

Education, Children and Families Committee

10.00 am, Tuesday, 13 December 2016

Implementation of the Children and Young People (Scotland) Act 2014 - Update

Item number 8.1

Report number

Executive/routine

Wards

Executive Summary

The Children and Young People (Scotland) Act 2014 is one of the most significant pieces of legislation affecting children, young people and their families since the Children (Scotland) Act 1995. The aims of the legislation are to:

- Help the Scottish Government achieve its ambition to make Scotland “the best place in the world to grow up” (Scottish Government, 2012);
- Strengthen children and young peoples rights, as described in the United Nations Convention on the Rights of the Child (UNCRO);
- Improve and expand the services that support and protect children and families, including looked after children.

The legislation should enable positive changes for children and young people in Scotland including improving joint working and sharing of information amongst professionals, as well as some considerable improvements for care leavers. Council officers continue to work with colleagues at local and national level to support the development of regulations and guidance. This report provides an update on the implementation of the legislation.

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Implementation of the Children and Young People (Scotland) Act 2014 - Update

1. Recommendations

- 1.1 The Committee notes progress on implementation of the legislation in Edinburgh.
- 1.2 To agree that a separate report specifically around the transition process from children's to adult services be submitted to the first meeting of the Committee following the Local Government elections in May 2017.

2. Background

- 2.1 The Children and Young People (Scotland) Act 2014 places children and young people at the heart of planning and services and aims to ensure that their rights are respected across the public sector. The Act has major provisions relating to children's rights, the planning and promotion of preventative services, early years and childcare and is the most significant legislation for looked after children since 1995. The provisions of the Act come into effect between 2014 and 2017. Consultation on further statutory guidance and regulation has been ongoing during 2016 for several Parts of the Act. The current status of consultations is referenced at the appropriate section in the report.

3. Main report

- 3.1 The Children and Young People (Scotland) Act 2014 sets out a number of new duties on public authorities in Scotland the majority of the Act has been implemented.
- 3.2 The main provisions:
 - Give recognition of the UN Convention on the Rights of the Child (UNCRC) in domestic legislation;
 - Extend the investigatory powers of the Children's Commissioner;
 - Provide a statutory basis for Getting it Right for Every Child (including provision for a "Named Person" for everyone under 18 and a child's plan for those who need targeted interventions);
 - Aim to improve children's services planning including joint planning between health boards and local authorities.
 - Extend provision for early learning and childcare;

- Extend support for kinship carers and care leavers;
- Create a statutory definition of corporate parenting and provide “relevant” services for families;
- Create a statutory adoption register and amend the process for establishing local support structures for the Children’s Hearings system;
- Make changes to the procedures for school closures.

Implementation

Rights of children and young people

- 3.3 To ensure that children’s rights properly influence the design and delivery of policies and services the Act places a duty on the Scottish Ministers to keep under consideration and take steps to further the rights of children and young people, to promote and raise awareness and understanding of the United Nations Convention on the Rights of the Child (UNCRC). There is now a duty on public authorities to report to the Scottish Government every three years which explain what they are doing to encourage and support children’s rights as set out in the UNCRC. The first reporting date will be in 2020.
- 3.4 Child Rights and Wellbeing Impact Assessments (CRWIA) were introduced in June 2015, CRWIAs will ensure that all parts of the Scottish Government consider the impact of proposed policies and legislation on the rights and wellbeing of children and young people.

Children’s Services Planning

- 3.5 There is now a new duty that requires public services to work together to design, plan and deliver services for children and families. The plans should demonstrate what public authorities are doing to ensure that services are integrated for service users, they make the best use of resources and are meeting their aims to safeguard, support and promote wellbeing, early intervention and prevention. The plans will focus on how well children in the Edinburgh are doing, based on the description of wellbeing. Ministers can “call in” plans and request changes if necessary.
- 3.6 All local authorities and health boards are to prepare their three year (2017-20) Children’s Services Plans with 2020 being the first date for reporting to Scottish Government.

Getting it Right for Every Child

- 3.7 The Act puts into law aspects of the Getting it Right for Every Child approach (GIRFEC), specifically the Named Person role and a single child’s plan to improve the way services work to support children, young people and families. Implementation of this part of the Act has been delayed until August 2017 following a Supreme Court ruling in July 2017 that the provisions relating to the sharing of information were non-compliant with the European Convention of Human Rights (ECHR) and with data protection legislation.

- 3.8 The Act ensures that all children and young people from birth to 18 years have access to a named person (usually a health visitor or head/senior teacher). The purpose of the named person is to provide a single point of contact for children, young people and families to turn to for advice, information and support, if and when they need it. The role also coordinates support for the child /young person, working with the family, where wellbeing concerns are identified.
- 3.9 The Act introduces the duty to share information “likely to be relevant” to the wellbeing of a child/young person with the named person, enabling a more effective response. This is the provision which was judged by the Supreme Court to be non compliant with ECHR and data protection legislation. The Data Protection Act 1998 requires that personal information can only be shared without consent if it is necessary to do so in order to protect the “vital interests” of an individual.
- 3.10 Current practice in the City of Edinburgh Council is compliant with the above. All our training and communication with staff has been clear that consent should always be sought before personal information is shared. The exception is where sharing without consent is required in order to protect a child from potential harm i.e. where there is a child protection concern. This meets the DPA “vital interests” test.
- 3.11 Further to the Supreme Court ruling, the Deputy First Minister announced a three month period of engagement during which the Scottish Government is seeking and gathering the views of practitioners and supporters of the named person provisions and of those who have concerns. The outcome of that engagement will be used to inform revisions of the information sharing parts of the legislation.
- 3.12 In the meantime, the Deputy First Minister has made clear that the Scottish Government remains committed to the named person scheme. He has also stated that those local authorities who have already started to implement the Getting It Right approach, as Edinburgh has, should continue to do so, while being clear that information sharing is compliant with data protection requirements as described above. Our practice in Edinburgh is consistent with this advice.

Early learning and childcare

- 3.13 Part 6 of the Act focuses on increasing the number of hours of early learning and childcare to 600 hours that three and four-year-olds, and some two-year-olds, are entitled to. Scottish Government guidance was published in August 2014.
- 3.14 In addition, a Policy Blueprint for the Expansion of Early Learning and Childcare was launched in September 2016 and this requires us to look at all Early Learning and Childcare provision in terms of quality, flexibility, accessibility and affordability.
- 3.15 A working group was set up to develop and extend the flexible delivery of the 600 hours early learning and childcare. By August 2015 all early years’ settings providing early learning and childcare on behalf of the City of Edinburgh Council had increased the placements to 600 hours. Following parental surveys the most popular option was to deliver this entitlement through a model of three hours 10 minute sessions delivered over 38 weeks.

- 3.16 In line with other local authorities, the Council are now undertaking a pilot in 25% of our establishments to look at offering flexible models of delivery. The models being piloted are 4 x 4 hour sessions, 2 x 8 hour sessions, continuing with 5 x 3 hour 10 minute sessions and additional sessions being available to purchase. The Council plans to evaluate this pilot throughout session 2016/17 in terms of quality, flexibility, affordability, and accessibility and then undertake further consultation to extend this pilot further.
- 3.17 We now have 19 establishments offering early learning and childcare to eligible two year olds and have plans to increase this provision in planned new builds. Throughout this session we plan to evaluate the quality of provision and undertake an evaluation of the impact of this provision on children, parents and carers.
- 3.18 In preparation for the planned expansion to 1140 hours we have conducted a survey with parents/carers about possible models of delivery of the 1140 hours. Our survey results indicate 44% of parents/carers would like the hours spread across the year. This would include some hours during term times and some during school holidays. 33% would like the hours delivered in one setting during term time.

Children and Young People who are Looked After

- 3.19 The Act contains significant provisions for looked after children and young people and those leaving care. There are significant new duties in relation to corporate parenting. The Act lists all organisations that are corporate parents and provides direction to make sure they are clear about their duties effective from April 2015.
- 3.20 Statutory Guidance for Part 9 of the Act, Corporate Parenting, was published in August 2015. The Council has an established elected member led Corporate Parenting Member Officer Group which developed a detailed action plan which has delivered a number of positive benefits for children and their families. Due to the staffing changes arising from transformation of the council and changes in partner agencies, there is now a need to renew the membership of the operational lead officer group in order to review the plan. This work will be taken forward by the Council Leadership Team in early 2017.
- 3.21 The provisions of the act relating to aftercare, continuing care and kinship care are all now in force as previously reported. The effect of these is that children, young people and carers have more entitlements. Young people can stay in a care placement until the age of 21 and are entitled to aftercare support up to age 26. Kinship carers of children who are not looked after can apply for an order which confers an entitlement to assessment and support. Clearly this brings challenges in relation to levels of demand on services but Edinburgh is currently compliant with the legislation and has continued to make good progress in relation to shifting the balance of care, as reported in a separate report to this committee (on LAAC transformation).

3.22 The Family Group Decision Making service (FGDM) is being offered to all families whose children may become LAAC. There is guidance and a structure in place for referring social workers who are asking for a child/YP to be accommodated. FGDM is also offered to kinship carers to support those placements. 400 families were referred for FGDM last year. Families were offered FGDM in crisis situations via emergency network meetings and the families of all vulnerable babies are offered FGDM meetings.

Other measures

- 3.23 Parts 14 to 18 of the Act contain a range of important measures. These sections:
- Place the use of a Scotland wide Adoption Register on a statutory footing to help adoption of vulnerable children and give Ministers powers to set out what it should contain. There are safeguards on. For example, disclosure of information which is current practice within the Council;
 - Clarify criteria for school closures, including rural schools, consultation requirements and school closure review panels – amendments to the Schools (Consultation) (Scotland) Act 2010 will be recognised and followed by the Council in any applicable statutory consultation;
 - Provide clarity on technical aspects of the Children’s Hearings System and establish area support teams, including local authority administration and support;
 - Clarify the appeals process for detaining children in secure accommodation;
 - Modify the circumstances under which children’s legal aid can be made available;
 - Provide legal authority for extending free school meals to all P1 and P3 pupils which the Council implemented in January 2015;
 - Provides definitions of how wellbeing should be assessed including what are known as SHANARRI measures: Safe; Healthy; Achieving; Nurtured; Active; Respected; Responsible and Included.

4. Measures of success

- 4.1 The Council and partner agencies meet new legislative requirements including those set out in forthcoming Regulation and guidance.
- 4.2 Partnership working and information sharing is enhanced and a wider range of provisions are seen to be implemented effectively.
- 4.3 Fewer children and young people need to be looked after and accommodated as a result of effective earlier intervention.

5. Financial impact

- 5.1 The Scottish Government has made a guarantee to fund the implementation of the Early Learning and Childcare section of the Act. This has resulted in revenue funding of £4.070m being provided in 2014/15 rising to £6.892m in 2016/17. In addition capital funding has been provided of £2.51m in 2014/15, £2.471m in 2015-16 and £2.591m in 2016/17. This is to implement the Early Learning and Childcare requirements for 3 to 4 year olds from August 2014.
- 5.2 Further funding was provided for 2 year olds in workless households and from August 2015 for 2 year olds who would be entitled to free school meals. Revenue funding of £1.528m was provided in 2014/15 rising to £4.237m in 2016-17. Capital funding was also provided of £2.517m in 2014/15 and £2.394m in 2015/16.
- 5.3 The level of revenue funding will increase each year to 2018/19 to allow for greater flexibility in service delivery. Exact allocations have yet to be confirmed but Edinburgh's share of the national revenue funding allocation is estimated to be 8.3% based on the allocations to date.
- 5.4 Ongoing funding for the 'Children and Young People who are Looked After' sections of the Act for 2015-16 was confirmed at £0.235m in 2015/16 rising to £0.405m in 2016/17 for Continuing Care, £0.326m in 2015/16 rising to £0.329m in 2016/17 for Throughcare and Aftercare and £0.045m in 2015/16 rising to £0.093m in 2016/17 for Changed Eligibility for Aftercare. Further funding will be provided in future years although exact allocations have yet to be advised.
- 5.5 One off funding of £0.157m for implementation work associated with the Kinship Care Order was provided in 2015-16.
- 5.6 Ongoing funding of £0.031m and one off funding of £0.310m was provided in 2015/16 for the implementation of the GIRGEC elements of the Act along with one-off funding of £0.728m in 2016/17. One off funding of £0.257m was provided in 2014/15 for Workforce Development.
- 5.7 The Scottish Government consulted on the costs associated with the original Bill and there was broad agreement from local authorities that the early learning and childcare funding was sufficient to meet the requirements. There were however, differences of opinion between the Scottish Government, COSLA and local authorities on the cost implications of the other areas of the Bill. Further work is ongoing with the Scottish Government, COSLA and local authorities to fully understand the financial implications of the areas of the Act that were contained within the original consultation and those areas subsequently added prior to the Bill being passed.
- 5.8 The table below identifies the cumulative level of revenue funding provided and the annual allocations of capital funding.

Breakdown of revenue and capital funding provided in 2014/15 – 2016/17				
Revenue funding (cumulative)				
Area of the Act	2014/15	2015/16	2016/17	Total
Early Learning and Childcare – 600 hours	£4.070m	£5.997m	£6.892m	£16.959m
Early Learning and Childcare – 2 year olds in workless households and free school meal entitlement	£1.528m	£3.403m	£4.237m	£9.168m
Continuing Care		£0.235m	£0.405m	£0.640m
Throughcare and Aftercare		£0.326m	£0.329m	£0.655m
Changed eligibility for aftercare		£0.045m	£0.093m	£0.138m
Kinship Care Order		£0.157m		£0.157m
GIRFEC		£0.341m	£0.759m	£1.100m
Workforce Development	£0.257m			£0.257m
Total Revenue	£5.855m	£10.504m	£12.715m	£29.074m

Capital funding	2014/15	2015/16	2016/17	Total
Early Learning and Childcare – 600 hours	£2.510m	£2.471m	£2.591m	£7.572m
Early Learning and Childcare – 2 year olds in workless households and free school meal entitlement	£2.517m	£2.394m	£0.000m	£4.911m
Total Capital	£5.027m	£4.865m	£2.591m	£12.483m

6. Risk, policy, compliance and governance impact

- 6.1 The Council has engaged with the Scottish Government and COSLA in discussions on the financial implications of the Act to work to ensure the costs of implementation are fully funded.

7. Equalities impact

- 7.1 The Act contains a number of specific measures to enhance and promote children and young people's rights.
- 7.2 The measures in the Act should support Council objectives to give all children the best possible start in life and improve outcomes for vulnerable children.

8. Sustainability impact

- 8.1 The Act promotes early intervention and community based care solution which are consistent with enhanced sustainability.

9. Consultation and engagement

- 9.1 The City of Edinburgh Council was been involved at every stage in the journey of the legislation, including providing written and oral evidence to the Committee. City of Edinburgh will continue to respond to current and future consultations in relation to regulations and guidance. There has been significant engagement and consultation with children, young people and families on key aspects of the Act.

10. Background reading/external references

[Children and Young People \(Scotland\) Act 2014 – Report to Education, Children and Families Committee, 6 October 2015](#)

[The Children and Young People \(Scotland\) Act 2014](#)

[Early Years Strategy Report 2016 – Education, Children and Families Committee 24 May 2016](#)

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11. Links

Coalition Pledges	P1 Ensuring every child in Edinburgh has the best start in life
Council Priorities	CP1 Children and young people fulfil their potential CP2 Improved health and wellbeing: reduced inequalities CP3 Right care, right place, right time
Single Outcome Agreement	SO3 Edinburgh's children and young people enjoy their childhood and fulfil their potential
Appendices	