



CHRISTIAN INFLUENCE IN A SECULAR WORLD

The Rt Hon Frank Mulholland QC
The Lord Advocate
Crown Office
25 Chambers Street
EDINBURGH
EH1 1LA

12 February 2014

Dear Mr Mulholland,

**Children and Young People (Scotland) Bill
Referral to the UK Supreme Court**

I am writing to you in relation to the Children and Young People (Scotland) Bill, which is due to be voted on at Stage 3 on 19 February.

The Christian Institute has received advice from leading counsel which casts considerable doubt over whether Part 4 of the Bill is compatible with Article 8 of the European Convention on Human Rights. And so the purpose of this letter is to urge you to exercise your discretionary power under section 33(1) of the Scotland Act 1998 to refer to the United Kingdom Supreme Court the question of whether Part 4 of the Bill would be within the legislative competence of the Scottish Parliament.

Named person service

Part 4 (clauses 19 to 30) of the Bill makes provision for the creation of a “named person service” in relation to children and young people in Scotland. If enacted, the Bill will create a *duty* on health boards (in relation to pre-school children – clause 20) and separately on local authorities (in relation to children and young people from school age up to age 18) to provide a “named person” to “each” child in their area.

If the Bill is enacted, every child in Scotland will be assigned a named person (someone other than their parents) who will have the power under statute to “advise” and “inform” the child, or discuss or raise matters about the child with the relevant authorities – without parental consent. The extent to which the named person engages in these functions for any given children will be so far as “the named person considers it to be appropriate” (clause 19(5)). This is an enormously wide discretion and the powers could be exercised irrespective of whether any problems relating to the child are on the radar.

In summary, every named person would be a State employee appointed and tasked by the State, *inter alia*,

- to receive and collate “information” about the child or young person assigned to that named person.
- to “monitor” what a child or young person assigned to that named person “needs” for the safeguarding, support and promotion of the “wellbeing” of that child or young person.
- to share with relevant public authorities information about the assigned child or young person to allow the named person and the public authorities to put together “a full picture of their wellbeing”.
- to initiate or assist in pre-emptive action or early intervention by public authorities intended to prevent any concerns about the (future) wellbeing of a child or young person “developing into more serious issues”.

According to some disturbing advice we have received from Aidan O’Neill QC, the provisions of Part 4 of the Bill (which would require the appointment of a named person to every child in Scotland without exception or any individual assessment as to a child’s needs) may not be lawful because:

- the blanket nature of this provision constitutes a disproportionate and unjustified interference with the right to respect for individual families’ private and family life and home, which is guaranteed under Article 8 of the European Convention on Human Rights.
- the provisions of Part 4 of the Bill would appear to fail the test of being in “accordance with the law” in the sense of having the qualities of accessibility, foreseeability and precision which would provide proper protection against arbitrary and oppressive use of the powers. This is because the functions, duties and powers of – and crucially the limitation on – the named person are not set out in terms in this legislation.

I enclose a copy of Mr O’Neill’s legal opinion. It can also be downloaded from <http://www.christian.org.uk/namedpersonslegalopinion>

Legislative competence

Mr O’Neill’s legal opinion raises the very serious question of whether the named person provisions in Part 4 of the Bill are within the legislative competence of the Scottish Parliament.

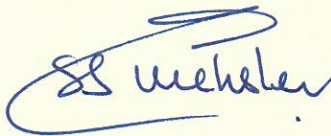
Under section 29(2) of the Scotland Act 1998 a legislative provision is deemed to be outside the competence of the Scottish Parliament if it is incompatible with any of the European Convention Rights. And under section 29(1) of the Scotland Act, an Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

Although the Presiding Officer will have exercised her duty under section 31 of the Scotland Act, on or before the introduction of the Bill in the Parliament, to decide

whether or not the provisions of Part 4 of the Children and Young People (Scotland) Bill would be within the legislative competence of the Parliament, we have grave concerns about whether she was given appropriate legal advice.

Please may I urge you in the strongest terms to exercise your discretion under section 33(1) of the Scotland Act 1998 to refer to the United Kingdom Supreme Court the question of whether Part 4 of the Children and Young People (Scotland) Bill would be within the legislative competence of the Parliament? I should say that I have also written to the Advocate General and Attorney General in similar terms, and to the Secretary of State for Scotland in terms of section 35 of the Scotland Act, and have put the Presiding Officer on notice of this correspondence.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. Webster', enclosed within a large, stylized blue scribble that loops around the text.

Mr Sam Webster

In-house solicitor

For and on behalf of The Christian Institute