
Annex A

In the 4 April 2018 minutes of the GIRFEC Legal Advisory Group, an action is noted as follows: “Officials to produce a note on the legislative assessment of wellbeing, welfare and child protection.”

Can you please provide a copy, or all the information contained therein, of the note produced by officials in regards to this action point in the minutes.

Action: Officials to produce a note on the legislative assessment of wellbeing, welfare and child protection.

•Children and Young People (Scotland) Act 2014, section 96, assessment of wellbeing

(1) This section applies where under this Act a person requires to assess whether the wellbeing of a child or young person is being or would be –

- (a) promoted,
- (b) safeguarded,
- (c) supported,
- (d) affected, or
- (e) subject to an effect.

(2) The person is to assess the wellbeing of the child or young person by reference to the extent to which the child or young person is or, as the case may be, would be –

Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, and Included.

(3) The Scottish Ministers must issue guidance on how the matters listed in subsection (2) are to be used to assess the wellbeing of a child or young person.

(4) Before issuing or revising such guidance, the Scottish Ministers must consult –

- (a) each local authority,
- (b) each health board, and
- (c) such other persons as they consider appropriate.

(5) In measuring the wellbeing of a child or young person as mentioned in subsection (2), a person is to have regard to the guidance issued under subsection (3).

(6) The Scottish Ministers may by order modify the list in subsection (2).

(7) Before making an order under subsection (6), the Scottish Ministers must consult–

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- (a) each local authority,
- (b) each health board, and
- (c) such other persons as they consider appropriate.

•Children’s Hearing (Scotland) Act 2011 (“2011 Act”), section 67, meaning of “section 67 ground”

(1) In this Act “*section 67 ground*”, in relation to a child, means any of the grounds mentioned in subsection (2).

(2) The grounds are that -

- (a) the child is likely to suffer unnecessarily, or the health or development of the child is likely to be seriously impaired, due to a lack of parental care,
 - (b) a [schedule 1](#) offence has been committed in respect of the child,
 - (c) the child has, or is likely to have, a close connection with a person who has committed a [schedule 1](#) offence,
 - (d) the child is, or is likely to become, a member of the same household as a child in respect of whom a [schedule 1](#) offence has been committed,
 - (e) the child is being, or is likely to be, exposed to persons whose conduct is (or has been) such that it is likely that—
 - (i) the child will be abused or harmed, or
 - (ii) the child's health, safety or development will be seriously adversely affected,
 - (f) the child has, or is likely to have, a close connection with a person who has carried out domestic abuse,
 - (g) the child has, or is likely to have, a close connection with a person who has committed an offence under [Part 1 , 4 or 5](#) of the [Sexual Offences \(Scotland\) Act 2009 \(asp 9\)](#),
 - (h) the child is being provided with accommodation by a local authority under [section 25](#) of the 1995 Act and special measures are needed to support the child,
 - (i) a permanence order is in force in respect of the child and special measures are needed to support the child,
 - (j) the child has committed an offence,
 - (k) the child has misused alcohol,
 - (l) the child has misused a drug (whether or not a controlled drug),
 - (m) the child's conduct has had, or is likely to have, a serious adverse effect on the health, safety or development of the child or another person,
 - (n) the child is beyond the control of a relevant person,
 - (o) the child has failed without reasonable excuse to attend regularly at school,
 - (p) the child -
 - (i) [has been, is being] ¹ or is likely to be, subjected to physical, emotional or other pressure to enter into [...] ² civil partnership, or
 - (ii) is, or is likely to become, a member of the same household as such a child.
 - (q) the child -
 - (i) has been, is being or is likely to be forced into a marriage (that expression being construed in accordance with [section 1](#) of the [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(asp 15\)](#)) or,
 - (ii) is, or is likely to become, a member of the same household as such a child. ³
- (3) For the purposes of paragraphs (c), (f) and (g) of subsection (2), a child is to be taken to have a close connection with a person if -
- (a) the child is a member of the same household as the person, or
 - (b) the child is not a member of the same household as the person but the child has significant contact with the person.

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- (4) The Scottish Ministers may by order –
- (a) amend subsection (2) by - (i) adding a ground,
 - (ii) removing a ground for the time being mentioned in it, or
 - (iii) amending a ground for the time being mentioned in it, and
- (b) make such other amendments of this section as appear to the Scottish Ministers to be necessary or expedient in consequence of provision made under paragraph (a).
- (5) An order under subsection (4) is subject to the affirmative procedure.
- (6) In this section -
- “*controlled drug*” means a controlled drug as defined in [section 2\(1\)\(a\)](#) of the [Misuse of Drugs Act 1977 \(c.38\)](#),
- “*permanence order*” has the meaning given by [section 80\(2\)](#) of the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#),
- “*schedule 1 offence*” means an offence mentioned in [Schedule 1](#) to the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#) (offences against children under 17 years of age to which special provisions apply).

•Children’s Hearing (Scotland) Act 2011 (“2011 Act) – Part 6

60 Local authority's duty to provide information to Principal Reporter

- (1) If a local authority considers that it is likely that subsection (2) applies in relation to a child in its area, must make all necessary inquiries into the child's circumstances.
- (2) This subsection applies where the local authority considers -
- (a) that the child is in need of protection, guidance, treatment or control, and
 - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (3) Where subsection (2) applies in relation to a child the local authority must give any information that it has about the child to the Principal Reporter.

61 Constable's duty to provide information to Principal Reporter

- (1) This section applies where a constable considers -
- (a) that a child is in need of protection, guidance, treatment or control, and
 - (b) that it might be necessary for a compulsory supervision order to be made in relation to the child.
- (2) The constable must give the Principal Reporter all relevant information which the constable has been able to discover in relation to the child.
- (3) If the constable makes a report under [\[section 20\(1\)\(d\)\]](#) of the [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#)¹ in relation to the child, the constable must also make the report to the Principal Reporter

NOTE: whilst Part 6 and s67 of the 2011 Act do not define “welfare” or “child protection”, it is widely considered that they set out relevant welfare and child protection considerations.

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