



Health and Community Care Committee

6th Meeting, 2001 (Session 1)

Wednesday 14 February 2001

The Committee will meet at 9.30 am in Committee Room 2

1. **Item in private:** The committee will consider whether to take item 4 in private.
2. **Regulation of Care (Scotland) Bill:** The Committee will take evidence from—
The Deputy Minister for Health and Community Care (Malcolm Chisholm)
British Agencies for Adoption and Fostering
Children First
Help the Aged
3. **Appointment of Budget Advisor:** The committee will consider the terms of reference for an advisor.
4. **Regulation of Care (Scotland) Bill:** The Committee will discuss conclusions and recommendations for the Stage 1 Report and consider secondary committee reports.

Jennifer Smart
Clerk to the Committee
Room 2.5
email jennifer.smart@scottish.parliament.uk

The following papers are attached for this meeting:

[Agenda Item 2](#)

[Submission from British Agencies for Adoption and Fostering](#)

[Submission from Children First](#)

HC/01/6/1

HC/01/6/A

Submission from Help the Aged

HC/01/6/2

HC/01/6/3

Agenda Item 3

Report on the Budget Process 2002/3

HC/01/6/4

Agenda Item 4

Draft conclusions and recommendations TO FOLLOW

HC/01/6/5

Stage 1 Report from Local Government Committee (PRIVATE)

HC/01/6/6

Stage 1 Report from Equal Opportunities Committee (PRIVATE)

HC/01/6/7

Stage 1 Report from Education, Culture and Sport Committee (PRIVATE)

HC/01/6/8

Agenda item 2

Health & Community Care
Committee
14 February 2001

THE HEALTH AND COMMUNITY CARE COMMITTEE**14 February 2001****REGULATION OF CARE (SCOTLAND) BILL - SUBMISSION FROM BAAF**

The British Agencies for Adoption and Fostering (BAAF) is the leading UK wide membership organisation which promotes high standards of practice in adoption, fostering and social work with children and families. BAAF acts as an independent voice in the field of child care, works within a child centred, multi disciplinary and anti discriminatory framework, promotes public understanding of issues, provides specialist training and produces a wide range of publications. BAAF Scotland provides advice, information, consultancy, child placement services and training throughout Scotland and all local authorities and voluntary adoption agencies here are members.

In the context of this Bill, we are concerned with those very vulnerable children who cannot live with birth families and are or are about to be “looked after” by local authorities. Every child is entitled to good quality “care services”, but these vulnerable children are entitled to the best possible ones. In the words of the White Paper, “Aiming for Excellence”, it is vital “to ensure that those children for whom the social work services have a legal responsibility receive a standard of care and support that enhances every aspect of their lives”.

The White Paper also highlights the fact that “the needs of children and young people for care and protection cannot be addressed by any one agency on its own. Many of the past failures to nurture and enhance the lives of children who come into contact with public care agencies stem at least in part from an inability to achieve a fully integrated approach to services and professional practice”.

BAAF would therefore suggest that a statement reflecting these values and principles should be included as an introduction to the Bill, so as to underline both the scope and aspirations of the legislation.

BAAF's particular concerns are:

- The quality of assessment and planning processes which determine the service that children and families receive, and how these are provided, i.e. the whole of the assessment and care management system;
- The quality of services actually provided, and in particular of adoption and fostering services;

- The proper implementation and resourcing of the Children (Scotland) Act 1995 and the Adoption (Scotland) Act 1978.

Consultative Processes Prior to Introduction of the Bill

There have been wide consultations on many aspects of the Bill. We welcome as wide a consultation as possible, before new legislation is introduced.

Reasons for the Introduction of the Bill

We welcome the move to pull together the regulation and inspection of “care services” and better to provide for the qualifications and training of social work professionals. The establishment of the Commission and the Council will enable standards to be developed and taken forward for all “care services”, and allow wider support and training for social work professionals.

Key Issues in the Bill

There is as yet nothing in the Bill about fostering and adoption services, but BAAF understands that amendments regarding these matters will be brought forward. It is not, therefore, possible to comment in detail on what is to be provided, until the amendments are available.

However, there are a number of key issues:

- Commission for the Regulation of Care, section 1.

We are in favour of the establishment of the Commission. We think that its crucial function is that mentioned in section 1(1)(b) – “the general duty of furthering improvement in the quality of care services provided in Scotland”.

- Care services, section 2.

It is essential that care services include:

- *Fieldwork - children and family services, assessments of and helping “children in need” and supporting them and their families, even where the children may become “looked after”;*
- *Fostering services - all functions of local authorities in connection with placing children with foster carers, and including arrangements whereby local authorities work with voluntary agencies, and other independent agencies run for profit;*
- *Adoption services – provided by local authorities in terms of section 1 of the Adoption (Scotland) Act 1978 and also by approved adoption societies (see section 3 of the 1978 Act).*

So far as fieldwork services are concerned, we would welcome an undertaking from the Executive that “a support service” as provided for in section 2(1)(a) and (2) will include local authority children and families fieldwork. Assessments and work done at this stage in a child’s life are crucial, and high standards are vital.

For fostering services, a wide definition is required, to include all the fostering tasks carried out by the local authorities, with regard to children who are “looked after” and fostered and also with regard to carers who are approved to do this. Voluntary agencies provide support to local authorities in carrying out their fostering duties, and these agencies must be brought within the “care services” definition. Finally, while there is little history of this in Scotland, it is important to include independent for profit agencies in the definition of fostering services, so that they too can be regulated.

Adoption services must also be registered and regulated to their widest extent, to include local authority services and also those provided by approved voluntary agencies.

As stated, the children for whom these three types of service are provided are vulnerable are entitled to the best possible service, and the protection of proper registration and regulation of those services.

- *Position of foster carers and adoptive carers.*

These carers are service providers for adoption and fostering services. It is important that the Bill recognises their position. Both types of carers are subject to existing assessment and approval procedures (part of the local authorities’ services). It needs to be made clear that the individual services they provide to children are not a “support” service (s2(1)(a) and (2)). If this is not clarified, questions may arise about the individual registering of carers. This is not necessary. Individual carers are assessed and approved, and what requires registration is the local authorities’ etc. services including those processes.

- Care Standards, section 5.

We welcome the development of Care Standards in all service provision. We have been involved in the development, consultation about and implementation of the Foster Care Standards. We are currently involved in the preparation of the Adoption Standards and their consultation.

- Complaints, section 6.

We welcome a separate Complaints Procedure about care services. We welcome the acknowledgement (s(2)) that such complaints procedures should run alongside existing procedures for service providers. Complaints procedures must be transparent, and separate out the different topics: queries, complaints and appeals. Also, section 6(1) does not, as it stands, allow foster or adoptive carers to use the complaints procedure in relation to their own treatment. The sub section should be amended accordingly.

- Cost of Registration, sections 7 and 20.

We welcome the possibility of circumstances when registration fees will not have to be paid. The cost of such fees is of concern to us for our own organisation, and for our members.

Fieldwork, adoption and fostering services provided by local authorities are not currently inspected or registered. If fees are to be charged to local authorities, this will have consequences for their child care budgets. It may be reasonable to charge a fee for registration for a service which is run for profit, but the services provided by voluntary agencies and local authorities do not fall into that category.

We believe that the Commission should be funded appropriately, not dependent on collection of fees.

- Inspections.

BAAF is currently inspected by the Social Work Inspectorate. We welcome the extension of inspection to all fieldwork, fostering and adoption services.

- Sanctions for non compliance.

We are interested to know what the sanctions will be in relation to local authorities who fail to register services, or to carry them out properly. Deregistration is not a feasible option.

- Registration and Training of Social Work Professionals, Part 2.

We are in favour of the increased importance to be given to recognition of social work practitioners and their training.

- Definition of “Child”, section 55(1).

This definition will need some amendment, when fieldwork, fostering and adoption services are considered. While a young person in Scotland is treated as an adult at 16 for most purposes (e.g. Adults with Incapacity (Scotland) Act 2000), the 1995 Act and the 1978 Act deal with young people up to the age of 18 and beyond in some circumstances. Leaving the definition as it is currently is not acceptable in relation to these services.

- Curators, section 54.

We welcome the amendment to s101 of the 1995 Act. Earlier consultations have suggested improvements to the provision of safeguarders. However, we have very serious concerns regarding the system for Curators etc. under the 1978 Act. We ask for an undertaking that that system will be overhauled, proper regulations provided, and provision made for proper remuneration. If this is not done, there will simply cease to be sufficient Curators, and adoption cases will languish indefinitely. We suggest that all functions mentioned in s101 are combined under one name, safeguarders, and that there is a unified system of appointment, training and payment, albeit for the different functions.

- Police Act 1997.

The Care Standards Act 2000 has detailed ancillary amendments to the 1997 Act. We consider that the equivalent are necessary in Scotland, whether or not in this Bill.

- Private Fostering.

This is fostering arranged by families themselves with friends. There is no coverage of this as a “care service” although it is surely a “support service”. The existing private fostering legislation is very complex and not well used, and we have concerns about this.

- Freeings in Adoptions.

We would ask that, as a minor amendment within the scope of this Act, consideration is given to amending s18 of the 1978 Act, to allow contact conditions to be made in a freeing order. There is no current provision for this in Scots law (although there is in English law) and this causes very significant problems in what is a small number of cases but ones involving difficult situations and very vulnerable children.

- Residence Allowances.

These are discretionary allowances paid by local authorities to family members and others caring for children outwith the public care system. The current legislation terminates these allowances at 16. A minor amendment could extend payment to 18, and would again fall within the purposes of the Act, given the heading for ss49-51, "Grants, loans and other payments". These are "direct payments to children in respect of certain care services".

AND FINALLY

- Children's Commissioner.

Recognising that, as a society, we are not good at tuning in to children's needs, this Bill should bring forward provisions for the appointment of a Children's Commissioner in Scotland. The Care Standards Act 2000 has introduced such a Commissioner in Wales.

Consequences of the legislation

- Good and full consultation on subsequent regulations and guidance;
- Improved joint working between agencies and authorities;
- Highlighting the need for management information regarding services provided.

Barbara J Hudson, Director, BAAF Scotland
Ian Millar, Consultant/Trainer
Marjorie Morrison, Child Placement Consultant
Vijay Patel, Black Issues Consultant
Alexandra G Plumtree, Scottish Legal Consultant

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HEALTH AND COMMUNITY CARE COMMITTEE 14 FEBRUARY 2001

REGULATION OF CARE (SCOTLAND) BILL

BARNARDO'S SCOTLAND, NCH SCOTLAND, CHILDREN 1ST

INTRODUCTION

We are delighted to have the opportunity to talk to the Committee about the Regulation of Care (Scotland) Bill. There are three of us giving evidence today and we will begin by giving you some information about our organisations.

Barnardo's Scotland. Through 48 services in Scotland, Barnardo's, in partnership with statutory and voluntary agencies, strives to develop and build on evidence based best practice which achieves positive outcomes for some of the most vulnerable, disadvantaged and excluded children, young people and families in our communities. A key purpose of Barnardo's Scotland is to influence policy and practice for the benefit of all children. Kelly Bayes is Principal Policy and Practice Officer.

NCH Scotland runs projects throughout Scotland for children, and young people and their families and communities. We prioritise those children and families who need help the most – and are in partnership with councils and health boards to provide a range of services including: family support, care for children who have to be looked after away from home, and projects for young people in trouble. We aim to positively influence public policy and opinion on behalf of those for whom we work. Maggie Mellon is head of policy with NCH Scotland.

For over 100 years **CHILDREN 1ST**, the Royal Scottish Society for Prevention of Cruelty to Children, has been working to give every child in Scotland a safe and secure childhood. Today, CHILDREN 1ST supports families under stress, protects children from harm and neglect, helps them recover from abuse and protects their rights and interests. Throughout Scotland our staff and volunteers use their skills to help children overcome the difficulties in their lives and rebuild confidence and trust. Anne Stafford is Head of Policy and Research with CHILDREN 1ST.

GENERAL COMMENTS

We are aware that other organisations have given informed evidence on the implications of the Bill for service users, staff and other stakeholders.

As major providers of child care services, dedicated to promoting the interests and welfare of children, we are particularly well placed to give evidence on the likely effect and impact of the Bill on children and young people. The basis for our evidence is our organisations' extensive experience and practice in the child care field. Our first and foremost concern is the interests of children as users of our services.

In this, we believe we are returning to one of the impetuses for the introduction of the proposed legislation. Events in Dunblane in 1996 raised serious issues of safety in relation to children and young people engaged in various settings in the community, in the clubs, groups and leisure activities where they spend their time. The Inquiry into events in Dunblane and Lord Cullen's Report forcefully make the case for regulation.

Further, increasing information and knowledge about risks of abuse to children in care settings also underline the need for regulation of this workforce. Organisations like ours are all too aware of the risks to children and young people in these settings. They can be at risk in many different ways, from sex offenders who systematically target children and young people and spend time building their trust, to simple bad practice from a workforce with low morale who are often under-trained, under-valued, under-qualified and under-paid.

For these reasons we strongly welcome these measures to register and set standards for all those working with children, and other vulnerable people.

Principles and Values

It is disappointing that the Bill does not contain a statement of principle in its introductory passages. The original 'Aiming for Excellence' document contained strong statements about principles and values. The focus of regulation and registration has to be the people using the service, their quality of life the main concern.

We believe that to fulfil these policy objectives in relation to children and young people, the proposed legislation should explicitly incorporate the principles and values embraced by Aiming for Excellence. The Standards in Schools Act 2000 provides a recent example of just such a statement of principle in relation to children and education.

Public Awareness

We recognise that the implementation of regulation across the sector will not be achieved overnight. However, in the interests of community confidence and child safety, it is imperative a strict timetable is drawn up and adhered to about what

services are to be regulated and when. This should be well publicised so there are no illusions about the services that are regulated and those that are not.

SPECIFIC COMMENTS

Definitions of care services

We would like to see the Care Services listed in the Bill extended to include:

➤ **'Nanny' Agencies.** These should also be included in the same way Nurse Agencies are included. This would ensure certain standards of service of these private agencies and provide some reassurance for those engaging the services of individual nannies. For example, it is important to know there are standards set for individual nannies in relation to being police checked, having references taken up and checked, and that agencies can be subject to deregulation. Services delivered to adults in their own homes are to be regulated. We believe there is a strong case for the regulation of all agencies supplying staff for vulnerable people. This is particularly so in the case of nanny agencies as there are no plans to register nannies/au pairs.

➤ **Assessment And Care Management – Fieldwork Services**

Child protection services. One important aim of the Bill is to increase public confidence in our services and reassure the public that serious steps are being taken to ensure children are safe and well cared for. We believe public interest and indeed expectation will be that these types of services will be included in any regulatory measures. Further, if these services are not included it may be misleading for the public who could assume they are regulated when they are not. High profile child protection cases for example in Orkney and Ayr highlight the need for the regulation of the services – not just the practitioners. This was highlighted again in the recent tragic Anna Climbie case in England.

'Looked After' Children. It has been announced that foster care and adoption services will be added to the Bill. However it is important that case management, assessment, planning and review, carried out by fieldwork staff in relation to looked after children, is also regulated. For example, children on home supervision are deemed to be 'looked after' and need to be covered. Children who have been 'looked after' and where after-care support is mandatory until the age of 19 should be included. This applies to adult care as much as children's care. Decisions about when a person has to be 'looked after' away from home, and about where, are crucial to their well being and a key aspect of both childcare and community care service.

Regulation and Resources

We are concerned to highlight the resource implications of the implementation of regulations for the sector. It is not possible yet to assess the full impact of the Bill on the costs of the often vital services that we and others provide. It is important that a sensible balance is struck between standards and their costs, in order to ensure that services are still affordable.

If, as proposed, the Council and Commission are to be self-funding, the cost of registration and inspection are of concern. There has to be concern that valuable and needed services – particularly perhaps those that are self help/service-user developed - will be unable to absorb the costs of regulation or to secure the necessary extra funding to continue.

Qualification of Employees / Criteria for Registration with Council

We welcome the proposal to regulate a wide range of qualified and unqualified personnel at all levels. However, it is important there is both clarity and flexibility about the experience and qualifications required for people to be registered. Being of 'good character' is not easily defined. Some definitions might exclude people with a lot to offer from their own life experiences of adversity.

Voice of Users

It is vital that the views of children and young people are sought and listened to at an early stage in the development of standards, complaints procedures and inspection processes. This will be an important check on rigidity and bureaucracy.

Public Awareness

There will be a need for very clear publicity to ensure the general public and users of services understand the functions and working of the new regulatory bodies and can readily access clear advice and information

A COMMISSIONER FOR CHILDREN IN SCOTLAND

We are aware that it has been suggested that the Bill should be amended to include the establishment of a Scottish Commissioner for Children. The concept of a Commissioner has wide support in Scotland. The Scotland for Children Campaign has been campaigning for a Commissioner for Children for more than three years and has the support of COSLA, ADSW Children and Families Forum, ADES and most of the major voluntary children's organisations.

However, we feel strongly that to be effective such a role needs to encompass all children and young people. We are concerned that the inclusion of such a provision in this legislation should not confine the office of Commissioner for Children only to those children receiving specified care services.

The new Welsh Commissioner's office was established through the equivalent English and Welsh Care Standards legislation. The role of the Welsh Commissioner is confined to those children covered by the legislation. We are aware of significant discontent with the limited nature of the role and of the difficulties that face attempts to amend the provisions in retrospect.

Under current definitions of care services, if the role of the proposed Commissioner was confined to those services covered by the legislation, this would exclude at least the following children:

- Children at school –or excluded from school–except for the accommodation aspects of those in boarding school
- Children on supervision orders at home
- Children and young people with major care responsibilities in their families,
- Children on child protection registers, and
- Children receiving day care in their own homes
- Children/ young people who have been looked after and are entitled to after care
- Young people in prison
- Children and young people suffering homelessness

In short, this type of Commissioner would not include the majority of children and young people, including some in circumstances of great adversity.

We believe that Scotland should follow the lead of Northern Ireland in embracing the principle of a Commissioner for all children.

We do recognise that children receiving care services away from home are particularly vulnerable to abuse and neglect and need strong advocates and protection. However, we strongly believe that the best way forward to achieve this is in the establishment of an independent office of Children's Commissioner. This legislation represents a real chance to get things right for these children who, on the evidence of repeated tragedies and subsequent inquiries, are at high risk of abuse and/or neglect. We believe that the Regulation of Care Bill should

be strengthened to ensure adequate protection of children and promotion of their interests in the work of the Commission and the Council. For that reason we support the proposal made by Cosla and ADSW to amend the Bill to establish the independent office of a Children's Commissioner for Scotland.

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Mission Statement

Help the Aged provides practical support to help older people live independent lives, particularly those who are frail, isolated or poor.



Help the Aged

Evidence to the Health and Community Care Committee on the Regulation of Care (Scotland) Bill

Help the Aged has monitored the progress of the Bill. The Charity has submitted a response to the policy paper "The Way Forward for Care" and has also taken part in discussions about the Bill with the Cross Party Working Group on Older People, Age and Ageing.

Summary of issues Help the Aged wishes to highlight

Help the Aged welcomes the Regulation of Care (Scotland) Bill, and hopes it will be another step on the road to ensure best practise in implementing care standards across Scotland.

At the meeting of the Health and Community Care Committee on 14.2.01, Help the Aged will be pleased to address the general principles of the Bill as requested but will wish to make a brief presentation highlighting the following issues;

- Day Care and Home care
- Complaints, practice, process and procedure
- National Care Standards – user involvement
- Categories of residential establishment
- Training of Social Workers and definition of the term thereof

We currently take no view on and do not wish to comment on

- Children and Young persons
- Offenders accommodations
- Boarding schools or hostels
- Housing – except as part of a Community care package of supports.

Agenda item 3

Health & Community Care
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The Health and Community Care Committee**7 February 2001****The Budget Process 2002/3****1. Purpose of Report**

The purpose of this report is to provide the Committee with an opportunity to confirm their intention to appoint an advisor for the Budget Process 2002/03 and to agree terms of reference and person specification.

2. Background

The Health and Community Care Committee employed an adviser to assist its consideration of the 2001/2 Budget Process. The Committee will be asked to consider Stage 1 of the Executive's proposed budget 2002/03 by May 2001 and the Committee could be assisted in its scrutiny by the appointment of an adviser.

It is proposed that the adviser be appointed using the fast-track procedure.

Under this procedure an adviser is appointed at a standard day rate and the appointment is not expected to exceed 15 days in total.

3. Proposed terms of reference

The Committee is invited to consider the following draft terms of reference for the appointment of an adviser.

Adviser Duties

The Adviser will:

- Compare the Committee's response for 2001/2 with the Executive's proposals for 2002/3 to identify any areas where recommendations have not been adopted.
- Set out a framework for gathering evidence
- Assist in the identification of relevant witnesses
- Prepare lines of questioning for witnesses
- If necessary, brief the Committee on particular aspects of the health budget
- Sift the evidence gathered
- Analyse the findings
- Draft the Committee's response to the Finance Committee by the end of May
- Provision of specialist expertise to clarify any ad hoc enquiries from the Convenor and other Committee members during the course of the enquiry
- Meet with Clerking and Research Services staff, in Edinburgh, to discuss progress.

Person Specification

The individual should be a recognised expert in the field of health economics, public expenditure, and/or have experience of health expenditure within the NHSiS. It is preferable that, if an academic they should be recently published in the field.

Conditions

As an expert in the field, they may have had an involvement with the main agencies involved in purchasing or providing health services. However, the expert should not currently or recently, be involved with the Scottish Executive or health service providers or be set to gain from reallocation or increase in health funding in any particular area.

The successful candidate will be required to declare their interests (pecuniary or otherwise) in advance of commencing employment.

Role

To assist the committee in all aspects of the budget as it relates to the Health and Community Care budget and in particular to analyse and interpret evidence.

Reporting

The expert would report to the committee through the clerk.

Commitment

It is proposed that the expert appointed provide the equivalent of 8 working days advice. This could be apportioned as follows

Preparation	1
Initial meeting of expert	0.5
Sifting of evidence	1
Attendance at meetings	3
Preparation of questions to witnesses	0.5
Findings	2
Ad hoc support	1
Final Report	2

Clearly this breakdown is provisional and may be the subject to revision following discussions between the adviser and the clerks.

Meeting Dates

The Health and Community Care Committee will meet on the mornings of Wednesday 4 April 2001, 25 April 2001, 2 May 2001, 9 May 2001, 16 May 2001 and 23 May 2001 to consider the budget. While it is not essential that the Adviser attends every meeting of the Committee it is advisable that they be available to attend the meetings on and 16 and 23 May 2001 when the Committee will be considering the draft report.

4. Recommendation

The Committee is asked to consider the content of this report, confirm its intention to appoint an advisor for the 2002/2003 budget process and approve the terms of reference for the adviser.

**Jennifer Smart
Clerk to the Committee
January 2001**