

## Towards new arrangements Issue 30 – 15 October 2010



### CHILDREN'S HEARINGS (SCOTLAND) BILL - UPDATE

The October Parliamentary recess gives us an opportunity to take a breath and reflect on where we are with the Children's Hearings (Scotland) Bill.

There have now been four meetings of the Education Committee to consider the Bill at Stage 2. Some 283 amendments have been considered by the Committee so far, with 231 of these being agreed and incorporated into the Bill. The remainder were either defeated, withdrawn or not moved following debate and discussion. We expect a minimum of one further meeting to be required (currently scheduled for 27 October) before Stage 2 can be concluded. If there are no additional delays, this would still allow Stage 3 to take place before the end of 2010.

#### Amendments that have been agreed:

Many of the amendments that have been presented are quite technical and resolve relatively minor drafting points, but there are a number of significant developments which we have summarised below. All these amendments have been agreed and are currently part of the Bill. The amendment numbers have been included for reference and you can find the text of each amendment [here](#).

- A group of three amendments (71-74) introduced by Education Committee member Elizabeth Smith (Conservative) place the responsibility for recruiting, selecting, training and supporting panel members via Area Support Teams directly under local authority control, rather than that of the National Convenor. SCRA and others have significant concerns about this as we feel that it would seriously undermine the independence and credibility of the Hearings System. The Scottish Government will have an opportunity to try and remove these provisions at Stage 3.
- SCRA and other partners had argued that there was a need for national arrangements to tackle inconsistencies in standards of recruitment, monitoring, training and quality assurance for Safeguarders. The Scottish Government has brought forward a series of amendments (22-31) which would involve Ministers contracting out the delivery of such arrangements to a third party (most likely a voluntary organisation).
- An amendment (87) promoted by a number of voluntary organisations places a duty on the Hearing to consider the appointment of an advocate in much the same way as they currently consider the appointment of a Safeguarder. A more far-reaching amendment which would have required the Hearing to secure the provision of an advocacy service in every case was withdrawn.
- A Scottish Government amendment (48), supported by ADSW and ACPOS, provides that a CPO will fall automatically after six days if it cannot be implemented (for example if the child/family has absconded).
- The Scottish Government brought forward an amendment that has resolved the issue raised by SCRA and others about the threshold for referral to the Reporter being too high in the Bill. The amendment reverts to the current threshold for referral, that the child "may require" compulsory measures of supervision.
- Another issue raised by SCRA was the need for a means of reviewing relevant person status if it is awarded by a pre-Hearing panel. The Scottish Government has brought forward amendments to achieve this.



- The Bill had changed the language of the “beyond control” ground to “not within the control”. At SCRA’s suggestion this has been changed back to the 1995 Act wording (amendment 119).
- One of the grounds for referral in the Bill was that the child had “a close connection with a person who has been convicted of an offence under Part 1, 4 or 5 of the Sexual Offences (Scotland) Act”. At SCRA’s suggestion, “has been convicted” was changed to “has committed” (amendment 118). This ensures consistency with other grounds.
- In addition, a new ground relating to forced marriage has also been introduced (amendment 177). While SCRA felt that existing grounds were capable of covering these situations, we foresee no particular problems with the introduction of this ground.

### **Forthcoming amendments:**

Amendments on the following issues have either already been lodged or are expected to be prior to future meetings (either at Stage 2 or Stage 3):

- SCRA has proposed that a provision be introduced in proceedings for proof of grounds of referral to prevent an alleged perpetrator of a Schedule 1 offence for being able to examine or cross examine his alleged victim. This would replicate provisions in criminal procedure and is being supported by the Scottish Government.
- The Bill proposed an ability for a Children’s Hearing to withhold information on that child from the relevant person in certain circumstances. While SCRA supported this in principle, we expressed concern about whether these proposals are consistent with Human Rights requirements. Amendments have been lodged by Committee member Elizabeth Smith (Conservatives) that seek to resolve this concern.

### **Outstanding issues:**

The vast majority of the issues raised by SCRA at Stage 1 have been resolved and the necessary changes have either already been incorporated into the Bill via Stage 2 amendments, or are expected to be brought forward at future Committee meetings. However, there are a few matters still outstanding:

- At Stage 1, SCRA and others had expressed concern about the extension of the Sheriff’s powers to overturn the Hearing’s decision even where the appeal has been dismissed. We continue to work with partners on this issue.
- The Bill currently provides a right of appeal to the Court of Session over the decision to award relevant person status but only to the child, relevant person and the individual involved. SCRA has argued that this right should extend to the Reporter as well. Contact with the Scottish Government over this issue is continuing.

### **Issues due for further consideration at Stage 3:**

Sections 10 and 17 of the Bill provide Scottish Ministers with the power to remove, vary or transfer functions of the Principal Reporter and the National Convenor. Amendments affecting the application of these powers were withdrawn so that further discussion could take place. SCRA will continue to work with the Scottish Government and with partners to ensure that appropriate restrictions and safeguards (in line with the Public Services Reform legislation) are placed around the use of these powers at Stage 3.

### **What happens next?**

As mentioned above, Stage 2 consideration will continue at the Education Committee’s next meeting on 27 October. Following Stage 2, a new version of the Bill (as amended) will be published by the Scottish Parliament and Stage 3 will commence shortly afterwards.