Policy Update
Delivering the Getting it right for every child

1. Purpose

1.1 The purpose of this document is to provide updated information on delivering the Getting it right for every child policy and replace the policy document issued in September 2016. The document includes information on:

- Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 and the Supreme Court judgment.
- The Children and Young People (Information Sharing) (Scotland) Bill.
- The continuing development and delivery of the Getting it right for every child approach.
- Status of the draft statutory guidance for parts 4 and 5 of the Children and Young People (Scotland) Act 2014 and accompanying orders.

Top line messages

Changes to information sharing provisions in the Children and Young People (Scotland) Act 2014 will bring consistency, clarity and coherence to the practice of sharing information about children’s and young people’s wellbeing across Scotland.

The Bill introduces a duty to consider if sharing information with or by the Named Person service will promote, support or safeguard the wellbeing of a child or young person, and then provides the power to share relevant information with or by the Named Person service only when certain conditions are met. This changes the 2014 Act which has a duty to share information.

Every child up to the age of 18 (and beyond if still in school) will have access to a Named Person. The Named Person service will available as an entitlement with no obligation for children and young people or parents to accept any offer of advice or support.

Where there are child protection concerns, then local child protection procedures must be followed without delay.

The Government remains fully committed to applying the Getting it right for every child approach and will work with others to strengthen the approach and build public confidence as we move forward with the legislative process.
2. Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 and the Supreme Court judgment

2.1 Getting it right for every child is the national approach in Scotland that puts the rights and wellbeing of children and young people at the heart of services that support them and provides a framework within which services can offer the right help, at the right time, from the right people.

2.2 The Getting it right for every child approach has been national policy in Scotland since 2010. In order to ensure consistency of implementation and to increase the pace of implementation nationally, elements of the approach (notably around the assessment of wellbeing, provision of a Named Person and the Child’s Plan) were included in the Children and Young People Bill, which subsequently became the Children and Young People (Scotland) Act 2014 (“the Act”).

2.3 Part 4 of the Children and Young People (Scotland) Act 2014 concerns Provision of Named Persons. This part of the Act has been the subject of debate, and was challenged through the Courts by a group of petitioners who objected to the Part 4 provisions on the basis that they considered them to be incompatible with the European Convention on Human Rights (ECHR), and hence beyond the legislative competence of the Scottish Parliament.

2.4 Both the Outer and Inner House of the Court of Session rejected the petitioners’ arguments, and the case was taken to the UK Supreme Court. The Supreme Court issued its judgment on 28 July 2016. In its judgment, the Supreme Court:

- determined that the principle of making available a Named Person for every child does not breach human rights and is compatible with European Union law;
- rejected the petitioners’ argument that the legislation relates to reserved matters; and
- ruled that changes are required to the information sharing provisions in Part 4 of the Act to make those provisions compatible with Article 8 of the ECHR.

2.5 As a consequence of the judgment, Parts 4 and 5 of the Act did not come into force as planned on 31 August 2016. Implementation was paused so that the Scottish Government could take steps to make the necessary changes to the information sharing provisions in the Act, working in partnership with stakeholders.

2.6 On 8 September 2016, the Deputy First Minister made a statement to the Scottish Parliament, reiterating his support for the Named Person policy, and his aim for the associated legislation to come into force as soon as possible. He stressed the Scottish Government’s commitment to amending the legislation to achieve what the Supreme Court judgment requires – particularly compatibility with Article 8 of ECHR – along with providing greater clarity around the Act’s information sharing provisions. He stated that the required changes must be made following open dialogue. This was achieved during a three month period of engagement with children and young people, parents and practitioners. The engagement process included discussions
with a range of stakeholders, including those who have concerns about the policy. The outcome of this engagement has been published on the Scottish Government website.

Read the output from the engagement sessions here: [http://www.gov.scot/Topics/People/Young-People/gettingitright/information-sharing/engagement](http://www.gov.scot/Topics/People/Young-People/gettingitright/information-sharing/engagement)

### 3. The Children and Young People (Information Sharing) (Scotland) Bill

3.1 Subsequent to the conclusion of the engagement process, The Children and Young People (Information Sharing) (Scotland) Bill (the Bill) was developed. The Bill and accompanying documents were presented to the Scottish Parliament on 19 June and published on 20 June 2017.


3.2 The aim of the Bill is to bring consistency, clarity and coherence to the practice of sharing information about children’s and young people’s wellbeing across Scotland. It seeks to ensure that the rights of children, young people and parents are respected when:

- information is shared with or by the Named Person service under Part 4 of the Act, by amending sections 23, 26 and 27, and in connection with
- discussing the need for, formulating or delivering a Child’s Plan under Part 5 by amending section 40 of the Act.

3.3 How will the Bill change the information provisions in the Act?

- The Bill introduces a **duty to consider** if sharing information with or by the Named Person service will promote, support or safeguard the wellbeing of a child or young person. This changes the Act which has a duty to share information that may affect a child or young person’s wellbeing with or by the Named Person service.
- The Bill introduces a **duty to consider** whether the information can be shared in a way that is compatible with the Data Protection Act, any directly applicable EU law relating to data protection and any other enactment or rule of law. **This is to help ensure that practitioners understand what legal requirements must be complied with before information can be lawfully shared, including** data protection law, the ECHR and the law of confidentiality.
- The Bill then provides the **power to share** relevant information with or by the Named Person service when the above conditions are met and as long as the person providing the information does consider that its provision would prejudice the conduct of a criminal investigation of the prosecutions of any offence. This differs from the Act which has a requirement to share information.
• The Bill also introduces a duty on Scottish Ministers to issue a **Code of Practice** about the provision of information (including the consideration of the provision of information) by persons exercising functions conferred by Part 4 of the Act or by or under Part 5 of the Act. A person exercising functions conferred by Part 4 of the Act or by or under Part 5 of the Act must do so in accordance with such a Code of Practice. An illustrative draft Code of Practice accompanies the Bill. The illustrative Code of Practice sets out:

  a) safeguards which need to be considered in order that information sharing is lawful and proportionate, and  
  b) a description of the relevant law which must be complied with when sharing information for the purposes of Parts 4 or 5 of the Act.

Read the illustrative draft Code of Practice here:  

3.4 What happens next?

• The Bill will proceed through the Scottish Parliament and stage one will begin in September. The Scottish Government will work with Parliament to agree the Bill's timetable. The Bill is being considered by the Education and Skills Committee.  
• During the process of the Bill through parliament and as we strengthen implementation of the Getting it right for every child policy, the Scottish Government will continue to engage with stakeholders to ensure that every opportunity is taken to improve the quality of service which children, young people and families experience from public services across Scotland.  
• Subsequent to completion of the Bill's Parliamentary process, there will be formal public consultation on the revised statutory guidance for Parts 4 and 5 of the 2014 Act and the Code of Practice on information sharing.  
• There will be work at national and organisational level to identify what may need to change in current and developing practice to support the amended legislative provisions when they are commenced. This will include;  
  ➢ national support to strengthen Getting it right for every child practice  
  ➢ national and local communication to inform and engage parents, children and young people and practitioners  
  ➢ the development of guidance and practice materials.
4. The continuing development and delivery of the Getting it right for every child approach

4.1 The Supreme Court judgment did not require other aspects of Parts 4 or 5 of the Act to be changed. The judgment relates only to the information sharing provisions that were intended to come into force under the Act, not to current practice under Getting it right for every child policy.

4.2 It remains the case that the Named Person service provision and a coordinated planning framework for children who need it can and should be provided on a policy basis. Local Authorities, Health Boards and other organisations have worked hard to prepare for implementation of Parts 4 and 5 of the Act and should continue to implement the Getting it right for every child approach, operating within the existing legal and policy framework. The approach builds on good practice by making a clear point of contact available for all children and young people, usually via the health visitor or a promoted teacher for children in school. The role of Named Person should be taken forward by these individuals as an integrated part of existing duties, offering advice or support relevant to their expertise, or helping access support from others. It is national policy for organisations to make the Named Person service available as an entitlement, but there is no obligation for children and young people or parents to accept any offer of advice or support from the Named Person. Non-engagement with a Named Person is not in itself a cause for concern.

4.3 Every child up to the age of 18 (and beyond if still in school) will have access to a Named Person. The United Nations Convention on the Rights of the Child (UNCRC) considers those under 18 to be children and requires their rights to be protected.

4.4 Where there are child protection concerns, then local child protection procedures must be followed without delay. All services must ensure that child Protection Guidance and training is up to date and provides the right support for all staff groups to ensure that all practitioners are confident and able to respond appropriately.

4.5 The Government remains fully committed to applying the Getting it right for every child approach and will work with others to strengthen the approach and build public confidence as we move forward with the legislative process.

Wellbeing

4.6 Taking a holistic view of the wellbeing of children and young people is at the heart of the Getting it right for every child approach. Getting it right for every child has its origins in the United Nations Convention on the Rights of the Child (UNCRC), which outlines the rights of children to have their basic needs met, and to reach their full potential. The UNCRC general principles of non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child, are the overarching rights needed for any and all rights in the Convention to be realised, and as such, should be the foundation for any assessment of a child’s or
young person’s wellbeing. This rights-based approach emphasises the responsibility of all public services and their partners to protect children’s rights and entitlements. Further detail about the UNCRC can be found on the UNICEF website.

4.7 Taking a holistic view of wellbeing is not a new concept. It has been evolving for a considerable time, and has involved extensive consultation and deliberation. While it is right that we should strive for every child’s wellbeing to be as good as it can be, and there are now widely-accepted targets in terms of child health and development, the Act does not specify the level of wellbeing that should be attained by every child or young person. Wellbeing will be relative, and will be influenced by the child’s or young person’s individual circumstances and what support they get from their family, community and professional services.

4.8 The Act identifies various times when practitioners should undertake a wellbeing assessment using the eight wellbeing indicators set out in section 96(2) based on the considerations set out in section 96(1) of the Act.

4.9 Section 95 of the Act (Consideration of wellbeing in exercising certain functions) came into force on 31 August 2016. Section 95 requires that local authorities, in taking action relating to children in need and looked-after children (as defined in the Children (Scotland) Act 1995), must act in a way which is designed to safeguard, support and promote their wellbeing (as set out in section 96 of the Act).

4.10 It should also be noted that Section 96 (Assessment of wellbeing) is already in force, and applies to all relevant Parts of the Act that have commenced, for example, Parts 6 (Early Learning and Childcare), 9 (Corporate Parenting), 10 (Aftercare) and 11 (Continuing Care).

**Getting it right for every child in practice**

4.11 All practitioners have a role in promoting, supporting and safeguarding the wellbeing of the children and young people they serve. When help or advice is asked for, or a concern about wellbeing is raised, practitioners should listen to the views of children or young people and parents and consider:

- What is getting in the way of this child’s or young person’s wellbeing?
- Do I have all the information I need to help this child or young person?
- What can I do now to help this child or young person?
- What can my organisation do to help this child or young person?
- What additional help, if any may be needed from others?

4.12 Children, young people and parents must be confident that practitioners will work in partnership with them and with others so that no aspects of wellbeing are overlooked, strengths and assets are recognised, and potentially significant problems are identified and dealt with through early support.

4.13 The Getting it right for every child approach makes a clear point of contact available for children, young people and parents - the Named Person. But the
provision of a Named Person service does not detract from the role or responsibility of all practitioners to promote, support and safeguard the wellbeing of children or young people. The Named Person service should support practitioners in taking forward their professional responsibilities to offer advice and support to children and families within a partnership approach.

The Named Person Role

4.15 The purpose of the Named Person role is to make sure children, young people and parents have confidence that they can access help or support no matter where they live or what age the child is.

4.16 The Named Person is an identified point of contact who is available to children, young people and parents, to help them get the information, advice or support they need if and when they need it. The role of the Named Person is generally carried out by the health visitor for pre-school children or a promoted teacher for children and young people who are enrolled at school. The delivery of the role is an integral part of their professional duties, working within universal services. Local authorities will put in place arrangements to make available a Named Person for others groups as appropriate.

4.17 The Named Person is also available as a point of contact to other practitioners who may have concerns about the wellbeing of a child or young person which these practitioners cannot fully address on their own or within their own service.

4.18 Where wellbeing needs are recognised, all practitioners working with the child or young person have responsibilities to help address these. Often the Named Person will have a significant role. However, it cannot be assumed that the Named Person will or can address all identified wellbeing needs, or that the child or parents are engaging with the Named Person. In this context it is important that practitioners who are aware of wellbeing needs understand, where appropriate support is being offered and provided, by themselves or by others.

The Named Person service

4.19 The term ‘Named Person service’ is used to describe the organisational arrangements and context within which the Named Person role operates.

4.20 The Named Person service should include making a Named Person available to children and young people, and the provision of all policies and procedures that support and relate to the Named Person role (e.g. local information sharing protocols). The Named Person service also includes providing management support to the Named Person, including professional support and supervision. The service should incorporate clear governance structures to ensure that there is accountability within the organisation for making decisions and put in place policies and procedures to support the Named Person in carrying out their role.

4.21 It will be helpful for Named Person service providers to inform children, young people, parents, practitioners and other organisations about how the service will
operate. This includes setting out how, in exceptional circumstances, children, young people or parents can request that an alternative Named Person be provided. Exceptional circumstances could, for example, relate to a complete breakdown in relationships between the child or parents and the Named Person which is getting in the way of promoting the child’s wellbeing.

**Providing a consistent approach to planning support**

4.22 Where support is asked for or offered and it is established that a child has wellbeing needs which require support from a range of services, or from more specialist services, it is important that the planning and delivery of that support is well organised and coordinated. Getting it right for every child provides a consistent approach to planning support through a single planning framework, called a Child’s Plan. A Child’s Plan may be offered to a child who requires extra support that is not generally available to address needs and improve their wellbeing.

4.23 A Child’s Plan is based on working with children and parents to offer tailored, coordinated support that meets the wellbeing needs of an individual child by taking account of their unique circumstances to help them reach their potential. Clear action planning to address children’s wellbeing needs helps parents and practitioners understand the child’s needs and how those needs can be met and support better outcomes for the child. Overall responsibility for delivering a Child’s Plan sits with an organisation such as a health board, local authority or independent school. But a single person - Lead Professional - will ensure the Child’s Plan is managed properly.

**Information sharing**

4.24 Effective communication, including sharing relevant and proportionate information, where appropriate, in accordance with the Data Protection Act 1998 and Human Rights Act 1998 should be current routine practice. Provision of a Named Person service now, under current policy, and in the future, when the amended Part 4 of the Act is commenced, should operate within the existing legal framework.

4.25 Public services must process, store and share personal information, and sensitive personal information, in line with the laws and guidance in relation to data protection, human rights and children’s rights. Named Person service providers and those considering offering a Child’s Plan, such as health boards and local authorities, should already routinely handle confidential information in line with data protection and human rights law.

4.26 In advance of the proposed Code of Practice and revised Parts 4 and 5 of the Act coming into place, the principles set out in the Information Commissioner’s Office Data Sharing Code of Practice will help guide organisations working with children, young people and parents in considering local guidance on sharing information within and between organisations. Practitioners should use their professional judgement when making decisions about sharing information, within organisational procedures. Where practitioners are uncertain, advice should be available from within the management structure.
4.27 In addition to sharing information, Named Person service providers will also receive information from others. Named Person service providers should make arrangements for the secure receipt and processing of information relating to the wellbeing of children and young people.

5. Status of the Draft Statutory Guidance and accompanying Orders

5.1 The Scottish Government issued draft statutory guidance on Parts 4, 5 and 18 (section 96) of the Act in December 2015. This guidance will be revised and will be subject to consultation prior to commencement of the amended legislation. The Orders, i.e. the associated subordinate legislation (the Named Persons (Training, Qualifications, Experience and Position) (Scotland) Order 2016, the Child’s Plan (Scotland) Order 2016, and the Children and Young People (Scotland) Act 2014 (Part 4 and Part 5 Complaints) Order 2016) have been revoked. These will be reviewed as part of the process of amending the legislation to comply with the Supreme Court judgment.

5.2 As noted above, Parts 4 and 5 of the Act (Provision of Named Persons and Child’s Plan) have not been commenced, neither has the Order that sets out the procedures for complaints in relation to these Parts of the Act. Complaints about any aspect of the delivery of Getting it right for every child policy should be dealt with through the relevant organisation’s usual complaints handling procedures until all the relevant legislation is commenced.

5.3 However, the substance of the draft statutory guidance on Parts 4, 5 and 18 (section 96) of the Act issued in December 2015 is still reflective of the Scottish Government’s expectations in terms of the delivery of Getting it right for every child, with the notable exception of how information sharing is to operate.

5.4 The draft statutory guidance describes how the requirement to share information with and by the Named Person was planned to operate when Part 4 of the Act was commenced. The guidance on Part 4 includes guidance on sections 23, 26 and 27 (Communication in relation to movement of children and young people; Information sharing; and Disclosure of information, respectively). These three sections specifically refer to the sharing of information. The Bill will amend these sections of the Act. Therefore, the current draft statutory guidance on sections 23, 26 and 27 should be disregarded until it is revised following amendment of the provisions. Any information sharing by and with those identified as a Named Person under Getting it right for every child policy can and should continue to operate in accordance with the existing legal framework and guidance on data sharing, human rights and children’s rights, including the Data Protection Act 1998, the Human Rights Act 1998 and law on confidentiality.

5.5 The draft statutory guidance on Part 5 of the Act (Child’s Plan) includes guidance on section 40 of the Act (Assistance in relation to child’s plan). The Bill will amend this aspect of Part 5 of the Act. The current draft statutory guidance on section 40 of the Act should, therefore, also be disregarded until the draft statutory guidance has been reviewed in light of legislative amendments and a Code of Practice issued. Any information sharing in relation to child planning can and should continue to
operate in accordance with the existing legal framework and guidance on data sharing, human rights and children’s rights, including the Data Protection Act 1998, the Human Rights Act 1998 and law on confidentiality.

5.6 The principle of considering the wellbeing of the child or young person and seeking agreement to share information to address wellbeing needs should remain a cornerstone of Getting it right for every child policy. Only in exceptional circumstances, such as where there are child protection concerns, should information be shared without consent, where there is a legal basis to do so.

6. Conclusion

6.1 In conclusion, the Scottish Government’s commitment to the Getting it right for every child approach is clear. Public bodies and partner organisations should continue to implement the policy in accordance with this policy update, and the attached reference documents, and in accordance with the existing legal framework, including data protection and human rights laws.

6.2 During the process of the Bill through Parliament, the Scottish Government will continue to engage with stakeholders to strengthen implementation of the Getting it right for every child policy. We will engage with children, young people, parents and service providers to build confidence as we move forward.

Getting it right for every child team, July 2017