Process of the Bill
The Children and Young People (Scotland) Bill (the ‘Bill’) was introduced in the Scottish Parliament on 17 April 2013. The lead committee is the Education and Culture Committee, which has issued a call for evidence with a deadline of 26 July 2013.

Stage 1 will continue after the summer recess looking at the general principles of the Bill and is expected to conclude by 29 November 2013.

Stage 2 involves a detailed line by line consideration of the Bill in committee and will provide the first of two opportunities to suggest amendments.

Stage 3 will see further detailed consideration by Parliament with another opportunity to push for amendments before the Parliament debates a final draft of the Bill.

The financial memorandum provides an indication of when the different provisions will take effect, mostly not before 2015 or 2016. The main exception is the increase in access to free early learning/childcare (from 475 to 600 hours/year) set out in Part 6 of the Bill, which is scheduled to take effect for September 2014.

Contents of the Bill
The draft Bill has 13 parts, which broadly reflect the themes set out in the consultation paper:

- Part 1 - children’s rights and the UNCRC
- Part 2 - new powers of investigation for the Commissioner for Children and Young People
- Part 3 - children’s services planning
- Parts 4 and 5 - the Getting it Right for Every Child (GIRFEC) proposals on named person and child’s plan
- Part 6 - proposals to give effect to the increase in free early learning and childcare
- Part 7 - sections introducing a legislative definition of corporate parent
- Part 8 - expanding access to aftercare for looked after children
- Part 9 - provision of counselling services
- Part 10 - kinship care orders
- Part 11 - creation of a Scottish adoption register
- Parts 12 and 13 - other miscellaneous provisions, including introducing the notion of wellbeing and the SHANARRI indicators into legislation.

CCPS members will have a range of views and will be working to influence different parts of the Bill in accordance with their respective priorities. In terms of CCPS’s input to the passage of the Bill, we propose to focus on those few areas where we have identified a potential impact on service provider organisations and, based on input from members, will submit a brief to the Education Committee that sets out our concerns and possible solutions in general terms. Those areas may include:

1- Part 3 - Children’s services planning and the links with the integration of health and social care bill developments (now published: Public Bodies Joint Working) (Scotland) Bill – the ‘Joint Working Bill’)
2- Other areas of the Bill where consultation and involvement are proposed – to strengthen provider voices and clarify duties around information sharing

A quick summary of the contents is provided below, along with some consideration of those areas that may have a particular impact on providers of children’s services.

Part 1 - Rights of children ss.1-4
This part introduces duties on Scottish Ministers to consider steps they could take to further the effects of the UN Convention on the Rights of the Child (UNCRC) in Scotland; to promote public awareness of the rights of children; and finally to report every 3 years on what steps they have taken in both areas.

It also introduces duties on public authorities – listed in schedule 1 and including local
Part 2 - Commissioner for Children and Young People ss.5-6

This part amends the 2003 legislation that created the Commissioner role and gives the Commissioner new powers to investigate the extent to which service providers have had regard to the rights of children and young people when taking decisions or actions, both generally and in individual cases. Note that ‘service provider’ is broadly defined in the Commissioner for Children and Young People (Scotland) Act:

“service provider” means any person providing services for children and young people but does not include a parent or guardian exercising the responsibilities imposed or the rights conferred by sections 1 and 2 of the Children (Scotland) Act 1995 (c. 36); and…

This part also enables the Commissioner to require a service provider to respond to the Commissioner’s recommendations following an investigation. It is not clear what, if any, sanctions could be applied in the event of a refusal to cooperate with this requirement.

Part 3 - Children’s Services Planning – ss.7-18

The proposals in the Bill for service planning build on the provisions in the Children (Scotland) Act 1995 but appear to fall short of the level of collaborative strategic planning that is being developed in the context of the integration of adult health and social care. In the Joint Working Bill, integration partnerships must establish consultation groups (that include the third sector, carers and users, in addition to the usual statutory partners) to jointly work on strategic planning. This is a significant step up from the ‘duty to consult’ requirements in the Children’s Bill, not least because it involves a range of stakeholders (including third sector providers) from the beginning of the planning process.

The development of joint strategic commissioning in the context of adult health and social care integration is seen as having some real potential for improving the involvement of third sector providers in the planning and design of services as well as improving outcomes for service users.

While there is no mention of it in the Bill, the Scottish Government is thinking about developing a similar approach in the context of children’s services outwith the Bill. They have put a proposal to the Looked After Children Strategic Implementation Group (LACSIG) board for a programme of work to develop joint strategic commissioning in the area of children’s services that mirrors many of the activities in integration for adult health and social care. It is unclear, however, how far and in what connection this approach relates to the duties in this Bill with respect to children’s services planning.

The basic framework for children’s services planning is as follows: s.8 introduces a duty on local authorities and health boards to produce children’s services plan every 3 years, to include all children’s services and ‘related services’.

The process, set out in s.10, places a duty on local authority and health boards to give other service providers an ‘effective opportunity’ to participate in or contribute to the preparation of the plan. ‘Other service providers’ is narrowly defined and does not include third sector providers. However, there is a duty to consult with organisations representing users, voluntary and independent sector providers, social landlords and others (as directed by Scottish Ministers) (s.10)(1)b and 10)(2).

There is a corresponding requirement in s.10(6) for organisations representing users, voluntary and independent sector providers, social landlords and others to meet any reasonable requests to participate or to contribute to the preparation of the plan. While we clearly welcome wide participation in the planning process (as noted above), we query the extent to which this legislation can place duties on non-statutory bodies to engage with the process. Is it our understanding that the legislation cannot place legal duties on the third sector, and practically speaking who would the duties fall on and how would they be enforced? Thus we would like to see clarification of the meaning of this provision in relation to both the policy aim and the legal impact. And related to the question of impact, it is notable that the...
financial memorandum anticipates no extra costs as a result of these proposals based on the assumption that local authorities already have a duty to produce integrated children's services plans. There is no consideration given to the costs that might come with wider participation in the planning process by third sector providers and others.

The plan must be kept under review and revised accordingly. There is a duty to provide children's services in accordance with the plan with the caveat 'so far as reasonably practicable'. Monitoring will be via an annual reporting duty on the local authority and each relevant health board. The annual report must set out how their aims have been achieved and what the outcomes are (referring to outcomes that will be prescribed by Scottish Ministers, and linked to the idea of wellbeing and the SHANARRI indicators, which are introduced in Parts 12-13 of the Bill). Meanwhile, the Care Inspectorate is developing a new multi-agency inspection methodology for children's services that may include a review of the strategic planning of children's services. However, the Bill makes no specific reference to any scrutiny role for the Care Inspectorate or HIS in relation to children's services strategic planning.

By comparison, the integration of adult health and social care proposals contained in the Joint Working Bill also include a duty on local partnerships to report annually on their strategic plans. The Care Inspectorate and Health Improvement Scotland will be required to scrutinise these, though this is expected to be set out in regulations or guidance rather than on the face of the Joint Working Bill.

S.14 introduces a general duty to comply with reasonable requests for information, advice or assistance from the local authority or health board in exercising their functions under this part. This duty applies to 'other service providers’ and also to organisations representing users, voluntary and independent sector providers, social landlords and others (as defined in s.10(1 and 2)). There is an exemption provision which allows a person to refuse if they consider it would be incompatible with any of their ‘duties’; or ‘unduly prejudice the exercise of any function.’ The wording of this appears open to wide interpretation and would benefit from clear guidance so that third sector providers can have a better grasp of the circumstances in which requests for information can be refused.

Scottish Ministers may issue guidance on planning (s.15); and must consult with the relevant service providers before issuing. Again, this does not appear to include third sector providers.

S.17 sets out the sanctions for failure to follow the guidance, including a power for Scottish Ministers to direct local authorities to comply. Ministers can also order the creation of a joint board of the local authority and health board to exercise their functions in order to comply with guidance.

**Part 4 – Named Person ss.19-30**

The named person is part of the GIRFEC approach, whose principal aim is ‘to have in place a network of support so that children and young people get the right help at the right time’. The named person role has already been introduced in some local authorities in Scotland and is typically someone who works in a statutory body, is already working with the child, can intervene early where difficulties arise, and can act as a single point of contact for services available to children and families. Part 4 places the role on a statutory footing and lays out the three principal elements 1) advising/supporting the child or parent; 2) helping to access services/support; and 3) discussing a matter with a service provider or relevant authority. Responsibility for providing the named person service to children and young people lies with the service provider rather than the individual named person.

The named person service is divided between the health board, responsible for pre-school children, and the local authority, responsible for children of school age up to age 18. There are exceptions to the local authority role for children in a public school managed by another local authority, independent school, in secure accommodation, or who are a member of the regular forces, in which case that establishment is responsible for providing the named person service. In the case of young people age 18 but still in school or secure accommodation, that establishment retains the duty to provide the service.

This part places a duty to communicate with the possible new named person, where changes
occur (like a move to a new area), including providing basic information and other relevant details. The local authority or health board also has a duty to provide information about their named person services, as well as a duty to help with the exercise of named person functions on the part of another service provider (defined narrowly to include only those services providing the named person service).

There are duties on service providers to share information under certain circumstances. S. 26 sets out the parameters of information sharing duties between service providers. A ‘service provider’ must provide any information held which might be relevant to the exercise of a named person’s functions. A similar duty is placed in relation to information which might affect the wellbeing of a child or young person. For the purposes of this section the definition of ‘service provider’ is broadened to include external providers (‘any person exercising a function on behalf of a service provider or relevant authority’).

This section highlights the tension between the child’s right to confidentiality and the practical necessity of sharing information between different services, including between third sector and statutory sector. As currently drafted, it appears to give power to local authorities and health boards to access a very wide spectrum of information, some of which may be commercially sensitive for providers or which might raise issues of confidentiality in relation to children or adults who are receiving services from third sector providers.

Providers believe that this section needs to strike a careful balance between access and confidentiality, and to recognise the important differences between third and statutory sector service providers. As such, there should be further debate about whether the section can be amended to clarify its scope or whether this can be accomplished through statutory guidance.

Part 5 – Content of Child’s Plan ss.31-41
This part sets out the circumstances in which a responsible authority is required to produce a child’s plan, what it should contain, and how it should be developed. The plan must state the wellbeing need identified by the relevant authority which has triggered the need for a plan and contain a statement of the ‘targeted intervention’ required to be provided to the child (s.32). Targeted interventions do not appear to include non-statutory services – they are defined as a service provided by a relevant authority – which in turn is defined as the health board, local authority or directing authority (e.g. grant-aided schools).

In respect of the management and review of a child’s plan (s.37), there is a requirement for the managing authority to consult with other statutory providers and the child and parents. There is no mention of consultation with third sector providers who may be providing the ‘targeted intervention’.

S.39 gives Scottish Ministers power to issue guidance on the child’s plan but requires them to consult ‘any person to whom it will relate’ beforehand.

We presume that it would make sense for the child’s plan to include services provided by the third sector, where appropriate. And equally, for there to be consultation with third sector providers, in the context of the management of the plan, where they are involved in providing a ‘targeted intervention’ set out in the child’s plan. This could be achieved either by amending the definition of targeted intervention or through regulation or guidance. Lastly, a similar point in relation to the duty to consult the third sector in development of any guidance on the child’s plan – we would suggest that should ensure the inclusion of third sector providers.

For information, the Scottish Government is currently working with stakeholders, including third sector providers, to develop the guidance that will accompany the GIRFEC sections of the Bill (i.e. Parts 4, 5 and 13). Draft headings for guidance on 1) child’s plan regulation; 2) the child’s plan minimum data set; and 3) named person – wellbeing guidance group have been circulated and are attached for information.

Part 6 – Early learning and childcare ss.42-49
This part sets out the terms on which education authorities will be required to provide an increased number of hours of early learning and childcare per year. The entitlement has increase by 125 hrs – from 475 to 600 hours per year. Early learning and childcare is defined as: a ‘Service consisting of education and care, … regard being had to the importance of interactions and
other experiences which support learning and
development in a caring and nurturing setting.

Eligibility covers 3 and 4 year olds, looked after 2
year olds and, in response to feedback during the
consultation phase, has been extended to 2 year
olds who have been the subject of a kinship care
order.

The education authority may provide alternative
arrangements for looked after two year olds, in
which case they must include their assessment
and details of the alternative arrangements in the
child's plan.

S.46 creates a duty to consult with
representatives of parents and children and
publish a plan on the delivery of early learning
and childcare at least once every 2 years.

Specific requirements on the method of delivery
are set out in the Bill including the provision
of sessions for at least 38 weeks per year, with
each session at least 2.5 hrs but less than 8 hours
duration. Education authorities must also have
regard to the flexibility of sessions to allow
parents an appropriate degree of choice.

Parts 7 and 8 of the Bill relate to looked
after children

Part 7 - Corporate Parenting – ss.50-59
This part creates a statutory regime of corporate
parenting which applies to all looked after
children and those under age 26 who were
previously looked after.
It includes a list of bodies who are ‘corporate
parents’ and sets out their responsibilities: to
be alert to matters which adversely affect the
wellbeing of children; to assess their needs;
to promote their interests; to seek to provide
opportunities for activities that promote their
wellbeing; and to take action to help access
such opportunities.
The list of corporate parents does not
include any non-statutory bodies. It is worth
considering whether there should be a way to
include third sector providers in this list, as they
do in practice exercise many of the functions
of corporate parent and would in many cases
welcome the benefits of better collaboration
among corporate parents.

The corporate parent also has a duty to plan
for how it will exercise its corporate parenting
responsibilities, including a duty to consult with
other corporate parents and ‘such other persons’
as appropriate.

S.54 tries to ensure that the different public
bodies involved in supporting a looked after
child will cooperate with each other in order to
promote the wellbeing of the child or young
person. There is a general duty to collaborate
with other corporate parents when exercising
their corporate parenting responsibilities, as
well as a list of more specific examples of what
that may include: sharing information, providing
advice or assistance, coordinating activities,
sharing responsibility for action and jointly
funding activities.

The corporate parent has a duty to report
on how it has exercised its responsibilities,
planning and collaboration functions under
this part, and must also provide information to
Scottish Ministers upon request, including what
outcomes have been achieved in exercising its
corporate parent role.
The corporate parent must comply with any
guidance issued by Scottish Ministers who also
have the power to issue directions to corporate
parents. In turn, Ministers must report every
3 years on how they have exercised their
corporate parenting responsibilities.

Part 8 - Aftercare – s.60
This section extends the age limit for eligibility
for support that formerly looked after children
may access from the local authority. In
response to feedback from the consultation, the
proposals on provision of aftercare have been
strengthened to address concerns that giving
young people a right to request support (as
initially proposed) would not necessarily result
in that support being provided.
S.60 amends s.29 of the Children (Scotland)
Act 1995 to increase the age limit for support
from 21 to 26. The draft new wording places
stronger duties on local authorities who are
required to consider a request for assistance and
must provide advice and assistance where it is
deemed necessary to meet ‘eligible needs’ not
addressed elsewhere. A local authority is also
given the power to continue support after the
young person has reached age 26.

The meaning of ‘eligible needs’ will be specified
by Scottish Ministers by order, which will be
subject to the affirmative procedure.
Part 9 – Counselling - ss.61-63
This part places a duty on local authorities to provide counselling services (e.g. family group conferencing) to parents and individuals with parental rights or responsibility for an ‘eligible child’ - the meaning of eligible child to be defined by order of Scottish Ministers. The policy goal is to provide early intervention support aimed at preventing a child becoming looked after.

The practical details of interest to third sector organisations providing relevant services will likely be set out in Ministerial orders (s.62), which will determine what, when and how counselling services are to be provided, and in what circumstances a child is an eligible child.

Part 10 - Support for Kinship Care – ss.64-67
This part aims to clarify when and what kind of support can be provided to children and young people and their families or other carers where an application for a kinship care order has been made or is contemplated. ‘Kinship care order’ is defined as an order under s.11(1) of the Children (Scotland) 1995 Act or a residence order. Kinship care assistance includes counselling, advice, financial support or support in kind, and any services provided by a local authority on a subsidised basis.

Part 11 – Adoption Register – s.68
This part formalises the establishment of a Scottish Adoption Register.

Parts 12 and 13 – Wellbeing and Miscellaneous Reforms
These parts contain a series of amendments to various pieces of legislation, including the Children's Hearings (Scotland) Act 2011 to address procedural issues; the Criminal Procedure (Scotland) Act 1995 in relation to appeals against detention in secure accommodation; the Schools (Consultation) Scotland Act 2010 relating to the procedures about decisions to close a school.

They also include an amendment to the Children (Scotland) 1995 Act introducing the notion of ‘wellbeing’ and the SHANARRI indicators (safe, healthy, achieving, nurtured, active, respected, responsible, included) into the matters which a local authority must consider when exercising its functions under ss.17 and 22, which are the sections that set out the main duties towards looked after children (s.17) and promotion of the welfare of children in need in their area (s.22).

A final note on the financial memorandum (part of the explanatory notes), which summarises the estimated cost implications of the Bill. It provides some useful initial insight into the way the Scottish Government anticipates much of this Bill to operate in practice. It does not make any provision for financial impact on third sector providers, despite the areas of the Bill that may lead to requirements on providers to participate, contribute or provide information, etc. It explains when they expect the different sections to begin to take effect. It discusses how the GIRFEC provisions may operate and what that would cost in additional teacher time, midwife, health visitor and public health nurse hours; it considers need and possible provision of kinship care support and tries to factor in the positive financial impact of diverting children away from becoming looked after; and it gives some indication of the type of support that might be provided by local authorities under the aftercare section (paras 91-105), though this is likely to be further refined in discussions with COSLA.

About CCPS
Coalition of Care and Support Providers in Scotland is the national association of voluntary organisations providing care and support services across Scotland. In 2010-11, CCPS members managed a total annual income of over £1.3 billion, of which an average of 79% per member organisation related to public funding.

Over this period, members supported approximately 300,000 people and their families, and employed around 45,000 staff.

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