

## ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Education Operational Delivery Committee
<b>DATE</b>	16 January 2020
<b>EXEMPT</b>	No
<b>CONFIDENTIAL</b>	No
<b>REPORT TITLE</b>	Children & Young People (Scotland) Act 2014
<b>REPORT NUMBER</b>	OPE/19/395
<b>DIRECTOR</b>	Rob Polkinghorne
<b>CHIEF OFFICER</b>	Eleanor Sheppard
<b>REPORT AUTHOR</b>	Lesley Stopani
<b>TERMS OF REFERENCE</b>	5

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### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide Elected Members with a proposed direction of travel following the Scottish Government's proposal to repeal Parts 4 & 5 of The Children and Young People (Scotland) Act 2014 and to seek approval to remove reference to the term 'Named Person' from Council and multi-agency documentation.

### 2. RECOMMENDATION

That the Committee:

- 2.1 note the proposed repeal of Parts 4 & 5 of The Children and Young People (Scotland) Act 2014 and instruct the Chief Officer Integrated Children and Family Services to remove reference to the Named Person from single and multi-agency guidance; and
- 2.2 agree that the key point of contact in schools be referred to as the Establishment Contact.

### 3. BACKGROUND

- 3.1.1 'Getting it right for every child' (GIRFEC) is the approach which has been adopted across Scotland over the last fifteen years in order to promote and improve the wellbeing of every child, specifically those in need of additional

supports to reach their full potential. The GIRFEC approach recognises that some children require support from a range of partners to support wellbeing and that access to supports from across the multi-agency should be coordinated and aligned to support children and families as soon as needs become apparent.

- 3.1.2 The Children and Young People (Scotland) Act 2014 Part 4 outlined the requirements in relation to the Provision of a Named Person to help enable effective multi-agency working including sharing information; and Part 5 the requirements of a Child's Plan to record information and approaches to address need.
- 3.1.3 The Children and Young People (Information Sharing) (Scotland) Bill (the "Bill") in 2017 proposed changes to the information sharing provisions in Parts 4 and 5 of the 2014 Act in order to address the Supreme Court decision that operation of the information-sharing provisions would result in interferences with rights protected by article 8 of the European Convention on Human Rights and further were not "in accordance with the law", and were therefore not within the legislative competence of the Scottish parliament and could not be brought into force as they stood.
- 3.1.4 In February 2018 the GIRFEC Practice Development Panel was convened. Membership included experts from education, health, the third sector and the legal profession. The remit of the Panel was to develop a draft Code of Practice for information sharing and to make recommendations on Statutory Guidance in relation to Parts 4 and 5 of the 2014 Act. The Panel, supported by a Legal Focus group, considered the following challenges:
  - The role of consent
  - The interaction between different areas of law, including human rights law
  - The challenges facing front line staff
- 3.1.5 The Panel's prime recommendation was that Ministers should not pursue a binding Code for Information Sharing in relation to information sharing under Part 4 (Provision of Named persons) of the Children and Young People (Scotland) Act 2014.
- 3.1.6 On the 19th September 2019 the Scottish Government published its response to the GIRFEC Practice Development Panel's recommendations, stating: their agreement that: "It would be challenging to produce an authoritative draft Code of Practice for Information Sharing that properly reflects the relevant legal requirements, is workable, comprehensive and user-friendly for children and young people, parents and practitioners.
- 3.1.7 Professional codes, policies, procedures and guidance on the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA) can, in the Panel's view, provide the legal framework and safeguards that are needed to support proportionate and necessary information sharing within a GIRFEC approach."
- 3.1.8 The Scottish Government accepted the Panel's recommendation that a binding statutory Code of Practice for Information Sharing should not be pursued at this time and that GDPR and DPA 2018 provide an appropriate legal framework

and safeguards which, combined with practice guidance, could support good information sharing practice within the GIRFEC approach.

#### **4. STEPS BEING TAKEN NATIONALLY**

- 4.1.1 The Scottish Government has indicated it will take forward suggestions made by the Panel. The Scottish Government GIRFEC team plan to hold a series of engagement events, inviting partners to participate in developing a suite of resources to support and promote the delivery of GIRFEC. The resources will be designed to support good information sharing practice within the context of effective multi-agency working.
- 4.1.2 It has been decided that GIRFEC information sharing will be supported through policy and practice guidance rather than further legislation. As a result The Children and Young People Information Sharing (Scotland) Bill will be withdrawn, with Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 being repealed in due course.

#### **5. LOCAL RESPONSE**

- 5.1.1 The Community Planning Partnership has agreed and published GIRFEC Operational Guidance which guides the working practices of all agencies supporting children and families in the City.
- 5.1.2 The GIRFEC Group oversees the development and refresh of the Operational Guidance on behalf of The Integrated Children's Services Board. Strong and agreed multi-agency approaches are well established across Aberdeen City and the recent Joint Inspection noted the strength of our relationships and how this helps us collectively support children and young people.
- 5.1.2 Information sharing guidance across the Community Planning Partnership has always been developed in collaboration with the Aberdeen City Council legal services. Agreed approaches to information have been communicated both within the Operational Guidance and also through briefings and professional learning events for practitioners across the partnerships. Information sharing across Aberdeen City has, and continues to be, in keeping with enacted legislation.
- 5.1.3 On publication of the Scottish Government announcement in September, Community Planning Partners were keen to ensure that staff continued to confidently work together to support children and families. In order to provide assurance, the GIRFEC Group came together with the ACC legal service to develop a statement for practitioners:
- 5.1.4 'Aberdeen City Council and its partners continue to be fully committed to embedding GIRFEC values, principles and practice in our approach to multi-agency working. This approach supports and promotes the wellbeing of all children and young people in Aberdeen City and will remain a priority for all practitioners. In particular we must protect our most vulnerable children and young people and those with the most severe and complex needs.

Staff working with children and their families in Aberdeen City, are skilled at effectively supporting children, young people and their families, as evidenced in the recent Care Inspectorate inspection report, and it is important that this continues as we await further guidance from The Scottish Government.

Once the anticipated updated guidance has been received, we will review our policy, guidance and practice for professionals working with children, young people and their families. In the meantime, we would remind colleagues:

That the well-established information sharing practice based on enacted legislation should continue in order to support positive wellbeing.

- Practitioners may offer to share information with other agencies to support the wellbeing of a child or young person. Practitioners should be open and transparent with families about how information will be shared with these other agencies
- Families have no obligation to accept help offered to support wellbeing
- However, if a child is considered to be at risk of significant harm, then information may be shared without consent and immediately. This has not and will not change.

Aberdeen City Integrated Children’s Services remains committed to keeping children, young people and families at the centre of care.”

- 5.1.5 The GIRFEC Group continues to engage with colleagues nationally in order to keep abreast of developments and be well placed to make any amendments to the agreed partnership GIRFEC Operational Guidance following publication of resources.
- 5.1.6 The press coverage around the Supreme Court Judgement and Repeal of Parts 4 and 5 have in part contributed to a negative association with the term Named Person. It is crucially important that children, young people and families are able to approach a key contact in school to seek help if required so that wellbeing needs can be addressed quickly.
- 5.1.7 The risk of a negative association could be significant for some so it is proposed that Aberdeen City Council gradually phase out use of the term ‘Named Person’ and use the term ‘Establishment Contact’. This will ensure that families still feel they can approach schools for support where appropriate.
- 5.1.8 The resources due to be published by The Scottish Government are unlikely to require a need for significant change to local guidance. The GIRFEC Group will review materials when published and continue to update our Operational Guidance to ensure it supports effective multi-agency working.

## 6 FINANCIAL IMPLICATIONS

- 6.1 There are no direct financial implications arising from the recommendations of this report.

## 7 LEGAL IMPLICATIONS

- 7.1 Actions planned are to ensure legal compliance following the repeal of Parts 4 and 5 of the Children and Young People (Scotland) Act 2014.

## 8. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
<b>Financial</b>	None		
<b>Legal</b>	Potential non-compliance with the law on information-sharing.		Steps taken and to be taken as set out in this report.
<b>Employee</b>	Potential concern from those who will act as Establishment Contacts regarding their roles.	L	Clear advice to all colleagues.
<b>Customer</b>	Potential concern from parents who may not wish to access the support.	L	Clear advice to all parents.
<b>Environment</b>	None		
<b>Technology</b>	None		
<b>Reputational</b>	Potential that parties are not seen to be consistent in their message.	L	Clear statements and consistency of response.

## 9. OUTCOMES

<b>Local Outcome Improvement Plan Themes</b>	
	<b>Impact of Report</b>
<b>Prosperous People</b>	To ensure that our children, young people and their families are protected from unlawful, potentially harmful, sharing of their data.

<b>Design Principles of Target Operating Model</b>	
	<b>Impact of Report</b>
<b>Partnerships and Alliances</b>	Provision of an agreed protocol.

## 10. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	Not required
<b>Data Protection Impact Assessment</b>	Not required
<b>Duty of Due Regard / Fairer Scotland Duty</b>	Not applicable

## 11. BACKGROUND PAPERS

The Children and Young People (Scotland) Act 2014  
The Children and Young People Information Sharing (Scotland) Bill 2017  
Getting it right for every child (GIRFEC) Practice Development Panel: Final Report

## 12. REPORT AUTHOR CONTACT DETAILS

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