

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

Barnardo's Scotland

Title Mr Ms Mrs Miss Dr

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

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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**

**Response from Barnardo's Scotland to the Scottish Government
consultation on Draft Statutory Guidance on Parts 18, Section
96, 4, and 5 of the Children and Young People (Scotland) Act
2014**

General comments

Barnardo's Scotland fully supports the principles of the Scottish Government's GIRFEC approach and backed the Scottish Government's plans to put GIRFEC on a statutory footing through the Children and Young People (Scotland) Act. We believe that the holistic approach to wellbeing represented by GIRFEC, putting the child at the centre, is central to efforts to improve outcomes for children across Scotland.

We therefore welcomed putting SHANARRI on a statutory footing, giving every child a 'named person' to ensure that they (and their parents) got assistance and support if and when they need it, and have a single point of contact with public services. Many children and families will benefit from the statutory single child's plan, co-produced with the children and the parents, for children who require support that cannot be provided through universal services.

Our comments on the guidance should therefore be understood as seeking to make the GIRFEC elements of the Children and Young People (Scotland) Act deliver their potential benefits to children and families as effectively as possible. We have set out a series of detailed suggestions and comments about individual sections of the draft statutory guidance that we hope will enhance the document's ability to enable effective strategic planning for the roll out of the relevant sections of the Children and Young People (Scotland) Act.

However, we have identified three overarching issues, which will be important to address to ensure that the roll out of GIRFEC on a statutory footing is done in an effective and efficient fashion.

Firstly, as we repeatedly identify in our detailed comments, non-statutory national practice guidance will be required to sit alongside this statutory strategic guidance. While we recognise that local flexibility is important, it is crucial that there is a high degree of consistency of practice. As we have highlighted some elements of the draft statutory guidance, for example paragraph 2.7.7, do not fit well in a strategic document such as this, and would fit better, in expanded form, in non-statutory practice guidance. We recognise that producing comprehensive practitioner

guidance will be an onerous task, but without it it is likely that there will be wide discrepancies of approach, thereby undermining the potential benefits of the legislation. The development of multiple different local interpretations of the role of named person and lead professional, and multiple local definitions of wellbeing and targeted intervention would be very unhelpful.

Secondly, the wellbeing-based approach set out in this guidance needs to integrate much more clearly with existing child welfare, child protection and children’s hearings. Paragraph 2.9.2 of the guidance draws a distinction between wellbeing concerns, and wellbeing concerns that relate to a child protection concern. This distinction needs to be explained much more fully, and comprehensive guidance is required to manage the interface between these different systems. Closely linked to this is the lack of specification or robust processes set out in the guidance regarding the needs of the most excluded and vulnerable. For example in 6.1.40 there is a recognition that some children do not regularly attend school, but it is left completely up to health boards and local authorities to develop arrangements to meet the needs of these children.

Finally, while the role of the Third sector is mentioned at various points in the statutory guidance, there is a lack of comprehensive and coherent information about how third sector bodies should relate to the processes set out in the guidance. The implication of some sections of the guidance, such as 10.3.8, are that there will have to be a wholesale re-evaluation of contractual relationships between third sector bodies and statutory agencies, and this will need to be effectively supported.

Detailed comments

Section	Paragraph	Comments
General introduction	1.1.4	<p>This paragraph reads <i>“The guidance has not been written with practitioners in mind. While practitioners who may be involved as a Named Person or Lead Professional can refer to the guidance to inform their practice, separate practice materials will be made available nationally and locally.”</i></p> <p>It is clear that a national framework or Practice Guidance aimed practitioners will be required, to ensure that there are minimum standards of delivery for the elements of GIRFEC covered in parts 4 and 5. We therefore welcome this commitment to additional national practice materials, but we would like clarity about the form these will take, the timescale for their production</p>

		<p>and consultation planned for their development. In particular, it would be useful to hear how third sector bodies will be involved in the development of practice materials.</p> <p>Some parts of the current document already appear to be more like practice guidance, for example paragraph 2.7.5, and while these examples are useful to a degree they underscore the need for national guidance designed specifically to inform practice.</p>
	1.3.2	<p>We agree with the principle set out in this section that levels of need will change for all children over time, and support the universal approach that is at the heart of GIRFEC. However, there is always a tension, even within universal services about ensuring that the needs of the most vulnerable are addressed as a priority, and we think this needs to be more fully reflected in the rest of the guidance.</p> <p>There is a danger within every universal system that the most excluded and vulnerable get the least robust procedures and poorest support. This can partially be address by clarifying link with child protection, but in order to make sure new systems meet the needs of those with the most significant adversities there should be greater focus on how named persons will address the needs of groups of children young people who are not engaged by health or education services.</p>
	1.3.10	<p><i>This paragraph reads "GIRFEC is important for everyone who works with children and young people – as well as many people who work with adults who look after children. Practitioners need to work together to support families, and, where appropriate, take early action at the first signs of any difficulty – rather than only getting involved when a situation has already reached crisis point. Similarly, a joined-up approach will mean that only those services that need or should be supporting a child or family are involved, reducing unnecessary intrusion."</i></p> <p>We fully agree with this statement, but would highlight that 'everyone who works with children' does not only cover employees of statutory bodies, but also those working for, or volunteering for third sector and community organisations,</p>

		<p>whether delivering public contracts or not. Therefore, for GIRFEC to work effectively, there needs to be greater clarity for third sector and community organisations on how they work within, where appropriate, the new statutory requirements.</p> <p>The role of the Third sector is mentioned at various points in the statutory guidance, including:</p> <ul style="list-style-type: none"> • Paragraph 8.1.3, which highlights that the duty to provide general information is intended to ensure that third sector organisations and any other individual or agency know how to make contact with the Named Person. • Paragraph 11.2.4 which highlights that a third party in terms of provision of a targeted intervention may be a third sector organisation commissioned or contracted by a relevant authority to provide a service, or a third sector organisation with no contracted arrangements, but which provides a service by arrangement with a relevant authority. • Paragraph 11.8.5 which highlights that employees of third party organisation may in certain circumstances act as Lead professionals. <p>However, there is a lack of comprehensive and coherent information about how third sector bodies should relate to the processes set out in the guidance. In particular, it would be useful to explicitly reference the third sector and third sector staff in at least one of the practice examples set out in 2.6.3, 2.6.4, 2.6.5 and 2.6.6. In addition, further detail and documentation would be helpful on this point, ideally including dedicated national guidance for third sector staff.</p>
	1.6.6	<p>The definition of lead professional in this paragraph, while helpful, states that "<i>local protocols [will be] in place to link the roles of the Named Person and the Lead Professional</i>". We recognise that there will need to be local flexibility in the delivery of GIRFEC – however, given the importance of the relationship between the Named Person and the Lead Professional, we think that stronger national practice frameworks will need to be developed to support local frameworks. Given that paragraph 11.8.5 recognises that Lead</p>

		Professionals may come from third parties, such as the voluntary sector, it is important that national and local practice guidance reflects this.
	1.6.24	<p>The definition of targeted intervention in this paragraph states that “<i>a distinction needs to be drawn between targeted interventions and services that are generally available</i>”, but that “<i>It will be for each health board, local authority and directing authority to indicate which services and support are available generally to children for whom they have a responsibility</i>”. This means that there may be very significant variations in practice across Scotland. Two children in neighbouring Local Authorities may have the same level of need, and receive the same intervention to address that need, but one may be deemed to be receiving a targeted intervention, and therefore require a child’s plan and lead professional, while the other may not. While we recognise the need for flexibility to match local circumstances, we feel a high level of national coherence is needed. Therefore a clear and detailed practice document, setting out examples of what is and what is not a targeted intervention, together with an overarching set of principles would be helpful.</p> <p>Work should also be done to ensure that a model of targeted interventions do not reinforce deficit based approaches to supporting children, rather than ones based on the assets and strengths children already have, and seeking to build resilience. This could usefully be incorporated here.</p>
Part 18/Section 96	2.5	We are concerned that some of the language in this section is not as direct as it would need to be to fully support individuals making wellbeing needs assessments. In particular, the matters covered under ‘safe’, which could be interpreted to mean a child is not safe if they are not protected from any avoidable situation which might result in that child being put at risk of harm. This does not relate clearly to the ability to manage risk mentioned in ‘active’. Equally, the matters covered in ‘responsible’ need to more clearly reflect the normal age and stage of development of a child.
	2.5	While noting that poverty is mentioned in 2.4.3 as “an influence that can have a negative effect on all the indicators of wellbeing”, we would like to see

		<p>poverty more explicitly referenced within 2.5. We would request that a phrase like “such as poverty and social exclusion” be added to the third bullet point explaining ‘included’, so it reads:</p> <p><i>Involves the removal of social, economic, cultural, religious and personal barriers, such as poverty and social exclusion, that prevent children, young people, and their families from accessing services, exercising their rights and engaging with their community, and society at large.</i></p>
	2.7.2	<p>This section makes it clear that “a wellbeing concern may be identified by the child or young person, or by anyone who knows and supports the child or young person”. We agree with this approach. However, in the discussion of the role of the named person in 4.1.21 (c), only parents or other professional are mentioned as sources of wellbeing concerns. We would like the language in 2.7.2 to be mirrored in 4.1.21.</p>
	2.9.2 & 2.12	<p>We think it is important and helpful that the statutory guidance makes clear the distinction between wellbeing concerns and child protection concerns, and identifies different routes for raising these different concerns. However it will be important to monitor how well these two statutory processes are working together in practice over time. It would be useful to have specific guidance for those who do not usually work on child protection issues to explain the difference between wellbeing concerns and child protection concerns, and explain the different procedures to be followed. It is not clear what the relationship between the named person (especially if the named person is also the lead professional), the Reporter and social work will look like in practice, and, again, national practice guidance would be very important to clarifying this in a consistent way across Scotland.</p>
	2.13.2	<p>This paragraph highlights other parts of the CYP Act that reference wellbeing, including 9(2)(a)(i). It would also be useful to highlight clause 9 (2)(a)(ii) – “that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising”. The term ‘needs’ in this clause should be interpreted as wellbeing needs, and this</p>

		is important context for the way planning for addressing wellbeing needs should be approached.
	2.13.11	Part 11 of the CYP Act is listed as another part of the Act (apart from 4, 5 and 18) that deals with wellbeing issues. We are not sure why this is, since the relevant parts of the section discuss situations where “the local authority considers that continuing to provide the care would significantly adversely affect the welfare of the person.” The reference is clearly to welfare, not wellbeing.
Section 19	4.1.4 & 11.8.4	This paragraph describes “good practice in the provision of a named person service”. It would be helpful if it was clear whether this was practice or statutory guidance, and there should also be recognition of the workforce implications of the measures listed. The discussion of ‘partnership arrangements’ in the third bullet point in 4.1.4 and 11.8.4 is very vague, and no other references are made to explain how such partnership arrangements are expected to work in practice.
	4.1.14	<p>This paragraph deals with situations where “a relationship breakdown between the child or parents and the Named Person would present a barrier to carrying out the functions to the best interest of the child’s wellbeing mechanisms should be in place to agree alternative arrangements for making the Named Person service available to the child and parents.”</p> <p>This is one of the most contentious issues in the legislation, and we welcome the greater clarity delivered through developing and redrafting this section. We agree that the approach outlined is appropriate, but believe that a Scotland-wide framework for the mechanisms required should be in place to ensure consistency of approach.</p>
	4.1.16 & 4.1.26	This paragraph makes clear that, among other things, the Named Person should have a clear understanding of how to work in partnership with parents and take account of their views in relation to the wellbeing of their child. We welcome the recognition that the named person will have to work in partnership with parents.

		<p>However, paragraph 4.1.26 states that “as far as is reasonably practicable, the Named Person should seek and consider the views of the parents before taking action.” The threshold of ‘reasonable practicality’ is a very vague one, and we are concerned that in practice, this language, and similar language used about parental engagement elsewhere in the guidance, may mean that the requirement for partnership with parents is not taken as seriously as it should be. We would therefore prefer paragraph 4.1.26 to read “Named Person should seek and consider the views of the parents before taking action, unless there are exceptional circumstances”.</p> <p>We would also suggest that the language of parental partnership in 4.1.16 is replicated in 1.1.6, adding “working in partnership with parents” to the list of key elements of GIRFEC</p> <p>In addition, it should be made clear that it is the responsibility of the named person service to ensure that individual named persons have a clear understanding of the points listed. This paragraph should therefore open with the statement that “The Named Person Service should ensure that individual named persons have a clear understanding of:”.</p>
	4.1.25	<p>We welcome this paragraph, and the clear implication that children and young people’s views must be sought and acted upon. However, we would like more clarity about the potential exceptions, by adding “only” after “exceptions wood” so the sentence reads “Exceptions would only be in cases involving very young babies or when involving the child (as described in the Act) would be detrimental to their wellbeing”.</p>
	4.1.30 and 4.1.31	<p>These sections describe situations where the Named Person for a child is absent, either on a planned or unplanned basis. The guidance states that it is for the Local Authority or health board to</p>

		<p>put in place “continuity arrangements” to deal with these situations. This was also a contentious issue in the legislation, and therefore requires more explanation of what such continuity arrangements look like, to ensure a consistent and appropriate services for children at all times, and address data sharing concerns.</p> <p>We are also uncertain about the meaning of the sentence “such contingency arrangements should be proportionate to the likely demands during school holiday periods”. Our assumption would be that the need for the named person service may well be higher at school holiday periods, as this is often a time when families move into crisis.</p>
	4.1.32	<p>This paragraph states that all Named Person service providers should have continuity arrangements in place to provide continual service in terms of:</p> <ul style="list-style-type: none"> <input type="checkbox"/> systems used to store information relevant to the Named Person function; <input type="checkbox"/> systems and processes used to convey information to the Named Person; <p>Has consideration been given to the implications of limited-term funding of third sector services, which store information relevant to the Named Person function or convey information to the Named Person? For example, what might be the role of a Child’s named person when a third sector Service (perhaps one named in the child’s plan) is to change or close?</p>
Section 21	6.1.11, 6.1.19, 6.1.23, 6.1.24	<p>This section deals with young people under 18 who are not in education, training, or employment. These young people may have a particularly high need for the support of a Named Person. While it is true that “nationally, a small proportion of leavers will not be participating in one of these post-school options”, this still amounts to around 30,000 young people in Scotland, and as the guidance notes this may be a high percentage of young people in some areas.</p> <p>We welcome the recognition in 6.1.19 that some</p>

		<p>young people who leave school before 18 will have significant long or short term needs, and that these young people may still require targeted interventions coordinated through a child's plan, and that this plan may continue on a non-statutory basis after the age of 18.</p> <p>The issue of effectively supporting young people with significant long or short term needs who leave school before 18 and then move Local Authority is particularly important. While we welcome the outline given in 6.1.23 and 6.1.24, such transition arrangements will need to be codified in a way that ensures consistency of support arrangements across all local authority areas.</p>
	6.1.24	We welcome the recognition that there need to be clear protocols in place where more than one Named Person is involved in working with a family as set out in 6.1.24. However, we believe it would be helpful to have at the very least clear principles setting out what any such local protocols should look like, if not a national Practice Guidance for managing these relationships.
Section 25	9.2.1	We welcome the proposal for consultation on a complaints procedure. However, even at this early stage we would prefer that the language used is about mediation with a view to reaching common understanding, rather than an adversarial complaints process.
	10.3.3	We welcome the increased clarity in this section that has come about through the drafting consultation, in particular on the importance of taking the views of parents into account.
	10.3.4	Matters relating to sexual behaviour are mentioned as an area where children or young people may not want information disclosed to a professional to be shared any further. It might be useful to reference in this regard sections 572-584 of the National Child Protection Guidance 2014 on Child Sexual Exploitation, including the discussion on disclosure.
	10.3.5	Paragraph 10.3.5 states that "Section 26(3) places an obligation on the Named Person service provider to share information with any other

		<p>service provider or any of the bodies listed in schedule 2 of the Act". It would be helpful to more explicitly link this statement with the recognition in 10.3.8 that the obligation in section 26 (3) covers both statutory service providers and bodies exercising a function on their behalf.</p> <p>The opening sentence might therefore better read "Section 26(3) places an obligation on the Named Person service provider to share information with any other service provider or any of the bodies listed in schedule 2 of the Act, or any third party delivering a function on behalf of such a body".</p> <p>This would make it clear that there is a requirement on named persons to share information, where appropriate, with non-statutory organisations, such as third sector bodies, delivering functions of statutory service providers. This would then make it clear that the reference in the final part of 10.3.5 to named persons needing to have a general awareness of what support is available in the area, should include both an awareness of statutory support and support that is delivered through third parties delivering functions on behalf of a statutory body.</p> <p>Named persons will therefore need to be clear that they should know which non-statutory organisations are delivering functions of statutory service providers to the children and young people they have responsibility for in order to be able to make the appropriate judgement about whether they have an obligation to share information with them. Further guidance and protocols on this would be helpful.</p>
	10.3.8	<p>We welcome this clause, but again feel that further guidance and protocols on this would be helpful. It would appear to indicate that before the commencement of these provisions, every contract or agreement between a service provider and relevant authority and a third party needs to be assessed as to whether it constitutes the delivery of a function, and if so how information sharing will be managed.</p>
	10.3.10	<p>This paragraph states that "if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the information</p>

		<p>provider's consent, unless it is completely necessary". We welcome the further explanation of the points in paragraphs 10.3.11 to 10.3.13 and section 10.4, but think there should be a more explicit reference to the National Child Protection Guidance at this point.</p>
Section 33	11.2.3	<p>Again, greater clarity is required around the threshold for an intervention to be considered an early intervention for this paragraph to be entirely clear. For example the Supporting children's learning code of practice (the Statutory Guidance relating to the Education (Additional Support for Learning) (Scotland) Act 2004), states that an "individualised educational programme describes in detail the nature of a child's or young person's additional support needs, the ways in which these are to be met, the learning outcomes to be achieved, and specifies what additional support is required, including that required from agencies from outwith education." Does the presence of an IEP constitute a targeted intervention? How should an IEP therefore relate to the child's plan?</p>
	11.2.4	<p>This paragraph highlights the fact that targeted interventions may be being delivered by "third sector organisation with no contracted arrangements, but which provides a service by arrangement with a relevant authority." More information needs to be given on how bodies that are delivering targeted interventions but are not delivering work under a contracted arrangement will be involved in the planning process. Again, it would also be helpful to have a clearer definition of a targeted intervention, so that a distinction could be made and clearly understood between third sector organisations with no contracted arrangements, but which provide a universal service to young people in the local area, by arrangement with a relevant authority, and those that provide a targeted intervention.</p>
	11.2.9	<p>It is not clear how Self-Directed Support arrangements, especially where the parent, not the Health Board or Local Authority, is the budget holder fit with what is currently described in 11.2 and 11.4. In these situations it may be the parent, not the lead professional, who ultimately decides</p>

		on the appropriate interventions.
Section 34	11.3.4	While we agree that "a Child's Plan should be easy to read, clear and succinct" without an explanation of the steps that will ensure this happens this may remain a purely aspirational statement. Therefore, we need to see more detail of how this aspiration will be realised, and what will happen if it is not.
Section 36	11.4.9	<p>While we agree that any "CSP should be fully integrated with the planning and review of the Child's Plan" and that "as far as possible, this should be a seamless process for the child, parents and practitioners" without an explanation of the steps that will ensure this happens this may remain a purely aspirational statement. Therefore, we need to see more detail of how this aspiration will be realised, and what will happen if it is not. As previously mention, it is also not clear where ASL IEPs fit into the child's plan.</p> <p>Again, this is something that could usefully be covered in a code of practice.</p>
	11.4.20 and 11.8.5	<p>11.4.20 states that the lead professional will be "the professional who is best placed to carry out the required co-ordinating role and work with the family to improve outcomes for the child."</p> <p>This is further clarified by 11.8.5 which states "Firstly, the individual who is to be the Lead Professional should be either an employee of the managing authority, or an employee of an organisation which carries out a service on behalf of the managing authority. As such this could include employees of third party organisations. However this should be clearly set out and defined in any contract or service level agreement the third party organisation has with the managing authority.</p> <p>We welcome the clarity that in some cases a third sector staff member may be the professional who is best placed to carry out the role, while recognising that in most cases the Lead Professional will be a direct employee of the managing authority. However, as previously stated, further guidance and protocols on this</p>

		would be helpful.
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