reservations about the proposals for school leavers. There is a need to tighten up on the whole area of home education. The Named Person for home educated children needs to be really well thought through

There is no mention of young carers.

There is no mention of asylum seekers. How does this affect unaccompanied minors? For this group the Named Person should be a lawyer/advocate.

The Bill states that plans are being taken forward for developing Lead Professional role (see page 43). We would have liked much more information on Lead Professional role at this stage.

The Child's Plan

21. Do you think a single planning approach as described in the consultation paper will help improve outcomes for children?

Yes, but we do not believe this will work without the repeal of existing statutory requirements such as the Co-ordinated Support Plan.

In addition, if plans are to grow and develop through the life of a child, many will need to start being built by health as the universal service for the under-fives, and to be added to in turn by other services. There is therefore the need for more joined up IT systems and for these to be developed by the Scottish Government.

22. How do you think that children, young people and their families could be effectively involved in the development of the Child's Plan?

Children young people and their parents need to be involved as fully as possible but there are issues when one's rights contradict the other's e.g. if a child doesn't wish the parent to see the plan.

Right to support for looked-after children

23. Do you agree that care-leavers should be able to request assistance from their local authority up to and including the age of 25 (instead of 21 as now)?

We welcome this if funding can be agreed.

Corporate Parenting

24. Do you agree that it would be helpful to define Corporate Parenting, and to clarify the public bodies to which this definition applies? If not, why not?

Yes

25. We believe that a definition of Corporate Parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection for looked-after children and to act in the same way as a birth parent would. Do you agree with this definition?

We fully support the intention to widen corporate parenting to a collective responsibility across a range of public bodies. We would suggest adopting the term “Community Parenting” to recognise the role of the wider Community Planning Partnership and local communities.

We believe there should be some reference to giving *additional* support opportunities and encouragement to LAC children.

The actions of birth parents cover a wide spectrum of behaviour so we think the phrase “birth parent” should be preceded by the word “good...” or “supportive...”.

Kinship care

26. Do you agree that a new order for kinship carers is a helpful additional option to provide children with a long-term, stable care environment without having to become looked after?

Although it is important to recognise the key role kinship carers play in stopping children becoming looked after, we are not sure how this new order would differ in any substantial way from the possibilities available under a residence order. The

only difference we can see is your proposal to make financial responsibility lie with the Local Authority – in other words, to get past the current financial anomaly which confuse and upsets many Kinship Carers of non-Looked After children. We do not agree with this proposal as we believe that responsibility for any additional financing of this group of children should lie with central government under the welfare system.

27. Can you think of ways to enhance the order, or anything that might prevent it from working effectively?

It would have to be clear that the Local Authority could not apply for this order on behalf of a kinship carer. Local Authority lawyers could not act on behalf of or provide legal advice to kinship carers because of restrictions on their practising certificates.

Adoption and permanence

28. Do you agree that local authorities should be required to match adoptive children and families through Scotland's Adoption Register?

Where it is possible to match "in-house", this should be sufficient without requiring to go through the Register. We think all local authorities should be encouraged to join the Register and to refer children and families they are unable to match "in-house" but do not agree that local authorities should be *required* to match through the Register.

Better foster care

29. Do you agree that fixing maximum limits for fostering placements would result in better care for children in foster care? Why?

We agree that fixing numbers in any foster care placement results in better care. Fostering households with more than two or three fostered children are less able to meet individual needs. Carers are more likely to need time out / respite which decreases children's sense of stability. Having said that, exceptions may need to be made for larger sibling groups.

30. Do you agree foster carers should be required to attain minimum qualifications in care?

No. We agree that there should be minimum standards for carers' knowledge, but this does not necessarily mean specific qualifications.. All carers need training to meet the needs of traumatised children. There is wide variation in foster carers' previous levels of training and qualifications. Some are more academically avble than others. A minimum standard would be hard to quantify and is best left to individual agencies which can target individual carers' training needs.

31. Would a foster care register, as described, help improve the matching by a local authority (or foster agency)? Could it be used for other purposes to enhance foster care?

A foster care register runs the risk of children being placed at a distance from their own geographical areas – this is hard in terms of providing meaningful support, and brings with it the negative impact of separating children from their practical and emotional supports such as friends, family and school. These are matters that would have to be carefully considered, but if it helped balance out resource-rich and -poor areas then a pool of available carers may improve choices for children.

32. Do you think minimum fostering allowances should be determined and set by the Scottish Government? What is the best way to determine what rate to pay foster carers for their role – for example, qualifications of the carer, the type of 'service' they provide, the age of child?

Although it would seem desirable in many ways desirable to fix minimum allowances, councils and other agencies need to be able to set allowances according to budgets. In addition, the amount set has wider reaching implications for local authorities in terms of kinship care and adoption allowances as these generally "track" fostering allowances. Foster carers do need a pay element that recognises the responsibilities they carry and, as with other types of employment, it would make sense to link pay to the degree of complexity in their work load, evidence of continued professional development and level of performance

Assessing Impact

33. In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the legislative proposals in this consultation document may have on any particular groups of people?

Comments

34. In relation to the Equality Impact Assessment, please tell us what potential there may be within these legislative proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

Comments

35. In relation to the Business and Regulatory Impact Assessment, please tell us about any potential economic or regulatory impacts, either positive or negative; you feel the legislative proposals in this consultation document may have, particularly on businesses?

Comments

Thank you for responding to this consultation.

Please ensure you return the respondent information form along with your response.

The closing date for this consultation is 25 September 2012. Please return to childrenslegislation@scotland.gsi.gov.uk

or

**Paul Ingram
The Scottish Government
Area 2B North
Victoria Quay
Edinburgh
EH6 6QQ**