



# **DRAFT CHILDREN'S HEARINGS (SCOTLAND) BILL**

**The UNISON Scotland's Submission to the Scottish  
Government on the Draft Children's Services (Scotland) Bill.**

**August 2009**

## **Executive Summary**

- UNISON Scotland, has serious concerns at the effects this Draft Bill would have on our members' ability to protect children from harm and provide the service that the Children's Hearing System currently offers.
- Given the current climate with a high level of public concern about child protection the Scottish Government should be making systems safer, rather than removing some of the protections currently in place. In fact the Bill fails to protect the welfare and child-centred principles of Scotland's world-leading Children's Hearing system.
- UNISON recognises the issues arising from the European Convention on Human Rights and the fact that changes already made to the current system have been widely accepted as 'ECHR-proof'.
- UNISON believes that the current checks and balances in the different roles and positive relationship between reporters and children's panels work to the benefit of the welfare of children.
- We are concerned that these legislative changes will force more and more children out of the hearing system into the court system, both on welfare and offence grounds, thereby wiping away a great deal of the innovative thinking and proven successes initiated by Kilbrandon.
- The ability of the court to completely re-hear a case already heard at a Children's Hearing (rather than just testing the reasonableness of the decision) and to substitute any decision of a children's hearing undermines the Hearing system and could lead to the courts, rather than the hearings, being the de facto locus for many cases. We believe that the current system of a sheriff only being able to hear an "appeal against the decision of a Children's Hearing" should be reinstated
- UNISON is concerned that the whole Draft Bill is unnecessarily complex in some areas and lacking in critical detail in others. This leads to a concern that the whole system will have to be defined by numerous subsequent orders, guidelines and statutory instruments.
- UNISON believes that the Draft Bill fails to comply with the principles in "Getting It Right for Every Child" (GIRFEC). 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.
- The wholesale changes in Part 1 of the Draft Bill were not part of the initial consultation and need far more examination than the timescale envisaged for the Bill.
- UNISON believes that splitting the system into two separate bureaucracies, the Tribunal, headed by a President (SCHAT) and the Reporters, headed by the Chief Reporter (SCRA), will cause problems both for children and their families and the professionals that have to deal with both systems resulting in them losing one consistent point of contact to see them through the whole process.
- UNISON has previously expressed its concerns about the level of bureaucracy social workers and other professionals currently have to engage with, leaving them, less time to deal with children and their families.

- The dual bureaucracies could create information-sharing problems and problems in ensuring joint positions in terms of ‘non-disclosure’ cases which could put children at risk and lead to them falling through gaps in the dual processes.
- We do not understand why the President of the Tribunal, not the Principal Reporter should be the person to advise the children’s hearings on procedure and disposals available to the hearing. Reporters have built up experience and developed guidance to provide the best quality of service to panel members, children, their families and to professionals. This body of knowledge will disappear if the Bill is passed in its current form.
- We believe that reporters must be able to attend all hearings to enable them to be fully advised about a child’s circumstances.
- UNISON is concerned that the Safeguarder’s duty to attend with the child is not clear enough, particularly in terms of the child’s right to also have another person of their choice attend with them.
- The Children (Scotland) Act 1995 allows the current Children’s Hearing system to protect children where it has been established that a Schedule 1 Offence has been committed against them, without a perpetrator necessarily having been identified or convicted. This protection is removed from the Draft Bill
- The current system also allows any other child who is or might become a member of the same household as such a child to be referred and this ground has also been omitted from the Draft Bill.
- UNISON is appalled that these immensely important child-centred grounds have been omitted from the Draft Bill and believes that this displays an over-concentration on the civil rights of adults at the expense of the rights of children to be protected.
- UNISON believes that the ethos of the welfare of the child would be better protected by giving more prominence to “welfare” grounds as opposed to the emphasis which appears in the list, where the top six grounds relate to offences rather than welfare.
- UNISON is concerned that under the draft Bill, children can only be referred to the Local Authority for ‘advice, guidance and assistance’ by the sheriff or panel members *after* they have already been subject to compulsory supervision, unlike the current provision where the reporter can refer a child to the Local Authority for voluntary measures, prior to or instead of arranging a hearing, if a hearing is not deemed necessary or appropriate.
- The role of the President (as opposed to the Principal Reporter) in seeking an order to enforce the Local Authority’s duty is not sufficiently clear.
- In addition, it is not clear whether the Local Authority will be invited to defend its position.
- UNISON is unhappy that the Local Authority, e.g. a social worker, is not included in the list of parties who can request a business meeting, especially in relation to the ability to excuse a child from attending a hearing.

- UNISON welcomes the provision for determining age in Sections 172-174
- UNISON believes that it should be an absolute offence to disclose protected information and Scottish Ministers should not have the discretion [179(5)] to decide no offence has occurred retrospectively.

## **Introduction**

UNISON is Scotland's largest trade union representing over 160,000 members working in the public sector, many of whom work with children. We represent many social workers, who perform a wide range of duties in Children and Family services as well as members working for the Scottish Children's Reporters Association (SCRA). UNISON is the only trade union within the SCRA where it has over two thirds of all employees in membership.

UNISON Scotland welcomes the opportunity to respond to the Scottish Government on the Draft Children's Hearings (Scotland) Bill and is happy to support the response submitted by our Scottish Children's Reporters' Administration Branch.

## **General Comments**

UNISON Scotland can support some elements of the Draft Bill.

However, we do have serious concerns at the effects this Draft Bill would have, should it be passed as it stands, on our members' ability to protect children from harm and provide the service to them that the Children's Hearing System currently offers.

Given the current climate with the high level of public concern about child protection, we believe the Scottish Government should be making systems safer, rather than removing some of the protections currently in place.

## **Areas for Support**

The issues we do support are as follows:-

Re-stating 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, and ensuring that the necessary separation of functions is both real and perceived;

Ensuring the "future-proofing" of the Children's Hearings System in the light of evolving ECHR jurisprudence.

## Criticisms

One of UNISON's overwhelming concerns about the Draft Children's Hearings (Scotland) Bill is that it fails to protect the welfare and child-centred principles of Scotland's world-leading Children's Hearing system. We believe this could lead to the undermining of the system, with a number of responsibilities and powers being removed from the discussion based forum of the hearing and placed in the more adversarial forum of the courts. This will have a negative effect on the participation of children and families in decision making and, as a result, on the welfare principle.

We also have a serious concern that protections for children at risk which exist in the current system would be diluted by the Draft Bill.

Significant parts of the Draft Bill were not contained in the initial consultation, "Strengthening for the future". In particular the fundamental changes to structures involving the roles of the President, Tribunal and Reporter - with all the uncertainty about roles, remits and information-sharing - have not previously been consulted upon.

UNISON recognises the issues arising from the European Convention on Human Rights and the fact that changes already made to the current system have been widely accepted as 'ECHR-proof'. UNISON is therefore concerned that the Draft Bill appears to make wholesale "knee-jerk" changes, apparently based on other totally unrelated tribunal systems, rather than defending the principles of the Children's Hearing system in terms of the human rights and welfare of children.

UNISON believes that the current checks and balances in the different roles and positive relationship between reporters and children's panels work to the benefit of the welfare of children. We are concerned that the proposed structures, including removing reporters from most hearings, will undermine the ability to maintain knowledge about children and the ability to maintain consistency in ensuring plans to protect and promote their welfare - or to address their behaviour - are progressed. We also believe that the lack of clarity about alternative arrangements arising from the removal of the reporter from hearings could result in poorer outcomes for children in hearings and leave volunteer panel members, who are central to this unique system, unsupported. This could risk the viability of the children's hearing system.

At times the Draft Bill appears to display a lack of understanding of the principles of the current system and how it operates to maintain those principles. Although two-thirds of referrals to the reporter are on protection and welfare grounds, the Draft Bill, especially in the sections on grounds, focuses disproportionately on offences. This suggests a lack of familiarity with the intentions, principles and workings of the current system.

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 costs, without a resultant improvement in the system.

The change of the term 'Supervision Requirement' to 'Supervision Order', which may at first seem to be merely semantic, actually sets the tone of an underlying focus throughout the Draft Bill on offences rather than welfare, and courts rather than hearings.

There is a concern that these legislative changes will force more and more children out of the hearing system into the court system, both on welfare and offence grounds, thereby wiping away a great deal of the innovative thinking and proven successes initiated by Kilbrandon. There is a danger of duplicating the problems faced in the current English court system which does not serve the protection of children well.

The ability of the court to completely re-hear a case already heard at a Children's Hearing (rather than just testing the reasonableness of the decision) and to substitute any decision of a Children's Hearing, not only undermines the Hearing system but could lead to the courts, rather than the Hearings, being the de facto locus for many cases.

While the Draft Bill retains the right of children to have their views taken into account, in practice this is more difficult to achieve in a court setting than in a hearing setting.

UNISON believes that any changes to a system that has proven effectiveness and wide respect throughout the world should not be made in such a short timescale in such a confusingly laid out Draft Bill. Some parts of the Bill require considerable changes to provide clarity of intention.

UNISON is concerned that the whole Draft Bill is unnecessarily complex in some areas and lacking in critical detail in others. This leads to a concern that the whole system will have to be defined by numerous subsequent orders, guidelines and statutory instruments. This will lead to a system that is far less accessible and understandable to children and their families, inevitably resulting in an over-litigious system with child welfare and protection locked up in court processes that, even in the best of cases, cannot be as accessible to children and their families as the Hearing System.

While the notes accompanying the Draft Bill state that it will address issues like clear leadership and unnecessary bureaucracy, the Bill itself introduces confusion in leadership, duplication of systems and

bureaucracies and an inherent danger that information that could protect children may fall through the gaps.

UNISON is also concerned that the local community ethos in terms of the Children's Panel membership and organisation is undermined by the Draft Bill.

UNISON believes that the Draft Bill fails to comply with the principles in "Getting It Right for Every Child" (GIRFEC), 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.

## **Part 1 – Structures**

The wholesale changes in this part of the Draft Bill were not part of the initial consultation and need far more examination than the timescale envisaged for the Bill.

The assumption is that these changes are designed to address ECHR concerns about the 'dual' role of the reporter. However, changes coming into force on 1 September 2009 to the role of the reporter, as outlined in the letter dated 25 June 2009 to all Children's Panel Chairs from the Minister for Children and Early Years, Adam Ingram, MSP, have been assessed as sufficient to meet the needs of the ECHR.

In principle, UNISON could accept the creation of a new national body, headed by a President, if the functions of the President were restricted to recruitment, training and monitoring of panel members. It is absolutely crucial that the President should be able to carry out these functions robustly. However, rather than limiting him or her to the functions described above, the Draft Bill provides that the President will also arrange and provide papers for children's hearings; advise on procedure and the orders available to the hearing and record the outcomes of children's hearings. These are very significant functions, requiring the set-up of major administrative machinery and transferring duties away from those currently carried out by the children's reporters.

Rather than creating complex dual systems and bureaucracies, which are likely to cost far more than the current system, UNISON believes the Government should have been prepared to defend the principles of the current system rather than introducing these new structures which will result in more and more children being drawn into the court system.

We believe that splitting the system into two separate bureaucracies, the Tribunal, headed by a President (SCHT) and the Reporters, headed by the Chief Reporter (SCRA), will cause problems both for children and their families and the professionals that have to deal with both systems.



Children and their families will need to navigate their way through the two systems, having to learn which agency deals with which part of their problem and losing one consistent point of contact to see them through the whole process. Professionals, such as social workers, health visitors, etc, will have similar difficulties, but may have to provide reports to two separate agencies, dealing with the same case. This will increase the time professionals spend on bureaucracy and reduce the time they have to work directly with children and their families. This goes against the ethos of “Getting it Right for Every Child” and even the specific policy objectives for the Bill.

UNISON has previously expressed its concerns about the level of bureaucracy social workers and other professionals currently have to engage with, leaving them less time to deal with children and their families.

UNISON is also concerned at the way the two agencies will interact and the Draft Bill singularly fails to clarify this. We also fear that the dual bureaucracies are likely to create information-sharing problems, problems in ensuring joint positions in terms of ‘non-disclosure’ cases which could put children at risk, and the possibility of children falling through gaps in the dual processes.

We believe that timely and effective decision-making will also be poorer. Because the Draft Bill does not provide for reporters to attend all children’s hearings, apart from the initial one, the President will have the reports from subsequent hearings, which will be needed by reporters to carry out their own functions. We believe that reporters must be able to attend all hearings to enable them to be fully advised about a child’s circumstances.

In addition we do not understand why the President of the Tribunal, not the Principal Reporter should be the person to advise the children’s hearings on procedure and disposals available to the hearing. We believe it is essential that a fully qualified professional is available to undertake these tasks and support the lay panel members to ensure fair process. Children’s reporters have the range of experience to deal with all circumstances from initial referral to appeal stage. Reporters have built up experience and developed guidance to provide the best quality of service to panel members, children, their families and to professionals. This body of knowledge will disappear if the Bill is passed in its current form.

We also believe the Draft Bill is vague on the crucial area of providing advice and is not clear about how the President would carry out this function. Neither is there any mention of who would carry out any functions that may be delegated, or what their qualifications should be, unlike the current primary and secondary legislation which specifically designates functions of the Principal Reporters.

UNISON Scotland believes it is unnecessary and damaging to the Children's Hearings System as a whole for the reporters' functions of arranging hearings, recording outcomes and providing procedural support to panel members to be transferred to the SCHAT and would urge that they remain with the SCRA.

### **Part 1, Chapter 6 – Other Supporting Bodies**

**Section 32:** UNISON is concerned that this will take away the principle of Children's panels being based on Local Authority areas and the important local link to panels themselves and local children's services.

**Section 34:** UNISON welcomes the sections on Safeguarders but believe that further regulations on the qualifications and training of Safeguards needs to be introduced.

**Section 35:** UNISON is concerned that the Safeguarder's duty to attend with the child is not clear enough, particularly in terms of the child's right to have another person of their choice attend with them.

### **Part 1, Chapter 7 – Mutual Assistance Obligation**

**Section 38:** UNISON believes this section is only necessary to address the duplication and confusion of functions created by the Draft Bill. The section in itself will not overcome the problems created by dual or overlapping responsibilities of the new structures or in terms of cross-local authority responsibilities.

### **Part 2 – Welfare of Child and Other General Considerations**

**Section 39:** UNISON welcomes the intention of the Draft Bill to safeguard the principle that the welfare of the child is paramount and that any procedures must have regard to the views of the child.

**Section 40:** However, we are deeply concerned about the placement and effect of Section 40 in terms of situations where the welfare principle is over-ridden by protection of the public. While this makes a welcome clearer definition in terms of the Children (Scotland) Act 1995, the reference to "Section 2" makes it unclear whether it means Part 2 of the Draft Bill or Section 39(2).

### **Part 3 – Emergency Orders**

**Section 58:** We are unclear about the timescales for Emergency Assessment Orders, (EAOs) i.e. will the child and parents still have to be given notice of the application and have the right to be heard before an application is granted? If not, the period of seven days would allow a child to be detained without review longer than in an Emergency Protection Order (EPO).

In addition we do not understand the need for the change in terminology which removes the word, “child” from both the EAO and the EPO titles as we believe this makes them less child centred.

#### **Part 4 – Compulsory Supervision Orders**

As stated in the General Comments above, the change of the term ‘Supervision Requirement’ to ‘Supervision Order’, which may at first seem to be merely semantic, actually sets the tone of an underlying focus throughout the Draft Bill on “offences” rather than “welfare”, and “courts” rather than “hearings”.

**Section 59:** UNISON believes that the ethos of the welfare of the child would be better protected by giving more prominence to “welfare” grounds as opposed to the emphasis which appears in the list, where the top six grounds relate to offences rather than welfare. This would better reflect the fact that the vast majority of referrals are about children who are in need of care and protection and not because of their behaviour towards others.

#### **Protection of Victims of Schedule 1 Offences:**

The Children (Scotland) Act 1995 [s52(2)(d) and (e)] refer to a child in respect of whom any of the offences mentioned in Schedule 1 to the [1975 c. 21.] Criminal Procedure (Scotland) Act 1975 (offences against children to which special provisions apply) has been committed. This allows the current Children’s Hearing system to protect children where it has been established that a Schedule 1 Offence has been committed against them, without a perpetrator necessarily having been identified or convicted. This ground for referral has been removed from the Draft Bill.

The current system also allows any other child who is or might become a member of the same household as such a child to be referred and this ground has also been omitted from the Draft Bill. This means that where a child has been abused in a household - even though the actual perpetrator cannot be absolutely identified - there would be no grounds to protect any other child currently living or moving into that household.

These are extremely important situations where the focus is on the child and how to protect them, rather than on whether a particular offender can be identified and is especially important in terms of the very low conviction rate, particularly in the case of sexual offences, and the great difficulties faced by children as witnesses in court.

Unfortunately, we are all only too well aware that babies and very small children can be subjected to life-threatening harm but are unable to tell who has harmed them. In addition, in circumstances where multiple carers

are involved it is simply impossible to determine which particular person was the perpetrator.

UNISON is extremely alarmed that these safeguards are missing from the Draft Bill meaning that vulnerable children who have been abused or harmed by an unidentified perpetrator will be unprotected as will other children within the household. UNISON does not believe this can be allowed to happen and urges that the Bill must be amended to allow the previous protections to continue.

We accept that not all children who have been offended against will require compulsory measures of supervision but the safeguard exists in terms of the dual test for the Principal Reporter of the ground existing and the need for a compulsory order in the Draft Bill [s69 (1)].

UNISON is appalled that these immensely important child-centred grounds have been omitted from the Draft Bill and believes that this displays an over-concentration on the civil rights of adults at the expense of the rights of children to be protected.

**Sections 59 (1) (h) and 59 (2):** This refers to the grounds regarding a child being exposed to someone whose conduct is such that there is reason to believe they may abuse or harm the child. It is not clear whether the current position whereby someone who has committed a schedule 1 offence is automatically deemed to present that risk, or whether there is a further test over and above that to evidence risk.

It also may be that these sections provide a broader interpretation of adults who may present a risk but that is not sufficiently clear. The use of the word 'commits' a Schedule 1 Offence in the present tense is also confusing. Clarification is needed about whether this rules out offences committed in the past.

**Section 59(4):** UNISON welcomes this clarification of being 'exposed' to a person.

**Section 59(f):** The order of the wording is confusing. The existing legislation [52 (2) (f)] states 'failed to attend school regularly' while the Draft Bill states 'regularly failed to attend'. Does this mean there has to be regularity to the failure rather than a failure to attend regularly?

#### **Part 4, Chapter 2 – Giving Information to the Principal Reporter**

**Section 61:** While the need for a Constable to refer a child believed to be in need of compulsory measures of supervision is accepted, there should be some reference to the 'Getting It Right For Every Child' principles of seeking to intervene early on an inter-agency basis.

**Sections 62 and 63:** UNISON welcomes these sections.

## **Part 4, Chapter 3 – Functions of Principal Reporter**

**Section 66(2) (b)** – UNISON does not support 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 the behaviour of children, when as previously stated, the overwhelming number of current cases relate to children needing protection. The wording shows an unnecessarily restricted view of the types of measures which can be considered in relation to children and needs to be redrafted in both this section and Section 69.

**Section 67(3) and (4):** It is not clear whether the Local Authority, while being given a duty to obtain information from sources defined by the Principal Reporter, would have corresponding powers to require those sources to provide that information. We believe it would make more sense to give the reporter the powers to require reports from other sources.

**Section 68:** UNISON is concerned that the current provision in Section 56(4)(b) of the 1995 Act for the reporter to refer a child to the Local Authority for voluntary measures of ‘advice, guidance and assistance of the child and his family’ if he does not consider a hearing necessary, appears to be missing from the Draft Bill.

It is inconsistent that, while the reporter does not have this power in diverting children from formal measures, the sheriff does have the power (s101) to refer for voluntary measures and the hearing has the same power in Section 133(6) but in both cases only if they are terminating an existing compulsory supervision order.

Thus, children can only be referred to the Local Authority for ‘advice, guidance and assistance’ after they have already been subject to compulsory supervision. This is not consistent with this important provision in the 1995 Act and acts against the spirit of the welfare principle, the “no order principle” and the GIRFEC principle of early intervention.

**Section 70:** As with the current legislation regarding Anti Social Behaviour, when the sheriff refers to the Children’s Hearing, the reporter has to accept the sheriff’s view that compulsory measures are necessary. UNISON believes this undermines the discretion of the reporter who, in all other circumstances where the sheriff refers a child, applies the test of ‘may be necessary’. It also begs the question of why there needs to be a Children’s Hearing if the decision that compulsory measures are necessary has already been taken.

In addition, the increased bureaucracy is highlighted by this section. For

example, 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 ask the President to arrange a hearing.

There is also a failure to connect 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.

**Section 71 and 72:** This again underlines UNISON's concerns about the dual bureaucracy and the possibility that more or duplicated reports will be needed with all the dangers of information falling through the gaps between the two systems.

#### **Part 4, Chapter 4 – Initial Children's Hearings**

##### **Sections 77-79**

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

#### **Part 4, Chapter 5 – Sheriff to Establish Grounds**

**Section 90:** UNISON believes there is a missed opportunity to clarify the situation in terms of the Rehabilitation of Offenders Act regarding young people who accept offence grounds. UNISON has already commented that legal representation should be available for young people referred on offence grounds.

**Section 91 and 92:** UNISON welcomes these measures for protecting vulnerable witnesses and young people who are victims of alleged sexual offences.

**Section 101:** UNISON believes that the sheriff's power to refer a child for voluntary measures when terminating a supervision order should be extended as an option for the reporter to consider when a child is first referred as an alternative to organising a hearing.

## **Part 4, Chapter 6 – Children’s Hearings on Grounds**

**Section 106(4):** UNISON requires confirmation that the test that the Children’s Hearing “must defer a decision” also has the test of the welfare of the child as detailed in Section 39, i.e. if the child’s welfare demands it, the hearing need not defer.

## **Part 4, Chapter 8 – Compulsory Supervision Orders**

**Section 116:** UNISON strongly welcomes the fact that the term ‘secure authorisation’ has been maintained with the further test of the agreement of the Chief Social Work Officer and the Head of the relevant unit.

**Section 117:** We require clarification about whether these conditions are intended to be exhaustive, as if so, we could not support them as they reduce the flexibility of the Supervision Order which may need to cover other issues.

**Section 121:** Further clarification is needed as to how Local Authorities would secure services from other Local Authorities and how any disputes would be resolved.

## **Part 4, Chapter 9 – Review of Compulsory Supervision Orders**

**Sections 134 – 136:** 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.

**Section 135(4):** In addition, the role of the President (as opposed to the reporter) in seeking an order to enforce the Local Authority’s duty is not sufficiently clear. It is not clear whether the Local Authority will be invited to defend its position.

## **Part 5 – Warrants and Ancillary Orders**

**Section 141:** UNISON welcomes this section which should avoid children being detained unnecessarily.

**Section 143 (d):** While we are aware that the use of police cells exists in practice while a place of safety is sought, UNISON believes this should not be legitimised, as it is in this section.

## **Part 5, Chapter 2 – Interim Compulsory Supervision Orders**

**Sections 144 and 145:** UNISON does not agree that the Children’s Hearing’s current ability to extend a ‘place of safety’ warrant for 66 days should be diluted in terms of the new ‘interim supervision order’ and the

need to apply to the sheriff after 22 days. This is another example of the undermining of the powers of the Children's Hearing and more powers being invested in the sheriff and the courts.

In addition, clarity is also required about sub-section (5) which could result in a situation where 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.

#### **Part 5, Chapter 4 – Secure Accommodation Authorisations**

**Sections 148 and 149:** As stated above, UNISON welcomes the retention of the current rules regarding secure accommodation but believes that provisions for Ministers to make Regulations in Section 149 could undermine the important safeguards.

#### **Part 6 – Children's Hearings**

**Sections 151-154:** UNISON is surprised that the Local Authority is not included in the list of parties who can request a business meeting, especially in relation to the ability to excuse a child from attending a hearing. In many cases, the Local Authority social worker will be the person best placed to advise on the likely effects on the welfare of the child of attendance at a hearing. It is our view that the Local Authority must be included in this list to avoid the possibility that young or vulnerable children may slip through the net and have to attend hearings that may be distressing for them or otherwise harm their welfare.

#### **Part 6, Chapter 2 - Procedure**

**Section 159(7):** It is not clear why existing wording in the Children (Scotland) Act 1995 regarding the definition of a child's "age and maturity" has been changed here. The 1995 Act [s16] states "a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view" and one assumed it would remain in the amended act.

However, section 159(7) of the Draft Bill adds confusion to the definition in that the President should "presume a child under 12 years to be of insufficient age and maturity to understand..." While the President is given some discretion, this section appears to change the presumption for no good reason.

**Section 171 Right to Attend:** The Children (Scotland) Act, in s42(2)(i) gave a power to the Secretary of State to make provision to confer a right to representation on the child and relevant person at a Children's Hearing, which was then incorporated in the Children's Hearing (Scotland) Rules 1996. We believe this is missing from the Draft Bill. UNISON would wish the



relevant person's and the child's right to have a representative of their choice attend the hearing clearly stated in new legislation.

**Sections 172-174:** UNISON welcomes the provision for determining age.

**Section 177:** We note 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.

### **Part 6, Chapter 3 – Publishing Restrictions**

**Section 179:** UNISON believes that it should be an absolute offence to disclose protected information and Scottish Ministers should not have the discretion [179(5)] to decide no offence has occurred retrospectively.

### **Part 7 – Reviews and Appeals**

UNISON believes that the use of the term 'review' both in relation to a Sheriff's review and a Children's Hearing review of supervision order, will lead to confusion.

**Sections 180 - 183:** UNISON believes that the apparent ability of the sheriff to re-run the whole Children's Hearing on review could lead to more and more cases being de facto heard in the courts rather than the hearings, leading to further undermining of the Children's Hearing System. We believe that the current system of a sheriff only being able to hear an "appeal against the decision of a Children's Hearing" should be reinstated.

**Section 181(1) (c):** UNISON is perplexed by the reference to the "President's report of the children's hearing". It is questionable what this 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. UNISON Scotland believes that the only reason for the introduction of this document is to deal with the problem raised by the fact that the Bill seems not to intend reporters to be in attendance at children's hearings, but reporters are to deal with reviews, which will be very difficult for the reporter to do 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.

**Section 185:** As mentioned above, UNISON is concerned that court delays could lead to warrants falling and children being left unprotected.

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