
To: Education and Children Policy Board

On: 12 May 2016

Report by: Director of Children's Services

Heading: Children and Young People (Scotland) Act 2014

1. Summary

1.1 The Children and Young People (Scotland) Act 2014 is a wide ranging piece of legislation containing 18 parts and spanning policies that have developed over a number of years in relation to kinship care, care leavers, integrated services, pre-school education and Getting It Right for Every Child (GIRFEC). The intention of the Act is to bring about transformational changes to working practices across a wide range of public bodies. These changes are in force and other areas will come into force over the next two years. These duties span all partners within the community planning partnership.

1.2 Content of the Act:

- Part 1: Rights of the Child
- Part 2: Commissioner for Children and Young People in Scotland
- Part 3: Children's services planning
- Part 4: Provisions of the named person
- Part 5: Child's plan
- Part 6: Early learning and childcare
- Part 7: Power to provide school education for pre-school children
- Part 8: Day care and out of school care
- Part 9: Corporate Parenting
- Part 10: Aftercare
- Part 11: Continuing Care
- Part 12: Services in relation to children at risk of becoming looked after
- Part 13: Support for kinship care
- Part 14: Adoption register
- Part 15: School Closure proposals
- Part 16: Children's hearings
- Part 17: Other reforms
 - Detention of children in secure care accommodation
 - Children's legal aid
 - Provision of school meals

2. Recommendations

- 2.1. The Board is asked to note the extent of the implications of the Children and Young People (Scotland) Act 2014 and the progress being made in implementing the new duties.
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3. Background

- 3.1 **The Act sets out a number of new duties on public authorities in Scotland. Currently, duties in the Act are at varying stages of implementation due to commencement dates within the Act. Implementation dates for different duties of the Act are noted below**

Part 1: Rights of the Child

- 3.2 As soon as is practicable after the end of the 3 year period, beginning in April 2015, public bodies, such as Local Authorities and Health Boards and Police Scotland must publish a report on the steps they have taken during that period to secure better or further effect the rights set out in the United Nations Convention on the Rights of the Child (UNCRC) within its areas of responsibility.
- 3.3 The report can be produced in a manner that the public body considers appropriate. Public bodies can prepare reports jointly with others. The Act states that two or more public bodies can prepare a report which means that a joint report covering all of the steps taken within a Community Planning Partnership could be prepared. The first report will be due as soon as practicable after the three year period ending in April 2017. Part 1 duties of public authorities in relation to UNCRC (sections 2 and 3) will commence in April 2017, with 2020 as the date of first reporting.

Part 2: Changes to the role of Scotland's Commissioner for Children and Young People (SCCYP)

- 3.4 The Commissioner currently has the power to carry out an investigation when s/he is alerted to an issue affecting the rights of children / young people as a group – for example, young people attending the same school or young people facing a particular issue. The Act will allow the Commissioner to investigate cases affecting individual children / young people. The commissioner can be asked to do this by the child or young person themselves or by someone else on behalf of the child or young person – for example, a parent or carer.
- 3.5 When the Commissioner's powers are extended, the SCCYP Enquiries Service will be expanded from its current role of providing advice and signposting to a complaints and investigation service.

Part 3: Children's Services planning

- 3.6 This duty requires the provision of a three year children's services plans for the period 2017 – 20 will be expected to be in place from April 2017. The current Integrated Children's Service Plan is due to be refreshed and will take account of the requirements.

Part 4: Named Person

- 3.7 The Named Person service refers to the organisational arrangements put in place to support the functions of the Named Person. The Named Person service, as set out in the duties of the Act, provides a structured way to ensure that a child-focused approach persists through a child's life into adulthood. Through children and families knowing who to contact, their access to help is made easier. The Act places a duty on local authorities to provide a Named Person service for children from five years, or school entry, until their 18th birthday whether in school, or otherwise educated, or having left school. The Named Person is a professional in the universal services of health and education, most often known to the child and parents/carers, and available to support children and families when there is a need, and to act as a point of contact for other practitioners who may have a concern about the child. A separate report on Named Person is being provided to update the Board.

Part 5: Child's Plan

- 3.8 The aim of the duties in Part 5 of the Act is to improve outcomes in relation to children's wellbeing by ensuring that a single statutory plan, the Child's Plan, is prepared for every child who needs one. Streamlining the planning process aims to ensure that there is a single planning framework in operation across children's services to make good use of resources and to avoid unnecessary duplication for the child, their parents, and practitioners. Progress in relation to the Child's Plan is also subject of a separate report to the Board.

Parts 6 - 8: Early learning and childcare

- 3.9 These duties increased the amount and flexibility of funded early learning and child care to a minimum of 600 hours for 3 and 4 year olds and for 2 years olds who are, or have been since turn 2, looked after or subject to a kinship care order. 2 year olds who are from workless households were also made eligible for 600 hours per year of funded early learning and child care. Both commenced in August 2014.
- 3.10 From August 2015 eligibility was further extended to include 2 years olds who would currently be eligible for free school meals. Ongoing consultation is required as well as engagement with both local authority and partner providers to ensure high quality provision is in place.

Part 9: Corporate Parenting duties

- 3.11 Under Parts 9-14 of the Act, there are a number of significant changes being made to the range of duties and powers that affect those in care and care-leavers. In relation to Corporate Parenting, Part 9, the Act provides for a clear definition of Corporate Parenting, and defines the bodies to which it will apply.

- 3.12 Part 9 puts the concept and policy of corporate parenting onto a statutory basis in Scotland. It established a framework of duties and responsibilities for relevant public bodies requiring them to be systematic and proactive in their efforts to meet the needs of looked after children and young people and care leavers. This also introduces new reporting and accountability structures, with national reporting to Scottish Parliament every 3 years. Commencement of corporate parenting responsibilities was from April 2015.
- 3.13 Development of corporate parenting guidance has been led by CELCIS in collaboration with the Scottish Government. The Statutory Guidance was issued in August 2015 under s63 of the Act and provides corporate parents with information and advice about how they should fulfil the duties set out in Part 9.
- 3.14 The guidance will be accompanied by corporate parenting national practice notes designed to support individual or groups of corporate parents to understand their legal responsibilities and to learn from existing good practice.
- 3.16 The definition of a 'corporate parent' is provided by Section 56 of the Children and Young People (Scotland) Act 2014. An organisation or individual is a corporate parent if they are listed, or within a description listed, in schedule 4 of the Act. Elected officials within a local authority area, staff members or a professional working in any of the public services listed in schedule 4 now have a corporate parenting duty in relation to looked after children and care leavers up to 26 years of age in their area.
- 3.17 The 'corporate parenting responsibilities' represent the core element of Part 9. The six duties provide a working definition of corporate parenting, and it is through a corporate parent's efforts to fulfil these duties that they will safeguard and promote the wellbeing of looked after children and care leavers under section 58.
- 3.18 The concept of corporate parenting is well established within Renfrewshire. We work closely with Who Cares? Scotland and we have recently secured funding through the Life Changes Trust to support the development of our corporate parenting work and our Children's Champion Board.

Parts 10 & 11: Aftercare provisions and continuing care

- 3.19 Both duties came into force from April 2015. The right to 'continuing care' will only be available to new care leavers (those who leave care in or after April 2015) who were born after 1 April 1999 and whose last placement was away from home.
- 3.20 Aftercare provisions, Part 10, came into force in April 2015. This new legislation introduces a new obligation on local authorities to secure some care leavers in their looked after placement, or suitable alternative accommodation, up to their 22nd birthday. The changes introduced by the Act reflect the principles of *Staying Put Scotland* (October 2013), guidance for local authorities and other corporate parents. The 2014 Act changes the legal definition of a 'care leaver'. From April 2015 any young person who ceases to be looked after on or after their 16th birthday will be classified as a 'care leaver'. (The current definition restricts the category of 'care leaver' to young

people who ceased to be looked after beyond their minimum school leaving age.) The 2014 Act extends eligibility to 'Aftercare' services to care leavers aged 21 to 25.

- 3.21 This change will result in an expansion of the population eligible for 'Aftercare' support in two ways. First, young people aged between 19 and 21 who are currently in receipt of 'Aftercare' will be able to continue to receive support up to their 26th birthday. Second, care leavers between the ages of 21 and 25 will be able to re-apply for support. The Scottish Government estimates that in 2015-16 approximately 3,225 care leavers aged 19 to 25 will request 'Aftercare' support, of which 65% (2,096) are likely to be successful.
- 3.22 From April 2015 all care leavers aged 19 – 26 will be entitled to request assistance from their local authority. The local authority must undertake an assessment and, if the care leaver is assessed as having eligible needs which cannot be met by other means, the local authority must provide them with 'such advice guidance and assistance as it [the local authority] considers necessary for the purposes of meeting those needs' (Section 60(2)). 'Eligible needs' will be defined by the Scottish Government through a Ministerial Order (regulations).
- 3.23 The 2014 Act also amends Section 30 of the 1995 Act, which sets out when a local authority may give financial assistance towards the education or training expenses of young people who have ceased to be looked after. From April 2015 the upper age to which this financial support can be requested is 25 (up from the previous limit of 21, or the conclusion of the young person's course). This is a discretionary power, and local authorities are under no duty to provide this financial assistance.
- 3.24 Part 11 of the Act introduces a new duty on local authorities to provide care leavers whose final placement was "away from home" with a continuation of the kinds of support they received prior to their ceasing to be looked after, including accommodation in a "looked after" placement.
- 3.25 The policy intention behind the "Continuing Care" provisions is to provide care leavers with a more graduated transition out of care and normalise the experience by allowing strong and positive relationships between the young person and carer to be maintained into adulthood.
- 3.26 Continuing Care is being introduced in a staged process. In the first year (2015-2016) only 16 year old care leavers will be eligible. In each of the next four years the right will be extended to an older age group until the right will apply to care leavers up until their 22nd birthday.
- 3.27 Renfrewshire has already taken on board the principle underpinning the legislation and many of our young people already remain in placement, whether this is in our children's houses or foster placements that become supported accommodation placements.

Part 12 – Services to children at risk of becoming looked after

- 3.28 The aim of Part 12 is to ensure that a range of 'relevant services' is available to children and their families at risk of becoming 'looked after' by a local authority. The types of services which must be made available by local

authorities will be set out by Scottish Ministers in due course. This part of the act comes into force in August 2016.

- 3.29 The Act states that services must be provided to a child at risk of becoming looked after, a 'qualifying person' in relation to a child at risk of becoming looked after, a woman who is pregnant with a child who is at risk of becoming looked after once born and a qualifying person in relation to a pregnant woman which includes, husband, partner and any other person whom the Local Authority decides will become that when the child is born. Scottish Ministers also have the power to make provisions about 'when' and 'how' relevant services are to be provided to eligible children or qualifying persons.
- 3.30 A relevant service is defined as:
- Providing information about a matter
 - Providing advice or counselling about a matter
 - Taking action to facilitate the addressing of a matter by a person
- 3.31 The relevant services which must be made available in part 12 will be listed in secondary legislation

Part 13: Kinship Care

- 3.32 Part 13 of the Act deals with kinship care, where a child is looked after by their extended family or close friends if they cannot remain with their birth parents. Scottish Government have funded organisations such as Children 1st and Citizens Advice Scotland to provide advice and support. In line with the 2014 Act Renfrewshire already recognises kinship carers not only where there is a looked after status, but also support families where there is a child in need, and where there is not a statutory order in force.
- 3.33 It is noted that the Board approved revised payment rates for kinship carers on 10 March 2016 to ensure parity for the payments of allowances for children for both kinship and foster carers.

Part 14 – Adoption register

- 3.34 The Scottish Government has funded the British Association for Adoption and Fostering (BAAF) to run the Adoption Register in Scotland since it was established in 2011. The register facilitates family finding across Scotland which has increased the numbers of placements of children linked for adoption. The register is a database which records and stores information already held by adoption agencies. The register uses this information to identify potential links between children with a plan for adoption and prospective adopters.
- 3.35 Part 14 of the Act places a duty on all adoption agencies to use Scotland's Adoption Register, what information is required and within agreed time scales. The 2014 Act adds new sections 13A to 13G to the Adoption and Children (Scotland) Act 2007. Section 13A (2) (a) empowers Scottish Ministers to prescribe in Regulations the information relating to adoption to be included in the Register.
- 3.36 Section 13C(1)(a) places a duty on an adoption agency to provide Scottish Ministers with such information as may be prescribed in regulations about

children who it considers ought to be placed for adoption. Adoption agencies would be required to refer a child to the Register at the stage of the Agency Decision Maker confirming that adoption is in the child's best interests. Renfrewshire Adoption Panel is currently reviewing its processes to ensure compliance with the legislation.

Part 15: School Closure

3.37 Part 15 (School Closure Proposals) of the Children and Young People Act 2014 relates to the Schools (Consultation) (Scotland) Act 2010 in respect of the development of the school estate. It updates the previous Act in relation to:

1. Restrictions on closure proposals;
2. Requirements to provide detail of financial implications of closure proposals;
3. Corrections to proposal papers;
4. Special provision for rural school closure proposals, incorporating:
 - Presumption against rural school closure;
 - Preliminary requirements in relation to rural school closure;
 - Additional consultation requirements;
 - Call-in of closure proposals;
 - Referral to the Convener of the School Closure Review Panels;
 - Review by Panel;
 - Decision following review; and
 - Appeal against decision of the Panel

Part 17: Other reforms and Children's legal aid

3.38 The Act makes provision for the Scottish Ministers to make children's legal aid available by Regulations for court proceedings under the Children's Hearings (Scotland) Act 2011. The Scottish Ministers already had power to do the same in relation to legal aid for specified children's hearings, and made the Children's Legal Assistance (Scotland) Regulations 2013.

3.39 The same tests would apply to similar circumstances as to legal aid available under other provisions. In relation to court proceedings where the person is an adult, the eligibility tests are reasonableness and whether undue hardship would occur if legal aid is not provided. In relation to court proceedings where the person is a child, the eligibility tests are reasonableness, undue hardship, and whether it is in the best interests of the child for children's legal aid to be made available. If the court proceedings are an appeal, there is an additional test of substantial grounds for making or responding to that appeal.

Part 18: Wellbeing

3.40 Part 18 of the Children and Young People (Scotland) Act 2014 focuses on 'wellbeing'. The Act provides for a number of duties that seek to safeguard, support and promote the wellbeing of children and young people. To ensure that these duties take a holistic view of what a child or young person needs, the Act provides for a holistic definition of wellbeing by reference to SHANARRI ie safe, healthy, achieving, nurtured, active, respected, responsible and included.

- 3.38 While each indicator is separately defined, in practice, the indicators are not discrete, but connected and overlapping. In this way, they give a holistic view of each child or young person, and allow the child or young person, and the adults supporting them, to consider strengths as well as barriers to growth and development. SHANNARI is embedded in the assessment processes of all the partners in children's services in Renfrewshire.
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Implications of this report

1. Financial Implications

Funding has been provided by Scottish Government to support implementation of the act.

2. HR and Organisational Development Implications

None.

3. Community Plan/Council Plan Implications

Children and Young People

- Implementation of the Children and Young People's Act 2014 supports our aspiration to give our children the best start in life and achieve all they can.

Community Care, Health and Well-being

- Implementation will support us to meet the wellbeing needs of our children and young people.

Safer and Stronger

- Implementation of the Act recognises that the need for support for some young people extends beyond the age of 18.

4. Legal Implications

None.

5. Property/Assets Implications

None.

6. Information Technology Implications

None.

7. Equality and Human Rights Implications

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health and Safety Implications**
None.
 9. **Procurement Implications**
None.
 10. **Risk Implications**
None.
 11. **Privacy Impact**
None.
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List of Background Papers

- (a) Background Paper 1: none

The foregoing background papers will be retained within children's services for inspection by the public for the prescribed period of four years from the date of the meeting. The contact officer within the service is Sharon Glasgow, Senior GIRFEC Officer, Tel 0141 618 6804

Children's Services

DH/SG

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