

Consultation inviting views on Draft Statutory Guidance on Parts 18, Section 96 (Wellbeing) 4 (Named Person), and 5 (Child’s Plan) of the Children and Young People (Scotland) Act 2014 and draft Orders made under Parts 4 and 5.

Respondent Information Form (RIF)



Please Note this form **must** be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation Name

Together (Scottish Alliance for Children’s Rights)

Title Mr Ms Mrs Miss Dr

Please tick as appropriate (if completing electronically, double click on box and select default value as ‘checked’)

Surname

Harris

Forename

Juliet

2. Postal Address (if organisation, please provide organisation address)

Level 1 Rosebery House

9 Haymarket Terrace

Edinburgh

Postcode EH125EZ

Phone 01313379015

Email juliet@togetherscotland.org.uk

3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes **No**

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

Are you content for your **response** to be made available?

Please tick as appropriate

Yes **No**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate **Yes** **No**

Additional Notes

Together (Scottish Alliance for Children's Rights) is an alliance of children's charities that works to improve the awareness, understanding and implementation of the United Nations Convention on the Rights of the Child (UNCRC) in Scotland. With over 280 members, our key aims include progressing children's rights at a local and national level through the provision of support and expertise, and providing robust monitoring of UNCRC implementation in Scotland at a national and international level.

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 UNCRC. We have focussed our comments on Part 18 (Section 96) which offers real scope to bring a coherent approach to realising children's rights and wellbeing in Scotland. The views expressed in this response are based on the general principles of the UNCRC and do not necessarily reflect the specific views of each of our member organisations.

Child Rights and Wellbeing Impact Assessment (CRWIA)

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*'. 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.

Therefore, it is key that the Scottish Government undertakes a CRWIA to analyse the impact that the implementation of the statutory guidance may have on the rights and wellbeing of all children and young people. This would provide a valuable resource through which the impact the statutory guidance will have on the rights and wellbeing of children can be understood. It would also ensure that any unintended consequences of the guidance are identified and mitigated. As a result, a CRWIA would encourage a consistent and coherent approach to implementing the Act, underpinned by children's rights.

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.¹ Together would like to reiterate the urgency of this request and recommend that the Scottish Government grasps this opportunity to pilot the CRWIA model which is currently being developed by the Rights and Wellbeing team to support the implementation of the Act.

¹ 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.

Consultation questions

General

1) Overall, do you think that the draft guidance gives a clear interpretation of the Act to support organisations' implementation of the duties?

Yes No

(if responding electronically, please double click on one of the boxes above and select the default value as 'checked')

Please provide details:

- The draft statutory guidance as it stands is varying in the detail it includes under each section. This leads to an unclear interpretation of how Part 4, 5 and 18 will be implemented in practice: The guidance remains top level in some areas whilst providing detailed practice examples in others. This discrepancy leads to a lack of clarity in terms of the purpose of the guidance and who it is intended for. As a result, Together has concerns that it will not support effective and consistent implementation of Parts 4, 5 and 18 of the Act.
- Alongside a large number of children's organisations, Together shares the view that there is a need for national practice guidance to inform the development of local practice guidance. **Together recommends that 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.**
- For the Act to achieve its aims to get it right for *every* child, guidance supporting the Act will be key to ensuring that the GIRFEC approach supports the most vulnerable children. The draft statutory guidance does not currently pay attention to or offer a clear interpretation of how exactly the Act will be implemented to fulfil this aim. As such, **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.**

Part 18, Section 96 - Wellbeing

2) Do you think the draft guidance on wellbeing provides clarity about what wellbeing means in the context of the Act?

Yes No

What is helpful and/or what do you think could be clearer?

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.

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.**

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 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'*², the *'Child Mental Health Indicators'*³ and the

² http://lx.iriss.org.uk/sites/default/files/resources/national_health_and_wellbeing_outcomes.pdf

³ <http://www.healthscotland.com/scotlands-health/population/mental-health-indicators/children.aspx>

*'National Care Standards'*⁴. 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.⁵

3) Are the explanations of the eight wellbeing indicators helpful? (2.5)

Yes No

What is helpful and/or what do you think could be clearer?

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.⁶ 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).

With specific reference to the indicators of wellbeing, Together recommends the following:

⁴ <http://web.archive.org/web/20141218012131/http://www.nationalcarestandards.org/>

⁵ <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>

⁶ <http://www.gov.scot/Resource/0046/00469613.pdf> (page 13)

- 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.

4) Are the descriptions and examples of wellbeing concerns sufficiently clear and helpful? (2.7)

Yes No

What is helpful and/or what do you think could be clearer?

5) Please provide any other general comments about the draft guidance on wellbeing:

Part 4 - Named Person

Section 19 – Named Person Service

6) Is the draft guidance clear on the organisational arrangements which are to be put in place by the service provider to support the functions of the Named Person? (4.1.3 - 4.1.4)

Yes No

What is helpful and/or what do you think could be clearer?

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 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.

7) The Named Person Order and the draft guidance in support of this relate to training, qualifications, experience and position of who can be a Named Person. (Named Person Order and 4.1.5 – 4.1.17)

Are they sufficient to promote reliability in the quality of the Named Person service while supporting the flexibility to ensure that organisations can provide the service universally and consistently?

Yes No

Do they provide clarity?

Yes No

Please give reasons for your answers, including if you think they should be changed:

8) Is the level of detail provided on the delivery of the Named Person functions within the draft guidance appropriate to guide service providers in the provision of the service? (4.1.19 – 4.1.27)

Yes No

What is helpful and/or what do you think could be clearer?

9) The draft guidance outlines how arrangements for making the Named Person service available during school holiday periods and other absences should be put in place. Do you agree that this provides sufficient clarity while allowing local flexibility? (4.1.30 – 4.1.32)

Yes No

What is helpful and/or what do you think could be clearer?

Section 20 – Named Person service in relation to pre-school children

10) This section of the draft guidance outlines arrangements for making the Named Person service available for pre-school children. Do you think it provides clarity?

Yes No

What is helpful and/or what do you think could be clearer?

Section 21 – Named Person service in relation to children who are not pre-school children

11) This section of the draft guidance outlines arrangements for making the Named Person service available for children who are not pre-school children. Do you think it provides clarity? (6.1.1 – 6.1.8)

Yes No

What is helpful and/or what do you think could be clearer?

12) Does the draft guidance make clear arrangements for providing the Named Person service for children who leave school before their 18th birthday? (6.1.9 – 6.1.25)

Yes No

What is helpful and/or what do you think could be clearer?

13) Does the draft guidance make clear arrangements for providing the Named Person service for children of Gypsy/travellers? (6.1.26 – 6.1.31)

Yes No

What is helpful and/or what do you think could be clearer?

14) Does the draft guidance make clear arrangements for providing the Named Person service for children who are home educated? (6.1.32 – 6.1.39)

Yes No

What is helpful and/or what do you think could be clearer?

15) Does the draft guidance make clear arrangements for providing the Named Person service for those families with more than one Named Person? (6.1.41 – 6.1.43)

Yes No

What is helpful and/or what do you think could be clearer?

Section 24 – Duty to communicate information about the role of the Named Person

16) Does the draft guidance make clear the requirements and expectations in relation to communicating information about the Named Person service and the Named Person?

Yes No

What is helpful and/or what do you think could be clearer?

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.

Section 25 – Duty to help the Named Person

17) Does the draft guidance make clear the arrangements which should be in place for service providers or relevant authorities to help a Named Person? (9.1.1 – 9.1.8)

Yes No

What is helpful and/or what do you think could be clearer?

Sections 23, 26 and 27 – Information sharing

General

18) Is the draft guidance on these sections clear on requirements in relation to consideration and sharing of relevant and proportionate information when there are wellbeing concerns?

Yes No

What is helpful and/or what do you think could be clearer?

Respecting children and young people's confidentiality and sharing information are stated as key values and principles underlying the Scottish Government's GIRFEC programme. Together has serious concerns that the lack of clarity in Part 18 with regards to the definition of wellbeing will have serious adverse effects of the ability of professionals to carry out the information-sharing duty consistently or effectively. Until clear guidance is produced that defines what constitutes a 'wellbeing concern', information-sharing practice will be piecemeal and patchy.

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

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, Together recommends that:

- **Guidance on Part 18 takes full account of its inherent impact on the ability of professionals to share information in a relevant and proportionate manner.**
- **Further clarity is given regarding how decisions to override Article 8 and share information are evidenced and the rationale for sharing clearly recorded.**
- **Local practice guidance and training are consistent in providing clearly the legal requirements relating to information sharing to ensure coherent practice.**

19) Does the draft guidance make clear the arrangements and processes that authorities will need to put in place to facilitate and support the consideration and sharing of relevant and proportionate information?

Yes No

What is helpful and/or what do you think could be clearer?

See Question 18.

20) Does the draft guidance make clear that the sharing of relevant and proportionate information under this Act must meet the requirements of the Data Protection Act 1998 and the European Convention of Human Rights?

Yes No

What is helpful and/or what do you think could be clearer?

See Question 18.

Section 23/Section 26

21) Does the draft guidance make clear the arrangements for managing and sharing information when duties of confidentiality are a consideration? (10.2.14 – 10.2.16 and 10.3.10 – 10.3.13)

Yes No

What was helpful and/or what do you think could be clearer?

See Question 18.

22) Are the arrangements set out for considering the views of the child clear? (10.3.3 – 10.3.4)

Yes No

What is helpful and/or what do you think could be clearer?

See Question 18.

23) Please provide any other general comments about the draft guidance on the Named Person service, including the information sharing sections:

As noted in Together's response to Question 2 and 3 on wellbeing assessments and SHANARRI, the wellbeing indicator framework as it currently stands does not succeed in providing a coherent framework against which to assess a child's wellbeing. 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.

Together is concerned that the current imprecise guidance being offered to support assessments of wellbeing under SHANARRI (which underpins the effective implementation of the Act) is confusing and leaves much open to interpretation. In relation to information sharing, this could widen the scope of information shared, risk the violation of children's rights under the UNCRC and undermine the aim of the Named Person service to deliver a preventative, joined-up approach.

Draft Named Person Order

See question 7 above; and

24) Please provide any other general comments about the draft order on the Named Person:

Part 5 – Child’s Plan

Section 33 - Child’s Plan requirement

25) Is the draft guidance clear about the definition and explanation of what constitutes a ‘targeted intervention’? (11.2.4. – 11.2.5)

Yes No

What is helpful and/or what do you think could be clearer?

26) Are the arrangements for seeking the views of the child, parents and others during consideration of the need for a Child’s Plan set out clearly in the draft guidance? (11.2.7 – 11.2.12)

Yes No

What is helpful and/or what do you think could be clearer?

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 heard⁷ to inform its considerations in this area.

Section 34 – Content of a Child’s Plan

27) Do you agree that the content of the plan, as set out in the Schedule to the draft Order and described further in the draft guidance is clear and covers the full range of likely circumstances? (11.3.1. – 11.3.9 and draft Child’s Plan Order)

Yes No

What is helpful and/or what do you think could be clearer?

Section 35 – Preparation of a Child’s Plan

28) Are the arrangements and processes set out in the draft guidance for preparing child’s plan clear? (11.4.1 – 11.4.6)

Yes No

What is helpful and/or what do you think could be clearer?

29) Does the draft guidance give clear support on how the child’s plan and the co-ordinated support plan should be integrated? (11.4.7 – 11.4.10)

Yes No

What is helpful and/or what do you think could be clearer?

⁷

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsglkirKQZLK2M58RF%2f5F0vHKTUsoHNPBW0noZpSp5d6MSKiT09ePYFY4ch5tmyyvg4tVAP%2fSH9%2bBtZWkhEtAmUXeyPIFduGREUMQJzh%2fHpLV>

Sections 36, 37 and 38 – Responsible authority: general, Responsible authority: special cases and Delivery of a Child’s Plan

30) Does the draft guidance make clear the different roles of the responsible, relevant, directing and managing authorities?

Yes No

What is helpful and/or what do you think could be clearer?

Section 39 – Child’s Plan: management

31) Does the draft guidance make clear the processes and arrangements for managing the child’s plan? (11.8.1 – 11.8.13)

Yes No

What is helpful and/or what do you think could be clearer?

32) Does the draft guidance make clear the arrangements for transferring management of a child’s plan? (11.9.1 – 11.9.21)

Yes No

What is helpful and/or what do you think could be clearer?

Section 40 – Assistance in relation to Child’s Plan

33) Is the draft guidance helpful in describing the processes and arrangements for providing assistance in relation to functions under this part of the Act? (11.10.1 – 11.10.8)

Yes No

What is helpful and/or what do you think could be clearer?

34) Please provide any other general comments about the draft Child’s Plan guidance:

Draft Child’s Plan Order

See question 26 above, and:

Part 1, Article 2 - General

35) Whenever possible we have referenced existing regulations to show the interaction with the new duties. Do you find this helpful?

Yes No

Please provide any comments on this approach:

Part 3, Article 6 – Preparation and content of a child’s plan

36) In terms of the 2014 Act, the Named Person; and, as far as reasonably practicable, the child and their parents, are to be consulted on the preparation of a child’s plan. The draft Order sets out who else should be consulted in certain circumstances. Under the Act, the responsible authority can also consult with anyone it considers appropriate in any particular case. Do you think any other people should be consulted, as far as reasonably practicable, for the preparation of every plan?

Yes No

Please provide details, including who and why.

Part 3, Article 7 – Copies of a child’s plan

37) Copies of the child’s plan should be provided to persons specified in the draft order, except in certain circumstances. This is set out in article 7 of the draft Order. Does this article meet the intention to ensure that others are not placed at risk of harm as a consequence of copies of the plan being provided?

Yes No

If no, please provide details including what you think should be changed:

38) Please provide any other general comments about the draft Child’s Plan Order:

Thank you, please send with your respondent information sheet to:

GIRFECConsultations@scotland.gsi.gov.uk

or

*Alan Davidson
Getting it right for every child
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ*