

## **NSPCC Scotland response to the Consultation on Draft Statutory Guidance for Parts 4, 5 and 18 (Section 96) of the Children and Young People (Scotland) Act 2014**

### **Introduction**

NSPCC Scotland welcomes the opportunity to comment on the draft statutory guidance for Parts 4, 5 and 18 of the Children and Young People (Scotland) Act 2014. The guidance is a welcome step towards embedding the principles of GIRFEC and we remain optimistic that, if fully resourced and implemented consistently, the new duties have the potential to minimise harm to children through earlier detection and intervention.

However, we would welcome more detail around purpose, language and how the various parts interface with each other and other pieces or relevant legislation.

### **About NSPCC Scotland**

The NSPCC aims to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfil their potential. We are working with partners to introduce new child protection services to help some of the most vulnerable and at-risk children in Scotland. We are testing the very best intervention models from around the world, alongside our universal services such as ChildLine<sup>1</sup>, and the NSPCC Helpline. Based on the learning from all our services we seek to achieve cultural, social and political change – influencing legislation, policy, practice, attitudes and behaviours so that all children in Scotland have the best protection from cruelty.

### **General comments**

NSPCC Scotland welcomes the draft statutory guidance and considers it a potentially useful vehicle to embed the principles of GIRFEC in practice. However, the guidance does not read coherently and the various parts do not interface well with each other or with other relevant pieces of legislation.

While the Christie Commission is cited as setting the context for the Children and Young People (Scotland) Act 2014, the draft guidance we have so far seen is unclear on how different parts of the Act link together and interface with existing duties. For example, it is not clear how

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<sup>1</sup> Until March 2012, ChildLine in Scotland will be delivered by Children 1<sup>st</sup>, on behalf of the NSPCC.



reporting duties in Children's Rights (Part 1) will be linked with other reporting duties in other parts of the Act, specifically Named Person (Part 4).

To address this, we would suggest a child rights impact assessment on the guidance is required to ensure that children's rights are embedded across all parts of the Act. This would add strength to the implementation of the Act in practice by ensuring the entire approach is underpinned by children's rights. Without this clarity, the guidance could lead to inconsistencies across local and national government and a range of public bodies.

Wellbeing is defined within the Act and within the guidance. Welfare is defined within the 1995 Act; it would be useful to have definitions and a distinction between the two and clarification of how these should interact.

Throughout the guidance the distinction between statute and practice is not always clear; there are times when the guidance reads as strategic guidance and other times where it takes on a more practice guidance tone; this could be usefully addressed by developing national practice guidance, as proposed, to sit alongside the statutory guidance.

While the emphasis of the guidance is on individual children, it needs to be acknowledged that wider structural drivers impact on individual children and their families, such as socio-economic factors, which may adversely affect their wellbeing. Strategic planners' attention should be drawn to interlinked strategies, such as the Child Poverty Strategy, the refreshed Looked-after Children Strategy and the Teenage Pregnancy and Vulnerable Parent Strategy as well as other relevant statutory instruments such as the Joint Working (Public Bodies) (Scotland) Act 2014.

## NSPCC Scotland response

### **1) Overall, do you think that the draft guidance gives a clear interpretation of the Act to support organisations' implementation of the duties?**

It is not clear how the new duties in the Children and Young People (Scotland) Act 2014 will interface with existing duties in other relevant legislation such as the Public Bodies (Joint Working) (Scotland) Act 2014 and the Community Empowerment (Scotland) Bill 2014. Potentially these other pieces of legislation will have far greater impact on outcomes for children and families than the provisions in the Children and Young People (Scotland) Act 2014 and should be given careful consideration as part of this process. How will guidance for these two pieces of legislation demonstrate clear links to children's rights?

Scottish Government Ministers now have a duty to promote children's rights. This requires Ministers to take a more joined up approach to assessing how specific pieces of new and existing legislation will impact upon children and young people. NSPCC Scotland is concerned that, contrary to the Christie Principles, and the aims of the Children and Young People Act, we cannot fully guarantee that the rights and interests of children and families will be clearly addressed by the guidance as it currently stands.



NSPCC Scotland would suggest that a more joined up approach across Government is essential to ensure that the commendable aspirations set out in the Children and Young People (Scotland) Act 2014 can be fully embedded in practice.

Part 18, Section 96 - Wellbeing

**2) Do you think the draft guidance on wellbeing provides clarity about what wellbeing means in the context of the Act?**

NSPCC Scotland welcomes further detail on the wellbeing indicators and recognises that this part of the Act will play a crucial role in ensuring the successful implementation of other parts of the Act.

Whilst we recognise the need for the indicators to be set at a relatively high level, to facilitate developments in relation to measuring wellbeing and to enable professional judgment, it is unclear how the proposed indicators would effectively support a professional assessment of a child's wellbeing. Therefore, significant amendments need to be made to this section of the guidance. The Scottish Government should set out explicitly where the indicators of wellbeing are to be used within the Children and Young People (Scotland) Act, who will use them and for what purpose.

Much more detail is required setting out how these indicators will interface with other legislation and guidance which interlinks with the definition of wellbeing, such as the Public Bodies (Joint Working) Act and Self Directed Support Act and the Child Poverty Strategy. As currently proposed, the indicators lack comparability and provide no framework to enable professionals to make informed decisions about a child's wellbeing.

We have particular concerns around the indicators of being 'responsible'. At present these indicators include *"the capacity for moral judgement"*, *"self-control"*, *"resisting pressure to engage in inappropriate, dangerous or anti-social behaviour"* and *"being patient when your wishes are not instantly gratified"*.

NSPCC Scotland believes these are inappropriate statements which undermine the child-centred approach encouraged by GIRFEC. They also fail to reflect the varying capacities of children subject to age, stage, early experiences and current circumstances.

We also have concerns that being 'accountable' is listed as a responsible indicator as we believe that whilst we would advocate the benefits of encouraging children to take accountability of their actions, ultimately the accountability must lie with the adults.

To address some of these difficulties, the proposed national practice guidance should outline a framework of wellbeing outcomes to allow for the development of detailed indicators in accordance with the requirements of different parts of the Act.

NSPCC Scotland believes that the language used in the proposed practice guidance must be much more explicit to ensure that best practice within child protection is safeguarded and that the terms wellbeing and welfare are not used interchangeably at a practice level.

**EVERY CHILDHOOD IS WORTH FIGHTING FOR**

## Part 4 - Named Person Section 19 – Named Person Service 7

### **Is the draft guidance clear on the organisational arrangements which are put in place by the provider to support the functions of the named person? (4.1.3 – 4.1.4)**

NSPCC Scotland believes that the Named Person Service has the potential to provide a cohesive approach to supporting individuals to carry out the Named Person duties.

4.1.7 In setting universal standards it is important to develop a shared understanding. It would therefore be useful for the Named Person service to have responsibility for ensuring this and to develop shared training across professions to ensure consistency of approach, as recommended by the Scottish Government in, 'It's everybody's job to make sure I'm alright'<sup>2</sup>. The Government must also collate and make explicit in the proposed national practice guidance information on resources which will be made available to practitioners in discharging their functions.

### **Provision of Named Persons**

4.1.4: NSPCC Scotland support the aspiration embedded in the Named Person provision within the Children and Young People (Scotland) Act as we believe that a co-ordinated system of assessment and accountability will help embed prevention through early detection. However, much more detail is required within the proposed national practice guidance to support these statutory duties.

The guidance refers to children who are excluded and children who leave school before their 18th birthday and states that local authorities maintain Named Person duties for these children, but does not specify how these duties will be carried out.

As the transitions from school can be a particularly difficult and isolating period for young people, it would be helpful for the guidance to highlight how concerns for children who are out with school will be dealt with by the Named Person if they accumulate to child protection concerns.

### **Named Person skills knowledge and understanding**

**4.1.16:** We would like to see further mentions of the National Child Protection Guidance in this section to ensure that there is clarity in Named Person training between wellbeing and welfare.

4.1.17: We would also welcome a multiagency approach to training to ensure that the Named Person has a clear understanding of child protection processes, how to assess, identify and manage risk and how to promote infant mental health, where appropriate.

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<sup>2</sup> <http://www.gov.scot/Publications/2002/11/15820/14009>

NSPCC Scotland is currently delivering advanced clinical skills-based training for multi-agency child protection practitioners at Stirling University which would be potentially beneficial to prospective named persons.

**9) The draft guidance outlines how arrangements for making the Named Person service available during school holiday periods and other absences should be put in place. Do you agree that this provides sufficient clarity while allowing local flexibility? (4.1.30 – 4.1.32)**

**4.1.31:** NSPCC Scotland is concerned that there is not adequate provisions set out within the draft guidance to ensure continuity over the school holiday period. For children experiencing multiple adversities, this can be a particularly difficult time when they require additional support and protection.

**4.1.32:** The guidance should set out how the Scottish Government intend to monitor and evaluate whether local authorities are fulfilling their duties with respect to children who are excluded from school, transient families, and those not in education, training or employment. Much more detail is required in this section to fully identify what would happen to children out with the school setting and when they move between local authorities.

Section 20 – Named Person service in relation to pre-school children

**10) This section of the draft guidance outlines arrangements for making the Named Person service available for pre-school children. Do you think it provides clarity?**

*“Where additional wellbeing needs are anticipated at birth the prospective Named Person should be involved in planning.....to eliminate, reduce or mitigate risks to wellbeing (this planning and support will be taken forward within a non-statutory framework as it is not within the terms of the Act)”*

However, the duties set out at Part 12 – Services to children at risk of becoming looked after - means that prevention activities supporting expectant and new parents/carers are now embedded in Scots law. We require clarity from the Scottish Government on which process takes precedent and how these parts of the Act will interface.

NSPCC Scotland believes that the preventative measures introduced in Part 12 to support vulnerable expectant and new parents and carers is a significant step forward and creates a strong statutory basis for practical, prevention-oriented policies and practice with the potential to enhance the earliest months and years of childhood. We believe duties in Part 12 must run as a golden thread through all children’s services planning and decision making, not to do so will lead (over time) to the earliest years receiving lower priority and less support than other areas.

Similarly it is not clear how duties in Part 9 – Corporate parenting come into play where the expectant parent is a looked-after young person not in education, training or employment. This links back to the earlier point about the particular needs and vulnerabilities of children who are

subject to a supervision order. What will be the assessment process where both a parent and child have an entitlement to a named person?

*“The health board must, where reasonably practicable, identify an individual pre-birth who will exercise the function of the named person”.* Detail is required on what constitutes ‘reasonably practicable’ in this context. We would stress the importance of ensuring that a named person is identified and a detailed, early assessment is carried out, pre-birth in all cases, where the parent(s) have one or more indicator of vulnerability e.g subject to a compulsory supervision order, to identify risk and put in place a pathway of appropriate care at the earliest point to minimise risk of harm.

NSPCC Scotland remains concerned about the capacity of local authorities and health boards (in particular Health Visitors) to deliver on the key asks of the policy where the ratios between the Named Person and children in their area is particularly high. Health visitors require time and space to assess parenting and promote attachment yet face considerable capacity issues across localities<sup>3</sup>. We would suggest that an additional resource package is required to facilitate the necessary training and recruitment to realise the Act’s ambition to embed a universalistic approach to prevention.

**18) Is the draft guidance on these sections clear on requirements in relation to consideration and sharing of relevant and proportionate information when there are wellbeing concerns?**

10.3.10 *“Where the sharing of information has been fully considered and is deemed to be in the best interests of the child’s wellbeing, then this Act permits sharing of information in breach of a duty of confidentiality”*

Further clarity is required regarding how decisions to override a duty of confidentiality and share information are evidenced. This is likely to rely heavily on professional judgement and subjective opinion, therefore local practice guidance and training should be consistent in providing clearly the legal requirements relating to information sharing to ensure coherent practice.

Part 5 – Child’s Plan

Section 33 - Child’s Plan requirement

**25) Is the draft guidance clear about the definition and explanation of what constitutes a ‘targeted intervention’? (11.2.4. – 11.2.5)**

NSPCC Scotland believes that there needs to be much more detail on what constitutes a ‘targeted intervention’ and what is considered a ‘generally available service’. The definition at 11.2.4 requires further explanation to avoid inconsistencies.

We believe that leaving this distinction to be drawn at a local level may lead to inconsistencies within the system which means that two children with similar needs in different local authorities

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<sup>3</sup> <http://www.nspcc.org.uk/globalassets/documents/consultation-responses/nspcc-scotland-2012-briefing-infant-mental-health-policy-context.pdf>

may receive different support. For example one child may receive services and support as part of local authority provision however another may be in receipt of targeted intervention and have a child's plan and lead professional assigned under statute.

The Scottish Government may wish to set out what universal services should be generally available to families throughout Scotland, so that targeted interventions are more clearly understood in the wider context and so that pathways into targeted interventions can be more clearly planned.

## Section 34 – Content of a Child's Plan

### **27) Do you agree that the content of the plan, as set out in the Schedule to the draft Order and described further in the draft guidance is clear and covers the full range of likely circumstances? (11.3.1. – 11.3.9 and draft Child's Plan Order)**

It is not clear within the guidance what circumstances would trigger a Child's Plan. There also needs to be more consideration of the various plans which exist for children and how they interact. While we understand that the aspiration, expressed by the Act, and this Guidance, is to move towards a single Child Plan, currently both the Child's Plan and the Coordinated Support Plan exists side by side, as do Child Protection Orders and Supervision Orders. How they interact and which takes precedence needs to be explained in the Guidance.

### **Appendix A: Named Person Service for the new-born – wellbeing of pregnant women**

*“Good practice to develop a draft Child's Plan pre-birth where there are child protection concerns”.* The national clinical guidelines on management of perinatal mood disorders (Sign 127) states that *“where women at high risk of postnatal major mental illness should have a detailed plan from their late pregnancy.....agreed with the women, shared with maternity services, the community midwifery team, GP, health visitor and mental health services”*. More detail is required on how these processes will interface to ensure that the most vulnerable prospective parents are fully assessed and appropriately supported at the earliest point.

There is also a need to raise awareness about the Sign 127 clinical guidelines amongst prospect named persons, where applicable, as equipping staff that interface with children most regularly to risk assess and detect problems better is a practical two generation approach to prevention.

## **Conclusions**

NSPCC Scotland has been supportive of the aspirations embodied within the Children and Young People (Scotland) Act 2014 and we remain optimistic that, if fully resourced and implemented consistently, the new duties have the potential to minimise harm to children through earlier detection and intervention.

We have identified a number of areas where we feel the draft statutory guidance could be strengthened. We require clarity around purpose, language, and intended audience; how the



new duties will interface with each other and other relevant pieces of legislation; and how professionals will be supported to confidently identify vulnerability and respond appropriately.

We believe these measures are essential to deliver the required cultural shift towards embedding GIRFEC in statute and placing the child at the centre of decision making across Scotland.

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