

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (RELEVANT SERVICES IN RELATION TO CHILDREN AT RISK OF BECOMING LOOKED AFTER ETC.) ORDER 2016

SSI 2016/44

The above instrument is made in exercise of the powers conferred by sections 68 and 69 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to negative procedure.

Policy Objectives

1. This instrument relates to the duty placed on local authorities by section 68(1) of the 2014 Act to make arrangements to secure that relevant services of such description as the Scottish Ministers may by order specify are made available for the following persons:

- (a) each eligible child residing in the area
- (b) a qualifying person in relation to such a child,
- (c) each eligible pregnant woman residing in its area,
- (d) a qualifying person in relation to such a woman.

2. The policy objective behind this instrument and Part 12 of the 2014 Act is to ensure that families in the early stages of distress who seek help are provided with appropriate forms of support to address preventable reception of children into care by introducing a legal underpinning to early intervention. This will be available in circumstances where a child is considered to be at risk of becoming looked after and is intended to act as an early and effective support mechanism.

3. Section 68(3) of the 2014 Act defines an “eligible child” as a child who the local authority considers to be at risk of becoming looked after (section 68(3)(a)). An “eligible pregnant woman” is a woman who the authority considers is going to give birth to a child who will be an eligible child (section 68(5)). This instrument provides that, in considering whether a child is an eligible child in terms of section 68(3)(a) of the 2014 Act, a local authority must consider whether the child’s wellbeing is being, or is at risk of being, adversely affected by any matter, such that the child is at risk of becoming looked after. This provision links to the wellbeing assessment under Part 18 of the 2014 Act: in considering the risk to the child’s wellbeing, a local authority requires to consider the wellbeing indicators listed in section 96(2) of the Act.

4. This instrument specifies relevant services, which must be made available for those in paragraph 1 above, as

- (a) family group decision-making services; and
- (b) support services in relation to parenting

5. This instrument also sets out further detail about the provision of relevant services. The instrument specifies that relevant services should only be provided where the local authority

considers that the likely benefit to an eligible child's wellbeing in doing so outweighs any likely adverse effect on that wellbeing arising from doing so. In considering the likely effect on an eligible child's wellbeing a local authority must, so far as reasonably practicable, ascertain and have regard to the views of the child and such other persons as the local authority considers appropriate. The intention behind this provision is that a local authority should not provide relevant services if this could have an adverse effect on the wellbeing of the eligible child.

6. The instrument further provides that each local authority must publish information about the provision of relevant services in its area; the ways in which persons can contact the local authority about the provision of relevant services and any other matters that the local authority considers appropriate. The intention behind this provision is to ensure that families are aware of how relevant services can be delivered, and can self-refer to the local authority to be considered for provision of such services.

Consultation

7. There is no requirement under the 2014 Act to consult on this instrument. However, throughout the development of this instrument we have had ongoing engagement with key stakeholders including local authorities and third sector organisations providing services for children and families, such as COSLA, Social Work Scotland, Aberlour, Barnardo's Scotland, Children 1st, SCRA and CELCIS.

8. We carried out an informal consultation between 4 September and 16 October 2015 on the proposed provisions in this instrument. We received 35 responses which were generally supportive of our proposals and policy objectives. Respondents highlighted a number of issues, in particular the need to ensure that links are made with other parts of the 2014 Act (including the Child's Plan in Part 5 and the wellbeing assessment in Part 18 of the 2014 Act). As a result of those responses, a number of amendments have been made to the drafting of this instrument and some issues will be addressed in the non-statutory guidance and practice notes which CELCIS have been commissioned to draft.

Impact Assessments

9. An Equality Impact Assessment (EQIA) and a Business and Regulatory Impact Assessment (BRIA) were completed on the Children and Young People (Scotland) Bill prior to its introduction to Parliament. No further impact assessments have been required to be undertaken for the Order.

Financial Effects

10. The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary for this instrument as, in line with the Financial Memorandum, the Scottish Government will fully fund the additional costs of measures in the 2014 Act. The Financial Memorandum was developed in conjunction with key stakeholder bodies including COSLA.

Scottish Government
Children and Families Directorate
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