

DRAFT CHILDREN'S HEARINGS (SCOTLAND) BILL

RESPONSE TO INITIAL ENGAGEMENT WITH STAKEHOLDERS

The Children's Hearings (Scotland) Bill will underpin reform of the children's hearings system; a reform programme that provides the opportunity to improve the way we support our most vulnerable children and their families. We published a draft of the Bill in June in order to seek the views of key partners.

The driving force behind the reform programme is improving outcomes for children and young people, addressing their needs and promoting their rights. The *Getting it Right for Every Child* approach is the key to this and the Scottish Government remains fully committed to it and to implementation of the Early Years Framework and the UN Convention on the Rights of the Child.

We are committed to a welfare based children's hearings system, focused on early and effective intervention. The reform programme is designed to build on Kilbrandon and the *Getting it Right for Every Child* approach, thereby keeping the ethos and principles of the children's hearings system and respecting its aim of protecting children's rights while seeking to strengthen and modernise the system. We need a system that responds effectively to the challenges it faces today – both the large growth in numbers of children needing care and protection and the need to deal with offending behaviour by young people; itself a symptom of the social fragmentation bred by disadvantage and deprivation.

The reforms will deliver:

children's rights at the heart of the system – by giving them the right to see relevant papers and information about their case and ensuring they have a voice at hearings;

more modern grounds for referral – that will ensure that all children in need of compulsory measures can be referred to a hearing;

improved consistency – by introducing a national children's panel with national recruitment and training, better support for panel members and a clearer statutory framework around the work of Children's Reporters;

a stronger system – by supporting the independence of panel members, ensuring they have the training, support and advice they need to take decisions in the best interests of children;

improved efficiency and protection – through the introduction of new procedural changes such as interim supervision orders and the streamlining of warrant provisions; and

a system that meets the demands of ECHR – both now and in the future.

Since June we have received a wide range of comments, including a number of concerns, about the proposals in the draft Bill. Reform of the children's hearings

system is incredibly important and it is imperative that we get the legislation right. Ministers have therefore decided to take the necessary time to discuss further with stakeholders before bringing forward the Bill to Parliament. Introduction of the Bill is now likely to be early next year.

Changes to the draft Bill are already being made in response to the representations and discussions with partners that we have had since June and we want this constructive dialogue to continue as we move forward.

This paper is designed to inform that ongoing discussion by responding to the comments received and the concerns we have heard. It also sets out: the changes to the draft Bill that the Government intends to make, what those changes are designed to achieve and the concerns they are intended to address; those issues on which we are still considering how best we can move things forward; and those issues on which we propose no change at present.

FUNDAMENTAL ISSUES

Impact of reforms on the ethos and principles of the system and outcomes for children and young people

What we have heard: There is widespread agreement that there is a need for changes and improvements to the children's hearings system in order to deliver better outcomes for children and young people and to provide better, more consistent support for volunteer panel members. There is also acknowledgement of the need to promote transparency and consistency in decision making and ensure compliance with the European Convention on Human Rights both now and in future.

Concerns have however been raised by a number of partners that it is not clear how the reforms proposed by the Scottish Government will achieve that goal, or indeed that they might unintentionally weaken the protections available to children and young people. It is argued that the present system has worked well and should not be changed unless such change is likely to produce a better result for children and families.

It has been argued that the draft Bill is weak on welfare rights and doesn't keep the child at the centre of the system and that it is not sufficiently grounded in the *Getting it Right for Every Child* approach ie it doesn't sufficiently promote early, proportionate intervention to reduce the need for compulsory measures. There is concern that the Bill could move the hearings system away from Kilbrandon principles of making the care and protection of children the basis of decision making. There is also concern that the proposals could fragment the system leading to a lack of continuity for the child and a dilution of clear accountability for the child's case and that this could therefore lead to a reduced ability to protect and support children.

It is suggested that action is required to ensure better participation in the system by children and young people. It is also argued that the draft Bill gives increasing powers to sheriffs – a departure from Kilbrandon. Concerns have also been raised that the reforms are too focused on ECHR rather than children and will make the system more adversarial.

SG response: The Bill does not undermine the underlying philosophy of the children's hearings system – there is nothing in it that challenges the care and protection ethos of the system. Needs and deeds remain the focus – the intention of reform is to reinforce that within the modern context.

For most children and young people the *Getting it Right* approach will mean that referral to the hearings system is not needed. This is what we are seeing for example in the GIRFEC Highland Pathfinder. Early intervention will offer them the help and support they need. For those who are referred we are committed to ensuring that we have a hearings system that is strong, modern and that has the best interests of children at its heart.

The hearings system is more than 40 years old and the context in which it operates has changed considerably over that time. For example, the number of care and protection cases that it deals with has increased significantly in recent years, as has

the complexity of cases which panel members are expected to deal with. Ensuring the children's hearing system is ECHR compliant was not an issue when the hearings system was set up but is something we must consider now. The children's hearings system needs to be more flexible and responsive in future than it is at present and it needs to sit comfortably within the wider legal context.

That is what is driving our reforms.

There is for example consensus that local attempts to provide panel members with the consistent, high quality training they require to deal effectively with the number and range of cases that come before them have not succeeded. The Scottish Government therefore believes that we need to establish a national body to address the current inconsistencies; to recruit and train panel members and to establish a national standard to which all panel members will be trained. It has yet to be decided exactly how the national body will operate at local level but the Scottish Government is clear that it must support the principle of community involvement in the hearings system and complement and support local decision making and delivery.

In seeking to standardise and improve support for panel members, we need to establish a new national body to ensure that the system remains ECHR compliant. Our *Strengthening for the Future* consultation suggested bringing responsibility for national panel member recruitment and training within SCRA. This raised concerns however about ECHR compliance – the different roles of panel members and SCRA need to be (and be seen to be) independent of each other to avoid concerns about conflict of interest. That is why rather than one national body we now propose two; SCRA and the new national body.

The Scottish Government acknowledges the concerns expressed by partners about the focus on ECHR compliance. However, ensuring compliance with ECHR ensures that we protect and promote the rights of children. The rights in the UN Convention on the Rights of the Child have to be centre-stage in a system that has such a great impact on the lives of many of our most vulnerable children and young people.

ECHR is an issue of considerable importance and one which needs to be addressed – if we are to safeguard the future of the children's hearings system we need to ensure it is and will remain ECHR compliant. ECHR is constantly evolving and it is not at all certain that the system will be ECHR compliant in future without change. Our proposals are designed to ensure that we can, in a planned and structured way, put in place the protections that the system is likely to need in future while retaining the fundamental rights and welfare based ethos of the system. Taking this proactive stance will help avoid the need for future piecemeal change in response to the changing demands of ECHR or individual ECHR challenges.

In taking forward this much needed reform, we are determined to not just maintain but to strengthen where possible the welfare and child-centred principles of the hearings system. We are for example, looking at how we can strengthen the child's right to express an opinion within the hearing and how we can better support safeguarders in the work they do promoting the best interests of children with the hearings system.

SG will:

- Consider further what changes need to be/can be made to ensure that we have a modern, strong hearings system that continues to have the best interests of children and young people at its heart.
- Consider what steps can be taken to further emphasize in the reform proposals the Government's commitment to children's rights and to bring in legislative and practice changes to promote and support the rights of children within the hearings system.

Changes to the role of the Reporter, including attendance at and taking the note of meetings

The reforms propose significant change to the role of the Reporter: that the Reporter should concentrate on investigating a referral, making a decision on whether compulsory supervision may be required, and on what grounds. At that point, the case would be passed to the President of the new body who would have responsibility for arranging a hearing, sending out papers, providing advice to the panel during a hearing, takes record of proceedings and related case management.

What we have heard: We have received a number of comments that this change in the role of the Reporter could be damaging as it would remove continuity with the child and their family as the individual case progresses and this would not be in the child's best interests. It could result in decisions being taken on more limited information which runs the risk of a decline in the quality of decision making. It is argued that Reporters should have the right to be present at all hearings and that they should take the note in order to inform any appeal or future referrals in respect of any child/children. It is argued that SCRA's practice changes (introduced on 14 September) will address any ECHR concerns, and that very few cases require a Reporter to offer anything other than procedural advice to hearings and that doing this would be ECHR compliant. It has been pointed out that the Minister for Children and Early Years' letter to Panel Chairs of 25 June 2009 indicated that following the practice change the system would be ECHR compliant.

There has also been opposition to the proposal to have hearings advisers attend hearings; it is argued that the role envisaged for them could be carried out by the Reporter. There is concern that having another adult involved in the process would only make it more difficult for children and families to identify who they need to speak to and could add to the confusion, already felt by many children, about who the various people in authority are. Concern has also been expressed that whatever changes to attendance at the hearing are introduced it is crucial that panel members continue to receive the help and advice they need to act effectively in the child's best interests.

SG response: This is clearly a key issue and one on which we have received a great many comments. We need to ensure that consistently high standards are achieved and maintained by all Reporters at all times. It is crucial that we get this right if we are to secure the positive change to the hearings system that is required –

strengthening the independence of panel members, protecting the role of the Reporter and ensuring the system is well placed to meet future ECHR challenges. This is a complex matter and further work is required to explore in more detail the alternatives that have been suggested and whether/how they might work in practice.

SG will: Work with key partners, in particular SCRA, in considering options for the role of the Reporter in future. We will produce a revised set of proposals on the role of the Reporter for consideration by the Children's Hearings Strategic Project Board (which is overseeing the reform programme) in October.

Transfer of functions/increase in bureaucracy

What we have heard: Concern that SCRA is best placed to carry out the functions that it is proposed will transfer to the President and the new national body. It is argued that having two bodies could cause problems for children, families and professionals who will have to deal with both bodies. It is argued that this could result in a duplication of services and processes, an increase in cost, an increase to the bureaucratic burden on professionals within the system and greater risks around information sharing. There is concern that the impact will be felt particularly in rural areas and island communities and that this proposal runs contrary to Kilbrandon and GIRFEC as families will be expected to deal with different bodies at different points in the proceedings, it also runs the risk that children could fall through the gaps between the two bodies.

It is argued that such "drastic" action is not required in order to comply with ECHR. It is also suggested that the proposals do not fit with the SG approach to the efficient delivery of public services as outlined in the Public Services Reform agenda. Concern has also been raised that the involvement of two bodies, for example around Emergency Protection Orders creates unnecessary potential for confusion and error.

SG response: We are clear that a single national body, as proposed in the original consultation paper is not an option because of concern about independence and ECHR. If there is to be a national body to oversee panel member recruitment and training (which has been widely supported) this body will be required to sit alongside and work closely with SCRA. We consider that there is considerable potential for the sharing of back office and administrative functions between the two bodies which will help eliminate duplication of effort and keep costs and bureaucracy to a minimum. We do however acknowledge the concerns raised and will give further thought to the future role of, and relationship between, SCRA and that of the proposed new body.

SG will: Continue discussions with SCRA and others on the role of the proposed new body and on its links with SCRA, for example around the structure and location of shared services. The efficiency and effectiveness of operations moving forward to ensure the best outcomes for children and young people is the paramount consideration.

Decriminalising Children and Young People

What we have heard: That the draft Bill does not appear to address the concern that the acceptance of an offence ground (or of a sheriff establishing grounds) is treated as a conviction and therefore creates a criminal record for the child or young person. Under the Rehabilitation of Offenders Act 1974, the conviction may be considered spent after a relatively short period (in the case of relatively minor offences), but the stain on the young person's Disclosure record remains. It is argued that this may come back to haunt them in later life, e.g. when applying for any job that involves working with children or vulnerable adults. It is suggested that unless this is addressed in the Bill the 'criminal consequence' could continue to affect children and young people who are before the panel for relatively minor offences, including those who may not fully appreciate the consequences of accepting their referral on offence ground and that this raises concern about Scotland's compliance with key international human rights requirements, such as the UNCRC.

SG response: We understand the concerns raised around criminalising children and young people, especially for relatively minor offences. As already identified, the *Getting it Right* approach will mean that referral to the children's hearings system is not needed in many cases. The opportunity to intervene at an early stage will divert many children and young people from more formal measures that might otherwise have resulted in a conviction. We do however, have to strike a balance between protecting the rights of children and protecting communities. Where children and young people have committed more serious offences it may be appropriate for this information to be made available to protect vulnerable children and adults.

SG will: Continue to work with partners including ACPOS and Disclosure Scotland to identify a proportionate approach to the retention and disclosure of conviction information about children and young people dealt with by a children's hearing.

Implementation of panel decisions

What we have heard: Concern that the Bill does nothing to ensure that the decisions of children's hearings will be implemented and not ignored by local authorities on the grounds of lack of resources.

SG response: We acknowledge the concerns, in particular those of panel members, that full implementation of supervision requirements is crucial to successful intervention with children and young people. For this to be a reality, it is crucial for local authorities and their partners, in particular panel members, Reporters and the voluntary sector to have a clear understanding of how things work in the local area. All local partners will also need to have regular and open dialogue to be clear about local priorities, issues and resources and agree how all panel decisions can best be implemented taking account of the availability of local services and resources.

SG will: Continue to explore with panel members, local authorities and others how we can best ensure that the decisions of children's hearings are implemented in full.

General concerns

What we have heard: Concern that elements of the draft Bill were not included in the initial consultation “Strengthening for the future”, for example the changes to structures involving the role of the President, the Tribunal and the Principal Reporter. There is also concern that the draft Bill is unnecessarily complex in some areas (for example Part 3) and lacking important detail in others, presumably meaning that the detail of the system will need to be defined in secondary legislation and guidance.

SG response: The draft Bill is based upon the responses we received to “Strengthening for the future” – which was the third consultation in recent years on modernising and improving the hearings system. For example, the responses revealed serious concerns from stakeholders about the proposal to create a single national body comprising the current functions of SCRA and those currently carried out by the 32 separately constituted children’s panels and 30 Children’s Panel Advisory Committees. We concluded that it was unlikely that the problems (real and perceived) around the separation of functions within a single body would be resolved. On 30 April 2009, the Cabinet Secretary for Lifelong Learning announced to the Scottish Parliament our proposal for a new national body to support the tribunal function, locally delivered and that SCRA would continue to deliver the Children’s Reporter service. We have published the responses to “Strengthening for the future” on the Scottish Government website.

The Bill brings together all the primary legislation relating to the children’s hearings system. We accept that the legal framework is complex, but by bringing it all together in a single Bill the intention is to have a single, clear point of reference. The Policy Memorandum that accompanies the Bill’s introduction to Parliament will include a more detailed policy justification for this. Around two-thirds of the draft Bill provisions are restatements of existing legislation that do not represent a change in meaning or government policy. The Explanatory Notes that also accompany the Bill’s introduction will make clear which provisions are restatements.

Primary legislation will however only ever set the framework; there will be secondary legislation and guidance that will set out the detail of the system. Our intention is to work on that secondary legislation and guidance alongside the development of the Bill to help inform discussion of the Bill, both with partners and in Parliament.

SG will: Continue to actively engage with partners as the Bill and wider reform programme is developed.