

The Educational Institute of Scotland

Children and Young People (Scotland) Act 2014 Notes and Guidance to the "Named Person" Legislation

Background

- 1.1 The Children and Young People (Scotland) Act 2014 was approved by the Scottish Parliament and received royal assent on 27 March 2014.
- 1.2 This Act was developed from "Getting it Right for Every Child" and puts the GIRFEC approach onto a statutory footing.
- 1.3 The Act introduces legislation to give statutory effect to the concept of the named person and the child's plan which will have statutory effect from August 2016 as well as developing a definition of a child's wellbeing.
- 1.4 The legislative framework is designed to take regard of the UN Charter on the Rights of the Child (UNCRC).
- 1.5 The Act is likely to have significant implications for local authorities, schools and promoted staff in those schools.

Getting it Right for Every Child

- 2.1 Scottish Government describes GIRFEC as a national approach to improving outcomes through public services that supports the wellbeing of children and young people. Based on children's and young people's rights, it supports children, young people and their parents to work in partnership with the services that can help them.
- 2.2 Scottish Government believes that the wellbeing of children and young people is at the heart of GIRFEC.
- 2.3 Wellbeing is described by 8 indicators (usually referred to by the acronym SHANARRI):
 - Safe
 - Healthy
 - Achieving
 - Nurtured
 - Active
 - Respected
 - Responsible
 - Included
- 2.4 By adopting a holistic approach to the wellbeing of a child GIRFEC promulgates preventative work and early interventions with the intention of reducing the need for statutory interventions.

- 2.5 In developing a child-focused approach a pathfinder project was set up in Highland in 2006 to develop common procedures and processes for sharing concerns about a child and constructing a plan for any support required for a child or young person.

The Named Person Service

- 3.1 The Act develops the Named Person service as a means of ensuring that a child-focused approach persists through a child or young person's life.
- 3.2 The named person is a point of contact that children and families can go to for advice and support from 0-18 or beyond, if still in school, based on "primary" prevention and early intervention. The Named Person Service is an "entitlement."
- 3.3 From birth to statutory school age the named person will be provided by the health service (midwife and health visitor) with the service responsibility passing normally to the local authority at school life. Independent schools also have a statutory duty to provide a named person. The responsible authority has a statutory duty to publish and communicate information about the role of the named person in general and to children/young people and their parents. When a child is enrolled in a school the child and parents/guardians must be advised who the named person is.
- 3.4 The named person will carry out statutory functions on behalf of the named person service provider. The Act is clear that responsibility for the exercise of the functions of the named person lie with the service provider and not with the individual.
- 3.5 Where the service provider is a local authority the named person for children attending school is expected to be a promoted member of staff, a Head Teacher, Depute Head or Principal Teacher with pastoral responsibility. While the guidance also refers to Faculty Heads (sic) as potential named persons it is unlikely that Councils will direct Principal Teachers Faculty to be a named person. Similarly, in independent schools a promoted teacher is expected to be the named person.
- 3.6 A named person has to have an understanding of
- the principles and values underpinning GIRFEC
 - wellbeing and the use of the National Practice Model for the assessment of wellbeing
 - what may affect the wellbeing of children and young people and the potential effect on wellbeing
 - how to recognise and evaluate a wellbeing need
 - how to respond proportionately to a wellbeing need to carry out their functions
 - how to work in partnership with children, young people and parents

- how to identify when speech, language or communication barriers exist
- how to access appropriate support
- how to seek assistance from within and outwith their service, including third sector organisations
- how to undertake their duties in relation to information sharing under the Act
- how to record and process sensitive information lawfully
- how to develop, use and manage a chronology
- when and how to use a child's plan
- working with a lead professional

3.7 A named person function falls into three main categories:

- (a) advising, informing or supporting the child or young person, or a parent of the child or young person.
- (b) helping the child or young person, or a parent of a child or young person, to access a service or support.
- (c) discussing or raising a matter about a child or young person with a service provider or relevant authority.

3.8 Young people and parents will continue to access advice and support from a range of services as they currently do without reference to the named person.

3.9 On receiving information about a child or young person the named person can

- offer additional advice to the child or young person or their parents
- offer additional support or change support
- offer advice or support from another service
- raise a wellbeing need and share information with an external agency to seek assistance to assess further the child or young person or their parent
- consider that a Child's Plan should be initiated
- if a plan is in place, consider contacting the lead professional
- consider contacting the Children's Reporter if a compulsory supervision order may be needed

3.10 The named person service provider has to have clear arrangements in place for times when the named person is not available **i.e. out of hours, during holiday periods, days of school closure, or should the named person be on sick leave.**

3.11 The named person service provider has a duty to support a named person. This may include collaborative discussion with other service providers how a service is provided, provide information or a resource or changing how a resource is provided.

3.12 A local authority has to decide how young persons who are 15, 16 or 17 years old and who have left school are supported by the named person service and who shall provide the named person role.

- 3.13 Local authorities and health authorities have to consider how to provide the named person service to the children of gypsy/traveller families. This will mean arrangements for the children in areas they normally reside with additional, proportionate arrangements being in place when they are in that area.
- 3.14 A local authority has a responsibility to provide a named person service for children who are home educated.
- 3.15 Where there is a change in arrangement of the named person service this should be communicated within 10 working days.
- 3.16 In exceptional circumstances children, young persons and parents can seek the identification of an alternative named person.
- 3.17 Services users will be able to express views on the service and will be able to complain about the service.

Duty to help the named person

- 4.1 A service provider or relevant provider as set out in the Act is under a duty to comply with a request from a named person service to carry out their functions. It is not intended that one organisation will direct another organisation but will facilitate a collaborative discussion on how to address wellbeing needs. A service provider or relevant authority should assist on a request for help to undertake an assessment, provide a service, change how a service is provided, provide information, make a resource available or changing a way a resource is provided.
- 4.2 A service provider has to comply with a request for help unless doing so would be incompatible with other duties or prejudice the exercise of any function of the service.

Information Sharing

- 5.1 Information recorded by the named person service providers and relevant authorities must be stored, processed and shared services. Proper records must be retained when decisions are made and when information is to be shared.
- 5.2 The Guide to Data Protection and Data Sharing Code of Practice (published to the Information Commissioner's Office) should inform data sharing.
- 5.3 Article 8 of European Convention on Human Rights establishes a right to privacy which is a qualified rather than an absolute right. Public authorities can share information if it is lawful and proportionate to do so but each case must be considered carefully to assess what is lawful and proportionate.

- 5.4 The United Nations Convention on the Rights of the Child (UNCRC) sets out 3 rights which must be considered when decision are made to transfer information.
- The best interest of the child must be the primary consideration in all actions concerning children. (Article 5)
 - Every child who is capable of forming their own views has the right to say what they think in all matters affecting them, and to have their views given due weight in accordance with their age and maturity. (Article 12)
 - Every child has the right to privacy. This law should protect the child's private, family and home life. (Article 16)
- 5.5 When deciding to provide information there are 2 parts of the test to be considered.
- (a) The views of the child must be considered and should occur in all but exceptional circumstances. The outcome of considering the views of the child should be recorded and their views and privacy should be respected. Where the information holder makes a decision to share specific information against the wishes of the child they should record what that information is, what the child's views are and why the named person decided to share the information.
- (b) The named person must consider if the likely benefit to the wellbeing of the child or young person outweighs any likely adverse that could result from sharing the information.
- 5.6 Information should not be shared if the information holder considers that would prejudice the conduct of a criminal investigation or the prosecution of any offence. This will involve close liaison with the police and the procurator fiscal service.
- 5.7 A named person service may receive information from elsewhere in the same organisation or in a service delivered on their behalf.
- 5.8 In deciding to share information with another service provider or a relevant authority the named person service must consider whether the information is likely to be relevant and ought to be provided.
- 5.9 A named person can make enquiries with a relevant authority and share limited information about a child or young person to allow the relevant authority to consider whether support can be provided.

The Child's Plan

- 6.1 The Child's Plan requires to contain the following information:
- The date of the Plan
 - The child's full name
 - Date of birth

- Reference number unique to the child (CHI no.; SW no.; education no.)
- Home address
- Name(s) and address(es) or parents/carers
- Child's named person and contact details
- Leader professional and contact details
- Summary of child's wellbeing needs and actions required
- Summary of wellbeing assessment(s)
- Child's views in relation to wellbeing assessment(s)
- Parents'/Carers' views in relation to wellbeing assessment(s)
- Views of other persons who contributed to the wellbeing Plan
- Conclusions and recommendations about the assessment(s), conclusions or recommendations
- Note of any disagreements about the assessment(s) conclusions or recommendations
- The Plan should set out in relation to each wellbeing need the nature of the need, action to overtake it, including targeting interventions and desired outcomes, identifying person(s) to take actions and interventions and timescale
- The date of next scheduled review or the date of the closure of the Plan

- 6.2 The decision to initiate a Plan depends on an assessment of a wellbeing need judged by the named person and to consider what support may be necessary by a targeted intervention. This is different from a "generally available service" which is normally provided through the schools such as specialist teaching services and psychological services.
- 6.3 When a third party which is involved in providing a targeted intervention that third party (a public body or third sector organisation) becomes part of the Plan.
- 6.4 In deciding whether to initiate a Plan, the named person service must, as far as reasonably practicable, seek and have regard to the views of the child, the views of the child's parents and the views of any other people the responsible authority considers appropriate.
- 6.5 If the responsible authority does not agree that a particular targeted intervention should be in the child's Plan it must give a statement of its reasons for not agreeing to the authority preparing the Plan. It must also record the decision and make alternative arrangements to achieve the desired outcome for the child. If it is agreed there should be a Plan, the Plan must be prepared as soon as reasonably practicable. The named person will initiate the preparation of the Plan in consultation with the child or young person and parents/carers.
- 6.6 The managing authority is the responsible authority for identifying a lead professional for taking forward the child's Plan. The lead professional will normally be an employee of the managing authority, or an employee of the organisation which exercises a function on behalf of the managing authority. The lead professional

should be suitably trained and experienced and should work professionally and collaboratively.

- 6.7 The lead professional is responsible for compliance with the statutory management of the Plan. In some circumstances the named person may also be the lead professional.
- 6.8 Once a Plan has been established the managing authority has to ensure the following:
- (a) That the wellbeing need(s) is/are still accurate
 - (b) That any targeted intervention and the way it is delivered is still appropriate
 - (c) That the outcome has been achieved
 - (d) Whether the management of the Plan should pass to another relevant authority
- 6.9 The Plan should initially be received within 12 weeks and should take place at least once every 12 months. The guidance makes it clear that the partners to the Plan may agree not to convene a meeting to conduct a review although the presumption would be to hold a review meeting.
- 6.10 The Act permits sharing of information even where this may be a breach of confidentiality.

Implications for Members

- 7.1 **Legislation** - The legislation has significant workload implications for promoted members of staff who may be named persons and for others who may act as lead professionals. **The Scottish Government states the named person duties are integrated into current roles and strengthen the support currently provided, formalising roles.** Whilst the EIS has not been opposed in principle to a named person approach to child welfare, it does not accept that the legislation simply builds on current good practice around pastoral care responsibilities. The indication is that the statutory requirements for liaison with other authorities and third parties and the bureaucracy in relation to Children's Plans - liaising with and meeting children, young people and their parents/carers, preparing and reviewing the Plans - will create significant additional workload which is not sustainable with current staffing levels. The statutory responsibility lies with the Council and not the individual named person.
- 7.2 **Resources** - Scottish Government has promised additional resources to support the administration of the named persons. Local Association Secretaries should clarify the level of additional resources for administrative support which has been provided to the Council and how the resource will be delivered to each school. There is no additional resource to appoint additional promoted staff.

- 7.3 **Variations to Contracts** – Scottish Councils, have a statutory responsibility to deliver the service. This means that the named person duty falls within the right of a Council to direct the duties of promoted staff under the provisions of Part 2, Section 2 of the SNCT Handbook. A named person is likely to have that duty added to a job description but there is no requirement for the SNCT to agree variation to contracts or to the duties set out in the Handbook.
- 7.4 **Hours of Work** – named persons cannot be required to undertake any duties beyond the normal 35 hour working week. Councils will have to have alternative arrangements for **any periods of sickness absence of the named person and for** out of hours and holiday periods including days of school closure when the named person is not available. LA Secretaries should ensure there are clear alternative arrangements in place. While the named person still has a 35 hour contractual working week, there is an issue which will have to be fully considered. While planning meetings are likely to be included in the time beyond class contact time and personal time there is an issue which will have to be resolved at local level. The time to meet children/young people has to come from the 35 hours and may come from collegiate time or from class contract time since the time for meetings may be timetabled. **This matter of required time should be raised at the LNCT.** The additional workload which arises from the demands associated with the named person service should be addressed through discussion in a school's Working Time Agreement following guidance from LNCT. This workload must be addressed in the context of the 35 hour working week.
- 7.5 **Job Sizing** – Job sizing was never intended to capture workload demand. Therefore, it is unlikely that workload demand can be captured by any review of job sizing. The named person provision may provide an opportunity to review sector 5 scoring for DHTs/PTs but any change would be a "C" level change and unlikely to lead to a review. In any case HTs are precluded from claiming beyond section 1 other than in relation to 2.4 of the toolkit. The EIS is of a view that the named person service requires additional promoted staff. The case load of guidance/pastoral care staff should be considered, as should the teaching time but LNCTs should consider these matters in the context of no detriment to the individuals. LNCTs should deal with this mindful that a reduction in teaching time can influence job sizing but a reduction of less than 5 hours is a "C" change. LNCTs can also discuss a no detriment arrangement with employers.

Conclusion

- 8.1 The EIS rejects the view that the Named Person Service only requires promoted teachers to take action in keeping with current good practice. That is an over simplification and disregards the potential workload demands for promoted staff in the requirement to deliver the service.

8.2 The EIS should monitor the demands and implementation of the statutory requirement on promoted staff and members to inform our position in relation to the named services provision.

8.3 This current EIS document should be issued to local association secretaries and members in all schools.