

Our ref: CRES 1041

31 July 2008

Dear Consultee

Strengthening for the Future: A consultation on the reform of the Children's Hearings System

This letter invites you to have your say in how we, the Scottish Government, propose to modernise and strengthen the Children's Hearings System including the establishment of a new national body to support and administer the system.

The Scottish Government is clear that the Children's Hearings system remains the best way of providing support and assistance to Scotland's vulnerable children and to their families, but we believe that the time is now right to reform the system.

We enclose a Consultation Paper seeking views on our proposals which require legislative changes to secure structural reforms. The proposals also require changes in practice which can be taken forward without the need to legislate.

The consultation period will last for 12 weeks. Subject to the outcome of the consultation, we will introduce a Bill to establish a new national body that brings together the functions currently carried out by the Scottish Children's Reporter Administration, 32 Children's Panels and associated bodies, the Scottish Government and local authorities. This will ensure that children's rights are properly upheld within the Children's Hearings system.

If you have any queries please contact myself or Gaynor Davenport on 0131-244-1583 or Eleanor Manson on 0131-244-5092.

I hope that you will take the time to participate in the consultation and would like to thank you in advance for your contribution.

**DENISE SWANSON
HEAD OF CHILDREN'S HEARINGS BRANCH**

STRENGTHENING FOR THE FUTURE

A CONSULTATION ON THE REFORM OF THE
CHILDREN'S HEARINGS SYSTEM



The Scottish
Government

STRENGTHENING FOR THE FUTURE

**A CONSULTATION ON THE REFORM OF THE
CHILDREN'S HEARINGS SYSTEM**

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ISBN: 978-0-7559-5771-2

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St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by RR Donnelley B56174 8/08

Published by the Scottish Government, August 2008

The text pages of this document are printed on recycled paper and are 100% recyclable

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FOREWORD



The care of Scotland's children is one of our most important responsibilities. For more than 35 years Scotland has enjoyed a distinctive system of justice and care for children, the Children's Hearings system, which has been visited and studied by politicians, academics and service providers from all over the world. The philosophy of the Children's Hearings system was established in the Kilbrandon Report of 1964 and recognises that children who offend and those who require care and protection are equally deserving to be considered as children in need.

We believe that philosophy remains as true today. It underpins the approach in *Getting it right for every child*. However, we also recognise that much has changed in the intervening years. Political structures have changed; our expectations and aspirations have grown; and, for many, our society is a better place. Despite this, many children and young people continue to face adversity and to struggle, on a scale previously unknown, with problems associated with disadvantage, neglect and abuse, and with behaviour which is damaging to themselves and to others.

The Scottish Government is clear that the Children's Hearings system remains the best way of providing support and assistance to Scotland's vulnerable children and to their families. We have already taken steps to improve children's services, and placed children and families at the heart of the national outcomes which local authorities are committed to taking forward through their Single Outcome Agreements.

More specifically, however, we believe that the time is now right to reform and strengthen the Children's Hearings system. We will modernise it, where necessary, to ensure it is fit to deliver its vital purpose in the 21st century and to make its particular contribution to our shared agenda of improving the life chances of children, young people and families at risk.

This paper sets out proposals for action aimed at improving the support provided by the Children's Hearings system, through a more streamlined approach which focuses the efforts of everyone involved on the children themselves, delivers in partnership consistent and effective decision-making throughout Scotland, reduces bureaucracy and drift and, in the longer term, helps deliver effectively to achieve better outcomes for the children who are involved in the Children's Hearings system.

Fiona Hyslop MSP

Cabinet Secretary for Education and Lifelong Learning

THE PURPOSE OF GOVERNMENT

The Scottish budget document, published in November 2007, defines a central purpose of *focusing Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth*. Sustainable economic growth does not just mean building up a rich economy - it will also mean building up a rich and responsible society.

The new Government Economic Strategy is central to the delivery of our overall Purpose. The delivery of the Government's Purpose will be supported by five strategic objectives - to make Scotland wealthier & fairer, smarter, healthier, safer & stronger and greener. These, in turn, are supported by fifteen national outcomes which describe in more detail what the government wants to achieve over a ten year period. Reform of the Children's Hearings system will contribute to all five strategic objectives and most, if not all, of the national outcomes.¹

Within the Government Economic Strategy five strategic priorities have been identified as being critical to economic growth. These are learning, skills & wellbeing; a supportive business environment; infrastructure development and place; effective government; and equity. The contribution of the Children's Hearings system is most readily identifiable through the learning, skills and wellbeing strand, and it will make a major contribution to achieving equity.

The Government Economic Strategy sets out targets for improving solidarity and cohesion. These are: to increase overall income and the proportion of income earned by the three lowest income deciles as a group by 2017; and to narrow the gap in participation between Scotland's best and worst performing regions by 2017. We believe that the interventions provided by the Children's Hearings system, to provide support and assistance to vulnerable children and families and improve their life chances, will contribute to achieving these objectives. It is self-evidently right that we should work with these families and children to reduce their vulnerability, but in doing so, we also increase their capacity to contribute to our ambitions for our country and our communities.

¹ Strategic Objectives and National Outcomes are available on the Scottish Government Website at <http://www.scotland.gov.uk/About/scotPerforms>

INTRODUCTION AND POLICY BACKGROUND

Introduction

Giving children the best start in life and improving the life chances of children, young people and families at risk will make a major contribution to delivering the solidarity and cohesion that we want to see in Scottish society. The Children's Hearings system has a substantial contribution to make to the delivery of the Government's Purpose.

Through *Getting it right for every child* we are seeking to achieve changes in the cultures, practices and systems of services affecting **all** children. For those whose activities impact on children, *Getting it right for every child* is developing an approach which will promote how to work in a way which delivers improved outcomes for children and young people. Earlier this year we announced our intention to focus on giving **all** children the best start in life. The framework we announced in March is intended to develop what needs to be done to support early years work and early intervention.

We are also acting to improve a wide range of services focussed on children in need - improving outcomes for looked after children; developing a more coherent approach to addressing the problems of children affected by substance misuse; providing support for kinship care; through Preventing Offending by Young People: A Framework for Action, we will strengthen all aspects of the youth justice agenda from prevention through to high risk and will carefully consider the Prisons Commission's recommendations on the ways we might deal with our young offenders in the future.

The Children's Hearings system sits at the centre of this network of policies and services, providing the gateway into support and services for those children who are most in need and may require compulsory measures of care and support. Within this context, the Scottish Government's overall objective is to introduce a coherent package of measures which will strengthen and modernise the Children's Hearings system and enable it to continue to play a central role in improving the lives of vulnerable children into the future.

Why change?

When local government was reorganised in 1996, the structure of the Children's Hearings system was partially reformed. The Children's Reporters were taken out of local control and placed within a Non-Departmental Public Body – the Scottish Children's Reporter Administration. The children's and Safeguarder panels however moved from a regional basis (12 children's panels, 12 Children's Panel Advisory Committees (CPACs) and 12 Safeguarder panels) to 32 Children's Panels, 30 CPACs and 32 Panels of Safeguarders.

This caused a considerable increase in bureaucracy as each children's panel required a chairman and at least one deputy, the number of CPAC members had to be significantly increased and separate processes had to be created for each panel of Safeguarders. In short, the change generated bureaucracy, reduced flexibility and added nothing to outcomes for children.

By any measure the Children's Panel is Scotland's largest tribunal. On a daily basis children's hearings take life changing decisions affecting vulnerable and troubled children and their families. Yet the support for Panel members varies enormously between the 32 local areas.

A critical result of this is that there is wide variation in the volume and quality of in-service training available to volunteer Panel members at present, creating inequalities across the system which can adversely affect the quality of panel member practice. Local Panel members have a right to expect the best possible training and continuing support, to help them deliver the high quality decisions needed to deal with the increasingly complex cases which are brought to Children's Hearings.

We want the decision-makers - Children's Reporters and Panel members - to be supported. The system rightly places a high value on the contribution of the community in taking decisions about children. However, too often the behaviours generated by an over-dependence on local support and the absence of underpinning standards mean this value is undermined. We think the current structures are over-complex and have unclear accountabilities. Both of these factors work against sustained leadership either locally or across the system.

Other tribunals operating in Scotland have a dedicated supporting national body and we think this is the right way forward for the Children's Hearings system.

What must remain

The three overarching principles governing the operation of the Children's Hearing system are that:

- the welfare of the child is the paramount consideration;
- the child's views must be taken into account where major decisions are to be made about his or her future;
- no supervision requirement should be made unless to do so would be better for the child than making no supervision requirement at all.

These core principles remain at the heart of our proposals.

We also intend to retain the position of Reporters and of the Principal Reporter, and we remain committed to the involvement of unpaid trained volunteers, representative of Scotland's communities, as the Panel members who make the decisions at local Children's Hearings.

We wish to ensure that the Children's Hearings system continues to be best placed to make its particular contribution to the well-being of Scotland's communities. Our proposed reforms will provide consistency within the system and a strong focus on quality assurance, whilst retaining local delivery and the involvement of volunteers with an understanding of local communities and the needs of those living within those communities.

Crucially, our policies, programmes, frameworks and reforms will together ensure that professionals and volunteers working in the Children's Hearings system are well-placed to decide when a compulsory intervention is necessary and what measures of care should apply to address needs and behaviour.

By building on the strengths of the current system and ensuring that it focuses more firmly on improving life chances for the children and families with whom it works, the Children's Hearings system can contribute to securing the transformational change which is now needed.

Our Priorities

Our priorities are to:

- ensure that the professionals and volunteers who make up the Children's Hearings system are able to focus their particular skills on the needs of children, through changed structural arrangements which provide clear accountabilities, reduce bureaucracy and remove unnecessary administrative burdens;
- demonstrate the high value the Scottish Government places on children referred to the system by providing Reporters and the volunteers in the system with better support;
- improve the effectiveness of the system through procedural change, making it more agile and less bureaucratic;
- work with communities to help them to understand and support young people whilst protecting the safety and peace of local neighbourhoods.

How will we do it?

Our proposals to strengthen and modernise the Children's Hearings system require **legislative changes** to secure the structural reforms we seek. They also require **changes in practice**, which can be taken forward without recourse to legislation.

Subject to the outcome of this consultation, we intend to introduce a Bill to establish a new national body, bringing together the functions currently carried out by the Scottish Children's Reporter Administration, 32 Children's Panels and associated bodies, the Scottish Government and local authorities, and to ensure that children's rights are properly upheld within the Children's Hearings system.

We will also take action to improve practice in the interim. Some of this is already underway. We have already set in place a project to bring forward changes to the frequency of hearings,² and another to improve the continuity of Panel members when a decision is deferred from one hearing to another.³ These developments will be rolled out throughout Scotland in the course of 2008, following specific training for all involved.

We will continue to support these efforts to bring about change within the existing system, whilst pressing forward on further activity to deliver improvement in the short term, in advance of our planned structural reforms.

Real change will require commitment and leadership from all those involved in delivery of the Children's Hearings system. The Scottish Government already meets formally with other partners involved in delivering the Hearings system, and will continue to do so.

In addition, we intend to establish a Strategic Project Board, chaired by the Minister for Children and Early Years, to oversee the development of the legislation and advise the Scottish Government on the implementation of the new system. The Project Board will include representatives from the Convention of Scottish Local Authorities (CoSLA) and SCRA, a Children's Panel representative and other key stakeholders.

We will also work with local authorities, through existing community planning arrangements, to ensure that the views and voices of community groups, families and children inform the reform programme.

The details of our proposals for structural reform and practice change are set out below.

² Proposal Twelve in the Draft Children's Services (Scotland) Bill consultation - The draft Children's Services (Scotland) Bill and reports on the consultation responses can be found on the Scottish Government Website at

www.scotland.gov.uk/Topics/People/Young-People/childrenservices/girfec/publications

³ Proposal Eighteen in the Draft Children's Services (Scotland) Bill consultation

PART ONE: STRUCTURAL CHANGE, A NATIONAL BODY

Background

On 18 January 2008, the Scottish Government announced a radical proposal to create a single body to undertake the functions currently delivered by the Scottish Children's Reporter Administration, the Children's Panels and the Children's Panel Advisory Committees (CPACs). We also intend to bring the Panels of Safeguarders within the ambit of the new body. At the time of this announcement, which received widespread support from key stakeholders, Ministers made clear their continuing commitment to local delivery of Children's Hearings.

Following this announcement, the Scottish Government embarked on a programme of bilateral meetings with key stakeholders to develop its thinking on the broad thrust of the reforms and to firm up the more detailed proposals contained in this document. An important aspect of these discussions has been the exploration of the respective roles of the Scottish Government and of local government.

The Role of the Scottish Government

In order to ensure the decision-makers are independent from Government, the new national body will be a Non-Departmental Public Body (NDPB). The Scottish Government will therefore have responsibility for setting the strategic direction of this body, for providing resources and for the sponsorship of the body through a set of corporate governance arrangements, e.g. agreeing organisational objectives and outcomes. The Government will also be responsible for making appointments to the Board of the new body through the Public Appointments process.

In light of the establishment of the national body the Scottish Government will cease to be directly involved in the recruitment and appointment of Panel members and in national recruitment campaigns.

Q1. What is your opinion on these proposals for Government's role in the future?

The Role of Local Government

Local government will continue to have two key roles to play. As now, local government will be responsible for giving effect to the decisions made by a children's hearing. This will involve delivering or securing services to children and families focussed on meeting the needs of each child and working with children and their families to address and resolve problems. It will be essential for the different parts of local government to work effectively together, and to work with other agencies in order to deliver the decisions of the hearings and provide children and families with the necessary support and assistance.

Local government already has a role in relation to promoting the Children's Hearings system to local communities, raising public awareness and understanding, and stimulating interest amongst local people in volunteering as Panel members. We propose that this should become a more substantial focus of local authority activity, in partnership with local Reporters and with the new national body.

We think that the community planning and Children's Services planning arrangements provide an ideal forum for drawing together the bodies and individuals with key contributions to make to ensuring the effectiveness of the Children's Hearings system locally. We see local partnership between the various players as being a key component in ensuring the needs of vulnerable children are met.

In light of the establishment of the national body to ensure appropriate consistency within the Children's Hearings system, we propose that local authorities should no longer be responsible for the provision of in-service training to volunteer Panel members nor for the setting and payment of volunteers' expenses. All of these functions will become the responsibility of the national body.

Local authorities will retain responsibility for giving effect to Panel decisions, and we propose that they should have an enhanced role in promoting the Children's Hearings system locally, and in developing effective partnerships to meet the needs of vulnerable children locally.

Q2. What is your opinion on the proposals for local government's role?

The New Body – The Children’s Hearings Agency

We propose that a new body, provisionally to be called the Scottish Children’s Hearings Agency, should be set up to facilitate the functions of the Principal Reporter, the Children’s Panel, Safeguarders and possibly legal representation of children appearing at hearings.

This will involve the provision of accommodation for children’s hearings throughout the country; employment of staff, including office-holders; “backroom” functions such as HR, finance, IT, and planning; the recruitment, training and monitoring of Panel members; and quality assurance of Panel decision-making. The new body will be a Non-Departmental Public Body (NDPB) and will employ staff, including the office-holders on terms and conditions to be approved by the Scottish Government.

The body will be overseen by a Board whose members will be appointed by Scottish Ministers through the Public Appointments process. It is suggested that the Board should have a Chair and Deputy Chair and between 5 and 8 other members. Specific legislative provision will be required to ensure that the Board of the new body has no influence over the decision-making functions of the Principal Reporter, children’s panel or Safeguarders. This point is addressed in greater detail below.

Q3. We invite views on the nature, functions and title of the new body.

Independence of Functions and ECHR Compliance

In creating the new body it will be essential that the current independence of the decision-making functions (currently exercised initially by the Principal Reporter and local Reporters as authorised by the Principal Reporter, and at the hearings themselves by Panel members) is secured within the new arrangements. This is one element in ensuring the continuing compatibility of the Children’s Hearings system with the provisions of ECHR.

This requires consideration of the individual functions undertaken by the existing bodies and exploration of how these might be appropriately delivered through the new national body. In broad terms, we think it will be necessary to secure appropriate separation of the functions and responsibilities of Reporters (including the Principal Reporter and local

Reporters); of the members of the Children’s Panel (the volunteers); the proposed President of the Panel; all appointments, training and quality assurance functions in relation to the Panel; and of the appointments and functions of Safeguarders and legal representatives.

Similar issues were addressed in the Local Government etc. (Scotland) Act 1994, which established the SCRA. Section 128(8) of that Act states that

“Nothing in this section or any other provision of this Act shall be taken as authorising the Administration [SCRA] to direct or guide the Principal Reporter in the performance of his functions under the Children (Scotland) Act 1995 and any other enactment conferring functions upon him.”

This offers a model for addressing through legislation the issue of separation of functions and independence.

These separations will require to be reflected legislatively, structurally and in the performance of day-to-day responsibilities. In our discussions to date with stakeholders we have described the necessary separation as “firewalls”, and will continue to use this term for the sake of simplicity.

The Scottish Government will give further consideration to this issue in the light of consultation responses which will be essential as we move, in due course, to more detailed consideration of the business model to be implemented within the new body to ensure ECHR compliance.

Q4. Do you have any thoughts on how the necessary separation (“firewalls”) can be achieved in the structure and day-to-day business of the new body?

The Chief Executive Officer (CEO)

This post will be the chief operating officer of the Scottish Children’s Hearings Agency, and will have overall responsibility for the efficient operation of the new body in the exercise of all its administrative functions e.g. HR, finance, procurement, legal services and IT functions, throughout Scotland. The CEO will be responsible for the staff carrying out these functions within the new body, and will be accountable to the Board of the Scottish Children’s Hearings Agency. The CEO will have no authority in relation to the exercise of the professional responsibilities of the Principal Reporter nor will the CEO have any authority in respect

of the exercise of the functions proposed for the new post of President of the Children's Panel.

Q5. What are your views on the proposed role and functions of the Chief Executive Officer?

Principal Reporter and Reporters

The Principal Reporter will be employed by the Board of the new body, and will continue to have statutory decision-making functions as currently defined in the Children (Scotland) Act 1995 and the Criminal Procedure (Scotland) Act 1995. As at present, the Principal Reporter (and such senior Reporter staff as may be designated) will continue to have a right of appeal to Scottish Ministers in the event of the post holder being dismissed from employment by the Board.

The role of the Children's Reporter, acting under the authority of the Principal Reporter, is to investigate a child's circumstances following a referral by any individual. In the light of that investigation the Reporter must decide whether there may be a need for a compulsory intervention in the child's life. If so, the Reporter will refer the matter on to a children's hearing.

Reporters currently make decisions about the scheduling of hearings, including the number of cases to be heard. The Reporter is required by law to take a note of proceedings of a hearing, covering a range of matters specified in the 1996 Rules. This note is intended to assist the Reporter in the event of an appeal. The Reporter will act at Court in the event of grounds being denied or an appeal being made.

Over time, the practice has evolved of the reporter also offering legal and/or procedural advice at a hearing, following his or her determination that a referral is appropriate. This role is not set out in the 1995 Act.

The proposed reforms provide an opportunity to re-examine aspects of the current role of the Reporter and to consider how to make best use of the special expertise of Reporters and to ensure appropriate separation of functions.

Some commentators have expressed concerns about the current practice of the Reporter offering legal or procedural advice at a hearing, and have suggested that this practice may not provide sufficient separation of functions in the light of ECHR provisions. In essence, they

suggest that since the Reporter is responsible for deciding whether a child should be referred to a hearing, he or she should not be able to offer legal or procedural advice to the Panel members at that hearing. As noted above, this role is not enshrined in legislation but has evolved over time.

The Scottish Government believes that the current arrangements conform with the requirements of ECHR. However, given such concerns and the fact that the structural changes we are proposing would bring Reporters and Panel members together in a single organisation, this is an important opportunity to consider how the proposed structures can address these concerns and minimise any future risk of challenge to the Children's Hearings system on that basis.

The Scottish Government will give further consideration to this issue in the light of consultation responses which will be essential as we move, in due course, to more detailed consideration to ensure ECHR compliance.

In particular, in moving forward with the reforms, it seems clear that, in order to protect the independence of advice and support given to children and families, the role currently fulfilled by Reporters during different elements of a hearing require to be separated both in terms of practice and accountability.

This could be achieved by separating out the tasks currently undertaken by Reporters prior to, during and after a hearing. Two separate teams of Reporters could be established through legislation. One team would deal solely with determining the need for referral to a hearing and appeals to the Court (accountable to the Principal Reporter) and the other team would solely provide legal or procedural advice at hearings (accountable to the President of the Children's Panel).

Another option would be to clarify simply in law that Reporters should not provide legal or procedural advice and leave it for Panels to make other local arrangements for the provision of this function. We think this would lead to differential and inconsistent practices developing at hearings, which would run counter to the spirit of the rest of our proposed reforms. As a result, we do not support this option.

Q6. We invite comment on the options outlined above. Do you have any other suggestions about how the concerns about separation of functions might be addressed? Are there other functions which need to be re-considered or re-allocated?

President of the Children’s Panel

We propose to establish a new post - the President of the Children’s Panel - to be employed by the Board of the new body. We propose that the President should be responsible for: the recruitment, appointment and training of Panel members; for quality assuring the decision-making function of Panels; and for setting the level and ensuring payment of Panel members’ expenses. These responsibilities are currently assigned variously to Scottish Ministers, local authorities and CPACs.

We see these as key functions in securing a more equitable and consistent national approach to the exercise of Panel responsibilities.

The President of the Children’s Panel would also be responsible for removing Panel members, but only with the consent of the Lord President of the Court of Session.

We propose that the President should also be responsible for securing local arrangements for the Panel member rota (a role currently undertaken by the Chair of the Children’s Panel). This will require the appointment of local co-ordinators or team leaders, appointed by, and accountable to, the President.

New powers would be needed to permit the President to specify “best practice” and to determine the content of training.

Q7. What are your views on these proposals?

Safeguarders

The role of the Safeguarder is to act in the child’s best interests. This role will be unchanged. A Safeguarder may be appointed for a child by a children’s hearing, or by a Sheriff in hearings-related court cases.

Safeguarders provide children’s hearings and courts with an independent assessment of what is in the child’s best interests. On average, around 1 child in 5 attending a hearing receives the services of a Safeguarder. The Scottish Government considers that Safeguarders are an integral and key element of the Children’s Hearings system. We therefore propose to bring Safeguarders within the ambit of the national body.

Safeguarders are currently appointed to local Panels by the local authority - with cases being allocated following decisions made by

children's hearings or Sheriffs. Training is available for Safeguarders (pre- and in-service). However no provision currently exists to agree remuneration and best practice nationally, to deal with complaints or to monitor performance.

We propose to create a single panel of Safeguarders - to be employed by the Board of the new body - under the discrete management of an employee appointed for that purpose.

Although they would constitute a single, national panel, we propose that individual Safeguarders should be able to indicate the local areas where they are willing to accept appointments.

A single national panel of Safeguarders would require the creation of a discrete element within the new national body in order to secure the necessary degree of independence for the function. This arm of the national body would be responsible for recruiting individuals as Safeguarders and for training, allocating cases, remuneration, setting and defining "best practice" as well as monitoring performance.

Sheriffs and children's hearings would remain free to choose whether to appoint a Safeguarder, as is currently the case.

Q8. What are your views of these proposals?

PART TWO: POLICY AND LEGISLATIVE CHANGES

New statutory system on the legal representation of children:

Legal representation is considered necessary where a children's hearing is giving active consideration to placing a child in secure accommodation and/or complex legal issues are at play.

The current interim scheme, which was introduced in 2002, is based on legal aid arrangements for court settings and is rather basic which has given rise to some concerns about both access and quality.

At present, legal representatives are drawn from members of the panels of Safeguarders and Curators ad Litem and Reporting Officers. As set out above, we are proposing that Panels of Safeguarders should be subsumed within the new national body. It is therefore necessary to consider how legal representation should be supported in a permanent scheme.

Researchers are currently examining the experience of the current system of legal representation by the users of these services - children, families, solicitors, panel members and reporters. This research will report in Autumn 2008 and will inform further consideration as to how legal representation can most effectively be supported in the context of the Children's Hearings system.

We believe the nature of the legal representative's role at hearings should reflect particular circumstances and needs of children as clients of legal representation. The nature of a children's hearing is fundamentally different to a court. We suggest that the role of the legal representative is similarly different. One option might be to develop a bespoke code of practice for legal representatives acting on behalf of children and young people at children's hearings. Such a code would need to be approved by the Law Society of Scotland. We will consider this matter further in the light of responses to this consultation, and the outcome of the research referred to above.

Q9. We invite views on the best way to provide an appropriate, statutory scheme for legal representation of children and young people (in the circumstances specified above) who are involved in the Children's Hearings system.

Withholding information provided by the child

The rights of parents and others involved in a children's hearing to full information about a child has led to the disclosure of information that may place children at risk. At present, where a child passes on a view or shares information with the children's Reporter or the children's hearing, the full substance of the communication **must** be shared with the parents.

Previous consultation on the Children's Services (Scotland) Bill contained a proposal to legislate to enable children's hearings and Reporters to withhold information provided by the child when they considered its release would place a child at risk. Almost 90% of respondents expressed support for this proposal. A similarly high proportion of respondents stated that they felt the proposal would meet the objectives.

The Scottish Government proposes to bring forward such a provision in draft legislation

Q10. What are your views on this proposal?

Streamlining the establishment of the grounds for referral

At present where a child is too young, not sufficiently mature or does not understand the grounds for referral, but the parents accept them, it is necessary for a proof hearing to be arranged at the Sheriff Court. Procedurally, this must be preceded by a children's hearing.

We consider this process causes unnecessary delay. Once again, consultation on the Children's Services (Scotland) Bill proposed a solution to streamline the establishment of the grounds for referral. This received widespread support with 86% of respondents in favour of the proposal.

The Scottish Government proposes to bring forward such a provision in its draft legislation.

Q11. What are your views on this proposal?

Procedural Changes to the Children's Hearings system

At present, if a children's hearing is unable to dispose of a case and considers it necessary to detain a child in a place of safety, the appropriate provision under which to grant a warrant is generally determined by the reason why the hearing is unable to dispose of the case. The appropriate provision may therefore vary at subsequent hearings. The reason for a hearing being unable to dispose of a case will often not be known in advance of the hearing.

The current warrant provisions are complex and can be difficult to manage. The proposed reforms provide an opportunity to simplify the structure of the warrant provisions and ensure that no child in need of detention in a place of safety is disadvantaged because of technicalities around which warrant provision the hearing relied upon. We therefore propose to bring forward amended warrant provisions.

We also propose to bring forward another change which was consulted on in the draft Children's Services (Scotland) Bill. This is in relation to section 63 of the Children (Scotland) Act 1995.

At present, where a child has been detained by the police in a place of safety and it is decided charges are not to be proceeded through the court, the Principal Reporter must on the same day as the information is received decide whether compulsory measures of supervision are required (and if so arrange a hearing to take place within 3 days). A difficulty arises if the Principal Reporter does not have sufficient information to take an informed decision at that time. In that case, the default position is the child is released with no further possibility of a hearing.

It is therefore proposed that the Principal Reporter should be able to release the child from detention in the place of safety while being able to continue to investigate matters and to decide (under s56 of the Children (Scotland) Act 1995) at a later date whether to arrange a hearing.

The Scottish Government proposes to bring forward such a provision in its draft legislation.

Q12. Do you agree these are areas which should be addressed?

Papers for children

In the *S Case*, the Court considered that children should have a fettered right of access to reports. The Principal Reporter gave an assurance that a scheme would be promoted to enable this to happen. However, while an administrative based scheme has been promoted, children still have no statutory right of access to the reports - unlike parents. We propose to remedy this in our draft legislation.

Q13. Do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

Other legislative implications

A raft of primary and secondary legislation would require significant amendment including the Children (Scotland) Act 1995, the Local Government etc. (Scotland) Act 1994, the Criminal Procedure (Scotland) Act 1995, the Children's Hearings (Scotland) Rules 1996, the Children's Hearings (Legal Representations) (Scotland) Rules 2002, and the Panels of Persons to Safeguard the Interests of Children (Scotland) Regulations 2001.

Q14. Are there any other issues which you think might be addressed in the reform programme or proposed legislation?

PART THREE: REGULATORY IMPACT ASSESSMENT (RIA)

Further consultation on the key provisions of the draft Children's Hearings (Scotland) Bill is planned for the early part of 2009. An RIA will be incorporated within that process. This will identify and analyse the benefits, risks, costs and compliance issues arising from the various proposals that may have implications for resources.

Equality and Equal Opportunities

We do not believe there will be any implications for the issues of equality, equity and fairness in the proposals which are being developed. However, in bringing forward a draft Bill, equality and equal opportunities issues will be considered in the light of the detailed proposals.

Resources for Local Authorities

It has been estimated that local authorities currently spend around £3m per year on supporting the work of the Children's Panels and CPACs. We are confident this continuing level of funding would fully meet any pressure of increased activity in relation to promoting the work of the Children's Hearings system since that increase would be offset by the proposed removal of the local authorities' current responsibilities for in-service training of the volunteers and payment of their expenses.

PART FOUR: THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Next Steps

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultations aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. This remains the case, however, the Scottish Government believes greater use of the web site will more effectively support the exchange of views. In this light, a limited number of written papers are being distributed to organisations and individuals with an interest. The Scottish Government website will enable a wider audience to access the paper and submit responses.

In addition, the Children's Panel Chairmen's Group (CPCG) has agreed to arrange a number of local events to facilitate consultation with members of the children's panels.

All Scottish Government consultation papers and related publications (e.g. analysis of response reports) can be accessed at: Scottish Government consultations (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy

- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

The Scottish Government now has an email alert system for consultations

(SEconsult:<http://www.scotland.gov.uk/consultations/seconsult.aspx>).

This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SGconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Responding to this consultation paper

We are inviting written responses to this consultation paper by 24 October 2008.

Please use the consultation questionnaire provided at Annex B or clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

Our on-line questionnaire is available on the Scottish Government website at www.scotland.gov.uk/consultations (look for the consultation title among the list of "current" consultations. The on-line questionnaire is located at the top of the contents page.

Alternatively, please post your response to:

The Scottish Government
Children's Hearings System consultation
CRES 1041
CSU, Spur U5b Saughton House
Edinburgh
EH11 3XD

Please remember to include the **Respondent Information Form (Annex A)**. You can use this Respondent Information Form or print off a copy from the Scottish Government Website. The form to be used is located at the top of the contents page of our consultation.

If you wish to respond by E-mail, our address is chbillteam@scotland.gsi.gov.uk. Please remember to include the **Respondent Information Form**, which can be accessed on-line. The form to be returned with the email is located at the top of the contents page

If you have any queries please contact Gaynor Davenport on 0131-244-1583 or Eleanor Manson on 0131-244-5092.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public so it is important that we receive your completed **Respondent Information Form** together with your consultation response as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 24 November 2008 and on the Scottish Government consultation web pages by 24 November 2008. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SG Library on 0131 244 4556. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next ?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the Children's Hearings system. We aim to issue a report on this consultation process by late December 2008. This will be followed by a draft Children's Hearings Bill and further consultation on the key provisions of the draft Bill in early 2009.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to Gaynor Davenport or Eleanor Manson at:

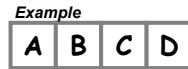
Scottish Government
Children's Hearings Bill Team
Mail Point 37
Victoria Quay
Edinburgh EH6 6QQ

or by e-mail to chbillteam@scotland.gsi.gov.uk



RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately



(Please complete in **BLACK** ink and in **BLOCK CAPITALS**, one per box)

1. Name/Organisation

Organisation Name

Grid for Organisation Name

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

Grid for Surname

Forename

Grid for Forename

2. Postal Address

Grid for Postal Address

POSTCODE Phone Email

3. Permissions

I am responding as ...

Individual

Individual checkbox

Group/Organisation

Group/Organisation checkbox

Please tick as appropriate

(a) Do you agree to your response being made available to the public... 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
Yes, make my response available, but not my name and address
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... 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... Are you content for Scottish Government to contact you again in relation to this consultation exercise? Please tick as appropriate Yes No

CSU USE ONLY

OFFICE USE ONLY

DATE RECEIVED

Grid for DATE RECEIVED

ANNEX B: Strengthening for the Future – a consultation on the reform of the Children’s Hearings System.

Consultation Questions

Thank you for taking the time to contribute to the consultation on the reform of the Children’s Hearings System.

You do not need to answer all of the questions.

All responses will be considered.

STRUCTURAL REFORM

The role of the Scottish Government (page 11).

Question 1.

What is your opinion on the proposals for Government’s role in the future?

The role of Local Government (page 12)

Question 2.

What is your opinion on the proposals for local government’s role in the future?

The New Body – The Children’s Hearings Agency (page 13).

Question 3.

We invite views on:

- a) *the nature of the new body*
- b) *the functions of the new body*
- c) *the title of the new body*

Independence of Functions and ECHR Compliance (pages 13 and 14).

Question 4.

Do you have any thoughts on how the necessary separation (“firewalls”) can be achieved in the structure and day-to-day business of the new body?

The Chief Executive Officer (CEO) (pages 14 and 15).

Question 5.

What are your views on the proposed role and functions of the Chief Executive Officer?

Principal Reporter and Reporters (page 15).

Question 6.

- a) *We invite comment on the options outlined.*
- b) *Do you have any other suggestions about how the concerns about separation of functions might be addressed?*
- c) *Are there other functions which need to be re-considered or re-allocated?*

President of the Children's Panel (page 17).

Question 7.

What are your views on these proposals?

Safeguarders (pages 17 and 18).

Question 8.

What are your views on these proposals?

POLICY CHANGES

New statutory system on the legal representation of children (page 19).

Question 9.

We invite views on the best way to provide an appropriate, statutory scheme for legal representation of children and young people (in the circumstances specified) who are involved in the Children's Hearings system.

Withholding information provided by the child (page 20).

Question 10.

What are your views on this proposal?

Streamlining the establishment of the grounds for referral (Page 20)

Question 11.

What are your views on this proposal?

Procedural Changes to the Children's Hearings system (page 21).

Question 12.

Do you agree these are areas which should be addressed?

Papers for children (page 22).

Question 13.

Do you agree that the Scottish Government should bring forward such a provision in the draft Bill?

Other legislative implications (page 22).

Question 14

Are there any other issues which you think might be addressed in the reform programme or proposed legislation?



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www.scotland.gov.uk

RR Donnelley B56174 8/08

ISBN 978-0-7559-5771-2



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