



**Scottish Children's Reporter  
Administration Branch**

**COMMENTS ON  
DRAFT CHILDREN'S HEARINGS (SCOTLAND)  
BILL**

## **Executive Summary**

UNISON is Scotland's largest trade union representing over 160,000 members working in the public sector. UNISON is the only trade union within the Scottish Children's Reporter Administration (SCRA) . Its membership comprises over two thirds of SCRA employees. In addition, UNISON acts as the representative and consultative body for all employees within SCRA.

SCRA is a non-departmental public body (NDPB) which administers the children's hearing system in Scotland.

The Branch consulted with members over a four week period from the 27th June - 31st July 2009. The following represents the results of the consultation period.

Members of the SCRA UNISON Branch spend their working lives dedicated to ensuring the protection of Scotland's children - and in particular to the protection of the children who are referred to SCRA. The Draft Bill displays a singular lack of understanding of the work performed by this very dedicated staff group. Further, and of greater concern, the Draft Bill proposes measures which would weaken the protections currently afforded referred children.

The SCRA Branch of UNISON Scotland welcomes the opportunity to respond to the Scottish Government's Draft Children's Hearings (Scotland) Bill ("the Bill"), a bill which would result in major reform of the children's hearing system.

This Branch commends the overall policy driver of improving outcomes for our most vulnerable children and young people, embedding a consistent, personalised, holistic, timely and effective approach to meeting children's needs, with a focus on early intervention.

**However, the Branch wishes to articulate - in the strongest possible terms - its serious concerns regarding the Bill.**

- There is a mismatch between the policy intentions and the actual proposals, with the result that, not only will the Bill fail to deliver on improved outcomes for children, but it will lead to exactly the opposite result, namely poorer outcomes for the most vulnerable children in society.
- We are very concerned that the Bill is badly drafted, lacking clarity in essential areas and overall displaying a poor understanding of the children's hearing system. This makes it very difficult to comment on certain aspects of the Bill.
- The draft Bill bears little or no resemblance to the proposals contained in the Consultation "Strengthening for the Future", which means there has been no effective consultation. The 6 week period for comment on the Bill is completely inadequate.

- The responsibilities given to the Scottish Children's Hearing Tribunal (SCHT) will result in a split in the children's hearing system with a less holistic approach, increased bureaucracy, greater possibility of confusion and error leading to risk to children, a more complex system for children, families and other professionals to engage with, and increased cost without a resultant improvement in the system.
- The removal of Reporters from children's hearings could result in poorer outcomes for children in hearings. There is a lack of clarity about the alternative arrangements if Reporters are not to attend hearings. As a result, volunteer panel members who are central to this unique system, may not be properly supported. This could risk the viability of the children's hearing system.
- The split in the system is likely to mean that ongoing decision making by Reporters will be slower and poorer due to the fact that information will not be readily available to Reporters. There is no power in the Bill for the Principal Reporter to request information from the President.
- The removal of Reporters' power to refer children back to a local authority for voluntary supports is also very concerning and could lead to poorer outcomes for the children who are being referred to the Reporter precisely because they are not receiving a service.
- Protection of children is weakened because of the poor drafting of the Bill in relation to various areas. In relation to grounds for referral, for example, one of the problems is that children who have been victims of offences when the perpetrator cannot be identified have been missed out. Another very confused area is in relation to Interim Supervision Orders (ISOs).
- There is a theme of undermining the children's hearing as the best forum for decisions about children in need of compulsory measures, with a move towards more decisions being made by courts, and increasing legalisation of hearings. This goes against fundamental principles, is contrary to the interests of effective participation by children, and could ultimately lead to a twin-track system of hearings and courts, reducing the time spent by professionals actually working children and their families.
- The Bill fails to comply with the Getting It Right for Every Child (GIRFEC) principles given the added layers of bureaucracy. The Bill fails to take in account the lessons learned from numerous enquiries into harm to children. The Bill brings about increased risks to children.

## **Policy Background**

UNISON SCRA Branch commends the specific policy objectives of:-

- re-asserting the independence of panel members and strengthening their knowledge and understanding of both the issues a child is facing and what decisions can best provide the right support;
- Improving and streamlining structures, recruitment, selection, training and continuing support of panel members;
- streamlining processes to improve understanding and use of the system;
- re-stating the functions of reporters, ensuring that the necessary separation of functions is both real and perceived;
- acting to "future-proof" the Children's Hearings System in the light of evolving ECHR jurisprudence.

However, it is the mismatch of the policy objectives with the specific strategies to achieve these that give this Branch huge concerns.

The following sections outline these concerns in detail.

## **THE BILL – PART 1**

### **1. SECTIONS 1-38 – STRUCTURAL ISSUES**

Under Part 1 of the Act, a new NDPB is created, namely the Scottish Children's Hearing Tribunal (SCHT). The chief officer of the SCHT is the President. The Scottish Children's Reporter Administration (SCRA) will continue. The chief officer of the SCRA is the Principal Reporter.

In principle, this Branch would commend the creation of a new national body, headed by the President, if the functions of the President were restricted to recruitment, training and monitoring of panel members. It is absolutely crucial that the President be able to carry out these functions robustly, but subject to that, we believe that this national body would contribute to the first 2 key policy objectives. We believe that if the President's functions were limited to recruitment, training and monitoring of panel members, this would enable the President to carry out these functions robustly.

However, rather than limiting the Presidents functions, the Bill provides that the President will also: -

- arrange and provide papers for children's hearings
- advise children's hearings on procedure and the orders available to the hearing
- record the outcomes of children's hearings

These are very significant functions, requiring the set-up of major administrative machinery to support these. In our view, this may dilute the President's capacity to properly carry out his or her other functions.

Further, the Bill will result in a split in the children's hearing system, which will lead to poorer outcomes for children through duplication, a less holistic approach, increased bureaucracy, greater possibility of confusion and error leading to risk to children, a more complex system for children, families and other professionals to engage with, and increased cost without a resultant improvement in the system.

This is because the key functions of arranging hearings, supporting fair process, and recording children's hearings outcomes are currently carried out by the Scottish Children's Reporter Administration (SCRA). The Bill would result in transferring these functions from the SCRA to the SCHT. The SCRA would continue to have other significant roles in relation to children's hearings.

The result is to create two bodies, both with significant functions in relation to children's hearings.

What the drafters of this Bill have failed to comprehend is that the experience of a child or family engaging with the children's hearing system is not on a one-off, task specific, basis, but is rather a continuous process involving complex interactions. A child is normally referred to the SCRA on a number of

occasions, both before and after a child has been referred to a children's hearing. A child may be referred to a children's hearing more than once, and for different reasons, meaning the involvement of SCHAT and SCRA on an ongoing basis.

Therefore creating two agencies with significant functions in relation to children's hearings will result in a split in the children's hearing system.

In practice, the problems that splitting the system will create are: -

- **children and their families** will have to get to grips with two different agencies, each with a significant role in relation to a child's life. One can easily envisage a situation where a child is trying to get information about what is happening in relation to his/her children's hearing, but s/he is faced with a dizzying array of professionals to contact. S/He may have to contact either or both of the SCHAT, and the SCRA, or having gotten through to who he thinks is dealing with his case, s/he may be referred by the SCHAT to the SCRA or vice versa, each agency legitimately having a different role in the child's life. At the moment, children and their families have a consistent point of contact, namely the SCRA. Reporters and Support Staff within the SCRA having a holistic overview of a child's circumstances are able to provide reassurance at what can be a very stressful time for families. This consistent point of contact will be lost. This Branch doubts that this is the holistic approach most likely to provide good outcomes for the most vulnerable children and families in this country.
- **Professionals**, such as social workers, health visitors, and teachers, have until now had a consistent point of contact for a child in need of or subject to compulsory support. That point of contact has been the SCRA. Under the Bill, professionals will now have two agencies that they are likely to have to make contact with. For example, a common situation is that further concerns arise about a child who has already been referred to a children's hearing. The professional involved may have to contact the SCHAT about the setting up of a hearing, whilst contacting the SCRA about the outcome of further concerns. Another possibility is that professionals are required to produce duplicate reports for two different agencies, both dealing with the same child. Rather than bringing about a holistic approach with reduced focus on bureaucracy, the draft Bill will reduce the time professionals have to spend working directly with the children and families. This is not in line with the GIRFEC aims nor the specific policy objectives for this draft Bill.
- **The interface between the SCRA and the SCHAT will inevitably be problematic.** Apart from a vague "mutual assistance obligation" set

out in section 38 of the Bill, it is unclear how the SCRA and SCHAT will interact in practice. This Branch foresees the following problems:-

- Each agency will have different but related tasks to perform in relation to children, sometimes at the same point in time. This will cause increased bureaucracy and delay for the child, family and other professionals.
  - Confidential information, possibly whole files, about the most vulnerable children and families in our society will have to be passed back and forth between the two agencies. This will lead to delay and increased bureaucracy.
  - It is vital for the safety and security of some children and families that their current whereabouts is not disclosed to certain persons. However, this Bill increases the risk to these children and families by introducing two different agencies each dealing separately with the same complex, and often dangerous sets of circumstances.
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- **There will be a duplication of work in the two agencies** with a resultant increase in bureaucracy and cost overall, but without a resultant benefit for outcomes for children. The same, often crucial, information about children will have to be processed separately through the two different agencies.
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- **Timely and effective decision making by the SCRA will be poorer.** Whilst the precise role of Children's Reporters in children's hearings is not clear from the Bill, it may be that Children's Reporters will not attend all children's hearings after the initial one. In addition, it is the President of the Tribunal who will obtain reports for review children's hearings. This means that Reporters will not have ready access to information about the circumstances in a child's life, which information will be needed if, as often happens, further concerns come to light about children, after they have been referred to a children's hearing. As there is no power for the Reporter to seek such reports from the Tribunal, Reporters will have to request additional reports from agencies such as social work, health visitors etc. This will inevitably cause delay in decision-making, and will most likely lead to already over-stretched social workers being asked to provide reports to two different agencies, who are dealing with the one child. The problem here is exemplified in relation to the Emergency Protection Order (EPO). Here Reporters have a duty to consider terminating an EPO in certain circumstances (in the child's best interests), but as it is the President who arranges the hearing subsequent to the EPO, two different agencies are dealing with the same emergency situation. There are other examples of a Reporter's ongoing role in relation to a family's situation such as in relation to Parenting Orders – and these roles will be impeded by a lack of current information. **It is essential for Reporters to continue to**

**attend children's hearings in order to have a holistic overview of a child's circumstances.**

- **The cost of creating a new body ("the Tribunal")** with the capacity to carry out the varied array of tasks allocated to it (arrange hearings, request reports, advise panel members, recruit, train, and monitor panel members) will be huge. IT systems capable of interacting (but with appropriate "firewalls") across 2 separate bodies will be required. Such IT systems are notoriously expensive and often not fit for purpose. New jobs will require to be created within the new body, with associated training costs. Property issues could be significant, particularly in rural areas. It may be necessary for separate housing of staff carrying out the SCRA function from staff carrying out the SCHAT function. All of this will require a huge investment in the children's hearing system, but without any clear associated benefit. A failure to consider the costs of creating a new separate body, and a failure properly to invest could result in the system unravelling, and putting children at risk.
- **Fair process in children's hearings may be compromised.** At the moment, Children's Reporters provide procedural support to children's hearings.

We understand that two of the overall policy objectives are having an impact here, namely:-

- re-stating the functions of reporters, ensuring that the necessary separation of functions is both real and perceived;
- acting to "future-proof" the Children's Hearings System in the light of evolving ECHR jurisprudence.

This seems to have resulted in the removal of Children's Reporters from all hearings possibly apart from the initial grounds hearing.

However, this move is unnecessary. The SCRA has modified guidance to Children's Reporters, and additional training is being given to lay panel members, to ensure that these policy objectives are already being met. There is now a both real and perceived separation of functions, should that ever have been in doubt. Despite the current system being in place since 1971, there have been no challenges to a decision of a hearing being made on the basis of the role of the Reporter, although many other challenges have been made based on ECHR law. In the Consultation Paper "Strengthening for the Future", the government confirmed that the children's hearing system was compliant with Human Rights Law. We also understand that Adam Ingram, the Minister for Children and Early Years, has confirmed to panel chairs that the current



children's hearing system, particularly given the new guidance, is compliant with Human Rights Law.

It is therefore extremely perplexing that the draft Bill should state that the President of the Tribunal, not the Principal Reporter, should have the role of advising the children's hearing on procedure and on the orders and warrants available to the children's hearing.

Children and families are entitled under Human Rights Law to a "fair trial". An appropriately qualified professional is necessary to support lay panel members, as otherwise there could be manifest procedural irregularities. It is crucial that such irregularities do not occur, as otherwise children and families are denied a fair trial. A failure to deal with this issue appropriately could undermine the children's hearing system as the appropriate forum for decisions in relation to vulnerable children in need of compulsory intervention.

Panel members are well able to guide themselves in terms of the issues a child is facing and what decisions can best provide the right support, and therefore any support to panel members must be restricted to fair process only. There is no need for panel members to receive additional advice. This would simply undermine one of the key policies namely,

*"re-asserting the independence of panel members and strengthening their knowledge and understanding of both the issues a child is facing and what decisions can best provide the right support"*

The modified guidance to Reporters ensures that Reporters support fair process only. Therefore, the SCRA has already moved to support the Scottish Government's policy objectives. Staff and panel members have welcomed the clarity.

Rather than clarifying the situation, the Bill is vague on the crucial area of providing advice. It is not clear how the President would undertake this function. Unlike the 1995 Act, which specifically refers to Children's Reporters ("reporters"), there is no mention in the Bill of any specific officer to carry out the President's presumably delegated functions. As a result, there is no mechanism for specifying such an officer's qualifications.

This Branch has concerns that the real policy driver here is attempted cost-saving, by introducing a less-qualified officer to provide such a crucial role. This does not fit with the policy of better outcomes for children. If mistakes are made during a hearing, children will be put at risk. However it is clear that this Bill – if passed – will require substantial budget increases.

This Branch believes that Children's Reporters are best placed to provide support to panel members by ensuring fair process. This is because Children's Reporters have the range of experience, from initial referral,

through the court process, to dealing with appeals of hearing decisions. In addition, since the inception of SCRA, Reporters have built up experience and have developed guidance to provide the best quality of service to panel members, to children, to their families and to other professionals. This body of knowledge will disappear if the Bill is passed in its current form.

In fact, in our experience, children, their families, and other professionals welcome the attendance of an experienced, independent professional, who is able to provide a consistent service throughout a child's contact with the children's hearing.

This Branch would go further, and point out that, it is almost impossible to create a role which is guaranteed to be perception-free of bias. The role of President as set out in the Bill in itself exemplifies this. This is because the President has the role of recruiting, monitoring and training panel members, so he is not independent of panel members and vice versa. However, he is also given the roles such as deciding who is a "recognised carer", deciding which papers should be sent to the hearing and pursuing the Local Authority through court if a panel's decision is not implemented. All of these roles mean that the President will have access to papers not necessarily seen by the children's hearing, and could put him in a position of alliance with or opposition to other parties in the case. This will put the President or his delegate in a privileged position, which could lead to biased advice to the children's hearing.

This Branch therefore questions whether the real policy driver here is not about ensuring human rights compliance but rather attempted cost-saving, to the detriment of outcomes for children and in fact, increased cost.

We suggest that there is a need for further reflection on these issues

- **The proposals in the Bill will result in a system that contradicts the principles of GIRFEC and all of the lessons learned from enquiries into children who have been harmed.**

- **Recommendation**

**It is simply unnecessary and damaging to the children's hearing system as a whole for SCRA's functions of arranging hearings, recording outcomes and providing procedural support to panel members to be transferred to the SCHAT. We recommend that these functions remain with the SCRA.**

## **2. SECTIONS 33-37 - SAFEGUARDERS**

We welcome these sections, providing additional clarification on the roles and responsibilities of Safeguarders, but we look forward to seeing further regulations on the qualifications and training of Safeguarders.

Clarification is required in relation to S35(2)(a). Is it intended that the Safeguarder should attend all hearings in relation to the child, even if the child is not attending? In our view, Safeguarders should have an obligation to attend all hearings.

Is S35(2)(a) intended to create a representative for the child? We would not support this as it undermines a child's right to separate representation.

## **THE BILL - PART 2**

### **3. SECTION 40**

Section 40 of the Act requires clarification. It is not clear whether section 40 is intended only to supersede S39(2) only, or the whole of the section.

**This is an example of the poor drafting of the Bill which will lead to confusion over essential principles.**

## **THE BILL - PART 3**

### **4. SECTIONS 41-57 - EMERGENCY PROTECTION ORDERS**

We do not understand the need for the change in terminology. The term "Child Protection Order" (which Emergency Protection Order replaces) was clear, and had "child" at the centre. This appears to be change for the sake of change, and again, not child centred.

*Point of clarification.* The referral to the Reporter to consider grounds for referral and need for a hearing on the 8<sup>th</sup> working day following an EPO seems to have been missed out. Is this deliberate?

We would not support such a move. There requires to be a dovetailing between the sections on EPO and the sections requiring the Reporter to consider grounds for referral. Otherwise, such orders will end up in "limbo". Further, the emergency nature of such orders requires that the family is given an opportunity to give a response to the concerns giving rise to the EPO. Therefore, there should be strict timescales for the holding of such hearings.

We would also comment that, in terms of style, these sections are repetitive and complex. If the aim is to make the Bill more understandable to children and families, then this has not been achieved.

## **5. S58 – EMERGENCY ASSESSMENT ORDERS**

Once more, a change in terminology, from “child assessment order” with no obvious justification. For children and their families, the terminology of the two orders could well be confusing.

There is perhaps a missed opportunity here to increase the rights of children and their families to challenge the granting of such wide-ranging powers, through giving notice and right of review either for a hearing or the Sheriff, albeit the emergency nature of such orders would have to be borne in mind.

## **THE BILL - PART 4 – COMPULSORY SUPERVISION ORDERS**

### **6. SECTION 59 - GROUNDS FOR REFERRAL**

This chapter is one of the most highly concerning so far as this Branch is concerned.

There is a change in emphasis here away from welfare based grounds for referral, towards the idea that the children’s hearing system is designed to deal with the behaviour of children towards others. The first 6 categories relate to behaviour of children. Welfare based categories appear as lower priorities.

This is a hugely concerning change. It will lead to erroneous perceptions about the children who are coming in to contact with the children’s hearing system. The fact is that the vast majority of children referred to the system are those who are in need of care and protection because of the behaviour of others towards them.

It also undermines the principles underlying the children’s hearing system. An underlying cause of poor behaviour in children is poor behaviour towards those same children by their care givers. The change in emphasis in this chapter seems to turn that understanding on its head.

Whether or not this has been an intentional shift in emphasis, perceptions about the system are vitally important, and yet again, the Bill drafters seem to be unaware of the fundamental principles of this welfare based system.

Another hugely concerning gap here is in relation to children who have had offences committed against them, formerly covered by section 52(2)(d) and (e) of the Children (Scotland) Act 1995. This was one of the most important sections of the Act. It allowed children who have been victims of offences or who shared a familial type relationship or residence with another child-victim to be protected.

Again, there is clearly a fundamental misunderstanding of the nature of risk to which vulnerable children can be exposed.

There is no equivalent of section 52(2)(e) at all. This is a clear omission. This excludes protection of children who are in the same household as a child who has been seriously injured or who has died but where it is not possible to say who has caused that harm.

As regards children who are victims of offences, the Bill has introduced several sections, namely 59(1)(h), (j), 59(2) and 59(4). This is unnecessarily complex drafting, which is liable to lead to extra difficulty in establishing such grounds for referral in court.

Despite or perhaps because of the complexity in drafting, children who are victims of offences are offered less protection. It will be necessary to name the person who has committed the offence or who is likely to abuse or harm the child. At the moment, it is not necessary to name the person.

This change would be hugely detrimental to the protection of children, because often it is not possible to name an offender, particularly where very young children have come to harm. We know that babies can come to life-threatening harm, but they cannot tell us who has harmed them, and when multiple carers are involved, it is simply not possible to say which particular person was involved.

**The drafting of this Bill leads to a horrifying omission – that the most vulnerable and most seriously harmed children in our society are not afforded the protection they need.**

Other concerns about this section are that misusing a volatile substance by inhalation of vapours has been missed out.

There is a change in emphasis from “failing to attend school regularly” to “regularly failing to attend school”. This takes away from the presumption that a child is required to attend school every school day unless there is a genuine excuse. Surely this is not a message that should be sent.

We fail to understand why the wording of section 59(1)(k) has been changed placing “the lack of parental care is such that”, at the beginning of the clause. We consider that this could potentially lead to an additional complication in the establishment of this ground. It may require the Reporter to prove a stand alone, higher standard of “lack of parental care”, whereas the current layout of section 52(2)c) of the 1995 Act can be read as a single test of a child being likely to suffer unnecessarily or being seriously impaired in her/his health or development *due* to a lack of parental care.

We think this section needs reconsidered and we question why there is any need to change the current law, in relation to which there is quite considerable case law. Again, this seems to be change for the sake of change, with possibly unintended consequences, making it harder for vulnerable children to be protected by the hearing system.

We welcome the new provision in relation to children who have been exposed to domestic abuse, in light of the known dangers to children in such a situation. However, perhaps there does require to be consideration of the very wide nature of this provision – and the section re-drafted to clarify its scope.

We welcome the possible intention of the Bill drafters to make it easier to protect children who are exposed to adults who are likely to harm them, but question whether this could have been achieved by other far less complex means. For example, rewording the current section 52(2)(f) to state “is a child who is or is likely to become exposed to a person who has committed any offences referred to in paragraph (d) above.” The offences in paragraph (d) could be extended to include the offences now mentioned in section 59((1)(j). Section 59(4) would, apart from the earlier comments about complexity, be helpful in extending protection to children who have “significant” contact with a Schedule 1 offender – albeit the definition of “significant” could be problematic.

## **7. SECTIONS 66 – FUNCTIONS OF PRINCIPAL REPORTER**

S66(2)(b) – we are puzzled by the change in terminology from “compulsory measures of supervision may be necessary” to “a compulsory supervision order is necessary for the protection, guidance, treatment or control of the child”. The underlined words are old-fashioned, and patronising towards children. They date back to the Social Work (Scotland) Act 1968. Again, there is an over-emphasis on behaviour of children, when the overwhelming number of cases are of children needing protection. The wording shows is an unnecessarily restricted view of the types of measures which can be considered in relation to children.

The same comments apply to section 69.

**We strongly recommend that these sections are redrafted.**

## **8. S67 - LOCAL AUTHORITY REPORTS**

The Bill puts a strange obligation on the Local Authority at the requirement of the Reporter to obtain information from a particular person or source. Helpful as this may be in some situations, there will be other situations where a Local Authority has no power to demand such information, and will therefore in breach of the requirement from the Reporter.

The alternative is simply to give the Principal Reporter a statutory power to demand reports from other agencies, over and above the report from the local authority. This would be beneficial in ensuring information about children at risk can be received quickly by the Reporter, ensuring better outcomes for children.

This section needs to be reconsidered to see if there is a more straightforward way of achieving better outcomes for children.

## **9. S68 – WHERE NO REFERRAL MADE**

This Branch notes that the Principal Reporter's power under section 56(4)(b) of the 1995 to "refer the case to a local authority with a view to their making arrangements for the advice, guidance and assistance of the child and his family" has disappeared from the Bill.

This is presumably because the policy intention is that only children suitably in need of compulsory measures are referred to the Reporter, and that otherwise children receive the early, proportionate intervention by agencies required under GIRFEC.

However, it is naïve to believe that GIRFEC will be adhered to perfectly. Inevitably, children will be referred precisely because they are not receiving the intervention they should be from other agencies. In such a case, if the Bill stays as it is, the Reporter will be powerless, simply having to take no action and being in no position to contribute to better outcomes for children. This is a missed opportunity.

The role of the SCRA is to take timely, effective decisions to ensure that a child who needs compulsory supervision receives that and on the other hand that a child who does not need compulsory supervision gets appropriate supports. This role is absolutely central to the principles laid out in GIRFEC.

The Bill could have contributed to better outcomes for children by retaining the Reporter's statutory power to request voluntary supports for children referred to them, without the need to refer such children to a hearing, hence ensuring proportionate, and timely intervention.

## **10. S70 – ANTI-SOCIAL BEHAVIOUR ORDERS**

The added bureaucracy brought about by the Bill is exemplified by this section. Where a Sheriff makes an anti-social behaviour order, previously s/he could require the Reporter to make a referral to a hearing. Now the referral will have to be made to the Reporter, who in turn will have to require the President to arrange a hearing.

There is also a failure to link in with the provisions of the Anti-Social Behaviour (Scotland) Act 2004 which sets out that the Principal Reporter has a key role to play in relation to such orders. An applicant must consult with the Principal Reporter before applying for an ASBO and the sheriff must have regard to any views expressed by the Principal Reporter before determining whether to make an order or an interim order.

Again, if Reporters are not attending children's hearings and have no power to request information from the President of the Tribunal, their effectiveness in this area will be severely hampered.

## **11. SECTIONS 73-76 – INITIAL HEARINGS**

This chapter seems unnecessarily complex and repetitive. There are related provisions in Part 4, Chapter 6. It is confusing for the provisions to be split. Comments in relation to section 74(4) apply equally to S106.

**S74(4)**, – it is not clear whether this sub-section is subject to principle of the paramount welfare of the child. This needs immediate clarification.

This Branch also questions whether the "must" in line one was intended to be a "may". If not, the Branch is concerned that by making the deferral of the decision mandatory, there will be an added formality and inflexibility to children's hearings which goes against the original principles of hearings. In our experience, children and families are often happy to proceed with hearings, where some reports (e.g. a school report which can be easily digested) are received late. At the moment, panel members use their discretion to decide whether the information received is of such importance that it would be unfair to proceed, and taking into account the views of the child and family. This section would result in numerous unnecessary continuations of hearings, which will have a huge impact on the resources of agencies having to attend hearings, such as social work, teaching and health. This could even result in the situation where a supervision is required to expire, because of a late report, as panel members seemingly have no power to proceed.

Similarly, sub-sections (d) and (e) of S74(4) will result in mandatory deferrals of decisions which may not be in a child's or family's best interests. In practice, what further steps can be taken by the President to find a recognised carer?

## **12. SECTIONS 77-79 - INTERIM SUPERVISION ORDERS**

The principal provisions in relation to Interim Supervision Orders (ISOs) are contained in sections 144-145, and it is confusing and unhelpful that other provisions regarding ISOs are contained in disparate sections of the Bill.

It would appear that where grounds are referred to the Sheriff for proof, a children's hearing is restricted to issuing only one ISO lasting 22 days. This will mean that the SCRA will have to apply to the Sheriff Court for ISOs before the expiry of 22 days. The reason for this change is unclear. At present, hearings can issue "warrants" for a total period of 66 days. We believe that this is symptomatic of a common theme in the Bill of undermining the children's hearing as the proper forum for making decisions about children, and of making the courts more prominent in all cases. We oppose any move to undermine children's hearings in this way. It is a fundamental principle that the informality of children's hearings is



helpful in allowing children and families to have their views heard. It is much more difficult for children to effectively participate in court processes.

In fact, the draft Bill should allow children's hearings to issue warrants beyond 66 days, not restrict their powers.

If this provision is intended to ensure that courts deal with juvenile referrals more promptly, then it is doomed to failure, as this will simply increase the pressure on the court system. Further, there is a missed opportunity here to deal with the problems already experienced in trying to ensure juvenile cases as appropriately prioritised in the court system.

### **13. SECTION 81 – SHARING EVIDENCE FROM PROCURATOR FISCAL**

This section could have gone further and stated a pre-eminence of the welfare of children in sharing of evidence between the Procurator Fiscal and Reporter.

### **14. SECTION 83 – ATTENDANCE BY CHILD**

Clarification is needed – is it intended that a children's hearing should excuse a child from attending court? If so, S83(1) would need amended.

### **15. SECTION 114(4) and (5) – DETERMINING AN APPROPRIATE LOCAL AUTHORITY**

We welcome a mechanism to determine an appropriate local authority.

### **16. SECTION 117 – CONDITIONS ON A SUPERVISION ORDER**

Are these conditions intended to be exhaustive? This is not clear. We would not support that as it reduces the flexibility of supervision order.

### **17. SECTIONS 133(5) and (7) – VOLUNTARY MEASURES**

We question why children's hearing have been given the power to order voluntary support by the local authority, when this option has been removed from the Principal Reporter (under section 68).

### **18. SECTIONS 134 – 136 - LOCAL AUTHORITY ACCOUNTABILITY**

The functions set out here are currently part of role of the Principal Reporter and we see no advantage in transferring the role to the President. We think the role of the President should be restricted to recruitment, monitoring and training of panel members, for all of the reasons set out above.

The Principal Reporter continues to have a wider role in relation to Parenting Orders and Anti-Social Behaviour Orders, and it seems strange in this wider context that the power to apply for Local Authority Accountability has been removed from the Principal Reporter.

## **19.SUB-SECTION 143 (1)(d) – WARRANTS TO SECURE ATTENDANCE**

This Branch is concerned about this sub-section. In the 1995 Act a “place of safety” is defined as (a) a residential or other establishment provided by the local authority, (b) a community home within the meaning of S53 of the Children Act 1989 (c) a police station or (d) a hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive the child. In other words, a police station is only one option for a place of safety in the current law (and in order of priority is the second to last option). The emphasis in the Bill on placing children in a police station, or cell is extremely worrying.

## **THE BILL - PART 5**

### **20. SECTION 144 – INTERIM ISOs**

Clarity is required about sub-section (5). This seems an inflexible overall restriction on the issuing of ISOs for no more than 66 days cumulatively. This could result in a situation where, for example, a Sheriff has been issuing ISOs for 66 days or more, the case goes back to a hearing, but the hearing is unable to reach a decision, in which case the hearing is unable to issue an ISO even if the child would be in danger. This is gravely concerning as it would put a child at risk.

### **21. SUB-SECTION 151(3)(b) – BUSINESS MEETINGS**

We question why local authorities are missed out from this sub-section, as it is often the social worker involved in the case who will request a child’s attendance be excused.

### **22. SECTION 171(1) – RIGHTS TO ATTEND CHILDREN’S HEARINGS**

We note that representatives for children at hearings have been missed out here. Research on the issue of legal representatives has highlighted some real concerns, but the Bill has failed to tackle this.

**We also consider this highlights the fundamentally flawed thinking in this Bill: children are not at the centre of it.**

### **23. S177 – PARENTING ORDER**

The Branch notes that the Principal Reporter continues to have the role of deciding on the need to pursue a Parenting Order. Again, this crucial role will be impeded by a lack of information.

### **24. SECTIONS 180-184 – REVIEWS BY SHERIFF**

This Branch notes that the terminology here has been changed from “appeal against decision of a children’s hearing” to “Review by Sheriff”.

**S181(1)(c)** – This Branch is perplexed by the reference to the “President’s report of the children’s hearing”. It is questionable what this report will contain, what status this has, and whether this document supersedes the reasons stated by the chair of the children’s hearing, in the case of conflict. This Branch believes that the only reason for the introduction of this document is to deal with the problem raised by the fact that it seems Reporters will not be in attendance at children’s hearings, yet, Reporters are to deal with reviews. In reviews, or appeals, factual issues raised by the Appellant may have to be rebutted. It will be very difficult for the Reporter to do this when not in attendance. A “President’s report” far from dealing with the pragmatic problem, will raise more questions than it answers. Yet again, a very pragmatic problem is raised by Reporters not being in attendance at hearings, and a circuitous process has had to be invented to attempt unsuccessfully to deal with this.

**S181 (3)** – this section significantly extends the Sheriffs power to hear evidence, in particular including the child and recognised carer.

**S182(3)** – even if the Sheriff confirms the decision of the hearing, if the child’s circumstances have changed since the hearing, the Sheriff has various powers of disposal, including (a) refer the case back to a hearing or (b) continue, vary or terminate any order or warrant already in place, or (c) discharge a referral or (d) of new make an order or warrant which a children’s hearing may make.

The cumulative effect of all of these provisions is to widen the scope of appeals before the Sheriff. In effect, the review carried out by the Sheriff will in most cases be a complete re-run of the case before the hearing, including new evidence that the hearing did not have.

This undermines the hearing as the primary forum for determination of matters in relation to compulsory supervision.

We will effectively have a twin-track system, with hearings running in parallel with courts. This will have a negative impact on the effective participation of children in decisions that affect them. It will result in additional legalisation of the children’s hearing system, which undermines fundamental principles. Professionals, such as social workers, teachers etc. will have time taken away from dealing with children and families and more time spent in courts.

We think the number of appeals will increase dramatically, to the extent that the viability of the children’s hearing system may come into question. Clearly, this contradicts the policy intentions.

**S183** – if the Sheriff determines that the decision of the hearing is not justified s/he must overturn the decision of the hearing. This is a change to the current law. At the moment, Sheriffs most often refer the child’s case back to the hearing for reconsideration, and for a short period the original decision of the hearing stays in place, unless there has been a children’s

hearing in the meantime to suspend the decision. Superficially, it may seem attractive for the decision of the hearing automatically to be overturned on a successful appeal, but in practice, this could leave children in an extremely uncertain or volatile situation. Say, for example, a hearing has decided to remove a child from home because of a risky situation. If the Sheriff decides the hearing's decision is not justified, perhaps because of a procedural irregularity, the Sheriff must overturn the decision of the hearing. This would leave the child "in limbo", unless the Sheriff interposed another decision. Thus again, the pre-eminence of children's hearings as the best forum for decisions about children in these circumstances is undermined.

Another worrying possibility is a situation where a hearing makes a decision, a Sheriff interposes a different order, but also requests the hearing to reconsider the decision. The hearing could make a different decision again. All of this would cause extreme uncertainty for the child involved.

## **25. SECTION 194 – EMERGENCY TRANSFERS**

We consider the wording of this section referring to "Child A" is slightly bizarre and could give an impression of a bureaucratic approach to children.

We note that a children's hearing must be held within 3 days of the child's move. This is a challenging timescale, but we can understand the policy intention.

### **SUMMATION:**

Due to the very short timescale involved this is not intended to represent a comprehensive review of the Draft Bill. Such is the weakness of the drafting of the Bill that there undoubtedly will be other significantly problematic areas.

However, given the fore-going, this SCRA UNISON Branch is strongly opposed to the Draft Bill in its current form, believing that it will result in a weakening of the protections currently afforded the most vulnerable children in our society.

The Branch express, in the strongest possible terms, how damaging to the welfare of children this Bill would be if passed in its current form. We therefore require complete re-evaluation and re-drafting of the Bill provisions taking account of the views expressed above. Without such a re-draft - which takes full account of the considered views expressed above – this Branch and its members fear for the future protection of vulnerable children in Scotland.

**SCRA UNISON Branch Executive**

**5 August 2009**