

Children and Young People (Scotland) Act 2014

PAS response to guidance consultation

General

We welcome the guidance. It restates the principles of GIRFEC, and pulls together its key components into one document. The focus on prevention and early intervention is also welcome. The definitions throughout are helpful. However, it may be useful to have more clarity around targeted interventions. Similarly, wellbeing is defined within the Act and within the guidance. Welfare is defined within the 1995 Act; it would be useful to have definitions and a distinction between the two and clarification of how these should interact.

However, there are some areas where we feel that the guidance could be improved. The first is around parental responsibilities vis a vis the role of the state. Additionally, the section on the child's wellbeing is largely individualised and is not contextualised around wider structural problems which are likely to disproportionately affect some children; it would be useful to state this within the wellbeing section and to link it to the Scottish Government's Child Poverty Strategy.

Throughout the guidance the distinction between statute and practice is not always clear; there are times when the guidance reads as strategic guidance and other times where it takes on a more practice guidance tone; this could be usefully addressed by developing practice guidance to sit alongside the statutory guidance.

Parental responsibility

While we are broadly supportive of the principles of GIRFEC and of the named person provisions in the interests of child wellbeing, there needs to be clarity about the legal framework around parental responsibility and how this new legislation and associated guidance relates to and interacts with this. The Government's statement that: "For the vast majority of children, with a supportive family, the role of the named individual will be minimal and should involve only screening for potential requirement for other services and facilitating transitions e.g. home from maternity unit, into pre-school provision, to primary school, to secondary school, through school leaving" should be paramount and the document should respect and reiterate this principle. Especially given the wide spread public perception of the named person provisions as an intrusion into family life, a restatement of the key principles in relation to this would be welcome.

The statement that parents legally retain the primary responsibility for their children must be stated early in the document and the guidance must be wholly informed by this, putting the principles of this along with the Human Rights Act and the UNCRC at

the heart of the guidance from which everything else should flow. This should be outlined in 1.2. and should be tied into the UNCRC's provisions about how the state should support parents in their parental and responsibilities.

“The UNCRC defines the context in which parenting takes place. It promotes parenting that is respectful of the child’s best interests and considerate of the needs of parents. It states that the child is entitled to care, security and an upbringing that is respectful of their rights and individuality. The UNCRC outlines the role of the parent in guaranteeing and promoting the rights of the child and ensuring that their best interests are always taken into account. It outlines how parents should fulfil their responsibilities and is clear that the state should provide parents with the necessary level of support they need to fulfil their role.”

(Together briefing on Parenting and the United Nations Convention on the Rights of the Child (UNCRC).)

We are aware that the intention of GIRFEC is to work with children and their families in an assets-based approach. However, there are times in the document where it reads as if the parents and families who are the problem, and the guidance appears to suggest a deficit model. The guidance should take an assets based approach to families that can lead to working with parents as partners and to co-producing solutions for families. We suggest that the introduction has a strong emphasis on asset-building and co-production.

Throughout the guidance there is reference to the involvement of parents. However this is inconsistent: at times, it refers to ‘when this is reasonably practicable’; at other times ‘when this is appropriate’ and at other times does not qualify their involvement. Given that parents retain primary responsibility for their children, the expectation must be that their involvement should be sought ‘unless it is unsafe to do so’.

Individual child – contextualisation of poverty and adverse circumstances

While the emphasis of the guidance is on individual children, it needs to be acknowledged (as indeed it is at the base of the wellbeing triangle) that wider structural issues impact on individual children and their families and that socio-economic determinants may adversely affect their wellbeing. Strategic planners’ attention should be drawn to interlinked strategies, such as the Child Poverty Strategy.

The third sector

There needs to be a clear statement at the beginning of the document which is referenced throughout on the role and involvement of the third sector. Increasingly, the third sector carries out duties on behalf of the local authority and of health boards, and its role needs to be referenced to ensure its inclusion in strategic

planning. In particular, the third sector has a strong role to play in the engagement of children and families that statutory services often find hard to reach.

Definitions

While the definitions were clear and generally provided clarity, targeted interventions could be better defined. It would be useful to articulate before targeted interventions what universal services should be generally available to families throughout Scotland, so that targeted interventions are more clearly understood in the wider context and so that pathways into targeted interventions can be more clearly planned.

Wellbeing

Generally the section on wellbeing is useful: it reiterates the components of wellbeing and provides clarity. The indicators also read clearly and the linkage to the UNCRC is welcomed. Again, reference to the third sector in this section would be welcomed.

The Guidance should encourage strategic leaders to make sure that a continuous cycle of suitable training and information is available to children and families as well as to practitioners, so that an asset-building, co-production model is developed.

We feel that much of 2.7 is more appropriate to a practitioner audience and that this could usefully form part of Practice Guidance.

2.10.7 This section should include mention of taking the views of children and their families into account and giving feedback on decisions to them.

Part 4: Named Person

Generally this clarifies and sets out the role of the Named Person. Setting out the principle that parents and families should be involved with the process throughout is welcome. The guidance states that the Named Person should have regard to the views of children and families. It also states that there are times where it may not be possible to act on these views. While we accept that this will be the case, there should be feedback to children and families about why this is so.

There are still areas where individual children may be missed. In particular, the provisions for 16 – 18 year olds, for gypsy children and for home educated children remain vague. Additionally, provision for school holidays, a time where the most vulnerable children may be most at risk, are not sufficiently robust. Information needs to be proactively communicated to children and their families to ensure the Named Person service is not regarded as a term-time service.

The Order

This specifies a health or educational qualification. However, it may be that in the case of those over 16 who have left school and are not in education, employment or training, an education professional may not be best placed to be the Named Person. It may be that a youth or community worker or careers guidance professional may be better placed to engage with the young person.

4.1.3 This section sets out clearly the duties of the Named Person service. It would be useful to incorporate timelines into this section. For families, where the wellbeing concern is a sudden disruption, such as bereavement, family imprisonment or diagnosis of disability, prompt action is required to ensure families get the help they need when they need it.

While a child or parent cannot choose their Named Person, consideration should be given about where relationships breakdown and processes to resolve this such as ADR.

4.1.6 The order specifies qualifications for the Named Person for those children of school age an educational qualification is specified. However, for those young people aged 16 – 18 who have left school and are outwith training, education and employment, an educational provider may not be in touch with or able to reach these young people and it may be more appropriate that a youth or community worker or careers guidance professional may be more likely and able to interact with the young person. We ask Scottish Government to give this consideration.

4.1.7 These are set out clearly. In setting universal standards it is important to develop a shared understanding. It is, therefore, be useful for the Named Person service to have responsibility for ensuring this and to develop shared training across professions to ensure consistency of approach. It should also draw attention to resources which are available to practitioners in discharging their functions, such as the Government's own GIRFEC site and other resources.

Part 5 Child's Plan

The Order: The Order specifies a review period of six weeks. It is unclear what the intention of this initial review is: if it is simply to ascertain whether a Plan is in place then this time period may be sufficient. However, it is to assess progress against the Plan, in our view this is not a sufficient length of time within which to do so.

General: There needs to be a clear understanding between agencies and professionals on what would trigger a Child's Plan and what the pathways both in and out of the Plan are. At present this is not clearly articulated within the Guidance. There should be more clarity within the Guidance about when a Child's Plan is

considered to be complete: completion of the actions if the desired outcomes have not been achieved should not be sufficient.

There needs to be more consideration of the various plans which exist for children and how they interact. While we understand that there is an intention, expressed by the Act, and this Guidance, to move towards a single Child Plan, currently both the Child's Plan and the Coordinated Support Plan exists side by side, as do Child Protection Orders and Supervision Orders. How they interact and which takes precedence needs to be explained in the Guidance.

11.2.4 The definition of a targeted intervention remains unclear and requires further definition. For example, in one local authority a parenting programme may be provided universally while in another it may be a targeted offer. If a child attends a special school, that would in one sense be a targeted intervention but would be a universal offer to the children within that school, but a child with additional needs within that school may require a further targeted intervention.

11.2.5 While local service design may mean that the help on offer will be dependent on what is available locally, this may lead to considerable local variation and may mean that families cannot access the help they need when they need it. It may also mean that as families move between local authority borders continuity of service cannot be guaranteed.

11.2.7 This section allows for the child's and the family's involvement in considering whether the child has a wellbeing need and requires a Child's Plan to address this need. We welcome the inclusion of parents here and that this should be the norm with exceptions to this being only if there is detriment to the child. Similarly we welcome that these views should be considered and recorded. We would welcome a similar statement that these views should always be fed back to the family and any reasons for not taking their views on board or meeting their stated needs should be clearly expressed.

11.2.8 The final sentence " Equally, it allows for a child of any age's views to be given less weight" does not seem compliant with the UNCRC. Children's views should be given equal weight, even if after consideration it is not possible to comply with these views.

11.4.16 Given the importance of this statement and its interaction with child protection, it should be given a more prominent place in the guidance. There also needs to be clarity around the thresholds given that these are considerably lowered from the 'risk of significant harm' to 'concern about well being'. This is likely to rely heavily on professional judgement and subjective opinion, but this should not override parents' rights to bring children up in the way they wish unless it

is detrimental to the child's welfare and safety. For example, one parent allowing their child to take risks could be viewed as a concern for their wellbeing, while another parent's rigid boundary setting could equally be viewed in this light.