

RESPONSE TO THE INFORMAL CONSULTATION ON SERVICES IN RELATION TO CHILDREN AT RISK OF BECOMING LOOKED AFTER ETC. ORDER 2016

October 2015

Due to the large number of consultations that are currently ongoing relating to the Children and Young People (Scotland) Act 2014 ('the Act'), and our similar positioning on this issue, Barnardo's Scotland, Aberlour and Children 1st are submitting a joint response to the informal consultation on the Order for services in relation to children at risk of becoming looked after.

Although we are pleased to have been asked to respond to this consultation we think it is important to record our reservations regarding an informal process, which may in practice exclude many people and organisations from responding in a way that a formal consultation does not. It also means that the timescale is shorter, which restricts our organisations from undertaking detailed analysis or consultation with our service managers and the children and young people with whom we work.

Barnardo's Scotland, Aberlour and Children 1st have long been supporters of the GIRFEC approach and continue to champion the importance of early intervention and prevention, particularly in the early years. We provide a wide range of family support and early intervention services, including many of those that will be delivered as part of the implementation of Part 12 of the Act. Our services work with vulnerable families providing critical support at difficult times, including working with those families on the 'edge of care' and with children and young people who go in and out of the care system. Collectively, along with Action for Children, we provide the Dundee Early Intervention Team, which aims to improve outcomes for children and families, addressing problems before they become critical and preventing the need for greater interventions.

Children 1st promote family-led decision making use of Family Group Conferencing as a way of bringing extended families together to find solutions to problems affecting the children of the family.

Our organisations also play active roles in the Early Years Collaborative and contribute to policies and decision-making relating to early years, attachment and prevention. We welcomed the intention behind Part 12 in the Act, recognising its potential to ensure the provision of high-quality services for some of Scotland's most vulnerable children. We believe that the best place for a child, where possible, is with their family and are pleased that the value of the type of services that we deliver where children and families are provided with intensive family support has been recognised. In response to this informal consultation we offer the following comments.

Capacity to deliver services in relation to children at risk of becoming looked after

The informal consultation paper states, "the intention of Part 12 is to complement the GIRFEC approach by **requiring** local authorities to provide specific relevant services to families" (our emphasis).

As a starting point, we think it is important to highlight that the number of children in each local authority area for whom these services may be required may be significant. The Christie Commission stated in 2010 that, “a cycle of deprivation and low aspiration has been allowed to persist because preventative measures have not been prioritised.” We know from our experience running these types of services that funding for early intervention and prevention is not always prioritised or guaranteed and demand and waiting lists are often high. We urge the Scottish Government to work with local authorities and the third sector to determine exactly how many services there are in relation to children at risk of becoming looked after in each local authority area. The core aims of prevention will simply not be met if there are not enough services in each area to meet demand.

Given the intention of the Act was to drive consistency across Scotland it is vital to ensure that those local authorities that are struggling to meet demand are supported with a range of creative solutions. If there is a requirement to provide services (as described in the informal consultation paper) this must be matched by a clear directive from the Scottish Government that there is an expectation on local authorities to fund the services that will deliver on the aims of this part of the Act to avoid a ‘postcode lottery’ of services where funding is always on a ‘knife edge’ and quality is compromised in order to keep up with demand.

Further, clearer links must be made between other elements of GIRFEC, the wider child protection system and Part 12. Many of the services to be delivered under Part 12 of the Act could also be elements of a targeted intervention in a Child’s Plan under Part 5 of the Act. Equally, by supporting children on the edge of care, links will need to be made with the Children’s Hearing system, to ensure that disposals from panels clearly relate to services provided under Part 12. Equally, Part 3 (Children’s Services Planning) must be clearly and explicitly linked to Part 12 to ensure that children’s services plans make sufficient provision for services in relation to children at risk of becoming looked after. This link with Part 3 should be set out directly in the guidance for both parts of the Act and referred to in the Order for Part 12.

Type of services to be delivered under Part 12 of the Act

We agree with the proposal that the Order should describe the relevant services in a way which covers services facilitating family decision- making and services designed to increase parenting capacity and improve parenting skills. However, we would prefer the term “intensive family support services” to be used, which would encapsulate all of the services that could be involved. Intensive Family Support is language that is currently used and widely understood by service providers in Scotland and is a term that can encompass a wide variety of services. We are concerned that reference to services relating to family decision-making and parenting skills and capacity may narrow the scope of services that should be available under this part of the Act—though we agree that family decision-making and parenting services should come under the broader heading of Intensive Family Support.

Intensive Family Support services could encapsulate services for both parents (or parents-to-be) and children and young people that extend beyond decision-making or advocacy and parenting to those that deal with substance misuse, mental health, building resilience, capacity and capability, primary prevention, child welfare, trauma recovery and many others. This means that these services are not simply children’s services but may involve adult services too. We feel that this is more in line with the

spirit of this part of the Act, the Policy Memorandum, which initially stated (Para 123) “The Bill also introduces a duty on local authorities to ensure that families in the early stages of distress who seek help are provided with appropriate forms of counselling (for example, family group conferencing or support with substance misuse). This will be available where a child’s wellbeing would be at risk of being impaired - in particular where the child is at risk of becoming looked after - and is intended to act as an early and effective support mechanism; and, where appropriate, it can be used to promote the role of a kinship carer.”

Further, we believe that this terminology would enable better alignment and coherence with other parts of the Act, which set out that the delivery of targeted interventions should be based on an assessment of the individual child’s needs. Children and families may require different types of intervention for different lengths of time and we therefore believe a wide number of services could come under the heading Intensive Family Support, which may be interpreted more broadly than those relating to family decision-making or parenting skills. This consultation paper states that, “the whole purpose of this provision is to ensure that families have access to support to address any issues that could potentially lead to the child entering formal care.” In order to achieve this ambitious aim we believe that the scope of available services must not be narrowed in any way.

Given the need for services to be delivered according to the individual needs of the child we agree with the consultation paper that relevant services should only be provided when this is in the child’s best interests. We believe that the guidance accompanying any secondary legislation must be clear about what this means and how children and young people and their families’ views should be gathered and taken into account in order to ensure that decisions not to deliver services include their views.

Services that may come under Intensive Family Support Services

We understand the reasoning in the consultation paper behind not prescribing a particular model of the type of service that would come under Part 12 due to concerns that this would not allow flexibility at local level in terms of service delivery. We agree that it is important that local authorities are allowed to determine what services are best needed in their area following a population-level wellbeing assessment (which should be carried out under Part 3 of the Act) and that there should be room for new innovation and practice to be delivered that may supersede other models of service. However, we consider it vital that the Scottish Government does not leave such a broad heading as Intensive Family Support services without prescribing their expectations on local authorities. There must be some mechanism for accountability by which the Scottish Government is able to determine to what extent the implementation of Part 12 has been a success, and some way to identify which services are for children and young people at risk of becoming looked after.

Barnardo’s Scotland, Aberlour and Children 1st therefore propose that the Order **specifies the type of outcomes** that they would expect these services to deliver. We believe that these outcomes should be linked to the definition of wellbeing outlined in the guidance for Part 18 of the Act (Section 96: Assessment of Wellbeing), which sets out the SHANARRI indicators. These outcomes should state that services that come under the heading of Intensive Family Support should work to ensure that children and young people who are at risk of being looked after and in receipt of these services feel more supported within their family living arrangements and their wellbeing is improved.

Outcomes could focus on trauma recovery, building resilience, mediation and advocacy, empowerment and aspirations, education, bereavement counselling, abuse and trauma recovery, parental substance abuse among other areas. We agree that there is significant evidence relating to the effectiveness of family decision-making and mediation services and we believe that local authorities should consider these services as part of those that may meet these outcomes.

We would not support an approach whereby the broad heading was used without being accompanied by specific outcomes for these services that relate to the aims of this part of the Act and, as described earlier, link to other support mechanisms for children with a wellbeing need. Further, guidance accompanying this Order must set out the type of support services that could meet these outcomes, while being clear that the list is not prescriptive and does not exclude other support services not listed. It should include family decision-making, parenting capacity building, bereavement counselling, trauma recovery, services that focus on the impact of parental substance misuse, family therapy and befriending.

We would also welcome clear reference to the value of Family Group Conferencing as an assets- based approach, which builds the capacity of families to make the best decisions for them. It involves ensuring the wider family can participate in the decision-making process regarding the care of their child. Children 1st data shows that between 2012 and 2013 77% of the Family Group Conferences that we delivered that identified ‘child/ young person is at reduced risk of being accommodated’ as a potential outcome, fully or partially achieved this.

Eligibility for services

We understand the reasoning not to prescribe when or how a local authority should consider whether a child is at risk of becoming looked after in the Order. We agree that it is important for professional judgement to be used to determine vulnerability and that individual family circumstances must be assessed. However we are concerned that the consultation’s statement that “examples and case studies” will be provided in the guidance with respect to eligibility for services is not sufficient. Further thought needs to be given to how there can be a balance between professional judgement and individual circumstances and consistency of service provision between localities. The provision of services and development of eligibility criteria must not be determined by the availability of resources but by the level of need in the local authority area.

Eligibility should be linked to a child’s wellbeing and an assessment of the impact a service may make towards improving their wellbeing. We would therefore encourage the Scottish Government to consider further how they can set out eligibility for services in a more prescriptive way that means there is not scope for a narrow interpretation of who is eligible for services based on a lack of resources. This may mean a legislative solution should be found.

In particular, we are concerned that we may have a situation where in one local authority area eligible children for services for ‘children at risk of becoming looked after’ may be all those in formal and informal kinship care, all those who are living in poverty or who have contact with the Children’s Hearings system, all those whose parents are involved in the criminal justice system, etc. and in another local authority eligible children would simply be those children whose families have reached crisis point. The Scottish Government must provide clarity on this issue in order to ensure local

authorities are aware of the expectations relating to the target group for these services and how this links to the outcomes we proposed earlier. This clarity should also extend to an explanation of how services provided under Part 12 fit in with other services for children with wellbeing needs.

In our view these services are for those families who would benefit from early support to prevent an escalating risk to the stability of the existing placement and the wellbeing of the child or children. A narrow interpretation of eligibility that only includes children who are in 'crisis' or strict eligibility criteria would not be cohesive with the initial aims and intentions of this part of the Act. However, we recognise that our interpretation means that many children could be included in this cohort—we would particularly want children affected by parental imprisonment, young carers and children living in kinship care arrangements to be considered—and we therefore link to our earlier point about a need for investment and prioritisation of early intervention and prevention services in order to meet capacity.

Review of eligibility of support and services subject to conditions

We note that the consultation document does not refer to section 69(1)(c) of the Act, which states that the Scottish Government may by Order make provision about when or how a local authority is to review service provision. As well as a review of eligibility of support, we consider it vital that families and children should be involved in regularly reviewing whether the support offered continues to be relevant and adequate. This is very important to ensure that the type of support is working for the family, and reflects their changing needs. Families should be involved in deciding how often the review should happen and again and we believe that secondary legislation should stipulate this.

While the Order might wish to set out duties on the timescales for review which the agency/person conducting the initial assessment must follow, there should also be flexibility to allow families to request such a review and it would be helpful for the Order to set out the expectations on the local authority to respond to this, including timescales. At the same time, there is a need to avoid the review process becoming overly burdensome, for everyone involved, but particularly because it might cause some families to desist from engagement.

We would also welcome clarification about whether the Scottish Government intends to make an Order for section 69(2)(a) of the Act, relating to circumstances in which relevant services may be provided subject to conditions, including payment.

Coordination with other parts of the Act

In our response we have noted several places where we believe that the implementation of Part 12 should link more closely with other parts of the Act. We think it is important to be clear that Part 12 cannot and should not operate independently from the implementation of the other parts of the Act. In particular, children who are at risk of becoming looked after should be identified through a population-level assessment of wellbeing as part of Part 3 (Children's Services Planning) and these services should be included in local authority children's services plans. The Named Person has a clear role in terms of identifying children and young people who may be at risk of becoming looked after and families that may require additional support under Part 4 and targeted

interventions including services that may be listed under Part 12 should be included in a Child's Plan for these children under Part 5. We also believe that the definition of wellbeing, outlined in Part 18 (Section 96: Assessment of Wellbeing) should be clearly referenced in terms of local authorities' identification of the children that may require services under Part 12.

Further, the Scottish Government must be clear about the links between Part 12 and Part 13 (Support for Kinship Carers), including how all eligible kinship care families can access the support provisions set out in Part 12 and how this relates to (or if it relates) to the counselling assistance set out in section 73 (1) (a) of Part 13 of the Act. As section 71(5)(a) of Part 13 defines an "eligible child" as a child who the local authority considered "to be at risk of becoming looked after" it is important that there is clarity over whether the services under both parts of the Act are different or the same and how they will be accessed. We are keen to ensure that kinship care families are clearly informed of their rights and entitlements and that there is a consistent level of high-quality support available for children living in kinship care arrangements who are eligible for support under both parts of the Act.

There are also clear links between Part 12 and Part 13 in terms of children moving between formal and informal kinship care arrangements who may be eligible for support under Part 12 and then their circumstances may change which means they become eligible for support under Part 13 or vice versa. Based on Children 1st's experience of engaging with kinship care families through the National Kinship Care service there are a number of families who may require support including those families where a child has been looked after but had that status lifted but because of family circumstance, where there is now a risk of the child becoming looked after again.

Information about what services are available and involvement of the family

In our experience many of the families to whom these services may be delivered may be hard to identify and may find the services difficult to access. We have highlighted above the role of the Named Person in terms of identification but we also believe that, where possible, families and children should be made aware of the different types of support they can receive under Part 12 and invited to contribute to the decision-making about what is most suitable for their family.

The local authority must be active in informing families about the types of support that are available. Families also need to be supported to give their views about the support put in place for them and their children, and there should be a mechanism to investigate any concerns or complaints a child or family may raise. Secondary legislation should stipulate this, with the detail of how this should practically happen, within guidance. We consider 69(1)(d) of the Act (Ministers may by Order make provisions about other such matters about the provision of relevant services... as they consider appropriate) allows for this.

Equal protection of children

Finally, it is important to note that while the consultation document highlights improving parenting capacity and skills as an important part of services in relation to children at risk of becoming looked after, the outdated legislation providing a legal defence for the physical assault of a child (section 51 of the Criminal Justice (Scotland) Act 2003)

undermines this intention. It is important that the Scottish Government addresses this legal issue as a matter of urgency to ensure that all legislation in Scotland is in line with the intentions set out in the Children and Young People (Scotland) Act 2014.

We would be very happy to discuss this response in further detail. Please do not hesitate to contact Chloe Riddell, Policy Manager at Children 1st in the first instance at chloe.riddell@children1st.org.uk.