

WRITTEN EVIDENCE FOR THE SCOTTISH PARLIAMENT'S
EDUCATION AND CULTURE COMMITTEE:
CHILDREN AND YOUNG PEOPLE (SCOTLAND) BILL

July 2013

1. CELCIS is the Centre for Excellence for Looked after Children in Scotland based at the University of Strathclyde. We welcome the opportunity to respond to this Call for written evidence and this response focuses primarily on those sections which most relate to looked after children.

Extension of Aftercare Support for Care Leavers up to the age of 26

2. The proposed amendment to section 29 of the Children (Scotland) Act 1995 extends a care leavers' right to request assistance from the age of 21 up to the age of 26. The Bill proposes that following an application by a care leaver, the local authority is required to carry out an assessment, and:

- must, if satisfied that the person has any eligible needs which cannot be met other than by taking action under this subsection, provide the person with such advice, guidance and assistance as it considers necessary for the purposes of meeting those needs, and
- may otherwise provide such advice, guidance and assistance as it considers appropriate having regard to the person's welfare.

3. While we welcome the extension of the duty to support a care leaver who is deemed to have eligible needs, it should be recognised that these provisions do not guarantee improved aftercare support for these vulnerable young people. Care leavers will still have to (and be able to) actively request assistance *and* be assessed as eligible. Local authorities will continue to define what are 'eligible needs' and provide what they consider 'necessary for the purposes of meeting those needs'. There is, therefore, considerable scope in how aftercare support will be provided, potentially perpetuating the status quo of inconsistent practice nationally (For further details on these points, please see the [CEL CIS response to the consultation on the Bill.](#))

4. We strongly recommend that the legislation is strengthened to reflect a duty on local authorities (and relevant corporate parenting partners, such as NHS Health Boards) to *provide support* to care leavers up to the age of 26, without caveats. If assessments are necessary, it is critical that clear and consistent eligibility criteria are applied across Scotland and that these are made public. There must also be a requirement on local authorities to provide accessible information to young people leaving care, and care leavers aged 19 -25, informing them of their right to be assessed, providing realistic timescales for the process and offering a transparent procedure for challenging decisions. Access to advocacy services up to the age of 25 should be provided to ensure all care leavers are supported through the process. Provision of oral evidence to the Committee on these issues would be helpful.

5. The Financial Memorandum's stated projection was that 65% of care leavers will be successful in their applications. However, without any detail of the eligibility criteria, it is difficult to predict and thus calculate how many care leavers will be eligible for support. In the year between July 2011-2012, statistics show that over one third (34%) of young people deemed eligible for aftercare support (aged 19-21) did not receive any service.¹ For those that did, provision was patchy and fragmented (as the results of a CELCIS/STAF survey showed). Provision for 19-21 year olds is already limited and inequitable. A major strategic vision for the development of Throughcare and Aftercare is needed if services are to expand their remit to support young people up to the age of 26.

¹ Scottish Government (March 2013) *Children's Social Work Statistics Scotland 2011-2012*, Edinburgh: Scottish Government

6. On the issue of data, the Committee is advised that Scotland does not have robust data on the levels of Aftercare support currently provided. We would recommend that the provisions in the Bill be accompanied by national reporting mechanisms to monitor the outcomes of requests and the levels of support provided.

7. In relation to transitions, we would recommend that the needs of disabled young people are given greater consideration. Navigating the transition from Children into Adult services, and the complex financial arrangements which often accompany this, can be a challenging, if not often distressing, experience for young people and their families.

8. Finally, we strongly recommend that a duty is imposed on the reporting, monitoring and recording of all care leaver's deaths (up to the age of 26) to the Minister and Care Inspectorate, as currently required for looked after children. As a 'good corporate parent' it is unacceptable that we hold no information on 'our' care leavers who die prematurely.

Duties of corporate parents

9. We strongly agree with the Bill's assertion that public bodies have a collective responsibility for the welfare of looked after children and young people. As set out in *'These are our Bairns': A guide for Community Planning Partnerships - being a good corporate parent* (Scottish Government, 2008), many public bodies have a corporate parenting role and it should be noted that many areas and organisations have embraced the concept without the need for legislation. The question posed by the Bill is whether it is advantageous overall to specify explicitly who should be deemed a 'corporate parent' (as schedule 3 does) and what their responsibilities consist of (or are limited to).

10. In respect to specifying who will be deemed a corporate parent, we strongly welcome the Bill's inclusion of health boards as corporate parents, in recognition of their critical responsibility for the wellbeing of looked after children at strategic, operational and practice levels. However, we do have some concerns about the appropriateness of including public bodies such as the Scottish Children's Reporters Association and Children's Hearings Scotland, who do not provide services directly to looked after children or care leavers.

11. In terms of the responsibilities of corporate parents set out in Bill, these seem appropriate and proportional. The principle behind corporate parenting is that organisations have a positive bias in favour of looked after children and care leavers. The responsibilities listed should go some way to realising that aspiration. We would, however, urge the Government to consider strengthening the reporting duties of corporate parents: if the Minister is to report to parliament on performance and outcomes every three years it seems reasonable for all corporate parents to do so too.

12. One area of this section of the Bill we would strengthen is around corporate parenting responsibilities for care leavers (up to age of 26). All relevant public bodies should be aware of the concept, responsibilities and practical implications of being a corporate parent for care leavers and should be required to set out a statement of intent in terms of how they will discharge these duties. As with looked after children, principle and practice should reflect a default favourable bias towards care leavers, in terms of any discretionary power they may have over provisions and support. Such an approach should include undertaking Equality Impact Assessments (current practice for other 'equalities groups') for any policy or procedural change which may impact on care leavers support and provision in order to ensure existing and future policy is 'care-proofed' in favour of care leavers. This should also address any cross-border or inter-authority arrangements where care leavers can often find themselves disadvantaged when remaining in or moving between local authorities areas where this is not their home area (For further reference, please see the [Access All Areas report](#), published National Care Advisory Service).

13. While generally supportive of this section of the Bill, we urge the Committee to consider some of challenges presented by embedding this collective responsibility for looked after children in a legislative framework. Firstly, many looked after children will still have birth parents who have parental rights and responsibilities: what will the interaction be between birth parents and corporate parents? Secondly, like parents, corporate parents may have different views on the 'best possible care and protection': does one corporate parent have a greater say than another? Thirdly, we know that there can be considerable disagreement between public bodies about who should provide a service and finance a service (for example, decisions between health and social care): this can be a cause of legal action. Questions remain about how these differences will be resolved and how the views of the child are heard throughout this process.

Extending assistance for kinship carers

14. We welcome the recognition of the role of kinship carers and their right to assistance. The re-designation of the section 11 order of the Children (Scotland) Act 1995 as a 'kinship care order' may be useful in providing legal security for a child without them becoming formally 'looked after'. However, it is clear that kinship carers have faced barriers in attempting to obtain section 11 orders (for example, time involved, cost and acrimony in using the court system) and these must be addressed in secondary legislation. The Committee is also encouraged to consider how 'contact' for children with birth families will be handled under these new provisions, as this can present many challenges for kinship carers. The provision of information, support and assistance in this process by local authorities and other organisations is welcomed, but a key concern will be the cost of pursuing an order and access to legal aid. It should be recognised that many families may choose not to involve courts and we endorse the work of Family Group Conferences in supporting families to resolve conflicts.

15. It is vital to understand the interplay between legal status, financial assistance and the benefits system. We are in a time of flux with the UK welfare reforms. Any legal order has to be understood in the context of these changes to ensure that kinship caring families are not penalised. Particular issues relate to child-related benefits and tax credit; income support and jobseekers allowance; housing benefit and council tax benefit; disability living allowance and carers allowance. Depending on whether a child is formerly 'looked after' or not has a consequence on different benefits. Therefore, given the introduction of Universal Credit in 2013, we need to ensure kinship carers do not face further hardships due to a potential disconnect between policies. It should also be recognised that the use of specific benefits can lead to 'passport benefits' such as school clothing allowances, school meals, etc. and the implications of this need to be understood.

16. Finally, the current provisions in the Bill relate to assistance provided by a local authority. We would support an amendment to the Bill that saw this obligation to provide assistance to kinship carers extended to all relevant service providers (especially the NHS Health Boards).

Counselling Provision

17. Although we are positive about the policy intention, this section of the Bill requires much greater clarity. First, the term 'counselling' is unhelpful. What is described in the policy and financial memorandum are family mediation and intervention services. As such, this should be stated clearly. Secondly, the Bill's accompanying documents state that these services are to be made available to 'children who are at risk of coming into care' (pg72, Financial Memorandum). However the proposed legislation does not limit the provision to this group (unless Scottish Ministers decree this by Order). Indeed we would be supportive of a broader interpretation of eligibility, to include a wider group of children and families who may experience adversity. For instance, services such as Family Group Conferencing could

be particularly valuable for care leavers who return home to birth family or wider family following care experiences.

18. Finally, as with other sections of the Bill, the duties to provide additional services should apply to all relevant organisations: not just local authorities. Many of the issues faced by families in crisis (such as drug and alcohol dependency) will demand interventions or services provided by other agencies, particularly health.

Children's Services Planning, Provision of Named Persons and Child's Plan

19. We welcome these provisions and strongly support any efforts to further imbed GIRFEC principles across Scotland, especially in relation to streamlining the assessment and care planning process through the use of the Child's Plan.

20. While some confusion has arisen during the consultation process in relation to the delineation between Lead Professional and Named Person, it is important to acknowledge that clear guidance in relation to the role and function of the former *already* exists and there are examples of where this is working well.

21. We would encourage some debate and clarification about the new information sharing duty placed on public bodies and its implications for maintaining young people's right to confidentiality.

22. We would suggest that the specific needs of disabled children are not adequately addressed and further consideration is required.

23. In relation to the implementation of GIRFEC, a challenge remains in supporting the *culture shift* required to fully realise consistent implementation and practice across Scotland – legislation alone will not achieve this.

Early childcare provision for looked after two year olds

24. We welcome the Bill's extension of free early learning and childcare to looked after two year olds (and children subject to a kinship care order). However, to be meaningful (and effective as an early intervention measure) it is critical that provision adequately reflects the breadth of the population's needs. It should, therefore, include family support and services that help foster carers to develop positive attachments with children.

25. The same arguments for additional priority for looked after two year olds may also be valid for other groups, such as children 'in need' (Section 22, Children (Scotland) Act 1995) and children on child protection registers. We believe that any additional support and resources for looked after two year olds should also be provided for children who might be diverted from the being formally 'looked after', given their needs are likely to be very similar. It should be noted that this provision – if restricted to just looked after children – could actually incentivise families (and professionals working with them) to seek compulsory supervision. Hence careful consideration should be given to how similar support is provided for children with the same needs who are not formally 'looked after': particularly as there are relatively few 'looked after' two year olds in Scotland (the projected population for mid-2014 being 1,653.2).

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² Data provided by SG. Projection based on mid-year figures for 2008-09 and 2009-10