



Children and Young People (Scotland) Act 2014

Draft Statutory Guidance for Parts 4, 5 and 18 (Section 96)

Children's rights briefing

30th April 2015

1. Introduction

Together welcomes the opportunity to contribute to the consultation on the Draft Statutory Guidance for Parts 4, 5 and 18 (Section 96) of the Children and Young People (Scotland) Act. Our response is informed and framed by the UN Convention on the Rights of the Child (UNCRC). We have focussed our commentary on Part 18 (Section 96) which offers real scope to bring a coherent approach to realising children's rights and wellbeing in Scotland. A lack of comment on other areas of the guidance should not be read as Together's endorsement of its content. The views expressed in this briefing are based on the general principles of the UNCRC and do not necessarily reflect the specific views of each of our member organisations.

2. Overview

- The Scottish Government should produce National Practice Guidance relating to Parts 4, 5 and 18 of the Children and Young People (Scotland) Act. This would support and inform the development of local guidance across local authorities and health boards that is both appropriate to the local context and reflects national best practice.
- The need for National Practice Guidance is of particular importance with regards to Parts 18. The definition of wellbeing is embedded in assessment, planning, reporting and monitoring duties throughout the Act. Wellbeing assessments are central to implementation of the Act and are key to the successful and consistent implementation of the information sharing duty in section 26. Work needs to be conducted in partnership with the guidance groups working on Part 3 of the Act to ensure there is a recognised and consistent framework of indicators that can be used to define, assess and report on wellbeing for individual and groups of children and young people.
- To fulfil the Scottish Government's aim to ensure that children's rights properly influence the design and delivery of policies and services¹, a Child Rights and Wellbeing Impact Assessment (CRWIA) should be undertaken on the draft statutory guidance. This would provide the Scottish Government with a valuable resource with which they can understand the impact the implementation of the statutory guidance will have on the rights and wellbeing of children and young people.
- Guidance supporting the Children and Young People (Scotland) Act will be key to ensuring that the GIRFEC approach supports all children and young people, including the most vulnerable. The guidance needs to reflect greater recognition that some children need more support than others to access equal opportunities. This needs to be priority if the Children and Young People (Scotland) Act is to succeed in reaching its ambition to make rights real for every child.

¹ http://www.scottish.parliament.uk/S4_Bills/Children%20and%20Young%20People%20%28Scotland%29%20Bill/b27s4-introd-pm.pdf (pg 1)

3. Child Rights and Wellbeing Impact Assessment

A Child Rights and Wellbeing Impact Assessment (CRWIA) should be conducted on the guidance, as already called for by a number of children's organisations.

The implementation of Parts 4, 5 and 18 are critical in achieving the ambitions of the Children and Young People (Scotland) Act to *'make rights real'* and ensure Scotland is the *'best place in the world to grow up'*. Given this significance, it is key that the Scottish Government analyses the impact that the implementation of the statutory guidance may have on the rights and wellbeing of children and young people. As such, it offers a crucial opportunity for the Scottish Government to pilot its forthcoming CRWIA model. Not to do so risks compromising the effectiveness of the statutory guidance and the ability of the government to take forward the aims of the Children and Young People (Scotland) Act.

A CRWIA would provide the Scottish Government with a valuable resource with which they can understand the impact the statutory guidance will have on the rights and wellbeing of children. It will also help to ensure that any unintended consequences of the guidance are identified and mitigated. A number of children's organisations, alongside Scotland's Commissioner for Children and Young People, have already called on the Scottish Government to take this forward with immediate effect.² Together would like to reiterate the urgency of this request.

Whilst children's organisations are generally supportive of the GIRFEC approach, concerns remain regarding patchy implementation across local authorities and ensuring that GIRFEC supports *every* child, including the most vulnerable. Undertaking a CRWIA provides an opportunity to ensure a consistent and coherent approach to implementing the Act, underpinned by children's rights.

Together recommends that the Scottish Government grasps the opportunity to pilot its CRWIA model, to analyse the impact that the statutory guidance may have on the rights and wellbeing of children and young people.

4. Specific comments

4.1. Part 18 (Section 96) - Wellbeing

The definition of wellbeing underpins much of the Children and Young People (Scotland) Act. Together has a number of recommendations as to how a wellbeing framework should be developed to ensure the effective implementation of GIRFEC.

Together welcomes Part 2 of the guidance setting out the wellbeing indicators. We recognise the crucial and wide-ranging role this element of the guidance will play in ensuring the successful implementation of many areas of the Children and Young People (Scotland) Act, in particular its role in defining what information should be shared under section 26 of the Act. In addition, reporting on wellbeing underpins duties within Corporate Parenting (in Part 9) and Children's Services Planning (in Part 3), as well as the Assessment of Wellbeing and the Child's Plan (as indicated in paragraph 2.1.6.). From Together's involvement in the Child Rights and Wellbeing Indicator Guidance Group (relating to Part 1), we also note that the indicators of wellbeing (defined in paragraph 2.5) will be used to develop the final framework for the Child Rights and Wellbeing Impact Assessment.

² See letter to Fiona McLeod dated 17th April 2015 from Barnardo's Scotland, Children in Scotland, NSPCC Scotland, Quarriers, Scottish Women's Aid, Together and YouthLink Scotland.

The draft statutory guidance confirms the need for a holistic and multi-dimensional framework to consider wellbeing to suit the context of an individual child's circumstances.³ Together recognises the need for the indicators to be relatively high level, to allow for developments in relation to measuring wellbeing and for a degree of professional discretion. As they currently stand, Together has real concern that the indicators proposed in Section 2.5. do not succeed in providing a coherent framework against which to assess a child's wellbeing and will undermine the implementation of many key areas of the Act.

The proposed indicators are inconsistent in tone, style and structure: Many are not recognisable as indicators and it is unclear how they would effectively support a professional assessment of a child's wellbeing. We have particular concerns around the section on 'responsible' which includes statements such as "*resisting pressure to engage in inappropriate, dangerous or anti-social behaviour*" and "*being patient when your wishes are not instantly gratified*". These are inappropriate statements which undermine the child-centred approach encouraged by GIRFEC. These, and similar statements, fail to recognise the age and capacity of every child, and may lead to underlying child protection concerns being missed or overlooked.

Although efforts have been made to link the framework to Articles of the UNCRC, the current proposals are not rights-based and do not assess the extent to which government (as duty-bearer) is fulfilling its obligations to uphold the rights of the child (as a rights-holder). As a result, it is unclear how wellbeing assessments will take into account the unique perspective of children of various ages and capacities, or those with additional and often more complex factors affecting their wellbeing (such as disability or poverty).

Given the pivotal role that Part 18 will play in the successful implementation of the Children and Young People (Scotland) Act, significant amendments need to be made to this section of the guidance.

Together would like to make the following overall recommendations:

- The Scottish Government should set out explicitly where the indicators of wellbeing (listed in 2.5.) are to be used within the Children and Young People (Scotland) Act, by whom and for what purpose.
- The Scottish Government should map other legislation and guidance which interlinks (or will interlink) with the definition of wellbeing, such as the Carers (Scotland) Bill, Public Bodies (Joint Working) Act and Self Directed Support Act.
- The statutory guidance needs to be clear if the indicators of wellbeing are 'indicators', 'outcomes' or 'descriptors'. As currently proposed, the indicators lack coherence, measurability and provide no framework against which a professional may inform their judgement.

Furthermore, with specific reference to the indicators of wellbeing:

- There is a need for National Practice Guidance to outline a framework of wellbeing outcomes and an accompanying coherent dataset. This would allow for the development of detailed indicators in accordance with the requirements of different parts of the Act.
- The framework should be explicitly right-based to support the duty on Ministers to take forward the implementation of the UNCRC under Part 1 of the Children and Young People (Scotland) Act. The framework should draw from a holistic UNCRC-based approach to ensure that the child's wellbeing needs are being met.

Together recommends that the development of such a framework is aligned with the work taking place in the Scottish Government-convened Children's Services Planning guidance subgroup on Wellbeing Outcomes and the work being undertaken by the Education Analytical Services department to develop a SHANARRI measurement

³ <http://www.gov.scot/Resource/0046/00469613.pdf> (page 13)

framework. It should also draw from some of the excellent work already taking place, such as the *'Framework for improving the planning and delivery of integrated health and social care services'*⁴, the *'Child Mental Health Indicators'*⁵ and the *'National Care Standards'*⁶. Furthermore, Scottish Government officials may find it useful to draw from the range of work being undertaken at an international level on the development of rights-based indicators, particularly that undertaken by the Office of the High Commissioner for Human Rights.⁷

4.2. Section 1.1.5. - Guidance for children and young people

Guidance for children and young people is welcomed. It should empower them to be involved and consulted in their Child's Plan and in the implementation of the Named Person service.

Together welcomes section 1.1.5 of the draft guidance, which indicates that corresponding guidance will be produced for children and young people in relation to the Named Person service and Child's Plan.

It is essential that children and young people are informed as to what the 'Named Person' and 'Child Plan' will mean to them and that they are equipped with appropriate information as to how they can inform and engage with the service. Such guidance should also make clear how they can raise and take forward concerns and complaints if they are unhappy or dissatisfied with the provision of the Named Person service of their Child's Plan. The guidance for children and young people will provide an opportunity for the Scottish Ministers to take forward their duty outlined in Part 1 of the Children and Young People (Scotland) Act to *"raise awareness and understanding of the UNCRC among adults and children alike"*. It can also be used to further the implementation of the UNCRC: To fulfil the rights of all children to access information and material aimed at promoting their wellbeing and physical and mental health (Article 17) and to seek, receive and impart information and ideas (Article 13).

The development of further specific information for children and young people to support their understanding of the operation of the Named Person service and Child's Plan must be child-friendly, age-appropriate, widely accessible and published in a number of formats recognising diverse communication needs. The Scottish Government should ensure that children and young people have the opportunity to feed into the development of these documents, and also to review the documents in terms of accessibility and effectiveness in supporting understanding of the Act.

4.3. Part 4: Provision of Named Persons - Training

The Common Core provides a key resource to be drawn from to ensure the Named Person and other professionals working with and for children have the skills, knowledge and understanding they need to be effective in their role.

Together welcomes the reference to the Common Core (which is underpinned by the General Principles of the UNCRC) within the draft guidance and the decision for it to be 'at the heart' of training of Named Persons. The Common Core describes the skills, knowledge and understanding, and values that everyone should have if they work with children, young people and their families. To ensure that the GIRFEC approach meets the needs of all

⁴ http://lx.iriss.org.uk/sites/default/files/resources/national_health_and_wellbeing_outcomes.pdf

⁵ <http://www.healthscotland.com/scotlands-health/population/mental-health-indicators/children.aspx>

⁶ <http://web.archive.org/web/20141218012131/http://www.nationalcarestandards.org/>

⁷ <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>

children and young people, it will be necessary for all practitioners from local authorities, health boards, relevant services and the third sector to receive training underpinned by the Common Core.

Together recommends that every person working with children and young people, as well as those supporting these practitioners (such as those working alongside a Named Person) should be trained using the Common Core and that this document should underpin and help to develop all local practice guidance for these parts of the Children and Young People (Scotland) Act. This would help to fulfil the Scottish Government's duty under Article 42 of the UNCRC to raise awareness and understanding of children's rights and as enshrined in Part 1 of the Children and Young People (Scotland) Act.

4.4. **Section 26: Named Persons and information sharing**

There is a lack of clarity within the guidance in relation to meaningful involvement of children and young people in relation to information sharing, and how a decision to share information is undertaken, evidenced and recorded.

Respecting children and young people's confidentiality and sharing information are stated as key values and principles underlying the Scottish Government's GIRFEC programme. Sharing information that is relevant and proportionate about children who are in need of support or 'at risk' of harm is a central component of GIRFEC.

During Parliamentary scrutiny of the Children and Young People (Scotland) Bill in 2013, there was much debate on ensuring fulfilment of children's rights to privacy under Article 16 of the UNCRC and Article 8 of the European Convention on Human Rights within the proposals on sharing information.

During Stage 1 of the Bill, Together made the following recommendations:

- There should be consolidation of the same coherent message with regards to confidentiality across all relevant guidance to ensure a clear and shared understanding amongst all partner agencies;
- There should be a strong position statement in GIRFEC on the importance of respecting children's confidentiality as a fundamental principle and on the parameters on information sharing;
- The principles and values around confidentiality and information sharing should be properly explained to children. There should be meaningful involvement of children in decisions and their consent should be sought to share information wherever possible.

With these recommendations in mind, further clarity is required regarding how decisions to override Article 8 and share information are evidenced and the rationale for sharing clearly recorded. Local practice guidance and training should be consistent in providing clearly the legal requirements relating to information sharing to ensure coherent practice.

4.5. **Section 11 – Part 5: Child's Plan**

Children and young people should be meaningfully involved in decisions regarding wellbeing needs and the development of a Child's Plan. The current language used within the draft statutory guidance in relation to ascertaining children's views is unlikely to ensure realisation of Article 12 of the UNCRC for every child.

Section 33 (6) of the Children and Young People (Scotland) Act requires that a child is involved in deciding whether they have a wellbeing need and consequently a Child's Plan. This is welcome and an important element

of ensuring that children's views are listened to and taken into account in matters that affect them, in line with Article 12 of the UNCRC.

However, Together has concerns that the language '*as far as reasonably practicable*' used within the draft statutory guidance in relation to seeking the views of children may prevent Article 12 being realised for more vulnerable children. This includes disabled children and children with specific communication needs. Whilst the draft guidance refers to ensuring '*meaningful discussion with the child and parents*' it is important that this is outlined clearly and consistently in local practice guidance, using a children's rights approach. A children's rights approach should be taken when clarifying the '*exceptional cases*' whereby responsible authorities do not seek the views of children and their parents.

Although the draft statutory guidance states that a Child's Plan should be available in a way to ensure that parents and children understand the content of the plan, further clarity should be given as to how this should be achieved.

Together recommends that the Scottish Government refers to General Comment No. 12 of the UNCRC on the right to be heard⁸ to inform its considerations in this area.

4.6. Glossary of Terms - Parental responsibilities

The statutory guidance should refer explicitly to the Scottish Government's obligation under the UNCRC to provide appropriate direction and guidance to parents and families in the exercise by the child of their rights.

Section 1.6.13 of the Act refers to the expectation that parents and carers are consulted and involved in the decisions and activities aimed at supporting a child within their care.

Article 5 of the UNCRC requires State Parties to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the Convention to parents and families.

Together recommends that Article 5 is referenced within the guidance and that further clarity and information is included in relation to how parents and carers will be involved in furthering the rights of children as enshrined in the UNCRC.

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