



Getting it right for every child  
Practice Guidance 4  
Information Sharing  
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## Practice Guidance – Getting information sharing right for every child

This is the fourth Practice Guidance in a series to help and support practitioners and managers embed and implement **Getting it right for every child (GIRFEC)** into their everyday practice. This guidance should be read in conjunction with the Scottish Government's **GIRFEC Policy Statement**, which refreshes our GIRFEC Values and Principles, and the Core Components of the approach.

The Guidance series is designed to provide further information on the key roles of GIRFEC, **Assessment of Wellbeing**, on how to use the **National Practice Model** and to guide our practice and provide clarity and confidence in **Information sharing**.

### The Practice Guidance

Practice Guidance 1. Using the **National Practice Model**

- Improving outcomes using the **Wellbeing Indicators (SHANARRI)**
- Gathering information with the **My World Triangle**
- Analysing information with the **Resilience Matrix**

Practice Guidance 2. The role of the **named person**

Practice Guidance 3. The role of the **lead professional**

Practice Guidance 4. Information sharing

### The Statutory Guidance

Assessment of Wellbeing – Part 18 (Section 96) of the Children and Young People (Scotland) Act 2014

## 1. Background

Getting it right for every child (GIRFEC) (see [glossary](#)) is the Scottish Government's commitment to provide all children, young people and their families (for definition of child or young person and family see [glossary](#)) with the right support at the right time - so that every child and young person in Scotland can reach their full potential.

This information sharing guidance is intended for practitioners (see [glossary](#) for definitions of information and practitioners) and service leads in services that work with children, young people and families. The guidance promotes lawful, fair and proportionate information sharing, which complies with all relevant legal requirements. This guidance refers at times to guidance from the Information Commissioner's Office (ICO), accessed in June 2022, licensed under the [Open Government Licence](#). The ICO provide specific guidance on Data Sharing and children ([Data sharing and children](#)).

This guidance aims to clarify the circumstances in which information can be shared with another agency (see [glossary](#)), the considerations that need to be taken into account to ensure sharing information with another agency is appropriate, and the importance of involving children, young people and families in the decision to share information (see [glossary](#)) with another agency.

It seeks to reassure leaders, managers and practitioners about how GIRFEC should be delivered within the current legislative and policy framework of rights, information sharing, and delivery of supports and services to children, young people and their families.

## 2. Introduction

With the [United Nations Convention on the Rights of the Child](#) (UNCRC) (see [glossary](#)) as its foundation, Getting it right for every child (GIRFEC) provides Scotland with a consistent framework and shared language for promoting, supporting, and safeguarding the wellbeing of children and young people. GIRFEC is based on evidence, is internationally recognised and is an example of a child rights-based approach. It is locally embedded and positively embraced by practitioners across children's services, changing culture, systems and practice for the benefit of children, young people and their families. However more needs to be achieved as we work towards [Keeping The Promise](#) to respect, protect and fulfil the rights of all children in Scotland.

Scotland must ... ensure that the right information is shared at the right time and that those close to children are heard. The starting point for any decision must be how to best protect relationships that are important to children.

[The Promise, the report of the Independent Care Review](#)

Sharing relevant information at the right time is an essential part of promoting, supporting and safeguarding the wellbeing of children and young people, including protecting them from neglect or physical, mental or emotional harm. [The Plan 21-24](#) is the first of three Plans providing Scotland with a clear outline of the priorities and actions required to Keep the Promise by 2030. Within this first set of priorities to be implemented by 2024, Scotland must be committed to ensure that:

“Organisations with responsibilities towards children and families will be confident about when, where, why and how to share information with partners. Information sharing will not be a barrier to supporting children and families.”

This guidance represents a significant milestone in delivering this.

This guidance is intended for practitioners and service leads in services that work with children, young people and families and focuses on information sharing. The [Information Commissioner's Office](#) (ICO) provide detailed guidance on all aspects of data protection compliance for all sectors, including the [Data sharing: a code of practice](#) as well as [Data sharing and children](#).

Processing of personal data (see [glossary](#)) by law enforcement organisations for specific law enforcement purposes (e.g. the Police investigating a crime) is outside the scope of this guidance.

When this guidance refers to information or data, it refers to personal information about living, identifiable people. This guidance promotes lawful, fair and proportionate information sharing that complies with all relevant legal requirements, by clarifying

- The circumstances in which information can be shared with another organisation;
- The considerations that need to be taken into account to ensure sharing information with another organisation is appropriate; and
- The importance of involving children, young people and families in the decision to share information with another organisation.

The UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 provide a framework to ensure that personal information is processed appropriately. Throughout this document, UK GDPR and DPA are referred to together as data protection legislation. Duties of confidentiality, the European Convention on Human Rights (ECHR) and UNCRC also apply to sharing information.

Data protection legislation enables fair and proportionate data sharing. It does not prevent or limit information sharing that is necessary and proportionate for the purpose of protecting children and young people from neglect or physical, mental or emotional harm.

These laws provide a framework in which information sharing can be carried out fairly and transparently, in a manner which respects the rights of the individuals concerned.

To support practitioners to work within and apply the law on information sharing, organisations should ensure that they have policies, procedures and guidance that provide the framework for lawful data processing, supported by accessible training, advice and supervision. This might include a data sharing agreement. Data sharing agreements set out the purpose of the data sharing, cover what happens to the data at each stage, set standards and help all parties involved in sharing to be clear about their roles and responsibilities. The ICO provide guidance on data sharing agreements ([Data sharing agreements](#)).

The information governance arrangements may vary between organisations depending on the nature and size and the types of personal data they are processing. For some organisations there may be a legal requirement to appoint a Data Protection Officer but for others this may not be the case. No matter who is sharing the data, robust policies and procedures should be in place. Organisations may benefit from joining a network or umbrella group that can provide support with information management processes and training. The ICO provide tools and guidance at [Data sharing information hub](#).

Practitioners are not expected to have the same level of knowledge as data protection officers or information governance leads, but should understand when and how it is appropriate to share information, and when they may need to seek further advice. In these situations, membership of wider networks may be especially valuable for smaller organisations.

This guidance is not intended to cover all routine information sharing (e.g. names, addresses, provided by schools to the local authority). Processes for these should be established in information sharing agreements (see [Data sharing: a code of practice](#)).

### 3. Key changes

The approach to information sharing for organisations has developed significantly since GIRFEC was initially introduced. Key changes highlighted in this document include:

- Parts 4 (named person) and 5 (child's plan) of the Children and Young People Act (Scotland) 2014 have not come into force and the intention of the Scottish Government is to repeal them. The role of named person (see [glossary](#)) does not create any additional authority to obtain information. However, some practitioners who fulfil the role of named person may have an existing role in relation to a child or young person (e.g. health visitor or head teacher) and in that capacity may have a lawful basis to process information. If a practitioner has significant concerns about a child or young person, they may share necessary information with the appropriate agencies and/or practitioners in response to their concerns, in compliance with data protection legislation. In some circumstances, it will be appropriate for information to be shared with the named person. No more information than necessary should be shared;
- An emphasis on building trusting relationships and being transparent with children, young people and families; and
- This guidance provides more clarity on information sharing for third sector organisations, and takes into account smaller, voluntary and community organisations that play a valuable role in sharing information to support a child or young person's wellbeing.

## 4. Key considerations

In order for information sharing to be lawful, the following conditions must be met:

- You must be fair and transparent (ICO provide guidance on this at [Principle \(a\): Lawfulness, fairness and transparency](#));
- You must keep a record of what information you have shared, with whom and for what purpose so that you can demonstrate that you have complied with data protection legislation;
- If you decide not to share information, keep a record of your rationale;
- You must be clear about what information you intend to share (e.g. whether it includes special category or criminal offence data) and the intended purpose (see [glossary](#) for definitions of special category data and criminal offence data);
- There must be at least one appropriate lawful basis (see [glossary](#)) e.g. a statutory or common law duty that creates a public task (see [glossary](#)) (Article 6 of the UK GDPR and section 8 of the DPA, (further guidance available at [Lawful basis for processing](#) and [Public task](#));
- If you are sharing special category data then you must also have an article 9 condition for processing (see [glossary](#) and [section 11](#));
- If you are processing criminal offence data you must either have official authority or you can identify a specific condition for processing in Schedule 1 of the DPA 2018 (see [section 11](#));
- The information sharing must be necessary for the specific purpose;
- There is no other reasonable way to achieve that purpose that interferes less with people's privacy;
- You must process personal data securely, with appropriate organisational and technical measures in place;
- The information that is shared must be the minimum necessary to achieve that purpose;
- The information sharing must not be against the common law duty of confidentiality; and
- To comply with ECHR Article 8, the information sharing must be in accordance with the law and necessary in a democratic society.

If the information is “special category data”, there are additional considerations. All of these conditions are explained in more detail in this guidance.

None of these conditions prevent you from sharing information in a proportionate way if you have concerns about protecting a child or young person's wellbeing.

This list is focussed on information sharing and is not an exhaustive list of data protection principles. More information can be found at [The principles](#).

## 5. Decision Making – the importance of sharing information

This guidance cannot aim to provide advice on decision making to cover the range of unique circumstances that people working with children, young people and families face. However, most situations will require the following key decisions:

### 5.1 What information do you hold and should this information be shared?

Ascertain what information you hold, the purpose for which you hold it and what benefit or outcome would be gained by sharing the information. Then consider what information sharing is necessary to achieve that outcome.

Once you have identified your purpose and the relevant data to be shared you need to ensure that you can comply with all the other data protection principles. Early sharing of appropriate information about wellbeing can be vital in preventing child protection (see [glossary](#)) issues occurring. The [Independent Care Review](#) highlighted that in many cases with tragic outcomes, Significant Case Reviews find that:

“Key information about a child was not shared timeously or not listened to. In many cases the information shared was not taken account of by the people who needed that information”.

If you are concerned about a child or young person’s wellbeing or a possible child protection issue, you should follow local child protection procedures.

In an emergency situation (e.g. safeguarding children or young people) you should go ahead and immediately (and without consent) share information as is necessary and proportionate. You should record the reasons why you have done as soon as possible afterwards. [Section 13](#) goes into more detail on information sharing in an emergency situation.

Concerns identified by one organisation may form part of a larger picture once shared appropriately with other organisations, enabling support to be offered before an issue becomes more serious.

In many cases, legislation places a duty on practitioners to take appropriate action, including sharing information to ensure the wellbeing of a child or young person.

In many situations information will need to be shared to enable a child, young person or their family to access a service or support that they have requested or agreed to. Sharing information in this way can prevent a child, young person or their family from being asked to repeat themselves.

## 5.2 Should the child, young person or family be asked for consent?

You should only ask for consent when this will genuinely affect whether the information is shared, and you will be relying on consent as the lawful basis (see [section 10](#)) for sharing information (see [glossary](#) for definition of consent). It is important that you do not give the impression that you are asking for consent if there is a lawful basis for sharing the information without consent and you have decided to share the information in the best interests of the child or young person. The ICO provide guidance at [Consent](#).

You can still seek a child, young person or families' views on sharing their personal information and use that to inform your decision making. Relying on a lawful basis other than consent does not preclude you from seeking their views.

It is appropriate to ask for consent where information sharing would enable a child, young person or family to access support that, while possibly helpful, is entirely optional.

**Example:** A school offers to refer parents (see [glossary](#)) to a local authority parenting support programme. The parents' participation in the programme is entirely optional. The school should advise the parents that they can contact the parenting support programme themselves; or the school could offer to make the referral. If the school makes the referral it would require to pass on the parents' contact details. Before doing so the school should seek the parents' explicit consent.

If appropriate, you should explain the possible consequences of withholding consent (for example, you might not be able to refer them to services that could help them).

Consent should be specific to the specific information-sharing circumstances.

**Example:** A parent has consented to information sharing for the purposes of a parenting support programme. In order for their information to be shared for another purpose, for example, a healthy eating programme, specific consent should be sought.

It will not be appropriate to seek consent if asking for consent could increase the risk of physical, mental or emotional harm to a child or young person; or if asking for consent could otherwise place a child or young person at risk. Under these circumstances there are other more appropriate lawful bases (see [glossary](#)).

In an emergency situation (e.g. safeguarding children or young people) you should go ahead and immediately (and without consent) share information as is necessary and proportionate. You should record the reasons why you have done as soon as possible afterwards. [Section 13](#) goes into more detail on information sharing in an emergency situation.

### 5.3 Can you share this personal information without consent?

Under data protection legislation you may share information without consent if in your judgement there is a lawful basis to do so. For example, if there is a child protection concern then you can share information for the purpose of protecting a child or young person from harm and the lawful basis would likely be public task or legal obligation (for more detail on information sharing in relation to child protection, see [section 14](#)). You will need to base your judgement on the facts about the case. When you are sharing or requesting personal information from someone, be clear about the basis upon which you are doing so. Be mindful that an individual might not expect information to be shared, and bear in mind the need for transparency ([Right to be informed](#)). Where a decision to share information without consent is made, a record of what has been shared should be kept.

### 5.4 Should the child, young person or family be asked for their views?

It is good practice, and in keeping with taking a child's rights-based approach to give the child or young person the opportunity to say what they think about the sharing of their information (in some circumstances, such as those listed at [5.5](#), this may not be appropriate). Their views should be taken into account and given due weight in accordance with their age and maturity, as part of any decision making process. This approach is rights-respecting and helps to ensure services respect the rights of children and young people. Advocacy (see [glossary](#)), translation or communication support may be helpful, or in some cases essential, to supporting children, young people and families to contribute their views. [Section 6, Rights of the child](#), discusses forms of communication that can be used.

Seeking the views of the child or young person should always be done in a safe, protected and trauma-informed way. Practitioners should consider what is in the best interests of the child or young person, and their wider rights, when seeking views which may increase their risk of physical, mental or emotional harm, or if asking for their views could otherwise place them at risk.

In an emergency situation (e.g. safeguarding children or young people) you should go ahead and immediately (and without consent) share information as is necessary and proportionate. You should record the reasons why you have done as soon as possible afterwards. [Section 13](#) goes into more detail on information sharing in an emergency situation.

### 5.5 Should the child, young person or family be informed?

Individuals have the [right to be informed](#) about the collection and use of their personal data. This is a key transparency requirement under the UK GDPR. Therefore the child, young person or their family should be informed about what information about them is being shared, with whom and for what purpose. There are circumstances where you may not have to inform the child, young person or family that you intend to share information. For example, where it would seriously impair the achievement of the objectives of the processing (e.g. you would not need to inform the child, young person or family that you intend to share information for the purposes of safeguarding a child or young person where the family members are being investigated for neglect of that child or young person).

You should not routinely rely on exemptions; you should consider them on a case-by-case basis. You should justify and document your reasons for relying on an exemption. There is more information on exemptions on the ICO's website [Exemptions](#).

## 6. Rights of the child

The GIRFEC approach is based on the UNCRC and puts the rights of the child at the heart of good practice.

The Scottish Government proposes to incorporate the UNCRC and First and Second Optional Protocols to the maximum extent possible into Scots law.

Article 12 of the UNCRC states every child and young person who is capable of forming his or her own views has the right to express those views freely in all matters affecting him or her, with those views being given due weight in accordance with the age and maturity of the child and young person.

In order to fulfil the rights under Article 12 where children and young people's views are not known on a matter that is likely to have an impact on them, those delivering public services should take steps to obtain their views. Therefore, Article 12 must inform the approach to participation of children and young people within the GIRFEC model.

A child or young person's capacity includes, among other things, their ability to understand different choices and make decisions. As children and young people grow and develop, they tend to develop the ability to make more decisions for themselves. In the UNCRC, this is referred to as a child's "evolving capacities". Children's capacity develops gradually, and it doesn't happen at the same speed for everyone – it depends on things like their experiences, education and maturity, as well as the complexity and magnitude of the decision being made.

There is no lower age limit on the right of the child or young person to express their views. Those seeking to understand the views of children and young people should give due consideration to the evolving capacity of the child or young person. It is not up to the child or young person to prove their capacity. A child is able to form views from pre-verbal stages.

Implementation of Article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, drawing and painting, through which very young children demonstrate understanding, choices and preferences.

Under the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#), children (aged 12-15) and young people (aged 16+) with additional support needs may have specific rights. These rights seek to ensure that children and young people can ask for their additional support needs to be identified and planned for; receive advice and information about their additional support needs; be fully involved in discussions and decisions about the support that they will receive; and access dispute resolution procedures to resolve concerns.

Children and young people have the same rights as adults over their personal information and where they are deemed to be competent to do so, are able to exercise their own data protection rights. More detailed guidance is available in [Children and the GDPR](#). Data protection legislation provides that in Scotland, children aged 12 or over are presumed to be mature enough to provide their own consent or exercise the rights conferred by data protection legislation, unless there is any reason to think that they are not.

In many circumstances, the sharing of information about a child or young person will be permitted without having to obtain the consent of the relevant child or young person.

In the interests of openness and transparency, as explained in section [5.4](#) (Should the child, young person or family be asked for their views?) and [5.5](#) (Should the child, young person or family be informed?) children, young people and families should be supported to fully participate in discussing how sharing information could support the child or young person's wellbeing. Their views should be taken into account and given due weight in accordance with their age and maturity, as part of any decision making process. However, in some circumstances, this may not be appropriate.

The child, young person or their family should at least be informed about what information about them is being shared, with whom and why this is necessary, unless you have justifiable and lawful reasons for disclosing a child or young person's information without their knowledge.

## 7. Transparency in information sharing

GIRFEC is a strengths-based approach that seeks to realise children's rights on a day to day basis and is therefore underpinned by key values and principles:

- Placing the child or young person and their family at the heart, and promoting choice, with full participation in decisions that affect them;
- Working together with families to enable a rights-respecting, strengths-based, inclusive approach;
- Understanding wellbeing as being about all areas of life including family, community and society;
- Valuing difference and ensuring everyone is treated fairly;
- Considering and addressing inequalities;
- Providing support for children, young people and families when they need it, until things get better, to help them to reach their full potential; and
- Everyone working together in local areas and across Scotland to improve outcomes for children, young people and their families.

Transparency in information sharing is included in the key data principles set out in UK GDPR ([The principles](#)) and is key to working together with children, young people and families, respecting their rights and placing them at the heart.

Where possible, children, young people and families must be informed, from the outset, what personal information the organisation will require, why and what they do with the information. If any routine information sharing is necessary, children, young people and their families must be informed with whom it is shared, why and what the recipient will do with the information. If the organisation shares information without consent in certain circumstances, this should be explained in a way that they understand.

This is usually included in a privacy notice, provided at the time the service collects personal information from children, young people and families. This should be clear and easily understandable and age appropriate. Privacy information can also be given verbally or by other means.

If information has come from a source other than the individual themselves and the child, young person and their family are not already aware that it has been shared for a particular purpose, you will need to inform the child, young person and/or family member concerned:

- within a reasonable period of obtaining the personal information and no later than one month;
- if the information is used to communicate with the child, young person and/or family member, at the latest, when the first communication takes place; or
- if you can foresee a situation where you would need to disclose the information to someone else, at the latest, when you disclose the information.

Privacy information should make it clear that in some circumstances information can be shared immediately and without informing the person first if, for example, providing the information would seriously impair the achievement of the purpose of the processing. This means that if you believe a child or young person may be at risk of physical, mental or emotional harm, information can be shared immediately, and without informing the child, young person and their family first.

More detailed information on privacy notices is available from the Information Commissioner's Office: [Right to be informed](#).

Additionally, the GIRFEC information sharing charter (Annex B) explains how children, young people and families can expect organisations to manage their personal information and respect their rights under the data protection legislation. The charter can be tailored for the needs of individual services and is available in accessible formats. It is good practice for services that work with children, young people and families to make the charter available.

## 8. Professional Judgement

A culture of appropriate information sharing starts with leadership that values the voice and opinion of children and the workforce. Leaders must model an approach that encourages a culture of speaking up and recognises the judgment of the workforce.

[The Promise](#)

Professional judgement is always required about the needs, risks or concerns in each set of circumstances and what information, if anything, is relevant, proportionate and necessary to share in relation to these. The needs, risks or concerns must be placed in the context of available observed and recorded information about the child or young person in their current circumstances.

You should share information that is adequate, relevant and limited to what is necessary for the purpose for which you are sharing the information ([Principle \(c\): Data minimisation](#)). In deciding what to share you should also consider the rights of the child under Articles 12 and 16 of the UNCRC.

Your record of decisions should evidence how data protection compliance has been considered.

## 9. Seeking advice

If in doubt about any aspect of information sharing, you should seek appropriate advice. Further consultation may be necessary with those responsible for information or care governance. If possible, you should seek advice without disclosing any information that could identify the individual. It should be recorded if advice was sought, from whom and what the advice was, whether information is shared or not at that time.

Within health services, a Caldicott Guardian is a senior person appointed to ensure that personal information about those who use its services is used lawfully, ethically and appropriately. Caldicott Guardians provide leadership and informed guidance on complex matters involving confidentiality and information sharing ([Caldicott Manual 2017](#)).

Outwith health services, arrangements vary, and will depend on the size and nature of the organisation and the types of personal data they are processing, but there must be processes and policies in place for practitioners to refer to. No matter who is sharing the data robust policies and procedures should be in place. Organisations may benefit from joining a network or umbrella group that can provide support with information management processes and training. The ICO provide tools and guidance at [Data sharing information hub](#).

## 10. Lawful bases for sharing information

Every time you process personal information, including sharing it with another organisation, you must have a lawful basis. A “lawful basis” is a reason or justification for sharing information recognised by data protection law (see [Article 6 of the UK GDPR](#)). There are six lawful bases that may apply. For special category data, you must also identify a separate condition for processing under Article 9; there are also greater protections for information relating to criminal convictions and offences (including allegations) for more detail on special category and criminal offence data, see [section 11](#).

The six lawful bases are summarised below:

**Public interest or public task** - Necessary for performance of a specific task carried out in the public interest which is laid down by law, or in the exercise of official authority - for example, a public body’s tasks, functions, duties or powers set out in law (see [glossary](#) for definition of public body).

**Vital interests** - Necessary to protect someone’s life or, for example, if a child or young person is deemed to be at risk of significant harm. You cannot rely on vital interests for special category data if the individual is capable of giving consent, even if they refuse their consent.

**Legal obligation** - Necessary to comply with a common law or statutory obligation.

**Consent** - The individual has given clear consent for their information to be shared for a specific purpose.

**Legitimate interests** - Necessary for your legitimate interests or those of a third party, unless there is a good reason to protect the individual’s personal information (cannot apply for a public authority sharing information to perform official tasks).

**Contract** - When necessary in performance of a contract entered in to by an individual and therefore unlikely to be relevant in this context.

**Reference:** [Lawful basis for processing](#);

It may be useful to refer to the [Lawful basis interactive guidance tool](#)

### 10.1 Public Task

For public bodies such as health, education and social work, **public task is likely to be the most relevant lawful basis**. Public task may provide the lawful basis for third sector and independent organisations to share information in situations where the organisation is commissioned to provide a service on behalf of public authorities.

Public task means processing personal information that is “necessary for the performance of a task carried out in the public interest or in the exercise of official authority”. You do not need a specific statutory power to process personal information, but the specific task or official authority must be laid down by law (for example, National Health Service (Scotland) Act 1978, Children (Scotland) Act 1995, Standards in Scotland’s Schools etc. Act 2000).

The processing must be necessary. You cannot use public task as the lawful basis if you could reasonably carry out the task or exercise your powers in a way that means less interference with people's privacy.

Public task applies to most situations where someone working in a public body has concerns about a child or young person's wellbeing that they have assessed needs to be shared with another agency. Organisations should have policies and processes for staff, which they can follow, which signpost the relevant public task.

The Information Commissioner's Office provide a more detailed explanation of what is meant by public task: [Public task](#).

### **10.1.1 What does "necessary for the performance of a task carried out in the public interest or in the exercise of official authority" mean?**

In situations where information sharing is necessary to deliver a service, children, young people and families should be informed before they agree to engage with the service, what information needs to be shared, with whom, and for what purpose.

In many cases, it will be clear whether processing is necessary or not. For example, if you are concerned about protecting the wellbeing of a child or young person. However, for the processing to be necessary, you must make sure that any information you share is:

- targeted so that you are not sharing more information than necessary; and,
- proportionate to the aim.

You should take into account:

- the sensitivity of the information,
- the purpose of sharing, and
- whether there is a way to achieve the aim that interferes less with the person or people's privacy.

It may be that you have to share information about a parent or sibling (not just the child or young person) in order to achieve support for a child or young person. When sharing personal information, you must consider and respect each individual's rights, and identify a lawful basis for each person.

You should record your actions, the reasons for them, and any views expressed. See [section 12, Recording decisions and the reasons for decisions](#), for more detail.

## **10.2 Legitimate interests as a lawful basis**

Public bodies cannot rely on legitimate interests unless they are processing for a legitimate reason other than performing their tasks as a public body, so it is unlikely to be the most appropriate lawful basis for public bodies to share information. However, it may be the most appropriate lawful basis for third sector and independent organisations if the conditions explained below are met.

The ICO guide to UK GDPR states:

- Legitimate interests is the most flexible lawful basis for processing, but you cannot assume it will always be the most appropriate.
- It is likely to be most appropriate where you use people's information in ways they would reasonably expect and which have a minimal privacy impact, or where there is a compelling justification for the processing.
- If you choose to rely on legitimate interests, you are taking on extra responsibility for considering and protecting people's rights and interests.
- There are three elements to the legitimate interests basis. It helps to think of this as a three-part test. You need to:
  - identify a legitimate interest;
  - show that the processing is necessary to achieve it; and
  - balance it against the individual's interests, rights and freedoms.
- The legitimate interests can be your own interests or the interests of third parties. They can include commercial interests, individual interests or broader societal benefits.
- The processing must be necessary. If you can reasonably achieve the same result in another less intrusive way, legitimate interests will not apply.
- You must balance your interests against the individual's. If they would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to override your legitimate interests.
- Keep a record of your legitimate interests assessment (LIA) to help you demonstrate compliance if required.
- You must include details of your legitimate interests in your privacy information.

Information Commissioner's Office, [Legitimate interests](#), accessed 14 June 2022, licensed under the [Open Government Licence](#).

## 10.3 Consent

Data protection legislation sets a high standard for relying on consent as a lawful basis, including that the person must have been able to disagree without being concerned about the consequences (i.e. there must be no imbalance of power). ICO guidance states that public authorities and other organisations in a position of power over individuals should not rely on consent unless they are confident they can demonstrate it is freely given (explained in more detail below, see also [When is consent appropriate?](#)).

**Example:** A school offers to refer parents to a local authority parenting support programme. The parents' participation in the programme is entirely optional. The school should advise the parents that they can contact the parenting support programme themselves; or the school could offer to make the referral. If the school makes the referral it would require to pass on the parents' contact details. Before doing so the school should seek the parents' explicit consent.

If the conditions are not met for public task, vital interests or legitimate interests (for example there are no concerns over harm that would justify sharing information), third sector, voluntary and independent organisations may be able to rely on consent as a lawful basis.

It is essential that consent is “specific and informed” and “freely given” in order for consent to be relied on as the lawful basis. Although there is no lower age limit on the right of the child or young person to express their views, data protection legislation provides that in Scotland, children aged 12 or over are presumed to be mature enough to have legal capacity to provide their own consent or exercise the rights conferred by data protection legislation. A determination of their capacity would be required to assert this is not the case.

Advocacy, translation or communication support may be helpful, or in some cases essential, to ensuring children, young people and families fully understand and are able to provide informed and freely give consent.

When consent is used as a lawful basis, the consent must be recorded and the record kept for as long as the information is stored, used or shared based on the consent. If consent is withdrawn, this does not affect the lawfulness of any information sharing that has taken place up to the point of the withdrawal of consent. It simply means that no further information sharing that is based on consent can take place from the time at which the consent is withdrawn.

### 10.3.1 What does “specific and informed” mean?

This means that you must explain to people in a way they can easily understand:

- The data controller's identity (who/which organisations will use or store the information and with whom it will be shared);
- The purposes of the processing (what they will use the information for);
- The processing activities: again, where possible you should provide granular consent options for each separate type of processing, unless those activities are clearly interdependent – but as a minimum you must specifically cover all processing activities; and
- The right to withdraw consent at any time (it is good practice to explain how to withdraw consent).

### 10.3.2 What does “freely given” mean?

Consent can only be freely given if the child or young person can refuse consent without being concerned about any possible consequences. Although the GIRFEC approach promotes choice and full participation, there are likely to be situations where children, young people and their families may feel that there will be negative consequences if they do not agree with the organisation or services, so the option to disagree is not open to them. This is what is meant by a power imbalance.

Consent can only be the lawful basis if there is no power imbalance. This might be possible if, for example:

- the child, young person or their family have no reason to be concerned about the consequences of not providing consent; and,
- it is clear that consent is optional and the decision will not affect the relationship between the child, young person or their family and the practitioner/service, or any support they receive.

In an emergency situation (e.g. safeguarding children or young people) you should go ahead and immediately (and without consent) share information as is necessary and proportionate. You should record the reasons why you have done as soon as possible afterwards. [Section 13](#) goes into more detail on information sharing in an emergency situation.

## 10.4 Vital Interests

There may be circumstances where vital interests (i.e. necessary to protect someone’s life or, for example, if a child or young person is deemed to be at risk of significant harm) is the most relevant lawful basis.

## 11. Special Category and criminal offence data (including allegations)

Information that you are considering sharing will often be “special category data” and this information may be especially relevant to understanding the situation (see [glossary](#)). Special category data is data that is sensitive and personal (for example, information concerning health, religion, ethnic origin, sex life, or sexual orientation). Data protection law provides greater protection for this information because of its sensitive nature. For example, to share special category data for the performance of a public interest task you would also need to demonstrate that you could meet one of the specific conditions in Article 9 of the UK GDPR e.g. that it was necessary for reasons of substantial public interest and in accordance with law.

There are also greater protections for information relating to criminal convictions and offences (see [glossary](#)). In addition to identifying an Article 6 lawful basis for processing, you can only process criminal offence data if the processing is either:

- [under the control of official authority](#); or
- authorised by domestic law. This means you need to meet one of the [conditions in Schedule 1](#) of the DPA 2018.

You should be assured that if you have concerns about a child or young person’s physical, mental or emotional well-being, data protection legislation does not present a barrier to sharing information.

This is a complex area and organisations should have protocols in place, including an appropriate policy document, to support practitioners to ensure that if they process special category and criminal offence data, that they do so lawfully. You should be able to recognise when you are sharing special category data or criminal offence data, understand that it needs particular protection and carries a higher risk and ensure that you are familiar with and sharing in accordance with relevant organisational data sharing agreements, protocols and policies. You should seek advice if in any doubt.

Further guidance can be found on the ICO website:

- [What are the conditions for processing?](#)
- [What are the substantial public interest conditions?](#)
- [Special category data](#)
- [Criminal offence data.](#)

## 12. Recording decisions and the reasons for decisions

There may be a data sharing agreement in place for certain routine data sharing.

If you need to share personal information with another service and it is not covered by a data sharing agreement, you should document your decision and the reasons for those decisions. This will help to demonstrate compliance if required. An information sharing checklist is available from the ICO that may be helpful ([Annex A: data sharing checklist](#)).

If a decision is made to share information the following should always be recorded:

- What information you have shared, and with whom;
- Your reasons for sharing information;
- Any views expressed in relation to information sharing;
- If the person concerned has not been informed, the reasons for this;
- Why you think it is necessary and proportionate to share information;
- The lawful basis for sharing [Lawful basis for processing](#); and,
- If the decision is not to share some or all of the information, this decision and the reasons should also be recorded.

Information sharing decisions must be based not only upon considerations about the safety and wellbeing of the individual, but also considering the safety of others.

## 13. Information sharing for Child Protection

[National Guidance for Child Protection in Scotland](#) states:

Where there is a child protection concern, relevant information should be shared with police or social work without delay, provided it is necessary, proportionate and lawful to do so.

If there is a child protection concern, consent is not required. The relevant section of the National Guidance for Child Protection guidance is “Information Sharing: Inter-Agency Principles” 1.128 to 1.147.

In an emergency situation (e.g. safeguarding children or young people) you should go ahead and immediately (and without consent) share information as is necessary and proportionate. You should record the reasons why you have done as soon as possible afterwards. As far as possible, where practitioners may be required to make decisions of this nature, organisations should plan for and train their staff for data sharing in emergency situations, and should carry out Data Protection Impact Assessments to cover the type of emergency situation that might occur, and have protocols in place to support necessary, proportionate and safe data sharing in these circumstances. The ICO provide guidance at [Data sharing in an urgent situation or in an emergency](#).

## 14. Confidentiality

In addition to data protection laws, there is a common law duty of confidentiality when information, particularly sensitive information, is obtained in circumstances where the person confiding personal information would reasonably expect that it will be held in confidence (this may be express or implied). It applies only to information not already in the public domain.

If you are considering disclosing information that may be confidential you should consider:

- Does the information have the necessary “quality of confidence” - is the information confidential in nature?
- Was the information communicated in circumstances giving rise to an obligation of confidence? This may be expressed or implied from the circumstances.
- Is there an over-riding interest sufficient to outweigh the duty of confidentiality? For example, the welfare of the child or young person.

Unless the person to whom the confidential information has consented, you must only share sensitive and confidential information where the information sharing is necessary and proportionate. For example, where there is an over-riding interest which is so serious that it outweighs the duty of confidentiality – such as a safeguarding concern.

If the requirements for processing special category data and under ECHR Article 8 have been met (e.g. the information sharing is in the best interests of the child or young person and is proportionate, the minimum necessary etc.) then it is likely that the information sharing will not breach the common law duty of confidentiality.

Some professional regulatory bodies have codes of practice in place which explain the duty of confidentiality as applicable to their members.

## 15. Article 8 European Convention on Human Rights (ECHR) and Article 16 of the UNCRC

Article 8 of the ECHR – Right to respect for private and family life states:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 8 gives everyone the right to respect for their private and family life, their home and their correspondence. Sharing personal information is likely to interfere with that right. For that interference to be lawful, the information must be shared in a way that is proportionate to the achievement of a legitimate aim.

[Annex D](#) provides details of the two-part test that needs to be met to ensure that children, young people and family member's human rights are respected and that any interference is justified as lawful and proportionate. Provided the information sharing is compliant with data protection legislation and you assess the information sharing in the particular circumstances to be in the best interests of the child or young person and to promote, support or safeguard their wellbeing, the conditions of the first part of the test will be met.

In addition, the impact on the person's right to privacy must not be disproportionate to the aim of sharing. If there is an alternative option, which is less intrusive but still achieves the aim, then the interference with an individual's private and family life will be disproportionate.

You must share the minimum confidential or sensitive information necessary with the minimum services or individuals necessary in the interests of the child or young person.

Article 16 of the UNCRC provides a similar right to privacy, but provided that you comply with the Article 8 test you will not breach Article 16.

## 16. Sharing Information for assessment and planning

Local authorities and health boards have specific legal duties to promote the health and welfare of people living in their local area. The GIRFEC approach provides a common framework which puts the child or young person at the heart and helps children, young people and families get the right support from the right people at the right time.

Within this approach, as part of the assessment and planning process, it is important to take an ecological, holistic approach to develop a full understanding of the child or young person's world. Where there is a multi-agency plan for a child or young person, collaborative working together with the child, young person and their family in the child or young person's best interests will involve information sharing to understand the strengths and achievements in relation to the child, young person and their family.

More detail on planning will be included in guidance specifically on planning for children.

## 17. Chronologies

A chronology (see [glossary](#)) is a timeline of child, young person and family circumstances. It provides a record of key events in the order that they happened. Chronologies may be put together by one or more agency to help them understand how to support a child, young person or family. Chronologies can help prevent people having to keep repeating what has happened in their lives. Guidance on chronologies will be provided in guidance on planning for children within the GIRFEC approach. In brief, you should give the same consideration to the information shared within chronologies as you give to other information sharing.

When contributing to, developing, sharing or storing a chronology you should consider the following principles:

- Only the minimum amount of information should be shared that is necessary for the identified purpose;
- Information should not be further shared or processed in any manner incompatible with the purpose(s) specified;
- Information should not be kept longer than is necessary for the purpose identified to the individual to whom it relates; and
- If sharing or use of information may negatively interfere with an individual's private and/or family life then this interference must be legitimate, appropriate and proportionate to the concerns.

## Annex A - Glossary of Terms

### **Advocacy**

Advocacy can mean different things in different contexts. In this context, advocacy is empowering children and young people to make sure that their rights are respected and that their views and wishes are fully considered and reflected in decision making about their own lives.

### **Advocate/Advocacy Worker**

Someone who provides advocacy. In many situations, this person should be a trained, professional advocacy worker.

### **Agency/agencies**

In this suite of documents the term 'agency/agencies' means an organisation or business providing a particular service.

### **Child or young person**

An individual who has not yet attained the age of 18 years.

### **Child protection**

The processes involved in consideration, assessment and planning of required action, together with the actions themselves, where there are concerns that a child or young person may be at risk of harm from abuse, neglect or exploitation.

### **Children's human rights and UNCRC**

Human rights are the basic rights and freedoms which we all have in order to live with dignity, equality and fairness, and to develop and reach our potential. Human rights are a list of things that all people – including children and young people – need in order to live a safe, healthy and happy life.

The European Convention on Human Rights (ECHR) has been incorporated into UK domestic law through the Human Rights Act 1998 (HRA). Everyone, including children and young people, has these rights, no matter what their circumstances. Under international law, States/Governments are obliged to respect, protect and fulfil human rights. Those delivering public services should respect human rights when they make decisions, plan services and make policies.

Children's human rights span the entire spectrum of civil, political, economic, social, cultural and environmental rights. Children and young people also have additional rights that recognise that childhood is a special, protected time, in which children and young people must be allowed to grow, learn, play, develop and flourish with dignity. Specific human rights for children are set out in the UN Convention on the Rights of the Child (UNCRC). The UNCRC offers a vision of the child as an individual and as a member of a family and community. By recognising children's rights in this way, the Convention firmly sets the focus on the child as a whole and multi-faceted person. It is important to be clear that all rights are equal; there is no hierarchy of human rights.

We know that children and young people face unique barriers to realising their rights. Their future often depends on the action taken by adults to implement their rights in practice. As children their voices can be unheard, or more easily dismissed. For that reason, the UNCRC recognises that children and young people are human beings with fundamental rights that are written into international law. It also makes clear that special action needs to be taken to ensure those rights are respected, protected and fulfilled. As one of the core United Nations (UN) human rights treaties, the UNCRC helps to safeguard the dignity and the equal and inalienable rights of all children and young people. It does this by making sure that important rights set out in other international human rights treaties are applied in a way that is relevant and appropriate to the needs of all children and young people.

### **Chronologies**

A chronology is a timeline of child or young person and family circumstances. It provides a record of key events in the order that they happened.

### **Consent**

In the context of information management, a person's freely given, informed, clear and specific agreement to their personal information being processed. 'Freely given' and 'informed' are explained at section 10.3.

### **Criminal offence data**

This is personal information about criminal convictions and offences or related security measures. UK GDPR gives extra protection to criminal offence data. This includes information about offenders or suspected offenders in the context of criminal activity, allegations, investigations and proceedings. It also includes information about unproven allegations and information relating to the absence of convictions, and covers a wide range of related security measures, including personal information about penalties, conditions or restrictions placed on an individual as part of the criminal justice process, or civil measures which may lead to a criminal penalty if not adhered to. The ICO provide more detail at [Criminal offence data](#).

### **Data/information**

Data means raw facts and figures, and information is data that has been managed, put into a context, often in order to make sense of it. In the interests of avoiding overly complicated technical details, within this guidance, references to information or data should be taken to mean both, and refer to information about living individuals.

### **Family/families**

Not all family units look the same. In this suite of documents the term 'families/family' can mean adoptive, biological, foster, kinship, extended, composite and others, for example settings and homes that have felt like family. Some children and young people may belong to more than one family.

## **Getting it right for every child**

This is Scotland's national approach to promoting, supporting, and safeguarding the wellbeing of all children and young people. It provides a consistent framework, shared language and common understanding of wellbeing. GIRFEC puts the child or young person at the heart and helps children and young people get the right support from the right people at the right time.

## **Information/data**

Data means raw facts and figures, and information is data that has been managed, put into a context, often in order to make sense of it. In the interests of avoiding overly complicated technical details, within this guidance, references to information or data should be taken to mean both, and refer to information about living individuals.

## **Lawful basis**

A reason or justification for sharing information that is recognised by data protection law.

## **Lawful bases**

The plural of lawful basis.

## **Named person**

This is a clear point of contact for times when children, young people and families require information, advice or help. The named person is mainly provided by health and education services and is usually someone who is known to the child, young person and family and who is well placed to develop a supportive relationship with them. Local arrangements and the term used to describe this role or function may vary from area to area. A named person can help children, young people and families access relevant support for a child or young person's wellbeing. Where there is a child's plan in place, the named person will work alongside the lead professional, continuing to provide general advice or support, while the lead professional will be the point of contact in relation to the plan. In some cases the named person will also be the lead professional.

## **Parent**

This document uses the term "parent" within the meaning of section 15 of the Children (Scotland) Act 1995. The term "parent" includes a person who is a genetic parent of a child, a parent by adoption, and those who are parents by virtue of Human Fertilisation and Embryology legislation. In this document, the term also embraces a person who has parental responsibilities in relation to the child or young person, who has care of the child or young person, or who is a guardian of the child or young person whether appointed by parents or the court.

## **Practitioner**

In this guidance, practitioner means any person involved in working with children, young people and/or families, whether on a voluntary basis or through paid work. In addition to roles typically thought of as working with children and young people such as health visitors and teachers; this includes wider activities that work with children, young people and families, such as housing services or police.

## **Processing**

Doing almost anything with data is processing; including collecting, recording, storing, using, analysing, combining, disclosing or deleting it.

## **Public body**

Any organisation that is publicly funded to deliver a public or government service. This includes health, education, social work, housing, police and many others.

## **Public task**

Processing personal data “in the exercise of official authority”. This means public functions and powers that are set out in law, or to perform a specific task in the public interest that is set out in law. Public task is explained in more detail in [section 10.1](#).

## **Special category data**

Information that is sensitive and personal (for example, information concerning race, ethnic origin, politics, religion, trade union membership, genetics, biometrics used for ID purposes, health, sex life, or sexual orientation). Data protection law provides greater protection for this information because of its sensitive nature.

## Annex B - Information Sharing Charter – Children and Young People

A charter is a guide to your rights. This charter explains how you can expect this organisation to manage information about you and aims to make your rights to do with your personal information easier to understand.

[Getting it right for every child \(GIRFEC\)](#) is Scotland's way of promoting, supporting, and safeguarding the wellbeing of children and young people. GIRFEC puts the rights of the child at the heart of good practice, including what happens with information about you.

We need some information about you so that we can provide a service (e.g. so that we contact you) and so that we can support your wellbeing.

The Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR) lay down rules on how services (e.g. schools, health services and voluntary services) must manage information. The Information Commissioner's Office (ICO) is an independent regulator that protects your rights when it comes to information about you. More information can be found at [ico.org.uk](https://ico.org.uk) or contact ICO Scotland on 0303 123 1115.

### Charter commitments

1. We will explain, as much as we can, what we are doing with your information and why.
2. We will not put you under pressure to agree to share information. We will explain what information we need to support you and why. Sometimes sharing information makes it easier to get more support.
3. When you become involved with our service, we will be clear about what information sharing will be necessary, with whom, why and what will be done with the information. For example, to help you get support from another service, we might need to pass on some information about you. In some situations this may save you repeating yourself to lots of people.
4. We will not share information about you further, or use it for anything that we have not told you about, unless we are worried that you may be at risk of harm. If we have to share information without your agreement, we will only share what is needed.
5. If you are under 12 your parents/carers have rights to ask if we hold information about you, what we use it for, and to ask to be given a copy of that information and to be told who the information has been shared with. If you are 12 or over, you have the right to ask for information about yourself. If we do not give you the information we will explain why. If you are under 12 the law does not give you this right but you can still ask. If we do not provide the information we will explain why.

6. We will keep information about you accurate and up to date for as long as we need it for the purpose for which it was obtained.
7. We only keep information for as long as we need it for the purpose for which it was obtained. Every organisation has its own rules for how long they keep information before they delete or destroy it.
8. If you don't agree with information that we hold about you, you and your parents/carers have the right to tell us and ask for it to be changed or deleted. We will consider your request and explain what happens next. If you are not happy with our decision you can complain to the Information Commissioner's Office (<https://ico.org.uk/make-a-complaint/>).
9. We store and process information about you securely and protect it from being accessed or used, when it shouldn't be, and from being lost or damaged.
10. We have a privacy notice that explains in more detail how we collect, store, use and share personal information.
11. If you think information about you has not been managed correctly, you can tell us. If you're unhappy with our response or if you need advice, you can contact the Information Commissioner's Office (<https://ico.org.uk/make-a-complaint/>).

## Annex C - Information Sharing Charter – Parents and Carers

This charter explains how you can expect information about you/your child to be managed and aims to make your privacy rights easier to understand.

Getting it right for every child (GIRFEC) is Scotland's way of promoting, supporting, and safeguarding the wellbeing of children and young people. GIRFEC puts the rights of the child at the heart of good practice, including the right to privacy.

We need some information about you/your child so that we can provide a service (e.g. so that we contact you) and so that we can support your child's wellbeing.

The Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR) sets out how services (e.g. schools, health services and voluntary services) must manage information. The Information Commissioner's Office (ICO) is an independent organisation that ensures information rights are protected. More information can be found at [ico.org.uk](https://ico.org.uk) or contact ICO Scotland on 0303 123 1115.

### Charter commitments

1. We will explain, as much as we can, what we are doing with information about you/your child and why.
2. We will not put you under pressure to agree to share information. We will explain what information we need to provide a service and what services cannot be provided without some information being shared.
3. When your child becomes involved with our service, we will be clear about what information sharing will be necessary, with whom, why and what will be done with the information. For example, to help your child get support from another service, we might need to pass on some information about you/your child. In some situations, this may save you and your child repeating yourselves to lots of people.
4. We will not share information about you/your child further, or use it for anything that we have not told you about, unless we are concerned that a child may be at risk of harm. If we have to share information without your agreement, we will only share the minimum needed.
5. If your child is under 12, you have the right to ask if we hold information about you or your child, what we use it for, to ask for a copy of that information and to ask who the information has been shared with. If your child is 12 or over, they have the right to ask for information about themselves. If your child is under 12 they do not have this right in law but they can still ask. If we do not provide the information we will explain why.
6. We will keep information about you and your child accurate and up to date for as long we need it for the purpose for which it was obtained.
7. If you don't agree with information that we hold about you or your child, you and your child have the right to tell us and ask for it to be changed or deleted. We will consider your request and explain what happens next. If you are not happy with our decision you can complain to the Information Commissioner's Office (<https://ico.org.uk/make-a-complaint/>).

8. We store and process information about you/your child securely and protect it from being accessed or used when it shouldn't be, and from being lost or damaged.
9. We only keep information for as long as we need it for the purpose for which it was obtained. Every organisation has its own rules for how long they keep information before they must delete or destroy it.
10. We have a privacy notice that explains in more detail how we collect, store, use and share personal information.
11. If you think information about you/your child has not been managed correctly, you can tell us. If you're unhappy with our response or if you need advice, you can contact the Information Commissioner's Office (<https://ico.org.uk/make-a-complaint/>).

## Annex D - Frequently Asked Questions

### Why seek consent to share information if it will be shared anyway?

You should not seek consent if the information will be shared anyway. If the information will be shared anyway, you should explain to the child, young person or family why their information is being shared, what will be shared and with whom, and how it will help.

In situations where consent is not being asked for the sharing of information, it is good practice to give the child or young person the opportunity to say what they think about the sharing of their information. Please see [section 5.4](#) for more detail on seeking views.

You should seek consent if information sharing does genuinely depend on a child, young person or family's consent, and consent will be relied on as the lawful basis.

### When should I seek consent to share information and when do I not need to?

You should seek consent when there is a genuine choice as to whether the information is shared.

**Example:** A third party provider offers support services for families. You offer the parents the choice whether or not to seek that support and whether they want to obtain that support directly or with your assistance. If the parents choose to take up the support with your assistance then in advance of sharing information with that third party provider you would seek the consent of the parents to share the relevant information.

It is important that you do not give the impression that you are asking for consent if you have already decided to share the information in the best interests of the child or young person. Before asking for consent, it is important to consider carefully the importance of sharing early concerns to prevent child protection issues occurring. If you have concerns about a child or young person that you have decided should be shared without their consent, you should still ask the child or young person for their views if at all possible.

### How do you decide whether a child or young person is competent to make their own decisions about sharing information?

There is no age limit on the right of the child or young person to express their views. However, in Scotland, under data protection law, children and young people aged 12 or over are presumed to be mature enough to provide their own consent, unless there is any reason to think that they are not. If there is disagreement between the child or young person and their parents and it is not possible to reach agreement, professional judgement will be required, with consideration for the rights of the child under Article 12 of the UNCRC.

### How do practitioners decide when to inform children, young people and families about information they receive from a source other than the individual themselves?

If the information has come from a source other than the individual themselves and the child, young person and their family are not already aware that it has been shared for a particular purpose, the practitioner will need to inform the child, young person and/or family member concerned:

- within a reasonable period of obtaining the personal information and no later than one month;
- if practitioners use information to communicate with the child, young person and/or family member, at the latest, when the first communication takes place; or
- if the practitioner can foresee a situation where they would need to disclose the information to someone else, at the latest, when they disclose the information.

Be aware that [exemptions](#) from the right to be informed may apply under data protection legislation.

### What is the legal basis for sharing information between professionals where a young person is 16 years old and is not a care leaver or person with additional support needs?

The most appropriate lawful basis will depend on the circumstances and the purposes for processing. Consent may be the appropriate lawful basis if the necessary conditions for consent are met. Vital interests does not apply to a specific age range, so if information sharing is necessary to protect someone's life then that would be a basis to share information.

Alternatively, if a child or young person under 18 or aged 18 or over and at risk ("at risk" is defined in the Data Protection Act as someone you have reason to suspect has needs for care and support; is experiencing or is at risk of neglect or physical, mental or emotional harm; and as a result is unable to protect themselves ) and sharing information is necessary to protect them from neglect or physical, mental or emotional harm, public task (and substantial public interest if it is special category data) would be an appropriate lawful basis. In the case of a public body, the conditions for public task may be met, depending on the underpinning legislation. If the information holder is not a public body, legitimate interests may be the appropriate lawful basis, provided the three-part test described at [8](#) has been considered. It may be that there is a legal obligation to share information in certain circumstances and that may be the most appropriate lawful basis for sharing information.

## Annex E - Article 8 ECHR – Two Part Test

### **Part 1 of the test: Is the interference “in accordance with the law”?**

In order for the interference to be in accordance with the law, you must consider the following:

- In your opinion, could sharing the information for example, protect the physical, mental or emotional wellbeing of the child?
- Can you share this information in a way that complies with data protection legislation?
- Have you complied with all other relevant laws such as the law of confidentiality?

### **Part 2 of the test: Is the interference “necessary in a democratic society”?**

You must consider if the interference is necessary to achieve one of the legitimate aims set out in Article 8. One clear example of a legitimate aim is where data is shared for the purposes of safeguarding a child.

You also need to consider whether it is proportionate to share the information. This means you have to weigh up the importance of ensuring the child or parent's rights are respected against the importance of achieving the “legitimate aim” (for example, for safeguarding purposes). The impact on the person's ECHR rights must not be out of proportion to the benefit you are sharing information to achieve. If there is another option, which has less of an impact on their right to privacy but still achieves the aim, then you should take that option. You should only share the information that is relevant to achieving the legitimate aim.

If you believe that a child or young person needs to be protected from neglect or physical, mental or emotional harm you should have a basis for justifying a breach of the child's Article 8 ECHR rights.

You should record your actions and the reasons for them.





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Any enquiries regarding this publication should be sent to us at  
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St Andrew's House  
Edinburgh  
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