

## Consultation on Draft Statutory Guidance for Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act, 2014

I welcome the opportunity to comment on the draft statutory guidance for Part 9 (Corporate Parenting) of the Children and Young People (Scotland) Act 2014. I am broadly supportive of the aims and objectives of this part of the Act and am hopeful that in practice this will translate to improved outcomes and opportunities for looked after and care experienced children and young people across Scotland. We can and must do more to challenge the way in which these children and young people face inequities and disadvantage and I am committed to working to ensure that they are able to know, and own, their rights.

My role as Scotland's Commissioner for Children and Young People is to promote and safeguard the rights of children and young people by promoting awareness and understanding of children's rights, keeping under review the law, policy and practice relating to the rights of children and young people promoting best practice and undertaking research. In responding to this consultation I have considered the guidance with respect to both the impact that it will have on the rights of children and young people and to the role of my office as a corporate parent.

The draft guidance as a whole is clear, coherent and well drafted. The efforts of the Centre for Excellence for Looked After Children (CELCIS) should be recognised in this respect. I also welcome the collaborative approach taken by the Scottish Government with regard to working together to resolve outstanding issues relating to my own inclusion on the corporate parenting schedule. While these concerns will present challenges, for the purpose of this response I have focused on the practical aspect of ensuring the guidance works as well as it can.

*Do you feel this draft guidance provides clarity about what corporate parenting is, and how corporate parents are supposed to exercise their duties?*

Yes, the guidance provides clear and detailed information about what corporate parenting is and identifies what corporate parents are expected to do in order to exercise their duties. However, the links between corporate parenting and children's rights should be made explicit from the very beginning. **Looked after children and young people and care leavers should be clearly identified as rights-holders and corporate parents as duty-bearers and a rights-based approach to corporate parenting should frame the guidance from the offset.**

With regard to identification of corporate parenting responsibilities, paragraph 71 of section c) *Promote the interests of looked after children and care leavers*, is the only section on corporate parenting responsibilities that explicitly refers to children's rights and the UNCRC and this is only to state that obligations are "linked". Similarly, the section on outcomes from corporate parents could more closely align with children's rights and the section on interaction between corporate parents and those with parenting rights and responsibility could make particular reference to the best interests, views and voice of the child and the concept of 'evolving capacity'.

As it stands there is more reference to parental rights than children's rights throughout the guidance. It would be helpful to outline what a rights-based approach to corporate parenting looks like, to identify how children and young people are going to be informed of their rights with respect to corporate parenting and to provide clarity over how Part 9 links with Part 1 (Children's Rights) of the Act. The section of the guidance that refers to corporate parenting responsibilities (starting on page 21) should more explicitly outline how these responsibilities interact with the United Nations Convention on the Rights of the Child (UNCRC) and the role and importance of children's rights. Children's rights should not be seen as separate to the duties outlined in Part 9 (Corporate Parents) of the Act or to the definition and understanding of wellbeing.

Although reference is made in paragraph 24 of the section on Transitions to corporate parents considering their duties under other parts of the Act and the way in which they interact with each other and paragraph 114 of Section 61, *Reports by Corporate Parents*, identifies the importance of linking this guidance with guidance for other parts of the Act, much more information is required. Part 1 of the Act (Children's Rights) places duties on public authorities to report on steps taken to secure better or further effect of the UNCRC requirements. It should be made clear that many public authorities will be corporate parents and that these duties do not sit independently from each other. Similarly, many bodies will have duties under Parts 4 and 5 of the Act, with respect to information sharing and interaction with the Named Person, which should also be clarified in this guidance. It is not sufficient to say that the guidance "links" together, this should be more carefully examined. Clearly this is a challenge because not all guidance for all areas of the Act has been produced and there are different enactment dates, but there needs to be cohesion between the various duties on corporate parents who may have other interlinked reporting duties.

*Do you agree with the definition of corporate parenting?*

Yes, I agree with the definition of corporate parenting set out in paragraph 21 of the draft guidance and welcome the development of a statutory definition for the first time in Scotland. However I would welcome the inclusion of "rights" in addition to "wellbeing" so that the definition reads: "An organisation's performance of actions necessary to promote and support the rights and wellbeing of a looked after child or care leaver..." This will ensure that corporate parents are clear that the duties in Part 1 do not sit independently from the duties in Part 9, and is in line with my consultation response on the draft orders for Parts 9, 10 and 11.

*Is the draft guidance clear about how different corporate parents, in view of their other function, should assess the wellbeing of looked after children and care leavers?*

Although the guidance for Part 9 is very clear that corporate parents should assess the needs of children and young people for services and support, it is not clear how this links to the development of the wellbeing indicators outlined in the draft guidance for Part 18 of the Act (section 96—Assessment of Wellbeing). The ongoing consultation into Parts 4, 5 and 18 of the Act, which is separate to this consultation and operating to different timeframes, includes guidance on an 'assessment of wellbeing' and 'indicators

of wellbeing'. I am keen to ensure that these indicators are rights-based and it would be helpful to know how the development of the assessment of wellbeing maps across to the guidance for Part 9, particularly as the consultation on this will conclude after the consultation on this guidance. The guidance for Part 9 states in paragraph 138 that "whenever wellbeing is assessed in relation to corporate parenting, it should be done in relation to the eight SHANARRI indicators...." Although it states that further guidance on wellbeing is being produced and corporate parents should give "regard" to it, I would be interested to know how the Scottish Government will ensure that the wellbeing indicators in Part 18 are the ones used in Part 9 if the consultation is concluding after the commencement of the duties.

My understanding is also that full commencement of Part 18 is not expected until August 2016 but the commencement date for Part 9 is April 2015. I am keen to ensure that corporate parents are made aware of the impact that the development of the indicators in Part 18 will have on their corporate parenting duties, given that it will be located in separate guidance.

It also would be helpful for the draft guidance to expand on paragraph 59 of the section on a) *Be alert to matters which might adversely affect wellbeing*, where it states "corporate parents must have systems in place to keep them informed of issues which could, potentially, have a negative impact on the life of a child or young person (or the population as a whole)." The guidance could provide examples of the types of system it would consider best practice.

Additionally, although there is reference in paragraph 62 of the section on b) *Assess the needs of children and young people for services and support*, to a Child's Plan, it would be helpful for there to be more clarity regarding how the assessment of wellbeing of looked after children and care leavers undertaken by corporate parents links to the Child's Plan. The paragraph states that "the responsibilities of the agencies involved in addressing wellbeing needs will be included in the Child's Plan." Will corporate parents have access to the Child's Plan and if so how will this work? Does this mean that corporate parents that provide services to looked after children and young people who undertake a wellbeing assessment but are not one of the agencies involved in developing the Child's Plan will be expected to become involved in some way? Will the wellbeing assessment undertaken by a corporate parent feed into the Child's Plan?

*Are there sections of the guidance which you feel need to be expanded?*

- More specific reference should be given to the unique needs and rights of children who are looked after and accommodated at home.
- With regard to planning and reporting (Sections 59 and 61), it is not clear when these plans and reports should be published and how they should be made available to Scottish Ministers for their review.
- The draft guidance frequently refers to the importance of seeking the views of looked after children and young people and care leavers and taking their voice into account, in line with Article 12 of the UNCRC. Although corporate parents should be informed by the needs, views and experiences of looked after children and care leavers as a

necessary component of all their functioning, the guidance should be clear that such engagement should be appropriate and meaningful. My office's Golden Rules of Participation may be helpful in this respect and I would recommend reference to this work, and to other best practice examples in the guidance. It should be clear that effort should be made to engage with those who are the most vulnerable and less likely to speak out, including those with a disability, additional support need or communication impairment.

- Paragraph 51 of the section on *local and national: application of Part 9* should be clear that (a) the local authority in the place a care leaver has moved to should provide *at least* the same standard of service as they would have received if they had remained in the care of the placing home local authority; (b) whether or not it is optional for corporate parents to enter into agreements with the receiving local authority and health board about the provision of services or support, as the paragraph seems to suggest, and what happens with respect to these services if an agreement is not in place.
- Paragraph 64 of the section on *assessing the needs of children and young people for services and support* should clarify that reference to a general assessment of population need is in reference to those corporate parents who are not able to immediately identify the needs of children and young people who present to their services—but it does not exempt corporate parents from undertaking individual assessments of need once those children and young people access their services.
- Paragraph 81 of the section on *actions to help eligible children and young people access and make use of services* should be clear that different levels of support and services will be provided depending on the corporate parent.
- Paragraphs 149-150 of the section on *Enforcement of Part 9* state that compliance with the legislation will be monitored by ministerial review, independent inspection mechanisms and existing governance arrangements, however additional detail would be welcomed. Will Ministers be providing feedback once they have reviewed these plans? How will inspectorates be adapting their scrutiny processes? How will changes be communicated and made to existing governance arrangements? The guidance should clearly outline how Ministers will hold corporate parents to account and ensure that children and young people's rights are upheld.
- Although the guidance has a section on transitions (paragraphs 54-55) it would be helpful for this to include further detail relating to what support and services should be put in place for children and young people who cease to be looked after and for those who reach the age of 26 and are no longer able to access services. It would be helpful have more information on transition planning for corporate parents who provide direct services to eligible children and young people and what their responsibilities are in terms of signposting and supporting those who are no longer eligible.
- The UNCRC as a whole should be referenced in Appendix C, and not just the General Comment on Best Interests. It would also be helpful for the UNCRC to be linked to the policy context in Appendix B.

- The use of examples is a helpful addition. The guidance outlines an ambitious set of responsibilities that should be grounded in practical examples where possible. This is particularly important for corporate parents who do not directly provide services for children and young people.
- It would be helpful for the paragraph 131 of the section on *Outcomes from Corporate Parenting* to identify the importance of high quality services and the role of raised aspirations for these young people.

*Additional comments on the guidance with respect to children's rights*

- The list of important changes for looked after children and care leavers in Scotland on Page 10 should include reference to the duties and responsibilities on public authorities and Scottish Ministers identified in Part 1 and Part 3 of the Act.
- It will be important for the Scottish Government to undertake a Child Rights Impact Assessment (CRIA) on the draft guidance, so that the full implications of the implementation of Part 9 of the Children and Young People (Scotland) Act are fully understood in light of the guidance. I understand that the Scottish Government is currently developing its own model for this, but in the interim my office's report on conducting a CRIA may be helpful.<sup>1</sup>
- It would be helpful for the guidance to be clearer on how children and young people who are looked after or are care leavers will be informed of their rights under this part of the Act. How will eligible children be made aware of the services, support and opportunities available from corporate parents? Who Cares? Scotland's recent research revealed that 47% of young people they asked were still unaware of what a corporate parent is and, crucially, found that the younger the respondent the less likely they were to have knowledge of corporate parenting.<sup>2</sup>
- The guidance should also indicate ways in which corporate parents can identify whether children and young people are looked after or care leavers. This becomes particularly complex if children are trying to access services in different local authorities or have had a number of different placements.
- It is clear that the success and level of implementation of many aspects of the corporate parenting duties will depend on the amount of resources available to corporate parents. Although the guidance makes it clear that corporate parents should not be restricted by resource and should develop solutions to resource constraints, inconsistencies in practice between corporate parents may inevitably occur. It would be helpful for the Scottish Government to clarify how it intends to prevent wide inequities in service provision between corporate parents in different local authority areas.

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<sup>1</sup> [http://www.sccyp.org.uk/uploaded\\_docs/children%27s%20rights%20impact%20assessment.pdf](http://www.sccyp.org.uk/uploaded_docs/children%27s%20rights%20impact%20assessment.pdf)

<sup>2</sup> Who Cares? Scotland, *Care Experienced Young People's Views Interpreting the Children and Young People Act 2014*, November 2014

*Additional comments on the guidance with respect to the inclusion of this office in the schedule*

- The Commissioner for Children and Young People (Scotland) Act 2003 that established this office defines “children and young people” as “natural persons in Scotland who are under the age of 18 years or, if they have at any time been in the care of, or looked after by, a local authority or Northern Ireland authority, under the age of 21 years; and related expressions have corresponding meanings.” The Children and Young People (Scotland) Act 2014 states that Part 9 (Corporate Parents) applies to “a young person who is at least the age of 16 but under the age of 26.” I would therefore welcome clarification in the guidance relating to what corporate parenting responsibilities, if any, my office has with respect to young people between the ages of 21 and 26.
- I welcome the emphasis in paragraphs 87-89, *Consistent with the proper exercise of other functions*, on Section 58 of the Act, which clarifies that corporate parenting responsibilities “should be fulfilled within the parameters afforded by a corporate parent’s primary function, and the structure it maintains to support these.” It is vital to continue to be clear that the aims and objectives identified in Part 9 of the Act will be achieved by the collective actions of all corporate parents who will implement their duties in their own way, rather than by attempting to put services in place that do not fit with organisations primary functions. In this respect, with regards to collaboration and sharing of information, it would be helpful for the guidance to be clearer on how this duty interacts with those organisations (including this office) with regulatory and investigatory functions.
- Section 61 on *Reports by Corporate Parents*, Para 112, states that corporate parenting reports should not only be narrative descriptions of activity but must be “based on data and analysis.” It would be helpful to have further clarity as to what data should be collected and analysed. The Commissioner’s office has an Enquiries service that collects a small amount of data but there are no other mechanisms for collecting data and I am unsure as to what would be expected in this respect.
- Paragraph 97 of Section 59 on *Planning by Corporate Parents* states that it is recommended that “corporate parenting plans include details of any planned collaboration between corporate parents.” It should be expected that my office will have continued engagement with corporate parents as I carry out my general functions, however this interaction is often on an ad hoc basis and it would not be appropriate to plan collaboration in advance. This paragraph could ensure that there is allowance for this flexibility.
- Paragraph 98 of the same section states that “A corporate parent must put in place systems to regularly collect and analyse information relating to its performance.” It would be helpful to expand on this area further in terms of the type of performance objectives that are recommended in the guidance.
- I am concerned about the explanation in paragraph 119, Section 62, *Duty to Provide Information to Scottish Ministers*, which states that this duty “provides a layer of accountability, through which the performance of corporate parents, and the outcomes achieved, may be monitored. On the basis of the information provided,

Scottish Ministers may take action to improve the way a corporate parent exercises its functions under Part 9 of the Act.” Given that my office is not exempt from this part of the Act it is vital to ensure that the layer of accountability described does not apply to the Commissioner for Children and Young People, Scotland because this would compromise the independence of the office.

My office continues to be happy to meet with the Scottish Government to discuss our comments in relation to the corporate parenting guidance and related orders. We would be willing to provide further information in person or in writing with respect to a rights-based approach if that would be of assistance. Please do not hesitate to contact Chloe Swift at [chloe.swift@sccyp.org.uk](mailto:chloe.swift@sccyp.org.uk) in the first instance.

**Tam Baillie, Scotland’s Commissioner for Children and Young People**

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