

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Child’s plan

Section 33 – Child’s plan: requirement

78. Subsections (1) to (5) provide that a child requires a child’s plan where the responsible authority (as determined under sections 36 and 37) considers that the child has a wellbeing need and that need is not capable of being met, or fully met, by taking action other than targeted intervention, and the need is capable of being met, at least to some extent, by one or more targeted interventions. A child has a wellbeing need if the child’s wellbeing is being, or is at risk of being, adversely affected by any matter. “Targeted intervention” means the provision of a service, by a health board or local authority or a grant aided or independent school, provided by a relevant authority (either directly or through a third party) which is directed at meeting the needs of children whose needs cannot be met, or fully met, by the services which are generally provided to all children by that body.
79. Subsections (6) and (7) provide that in deciding whether a child requires a child’s plan, the responsible authority is, so far as reasonably practicable, to ascertain and have regard to the views of the child, their parent(s), any persons as the Scottish Ministers may by order specify, and any other persons as it considers appropriate. In having regard to the views of the child, the responsible authority is to take account their age and maturity. The responsible authority must also consult the child’s named person where that individual is not employed by them.
80. Subsections (8) and (9) provide that if a child already has a plan, or if the child is a member of any of the regular forces, then subsection (1) does not apply. Where a child already has a plan, section 39 would apply, meaning that the question would then become one of plan review. “Regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

Section 34 – Content of a child’s plan

81. Subsection (1) provides that a child’s plan must include a statement of: the child’s wellbeing need; any targeted intervention(s) which requires to be provided in relation to the child to address the wellbeing need; details of the relevant authority which is tasked with providing any targeted intervention; details of how the intervention is to be provided; and the outcome which the intervention is intended to achieve. A child’s plan may contain a targeted intervention only where the relevant authority tasked with delivering the intervention agrees to its inclusion. If the relevant authority is not in agreement and is not leading on the preparation of the plan, it must provide the person preparing the plan with its reasons for not agreeing to provide an intervention.

82. Subsection (4) provides that the Scottish Ministers may, by order, make provision as to any other information which is, or is not, to be contained in child's plans and the form of those plans.

Section 35 – Preparation of a child's plan

83. Subsections (1) and (3) have the effect that where a child requires a child's plan, the responsible authority should prepare the plan unless the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare the plan. Subsection (2) provides that where required a plan should always be prepared as soon as is reasonably practicable. Subsection (5) creates an exception for where there are no targeted interventions to be included because a relevant authority has not agreed to them in the terms of section 34(2).
84. Subsection (4) provides that where a relevant authority declines to give its agreement to prepare a plan, the relevant authority must provide a statement of its reasons for declining.
85. Subsection (6) provides that in preparing a child's plan, an authority must consult the child's named person where that individual is not employed by the authority. Furthermore, the authority must, so far as reasonably practicable, ascertain and have regard to the views of the child, their parent(s), any other persons as specified by order by the Scottish Ministers and any other persons as it considers appropriate. In having regard to the views of the child, the authority is to take account of the child's age and maturity. Subsections (8) and (9) provide that the Scottish Ministers may, by order, make further provision as to the preparation of child's plans, including provisions requiring or permitting a copy of the plan to be given to a particular person or persons within a particular description, in the circumstances described in the order or where the authority considers it appropriate.

Section 36 – Responsible authority: general

86. Subsection (1)(a) provides that for the purposes of this Part the responsible authority for a pre-school child is the health board for the area where the child lives. Subsection (1)(b) provides that the responsible authority for a child who is not a pre-school child is the local authority for the area where the child lives. Subsection (2) provides that subsection (1) is subject to special cases outlined in section 37.
87. Subsection (3) defines "pre-school child" as a child who has not started primary school and, if the child is of school age, has not started school because the education authority has consented to this being delayed.
88. Subsection (4) provides that for the purposes of this section, the reference to school age is to be construed by reference to the school commencement dates fixed by the relevant education authority; the references to attendance at primary school do not include attendance at nursery classes based in a primary school; and the references to relevant education authority are to the education authority for the area where the child resides.

Section 37 – Responsible authority: special cases

89. As noted above, section 37 makes provision about who the responsible authority is in relation to special cases. Subsection (1) provides that where a pre-school child resides in the area of a health board, by virtue of a placement by another health board or local authority, the health board for the area in which the child resides immediately before that placement is the responsible authority in relation to the child. "Pre-school child" has the meaning given by section 36(3).

90. Subsection (2) provides that where the child is at a public school managed by a local authority other than the one for the area in which the child lives, that other authority is the responsible authority in relation to the child.
91. Subsection (3) provides that where the child is a pupil at a grant-aided or independent school, the directing authority of that school is the responsible authority in relation to that child.
92. Subsection (4) provides that subsection (3) does not apply where the child is a pupil at a grant aided or independent school by virtue of a placement by a local authority.
93. Subsection (5) provides that where a child's residence is displaced by virtue of their falling within any of the categories set out in subsection (6), the local authority for the area in which they would normally reside is the responsible authority in relation to the child. Subsection (6) specifies these categories as: where, in pursuance of a local authority's duties under the Education (Scotland) Act 1980, a child is a pupil at a grant-aided or independent school and resides in accommodation provided for the purpose of attending that school; where the child is placed in a residential establishment by virtue of Chapter 1 of Part 2 of the Children (Scotland) Act 1995; where the child resides at a residential establishment by virtue of an order under the Children's Hearing (Scotland) Act 2011; or where the child is detained in residential accommodation in pursuance of an order under the Criminal Procedure (Scotland) Act 1995.
94. Subsection (7) provides that the Scottish Ministers may, by order (subject to affirmative procedure), modify this section so as to make further or different provision as to the circumstances in which section 36(1) does not apply in relation to a child.

Section 38 – Delivery of a child's plan

95. This section requires that a relevant authority which is to provide a targeted intervention (either directly or through a third party) in terms of a child's plan is to provide it, so far as reasonably practicable, in accordance with the plan. This does not apply where the responsible authority considers that to do so would adversely affect the wellbeing of the child (subsection (2)).

Section 39 – Child's plan: management

96. Subsection (1) provides that the managing authority of a child's plan must keep under review: whether the wellbeing need of the child stated in the plan is still accurate; whether the targeted intervention(s) or manner of provision of those interventions is still appropriate; whether the outcome of the plan has been achieved; and whether the management of the plan should transfer to another authority. In reviewing a child's plan, subsections (2), (3) and (4) state that the managing authority is to consult each relevant authority which is providing a targeted intervention contained in the plan (either directly or through a third party), the responsible authority (where that authority is neither the managing authority nor providing a targeted intervention) and the child's named person where that individual is not employed by the managing authority. The managing authority must also, so far as is reasonably practicable, ascertain and have regard to the views of the child, their parents, such other persons as the Scottish Ministers may specify by order, and any other person that the managing authority considers appropriate. In having regard to the child's views, the managing authority is to take account of their age and maturity.
97. In consequence of this review, the managing authority may, under subsection (5) (a) amend the plan so as to revise the wellbeing need of the child, any targeted intervention(s), or manner of the provision of targeted intervention(s) which require to be provided, or the outcome which the plan is intended to achieve. The managing authority may also transfer the management of the plan to a relevant authority or end the plan (subsections (5)(b) and (c)).

98. Subsection (6) provides that the Scottish Ministers may make, by order, provision about: the management of the child's plan, including when and how a child's plan is to be reviewed in accordance with subsection (1); who is to be the managing authority of the plan; when and to whom the management of the plan is to or may be transferred under subsection (5)(b); when and how a new targeted intervention may be included in a child's plan; and the keeping, disclosure and destruction of child's plans.
99. Subsection (7) provides that the managing authority of a child's plan is the authority which prepared it, or where the management of the plan has been transferred, the person to whom it was transferred. This is subject to any different provision made by order as mentioned above.

Section 40 – Assistance in relation to child's plan

100. Subsections (1) and (2) provide that a relevant authority or a listed authority (see section 44) must comply with any reasonable request made of them to provide a person exercising a function under this Part with information, advice and assistance.
101. Subsection (3) provides that subsection (1) does not apply where the authority or person to whom the request is made considers that the provision of such information, advice or assistance would be incompatible with any of their duties or would unduly prejudice the exercise of any of their functions.
102. Subsection (4) provides that subsection (1) does not permit or require the sharing of information in breach of any legal prohibition or restriction linked to the sharing of such information, other than a breach of a duty of confidentiality.
103. Subsections (5) and (6) apply where a person ("the recipient") receives information in accordance with section 40(1), which has been provided in breach of a duty of confidentiality and where the recipient has been made known of this breach. The recipient is not then to provide that information to anyone else (a third party) unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 5) or any rule of law.

Section 41 – Guidance on child's plans

104. Subsection (1) and (2) provide that relevant authorities and listed authorities must have regard to any guidance issued by the Scottish Ministers about the exercise of functions under Part 5 (other than the function of complying with section 38). Before issuing or revising guidance, the Scottish Ministers must consult any person to which it relates, and such other persons as they consider appropriate.

Section 42 – Directions in relation to child's plans

105. Subsections (1) and (2) provide that relevant authorities and listed authorities must comply with any direction issued by the Scottish Ministers about the exercise of the functions conferred by Part 5 (other than the function of complying with section 38). Before issuing, revising or revoking a direction, the Scottish Ministers must consult any person to which it relates, and such other persons as they consider appropriate.

Section 43 – Complaints in relation to Part 5

106. This section provides that the Scottish Ministers may, by order, make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under Part 5. Subsection (2) details the matters which may be included in any such order. Subsection (3) provides that any order made under subsection (1) may modify any enactment.

Section 44 – Listed Authorities

107. **Section 44(1)** provides that the persons listed in schedule 3 are “listed authorities” for the purposes of Part 5 (subject to subsections (3) and (4)). Subsection (2) allows the Scottish Ministers to modify schedule 3 by order. Subsection (3) provides that the Scottish Ministers are not a listed authority for the purposes of sections 41 and 42. Subsection (4) provides that the Commissioner for Children and Young People in Scotland and a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005 are not listed authorities for the purposes of section 42 – they are therefore not subject to the duty to comply with directions issued under that section. Subsection (5) provides that an order under subsection (2) which adds a person to schedule 3 may modify this section so as to provide that the person is not a listed authority for the purposes of section 42 – this similarly allows the duty to comply with directions to be disapplied if required.

Section 45– Interpretation of Part 5

108. This is an interpretation section for this Part. It includes the definition of “directing authority”. When used generally, this means the managers of each grant-aided school and the proprietor of each independent school. When used in relation to a grant-aided school, it means the managers of the school, and in relation to an independent school, it means the proprietor of the school. It also defines “relevant authority” as any health board, local authority or directing authority.