

Getting It Right For Every Child (GIRFEC)

Policy Update on Delivering the GIRFEC Approach

Foreword

The Getting It Right For Every Child (GIRFEC) approach has been national policy in Scotland since 2010. In order to ensure consistency of implementation and to increase the pace of implementation nationally, elements of the GIRFEC approach (notably around the assessment of wellbeing, provision of Named Persons and the Child's Plan) were included in the Children and Young People Bill, which subsequently became the Children and Young People (Scotland) Act 2014.

Part 4 of the Children and Young People (Scotland) Act 2014 ("the Act") concerns Provision of Named Persons. This Part of the Act has been the subject of debate, and was challenged through the Courts by a group of petitioners who objected to the Part 4 provisions on the basis that they considered them to be incompatible with the European Convention on Human Rights (ECHR), and hence beyond the legislative competence of the Scottish Parliament.

Both the Outer and Inner House of the Court of Session rejected the petitioners' arguments, and the case was taken to the UK Supreme Court. The Supreme Court issued its judgment on 28 July 2016. The Supreme Court judgment:

- ruled that the principle of providing a Named Person for every child does not breach human rights and is compatible with European Union law;
- rejected the petitioners' argument that the legislation relates to reserved matters; and
- ruled that changes are required to the information sharing provisions in Part 4 of the Act to make those provisions compatible with Article 8 of the ECHR.

As a consequence of the judgment, Parts 4 and 5 of the Act did not come into force as planned on 31 August 2016. Implementation was paused so that the Scottish Government could take steps to make the necessary changes to the information sharing provisions in the Act, working in partnership with stakeholders.

On 8 September 2016, the Deputy First Minister made a statement to the Scottish Parliament, reiterating his support for the Named Person policy, and his aim for the associated legislation to come into force as soon as possible. He stressed the Scottish Government's commitment to amending the legislation to achieve what the Supreme Court judgment requires – particularly compatibility with Article 8 of ECHR – along with providing greater clarity around the Act's information sharing provisions. He stated that the required changes must be made following open dialogue, achieved during a three month period of engagement with children and young people, parents and practitioners. This engagement will include discussions with a range of stakeholders, including those who have concerns about the policy, and will be led by the Deputy First Minister and the Minister for Childcare and Early Years. In order to address the concerns raised by the Supreme Court, the principles that

underpin the legislation will be discussed, along with strengthening the safeguards in the Act, guidance and other documentation on information sharing.

When that engagement period ends, the Deputy First Minister will return to Parliament and announce the next steps. He has stated that it is his ambition to work towards a commencement date of August 2017. The Supreme Court judgment provides us with an opportunity to amend the information sharing provisions in the Act in a way that improves the Named Person service and reassures parents and practitioners and the wider public on how it will operate.

The Supreme Court judgment itself does not require current policy to change. The judgment relates only to the information sharing provisions that were intended to come into force under the Act, not to current practice under GIRFEC policy.

It should also be noted that the Supreme Court judgment itself does not require changes to be made to the wellbeing provisions in the Act. Section 96 (Assessment of wellbeing) is already in force, and applies to all relevant Parts of the Act that have commenced, that is, Parts 6 (Early Learning and Childcare), 9 (Corporate Parenting), 10 (Aftercare) and 11 (Continuing Care).

In addition, section 95 of the Act (Consideration of wellbeing in exercising certain functions) came into force on 31 August 2016. Section 95 requires that local authorities, in taking action relating to children in need and looked-after children (as defined in the Children (Scotland) Act 1995), must act in a way which is designed to safeguard, support and promote their wellbeing (as set out in section 96 of the Act).

Local authorities, health boards and other organisations have worked hard to prepare for implementation of Parts 4 and 5 of the Act, and the clear message from the Scottish Government is that this work should continue. 'Business as usual' means continuing to provide and implement the GIRFEC approach, operating within the existing legal and policy framework.

During this period of engagement and amendment to the legislation and guidance, it is important that children, young people and parents continue to benefit from delivery of the GIRFEC approach including the availability of a Named Person service that is responsive to their needs.

The purpose of this document is to provide an update on the Scottish Government policy on Named Persons in the context of the GIRFEC approach.

Introduction

1. The Scottish Government issued draft statutory guidance on Parts 4, 5 and 18 (section 96) of the Act in December 2015, and made a commitment to refresh this guidance in order to incorporate reference to the associated subordinate legislation (the Named Persons (Training, Qualifications, Experience and Position) (Scotland) Order 2016, the Child's Plan (Scotland) Order 2016, and the Children and Young People (Scotland) Act 2014 (Part 4 and Part 5 Complaints) Order 2016). These Orders have since been revoked, and will be reviewed as part of the process of amending the legislation to comply with the Supreme Court judgment.
2. The substance of the draft statutory guidance on Parts 4, 5 and 18 (section 96) of the Act issued in December 2015 is still reflective of the Scottish Government's expectations in terms of the delivery of GIRFEC, with the notable exception of how information sharing is to operate.
3. The draft statutory guidance describes how the requirement to share information with and by Named Persons was planned to operate when Part 4 of the Act was commenced. The guidance on Part 4 includes guidance on sections 23, 26 and 27 (Communication in relation to movement of children and young people; Information sharing; and Disclosure of information, respectively). These three sections specifically refer to the sharing of information. The Supreme Court judgment requires the information sharing provisions of Part 4 of the Act to be amended in order for them to be compatible with Article 8 of the ECHR. Therefore, the current draft statutory guidance on sections 23, 26 and 27 should be disregarded for the time being until it is revised following amendment of the provisions. Any information sharing by and with those identified as Named Persons under GIRFEC policy can and should continue to operate in accordance with the existing legal framework and guidance on data sharing, human rights and children's rights, including the Data Protection Act 1998 and the Human Rights Act 1998.
4. The draft statutory guidance on Part 5 of the Act (Child's Plan) includes guidance on section 40 of the Act (Assistance in relation to child's plan). This guidance states that the duty to provide assistance may include a duty to provide information, however, as Part 5 of the Act has not been commenced there is no statutory requirement to provide information in relation to Child's Plans. The current draft statutory guidance on section 40 of the Act should, therefore, also be disregarded for the time being until the draft statutory guidance has been reviewed in light of any further legislative amendments. Any information sharing in relation to child planning can and should continue to operate in accordance with the existing legal framework and guidance on data sharing, human rights and children's rights, including the Data Protection Act 1998 and the Human Rights Act 1998.
5. The principle of considering the wellbeing of the child or young person and seeking consent to share information to address wellbeing needs should remain a cornerstone of GIRFEC policy. Only in exceptional circumstances should information be shared without consent.

The Named Person Role

6. The purpose of the Named Person role is to make sure children, young people and parents have confidence that they can access help or support no matter where they live or what age the child is.
7. The Named Person is a central point of contact who is responsible for working with children, young people and parents, and helping them get the support they need if and when they need it.

The Named Person service

8. The term 'Named Person service' is used to describe the organisational arrangements and context within which the Named Person role operates.
9. The Named Person service should include making Named Persons available to children and young people, and the provision of all policies and procedures that support and relate to the Named Person role (e.g. local information sharing protocols). The Named Person service also includes providing management support to Named Persons, including robust professional support and supervision. The service should incorporate clear governance structures to ensure that there is accountability within the organisation for making decisions and putting in place policies and procedures to support Named Persons in carrying out their role.

Information sharing

10. Effective communication, including sharing relevant and proportionate information, where appropriate, in accordance with the Data Protection Act 1998 and Human Rights Act 1998 should be current routine practice. Provision of a Named Person service now, under current policy, and in the future, when the amended Part 4 of the Act is commenced, should operate within this existing legal framework.
11. Public services must handle, store, process and share personal information, and sensitive personal information, in line with existing laws and guidance in relation to data protection, human rights and children's rights. Named Person service providers, such as health boards and local authorities, should already routinely handle confidential information in line with data protection and human rights law.
12. The principles set out in the following documents: [ICO Data Sharing Code of Practice](#); [ICO's latest advice on Named Persons](#); and [Information sharing - Advice for practitioners providing safeguarding services to children, young people, parents and carers \(UK Gov\) 2015](#) will help guide practitioners working with children, young people and parents in considering sharing information within and between organisations. Practitioners should use their judgement when making decisions on what information to share and when. They should follow organisational procedures or, if in doubt, consult with their manager.
13. In addition to sharing information, Named Person service providers will also receive information from others. Named Person service providers should make arrangements for the secure receipt of information relating to the wellbeing of children and young people. This may include, but is not limited to, setting up a secure email inbox to facilitate the routing of relevant, proportionate information to individual Named Persons.

Supporting children and young people and parents who choose not to accept advice or support

14. It is national policy for organisations to make the Named Person service available, but there is no obligation for children and young people or parents to accept any offer of advice or support from the Named Person. Non-engagement with a Named Person is not in itself a cause for concern.
15. Where there are concerns for a child's or young person's wellbeing which constitute child protection concerns, then local child protection procedures should be followed without delay.

Supporting those who want to change their Named Person

16. It will be helpful for Named Person service providers to inform children, young people and parents about how the service will operate. This includes setting out how, in exceptional circumstances, children, young people or parents can request that an alternative Named Person be provided. Exceptional circumstances could, for example, relate to a complete breakdown in relationships which is getting in the way of promoting the child's wellbeing.

Complaints

17. As Parts 4 and 5 of the Act (Provision of Named Persons and Child's Plan) have not been commenced, neither has the legislation that sets out the procedures for complaints in relation to these Parts of the Act. Complaints about any aspect of the delivery of GIRFEC policy should be dealt with through the organisation's usual complaints handling procedures until all the relevant legislation is commenced.

Conclusion

18. In conclusion, the Scottish Government's commitment to the GIRFEC approach is clear. Public bodies and partner organisations should continue to implement and work with Named Person services in accordance with this policy update document, and the attached reference documents, and in accordance with the existing legal framework, including data protection and human rights laws.

19. Further information can be found via the links below:

GIRFEC:

<http://www.gov.scot/Topics/People/Young-People/gettingitright>

The Children and Young People (Scotland) Act 2014:

<http://www.legislation.gov.uk/asp/2014/8/contents/enacted>

European Convention on Human Rights:

http://www.echr.coe.int/Documents/Convention_ENG.pdf

United Nations Convention on the Rights of the Child:

<http://www.unicef.org.uk/UNICEFs-Work/UN-Convention/>

Human Rights Act 1998:

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

Data Protection Act 1998:

<http://www.legislation.gov.uk/ukpga/1998/29/contents>

ICO Data Sharing Code of Practice:

<https://ico.org.uk/for-organisations/guide-to-data-protection/data-sharing/>

Common Core of Skills, Knowledge & Understanding and Values for the “Children’s Workforce” in Scotland:

<http://www.gov.scot/Resource/0039/00395179.pdf>

Child Protection:

<http://www.gov.scot/Resource/0045/00450733.pdf>

Children’s Hearings (Scotland) Act 2011:

<http://www.legislation.gov.uk/asp/2011/1/contents>

Referral to the Children’s Reporter:

<http://www.chip-partnership.co.uk/wp-content/uploads/2016/02/Guidance-on-Referral-to-Reporter-.pdf>

Information Sharing:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419628/Information_sharing_advice_safeguarding_practitioners.pdf