



# **CHILDREN'S HEARINGS (SCOTLAND) BILL - CALL FOR WRITTEN EVIDENCE ON THE CHILDREN'S HEARINGS (SCOTLAND) BILL**

**The UNISON Scotland Submission to the Scottish Parliament's Education, Lifelong Learning and Culture Committee on their call for written evidence for their consideration at Stage 1 of the Children's Hearings (Scotland) Bill**

**March 2010**

## **Introduction**

UNISON Scotland welcomes the opportunity to respond to the call for evidence from the Education, Lifelong Learning and Culture Committee on the above Bill

UNISON Scotland has over 160,000 members in Scotland, most of whom work in the public sector across Scotland. We represent most of the staff who work for the Scottish Children's Reporters' Administration and are the majority union representing social workers and council administrative staff who will be affected by changes proposed in the Bill.

## **General Comments**

UNISON Scotland wants to commend the consultation process which has taken place in the period since the last Draft Bill was published for consultation. We have been fully involved in the consultation carried out by the Scottish Government, by making written submissions, meeting with the Minister, Adam Ingram, meeting with Kit Wyeth, one of the Civil Servants attached to the CH Bill Team, and by participating in the Virtual Bill Group that was set up to engage with stakeholders and share information relating to the formulation of the Bill.

UNISON's main concern throughout all of our discussions on the Bill has been to ensure that the unique nature of the Children's Hearings system was upheld. The current scheme approaches the human rights of children through the concept of their welfare being paramount and through attempts to work in partnership with their families. We originally had fears that this unique principle would be sacrificed in an attempt to change the system to fit bureaucratically with the ECHR rather than seeing those rights from a child's perspective and defending and promoting the rights afforded to them by the CH system.

We are very grateful for the opportunities afforded us by the Minister and the Bill Team who have ensured that our views and comments were taken seriously and which have allowed us to assist in making the Bill now before us a more realistic and workable piece of legislation, based on the principles of the welfare of the child, which will enable our members to continue to protect children from harm and provide the excellent service that is currently offered by the Children's Hearings system

## **Remaining Concerns**

Whilst as stated above, we appreciate the immense movement that has been made in producing the new Bill, we still have a few concerns on which we require further clarification and set these out below:

### **Sections 151 to 7 – Appeals**

UNISON is concerned that the Bill allows a wider scope for a sheriff to substitute decisions made in the Children's Panel. The current test is provided by Section 51 (5) of the 1995 Act which states that: "the decision of the children's hearing is not justified in all the circumstances of the case" This is now substituted for "if satisfied that the decision is justified". We believe that a consequence of this could be that rather than looking at whether the matters contained in the appeal lead to a conclusion that the decision is not justified (onus on appellant), the onus might now be considered to be

on the Reporter i.e. to prove that the decision is justified. We are also unclear about the scope of the appeal and wonder whether this could be anything the Sheriff chooses to bring in to it.

Section 151 (1) (b) of the Bill permits the Sheriff to substitute his or her own decision if he or she believes that the child's circumstances have changed. UNISON believes that this wider scope for the Sheriff's action challenges one of the basic premises of the Kilbrandon Report which advised that the Hearing was the most appropriate place for decisions about children to be made.

Section 155 of the Bill also provides 'relevant persons' with a right of appeal against a decision of a 'pre-hearing meeting' (currently defined under the 1995 Act as a 'business meeting') to confer (or not) the status of 'relevant person'. It remains to be seen how any individual who is not currently a relevant person (and therefore has no right to receive notifications relating to a child) prior to the pre-hearing meeting to consider his/her status could receive any notification of such a hearing – and thus be able to appeal within the required 7 days against such a determination.

The Bill also provides a new right of appeal (S156) against a decision to implement a secure authorisation. This appeal will be against a decision made by a chief social worker for the relevant local authority, so it is unclear as to what the Reporter's role in this appeal will be.

We have other concerns around the Sheriff's role in relation to appeals and may consider the use of an amendment to change the details outlined in the Bill.

## **Legal Aid**

UNISON appreciates the provisions relating to Legal Aid, but would be concerned if this led to lawyers routinely appearing before the hearing. The experience of our members is that this can create an adversarial atmosphere that tends to work against participation by children and families, detracting from the discussion-based ethos which is the strength of the Children's Hearings system. We are glad to note that the Legal Aid Board is to expedite applications as we believe delays could be damaging to the children.

## **Safeguarders**

We feel that the wording of Section 32 - "Termination of appointment of safeguarder appointed by children's hearing" of the Bill is clumsy and does not make clear why the termination of the safeguarder's appointment should be linked to his or her making (or not) an appeal. This appears to mean that a safeguarder who has not lodged an appeal will be unable to assist or appear before the court if the appeal be made by another person, whereas we believe it would be better to state that a safeguarder's appointment will terminate on the expiry of the period given to lodge an appeal. In this way, a safeguarder's appointment would persist if an appeal was lodged by someone else.

## **Section 58 - Local authority's duty to provide information to Principal Reporter**

In particular we are referring to the following point:-

- (2) *This subsection applies where the relevant local authority for a child considers:*
  - (a) *that the child is in need of protection, guidance, treatment or control,*

*and*  
*(b) that a compulsory supervision order should be made in respect of the child.*

This section differs from the current test provided in S53 of the 1995 Act. The 1995 Act places a duty upon a local authority to provide information to the Principal Reporter where it 'appears' to them that 'such measures *may* be necessary'.

The new test is higher – and UNISON is concerned that this will result in failure to provide information regarding children. Given that Reporters are trained to assess evidence and identify thresholds, we believe that this wording could result in higher rates of unmet need and increasing vulnerability for children.

### **Child's right to be accompanied to their Hearing by a representative of their choice:**

Although Section 77 includes "a person representing the child" in the list of persons with a right to attend a children's hearing, UNISON would have preferred to see this right more clearly established within the legislation. Section 107 states clearly a child's right to be represented at a court hearing to establish grounds; and that the person "need not be a solicitor or advocate" which is welcomed. However, we would have wished to see a similar statement of this sort in respect of a child's right to representation at a Children's Hearing. To clarify, the current regulations state that: "Any child whose case comes before a children's hearing and any relevant person who attends that children's hearing may each be accompanied by one person for the purpose of assisting the child, or as the case may be, the relevant person at the hearing." UNISON would wish this right to continue.

### **Pre-hearing panels**

Section 78 deals with the referral of certain matters for pre-hearing determination. This includes dealing with requests to excuse a child from attending their Hearing. We are very disappointed that the Local Authority is still not included in the list of people who can request a pre-hearing panel, especially since a social worker is likely to be best placed to assess whether a child should be excused from attendance. Current practice is that the impetus for a business hearing will frequently come from the local authority social worker. Providing the local authority with a right relative to pre-hearings would seem to be sensible.

### **Sections 86-87 and 89**

We would like clarification on whether the Bill provides for hearings to have the power to part discharge the grounds placed before them .

### **Section 97 - Meaning of "compulsory supervision order"**

It is unclear whether the definition of 'compulsory supervision order' as provided for within the Bill includes a 'home' supervision order. Given that the majority of children placed on supervision remain within their family home it would be very strange for the definition not to cover those circumstances.

Sections 69 and S70 cover this in the existing Act and there is no explicit reference to 'home supervision'. The assumption has, therefore, always been that this would mean

supervision at home unless the panel imposed a condition to the contrary. The new Bill does not make this clear and we would welcome confirmation that this will continue to be the case.

### **'Protection, guidance, treatment or control'**

These references are in the current legislation and have continued into the new Bill. UNISON is disappointed that the new Bill has not taken the opportunity to address this in terms of focussing on the child's welfare, perhaps using wording, such as, "in the interests of the welfare of the child, including the need where necessary for protection etc..."

### **Rehabilitation of Offenders Act**

We understand that steps will be taken separately from this Bill to clarify the situation in respect of the Rehabilitation of Offenders Act regarding young people who accept offence grounds at their Children's Hearing. At present, these are recorded and retained for the purposes of the Act, even where (as often happens) the offences have been accepted rather than proved beyond reasonable doubt (the test in criminal proceedings). The experiences of our members is that children can sometimes accept grounds where that evidence might not exist and without proper advice and guidance. This means that the child will then have a criminal record without the grounds having ever been tested or proven. This can have significant implications for them in later life. We are therefore very keen to see provision in place to ensure that this does not continue, or if it does, to ensure that children and young people have access to proper support, legal advice and guidance when offence grounds are to be put to them.

### **'Relevant Person' Definition**

UNISON believes that the definition provided by the Bill is too wide (i.e. any person with 'significant involvement') – and that as a consequence there could be a multitude of people with a right to attend a child's hearing. The impact of this could be very large hearings with a multiplicity of adult voices and competing interests and lead to the child's own voice being 'lost'. There are also considerations regarding the right to privacy which require to be considered more fully.

In addition, where relevant person status is conferred by a pre-hearing panel it does not appear that this is able to be reviewed at a later date by a further panel in order to reflect changes in the child's life.

### **Support for Panel Members**

We would wish clarification about whether panel members will still be able to get the advice and support from Reporters that they used to have before changes were introduced in September 2009. The current situation is that Reporters can 'make submissions' during a hearing, but can not provide any legal advice or assistance. Reporters were advised at that time that they were not to continue to provide advice or spend any pre-hearing (or post-hearing) time with the Panel; nor could they advise Panel members when they are writing reasons for decisions. This was done in order to meet ECHR concerns. UNISON believes that this is a detriment to current panel members and that ways should be found to reinstate this practice which we do not accept breached ECHR guidelines.



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