

Children and Young People (Scotland) Act 2014

**Draft Statutory Guidance
for Parts 4, 5 and 18 (Section 96)**

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1 GENERAL INTRODUCTION

1.1 Introduction

1.1.1 This document sets out statutory guidance to the new legal duties in the Children and Young People (Scotland) Act 2014. It relates to the Getting it right for every child (GIRFEC) approach to improving outcomes through the delivery of services to support the wellbeing of children and young people. GIRFEC will help realise the shared ambition of making Scotland the best place in the world to grow up.

1.1.2 The Children and Young People (Scotland) Act 2014 ('the ACT') is a wide-ranging piece of legislation, containing 18 parts and spanning policies that have developed over a number of years in relation to kinship care, care leavers, integrated services, pre-school education and GIRFEC. With respect to GIRFEC, the Act provides the legislative impetus to bring about transformational changes to working practices across a wide range of public bodies.

Who is the statutory guidance for?

1.1.3 The guidance is aimed at those with statutory responsibility for implementing and operating the provisions of the Act. This is likely to include strategic leaders and senior operational managers in health boards and local authorities, the Scottish Prison Service, and the bodies listed in schedules 2 and 3 of the Act, as well as the proprietors, and managers of independent and grant-aided schools and secure accommodation units. They will be required by law to ensure that all appropriate staff are supported through local guidance, policies and procedures, training and management support structures.

1.1.4 The guidance has not been written with practitioners in mind. While practitioners who may be involved as a Named Person or Lead Professional can refer to the guidance to inform their practice, separate practice materials will be made available nationally and locally.

1.1.5 The guidance is not written in a way which will make it accessible to most children, young people and parents. While families may wish to refer to the guidance to understand their entitlement and rights under the Act, further specific information for parents, young people and children will continue to be developed to support their understanding of the operation of the Act.

Context

1.1.6 To put the Act and this statutory guidance in context, it is worth setting out the wider GIRFEC approach to improving outcomes for children and young people in Scotland. This section explains the basic principles behind, and origins of, the GIRFEC approach, covering:

- Key elements of the GIRFEC approach
- Background to the GIRFEC approach
- Principles behind the approach:
 - Child-focused

- A holistic understanding of a child's wellbeing
- Preventative rather than reactive
- Joined up across services

1.2 Key elements and background

1.2.1 GIRFEC is the national approach to improving the wellbeing of children and young people in Scotland. Through policy and the delivery of services at both national and local level, the approach:

- puts the best interests of the child at the heart of decision making;
- takes a holistic approach to the wellbeing of a child;
- works with children, young people and their families on ways to improve wellbeing;
- advocates preventative work and early intervention to support children, young people and their families; and
- believes professionals must work together in the best interests of the child.

1.2.2 The Act is rooted in the GIRFEC approach, and puts a number of key elements into statute, including the Named Person and the single Child's Plan, as described in this guidance. However, the GIRFEC principles underpin a wider variety of other systems, services and initiatives, including Curriculum for Excellence, the Children's Hearing system, the Early Years Collaborative, Early and Effective Intervention/Whole Systems approach to youth justice, and the Family Nurse Partnership. GIRFEC is about how services can best support children, young people and families so that outcomes can be improved, delivery made more efficient, and the vision of making Scotland the best place in the world to grow up be achieved.

1.2.3 Moreover, it is an approach that recognises the rights of children, as enshrined in the [United Nations Convention on the Rights of the Child](#) (UNCRC), and seeks to give those rights practical expression. The GIRFEC approach is about how practitioners across all services for children and adults meet the needs of children and young people, working together where necessary and supporting families to ensure children and young people can reach their full potential. These principles are supported by the [Common Core](#) which describes the skills, knowledge and understanding, and values that everyone should have if they work with children, young people and their families. It is an approach that works through the existing range of services that support children and young people, particularly the universal services offered through health and education, building on what practitioners and families recognise as the good practice that already exists in how those services are delivered.

1.2.4 As well as the Named Person and the Child's Plan, the GIRFEC approach includes other elements of good practice designed to improve how services work with children, young people and their families as well as with each other. While these elements are not statutory, they will support the duties set out in the guidance here. More about how these different elements and the value they can bring to the services for children and young people can be found on the Scottish Government website:

www.scotland.gov.uk/Topics/People/Young-People/gettingitright

1.2.5 The Named Person and the Child's Plan have been tested and developed across Scotland over a number of years. This has built on a period of evolution in children's services towards more integrated, child-centred design and delivery. The 2001 report by the then Scottish Executive, 'For Scotland's Children', concluded, "We need a much more robust approach to putting children and families at the centre of the service network," and the 2005 Proposals for Action recognised the importance of better co-ordination of assessment and planning in support of a child's needs. To develop the practical changes that would be needed across Scotland to address these ambitions, a 'pathfinder' project was set up in Highland in 2006 with the support of the Highland Partnership. Central to the project were common procedures and forms for sharing concerns about a child, recording information, and constructing and implementing a plan around any support needed.

1.2.6 As the pathfinder put GIRFEC principles into practice, it became clear that for universal services to deliver early intervention effectively, a Named Person role in the core universal service and in contact with the child, was essential. Parents also said they wanted a single point of contact and so the role was developed through the pathfinder.

1.2.7 The pathfinder brought significant improvements to children and young people as well as to the professionals supporting them, including reduced time in meetings and reductions in caseloads for social work combined with falls in the number of referrals to the Children's Reporter and the number of children placed on the Child Protection Register over time.

1.2.8 The approach, tested in Highland, has been adopted across much of Scotland over the last few years. With legislation, the Named Person and the Child's Plan will be rolled out consistently across the whole of Scotland. This statutory guidance will be an important part of achieving that consistency.

1.3 Principles

A child-focused approach

1.3.1 The GIRFEC approach recognises that at different stages of their life each child will have different needs. Services need to be responsive to how these needs differ between children, how they change as they get older and whether they can be met with the universal support available to all children.

1.3.2 As children and young people progress through life, while many will have their needs adequately met, some may have temporary difficulties, some may live with challenges and some may experience more complex issues. Sometimes they – and their families – may need support. No matter where they live or whatever their needs, children, young people and their families should always know where they can find help, what support might be available and whether that help is right for them. The GIRFEC approach ensures that anyone providing that support puts the child or young person – and their family – at the centre.

1.3.3 The Named Person, as set out in the duties of the Act, provides a structured way to ensure that a child-focused approach persists through a child's life into adulthood. Although the duties apply formally to children between birth and 18, the

Named Person will have an important impact on supporting transitions for those children and young people needing service support. For example, while the Named Person only formally comes into play from the point of birth, midwives supporting pregnant women have a key role to play. The focus on wellbeing pre-birth will be the firm foundation upon which good quality support for children, young people and their families will be built. Midwives will work closely with health visitors so that where continuing support is needed, there should be a smooth transition to the Named Person from birth. (See Appendix A for more details about wellbeing pre-birth.) Similarly, when young people leave school but continue to need support, the Named Person will be able to provide that transition to adult-focused services and help prepare young people for that next stage.

A wellbeing approach

1.3.4 The wellbeing of children and young people is at the heart of the GIRFEC approach, but the key here is that the approach encourages families and professionals to consider a child's wellbeing in the round. It is an approach that recognises that how well a child can achieve or how healthy they are may be linked to how safe or respected or inclusive they feel. Different services may be able to support one aspect of wellbeing more than another, but it is important that they are aware of all aspects. Recognising when a child needs support and being able to respond when a parent asks about *any* aspect of their child's wellbeing is important if services are to be timely, appropriate and effective in a child's life.

1.3.5 For that reason, the GIRFEC approach uses eight areas of wellbeing. It focuses professionals and families' attention on how safe, healthy, achieving, nurtured, active, responsible, respected and inclusive a child feels. The approach to wellbeing has been put into statute and is described in more detail below.

A preventative approach

1.3.6 An essential GIRFEC principle is to act at 'the right time'. Whenever feasible, the right time is before a child's wellbeing is adversely affected (known as primary prevention) or as soon as possible after an adverse effect manifests itself (known as early intervention). Both concepts are essential to GIRFEC.

1.3.7 'Primary prevention' means keeping a child from experiencing significant adversity in the first place, instead of only reacting once it has already happened. Two characteristics are often present in effective primary prevention. The first is that it tends to be most effective in the few years of a child's life (pre-birth to pre-school). The second is that it usually means supporting and assisting the parents and families at least as much as the child directly. It recognises that action should not be taken when problems emerge, but to pre-empt problems arising in the first place, and that the way to do so is not simply just to focus on children alone, but consider how to support the families of which many will be a part.

1.3.8 'Early intervention' means acting as soon as there are signs of adversity, and that can mean ensuring that families – and practitioners – are able to recognise the signs of any problems in a child's life and take proportionate action. Early intervention can often prevent further or more severe adversity taking place. Early intervention can also prevent the original problem from triggering secondary ones.

1.3.9 The GIRFEC principle of acting to improve the wellbeing of a child at the right time does not apply only to early childhood. It also means aiding those children not fortunate enough to have had their needs met when they were very young. It also is the case that the pressing needs of some children do not even emerge until long after their early years. For example, it is still 'early intervention' to act immediately to safeguard and promote the wellbeing of an eleven year-old whose mother has suddenly died – or of a teenager whose family life is being jeopardised for the first time by serious domestic violence. The crucial point about 'early' intervention is not the age at which it is provided, but rather the swiftness with which it happens after the need for any intervention arises.

A joined-up approach

1.3.10 GIRFEC is important for everyone who works with children and young people – as well as many people who work with adults who look after children. Practitioners need to work together to support families, and, where appropriate, take early action at the first signs of any difficulty – rather than only getting involved when a situation has already reached crisis point. Similarly, a joined-up approach will mean that only those services that need or should be supporting a child or family are involved, reducing unnecessary intrusion.

1.3.11 This means it is an approach not simply for those working in services focusing directly on children, but also for those in services with an indirect impact on children as well. Services that support the wider family or community, or focused on adults can still have a powerful role in supporting children and young people. The role of the Named Person will have a clear impact on practitioners in these areas, and so they need to be aware of how their work and decisions may affect children.

1.4 Statutory guidance

1.4.1 This guidance explains the duties in Parts 4, 5 and 18 of the Children and Young People (Scotland) Act 2014 as they affect health boards, local authorities, independent and grant-aided schools, secure accommodation providers and the Scottish Prison Service, as well as the bodies listed in schedules 2 and 3 of the Act. It follows the order of the Act with the exception of the information sharing sections which are brought together for ease of reading. The guidance uses the term 'the Act' to include, where relevant, the secondary legislation provisions made under the main primary legislation. There is also reference to other key statutes which underpin the duties in this Act.

1.4.2 As this is statutory guidance, the bodies named within the Act and specified within the guidance must have regard to this guidance when carrying out their functions under the Act. All agencies must ensure that their policies and procedures take full account of the legal requirements set out in the Act. However, while the guidance is designed to support effective implementation and decision making, it cannot be prescriptive about the requirements for individual children in all circumstances. So while the guidance refers to some examples of good practice, these are not meant to be definitive interpretations of the legislation (as might be set, for example, by case law). The guidance explains the principles of the legislation and illustrates how the duties might be operated in certain situations.

1.4.3 To properly understand the framework and duties set by Parts 4, 5 and 18 of the Act, the guidance should be read as a whole. Individual sections should not be taken out of context or read in isolation from each other or from relevant parts of the Act and the related secondary legislation. Users should ensure that they are familiar with all the duties and requirements set out in the relevant parts of the Act and secondary legislation, and use this guidance in order to understand how the duties should normally be applied. However, the guidance is not a substitute for taking appropriate advice on the legal implications of particular situations.

1.5 Interpretation

1.5.1 Throughout this document, the following terms will be used:

- the Act means the [Children and Young People \(Scotland\) Act 2014](#);
- the 1968 Act means the [Social Work \(Scotland\) Act 1968](#);
- the 1980 Act means the [Education \(Scotland\) Act 1980](#);
- the 1995 Act means the [Children \(Scotland\) Act 1995](#);
- the DPA means the [Data Protection Act 1998](#);
- the 2003 Act means the [Local Government in Scotland Act 2003](#);
- the 2004 Act means the [Education \(Additional Support for Learning\) \(Scotland\) Act 2004](#);
- the 2005 Act means the Further and [Higher Education \(Scotland\) Act 2005](#);
- the 2011 Act means the [Children's Hearings \(Scotland\) Act 2011](#); and
- the 2013 Act means the [Social Care \(Self Directed Support\) \(Scotland\) Act 2013](#).

1.6 Glossary of terms

1.6.1 This guidance uses a number of terms introduced by Parts 4 and 5 of the Act, or used in the secondary legislation (Ministerial Orders), to explain the duties related to the Named Person and Child's Plan provisions. The following definitions and explanations should be helpful in reading the guidance:

Child and young person

1.6.2 The provisions in Parts 4 and 5 of the Act refer to 'child'. The definition of child varies across other aspects of legislation however for the purposes of the duties outlined in this Act, an individual is a child from birth until their 18th birthday.

1.6.3 Section 22(2) of the Act introduces the term young person which applies only to individuals who have attained their 18th birthday and continue to attend school. For the period they remain on the school roll beyond their 18th birthday, they are referred to as a young person and the duties within Part 4 only of the Act continue to apply to them.

1.6.4 This means that when reading this guidance, 'child' is used throughout to refer to all individuals up until their 18th birthday. Where in Part 4 'young person' is used it only refers to the group of individuals who remain at school beyond their 18th birthday. There is no reference to 'young person' in Part 5, as the Child's Plan statutory duties only apply to individuals up until their 18th birthday.

Directing authority

1.6.5 This term is used in Part 4 and Part 5 of the Act in relation to independent and grant-aided schools, and to secure accommodation, as follows:

- the managers of a grant-aided school;
- the proprietors of an independent school; and
- the local authority or a person who manages a residential establishment that houses secure accommodation.

Lead Professional

1.6.6 Where there is a need for one or more targeted interventions to meet the wellbeing needs of a child (and hence there is a requirement for a Child's Plan), the Lead Professional will manage the Child's Plan. There will be times when the Named Person is the Lead Professional, but in other cases, it may be more appropriate for another professional to take on this role, in agreement with the partners to the Plan. Where there is a Lead Professional in place, the role of the Named Person will continue and there should be local protocols in place to link the roles of the Named Person and the Lead Professional. The guidance on Part 4 of the Act makes reference to the Lead Professional role which is further explained in guidance on Part 5.

Listed authority

1.6.7 For the purposes of the guidance in relation to Part 5, the listed authorities are the bodies in [schedule 3](#), who have duties outlined in Section 40 of the Act, to provide information, advice or assistance in relation to a Child's Plan.

Managing authority

1.6.8 When the term 'managing authority' is used in Part 5 of the Act it relates to:

- the authority which prepared the Child's Plan, or
- the authority to which the management of the Child's Plan has been transferred after its preparation

1.6.9 The Scottish Ministers have the power to make further provision about who can be the managing authority under Section 39(6)(b).

Named Person service

1.6.10 Section 19(1) of the Act introduces the term 'Named Person service'. This means the service of making a Named Person available for children and young people. This therefore encompasses the organisational arrangements and systems which service providers will need to put in place to provide a Named Person for every child and young person for whom they have responsibility, and to support the role and functions of the Named Person. Service providers will be local authorities, health boards, directing authorities and the Scottish Prison Service. This provides the structure within which the identified Named Person will carry out the functions on behalf of their organisation. When the guidance refers to the 'Named Person service

provider' this means the organisation providing the Named Person, *not* the identified individual carrying out the Named Person role. This is an important distinction, as the legal duties fall on the *organisation* providing the Named Person service, *not* on the individual practitioner taking on the role of Named Person.

Parent

1.6.11 Throughout Part 4 and Part 5 when the term 'parent' is used, it has the same meaning as in the Education (Scotland) Act 1980 (the 1980 Act).

1.6.12 Section 135(1) of the 1980 Act states that 'parent' includes a guardian and any person who is liable to maintain or has parental responsibilities (within the meaning of section 1(3) of the Children (Scotland) Act 1995) in relation to, or has the care of a child or young person.

1.6.13 Although the legal term used throughout the Act is 'parent' in the singular, as the definition above shows, where both parents, or more than one individual, have parental rights and responsibilities, liability to maintain the child or have the care of a child, the expectation would be that both are consulted and involved in decisions and activities aimed at supporting the child. There will be exceptions to this however, related to the interests of the child's wellbeing, or their rights in relation to confidentiality.

Promoted post

1.6.14 In relation to the Named Person service for children in school, the Ministerial Order and guidance specify that the identified Named Person should hold a promoted post. In this context, promoted post means an individual who is not a main grade practitioner, but has been promoted into the post of for example, Principal Teacher, Deputy Head Teacher or Head Teacher.

1.6.15 In secure units, the Head of Unit, as defined in the Secure Accommodation Authorisation Regulations 2013, will be the Named Person.

Pupil support post

1.6.16 Within the guidance this is the generic term used to refer to any promoted post in a school or education service which carries a remit for pupil support, pastoral care, guidance or support for learning

Regular forces

1.6.17 The term *regular forces* is defined in section 374 of the Armed Forces Act 2006 as meaning the Royal Navy, the Royal Marines, the regular army or the Royal Air Force. Section 21 provides that a Named Person service does not require to be made available for a child who is a member of any of the regular forces.

Relevant authority

1.6.18 For the purposes of **Part 4** the public bodies listed in [schedule 2](#) of the Act are ‘relevant authorities’. They have duties under the Act, outlined in this guidance, to share information with and help the Named Person Service provider.

1.6.19 When the term ‘relevant authority’ is used in **Part 5** it means any:

- health board
- local authority
- directing authority(see above for the definition of “directing authority”)

1.6.20 In relation to Part 5, a relevant authority may:

- i. provide one or more targeted interventions in relation to a Child’s Plan (either directly or by arrangement with a third party);
- ii. in some circumstances, be responsible for preparing a Child’s Plan (where it is agreed with the responsible authority that this would be appropriate);
- iii. manage a child’s plan (as the “managing authority” – see above for the definition of “managing authority”).

Reserve forces/Service law

1.6.21 ‘Reserve forces’ and ‘subject to service law’ have the meaning given by section 374 of the Armed Forces Act 2006. The reserve forces are the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve and the Royal Auxiliary Air Force. Section 19(6) of the Act provides that the Named Person functions do not operate during any time when a child or young person is subject to service law as a member of the reserve forces – in other words, when they are on training or duty with them.

Responsible authority

1.6.22 For the purposes of Part 5, the responsible authority is the authority which is responsible for deciding whether a child needs a Child’s Plan, and, in most circumstances, responsible for preparing it. The responsible authority for a Child’s Plan may be a health board, a local authority or a directing authority (see above for further definition of ‘directing authority’).

Service provider

1.6.23 When the term ‘service provider’ is used generally in Part 4 it means:

- each health board;
- each local authority;
- each directing authority; and
- the Scottish Ministers

Targeted intervention/services that are generally available

1.6.24 For the purposes of **Part 5** the need for a targeted intervention to address a wellbeing need is the trigger for initiating the process leading to a Child's Plan. A targeted intervention is defined as a service which is directed at meeting the needs of children whose needs are not capable of being met, or met fully, by the provision of services that are generally available. As such, a distinction needs to be drawn between targeted interventions and services that are generally available. It will be for each health board, local authority and directing authority to indicate which services and support are available generally to children for whom they have a responsibility.

2 Part 18 (Section 96) – Wellbeing

2.1 Introduction

2.1.1 This part of the statutory guidance is issued under section 96(3) of the Children and Young People (Scotland) Act 2014 (the Act), requiring the Scottish Ministers to issue guidance on how matters listed in section 96(2) (the eight wellbeing indicators) are to be used to assess the wellbeing of a child or young person. Section 96 of the Act is expected to come fully into force on 1 August 2016, but the commencement date will be decided by Parliament in due course. The section has already been partially commenced for the purposes of some parts of the Act, for example, the Early Learning and Childcare Provisions, and may be commenced for other particular purposes before 2016. Consequently, guidance on wellbeing in relation to specific matters, such as Early Learning and Childcare and Corporate Parenting, has been issued, or will be issued before August 2016. However, other parts of the Act which rely substantially on the concept of wellbeing as defined in the Act – notably the Named Person and Child’s Plan provisions – are not expected to commence until 1 August 2016.

2.1.2 Section 96(5) of the Act requires a person measuring the wellbeing of a child or young person under the Act, as specified in section 96(2), to have regard to this guidance.

2.1.3 The content of this guidance has been informed by consultation as required by section 96(4) of the Act. Under this section, the Scottish Ministers are required to consult local authorities, health boards and other people as they consider appropriate, on guidance in relation to the assessment of wellbeing.

2.1.4 This guidance should be read in conjunction with [section 96](#) of the Act (assessment of wellbeing). It supplements the guidance on wellbeing as it relates to specific provisions of the Act that are to be commenced before August 2016 (for example, Early Learning and Childcare; Corporate Parenting).

2.1.5 Further information on wellbeing is available on the [Scottish Government website](#).

2.1.6 Wellbeing is a general term used to describe the condition of an individual or group. The term wellbeing is used in Parts 3, 4, 5, 6, 9, 17 and 18 of the [Act](#), and associated secondary legislation, and hence there is a need to be clear what is meant by the term in relation to children and young people in the context of the Act. The purpose of this guidance is to provide that clarity.

2.2 Purpose of Part 18 (Section 96) of the Act: Assessment of wellbeing

2.2.1 Part 18 of the Act covers general provisions, including [section 96](#), which aims to set out the required approach to the assessment of the wellbeing of a child or young person.

- a) **Section 96(1)** specifies that section 96 applies when making assessments under the Act relating to the wellbeing of a child or young person;

- b) **Section 96(2)** lists the indicators of wellbeing that should be considered when assessing wellbeing in the context of the Act;
- c) **Section 96(3)** requires the Scottish Ministers to issue guidance on how wellbeing is to be assessed in relation to the indicators listed in section 96(2);
- d) **Section 96(4)** stipulates that the Scottish Ministers must consult with specified stakeholders before issuing or revising guidance;
- e) **Section 96(5)** requires a person assessing the wellbeing of a child or young person as mentioned in section 96(2) to have regard to guidance issued under section 96(3);
- f) **Section 96(6)** gives the Scottish Ministers order-making power to modify the list of wellbeing indicators in section 96(2);
- g) **Section 96(7)** requires the Scottish Ministers to consult with specified stakeholders before making an order under section 96(6).

2.2.2 The structure of this guidance broadly follows the order of the provisions contained in section 96 of the Act, and thereafter, the provisions influenced by section 96.

2.3 Context

2.3.1 Taking a holistic view of the wellbeing of children and young people is at the heart of *Getting it right for every child (GIRFEC)*, which has its origins in the [UNCRC](#). The Act requires the promotion, support and safeguarding of wellbeing as a common approach across all services engaging with children and families.

2.3.2 Although there is a range of definitions of 'wellbeing' in the literature, in relation to the Act, wellbeing should be seen as a multi-dimensional concept. Levels of wellbeing in one domain impact upon and interact with levels of wellbeing in other domains. How the child feels about school, for example, is not just affected by his or her experiences at school, it is also affected by circumstances at home, relationships, physical and psychological health, confidence, and his or her sense of self-esteem.

2.3.3 An assessment of wellbeing must seek to identify all the factors in the child's or young person's life which may be impacting positively or negatively upon them in order to determine how best to help them when they experience problems. This will include, but is not limited to, identifying issues relating to family circumstances (for example, parental ill health), socio-economic factors, disability or communication difficulties.

2.3.4 A framework for considering the wellbeing of children and young people should be holistic, strengths-based, multi-dimensional, and to provide for a developmental perspective within the context of the child's circumstances. Academic research on children's rights and child development theories¹ has identified that when considered as a suite of indicators, the extent to which a child or young person is safe, healthy, achieving, nurtured, active, respected, responsible, and included, as listed in section 96(2), fulfils these requirements. Hence when considering the wellbeing of individual children and young people, or populations of children and young people under the Act, practitioners and organisations must consider each of these eight indicators.

2.4 Section 96: Assessment of wellbeing

2.4.1 When an assessment is required as to whether the wellbeing of a child or young person is being, or would be, promoted, safeguarded, supported, affected or subject to an effect (section 96(1)), these terms have the following meaning:

- a) promoted – actively encouraged or further developed;
- b) safeguarded – protected from harm or damage;
- c) supported – given assistance, approval, encouragement;
- d) affected – influenced, changed; and
- e) subject to an effect – a term used to encompass all references throughout the Act to the consequences of various circumstances in relation to a child's or young person's wellbeing.

2.4.2 It is important to consider the context of the child's or young person's life with their parents, wider family and community. A key element of the GIRFEC approach is building on strengths and promoting resilience, and any assessment should therefore identify positive wellbeing as well as concerns. While it is expected that professional judgement will be used to decide whether there are any short or long term concerns, it is important that practitioners recognise that children and young people can thrive in different environments. They must therefore be respectful of and responsive to the child's or young person's, or parents' education, communication capacity, life experiences, socio-economic status, lifestyle and beliefs. This has relevance to all aspects of wellbeing.

2.4.3 Certain factors such as sleep, play and healthy eating have a positive impact on all aspects of a child's or young person's wellbeing. Similarly, poverty, neglect and abuse are examples of influences that can have a negative effect on all the indicators of wellbeing.

¹ Outcomes Framework Report (Stradling & MacNeill, 2012)
www.scotland.gov.uk/Resource/0039/00398541.pdf
Paper on GIRFEC and UNCRC (Aldgate 3013)
www.scotland.gov.uk/Resource/0041/00417256.pdf

2.4.4 Health, social support needs and disability can also impact on all areas of wellbeing. Consideration must be given to the child's or young person's abilities and needs, and the impact of their health, social support needs or disability on their wellbeing. The impact of a child's disability on the parent and/or siblings, and their support needs, should be considered as part of the holistic approach.

2.4.5 Speech, language and communication development is important to the overall wellbeing of all children and young people. Assessment, monitoring and review of wellbeing must therefore include the use of evidence-based tools to profile the child's or young person's speech, language and communication abilities and needs as appropriate. There are a variety of tools available that a wide range of practitioners can use to assess a child's speech, language and communication. The following links may be helpful in identifying tools best suited to be integrated into local practice:

- [The Communication Trust](#);
- [Sure Start Language Measure](#);
- [Talking Point](#); and
- [GL-Assessment](#).

2.4.6 The [Named Person](#) has a particular role in taking action as appropriate in order to promote, support or safeguard the wellbeing of the child or young person. This builds on the professional responsibilities of those individuals who are identified as Named Persons (such as Health Visitors, Primary Head Teachers and Guidance or Pastoral Care Teachers), and will form part of their day-to-day work. Further details on the Named Person functions are provided in the Named Person statutory guidance from **paragraph 3.1**.

2.4.7 Other practitioners will be required to assess the wellbeing of children and young people in the context of the duties under parts 3, 4, 5, 6, and 9 of the [Act](#).

2.5 Indicators of wellbeing

2.5.1 Section 96(2) describes wellbeing in terms of eight indicators. A person assessing a child or young person's wellbeing is to consider the extent to which the child or young person is:

Safe – protected from abuse, neglect or harm (UNCRC Articles 11, 19, 22, 32, 33, 34, 35, 36, 37, 38):

Every child or young person has the right to be safe and protected, and to feel safe and protected from any avoidable situation or acts of commission or omission which might result in that child:

- Being physically, sexually or emotionally harmed in any way;
- Put at risk of physical, sexual or emotional harm, abuse or exploitation;

- Having their basic needs (food, clothing, shelter, sanitation, education, healthcare) neglected or experiencing that their needs are met in ways that are not appropriate to their age and/or stage of development;
- Being denied the sustained support and care necessary for them to thrive and develop;
- Being denied access to appropriate health care and treatment, and social care support;
- Being exposed to demands and expectations which are inappropriate to their age and stage of development; and
- Being harmed by the behaviour of themselves or others.

Healthy – having the best possible standards of physical and mental health; support to make healthy, safe choices ([UNCRC Articles 3, 6, 24, 39](#)):

- Every child and young person has the right to a standard of health that supports them in fulfilling their developmental potential;
- The health of children and young people should be promoted, supported and safeguarded to maximise their health throughout their life course; and
- Children and young people should have access to timely, acceptable and appropriate health care, and support of appropriate quality.

Achieving – accomplishing goals and thereby boosting skills, confidence and self-esteem; ‘being all they can be’ ([UNCRC Articles 4, 18, 28, 29](#)):

- Every child and young person has the right to fulfil his or her potential. Improving achievement and attainment often go hand-in-hand, and both lead to improved life chances. Supporting all our children and young people to accomplish goals and develop skills, ambition and know-how helps them to fulfil their potential and aspirations; and
- Achievement also applies to a child’s development as a social being with a fully-formed and autonomous personality. An achieving child is more likely to feel they belong and to be able to navigate their way through life with knowledge, understanding, and confidence in their ability to cope with new and different challenges.

Nurtured – having a loving and stimulating place to live and grow ([UNCRC Articles 4, 5, 18, 20, 21, 25, 27](#)):

- The right of every child to thrive and develop into a safe, healthy, happy, well-adjusted child – and, ultimately, a respected and responsible adult – is fundamental;
- Having clear boundaries and support from adults whose actions are predictable and can be trusted; and
- Having the opportunity to form a secure attachment with a care giver.

There is clear overlap between being nurtured and being safe, healthy, achieving, respected, responsible and included.

Active – having opportunities to take part in a wide range of activities ([UNCRC Articles 3, 23, 31](#)):

Being active is not just about ‘doing’. It is also about children and young people, within their capabilities:

- having access to and being encouraged to explore their home and community environment;
- expressing themselves in different ways;
- developing new skills;
- learning how to assess and manage risks; and
- acting co-operatively within groups.

Above all, activity and play are essential to the child and young person’s subjective sense of wellbeing; the positive feelings about the self that come from having fun.

Respected – being enabled to understand their world, being given a voice, being listened to, and being involved in the decisions that affect their wellbeing ([UNCRC Articles 2, 3, 4, 5, 8, 12, 13, 14, 16, 17, 18, 30](#)):

- The UNCRC highlights the importance of parents, carers, and practitioners in children’s services, recognising every child’s right to be treated with respect and dignity at all times; regardless of the child or their parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;
- Respect and being respected are multi-dimensional concepts. Every child or young person has the right to express their views on matters that directly affect them, in the manner most appropriate to them; and to have those views given due weight in accordance with their age and developmental level, by the adults who care for them, or come into contact with them in a professional or personal capacity. Communication or learning difficulties should not be a barrier to obtaining and having regard to the child’s views;
- Where decisions are being taken in respect of a child in a legal forum or elsewhere, there should be a record of the child’s views, which should be considered before any decision is taken, and where necessary, advocacy or other appropriate support should be provided to assist the child;

- The child who is treated with respect is more likely to be safer, emotionally, physically and spiritually healthier, happier, more nurtured, more likely to feel and be included, more likely to be active, and more likely to respect themselves and others, and behave in a considerate and responsible way.

Responsible – taking an active role within their home, school and community
([UNCRC Articles 3, 12, 14, 15, 40](#)):

Being responsible is about:

- accountability;
- understanding the rules and parameters which guide how we live alongside each other;
- leadership and decision making, with support as appropriate;
- the capacity for moral judgement;
- showing respect and compassion for others;
- being honest with yourself and others;
- taking an active role in your peer group;
- resisting pressure to engage in inappropriate, dangerous or anti-social behaviour;
- self-control;
- being patient when your wishes are not instantly gratified;
- not resorting to aggression or violence to get your own way; and
- learning how to negotiate with others.

Included – being a full member of the communities in which they live and learn; receiving help and guidance to overcome inequalities ([UNCRC Articles 3, 6, 18, 23, 26, 27](#)):

- Every child has the right to be included;
- Inclusion is about the acceptance of all, and the recognition that each person, regardless of their differences, can make a valuable contribution to the community; and
- Involves the removal of social, economic, cultural, religious, personal, communication and physical barriers that prevent children, young people, and their families from accessing services, exercising their rights and engaging with their community, and society at large.

2.5.2 These eight wellbeing indicators are sometimes known collectively as SHANARRI. While each indicator is separately defined, in practice, the indicators are not discrete, but connected and overlapping. In this way, they give a holistic view of each child or young person, and allow the child or young person, and the adults supporting them, to consider strengths as well as barriers to growth and development.

2.6 Who should assess a child's or young person's wellbeing?

2.6.1 Section 96(1) refers to 'a person' assessing the child or young person's wellbeing. This term encompasses all those to whom this guidance applies (local authorities, health boards, directing authorities; other service providers and related

services as defined in Part 3; relevant authorities as listed in schedule 2, listed authorities as detailed in schedule 3, and corporate parents as listed in schedule 4 of the Act).

2.6.2 This means that a wide range of practitioners are required to think about children and young people's wellbeing in the course of their day-to-day activities when exercising functions under the Act. This will include practitioners with direct responsibilities for children, and those with indirect responsibilities (for example, those delivering services to parents).

2.6.3 Clearly, those practitioners directly involved in delivering services to children and young people need to consider their wellbeing. For example, a teacher who notices a change in a child's school attendance, or a youth worker who becomes aware that a young person is a victim of bullying, must consider whether these circumstances are a consequence of, or an influence on, the child or young person's wellbeing.

2.6.4 Practitioners providing a service to, or coming into contact with, adults who are parents (See glossary, **paragraph 1.6.11**), adults who are siblings of children or young people, and adults who have regular contact with children or young people, are also required to consider children or young people's wellbeing. For example, a GP treating an adult with a chronic health condition must consider whether the adult's condition is affecting their child or children's wellbeing, as detailed in section 96(1)(d).

2.6.5 In addition, practitioners providing general services in the community may have information relevant to children and young people's wellbeing. For example, a Police Officer charging a 14 year-old boy following an on-going dispute between two groups of youths is required to consider the boy's wellbeing and to assess whether he is eligible for support via the local Early and Effective Intervention (EEI) process. EEI is designed to facilitate a multi-agency assessment of wellbeing concerns in relation to the alleged offence, and with the Named Person, to identify the most appropriate support for the child, with the aim of preventing further offending and meeting identified needs.

2.6.6 Practitioners with a particular focus in a specialist area (for example, oncology consultant, substance misuse support worker) have specialist assessment tools that they use to analyse information about a specific area of a child or young person's needs. These specialist assessments form part of the holistic assessment of wellbeing, and should be considered in the context of the child or young person's life at home and in the wider community.

2.6.7 Assessments of wellbeing will be required in a wide and varied range of circumstances. Local authorities, health boards, directing authorities; other service providers and related services as defined in Part 3; and the public bodies listed in schedules 2, 3 and 4 of the Act should have local training, policies and procedures in place to support their employees in assessing wellbeing.

2.7 Wellbeing concerns

2.7.1 A child or young person has a [wellbeing need](#) if their wellbeing is, or is at risk of, being adversely affected by any matter. The identification of a wellbeing need is usually the result of someone in the child's, or young person's life having a concern about their wellbeing. All practitioners highlighted in **paragraph 2.6.7** above should know how to identify a wellbeing concern, how to communicate that concern, and to whom.

2.7.2 A wellbeing concern may be identified by the child, or young person, or by anyone who knows or supports the child or young person., and can be identified for many reasons, such as (but not limited to) the following:

- a) a child or young person may be worried, anxious or upset about an event/set of circumstances, including socio-economic circumstances;
- b) a parent or family member may have noticed a change in the child or young person's behaviour, demeanour or developmental progress;
- c) a parent may have concerns about the impact on their child of an event or set of circumstances;
- d) a practitioner may have concerns for a child or young person's health, or may have noticed a change in their behaviour, demeanour, developmental progress or level of achievement;
- e) a child or young person may be offending, or putting themselves at risk of harm.

2.7.3 Any indication that a child's or young person's wellbeing is, or is at risk of being, adversely affected, can constitute a wellbeing concern.

2.7.4 The concern will arise from observation or assessment which indicates that one or more aspects of wellbeing is, or is at risk of being, adversely affected or subject to an effect by factors related to the child, or young person. Professional judgement based on experience and training (supported by local management structures and governance arrangements) and information about the child, or young person, and their circumstances, will be key to identifying wellbeing concerns. In some cases a single observation or incident may be judged to represent a risk to wellbeing and be considered a concern. In other cases the context of the observation or assessment, and wider knowledge of the child's general wellbeing and circumstances may either heighten or reduce the concern. The nature of the concern will be specific to the individual child, their age, stage of development and circumstances, so what represents a wellbeing concern for one child, may not be judged a concern for another child.

2.7.5 The following examples illustrate the importance of considering context and other information about the child:

- A parent requests an emergency dental appointment for a four year old child, who fell off their bike the night before and broke a front tooth. The child is

found to have been attending the dentist regularly and dental and oral health appear good. Through observation, examination and enquiry into the circumstances of the injury there are no concerns about the wellbeing of the child.

Another parent requests an emergency dental appointment for a four year old child as they fell off their bike two weeks ago and have broken a front tooth that has been causing pain for days. The child is found to be in significant pain and the broken tooth is infected. The child has not been attending the dentist regularly and has poor oral and dental health including several decaying teeth that have to be removed and several others that require treatment. The dentist therefore forms a professional judgement that there is concern about the child's wellbeing.

- A child is disengaged in class and performing poorly in assessments. The class teacher in discussion with the child is satisfied that this is a temporary loss of focus due to peer group distractions and that following discussion, the child will reapply themselves without any further intervention. There is no concern about the child's wellbeing.

For another child, inquiry by the class teacher may suggest that a fall in performance may be coupled with a fall in attendance and poor application in a range of classes. Discussion with the child may lead the teacher to conclude that the child is struggling to cope with peer group interactions, curriculum demands and is starting to disengage from school. The judgement is that there is a concern about wellbeing and that early intervention is necessary to address the concern before it escalates.

2.7.6 Wellbeing concerns will be on a continuum of severity, and may relate to a minor adverse effect on wellbeing or to a significant risk to the child's wellbeing, as in the case of serious injury or illness, or child protection concerns². The nature of the concern may represent a short or long term risk to wellbeing, including relatively minor issues that, if not resolved, would over time have a detrimental effect on the child's wellbeing.

² Where there are child protection concerns, existing child protection procedures should be followed, as specified in the [National Guidance for Child Protection in Scotland 2014](#).

2.7.7 While in reality the eight wellbeing indicators often overlap, the following are some examples of wellbeing concerns under the SHANARRI headings (note: these are examples only – this is not an exhaustive list). A child may:

Safe

be left unattended at home or in the community; be victimised at school or in the community; be involved in risk taking behaviour;

Healthy

have repeated untreated head lice infestations; have untreated dental caries; report self-harming; be involved in regular, or excessive, underage drinking;

Achieving

have poorly developed speech and language skills; lack the confidence to tackle new experiences or tasks; be unable to attend school regularly, or for the whole day, due to caring commitments;

Nurtured

show poor attachment to primary care givers; experience a poor or inconsistent level of physical or emotional care within the family setting;

Active

have poor gross motor skills; have no opportunity to engage in age-appropriate play or cultural, sporting or recreational activities;

Respected

feel that their views are not listened to and given due consideration; be unfairly treated because of their background, beliefs or characteristics;

Responsible

be misusing alcohol, drugs or other harmful substances; be engaging in anti-social, dangerous or offending behaviour in the community; not respect others' possessions;

Included

have limited support to overcome social, physical or emotional barriers to participation in family, school or community life; not feel accepted or valued in school or in the community.

2.8 The role of the Named Person in relation to wellbeing

2.8.1 Section 19 of the Act sets out the key role of the Named Person in promoting, supporting or safeguarding the wellbeing of a child or young person.

2.8.2 Section 19(1) defines the 'Named Person service' as the service of making available, in relation to a child or young person, an identified individual who is to exercise certain functions. These functions are set out in section 19(5) as:

- a) doing such of the following where the Named Person considers it to be appropriate in order to promote, support or safeguard the wellbeing of the child or young person –
- i. advising, informing or supporting the child or young person, or a parent of the child or young person,
 - ii. helping the child or young person, or a parent of the child or young person, to access a service or support, or
 - iii. discussing, or raising, a matter about the child or young person with a service provider or relevant authority, and
- b) such other functions as are specified by this Act or any other enactment as being functions of a Named Person in relation to a child or young person.

2.8.3 In order to recognise whether any action is required in response to a wellbeing concern in order to promote, support or safeguard the child or young person's wellbeing, the Named Person must have a good understanding of the wellbeing indicators, and must have an overview of the child's wellbeing.

2.8.4 The skills and experience required by a Named Person are specified in secondary legislation and further explained at **paragraph 4.1.15**. This sets out the expectation that the Named Person will have a good understanding of child development or pupil support needs, and will therefore be able to consider the child or young person's wellbeing as appropriate to their age and/or stage of development. The Named Person will also be required to have an understanding of common effects on wellbeing such as socio-economic factors, communication difficulties and disabilities.

2.8.5 The five practitioner questions should help the Named Person decide what action, if any, is required:

- a) What is getting in the way of this child or young person's wellbeing?
- b) Do I have all the information I need to help this child or young person?
- c) What can I do now to help this child or young person?
- d) What can my agency do to help this child or young person?
- e) What additional help, if any, may be needed from others?

The National Practice Model (**Appendix A**) should be used in considering the child or young person's wellbeing, and is described later in this guidance.

In responding to concerns about a child or young person's wellbeing, the Named Person and others will be required to consider wellbeing as a whole, and therefore the impact of promoting, supporting or safeguarding one aspect of the child or young person's wellbeing on all the other aspects. For example an action taken to keep a child safe might have the unintended consequence of reducing the child's inclusion at school or in the community, as could be the

case where a child is impulsive and behaves in a way that can cause injury or upset to themselves and others. The need for a high level of supervision at break times in school may mean that for safety reasons the child will remain indoors rather than in the playground. However this action without additional measures would exclude the child from playground activities and interaction with other children. The Named Person, typically in discussion with the child and parents, would be required to consider how best to keep the child safe from the risk of further injury to themselves and others, while finding ways to ensure that they were included in interactions with peers. This might be identifying 'buddies' for the child, or creating alternative opportunities for the child to interact with their peers indoors, balanced with providing opportunities for supervised structured play in the playground.

2.9 Information sharing in relation to a child's or young person's wellbeing

2.9.1 Sections [23](#), [26](#) and [27](#) of the Act specify the conditions under which information relating to wellbeing concerns should be shared.

2.9.2 It is important that, regardless of the nature of the concern, or of its source, the person who has a concern knows whether they should share it, and who to share it with. The Act provides, under the information sharing duties in section 26, that a person holding information likely to be relevant to the Named Person's functions must consider what is appropriate and proportionate to share with the child or young person's Named Person. Therefore, anyone who has a concern for a child or young person's wellbeing should contact the child or young person's Named Person. Further details are provided in the guidance on Part 4. It is important to stress that if the wellbeing concern relates to a child protection concern, then Social Work Services should be informed immediately, as set out in the [National Guidance for Child Protection in Scotland](#). The Named Person should subsequently be informed that a child protection concern has been raised.

2.9.3 The Act requires that the Named Person service provider must publish information about how to contact Named Persons. A phone call or conversation may well be the first form of contact with the Named Person, but the detailed procedures for sharing information relating to a child or young person's wellbeing within and between services and agencies, will be dictated by local policies and working practices. Local procedures will specify the arrangements in place in each health board or local authority area, and for independent schools, secure accommodation and the Scottish Prison Service.

2.9.4 Further detail about information sharing is provided in the guidance on Part 4 of the Act (**paragraph 3.1**).

2.10 Duty to help Named Person in relation to a child's or young person's wellbeing

2.10.1 [Section 25\(2\)](#) requires a service provider or relevant authority, as defined in Part 4 of the Act to comply with any request for help made by the Named Person service provider, unless, as defined in [section 25\(3\)](#), the provision of that help would:

- a) be incompatible with any duty of the other service provider or relevant authority, or
- b) unduly prejudice the exercise of any function of the other service provider or relevant authority.

2.10.2 Section 25 effectively allows the Named Person to ask for help from another service, or from another part of the same service, in order to promote, support or safeguard a child or young person's wellbeing, and that other service is required to provide that help, whatever it may be, unless the exclusions in section 25(3) apply. Further detail on section 25 can be found in the guidance on Part 4 (**paragraph 9.1**).

2.10.3 The GIRFEC National Practice Model is the main way to consider wellbeing (**Appendix A**). It should be used in all circumstances where an assessment of wellbeing is required.

2.10.4 At its simplest level, promoting, supporting or safeguarding the child or young person's wellbeing may constitute consideration of whether there are any concerns for the child or young person's wellbeing in relation to any of the wellbeing indicators. This is the level at which most people will use the National Practice Model, and is the level that is likely to be used at transition points in every child or young person's life.

2.10.5 Certain circumstances will trigger a more comprehensive assessment of wellbeing, particularly when there are any established concerns for the child or young person's wellbeing. For example, following a significant life event (such as bereavement, involvement in offending activity) where this event has had an impact on the child's wellbeing, the Named Person, working in partnership with the family and colleagues as appropriate, would gather further information if required, and analyse all the information using the My World Triangle and the Resilience Matrix, to identify the child or young person's wellbeing needs.

2.10.6 If wellbeing needs are identified, it is important to consider how they can be met. This involves identifying the desired outcomes, and returning to the practitioner questions in order to plan for future action:

- What can I do now to help this child or young person?
- What can my agency do to help this child or young person?
- What additional help, if any, may be needed from others?

2.10.7 At each step, the practitioner is required to record and evidence their activities in relation to their assessment of the individual child or young person's wellbeing, in accordance with local procedures.

2.11 Wellbeing in the context of the Child's Plan

2.11.1 [Part 5](#) of the Act requires consideration of the requirement for a Child's Plan – defined in section 33(1) as being when –

- a) the child has a wellbeing need, and
- b) subsection (3) applies in relation to that need.

2.11.2 Subsection 3 applies in relation to a wellbeing need if –

- a) the need is not capable of being met, or met fully, by the taking of action other than a targeted intervention in relation to the child; and
- b) the need, or the remainder of the need, is capable of being met, or met to some extent, by one or more targeted interventions in relation to the child.

2.11.3 This means that, when a child has no wellbeing needs, or wellbeing needs that can be met by the services generally available from the health board, local authority or independent school, then a Child's Plan is not needed. However, when a child's wellbeing is, or is at risk of being, adversely affected, consideration must be given to whether a targeted intervention is required in order to meet the child's needs – that is, whether or not the child requires a Child's Plan.

2.11.4 In addition to the requirement for a Child's Plan, the duties relating to content and management of the Child's Plan, as specified in sections [34](#) and [39](#) of the Act respectively, require reference to the child's wellbeing needs.

2.11.5 The statutory Child's Plan provisions in Part 5 apply from birth up to the child's 18th birthday, but good practice would support non-statutory planning from pre-birth to beyond a child's 18th birthday, as appropriate to need.

2.12 Child protection in the context of wellbeing

In assessing a wellbeing concern, consideration must be given to whether the information available suggests that a child or young person is experiencing, or is, or could be at risk of harm, abuse or neglect. These child protection concerns must be shared with Social Work Services so that they can decide whether the harm is, or is likely to be, significant, and can take appropriate action. The Named Person should be informed as soon as is reasonably practicable thereafter. Further information about child protection procedures can be found in the [National Guidance for Child Protection in Scotland 2014](#). Informing the Named Person about a child protection concern must not create a delay in following local child protection procedures.

2.13 Other parts of the Act relating to wellbeing

2.13.1 The term wellbeing is used in other related parts of the Act (Parts 3, 4, 5, 6, 9 and 17) and is also referenced in other legislation.

Part 3:

2.13.2 [Part 3](#) of the Act concerns children's services planning, and states at [section 9\(2\)\(a\)\(i\)](#) that one aim of a children's services plan is that children's services in an area are to be provided in the way which best safeguards, supports and promotes the wellbeing of children in the area concerned.

2.13.3 Further, at [section 13\(1\)\(b\)\(ii\)](#), a local authority and the relevant health board must publish a report on the extent to which the provision of children's services and related services, in accordance with the children's services plan, has achieved such outcomes in relation to the wellbeing of children in the area as the Scottish Ministers may by order prescribe. Full statutory guidance on Part 3 of the Act will be published in advance of this Part coming into force.

Part 6:

2.13.4 [Part 6](#) of the Act relates to early learning and childcare, and in particular, section 49 makes provision about alternative arrangements to meet the wellbeing needs of looked after two year olds. Within the terms of section 49(1)(b) of the Act, an authority must assess a child's needs, and consider whether making alternative arrangements in relation to the child's education and care would better safeguard or promote the child's wellbeing.

2.13.5 If the authority considers that alternative arrangements in relation to the child's education and care would better safeguard or promote the child's wellbeing, then in terms of section 49(2)(b) of the Act, it must make such alternative arrangements as it considers appropriate for this purpose.

2.13.6 The outcome of any wellbeing assessment undertaken in accordance with section 49 of the Act, and any alternative arrangements made, must be recorded in the Child's Plan, as detailed in Part 5 of the Act³.

2.13.7 Section 96 of the Act was commenced for the purposes of Part 6 on 1 August 2014. [Statutory guidance](#) on Part 6 of the Act was issued on 4 August 2014, and included guidance on wellbeing as it relates to Part 6.

Part 9:

2.13.8 Corporate parenting duties are specified in [Part 9](#) of the Act. These duties apply to the organisations listed in schedule 4. Full statutory guidance on Part 9 will be published prior to this Part coming into force on 1 April 2015.

2.13.9 Section 58(1)(a) requires that every corporate parent is, in so far as consistent with the proper exercise of its other functions, to be alert to matters which, or which might, adversely affect the wellbeing of children and young people to whom Part 9 applies, as specified in section 57 – that is, to every child who is looked after by a local authority, and every young person between the ages of 16 and 26 who was (on their 16th birthday or subsequently), but is no longer, looked after by a local authority, and any other young person between the ages of 16 and 26, formerly but no longer looked after by a local authority, as the Scottish Ministers may specify by order.

2.13.10 Each corporate parent listed in schedule 4 is to have cognisance of wellbeing as defined by section 96 of the Act, and to be alert to matters which might adversely affect wellbeing. In order to achieve this, corporate parents should ensure they create a culture where wellbeing is understood in the context of sections 95 and 96, specifically in relation to those who are, or have been, looked after children.

³ Transitory provision is made under article 3 of the Children and Young People (Scotland) Act 2014 (Commencement No. 1 and Transitory Provisions) Order 2014 with the effect that until a Child's Plan is prepared for the first time under Part 5 of the 2014 Act, the reference to Part 5 in section 49(5) of the Act is to be read as if it were a reference to regulation 5 (Child's Plan) of the Looked After Children (Scotland) Regulations 2009 (SSI 2009/210).

Part 11:

2.13.11 [Part 11](#) of the Act amends the 1995 Act, to insert a new section 26A (provision of continuing care: looked after children). Under this new section, local authorities are under a duty to provide an eligible person (defined in section 26A(2)) with continuing care, which section 26A(4) defines as meaning the same accommodation and other assistance as was being provided immediately before the person ceased to be looked after. Section 26A(5) and (7) set out the circumstances in which the duty to provide continuing care does not apply and ceases respectively.

2.13.12 Section 95 of the Act also amends the 1995 Act to the effect that in exercising functions under the new section 26A, a local authority must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing (see new section 23A of 1995 Act – explained in more detail in **paragraph 0** below). Wellbeing in this context is as defined in section 96(2) of the Act.

2.13.13 This means that for those young people who are eligible to access continuing care, the care provided should safeguard, support and promote their wellbeing. All individuals working with these young people are therefore required to have regard to this guidance. Local authorities should issue appropriate training, policies and procedures to support practitioners.

2.14 Wellbeing and Other legislation:

The Children (Scotland) Act 1995:

2.14.1 The [1995 Act](#) is amended by section 95 of the Act to ensure that wellbeing is considered by local authorities when exercising certain functions under the 1995 Act.

2.14.2 Under section 95 of the Act, a new section, 23A (sections 17, 22 and 26A: consideration of wellbeing), is to be inserted after section 23 of the 1995 Act. As such, this relates to children and young people who are looked after by the local authority, and children who are in need, as defined by the 1995 Act, and to children and young people who are eligible for the provision of continuing care under Part 11 of the Act. New section 23A applies where a local authority is exercising a function under or by virtue of sections 17 (duty of local authority to child looked after by them), 22 (promotion of welfare of children in need) or 26A (provision of continuing care: looked after children) of the 1995 Act (section 23A(1)).

2.14.3 Section 23A(2) of the 1995 Act stipulates that the local authority, when exercising those particular 1995 Act functions, must have regard to the general principle that functions should be exercised in relation to children and young people in a way which is designed to safeguard, support and promote their wellbeing.

2.14.4 Section 23A(3) of the 1995 Act requires a local authority to assess the wellbeing of a child or young person by reference to the extent to which the indicators listed in section 96(2) of the Act are or, as the case may be, would be satisfied in relation to the child or young person.

2.14.5 Section 23A(4) provides that in assessing the wellbeing of a child or young person as required by section 23A(3) of the 1995 Act, a local authority is to have regard to guidance issued under section 96(3) of the Act (in other words, this guidance).

The Public Bodies (Joint Working) (Scotland) Act 2014:

2.14.6 The [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) includes provision for the Scottish Ministers to make regulations to prescribe outcomes in relation to health and wellbeing ('the national health and wellbeing outcomes'). These outcomes have now been prescribed in the Public Bodies (Joint Working) (National Health and Wellbeing Outcomes) (Scotland) Regulations 2014 SSI 2014/343. These outcomes sit alongside the wellbeing indicators prescribed by the Children and Young People (Scotland) Act 2014.

The Social Care (Self Directed Support) (Scotland) Act 2013:

2.14.7 The [2013 Act](#) provides a choice of options for children and family members where a local authority is to provide services under section 22 of the 1995 Act to a child or a member of a child's family. The local authority, in exercising functions under section 22 of the 1995 Act, as amended by section 95 of the Act, is to have regard to the general principle that functions should be exercised in relation to children in a way which is designed to safeguard, support and promote their wellbeing.

2.14.8 It follows, therefore, that the amendment to the 1995 Act specified in section 95 of the Act, has a consequential effect on the implementation of the 2013 Act as it applies to children. This means that, in providing services under section 22 of the 1995 Act, and in giving the supported person the opportunity to choose one of the options for self-directed support in accordance with the 2013 Act (unless the local authority considers that the supported person is ineligible to receive direct payments) the local authority will be required to have regard to the general principle that providing self-directed support options should be done in a way that is designed to safeguard, support and promote the wellbeing of the child (whether they are the supported person or whether the supported person is a member of their family).

3 Part 4 – Named Person

3.1 Introduction

3.1.1 This part of the guidance covers Part 4 Children and Young People (Scotland) Act 2014 (the Act). The following bodies must have regard to this guidance in exercising the functions conferred by [Part 4](#):

- a local authority;
- a health board;
- a directing authority; and
- a relevant authority.

These terms are explained in the glossary (**paragraph 1.6**).

3.1.2 Section 29 stipulates that certain bodies must comply with the directions* issued by Scottish Ministers when exercising their functions under this part of the Act. These bodies are:

- a local authority;
- a health board;
- a directing authority; and
- a relevant authority.

*Directions are further legislation that may be issued by Ministers to give legally binding instructions to a public body about the way it exercises its functions.

3.1.3 In line with section 29(3) of the Act, any directions issued under the Act must be subject to formal public consultation. The revocation or revision of a direction must also be subject to consultation.

3.1.4 This guidance should be read in conjunction with Part 4 of the Act (Named Person Service), any secondary legislation made under Part 4 and any directions which are issued under Part 4. The guidance follows headings used within Part 4 of the Act, but additional sub-headings have been introduced for further clarity.

3.2 Summary of Part 4

3.2.1 The following summarises the different sections within [Part 4](#) of the Act (discussed in more detail below).

- **Section 19** sets out the duty to make available the Named Person service, what that means, who is responsible for providing the Named Person service, who can be a Named Person (supplemented by secondary legislation) and sets out the functions of the Named Person.
- **Section 20** sets out the responsibility of health boards to make available the Named Person service for children in their area from birth until school age, or entry.

- **Section 21** sets out which service provider is responsible for providing the Named Person service for children from age five, or school entry, until their 18th birthday.
- **Section 22** states how the Named Person service should continue to be available for young people who remain on a school roll beyond their 18th birthday.
- **Section 23** specifies how communication and the transfer of information should be managed at the points when the Named Person service provider changes.
- **Section 24** sets out the duty of Named Person service providers to communicate information about the role of the Named Person in general, and specifically to children/young people and their parents.
- **Section 25** sets out the duty placed on service providers and relevant authorities to respond to a Named Person service provider to assist the Named Person in exercising their functions.
- **Section 26** sets out the duties and powers in relation to information sharing, and provides a framework to support the proportionate and appropriate sharing of information by the Named Person and others in support of the Named Person functions.
- **Section 27** makes further provision where the disclosure of information under Part 4 results in a breach of confidentiality.
- **Section 28** specifies who must have regard to the statutory guidance issued by Scottish Ministers and who should be consulted about the guidance.
- **Section 29** specifies who must comply with any directions issued by Scottish Ministers and who should be consulted by Scottish Ministers before the directions are issued or changed.
- **Section 30** provides for an Order-making power under which the Scottish Ministers can set out a complaints procedure in relation to this part of the Act .
- **Section 31** specifies that schedule 2 of the Act lists the relevant authorities for the purposes of Part 4; specifies which persons on that schedule are not relevant authorities for the purposes of section 29 (and therefore do not require to comply with directions of the Scottish Ministers); and provides how the schedule, and the section 29 exclusion may be amended.
- **Section 32** provides an interpretation of the terms used within Part 4 of the Act.

4 Part 4 – Provision of Named Persons

4.1 Section 19

Named Person service

4.1.1 Section 19 sets out the duty to make available the ‘Named Person service’, describes what that means, specifies who can be a Named Person (to be supplemented by secondary legislation) sets out the functions of the Named Person and explains who has responsibility for the exercise of the Named Person functions.

4.1.2 Sections 20, 21 and 22 specify who should be the Named Person service provider for different ages and groups of children. In summary, the duty to make available the Named Person service is specified as follows:

- the health board for children from birth to five years, or school entry (if before or after the age of five years), known as pre-school children within the terms of the Act;
- the local authority for children from five years, (including home educated children), or school entry, until their 18th birthday, or later if still at school, with the exception of those in the categories below;
- a directing authority – notably the manager of a grant-aided school, or the proprietor of an independent school, for children in attendance at that school, or the manager of a residential establishment in which secure accommodation is housed; and
- the Scottish Ministers (via the Scottish Prison Service) for children in legal custody (as defined by section 21(3) of the Act).

4.1.3 The Named Person service refers to the organisational arrangements put in place by the service provider, to support the functions of the Named Person in respect of every child and young person for whom the service provider is responsible. The details of these arrangements are outlined in the guidance below, but in summary the Named Person service must:

- make available an identified Named Person for every child and young person for whom the service provider has responsibility;
- ensure that the Named Person meets the requirements in section 19(3) and requirements relating to qualifications, training and experience as specified in secondary legislation;
- make known the arrangements for the operation of the Named Person service, in general and for children, young people and parents;
- put in place arrangements to ensure business continuity in relation to making available a Named Person;
- put in place information sharing arrangements to ensure the appropriate and proportionate sharing of information, by and with the Named Person, within the legal framework, to promote, support and safeguard the wellbeing of the child or young person;
- support the process of initiating preparation of a Child’s Plan as soon as is reasonably practicable in cases where the child has a wellbeing need and their wellbeing is being, or at risk of being, adversely affected by any matter,

and the need cannot be met, or met fully, by action other than a targeted intervention.

4.1.4 Good practice in the provision of a Named Person service suggests that a service provider should also:

- provide systemic and individual support and supervision to enable each Named Person to carry out their functions effectively;
- ensure that the arrangements make clear that where there is a child protection concern the local child protection procedures should be followed without delay. The arrangements should include who has responsibility for informing the Named Person in these circumstances, but emphasise that informing the Named Person should never delay taking action to safeguard a child. These arrangements should also refer to adult protection procedures as appropriate;
- put in place partnership arrangements to support the functions of the Named Person in relation to providing, accessing and coordinating support for a child and young person;
- ensure that there is a common understanding of the responsibility to support the Named Person functions across the workforce and between service providers as appropriate;
- ensure that the culture, systems and practice in relation to the exercising of the Named Person functions supports partnership working with children, young people and parents.

The Named Person

4.1.5 Section 19 requires the Named Person service to be made available through a designated, identified individual who will exercise the functions of the Named Person on behalf of the service provider. The Named Person will carry out statutory functions on behalf of the service provider with respect to individual children or young people for whom they have a professional responsibility, as part of their contracted functions. The Named Person is the individual point of contact within a service, acting on behalf of that service, with responsibility for supporting the wellbeing of the individual child or young person within the context of their professional expertise and contracted role. The Act is clear that responsibility for the exercise of these functions lies with the service provider and not with the individual. This means that the Named Person functions will be carried out as part of the Named Person's contractual duties and will be subject to the same accountability, supervision and support arrangements as other aspects of the individual's duties. The Act does not impose any additional legal responsibilities on any individual who is carrying out the Named Person functions.

4.1.6 The Act outlines two conditions which have to be satisfied for a person to be an identified individual for the purpose of the Named Person service:

- Firstly, the individual must be either an employee of the service provider, or an employee of an organisation which carries out a service on behalf of the service provider. In almost all cases it is expected that the Named Person will be a direct employee of the service provider. An example of an exception would be where, as a result of health and social care integration, either a health board or a local authority employs staff who carry out the Named

Person functions on behalf of the other organisation. In practice this might be where health visitors are employed by the local authority as part of a social care team, but carry out the Named Person functions for pre-school children on behalf of the health board. There is no intention or expectation, that service providers will contract a third party to carry out the Named Person functions on their behalf, or otherwise 'outsource' the Named Person functions.

- The second condition refers to the training, qualifications, experience and position of the individual. These requirements are specified by Scottish Ministers in secondary legislation, with the intention of ensuring that the key role of Named Person is undertaken by an individual with the appropriate background and experience, who holds a position within the service which will allow them to carry out effectively the functions as specified in the Act. It will be for the service provider to make the appropriate arrangements to ensure that the Named Person service is delivered through individuals who meet the conditions set in the Order and who have had training in the role of the Named Person. While for the majority of children and young people, there will be a standard approach as indicated below, there will be situations where the service provider will require to make alternative arrangements to meet the child's or your person's wellbeing needs. The guidance and secondary legislation provide the framework within which this flexibility may be exercised.

4.1.7 Where the service provider is a health board for pre-school children living in their area, the Named Person will be registered with the Nursing and Midwifery Council or the General Medical Council and fulfil the requirements for training as specified in The Named Persons (Training, Qualifications, Experience and Position) (Scotland) Order (2016) "referred to as the Named Persons Order"). This Order requires that all Named Persons for pre-school children should have training in child development and in assessing and profiling the speech, language and communication abilities and needs of children, young people and parents.. It is anticipated that Named persons for pre-school child will normally be a registered and practicing health visitor. When a family is enrolled in the Family Nurse Partnership programme then the Family Nurse should be the Named Person.

4.1.8 Where the service provider is a local authority, the Named Person for children and young people attending school in that local authority area is expected to be a registered teacher who holds a promoted post in the school the child or young person is at, and who holds, or has held, a post which gives them experience in relation to pupil support, pastoral care/guidance.

4.1.9 Where the service provider is the local authority and the Named Person service is in place for children not on a school roll, the Named Person should be the holder of a promoted post within the local authority, who has had training and experience in supporting pupils, to enable the individual to undertake that role and who holds, or has held a post which gives them experience supporting pupils.

4.1.10 Where the service provider is an independent or grant-aided school, the Named Person should be a registered teacher who holds a promoted post in the school attended by the child for whom they are Named Person. They should also hold, or have held, a post which gives them experience in relation to pupil support, pastoral care/guidance.

4.1.11 Where the service provider is a provider of secure accommodation the Named Person should be the Head of Unit. Where the service provider is the Scottish Prison Service, the Named Person should be an individual in a promoted post within the penal establishment, who has responsibility for the care and support of children in legal custody.

4.1.12 The Act specifically states that the role of the Named Person cannot be carried out by the parent of the individual child or young person. This is in recognition of the very clear differences between the role of a parent and the statutory role of the Named Person as stated in the Act. Where there is a potential conflict – notably where an individual’s professional role covers their own children – the service provider must make arrangements for the Named Person service to be made available through another individual. For example, where the Head Teacher of a primary school would be the Named Person for a pupil who is also their own child, the local authority should arrange for another appropriate member of staff within the school, or another appropriate employee of the service, to be the designated Named Person for that child.

4.1.13 Where it becomes clear that the professional who would usually take on the Named Person role would not be appropriate for a child or young person (for example, if they were a relative or there has been a significant breakdown in relationships and trust), it would be for the service provider – in discussion with the usual Named Person, the child and parents – to make a judgement about what arrangement would be in the child’s best interest.

4.1.14 If the judgement is that there may be a potential conflict between the family and professional role of the individual and that conflict could have a negative impact on the child’s or young person’s wellbeing, or would compromise the professional role of the member of staff, then alternative arrangements should be made. Similarly where a relationship breakdown between the child or parents and the Named Person would present a barrier to carrying out the functions to the best interest of the child’s wellbeing, mechanisms should be in place to agree alternative arrangements for making the Named Person service available to the child and parents.

Named Person skills knowledge and understanding

4.1.15 The skills, knowledge and understanding of Named Persons will be developed and maintained through undergraduate, postgraduate, professional and in-service training and development. At the heart of this training will be the [Common Core of Skills, Knowledge & Understanding and Values for the “Children’s Workforce” In Scotland](#). In the vast majority of circumstances the Named Person will be a health visitor or a promoted teacher and the skills, knowledge and understanding required to fulfil the Named Person functions will be part of their daily functions. However in a small number of situations other professional designations will fulfil the functions of a Named Person and the following will be helpful to ensure a universal standard.

4.1.16 The Named Person should have a clear understanding of:

- The principles and values underpinning the GIRFEC approach
- Wellbeing and the use of the National Practice Model for the assessment of wellbeing

- What may affect the wellbeing of children and young people and the potential effect on wellbeing
- How to recognise and evaluate a wellbeing concern
- How to respond proportionately to a wellbeing concern to carry out their functions as outlined in the statutory guidance
- How to work in partnership with parents and take account of their views in relation to the wellbeing of their child
- How to seek and have regard to the views of children and young people, be able to identify when speech, language or communication barriers exist and how to access appropriate support where such barriers exist
- How to seek assistance from within and outwith their service
- Their duties regarding information sharing including
 - Their specific responsibilities in terms of this Act
 - The handling, storage and recording of Named Person information
 - The duty that this Act places on Named Person services to share information that is likely to be relevant to the functions of other Named Persons.
 - Sharing where a duty of confidentiality exists
 - Sharing or not where other legal restrictions are in place
 - Sharing appropriate Named Person information at transition points
 - Appropriately recording decisions and the rationale.
- Recording and processing of wellbeing concerns and other sensitive information
- Development and use of a chronology
- Initiating, reviewing and managing the Child's Plan
- What constitutes a 'targeted intervention'
- Transferring management of the Child's Plan
- Working with a Lead Professional
- The relationship between a wellbeing concern and a child protection concern
- The range of management and other support available to support their role.

Training and development

4.1.17 The Named Persons Order specifies that the Named Person should have training relevant to carrying out their functions. It will be for the service provider to provide support for Named Persons including clear guidance on policy and procedures and training. It will be the responsibility of the service provider to determine the detailed content and nature of delivery of such training, based on the legislative provisions and this guidance. It is expected that where required, training and development will be provided to meet the above skills, knowledge and understanding.

Cross border considerations

4.1.18 There will be circumstances where children reside outside Scotland but attend a school in Scotland, or live in Scotland but attend a school out with Scotland. In relation to the Named Person duties, these only apply within Scotland. This means that where a child lives in Scotland but attends a school outwith Scotland, the Named Person service will be made available by the Scottish local authority of residence, but their ability to carry out their statutory functions will be limited to the geographical scope of this legislation. Where a child lives outwith Scotland but

attends a school managed by a Scottish local authority, the Named Person service will be provided by the Scottish local authority via the school attended.

The functions of the Named Person

4.1.19 The Named Person functions are designed to promote, support and safeguard the wellbeing of the child or young person. The role will be part of the Named Person's day-to-day work. The Named Person response to any wellbeing concerns should be proportionate, informed by the child's views and should reflect the nature of their need for additional support. The support of the Named Person comes into play if the child or parent seeks advice or support, if the Named Person identifies a wellbeing concern, or if concerns about the child's wellbeing are brought to the attention of the Named Person by others. It may be that a child, young person or parent wishes to contact their Named Person if they are worried about the child's or young person's wellbeing. The Named Person may have their own concerns from contact with the child or young person. Other individuals or agencies may have concerns that they wish to bring to the attention of the Named Person.

4.1.20 The Named Person should have regard to the following definitions of promoting, safeguarding and supporting wellbeing:

- to *promote* – actively encourage or further develop;
- to *safeguard* – protect from harm or damage.
- to *support* – give assistance, approval and encouragement; and

4.1.21 Section 19(5) outlines a range of functions which should be carried out by the Named Person, in respect of the child or young person, or the parents of the child or young person. These functions fall into three main categories:

- a) **advising, informing or supporting the child or young person, or a parent of the child or young person.** This may involve the Named Person providing direct help to the child, young person or parent in the form of information, advice, or support from their own service, in response to a request for assistance, an identified wellbeing need or based on assessment, in response to an opportunity to further promote the child or young person's wellbeing. For example this might include the Health Visitor offering information on parent and toddler groups where a parent is seeking play and social opportunities for the child, the primary head teacher organising peer buddying for a child who has recently joined the school and needs support to be included, or a pupil support teacher supporting a socially disadvantaged pupil with athletic ability to join a sports club;
- b) **helping the child or young person, or a parent of the child or young person, to access a service or support.** In considering the child's or young person's wellbeing, the Named Person may identify a service or particular support which would benefit the child, young person or parent and seek assistance from within their own service or from another service provider. The Named Person may respond to a parent's lack of confidence about aspects of parenting by supporting them to access a parenting programme, seek advice for a family on disability-friendly play activities, arrange counselling for a child who needs help with bereavement, put mentoring in place for a child who is

disengaged from learning, or facilitate access to group work support for a child who is at risk of being excluded from school; and

- c) **discussing or raising a matter about a child or young person with a service provider or relevant authority.** The Named Person may identify a wellbeing need, or have a concern brought to their attention by a parent, or another professional, which in their professional judgement requires advice and support from another agency. The Named Person may then need to discuss the wellbeing issue with other professionals in order to complete the assessment of the child's or young person's needs, or seek specialist advice as to the type of service or support which would be most appropriate to improve outcomes for the child or young person. For example, the Health Visitor may have concerns about a child's motor development and make a request for assistance to an appropriate Allied Health Professional who will provide either reassurance, signposting, advice, information, or intervention. Within the school setting a young carer may be showing signs of disengagement from school and friends as a result of their caring responsibilities, prompting the Named Person to discuss the matter with the child, raise the issue with health or social work colleagues and seek further assessment and assistance.

4.1.22 Before exercising these functions, the Named Person should use the GIRFEC National Practice Model (**Appendix A**) to consider the child's or young person's wellbeing based on the wellbeing indicators.

4.1.23 In order to respond proportionately to a wellbeing need, the Named Person will ask the five 'practitioner' questions:

- What is getting in the way of this child 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 agency do to help this child or young person?
- What additional help – if any – may be needed from others?

4.1.24 Having become aware of a wellbeing concern and analysed that information in the manner outlined above, the Named Person should exercise their professional judgement and decide to respond in the most appropriate way to promote, support and safeguard the child or young person's wellbeing. This will be a dynamic process and the Named Person may call upon the support of colleagues to assist them in their decision making. Although all decisions will be specific to the individual child and their circumstances, it is likely that the Named Person will respond in one of the following ways, in line with their statutory functions:

- the analysis of the information may indicate that the concern has no positive, or negative impact on wellbeing, and no additional action is required;
- it does not add to or change the existing assessment of wellbeing, and the existing support which the child, young person and/or their parents receive remains adequate, so no further action is required;
- the child, young person or the parents may benefit from additional advice or information from the Named Person;

- the child, young person, or their parents, may require additional support, or a change in the nature of the support provided by the Named Person, or their service;
- the child or young person, or their parents, may need assistance from the Named Person to access another service or support from another agency;
- the Named Person may need to raise the wellbeing concern with another agency to seek assistance to further assess or support the child, or the young person, or the parents;
- the Named Person may consider that a Child's Plan should be prepared, as the child's wellbeing is now, or is at risk of becoming, adversely affected and the need cannot be fully or partially met through any action other than a targeted intervention; or
- immediate action is required to safeguard the child or young person, in which case the Named Person will follow child protection procedures.

Regardless of the decision taken, the Named Person should record information about the child's wellbeing, or wellbeing concern, the analysis leading to the decision and the views of the child or young person, as well as the parent if appropriate, in line with national and local guidance.

4.1.25 The Named Person should involve the child, or young person and take account of their views as appropriate to their age and maturity, before taking action. There should be few exceptions to this requirement. Exceptions would be in cases involving very young babies or when involving the child (as described in the Act) would be detrimental to their wellbeing, for example would put their health at risk or expose them to other risks.

4.1.26 As far as is reasonably practicable, the Named Person should seek and consider the views of the parents before taking action. Exceptions to this may be where child protection procedures are being followed, or to do so would be detrimental to the wellbeing of the child or when parents are estranged from the child.

4.1.27 Communication or learning difficulties would not be considered an exception to the requirement to obtain and consider the views of the child or parents. Appropriate support should be available to ensure that the Named Person can effectively communicate with children and parents, and the child and parents are supported to understand and effectively express their views as appropriate.

Named Person and the reserve forces

4.1.28 A small number of children may become members of the reserve forces before their 18th birthday. The Act stipulates that while these individuals are in training or on duty with the reserve forces and therefore subject to service law, the Named Person functions outlined in this guidance do not apply.

4.1.29 This means that while the individual is subject to service law, the Named Person is not required to promote, support and safeguard their wellbeing by exercising their statutory functions. The reserve forces have a duty of care for service personnel which means that they will have responsibility for an individual's wellbeing while they are on training or duty with them. When the child returns from

training or duty with the reserve forces, the requirement to provide the Named Person functions will resume.

Continuity of Named Person service

4.1.30 There will be times when a child's Named Person is temporarily absent for a range of reasons, both planned and unplanned. If the absence is temporary, for example, if a Named Person is absent due to illness or planned annual leave, then the Named Person's organisation (the service provider), should have continuity arrangements in place to ensure that the Named Person function is still available. (In establishing these arrangements organisations should note that access to information systems should be strictly limited and controlled. Business Continuity Plans must reflect this and name the individual and/or post acting as a substitute. Access to information by the substitute should only be granted for the duration of the absence.) There is no expectation that the Named Person service will be available 'out of hours'.

4.1.31 Such arrangements will be particularly important for local authorities, and independent schools in relation to school holiday periods. It is expected that such arrangements will build on existing good practice in dealing with both routine and emergency enquiries during holiday periods. As the local authority or directing authority responsible for providing the Named Person service, they should be in a position to respond to urgent matters (for example, police or social work involvement in a child protection or criminal enquiry), through an identified individual, or individuals to provide routine advice and information and record non-urgent concerns for action when the school term resumes. Such contingency arrangements should be proportionate to the likely demands during school holiday periods, but robust enough to fulfil the statutory functions. Service providers should ensure that anyone who exercises the statutory functions of the Named Person during this time meets the specified requirements set out in the Act and in secondary legislation. For pupils already known to have on-going wellbeing needs, for example, disability or child protection concerns, individual planning for those pupils should include contingency or alternative arrangements for school holiday periods, for example befriending service or specialist play scheme.

4.1.32 All Named Person service providers should anticipate all likely absences and have arrangements in place to provide continual service. In doing so continuity arrangements will have to consider:

- systems used to store information relevant to the Named Person function;
- systems and processes used to convey information to the Named Person;
- on-going support supplied by the Named Person;
- all Child's Plans managed by the Named Person; and
- communication with partner agencies, the child and parents.

Planning for these eventualities is important, so it is vital that the process is robust and seen to be robust, with all key individuals across the partnership confident in its operation. Arrangements should therefore be reviewed and tested regularly.

5 Section 20

5.1 Named Person service in relation to pre-school children

Health board provision of Named Person service

5.1.1 This section of the Act places a duty on a health board to make available a Named Person service for each pre-school child living in its area.

5.1.2 A pre-school child is:

- a child who has not yet reached the age of primary school commencement as defined by reference to school commencement dates fixed by the child's local authority of residence (this is generally between four and a half and five and a half years of age); or
- a child who has reached the age of primary school commencement as defined by reference to school commencement dates fixed by the child's local authority of residence but the local authority has consented to the child's commencement at primary school being delayed.

This means that the health board retains responsibility for children who have reached school age but who remain in an early learning and childcare placement. Only when the child starts school does responsibility transfer to the local authority of residence, or the local authority which manages the school attended, or the directing authority of the independent/grant aided school.

5.1.3 A health board must make available a Named Person service to a child at the time of birth. Where wellbeing risks or concerns have been identified during the ante-natal period the Named Person service should take immediate action to review any pre-birth wellbeing assessment (**Appendix A**). The Named Person service and the individual identified to carry out the Named Person functions should conform to the specifications set out in the Named Persons Order, and outlined in section 19 of the Act (**paragraph 4.1.5**) and as supplemented by this guidance.

5.1.4 On the birth of a child, the health board area where the child will normally live (the health board of ordinary residence), has responsibility to provide the Named Person service (see [Establishing the Responsible Commissioner: Guidance and Directions for Health Boards, March 2013](#)). Where the place of birth is not the health board of ordinary residence, and the child is born in another Scottish health board then the health board in which the child is born will have responsibility to notify the health board of residence of the child in order that they can provide a Named Person service. The health board must, where reasonably practicable, identify an individual pre-birth who will exercise the functions of the Named Person following the birth of the child – in other words, a prospective Named Person. Routinely, the prospective Named Person will be the health visitor identified for the child. Where the pregnant woman has enrolled in the Family Nurse Partnership programme, the family nurse will be the prospective Named Person. They will exercise the functions of the Named Person following the birth of the child, and throughout the time that the family participates in the Family Nurse Partnership programme.

5.1.5 It is anticipated that only in exceptional circumstances will the child's health visitor or family nurse *not* fulfil the Named Person functions. An example of an exception might be in a remote and rural situation where it is not practicable for the normally allocated health visitor to be the Named Person and there is not another Health Visitor available locally (**paragraph 4.1.12**). A health board as a Named Person service provider in these circumstances may identify an appropriate individual to fulfil the Named Person functions. The individual identified should conform to the specifications set out in the Named Person (Scotland) Order 2016, outlined in section 19 of the Act and supplemented by this guidance.

5.1.6 Each health board should ensure, as far as reasonably practicable, continuity of provision of an identified Named Person for the child. For example where it is anticipated that a Named Person will be ceasing to provide their Named Person functions for a child then a health board should identify a prospective Named Person who will take on the role when the outgoing Named Person ceases to exercise their functions.

5.1.7 Where the Named Person for the pre-school child is not to be a health board employed or commissioned health visitor or family nurse then the Named Person will be registered with the Nursing and Midwifery Council or the General Medical Council and hold, or have held, a post which gives them knowledge and understanding of child development and experience in working with families to promote, support and safeguard the wellbeing of children. They will still have to be either employed or delivering a function on behalf of the health board, for example as a general practitioner.

5.1.8 When a health board becomes aware of a child becoming resident in their area they must identify a Named Person for the child as soon as reasonably practicable and provide that child with a Named Person service in line with section 20 of the Act.

5.1.9 Any change in the Named Person service provider will require the outgoing Named Person service to give information to the incoming Named Person service. Guidance in relation to the provision of information at this time can be found in the guidance at **paragraph 10.2**.

5.1.10 A health board will cease to have responsibility to provide a Named Person service if:

- it becomes aware that a child for whom it has been providing the Named Person service is no longer a pre-school child;
- it becomes aware that a child for whom it has been providing the Named Person service has taken up ordinary residence in another health board area; or
- it becomes aware that the child has taken up ordinary residence outwith Scotland.

5.1.11 The health board as outgoing Named Person service provider has a duty to inform whoever it considers to be the incoming service provider that it has stopped being the service provider and now considers that the incoming service provider has

the duty to provide the Named Person service. As noted above, the guidance at **paragraph 10.2** is relevant here.

5.1.12 When a health board believes that a child has taken up ordinary residence outwith Scotland then the Named Person provisions and duties no longer apply. However the health board must review all information held by the Named Person and consider whether the child's circumstances indicate that their wellbeing might be compromised if the information was not shared with an appropriate authority outwith Scotland. The provisions of this Act do not apply to the further sharing of information, however the child's wellbeing needs should always be considered. Where there are genuine concerns about a child's or young person's wellbeing, the Data Protection Act 1998 promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed.

5.1.13 In such circumstances, relevant information held about the child should be archived and retained in line with the Named Person service's records management plan. This is because, if the child returns to Scotland, information that is likely to be relevant to their wellbeing will need to be shared with the child's Named Person.

6 Section 21

6.1 Named Person service in relation to children who are not pre-school children

Children from five years, or school entry until 18 years

6.1.1 This section outlines the arrangements for providing the Named Person service for children from five years, or school entry, until their 18th birthday, whether in school or otherwise educated, or having left school.

6.1.2 Section 21 places a duty on local authorities to provide a Named Person service for every child and young person of school age, who resides in their area, with the exception of those who :

- attend school in another local authority area, where the local authority which manages the school is responsible for providing the Named Person service
- attend an independent or grant-aided school, where the directing authority of the school is responsible for providing the Named Person service
- are kept in secure accommodation, where the manager of the establishment is responsible for providing the Named Person service
- are in the custody of the Scottish Prison Service (SPS), where SPS is responsible for providing the Named Person service
- or are members of the regular forces, who are exempt from the provisions of this Act.

6.1.3 The secondary legislation provides specifications on the requirements of a Named Person in terms of their position, qualifications and experience. The expectation is that for the majority of children and young people of school age, the local authority will meet its duty to provide a Named Person service by identifying individuals within schools to carry out the Named Person functions.

6.1.4 The Named Person should, as far as practicable, be someone who is known to the child or young person and their parents or carers, and who they consider is in a position to offer them information, advice and support if they need it. The Named Person should also be readily identifiable and accessible to other relevant authorities and services who may wish to raise a wellbeing concern with them.

6.1.5 In the primary school setting this is likely to be the head teacher, or deputy head teacher. They are easily identifiable for other services, but also familiar as a point of contact for the parents and child.

6.1.6 In the secondary school context, support for children and parents is most likely to be offered via a principal teacher pupil support, or deputy head teacher pupil support. Arrangements will have to be put in place to ensure that these individuals can be directly accessible, and known, to other services, should there be a need to share information about a wellbeing concern.

6.1.7 While the above examples provide guidance, it will be for the local authority to determine how the Named Person arrangements can be most effectively managed in

all circumstances, meeting the requirements of the Act, and having regard to the wellbeing of the child, or young person. For example, while the child, young person and parents will know the Named Person by name, other services may be advised to contact the child's school to find out who has the Named Person role. Any such arrangements should be clearly laid out in local protocols and supported by local training and guidance. Whatever the arrangements, there should be clear and easy access to the Named Person for children, young people and families, and for relevant authorities and other services.

6.1.8 Some children experience exclusion from school for a period, or periods of time. We know that this group of children can have significant wellbeing needs, so it is important that clear arrangements are in place, and made known locally, to ensure that the Named Person service continues to be available in an effective way during any period of exclusion from school.

Named Person service for children who leave school before their 18th birthday

6.1.9 While for most children, and young people, the Named Person will be provided through the school they attend, as outlined above, arrangements will also have to be put in place by the local authority for children in the area who leave school before their 18th birthday. The local authority in whose area the child lives during the period from their school leaving date until their 18th birthday, is responsible for providing the Named Person service, regardless of the school the child previously attended. It will be for the outgoing Named Person service, where this is another local authority area, or an independent provider, to make the residential authority aware that the individual has left school and lives in their area (see **paragraph 6.1.23** for more detail). It will be for each local authority to agree arrangements to make the Named Person service available to best suit the local network of support and the needs of this group.

6.1.10 As outlined earlier, in section 19 (**paragraph 4.1**) of this guidance, the Act requires the local authority to identify an individual through whom the Named Person service will be delivered. Secondary legislation further stipulates the requirements determining who can be a Named Person. It will be a matter for local authorities to decide which posts within their structure can most effectively carry out the functions in relation to 15, 16 and 17 year olds who have left school. Given the potential needs of this group, the Named Person should hold a post within the structure which allows them to provide advice and information to children and other practitioners, based on appropriate experience, knowledge and training. They should be someone who can access and analyse relevant information from the child's previous Named Person or Named Person service, and assist individuals to access their local support network.

6.1.11 Children who leave school (who, in other words, are no longer on a school roll), before their 18th birthday are most likely to be in further or higher education, training, or employment. However nationally, a small proportion of leavers will not be participating in one of these post-school options, including those with chronic ill health or other significant barriers to participation, but this proportion will vary significantly across the country and have a bearing on how services are provided on a local basis.

6.1.12 The Named Person arrangements for these children should be proportionate, informed by the child's views and should reflect the nature of their need for additional support. A balance will need to be struck between respecting the rights and wishes of individuals and ensuring that for those at risk of poorer outcomes, the offer of support through the Named Person service is accessible, meaningful and robust.

6.1.13 The functions of the Named Person service for 15, 16 and 17 year olds who have left school will be as outlined in the Act and described in section 19 of this guidance. How those functions are delivered should reflect the nature and range of needs of this group. Local authorities should ensure that these arrangements build on existing support networks to make best use of resources, avoid duplication and provide a clear pathway for children to access support if required.

6.1.14 As with all segments of the child population, the potential needs of this group will be diverse. The majority of school leavers will be successfully pursuing further or higher education, training or employment and managing other aspects of their lives with the support of family, friends and community resources. Where this is the case they are unlikely to seek assistance from the Named Person service, or be brought to the attention of the Named Person as requiring support for their wellbeing.

6.1.15 Of the group who are generally managing well, arrangements should be in place to provide general information or advice, to signpost to a relevant partner service, to help access a partner service, or to offer direct support via a local authority service if needed.

6.1.16 These functions can be delivered in a range of ways and it will be for local authorities to make arrangements which suit the local context and fulfil the statutory requirements. It will be important for other key services within the local authority who may be in contact with this group of children, to be aware of the Named Person service and understand their role in relation to the statutory duties in the Act.

6.1.17 Where a child is brought to the attention of the Named Person service by another service or agency, and in the judgement of the Named Person, based on the information available, there are wellbeing needs which can only be met by the provision of a targeted intervention, a decision should be made about whether to prepare a Child's Plan. Before further sharing any information about the child, the Named Person must consider the steps highlighted in section 10.1 of this guidance. Further detail on the Child's Plan can be found in the guidance on Part 5 of the Act (**paragraph 11.1** of this document).

6.1.18 Where the child declines to engage after a wellbeing concern has been identified, the Named Person will have to consider what further action to take, depending on the nature of the concern. Supporting children who have left school to achieve and maintain a positive destination is a priority, so even where the child initially declines to respond to an offer of assistance, the Named Person should consider what further efforts to engage with the individual are required, seeking assistance through the Opportunities for All partnership where appropriate.

6.1.19 A minority of those who leave school before their 18th birthday will have significant long or short term needs. These needs may, for example, be as a result of having no post-school destination, health concerns, disability, adverse family

circumstances, leaving care, being a young carer or becoming involved in offending behaviour. Of these, a small number will be subject to compulsory measures of supervision through the Children's Hearings or court system. Where a child has established wellbeing needs which do need action via a targeted intervention, a Child's Plan should be in place and this will continue to have a statutory basis until the child reaches their 18th birthday, but may continue as good practice beyond 18. For many individuals with additional support needs or complex health needs, the Child's Plan will have an important role in transition planning and in some circumstances beyond 18, may facilitate on-going coordination of support in adult services. Further guidance on the Child's Plan is outlined in **paragraph 11.1** of this document.

6.1.20 Some 15, 16 and 17 year olds in this group may be young parents, in which case their child will be supported through the Named Person service provided by the health board. In some cases the Named Person will be a Family Nurse who will have a wider support role. There should be local protocols in place to agree how the Named Person service in health and in the local authority work together to provide effective individual support for the parent(s) and the child where appropriate, avoiding duplication.

6.1.21 In relation to the duty to communicate information about the role of the Named Person, local authorities will have to consider how this can be most effectively achieved, at the point when the child is leaving, or has left, school, and for the remainder of the time up to their 18th birthday. It may form part of the existing leaving school arrangements, or a new procedure may need to be put in place. Making information known about the Named Person service for children who have left school should take account of communication difficulties which may be particularly relevant for this group of children.

6.1.22 Given the importance of partnership approaches to supporting this transition stage, information on the arrangements for the Named Person service should be readily available to the wider community and support network. All key services and agencies, including relevant adult services, should be aware of the Named Person service and their responsibilities to support the Named Person role.

6.1.23 This will be a key transition point for the individual but will also require a change of Named Person arrangements. In some cases this will be a change of Named Person within the same local authority, but in other cases it will be a change of Named Person service provider, for example where a child has left school in another authority area, or an independent school. As with all other transition points, the outgoing Named Person will be required to assess what information needs to be shared with the Named Person who will carry out the function for this group, following the requirements of section 23 as explained by this guidance at **paragraph 10.3**. There should be protocols in place to allow the incoming Named Person to receive information from the previous Named Person, or Named Person service where appropriate, in line with data protection requirements. and to maintain a record of engagement with the individual child where required, also in line with data protection requirements.

6.1.24 Where a child has been at an independent school, or a state school in an area in Scotland other than the area in which they live, the school they have attended, as

the outgoing Named Person service provider, must tell the local authority, as the incoming Named Person service, that they will cease to have responsibility for providing the Named Person service, when the child leaves the school. The local authority should advise the child and parent of the arrangements in place to provide the Named Person service until the child reaches their 18th birthday. As noted above, this will be a decision point for the outgoing Named Person service provider in relation to proportionate information sharing.

6.1.25 When a local authority or grant-aided/independent school, believes that a child has taken up ordinary residence outwith Scotland then the Named Person provisions and duties no longer apply. However the Named Person service provider must review all information held by the Named Person and consider whether the child's circumstances indicate that their wellbeing might be compromised if the information was not shared with an appropriate authority outwith Scotland. Where there are genuine concerns about a child's or young person's wellbeing, the Data Protection Act 1998 promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed. In such circumstances, relevant information held about the child should be archived and retained in line with the Named Person service's records management plan. This is because, if the child returns to Scotland, information likely to be relevant to their wellbeing will need to be shared with the child's Named Person.

Named Person service for children of Gypsy/Travellers

6.1.26 The children of Gypsy/Traveller families are entitled to have the Named Person service made available to them as outlined in the Act. Gypsy/Traveller children are not a homogeneous group, and like other segments of the population will have a range of needs in relation to their wellbeing. They do, however, often have a non-standard use of the universal services of health and education. For this reason, health boards and local authorities may need to give particular consideration to the arrangements they put in place to make the Named Person service available to children while residing in their area.

6.1.27 Some members of the Gypsy/Traveller community are generally settled in an area on a full time basis, and as such, the arrangements put in place should reflect their permanent residence status. Where families use the universal services of health and education, the arrangements for making available the Named Person service outlined in the guidance above, should apply. Where there are concerns about access to, or take up of, services, as with other user groups, health boards and education services should ensure that services are accessible and delivered in a way that recognises and seeks to overcome any cultural, language, literacy or other barriers to engagement.

6.1.28 Where Gypsy/Traveller families are normally resident in a particular area for significant parts of the year, and travel for only a few months, it is likely that the arrangements outlined above will be appropriate while they are resident, with additional arrangements put in place to respond proportionately while they are absent from the area. In discussion with the family, if the absence from the area is for a set period of time, with an anticipated return to the same area, then the health board or local authority of normal residence should retain responsibility for the

Named Person service: in other words, there will be no need for a change of Named Person service provider.

6.1.29 Where families have a less predictable pattern of residence and travel, the health board or local authority, depending on the age of the child, will have to decide, in discussion with the family wherever practicable, how the Named Person service can be made available during residence, and effectively transferred while the family is travelling in other parts of Scotland. In some cases, it will be for health boards, or local authorities to put arrangements in place to be made aware of children when they arrive in their area and for whom they should make provision of the Named Person service, or to make information available by appropriate methods, to inform Gypsy/Traveller families how the Named Person service can be accessed while resident in that area.

6.1.30 As is the case with other children and families, where there are no wellbeing needs or concerns, the Named Person service need only be made available, and contact details made known to children and families. If the family tells a health board or local authority or other service about a wellbeing need, then there will have to be procedures in place to respond to that need. This will include advising the current service provider that the responsibility for provision of the Named Person service has transferred and giving them an opportunity to consider what information they should transfer to the new service provider within the terms of the Act.

6.1.31 Relevant information on the arrangements for the Named Person service for Gypsy/Traveller children should be readily available to the wider community and support networks. All key services and agencies, including relevant adult services, should be aware of the Named Person service and their responsibilities to support the Named Person role.

Named Person service for children who are home educated

6.1.32 As the Act makes provision for the Named Person service to be made available to all children, local authorities will need to put arrangements in place to identify a Named Person for those children who do not attend a public or independent school, as a result of their parents fulfilling their duty to educate their child by other means, namely education at home. The right of parents to home educate is unchanged by this Act, and any arrangements to put in place the Named Person service should take account of the [Scottish Government guidance to local authorities on supporting Home Education](#).

6.1.33 Parents have the right to make the choice to home educate without seeking consent from the local authority in the following circumstances:

- the child has never attended a public school;
- the child has never attended a public school in that authority's area;
- the child is being withdrawn from an independent school;
- the child has finished primary education in one school but has not started secondary education in another; and
- the school the child has been attending has closed.

6.1.34 When a child reaches school age, as described in paragraph 5.1.2 of this guidance, there will be a transfer of Named Person service from the health board to the local authority of residence, or the directing authority of a grant-aided or independent school. When a home-educated child reaches school age, the health board, as the outgoing Named Person service, must tell the local authority, as the incoming Named Person service, that the health board no longer has responsibility in relation to the individual child (this is in line with section 23 of the Act). In order to transfer responsibility for provision of the Named Person service, the health board will need to tell the local authority of residence, the child's name and address, who the child's parents are and any relevant information about the child's wellbeing. This is explained in more detail in paragraph 10.2.10.

6.1.35 Health boards and local authorities will need to put arrangements in place to ensure that there is effective transfer of responsibility for the Named Person service in these circumstances, and that information is shared proportionately in line with the requirements set out in section 23 of this Act as supplemented by this guidance.

6.1.36 As indicated above, there are other points in the child's school life when parents may make the choice to home educate without seeking the consent of the local authority where they live. As well as the arrangements between the health board and the local authority outlined above, arrangements will also need to be in place to take account of these other circumstances, so that the outgoing Named Person service, or Named Person, can fulfil its or their duty to inform the incoming Named Person service provider, or Named Person, and the new Named Person service can tell the child and the parents of the availability of the Named Person service. This is likely to include the need for clear protocols:

- within local authorities at the primary/secondary transfer point;
- in the event of a school closure;
- between local authorities; and
- between independent schools and local authorities.

6.1.37 In identifying the individual who will carry out the Named Person functions, any arrangements must comply with the specifications in secondary legislation as explained in section 4.1 of this guidance, regarding the training, qualifications, experience and position of the individual. It is expected that these arrangements will build on existing arrangements to support children who are home educated, in line with national guidance.

6.1.38 When a local authority becomes aware that a child is of school age and is being home educated, they will, as soon as practicable, need to tell the child and parents about the arrangements in place for contacting the child's Named Person. The information should indicate that the service is available as an entitlement, and further engagement beyond the local authority's responsibility to satisfy itself that suitable and efficient education is being provided, will occur only if the child or parent seeks advice or support, or if concerns about the child's wellbeing are brought to the attention of the Named Person by others.

6.1.39 Where a child has previously been enrolled at a public school, parents have the right to seek permission from the local authority to withdraw the child from school to home educate. In working through the procedures for considering a parent's

request to withdraw a child from school outlined in national guidance, the arrangements for providing the Named Person service in the circumstances of home education should be made clear to the child and the parents.

Named Person service for other children not in school

6.1.40 While the section of the guidance above explains how arrangements should be in place to make available the Named Person service for children of Gypsy/Travellers and home educated children, there may be other children who are not in regular attendance at a local authority or grant aided/independent school, for example children with chronic or life threatening medical conditions, children fleeing domestic violence or trafficked children. For any child experiencing interrupted education, the health board or local authority should consider what arrangements would be most appropriate to meet the entitlement for such children to have access to a Named Person.

More than one Named Person involved with a family

6.1.41 As the arrangements for providing a Named Person relate to the age and other circumstances of the child, there will often be more than one Named Person involved with a family, and in some cases more than one Named Person service. It is important that each Named Person carries out their functions in respect of an individual child, but information which indicates a concern about the wellbeing of one child in a family may have relevance to the functions of the Named Person for another child within that family. Within the terms of the Act, there is a duty to communicate information to a Named Person where it is likely to be relevant to their functions, so where appropriate and proportionate, there should be dialogue between the Named Persons for different children in the same family.

6.1.42 In some cases, the parent or parents, may have a Named Person as well as their child. This will almost always involve two different responsible authorities providing the Named Person Service, for example where the parent (s) have a Named Person provided by the local authority, or the Scottish Prison Service, and the child's Named Person is provided by the health board. As noted above, there should be clear protocols for information sharing between the respective Named Person services where there are wellbeing concerns.

6.1.43 In taking forward these arrangements it is important that the child, young person and parents are appropriately involved in the discussions and are clear how to access information, advice and support. Where there is intervention and coordination of support for several individual children in a family, it will be for the Named Persons and, where there is a Child's Plan, Lead Professionals, to consider how this can be done in an effective and meaningful way, within the terms of the Act, taking into account the views of the children and parents.

7 Section 22

7.1 Continuation of the Named Person service in relation to pupils beyond their 18th birthday

7.1.1 The Act provides for the continuation of the Named Person service for all pupils who remain at school (in other words on the school roll), beyond their 18th birthday until they leave school. An individual in this position is referred to for the purposes of the Act as a *young person*.

7.1.2 Local authorities will have a duty to continue to make available the Named Person service to every young person who attends a school under their management until they leave that school. This duty also applies to independent schools and grant-aided schools.

7.1.3 It is expected that the arrangements put in place to provide the Named Person service will be a continuation of the arrangements that were in place in the school before the young person reached their 18th birthday.

7.1.4 If a young person starts at a school managed by a local authority or which is an independent or grant-aided school, after their 18th birthday, the service provider should make the Named Person service available to them until such time as they leave that school.

7.2 Information sharing duties

7.2.1 The Act outlines a range of provisions in respect of information sharing within Part 4 to support better outcomes for children and young people. Guidance about the information sharing sections of Part 4 of the Act starts at **paragraph 10.1** and on specific sections as shown below:

- **Section 23** – Communication in relation to the movement of children and young people (**paragraph 10.2**)
- **Section 26** – Information sharing (**paragraph 10.3**)
- **Section 27** – Disclosure of information (**paragraph 10.4**)

8 Section 24

8.1 Duty to communicate information about the role of Named Person

8.1.1 Each service provider must publish information about the provision of the Named Person service in a manner which it considers to be appropriate. This duty applies to:

- the health board;
- the local authority;
- the manager of each grant-aided school;
- the proprietor of each independent school;
- the manager of secure accommodation; and
- the Scottish Prison Service.

8.1.2 There are two aspects to the duty to communicate information. The first is a duty to provide information about how the service provider exercises its functions under Part 4, how the Named Person functions are generally exercised and the general arrangements for contacting Named Persons. This information relates to the Named Person service as stipulated in section 19 and outlined in section 4.1 of this guidance, and the related information relevant to other aspects of the Named Person arrangements contained in Part 4 of the Act. There is also power to provide any additional information relating to the Named Person service as the service provider considers appropriate. This allows for local contextual information, or other related information to be provided as part of the general information duty.

8.1.3 This duty to provide general information is intended to ensure that other services listed in schedule 2, third sector organisations and any other individual or agency know how to make contact with the Named Person and what to expect from the service, if they have a concern about a child's wellbeing. It is therefore important that the content and the manner in which the general information is published takes account of the need to be easily understood and accessible to a wide and varied audience.

8.1.4 The content of the published information should make it clear how the service is to be contacted and what the service can and cannot do as part of its statutory functions. This should include making it clear:

- under whose authority the service operates, in other words, who is the responsible service provider;
- who is carrying out the Named Person service and for which children or young people. This should be the roles within the service, rather than the named individuals (although it will be for the service provider to decide if names should also be provided in some circumstances);
- the categories of children (for example, pre-five children, school age children in attendance at an establishment) for whom the service provider is responsible in relation to the Named Person arrangements, and the exceptions as stipulated in section 21 of the Act, and outlined in paragraph 4.1.2 so that services or individuals are directed to the correct service provider where responsibility lies elsewhere;

- how the Named Person for individual children can be contacted directly, or indirectly, and in what time frame;
- arrangements for continuity of the Named Person service during holiday periods, or in the event of a Named Person being unavailable;
- the functions undertaken by the Named Person and how these are generally carried out;
- how the Named Person role is supported through local protocols and procedures;
- arrangements for responding to, sharing and recording information in line with national legislation and local protocols; and
- reference to information on complaints-handling arrangements in relation to the Named Person service.

8.1.5 As most of the service providers listed in **paragraph 8.1.1** above already provide information about their service on a general basis, it is expected that the publishing of information on the Named Person service will build on existing effective communication plans and channels. This might typically include: use of a website; general and targeted written material; publications; school handbooks, posters; and advice phone lines. The information should be prominent, accurate, current and available on request in alternative formats and languages.

8.1.6 All staff working for the service provider, not just those directly involved with the Named Person service, but also including those who provide services to parents and other adults, should be aware of the information sources and be able to direct individuals or services to the information as required. This should also extend to staff in contracted or commissioned services, or where provided by a third party by mutual agreement, where appropriate. This is an important part of developing and providing the Named Person service, and will require awareness raising and training for a wide range of staff, and an effective communication strategy built on existing good practice.

8.1.7 The second aspect of the duty to communicate information about the Named Person service relates to providing information to the child or young person, and the parents, about the arrangements for contacting the Named Person.

8.1.8 This information, which is specific to the child or young person, must be communicated as soon as reasonably practicable when the service provider becomes responsible for the Named Person service, and as soon as reasonably practicable when there is a change of Named Person or a change in the arrangements for contacting them.

8.1.9 While the Act does not specify any timescales for telling the child or young person or their parents about the Named Person service, or changes to that service, information is expected to be communicated within 10 working days after the new arrangement is put in place, unless there are good reasons for this to take longer. In some cases where the service provider can anticipate the need to communicate, there would be an expectation that the information could be communicated more quickly. This might be the case for anticipated transitions, for example, from primary to secondary school, or where the Named Person is leaving their current post and this is known in advance. While the Act requires communication to be timely after the service provider assumes responsibility for the Named Person service, or after a

change of Named Person, it will be for service providers to decide whether they wish to provide this information in advance of a change in some circumstances, for example, at known transition points as part of transition planning arrangements.

8.1.10 This information is expected to be communicated in writing to the child or young person, and their parents, as a matter of good practice, unless an alternative format is agreed to be more appropriate for the individual child or young person, or their parents. This may include adding this information into current standard communications or correspondence, provided that it meets the requirements of the Act. In providing this information, any communication needs of the child or young person, and their parents, should be taken into consideration, for example, translation, easy read format or braille.

8.1.11 To comply with this duty, the service provider must ensure that there are clear systems in place to ensure that communication with children or young people, and their parents, forms part of the routine processes at recognised transition points such as:

- health to local authority/independent school at school entry, or school age;
- primary to secondary transfer;
- school leaving date if before the 18th birthday
- first notification of children and young people moving into the health board or local authority area;
- enrolment at a school managed by the service provider;
- transfer into secure accommodation or the custody of the Scottish Prison Service; and
- the start of new Named Person arrangements due to staff changes, absence or other circumstances which necessitate a change in the identified individual carrying out the role.

Where there are not processes in place new processes should be considered.

8.1.12 The information given to the child or young person, and their parents, should include:

- the name of the service provider who has responsibility for providing the Named Person service;
- the name of the individual who will carry out the Named Person functions for that child or young person; and
- how the Named Person can be contacted

8.1.13 Information about the functions of the Named Person service should be given to children, young people and their parents in an accessible format and manner. Children and young people, and their parents, should know what to expect from their Named Person and the range of support available to them. There should also be reference to how complaints can be made if they are dissatisfied with the way in which the Named Person service is being carried out.

9 Section 25

9.1 Duty to help Named Person

9.1.1 This section of the Act places a duty on a service provider (listed in [section 32](#) of the Act) or relevant authority (listed in [schedule 2](#) of the Act) to comply with a request from a Named Person service provider to act to help a Named Person in the exercise of their functions.

9.1.2 This power is not expected to be used in a directive way, but instead, will empower the Named Person service provider to secure collaborative discussion with other service providers and relevant authorities in order to address wellbeing needs.

9.1.3 When asking a service provider or relevant authority for help by acting to support, promote or safeguard the wellbeing of a child or young person, a Named Person should be specific in identifying the wellbeing need to be addressed and where possible the desired outcome anticipated.

9.1.4 In addressing the wellbeing need of a child or young person this power may be used to make requests for help relating to a child, young person, parent or significant individual where the wellbeing of the child will be affected by the help requested. The help a service provider or relevant authority may provide could include: undertaking an assessment; providing a service; change in provision of service; provision of information; provision of a resource; and change in provision of a resource.

9.1.5 A service provider or relevant authority must comply with a request for help from a Named Person service provider unless to provide the help would:

- be incompatible with other duties of the service provider or relevant authority; or
- unduly prejudice the exercise of any function of the service provider or relevant authority.

9.1.6 When considering a request for help from a Named Person service provider a service provider or relevant authority should consider the potential affect or effect on the wellbeing of the child or young person. They must do this taking into consideration all wellbeing indicators. This may be of particular significance when prioritising the provision of a service or resource, for example;

- request to provide a service urgently when a waiting list exists; or
- request to provide an extraordinary resource.

9.1.7 When declining to comply with a request for help from a Named Person service provider, a service provider or relevant authority must provide clear reasoning.

9.1.8 Named Person service providers should have processes and procedures to make requests for help under this part of the Act. This should include providing dialogue with service providers and relevant authorities to address wellbeing needs where a request for help is declined or alternative help is suggested or offered.

9.2 Complaints in relation to Part 4

9.2.1 Section 30 of the Act creates an order-making power for the Scottish Ministers to make provision about the making, consideration and determination, of complaints concerning the exercise of Part 4 functions. Any complaints about the exercise of functions under this Part should be pursued via the process to be set out in this order. Work is underway on developing the order, including consultation with stakeholders. A formal consultation is also planned later this year on the draft order and the associated guidance.

9.3 Relevant authorities

9.3.1 As noted earlier in the guidance, the bodies listed, or described, in [schedule 2](#) are considered to be relevant authorities for the purpose of all sections of Part 4 of the Act.

9.3.2 The following bodies are considered to be relevant authorities for all sections of Part 4 excluding section 29.

- the Commissioner for Children and Young People in Scotland; and
- a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005.

These two bodies have a degree of independence and therefore cannot be subject to the direction of Scottish Ministers as laid out in section 29 of the Act.

9.3.3 The Act gives Scottish Ministers the power by order to add, remove or modify an entry in schedule 2, therefore changing the list of relevant authorities.

9.3.4 As outlined in section 25 of the Act, the bodies listed are included as relevant authorities as it is considered that in the course of their normal operation, they may be able, by taking action, to support the Named Person in promoting, supporting or safeguarding the wellbeing of a child, or young person, and to help in the exercise of any of the Named Person functions.

9.3.5 Depending on the nature of the operations of each of the relevant authorities, the support which they may be able to provide to the Named Person will vary but is likely to include:

- sharing information relevant to the child’s, or young person’s, wellbeing;
- contributing to the assessment of wellbeing in order to provide information, advice or support to the child, young person, or their parents; and
- delivering a service to the child, young person, or their parents.

9.3.6 Relevant authorities will link with the Named Person in two principal ways:

- a relevant authority may be engaged in providing a service to a child, young person, or their parents as part of their routine provision of services, and in line with their duties under the Act, they may consider that they need to share information with the Named Person to support the Named Person in their functions; and
- in some cases, as a result of identifying a wellbeing concern about a child or young person, the Named Person may provide information or seek assistance from the relevant authority to support the child, young person, or their parents.

10 Information sharing – Sections 23, 26 and 27

10.1 Information sharing

10.1.1 Section 23 sets out the duties in relation to the movement of children and young people when the Named Person service provider changes. As a result it is relevant at all points of transition between services, unless the child is no longer covered by the provisions of the Act.

10.1.2 Under Section 23 when the Named Person Service changes, the outgoing Named Person Service Provider has a duty to provide the incoming Named Person Service Provider with:

- the name and address of the child or young person and each parent of the child or young person and
- all information which the outgoing service provider holds which is likely to be relevant to the Named Person functions.

10.1.3 Section 26 provides a framework to support the proportionate and appropriate sharing of information by the Named Person service provider, those performing a function on their behalf and others in support of the exercise of their functions under the Act. It sets out the responsibilities and duties of both service providers (including the Named Person's own organisation) and relevant authorities (as defined in section 31) in relation to:

- Sharing information with a child or young person's Named Person (service provider)
- The child or young person's Named Person further sharing information
- The tests that are to be considered when information is shared
- Ensuring that information subject to a duty of confidentiality falls within the provisions of this section

10.1.4 Section 27 specifies actions in relation to information that is shared in what would otherwise be a breach of the duty of confidentiality.

10.1.5 Sections 23, 26 and 27 deal with the proportionate sharing of information which is likely to be relevant to functions relating to a child or young person's wellbeing. Information shared under these provisions, and the way in which it is shared (for instance, who it is shared with) must be relevant and proportionate⁴. Therefore, information holders need to ensure, on a case-by-case basis, that the information they are considering sharing is likely to be relevant to the Named Person function. **Moreover, the three sections should be read in conjunction with each other and in the context of Part 4 as a whole.**

⁴ The Data Protection Act does not define these words, they need to be considered in the context of the purpose for which personal data is held; and separately for each individual about whom information is held (or for each group of individuals where the individuals in the group share relevant characteristics). To assess whether the right amount of personal data is held organisations must be clear about why they are holding and using it. They should take into account that this may differ from one individual to another.

10.1.6 The Act creates a duty to share information but it does so within a set of clear principles and boundaries, including those already set by the Data Protection Act 1998 (the DPA). This means that the processing and sharing, handling, storage and retention of information needs to be considered in terms of the eight Data Protection Principles.(see links below).

10.1.7 As the Named Person will often be handling and storing personal and sensitive personal data it is vital that service providers ensure that Named Persons are sufficiently aware of their responsibility under the DPA and are supported through data sharing agreements, policies, guidance and infrastructure appropriate to their role. It is important that information held by the Named Person is reviewed at regular intervals and only information which is likely to be relevant to their functions is kept.

Further information on the DPA can be found at:

- www.legislation.gov.uk/ukpga/1998/29/contents; and
- ico.org.uk/for_organisations/data_protection/topic_guides/data_sharing

10.1.8 Article 8 of the European Convention on Human Rights(ECHR), giving everyone the right to respect for their private and family life, their home and correspondence, is especially relevant to sharing personal data. Information shared and who it is shared with must be relevant and proportionate to the purpose. Therefore, information holders need to ensure, on a case-by-case basis, that the information they are considering sharing is likely to be relevant to the Named Person function. The right to privacy afforded through Article 8 is a qualified rather than absolute right – public authorities are permitted to overrule it if it is lawful and proportionate to do so, but each case must be considered carefully to assess what is lawful and proportionate in the particular circumstances.

10.1.9 Further detail on the requirements of Article 8 of the European Convention on Human Rights(ECHR) and the DPA can be found in **Appendix C**.

10.1.10 All children and young people share the same fundamental rights. These are clearly set out in the United Nations Convention on the Rights of the Child (UNCRC). While it is important to ensure that all Articles of the convention are applied to all children, Articles 3,12 and 16 are particularly relevant to the information sharing sections of the Act.

- Article 3 – The best interests of the child must be the primary consideration in all actions concerning children.
- Article 12 – Every child who is capable of forming their own views has the right to say what they think in all matters affecting them, and to have their views given due weight in accordance with their age and maturity.
- Article 16 – Every child has the right to privacy. The law should protect the child's private, family and home life.

Further information about the UNCRC can be found at:

www.scotland.gov.uk/Topics/People/Young-People/families/rights/uncrc

10.1.11 When handling, storing or sharing personal and sensitive data consideration should be given to whether there are any restrictions on the disclosure of information and the risk to a child or an adult if personal details are disclosed, and whether or not any non-disclosure provision applies. There are a number of provisions within the Children (Scotland) Act 1995 and Children's Hearings (Scotland) Act 2011, which relate to non-disclosure. Further details can be found at: www.scra.gov.uk/children_s_hearings_system/children_s_hearings_scotland_bill.cfm

10.1.12 When making decisions on sharing information under the provisions of this Act, relevant individuals should record information sharing decisions and their reasoning including whether or not they shared the information, what information was shared and for what purpose and who it was shared with. This is not a requirement of the Act but is good practice and in accordance with the ICO's Data Sharing Code of Practice.

10.1.13 It is important that Service Providers and Relevant Authorities consider the requirements of these sections when engaging with children, young people and their parents and ensure that they are aware of what information is held and how it may be used in accordance with this Act.

10.2 Section 23

Communication in relation to movement of children and young people

10.2.1 Section 23 of the Act applies when the Named Person service provider changes. As a result it is relevant at all points of transition between services, unless the child is no longer covered by the provisions of the Act.

10.2.2 Throughout a child's life there will be set points where the Named Person service provider changes. For all children this will include the transition from being a pre-school child when the transition is from the health board as service provider to the local authority, or independent/grant aided school. In addition to this planned transition, other events will necessitate a change in Named Person service provider, such as:

- a child and family move to another area;
- a child moves to or from a school in another local authority or an independent school;
- a child moves into/out of secure accommodation; or
- a child moves into/out of the custody of the Scottish Prison Service.

It is important that each transition is seen as an information sharing decision point.

10.2.3 Guidance is provided in this section on what information must be communicated when a Named Person service provider for a child changes. The guidance includes detail of specific information that must always be communicated for every child and how to identify what additional information must be communicated when the Named Person service provider changes. Each transition is a decision point. Information which the Named Person service provider holds will in some cases be of a confidential and sensitive nature. At times it will consist of

information shared with the Named Person by a third party in accordance with sections 26 and 27 of the Act. Any further sharing of information must be as a result of a decision made by the Named Person having followed all of the following steps, and satisfied themselves that information is likely to be relevant to the incoming Named Person's functions. See **Appendix D** for a flow chart of this decision process.

Information to be communicated

10.2.4 When a service provider ceases to be the Named Person service provider for a child or young person (the 'outgoing service provider'), they must, as soon as reasonably practicable, tell the 'incoming' service provider (who they expect to take on the Named Person role) that they are no longer going to be the service provider. They must also give the incoming service provider the following:

- a) the name and address of the child or young person and each parent of the child or young person (so far as the outgoing service provider has that information); and
- b) all information which the outgoing service provider holds and which falls within section 23 (3) of the Act – that is, information likely to be relevant to:
 - i. the exercise by the incoming service provider of any functions of a service provider under Part 4 of the Act, or
 - ii. the future exercise of the Named Person functions in relation to the child or young person; at times there will be a need to share information that is likely to be relevant to the Named Person functions in advance of the outgoing Named Person Service ceasing to be the service provider. An example of this would be where arrangements or services need to be put in place in advance to meet the child's needs on transfer.

10.2.5 Before any information under **paragraph 10.2.4 b** above is shared, the outgoing service provider must consider whether the information ought to be provided and whether to do so would prejudice the conduct of any criminal investigation/prosecution. These duties are discussed further below.

10.2.6 These duties ensure that the incoming Named Person service provider is aware that they have a responsibility in terms of section 19 of the Act to provide a Named Person service for a child or young person. It also requires the outgoing Named Person service provider to make a decision about what information is proportionate and relevant to share with the incoming Named Person service provider that is likely to be relevant to that responsibility.

Information that ought to be shared

10.2.7 Before sharing information under section 23, the outgoing Named Person service provider must consider whether the information ought to be provided under section 23(3), as outlined above. They must in particular do the following:

- obtain and have regard to the views of the child or young person, in so far as reasonably practicable and in the case of a child take their age and maturity into account when considering these views; and
- decide whether sharing the information would be likely to have a greater adverse effect on the child's wellbeing than not sharing – if it would, they should not share the information.

When the information shared includes information about the child's parents, they should be made aware, unless it might be to the child's detriment This is not a requirement of this Act but in line with the 'fair processing' requirement of the DPA (for more information on the requirements of the DPA, see the links in **paragraph 10.1.7**).

10.2.8 If all of the above tests are met, then the outgoing service provider may conclude that the information should be shared. However, it will be a matter for the service provider in any individual case to decide, taking all the relevant factors into account, whether or not information ought to be shared.

10.2.9 Information that falls into this category will generally relate to current or likely wellbeing concerns and any associated actions. At times it may also be in connection with events in the child's past, if it is considered likely to be relevant at some point in the future. Wellbeing concerns may relate to a specific aspect of the child's wellbeing or be more general, they will tend to indicate that the child is likely to be at risk should the concern not be addressed. Some examples of situations where a concern may arise are:

- Where a child may appear to be victimised at school or in the community
- have untreated dental decay
- be involved in regular underage drinking.
- Is failing to reach expected or predicted attainment targets
- engaging in anti-social or offending behaviour or not showing respect for others' possessions
- not feel accepted or valued in school or in the community

Where a chronology is shared, only significant events in a child's life, which are likely to be relevant should be included. For further advice on what may constitute a wellbeing concern see **paragraph 2.9** of this guidance.

10.2.10 Before sharing information under this section, a service provider should obtain and have regard to the views of the child or young person, so far as reasonably practicable. Examples of where it might not be reasonably practicable to do this may be because: the child cannot be located; the child is unable to express their view; or because obtaining the views would not be possible without compromising the wellbeing of the child. The service provider will need reasoned justification as to why they had not been able to obtain and have regard to the views of the child. It would not, for example, be sufficient to say that they did not have time

to obtain the views, unless they could demonstrate that there was a need to share the information urgently, and before they were able to discuss with the child, in light of a particular matter.

10.2.11 It is important to remember that having regard to the child's view does not mean having to comply with the child's wishes. It is for the service provider to decide if information ought to be shared. While the expectation is that the Named Person and the child and, as appropriate, the parents will be working in partnership, the Named Person will not always be able to comply with the child's wishes. Where the outgoing service provider makes a decision to share information against the wishes of the child they should record the child's views and why they decided to share information against their wishes.

10.2.12 Although not a legislative requirement, unless there are indications that it would be against the child's views or detrimental to their wellbeing, it is routine good practice to seek parents' views about information shared at transition points. Where the child has sufficient capacity to make a decision, with appropriate communication support as required, the child's privacy should be respected and any information that the child would wish to be kept in confidence should not be disclosed to the parent. However where the child's age, communication competence and maturity is such that the Named Person decides that they lack the capacity to be involved in any such decision, parents' views should be typically sought on the information to be passed on at transition points. The use of evidence-based tools to profile the child or young person's speech, language and communication abilities and needs (2.5.6) would assist services in determining communication competence. When the information shared is specific to the parents then, in line with the requirements of the DPA, they should be made aware of what is being shared and with whom.

Information sharing that may prejudice a criminal investigation or prosecution

10.2.13 Information should not be shared if it is likely to prejudice the conduct of a criminal investigation. Such circumstances will be rare and will involve close partnership working with Police Scotland and the Crown Office Procurator Fiscal Service who will advise on what cannot be shared. If information is not shared, it will be important to ensure that this does not impact adversely on the child's wellbeing. Continual monitoring of the child's wellbeing will be essential in these circumstances.

Duty of confidentiality and consent to share information

10.2.14 The Named Person will seek the views of the child and, as appropriate, the parents, about what information should and should not be shared. Throughout this engagement the Named Person should make it clear that whilst the views of the child and parents are valued and must be taken into account, their consent is not being sought, and the Named Person may, where appropriate, share information without consent, when it is required to promote, support or safeguard a child's wellbeing.

10.2.15 Some professions, such as those in health services, are covered by a professional or common law duty of confidentiality and adhere to that duty in relation to their dealings with service users. In practice, this means that client and patient

information must not normally be disclosed without the consent of the patient or client. The general position is that if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the patient's or client's consent. However the sharing of such information by the outgoing Named Person service provider with the incoming Named Person service provider is specifically allowed under section 23(7) of the Act, should the outgoing Named Person service provider decide that it is likely to be relevant to promote, support or safeguard a child's wellbeing and that it ought to be shared.

10.2.16 The Act only allows the information to be shared under a duty of confidentiality and does not allow sharing under other circumstances such as where a court order would be breached. When information is provided in breach of a duty of confidentiality then section 27 applies and the information holder should inform the recipient of the information that it has provided in breach of confidentiality. See guidance on section 27 at paragraph 10.5.1.

Decisions on sharing information

10.2.17 When making a decision about what information ought to be shared, relevant individuals must ensure that all information shared is proportionate, likely to be relevant to the exercise of the particular functions for which they have been shared, and in compliance with other relevant legislation. Information should not routinely follow the child unless it is likely to be relevant. What information is likely to be relevant is a decision for the outgoing Named Person service provider. In establishing what information is to be provided, they must consider whether the child's circumstances indicate that their wellbeing might be adversely affected if the information is not shared.

10.2.18 There will be circumstances where the child is not directly accessing the universal provision of health or education services, or where the child, or the child's parents, do not directly make use of the Named Person service. Examples might include a parent deciding to home educate at the transition when a child ceases to be a pre-school child or children who have left school before they reach 18. The Named Person is far less likely to have routine contact with an individual child in such circumstances. This makes it particularly important that the incoming Named Person service provider is made aware that the child still falls within their Named Person service provision and that only appropriate and proportionate information is shared.

10.2.19 The Named Person role will be made available should a child or parent wish advice or support. Where the child or parents do not wish to engage with the Named Person they will not be required to do so, unless there is a current concern or a concern arises about the child's wellbeing.

10.2.20 The Named Person should record all decisions on what information they decide is necessary to transfer or share, and their rationale for doing so. Decisions of this nature may be assisted by consultation with managers or relevant colleagues. In such circumstances, the identity of a child or third party can be anonymised. Enquiries and discussions on an anonymous basis can achieve the same aim, however it is important to remember that the removal of an individual's

name and/or address may not be sufficient to anonymise the information and consideration should be given to the removal of any other material which might lead to identification. Further guidance can be found within the ICO's Anonymisation Code of Practice at:

ico.org.uk/for-organisations/guide-to-data-protection/anonymisation/

10.2.21 When recording their decision and why they reached it, the Named Person should consider the following:

- the situation as presented;
- options available (in other words, share or not share);
- the potential risks and benefits of each option (including the likely effect on the child's wellbeing);
- the preferred option and why;
- the views of the child/parents;
- any duty of confidentiality which applies; and
- the decision reached (time and date).

This should not involve a new or onerous set of processes, but should be incorporated into current good practice.

Transfer of information held by Named Person where routine records are being transferred

10.2.22 Currently, various arrangements are in place for the routine transfer of information at transition points (for example, patient records from one health board to another, and pupil progress records from one school area to another), and this will continue to be the general procedure. As information will be shared with the Named Person, there needs to be a distinction between a routine record held for the purposes of the Named Person's organisation and information shared and held in relation to the Named Person function. As at present, a record will be held for routine purposes, and access to it may be fairly wide depending on those involved with the routine activities of the universal service.

10.2.23 However this does not mean that there will be no cross-transfer of information between the Named Person and the child's health/education record. Indeed much of the information shared with the Named Person will be pertinent to the child's health or educational development. If the Named Person is of the opinion that certain information should be recorded about a child's health or education record, they should record that decision (it is recommended that the Named Person records the reasons for this decision as a matter of good practice). The information should be retained on the record as long as it is deemed necessary, with regular reviews, including at transition points. Personal data should not be retained because it might be useful in the future: there must be a justifiable reason.

10.2.24 When a Named Person Service believes that a child has taken up ordinary residence outwith Scotland then the Named Person provisions and duties no longer apply. However the out-going Named Person must review all information held and consider whether the child's circumstances indicate that their wellbeing might be adversely affected if the information was not shared with an appropriate authority outwith Scotland. Whilst the provisions of this Act do not apply to the further sharing of information, where there are genuine concerns about a child's or young person's wellbeing, the DPA promotes lawful and proportionate information sharing, while also protecting the right of the individual to have their personal information fairly processed.

10.2.25 In such circumstances, relevant information held about the child should be archived and retained in line with the Named Person service's records management plan. Should the child return to Scotland, information that is likely to be relevant to the child's wellbeing will need to be shared with the child's Named Person.

Change in Named Person within a Named Person service

10.2.26 There will be times where a child's Named Person service provider remains the same but the child's Named Person changes, whether due to the child progressing through education or health services or due to staff changes. While the terms of section 23 do not apply to these transitions, the general principles of information accuracy, relevance, proportionality and appropriateness should be considered when information is shared within a service. Information that cannot be justified as likely to be relevant in promoting, supporting and safeguarding a child's wellbeing, should not be routinely retained or transferred. If such information is no longer relevant it should be archived and omitted from the records that are transferred. This requirement is not as a result of this Act but is already required practice in terms of the DPA. It is a requirement of Principle 3 of the DPA that personal data should not be held longer than necessary. Nor should the data held include irrelevant details. Where sensitive personal data is concerned, it is particularly important to make sure that only the minimum amount of information needed is collected or retained.

Transfer of information held by Named Person service where there are no wellbeing concerns

10.2.27 Where there are no wellbeing concerns, procedures should be in place to inform the new Named Person service provider that only routine information will be shared. This will always include the name and address of the child or young person and their parents.

10.2.28 It is important that each transition, whether from a health board area or a local authority area or to another area or another authority, or independent provider, should be regarded as an information sharing decision point. The outgoing Named Person service provider will decide what is relevant and proportionate to share with the incoming Named Person service provider. This process will involve an examination of the information held and an assessment of whether it is likely to be relevant to the functions of the incoming Named Person service provider. The steps referred to in section 10.3 should be followed and will assist in coming to the right decision.

10.3 Section 26

Information sharing

10.3.1 Section 26 provides a framework to support the proportionate and appropriate sharing of information by the Named Person and others in support of the exercise of their functions under the Act. It sets out the responsibilities of both service providers (including the Named Person's own organisation) and relevant authorities (as defined in section 31) to share information.

10.3.2 If at any time there is any concern that the child may be at risk of significant harm, it is essential that child protection procedures are followed immediately. The National Child Protection Guidance sets out the national guidelines on what procedures should be followed.

It can be accessed at:

www.scotland.gov.uk/Publications/2014/05/3052/downloads#res450733

Sharing information with the Named Person

10.3.3 Sections 26(1) and (2) of the Act specify that information should be shared with the Named Person's organisation if a set of 'tests' are met.

First, it is likely to be relevant to the exercise of the functions of the Named Person in relation to a child or young person. Second, the information ought to be shared. This element of the test comprises a number of factors:

- a) that the information holder has, where reasonably practicable, obtained and considered the views of the child or young person and in the case of a child, has considered their age and maturity in taking these views into account. Whether the child has the capacity to make decisions is ultimately a matter of professional judgement. When the information shared includes information about the child's parents, they should be made aware and their views taken into account unless it might be to the child's detriment. This is not a requirement of this Act but in line with the 'fair processing' requirement of the DPA. (For more information on the requirements of the DPA, see the links in **paragraph 10.1.7.**) The information holder should bear in mind that some of the information may consist of the parent's' own personal/sensitive personal data, and must ensure that they comply with the DPA in this respect.
- b) that the likely benefit to the wellbeing of the child or young person outweighs any likely adverse effect arising from sharing the information. An example of this would be where a child or young person has started to disclose information and that a further sharing may stall that process or is likely to be too traumatic an experience. In such circumstance the information holder should use their judgement, experience and professional guidance to reach a decision. When a decision is reached not to share under this provision, it will be good practice to review it as appropriate.
- c) that, in all of the circumstances, the information ought to be shared. The information holder should take into account the whole context in which they are considering sharing the information, including any legal duties that they are subject to (such as the DPA, ECHR and any duty of confidentiality – see section on duties of confidentiality at **paragraph 10.3.10**).

10.3.4 Lastly, the information sharing will not prejudice the conduct of a criminal investigation or the prosecution of any offence. (See **paragraph 10.2.13.**) In practice this means that a service provider or relevant authority will have to tell a child's or young person's Named Person service provider about the information, after consideration and fulfilment of the tests listed above. It is important to remember that at times, parts of the service provider's organisation will have information that is likely to be relevant to the functions of the Named Person. Organisations must consider this and ensure that appropriate guidance and processes are in place to ensure that information is shared with the Named Person. A typical example of this would be where a service with an adult focus, such as housing or an addiction service becomes aware of information that is likely to be relevant to a child's

wellbeing. Although they may be part of the same organisation as the Named Person service, they must share the information appropriately and as specified in this section. The Named Person must make a reasoned, professional judgement as to the further sharing of such information. Consequently, there is a clear distinction between telling the Named Person about a concern and that information being made more widely known. Many services regard a child's or young person's ability to share information with them confidentially as key to their engagement. Professionals dealing with mental health, matters related to sexual behaviour and more specific issues relating to gender identity are examples – by no means exhaustive – of where the child or young person may not want matters shared any further. There are situations where a child or young person may be content with the information being shared with their Named Person but not with their parents. It is important that information holders and the Named Person consider the views of the child or young person before reaching a decision to share further.

Sharing information by the Named Person

10.3.5 Section 26(3) places an obligation on the Named Person service provider to share information with any other service provider or any of the bodies listed in [schedule 2](#) of the Act, if they consider it is relevant to the exercise of functions of the recipient which affect or may affect the wellbeing of the child or young person. Again, before further sharing the Named Person, must ensure that:

- it is likely to be relevant to the exercise of the functions of the recipient service provider or relevant authority which affect or may affect the child or young person's wellbeing and ought to be provided for that purpose;
- it ought to be provided – see above for the considerations that apply in considering whether information ought to be provided.

As set out elsewhere in this guidance, the Named Person's functions operate where the child, young person or parents have approached the Named Person for support with the child's wellbeing or there is a concern, or a need has been identified with the child's wellbeing. So the information that is likely to be shared under section 26 would arise from a concern that the information holder has about the child's wellbeing being at risk or likely to be at risk. The concern may arise directly from the child or the parents or anyone else who knows the child, or from observation or assessment by a professional. Professional judgement based on an understanding of wellbeing, experience, training and information about the child and their circumstances will be key to identifying wellbeing concerns. In some cases, a single observation or incident may represent a risk to wellbeing and be considered a concern. In other cases, the context of the observation or assessment, and wider knowledge of the child's general wellbeing and circumstances, may either heighten or reduce the concern. The nature of the concern will be specific to the individual child and their age and circumstances, so what represents a wellbeing concern for one child, may not be judged to be a concern for another child.

It will be important for the Named Person, in considering which service provider or relevant authority it is appropriate to share information with under this section, to have a general awareness of what support is available. They should also be aware of who supplies the support and the processes for accessing it or for making enquiries about its use.

10.3.6 The decision to share will at all times be driven by what is best for the child's wellbeing. The Named Person will not share information with other authorities or service providers unless the Named Person considers it is necessary. In all but exceptional situations, the child or young person – and as appropriate their parents – will be involved in the decision to share information in order to seek assistance from another service.

10.3.7 Sections 26(8) and (9) give the Named Person power to share information with a service provider or relevant authority if it is necessary or expedient for the purposes of exercising any of the Named Person functions. This differs from the duty provided in section 26(3) in that at times the Named Person may wish to share information for the purpose of assisting them in the exercise of their own functions, rather than those of a third party. This could be where the Named Person has a concern about the child's wellbeing or has been made aware of a likely concern and as a result is exploring options for support or making enquiries on behalf of the child or parents. In such circumstances if the Named Person is of the opinion that there is a practical benefit to their functions to share the information then they have the power to do so, however it is not expected that this power would be used to share substantive information about a child's wellbeing. In such circumstances, the duties outlined in section 26 (3) should be used. Such sharing may be necessary in the Named Person establishing whether the duty to share in section 26 (3) & (4) applies as they establish whether a service provider or relevant authority can provide the support that best meets the child's wellbeing need. An example of this would be where a Named Person is making enquiries with a relevant authority in order to assess whether they can assist in supplying a specific service that would help in meeting the child's needs. This may entail disclosing information about the child and their needs so that the relevant authority can assess whether the services they offer would promote, support and safeguard the wellbeing of the child involved. Unlike information shared under section 26 (3), it will not be necessary to follow the steps in relation to the information being likely to be relevant to their function; considering the child's views; assessing if the benefit of sharing outweighs any adverse effect of sharing; However, it would be good practice to consider all of these before further sharing. The requirements of the DPA must also be complied with.

10.3.8 Section 26 (10) clarifies that references to service providers or relevant authorities (schedule 2 bodies) in section 26 also include any person exercising a function on their behalf. This impacts on a wide range of arrangements such as, but not restricted to, third sector or private organisations who are commissioned or contracted to deliver a function, of the service provider or relevant authority. Expectations and requirements to share information under these provisions should be clearly set out and defined in any contract or service level agreement the third party organisation has with the service provider or relevant authority. It is important that the duties in this section are considered by all schedule 2 bodies or service providers when services are being contracted, and that bodies being contracted consider how they keep separate any information that might be held in different parts of their organisation.

10.3.9 An example of this could be where a third sector organisation provides a helpline offering a degree of confidentiality. Another arm of the organisation is contracted by a service provider or relevant authority to provide separate functions

on their behalf. Whilst those members of the organisation who provide the separate functions fall within the scope of this section, those who provide the helpline service do not. Organisations should consider information access needs and ensure that suitable processes are in place to ensure that personal information is only shared when it relates to their contracted functions.

Duties of confidentiality

10.3.10 Section 26(11) of the Act explains how the information sharing provisions in section 26 interact with duties of confidentiality. Some professionals, particularly health professionals, are covered by a professional or common law duty of confidentiality and professionals adhere to that duty in relation to their interaction with clients. The general position is that if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the information provider's consent, unless it is completely necessary. Where the sharing of information has been fully considered and is deemed to be in the best interest of the child's wellbeing, then this Act permits sharing of information in breach of a duty of confidentiality.

10.3.11 Section 26 does not permit or require the sharing of information in breach of any legal duty except a duty of confidentiality. This means that any other legal restrictions continue to apply other than when the information holder is bound by confidentiality as understood in common law or as part of a professional code that has a statutory basis. This section does not allow the information holder to breach any other legislation such as the DPA or any other legal restrictions such as an Order of the court specifying non-disclosure. Where the only restriction or barrier to sharing the information is patient or client confidentiality the Act specifically removes that restriction where information is shared in accordance with section 26. The information holder should consider the information in relation to the tests outlined in section 26 – see **paragraph 10.3.3**. If the information holder decides that the information ought to be shared and that all of the necessary tests are met, they can share regardless of the duty of confidentiality. However, they must make the recipient aware that confidentiality has been breached. The Named Person is then not permitted to further share the information unless this further disclosure would be permitted by law. Organisations should consider making clients aware of the obligation to share such information as part of their engagement.– see guidance on section 27 (**paragraph 10.4**).

10.3.12 In practice, this means that section 26(11) specifically allows for client and patient information to be shared if the information is shared in accordance with the tests laid down in section 26. This is regardless of whether the information is held on paper, computer, visually or audio recorded, or held in the memory of the professional, and must not normally be disclosed without the consent of the patient or client..

10.3.13 At times, achieving the balance between confidentiality and sharing can be challenging. In such cases, where the child, or the service sharing the information asks for confidentiality, then respecting that request should be the default position of the service provider, relevant authority or Named Person. The Act permits the appropriate sharing of confidential information, when it is likely to be relevant to functions relating to a child or young person's wellbeing. At times a child may

disclose information on the basis that it is treated as confidential and not shared further, however the information holder or their service may consider that it is necessary to further share to promote, support and safeguard the child's wellbeing. These are difficult decisions and the section 26 tests must be considered carefully, in particular the child's views and the likely effect on the child's wellbeing. Any other legal requirements relating to the information must also be carefully considered, including the requirements of the DPA and the child's right to private and family life under Article 8 of the European Convention on Human Rights. Only where further sharing is necessary to promote, support and safeguard a child's wellbeing or to prevent harm, and where this is permitted under data protection legislation, should the information be shared further. Decisions such as these will need to be evidenced, and the rationale clearly recorded.

10.4 Section 27

Disclosure of information

10.4.1 Section 27 applies only where information has been shared under the provisions of Part 4 of the Act and as a result, the information has been shared in breach of a duty of confidentiality. As a general principle the duty arises when a person receives information in circumstances where he knows or can be taken to know that the information is to be treated as confidential. For example, NHS patient information is nearly always under a duty of confidence. This Act specifically allows such information to be shared if the steps set out in section 23 and 26 are followed. Where a person is providing the information in breach of such a duty, they should make the recipient aware of this fact. Where they do so, section 27 then provides that the information should not be further shared by the recipient, unless to do so would be required or permitted by virtue of any legislation or rule of law (including the provisions of Part 4 of this Act). In other words, where someone receives information in breach of a duty of confidentiality, they must satisfy themselves that a legal basis for the further sharing of this information exists. This offers a safeguard against further sharing of information in breach of a duty of confidentiality.

10.4.2 The legal basis which can be used to justify onward sharing of information in breach of a duty of confidentiality can include Part 4 of the Act itself. So, for example, information could be shared with a Named Person in breach of a duty of confidentiality and the Named Person should, under section 27(1), be informed of that fact. The Named Person cannot automatically share that information further: they must consider whether this Act or any other rule of law or enactment permits or requires them to share further. The Named Person could consider, in terms of section 26 of the Act, that they require to share this information further with a relevant authority or service provider. They must, however, go through the necessary tests for information sharing, as set out in section 26, before doing so.

11 Part 5 – Child’s Plan

11.1 Purpose of Part 5 of the Act; Child’s Plan

11.1.1 The aim of [Part 5](#) of the Act is to improve outcomes in relation to children’s wellbeing by ensuring that a single statutory plan, the Child’s Plan, is prepared for every child who needs one. Streamlining the planning process aims to ensure that there is a single planning framework in operation across children’s services to make good use of resources and to avoid unnecessary duplication for the child, their parents, and for practitioners.

- **Section 33** specifies that a responsible authority is to consider whether there is a requirement for a Child’s Plan, and sets out how this should be done;
- **Section 34** covers the content of a Child’s Plan and contains an order-making power to enable Scottish Ministers to make provision about what other information is, or is not, to be contained in Child’s Plans, and the form of Child’s Plans;
- **Section 35** requires a responsible authority or, in some circumstances, a relevant authority, to prepare a Child’s Plan. Section 35(8) gives the Scottish Ministers order making powers in respect of the preparation of a Child’s Plan, and the provision of copies of the Child’s Plan;
- **Section 36** sets out who the responsible authority for a Child’s Plan normally is;
- **Section 37** defines ‘responsible authority’ in special cases, and lists what these special cases are;
- **Section 38** sets out the duty on a relevant authority to secure delivery of a Child’s Plan by providing a targeted intervention or by arranging for a targeted intervention to be provided in accordance with the plan;
- **Section 39** specifies how a Child’s Plan should be managed and reviewed by the ‘managing authority’, and sets out who the ‘managing authority’ of the Child’s Plan is;
- **Section 40** imposes a duty on relevant authorities and listed authorities (that is, those in schedule 3) to comply with any reasonable request to provide information, advice or assistance to a person exercising functions under Part 5;
- **Section 41** outlines the requirement to have regard to guidance about the exercise of functions under this Part (other than the function of complying with section 38), and the requirement for the Scottish Ministers to consult any person to which it relates and such other persons as they consider appropriate before issuing or revising such guidance;
- **Section 42** confers direction-making power on the Scottish Ministers, and imposes a duty to comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by or under this Part, other than the function of complying with section 38. In other words, Scottish Ministers may issue directions on functions under this Part other than the delivery of the Child’s Plan;
- **Section 43** gives the Scottish Ministers order-making power to make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under this Part;

- **Section 44** relates to the persons listed, or within a description listed, in schedule 3 – to be referred to as ‘listed authorities’ for the purposes of this Part. The Scottish Ministers are not a listed authority for the purposes of sections 41 and 42, as they cannot issue guidance or directions to themselves. In addition, the Commissioner for Children and Young People in Scotland and a body which is a ‘post-16 education body’ for the purposes of the 2005 Act, are not listed authorities for the purposes of section 42. This is to say, these organisations are not subject to direction-making power in relation to Child’s Plans;
- **Section 45** provides a definition of terms used within Part 5.

11.2 Part 5 – Section 33: Child’s Plan requirement

11.2.1 This section sets out the framework within which a decision to prepare a Child’s Plan should be made. It will be for the responsible authority in relation to the child, to decide if a child requires a Child’s Plan based on the criteria outlined below. The responsible authority may be a health board, a local authority, or a directing authority where a child attends an independent or grant-aided school. An individual who is placed in secure care, or the care of the Scottish Prison Service should have a Child’s Plan in place, prepared by their local authority of residence (that is, the responsible authority in relation to the child).

When is a Child’s Plan required?

11.2.2 There are two main considerations in deciding if a child requires a Child’s Plan. The first is based on an assessment of wellbeing, as defined in Section 96(2). The child must be assessed as having a wellbeing need in terms of the definition of wellbeing within the Act. This means that a judgement has been made that the child’s wellbeing is currently being adversely affected by any matter, or is at risk of being adversely affected, as specified in Section 33(2). The adverse effect may be on one or more aspects of wellbeing and can arise from any factors relevant to the child. This judgement will be made based on a holistic knowledge of the child, informed by the use of the National Practice Model. See Wellbeing section of this guidance (**paragraph 1.6**) and **Appendix A**.

11.2.3 The second consideration relates to the support judged necessary to meet the identified wellbeing need. A wide range of children may present with a wellbeing need at some points in their lives and these can most often be met by support from their family, community resources or the support generally available within the universal services provided by the health board or local authority. A Child’s Plan is required only when the wellbeing need cannot be met, or fully met, without the provision of a ‘targeted intervention’, and it is considered that the wellbeing need can be met by one or more targeted interventions. This means that the responsible authority decides that action should be taken to provide specific support which meets the definition of a targeted intervention.

Targeted intervention

11.2.4 Within the terms of the Act, a ‘targeted intervention’ is a service which is provided by and/or arranged by a relevant authority in pursuance of its functions. It is directed at meeting the wellbeing needs of children whose needs are not able to be met, or fully met, by the services provided generally to children by the health board or local authority, or independent/grant aided school. This means that a targeted intervention will be a service or some type of support which is more specialist, or targeted at addressing particular wellbeing needs and is therefore not made available generally to children by that authority. A targeted intervention that is provided by a third party or person, under arrangements made by the relevant authority means that a third party or person may become a partner to the Child’s Plan – see guidance on Section 38. A third party in terms of provision of a targeted intervention may be a public body listed in schedule 3 delivering a service by arrangement with a relevant authority, a third sector organisation commissioned or contracted by a relevant authority to provide a service, or a third sector organisation with no contracted arrangements, but which provides a service by arrangement with a relevant authority.

11.2.5 Just as a wellbeing need will require to be judged within the context of the individual child’s circumstances, the definition of a targeted intervention will be related to local context and the service design of the relevant authority. It will be for all relevant authorities to consider which of their services are not made generally available and therefore meet the definition of a targeted intervention for the purposes of a Child’s Plan. The following are some examples of services or support which may constitute a targeted intervention:

- Speech and language therapy input
- Parental support through targeted parenting programme
- Specific prescribing/dispensing schedule for methadone for parent
- Inclusion in a school nurture class
- Parent and child participation in healthy weight programme
- Befriending support for child
- Child and Adolescent Mental Health Services (CAMHS)
- Fire safety awareness/Fire setter prevention programmes

Planning

11.2.6 While this section of the guidance lays out the systems and processes which need to be in place to develop a Child’s Plan within the terms of the Act, it is important to set these requirements within the principles of early and effective intervention and the more general planning processes which will continue to be in place for children. For some children there will be a need to plan short-term or long-term support within universal services as part of the routine provision of support. This might include a health care plan or an individual education programme to support a particular learning need within the class or school. Such planning should use the National Practice Model and be proportionate to the child’s needs. Where there is no requirement for a targeted intervention, as defined in Section 33(4) of the Act, the plan will not constitute a statutory Child’s Plan. Routine use of the GIRFEC National Practice Model (Appendix A) enables children, parents and practitioners to develop a

collaborative approach to meeting needs, and where necessary provides an incremental approach to improving outcomes which might in some cases result in a statutory Child's Plan.

Views of the child, parent and others

11.2.7 Section 33(6) of the Act requires that the child, and the child's parents, should be involved in considering whether the child has a wellbeing need, and if so, whether that need requires a Child's Plan to be initiated in order to meet that need. Therefore, in deciding whether a child requires a Child's Plan, the responsible authority must, so far as reasonably practicable, seek and have regard to the views of the child, the views of the child's parents, and the views of any other people considered appropriate by the responsible authority. It is expected that meaningful discussion with the child and parents will be part of the decision-making process in all but exceptional cases, and the responsible authority would need to have reasoned justification as to why they were not able to obtain the views in any given case. The exceptions may be where the child's age makes this not reasonably practicable, or where to seek and have regard to the views of the child's parents would be detrimental to the child's wellbeing. Communication or learning difficulties should not be considered an exception to the requirement to obtain and consider the views of the child or parent. Where it is practicable to obtain the child's views, this should always be done, regardless of the child's age. Further, if views have been obtained then they should always be considered and recorded.

11.2.8 In having regard to the child's views the responsible authority must take account of the child's age and maturity (Section 33(7) of the Act). Consideration should also be given to any speech, language and communication disabilities and needs (**paragraph 2.4.5**) the child may have. This will allow, for example, a young child's views to be taken into account and given significant weight notwithstanding that they are below the age of 12, which is often used as a determination of capacity. Equally, it allows for a child (of any age)'s views to be given less weight in circumstances where their wellbeing need demands that a Child's Plan be prepared, but they would prefer for that not to happen.

11.2.9 The person preparing the Child's Plan will be required to:

- a) Consult the child's Named Person (if they are not themselves the Named Person)
- b) Consider whose views need to be ascertained and taken into account. In other words, who are the key people in this particular child's life who will have a view on the content of the Child's Plan? These are likely to include:
 - i. The child
 - ii. The parents
 - iii. Carers (if appropriate)
 - iv. Other people considered appropriate (this will depend on the individual child's circumstances)
 - v. Other partners to the Child's Plan, if appropriate (for example, those who will be delivering the targeted interventions in the Plan)

11.2.10 The Named Person has a key role in promoting, supporting and safeguarding the wellbeing of the child (see **paragraph 3.1**) In most circumstances the Named Person, acting on behalf of the responsible authority, will be involved in deciding if a child requires a Child's Plan. However, there may be situations where the Named Person is not an employee of the responsible authority. This would be the case, for example, if the child is serving a custodial sentence, where the Named Person would be employed by the Scottish Prison Service, or where a health visitor is employed by a local authority. Section 33(6)(a) stipulates that in such circumstances the child's Named Person must be consulted to ensure that their views are ascertained and given regard in deciding if the child requires a Child's Plan.

11.2.11 It will be for the responsible authority to consider who else may be appropriate to consult in deciding if the child requires a Child's Plan. While this will always be dictated by the individual child's circumstances, it may be appropriate to consult with those who are looking after the child but are not covered by the definition of parent, for example, residential care worker, or someone who plays a significant part in the child's life, like a befriender for example.

11.2.12 Scottish Ministers may specify in secondary legislation others whose views must be sought and considered in relation to the decision about the requirement for a Child's Plan.

Exceptions

11.2.13 The duties outlined in section 33 apply to all children who may require a Child's Plan, unless they already have a Child's Plan, or the child is a member of the regular forces. Where a Child's Plan already exists, the processes outlined at 11.10 in this guidance, about management and review of plans, should be followed. Where the child is a member of the regular forces, they fall outwith the scope of Part 5 of the Act.

11.2.14 Members of the reserve forces who are under 18 are not exempt from the Child's Plan provisions. A member of the reserve forces whose wellbeing needs cannot be met or met fully without the provision of a targeted intervention should have a Child's Plan. For the period that the child is on duty or training with the reserve forces and therefore subject to service law, there may be practical limitations on taking forward all of the interventions outlined in the Child's Plan..

11.3 Part 5 – Section 34: Content of a Child's Plan

11.3.1 The required content of a Child's Plan is described in Section 34 of the Act, and will be supplemented in secondary legislation. The Child's Plan has been designed to help all staff working with children and families in responsible authorities, relevant authorities or listed authorities; the child, the parent and other relevant persons, to think about the wellbeing needs of a child and what can be done to improve their outcomes. The Child's Plan should be accessible and helpful to all partners to the plan, including the child and parents. This means it should be made available in a way that ensures parents and children can understand the content of the plan, and express their views about it. There may be occasions and circumstances in which a Child's Plan is used in formal settings such as Children's

Hearings or courts. Responsible authorities and managing authorities should consider how the content of a Child's Plan can be adapted or presented for these purposes as and when required.

11.3.2 For whatever reason, a child might not be as safe, healthy, achieving, nurtured, active, respected, responsible or included as they should be. The Child's Plan is for use with any child whenever there is an identified wellbeing need which requires a targeted intervention to be provided in order to meet, or fully meet that need (see guidance on Section 33 – **paragraph 11.2.2**).

11.3.3 When planning and thinking about a child's wellbeing needs, every practitioner should think about the child's holistic needs (see guidance on Section 96 – paragraph 2.5.1). The Child's Plan should provide a holistic view of the child's wellbeing, and is a means to plan for, and record, the child's wellbeing needs, and how the assessment of need has been reached. The desired outcome in relation to these needs, and the actions necessary to reach that outcome, the child's and parents' views and other relevant information will also be recorded in the Child's Plan. It is important that the Child's Plan contains relevant information about the child's strengths and resilience, and the needs it is addressing, and is not used as a means of recording information which is surplus to this requirement. Information which is about a child, but is not related to the plan, should be stored according to each organisation's policy and procedures, and not within the body of the Child's Plan. For example, information about a child's educational attainment would be stored in the child's educational record, but may not necessarily be relevant to the specific wellbeing needs being addressed in the Child's Plan.

11.3.4 A Child's Plan should be clear and succinct, available in a format that can be understood by the child and parents, and refer to needs that have been identified and will, or are likely to be, addressed through a targeted intervention(s). The use of technical terminology and abbreviations should be avoided. While the Plan sets out the factors that gave rise to the child's wellbeing needs and includes a summary of the assessments carried out by a responsible authority or relevant authority, it should not contain the full multi-agency, assessment/reports. How or where this information is kept or shared is a matter for the Named Person or, where appropriate, the Lead Professional (See glossary, **paragraph 1.6.6**), in line with the DPA and local procedures. It is important to consider whether some of this information may be sensitive or could cause distress or risk to the child or other family members. Where this is likely, the Named Person or Lead Professional should consider with whom it is appropriate and proportionate to share this information.

11.3.5 Section 34 of the Act, and secondary legislation, set out the minimum content for a Child's Plan. Plans must contain a statement of:

The child's wellbeing need

The child's wellbeing should be assessed and recorded in terms of the eight wellbeing indicators specified in section 96(2) of the Act. The assessment process should follow the National Practice Model, which provides a framework for practitioners to structure and analyse information consistently so as to understand a child's needs, the strengths and pressures on them, and to consider what support the child might need.

The targeted intervention

The targeted intervention or interventions, which require(s) to be provided in relation to the child. Examples of Targeted interventions which may feature in (but are not limited to) a Child's Plan are outlined in **paragraph 11.2.5**. These are services or forms of support which are not made generally available within a local or service context.

The relevant authority which is to provide the targeted intervention

A targeted intervention is to be provided by a relevant authority (Section 33(4)). See also guidance at paragraph 11.9 on Section 38 about the delivery of the Child's Plan and how targeted interventions should be provided.

The manner in which the targeted intervention is to be provided

The agreed action(s) to be taken, who is responsible for each action (to include the family, the child, and agencies involved), and when it should be done. The resources to be provided – who provides them and when this should happen.

The outcome in relation to the child's wellbeing need

There should be a statement of what each targeted intervention is intended to achieve. Outcomes should focus on the child's wellbeing needs and relate to the impact of the targeted intervention with a focus on their experiences and the extent to which their lives and life opportunities will be enhanced. The Child's Plan should be appropriate to the child's needs and circumstances.

Agreement on the provision of a targeted intervention

11.3.6 A targeted intervention may be contained in a Child's Plan only where the relevant authority which would provide it, or which would arrange for its provision, agrees. If that relevant authority does not agree that a particular targeted intervention should be contained in the Child's Plan, it must tell the authority preparing the plan why. In such circumstances there should be processes in place to consider this decision and where possible, to make alternative arrangements to achieve the desired outcome for the child. It is important that these processes are swift and effective so as to prevent any delays in meeting the child's wellbeing needs.

Example:

The Named Person might consider that Child and Adolescent Mental Health Services (CAMHS) input is appropriate for a child displaying challenging behaviour. CAMHS disagree, as the child does not meet the criteria for accessing their service. The alternative arrangement agreed might be that CAMHS will signpost to another service, or that CAMHS will provide advice to the school, who will implement strategies to support the child to develop positive relationships and behaviour.

11.3.7 The Scottish Ministers will, by secondary legislation, make provision as to other information which is, or is not, to be contained in a Child's Plan, and the form in which that information should be set out. The information required to be contained in

a Child's Plan is specified in Schedule 1 of the draft secondary legislation (the Child's Plan (Scotland) Order) which is made under Part 5. Please refer to Schedule 1 in the draft Order for details of the content of the Child's Plan.

Chronology of significant events

11.3.8 As part of the Child's Plan data set, every Child's Plan must contain a chronology of significant events. The purpose of a chronology is to document significant achievements, events, developments, and changes in a child's life, so that the pattern and impact of events on the child over time may be observed and responded to.

11.3.9 A chronology must contain – as a minimum – the date of the significant event, details of the significant event, the source of Information, the action taken and the name, title and agency of the person making the entry.

11.4 Part 5 – Section 35: Preparation of a Child's Plan

11.4.1 Section 35 outlines the duties and responsibilities associated with the initiation and preparation of a Child's Plan. This section applies in all circumstances where a child is deemed to require a Child's Plan by the conditions set out in section 33 of the Act.

11.4.2 When it has been established that a child requires a Child's Plan, the responsible authority, as defined in sections 36 and 37 of the Act, or if agreed, a relevant authority, is to prepare the plan as soon as is reasonably practicable (in other words, as soon as the required steps can be completed successfully), in accordance with timescales set out in the Child's Plan (Scotland) Order, and with other legislative requirements (for example, The 2004 Act). Usually the responsible authority will be the health board (pre-school children) or local authority (non-pre-school children) for the area where the child lives, or the directing authority where the child is placed by parents in an independent or grant-aided school.

11.4.3 In most circumstances, the Named Person, who will usually be an employee of the responsible authority, will initiate the preparation of the Child's Plan. The rationale for this is that the Named Person is the single point of contact for all concerns about a child's wellbeing, and may therefore already hold relevant information (and will know if the child already has a Child's Plan). The Named Person will initiate the Child's Plan process in collaboration with colleagues from other services/agencies as appropriate.

11.4.4 Where there is already a Child's Plan in place, the identification of the need for new targeted interventions will be a trigger for review of the existing plan.

11.4.5 Where the child's needs lie predominantly within the scope of the Named Person's agency (health for children from birth to school age or entry, or local authority or independent or grant-aided school after 5, or starting school) the Named Person, in their capacity as an employee of the responsible authority, is expected to prepare a Child's Plan. They will then coordinate delivery of the targeted intervention (in other words be the Lead Professional), unless this requires a level of coordination beyond the scope or capacity of the Named Person. In determining this the Named

Person should utilise the support of their agency and the wider assistance available to them through the Named Person service arrangements. In that case, discussions will need to be held with all partners to the Child's Plan, including the child and parent, about who will be the most appropriate professional to take on the role of Lead Professional. For example, for a young child where concerns are highlighted at the 27-30 month review, the health visitor may seek support from other specialist health professionals and coordinate that support through a Child's Plan. Where the child is of school age, the Named Person can call on specialist educational services outwith the school's resources to meet aspects of the child's wellbeing (for example, input from a specialist team). The support to be provided and the desired outcomes will be outlined in the Child's Plan. (See **paragraph 11.4.19** below for further details about the Lead Professional.)

11.4.6 If there are disagreements about who is the most appropriate professional to take on the Lead Professional role there should be processes in place to consider this and where possible, to make alternative arrangements to achieve the desired outcome for the child. It is important that these processes are swift and effective so as to prevent any delays in meeting the child's wellbeing needs. These processes should also actively engage with the child and parent and have regard to their views.

Children who have additional support needs and require a Coordinated Support Plan

11.4.7 In some cases, a child with wellbeing needs which require a targeted intervention through the development of a Child's Plan, may already have a Coordinated Support Plan (CSP) within the terms of the 2004 Act. The CSP is an educational plan which includes commitments by other agencies to provide additional significant support to enable a child to benefit from education. This is a statutory plan which education authorities must be able to produce as a standalone plan for purposes outlined within the 2004 Act.

11.4.8 There may be some potential for overlap in the contents of the CSP and the Child's Plan. However, while the content of the CSP is focussed on the additional support a child needs to benefit from education, the content of the Child's Plan can focus on a wider range of issues relating to any aspect of the child's wellbeing, including strengths and adversity in relation to achievement. For some children who meet the criteria for a CSP, it will be important to develop a Child's Plan to plan for and record targeted interventions to achieve the desired outcomes across a range of wellbeing indicators.

11.4.9 Where the decision to develop a Child's Plan has been taken in line with section 33 of this Act, and a CSP is also in place or may be required, the process leading to the development and review of the CSP should be fully integrated with the planning and review of the Child's Plan. As far as possible, this should be a seamless process for the child, parents and practitioners resulting in a single planning document – in other words, the Child's Plan.

11.4.10 The Child's Plan will contain detail of the support offered through targeted interventions by one or more agencies, and may be discussed and reviewed in a single forum, referred to as the Child's Plan meeting. Where more than one agency contributes to the Child's Plan, a decision will be made by all the

partners to the plan about whether it is more appropriate for the responsible authority or a relevant authority to prepare the plan. Section 35(4) specifies that if a relevant authority will not agree to prepare the Child's Plan, it must provide a statement of reasons in support of this decision. Any disputes about preparation or management of the Child's Plan should be addressed through local procedures.

11.4.11 A relevant authority is defined for the purposes of Part 5 of the Act as a health board, local authority or directing authority. Where the responsible authority and a relevant authority agree that it would be more appropriate for the relevant authority to prepare a Child's Plan, the relevant authority will prepare the plan as soon as is reasonably practicable. This means that in some situations, it will be clear that, having initiated the Child's Plan process, the responsible authority is not the most suitable authority to prepare the Child's Plan (perhaps because of the specific nature of the child's wellbeing needs, for example complex health needs, issues relating to social care needs).

11.4.12 An example of where it would be more appropriate for someone other than the Named Person (even where they are employed by the responsible authority) to prepare the Child's Plan may be where a baby is born with complex health needs, or an unanticipated event results in a child experiencing severe or complex acute health needs. The Named Person here would normally be a health visitor. The preparation of the Child's Plan might, in these circumstances, be undertaken by another employee of the responsible authority, for example, specialist health staff.

11.4.13 Health boards, local authorities and directing authorities, in their role as responsible authorities, should have in place processes, protocols, guidance and agreements to support the Named Person in determining whether or not they are the most appropriate individual to prepare the Child's Plan. These processes will also outline which other organisations, acting as relevant authorities can, and in what circumstances should, be the appropriate organisation to prepare the Child's Plan. There should also be clear processes to deal with situations where a relevant authority declines to prepare a Child's Plan.

11.4.14 There is a requirement in terms of section 35(6)(a) to consult the Named Person about the preparation of a Child's Plan, where the Named Person is not an employee of the responsible authority. The rationale for this is that the Named Person holds information about the child's wellbeing which may be of assistance in relation to these decisions.

11.4.15 Where the Named Person is an employee of the responsible authority but is not preparing the Child's Plan, consideration should always be given to involving the Named Person in such discussions, as they will hold key information about the child's wellbeing.

11.4.16 Involving the Named Person should never delay vital action being taken to safeguard aspects of the child's wellbeing.

11.4.17 For many children there will be an incremental approach to planning and providing support to meet wellbeing needs, but for a minority of children, a sudden event or crisis might require multi-agency planning and support as a first

step. Typically this may occur where there are child protection concerns, or sudden serious medical issues, leading to a professional in social work, police or health responding to the situation and putting in place a response to the child's immediate needs. If there are any concerns that a child may be at risk of significant harm, local child protection procedures must be followed immediately. This may involve immediate action being taken to secure the safety of the child. Preparation of the Child's Plan will follow this immediate action, and it may be appropriate in these exceptional circumstances for a practitioner other than the Named Person to prepare the plan (for example, a social worker). In this situation, the social worker would be likely to take on the role of Lead Professional, and they would be required to collaborate with the child's Named Person throughout the process of preparing the Child's Plan.

11.4.18 In preparing the Child's Plan, the responsible authority or relevant authority is, as far as is reasonably practicable, required to ascertain and have regard to the views of the child, the child's parents, such persons, or the persons within such description, as the Scottish Ministers may by order specify, and such other persons as the authority considers appropriate (Section 35(6)). Guidance in relation to the requirement to have regard to views is covered under Section 33 – see **paragraph 11.2.1**.

11.4.19 Secondary legislation makes provision requiring the authority which prepared a Child's Plan (that is, a responsible or relevant authority) to provide a copy of it to

- a) the child where, taking account of the child's age and maturity, it is considered that the child is capable of understanding the purpose and effect of the child's plan;
- b) the child's parents;
- c) the child's Named Person; and
- d) other persons in specified circumstances (in order to take account of other statutory planning processes).

11.4.20 The Lead Professional will be the professional who is best placed to carry out the required coordinating role and work with the family to improve outcomes for the child.

11.4.21 The role of the Lead Professional is key to ensuring that

- a) support is coordinated across agencies,
- b) the child and their parents are kept informed and are actively involved in the process, and
- c) the agreed support is being taken forward in line with the plan.

11.4.22 The Named Person will work with the Lead Professional and should always be involved in the decision to initiate the Child's Plan even if they do not work for the agency leading on preparation of the plan.

11.4.23 In cases where the Children's Hearing system is involved, and compulsory measures of supervision are being considered, the role of the Named Person, in relation to promoting, supporting and safeguarding the child's wellbeing, will continue to be important alongside the coordinating role of the Lead Professional. This builds on current good practice where health practitioners and education staff support children involved with the Children's Hearing process.

11.5 Part 5 – Section 36: Responsible authority: general

11.5.1 A responsible authority is under a duty to decide if a Child's Plan is required, and in most circumstances, to prepare the Child's Plan. Section 36 of the Act sets out the general position on who the responsible authority for a Child's Plan will be.

11.5.2 In most cases where a child requires a Child's Plan, the support identified through the targeted interventions in the Child's Plan is delivered through services available in the area where the child lives. The responsible authority is usually the health board (pre-school children) or local authority (non-pre-school children) for the area where the child lives.

11.5.3 This section of the Act defines a 'pre-school child' as a child who has not started at a primary school, either because they have not yet reached the age fixed by the local authority for starting school in that area, or a child who has reached the local authority's 'school age' but their school start date has been delayed with the consent of the local authority.

11.5.4 A child who is not a pre-school child is defined as a child who has reached school age, as defined in relation to school start dates fixed by the local authority in the area where the child lives. This category does not include children who attend a nursery class within a primary school.

11.6 Part 5 – Section 37: Responsible authority: special cases

11.6.1 There are circumstances where the responsible authority will be different to the general definition described in Section 36:

11.6.2 If a pre-school child is required to live in another health board area, as a result of a decision by the local authority or health board, then the health board where they would normally live is the responsible authority for the child. This would be the case if a pre-school child is a looked after child and lives in a care setting that is not in the area covered by the health board where the child would normally live.

11.6.3 Where a child attends a state school that is managed by a local authority other than the one for the area where the child lives, the authority where the school is located is the responsible authority for the child.

11.6.4 Where the child is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the child.

11.6.5 Where a local authority has placed a child in a grant-aided or independent school, regardless of where the school is located, then the local authority where the child would normally live is the responsible authority for the child.

11.6.6 The 'home' local authority (in other words the local authority where the child would normally live) remains the responsible authority when the child lives in a different local authority area as a result of any of the following happening:

- The local authority places the child in a residential grant-aided or independent school (under the 1980 Act), and the child is accommodated for that purpose;
- The child is placed in a residential establishment under Chapter 1 of Part 2 of the 1995 Act (s. 93)
- The child is placed in a residential establishment by virtue of an order under the 2011 Act (s. 202), in other words, under an order made by a Children's Hearing or Sheriff which requires the child to reside at a residential establishment;
- The child is detained in residential accommodation under Part 2 of the Criminal Procedure (Scotland) Act 1995

11.6.7 As specified in Part 4 of the Act, the Named Person Service is to be provided by the health board, local authority, directing authority or Scottish Ministers. In considering the relationship between the Named Person service and the responsible authority in the special cases described in Section 37, it is clear that the child's Named Person Service provider may not always be the same organisation as the responsible authority. It is in these cases, that the collaboration and co-operation between the Named Person and the responsible authority is particularly important.

11.6.8 In the special cases described, where the child lives in another area as a result of a health board or local authority decision, it would be expected that the child would have a Child's Plan in place before their change of residence, and that a Lead Professional would be identified by the responsible authority. The Lead Professional in these cases, as in every other case, will be required to liaise closely with the child's Named Person.

11.6.9 In the special cases described, where the child attends a state school managed by a local authority other than the one for the area in which the child lives, that other authority is the responsible authority in relation to the child, and is also the Named Person service provider for that child. In some instances it will be appropriate for the responsible authority to ask the home local authority, as a relevant authority, to develop and manage the Child's Plan. In such cases it will be important for the Named Person and the Lead Professional to liaise closely in considering the need for a Child's Plan, and in preparing the Child's Plan.

11.6.10 In the special cases described, where the child is a pupil at a grant-aided school or independent school (and the decision to place the child in that school has been made by the child's parents/carers), then the directing authority of that school is both the Named Person service provider and the responsible authority in relation to the child.

11.6.11 In those special cases where the child is a pupil at a grant-aided or independent school by virtue of a placement by a local authority, the local authority placing the child is the responsible authority in relation to the child and the directing authority of the school is the Named Person service provider. This would be the case regardless of whether the grant-aided or independent school was situated in the same or different local authority area. It would be expected that a child in these circumstances would have a Child's Plan in place prior to being placed in the grant-aided or independent school.

11.7 Part 5 – Section 38 Delivery of a Child’s Plan

11.7.1 In the context of delivery of a Child’s Plan, a relevant authority will be any organisation which is responsible for delivering a targeted intervention (either directly or by arrangement with a third party).

11.7.2 Section 38 of the Act sets out the statutory duties of relevant authorities in relation to the delivery of the Child’s Plan. Relevant authorities in this context are health boards, local authorities and directing authorities (managers of grant-aided schools and proprietors of independent schools).

11.7.3 A relevant authority is required (as far as reasonably practicable) to provide any targeted intervention for which it is responsible in accordance with the detail relating to that targeted intervention recorded in the Child’s Plan (for example, type of service, detail of service provision, timescales, milestones, outcomes).

11.7.4 Furthermore a relevant authority is required, as far as reasonably practicable to ensure that any targeted intervention provided by a third person under arrangements made by the authority is in accordance with the Child’s Plan (for example, provision by commissioned services, contracted services and those services provided by the third sector by arrangement).

11.7.5 If the relevant authority considers that providing the targeted intervention in accordance with the plan would adversely affect the wellbeing of the child, it does not need to comply with the requirement to ensure the intervention is provided in accordance with the plan. If the delivery of the targeted intervention is, or has been modified, suspended or terminated then the managing authority should be notified, and a reason given. Notification would normally be via the Lead Professional who is coordinating the plan. The negative impact of the targeted intervention on the child’s wellbeing should trigger a review of the Child’s Plan.

11.7.6 In determining if it is reasonably practicable to provide or secure the provision of a targeted intervention in accordance with the plan, a relevant authority should consider whether this provision could reasonably be expected of it in the exercise of its functions. In determining what is ‘reasonably practicable’, the relevant authority will need to consider all the child’s wellbeing needs and the circumstances relating to these needs. It will be necessary to ensure there is a decision-making process in place that considers the provision of the targeted intervention, wellbeing needs, circumstances, organisational responsibilities and organisational capability, and an agreed way of recording this process. Adherence to a properly-recorded process of justified decision making will assist in the event of a challenge, review, scrutiny or court process related to the relevant authority’s determination of what is or was ‘reasonably practicable’ in any given situation.

11.7.7 Relevant authorities should always consider what elements, if any, of the targeted intervention may require compulsory intervention through an order of the children’s hearing and therefore require a referral to the Scottish Children’s Reporter Administration. See:

www.scra.gov.uk/cms_resources/2.%20Children%20Referred%20to%20the%20Reporter.pdf

It should also be borne in mind that necessary interventions for a child can be identified through the Children's Hearings System independently of the Child's Plan process – in practice, this would involve a children's hearing or Sheriff making an order requiring the child to be placed under supervision which requires the authority implementing that order to take specific action in relation to the child. Every effort should be made to ensure that the decisions of hearings and courts are in line with the actions identified in the Child's Plan.

11.7.8 In some cases, a children's hearing or a court may make a decision which a relevant authority considers would adversely affect the wellbeing of the child. In these circumstances, pending resolution of the issue, the order of the decision of the hearing or court should take precedence and the relevant authority must implement that decision. To fail to do so could leave the authority in contempt of court, where the order is made by a Sheriff; or liable to enforcement action under the 2011 Act, where the order is made by a children's hearing. Where a relevant authority is concerned about the effect of the order on the child's wellbeing, they should take steps to raise the matter with the children's hearing at the first available opportunity and, where possible and appropriate, seek a review of the order and/or take other action to protect the child as necessary.

11.8 Part 5 – Section 39 Child's Plan: management

11.8.1 Section 39 of the Act outlines the management requirements and process for the Child's Plan. These are supplemented by secondary legislation. It describes what that means in the context of the functions of the 'managing authority' for the Child's Plan, as described in the glossary (**paragraph 1.6.8**).

11.8.2 The provisions in section 39 require the managing authority to exercise certain functions. In practice, the managing authority will, in agreement with the Named Person and other partners to the Child's Plan, including the child and parent, identify an individual, referred to as the Lead Professional, who will manage the Child's Plan.

11.8.3 Section 39 outlines a range of considerations relating to management of the Child's Plan, which need to be kept under review by the managing authority:

- a) that the wellbeing need of the child stated in the Plan is still accurate;
- b) that each targeted intervention stated in the Plan, and the way the targeted intervention is to be delivered, is still appropriate;
- c) that the outcome of the plan has been achieved;
- d) whether the management of the Plan should transfer to another relevant authority.

11.8.4 Management of the Child's Plan refers to the organisational arrangements put in place by the managing authority, to support the delivery and review of each Child's Plan. The details of these arrangements are outlined below, but in summary the managing authority for the Child's Plan must:

- Agree who should manage the Child's Plan for each child who has a plan;
- Maintain and review the Child's Plan;

- In reviewing the Child's Plan, consult with appropriate individuals and organisations, as specified in Sections 39(2)(a);
- In reviewing the Child's Plan, ascertain and have regard to the views of the child, the child's parents and other appropriate persons, as specified in Section 39(2)(b) – see also Section 33 guidance above on obtaining views;
- Be cognisant of, and compliant with, the decisions of Children's Hearings and the courts;
- As a consequence of these decisions, and/or of reviewing the plan, make appropriate decisions about the future of the Child's Plan.

This means in practice that the managing authority will

- Ensure that the Lead Professional is suitably qualified, trained and experienced to fulfil their role in line with other statutory requirements and local guidance;
- Ensure there is a clear link between the role of the Named Person and the Lead Professional and a system to support appropriate collaboration;
- Provide systemic and individual support to enable each Lead Professional to carry out their role effectively;
- Put in place arrangements to ensure business continuity in relation to making available a Child's Plan;
- Put in place arrangements to ensure the appropriate and proportionate sharing of information, by and with the Lead Professional, and the provision of advice or assistance to the Lead Professional;
- Put in place partnership arrangements to support the functions of the Lead Professional in relation to providing, accessing and coordinating targeted interventions for a child;
- Ensure that there is a shared understanding of wellbeing, and take responsibility for supporting the Lead Professional role across the workforce and between relevant authorities as appropriate;
- Establish an agreed single planning framework within which the Child's Plan functions will be exercised;
- Ensure that the culture, systems and practice in relation to the exercising of the Child's Plan functions supports partnership working with children, and parents.

11.8.5 Firstly, the individual who is to be the Lead Professional should be either an employee of the managing authority, or an employee of an organisation which carries out a service on behalf of the managing authority. As such this could include employees of third party organisations. However this should be clearly set out and defined in any contract or service level agreement the third party organisation has with the managing authority. In most cases it is expected that the Lead Professional will be a direct employee of the managing authority. As with the role of the Named Person, an example of an exception would be where, as a result of health and social care integration, either a health board or a local authority employs staff who carry out functions on behalf of the other organisation.

11.8.6 Another consideration is the training, qualifications, experience and position of the individual taking on the Lead Professional role. These have not been specified by Scottish Ministers in secondary legislation, because the Lead Professional is not a statutory role. The intention is that the role of Lead Professional is undertaken by an

individual with the appropriate background and experience, who holds a position within the managing authority which will allow them to manage the Child's Plan effectively as specified in the Act. It will be for the managing authority to make arrangements to ensure that the Child's Plan is managed by individuals who are appropriately supported and equipped to fulfil the conditions set out in the secondary legislation.

11.8.7 The Act does not preclude a member of a child's family from undertaking the management of a Child's Plan by taking on the role of Lead Professional. This situation might arise if the family member is employed by the managing authority, or a relevant authority, and would otherwise be considered to be the most appropriate partner to the plan to take on the role of Lead Professional. It will be a matter for the managing authority, in discussion with the proposed Lead Professional, the child and parents, to make a judgement as to whether this is in the child's best interest. If the judgement is that there is a potential conflict between the family and professional role of the individual, and that conflict could have a negative impact on the child's wellbeing, or would compromise the professional role of the member of staff, then alternative arrangements should be made.

11.8.8 In exercising their role, the Lead Professional should use the GIRFEC National Practice Model to review the child's wellbeing based on the wellbeing indicators, outlined in the guidance on section 96 of the Act (**paragraph 2.1**). The Lead Professional must ensure that this process of reviewing the child's wellbeing needs actively involves the child and their parents as appropriate, as well as the Named Person.

11.8.9 In order to respond proportionately to any wellbeing concern, the Lead Professional will ask the five practitioner questions (**paragraph 2.8.5**.)

11.8.10 Having assessed the identified wellbeing needs and reviewed that information in the manner outlined above, and in consultation with the child's Named Person (if different), the Lead Professional will exercise their professional judgement and decide to respond in one of the following ways in line with their role:

- immediate assistance is required to safeguard the child, in which case the Lead Professional will follow Child Protection procedures;
- the wellbeing need has been met, no further action is required and therefore the Plan should be ended;
- the existing targeted intervention remains adequate, so no change to the plan is required;
- the child or their parents may benefit from additional advice or information;
- the child, or their parents, may require additional support, or a change in the nature of the support provided;
- the child, or their parents, may need assistance from the managing authority to access another service or support from another agency;
- the Lead Professional may need to raise the wellbeing need with another agency to seek information, advice or assistance to further assess or support the child, or the parents (see guidance on Section 40- **paragraph 11.10.1** for further details).

11.8.11 Regardless of the decision taken, the Lead Professional should record information about the wellbeing need, the analysis leading to the decision and the views of the child and the parent if appropriate, in the Child's Plan.

11.8.12 The Lead Professional will, wherever reasonably practicable, actively involve the child and parents, and take account of their views before taking action. Communication or learning difficulties should not be considered an exception to this requirement.

11.8.13 The Act is clear that the management of the Child's Plan is carried out on behalf of the managing authority, who will normally be the Lead Professional's employer. Responsibility for the exercise of these functions lies with the managing authority and not with any individual. The Act does not impose any legal responsibilities on any individual who may be carrying out the Lead Professional role. This means that the management of the Child's Plan will be carried out as part of the Lead Professional's contractual duties and will be subject to the same accountability, supervision and support arrangements as other aspects of their duties

11.9 Section 39(5)(b) – Transferring management of the Plan to another authority

11.9.1 This section applies when the managing authority of the Plan needs to change. As a result it is relevant at all points of service transition, unless the child is no longer covered by the provisions of the Act.

11.9.2 When a review decision is that the management of the plan should be transferred to another authority (incoming managing authority) the original authority (outgoing managing authority) must give the incoming managing authority all information which the outgoing managing authority holds, and which falls within section 34 (1) (a)(b) (c) of the Act and secondary legislation, such as the content of the plan (**paragraph 11.3.1.**)

11.9.3 These duties are intended to ensure that the incoming managing authority is aware that they have a responsibility (under section 39 of the Act), and that they have to accept that responsibility. It also requires the outgoing managing authority to make a decision about what information is proportionate and relevant to share with the incoming managing authority.

11.9.4 Secondary legislation makes provision for the circumstances under which management of a child's plan is to be transferred. Where the managing authority of a child's plan considers that it would be more appropriate for another relevant authority to manage the plan, then management responsibility may transfer to that other authority by agreement. The circumstances which might suggest that another authority should manage the plan are:

- the child's wellbeing needs (for example, if these have changed since the plan was prepared);
- any targeted intervention(s) which are required to meet those needs; and
- the authorities which are providing, or are able to provide, those targeted interventions.

11.9.5 When a child with a Child's Plan moves, without any immediate intention of returning, from residence in one health board or local authority area, to another, this should trigger a review of the Child's Plan by the managing authority, and a decision will be made about transferring management of the Child's Plan. Under duties in Part 4 of the Act, a move of normal residence from one health board or local authority area to another, will usually result in a transfer of Named Person service provider as outlined in section 23 of the Act. Where, as a consequence of the review of the Child's Plan, the managing authority decides to transfer the management of the Child's Plan to another managing authority, the incoming Named Person service – either the health board or local authority of new residence – should be advised of the decision to transfer management of the Child's Plan as part of the transfer of information about the child's wellbeing.

11.9.6 This means that for a pre-school child where the responsible authority is the health board of residence, and the managing authority of the Child's Plan is either the health board or the local authority, a move of residence into another health board area will trigger a review of the Child's Plan by the managing authority, and a decision to transfer the plan. It will be for the health board or local authority, as managing authority, to contact the new health board or local authority, and make arrangements to transfer the plan. This should be closely linked to the transfer of the Named Person service, and agreed as part of the review of the Child's Plan.

11.9.7 A similar process should be followed for a school age child moving to live in another local authority area, where the responsible authority is the local authority of residence.

11.9.8 Where a school age child lives in one local authority area but attends a school under the management of another local authority, it will need to be decided whether there is a need to transfer the management of the Child's Plan.

11.9.9 For children who attend an independent or grant-aided school, where the Named Person service is the directing authority, a move from one local authority area to another may result in no change of Named Person service provider but may require a change of managing authority where the Child's Plan is managed by a body other than the independent school.

11.9.10 In some circumstances there will be existing processes in place to support the transfer of a Child's Plan depending on the needs and legal status of the child. This would be, for example, when there are on-going [child protection](#) concerns and/or when decisions have been made in [Children's Hearings](#).

11.9.11 In all circumstances, the review of the Child's Plan and the process for transferring the management of the plan should ensure that:

- i. The Named Person service is involved in discussion and preparation for transfer of the Plan
- ii. The child and parents are involved in the review as outlined in section 39(2)(b) and kept informed of the arrangements to transfer management of the plan
- iii. That continuity of support for the child's wellbeing is the key determinant in the transfer process.

11.9.12 Where the transfer of the Child's Plan has arisen because the child (and parents) has gone to live in another health board or local authority area, it is recommended that transfer of the management of the Child's Plan takes place as soon as practicable.

11.9.13 In the case outlined in the previous paragraph the new health board or local authority of residence will wish to review the plan as soon as practicable, and not later than six weeks after getting the Child's Plan from the previous managing authority.

11.9.14 It is important that when making this decision, the outgoing managing authority applies the principles of the DPA, and the provisions in section 40 of the Act, and ensures that all information shared is proportionate and likely to be relevant to the child's needs. Information should not routinely follow the child unless it can be justified as being relevant to the targeted intervention deemed necessary to address the child's wellbeing needs.

11.9.15 In all circumstances a change of managing authority must be communicated to the child's Named Person. There will be circumstances where the child is not directly accessing the universal provision of health or education services, or where the child, or the child's parents, have no wish to make use of the Named Person service. Examples might include a parent deciding to home educate at transition from health to education, or children who have left school before they reach 18. The Named Person is less likely to have routine contact with an individual child in such cases than they would if the child was making use of the service. This makes it particularly important that the incoming managing authority is made aware who the Named Person service provider is and who the Named Person is, as information may not be shared through more routine transition procedures.

11.9.16 Throughout a child's life there will be times when the Named Person service provider changes. For all children this will include the transition at age 5, or school entry, when the transition is from the health board to the local authority, or directing authority of an independent school. Where there is a Child's Plan, it is important that, at these key transition points, the managing authority maintains contact with the Named Person to assist that transition. Transfer of a Child's Plan is a planned transition that will trigger a review. Other events will also necessitate a change in Named Person service provider, for instance:

- The child and family move to another area
- The child moves to or from, a state or an independent school
- The child moves into/out of secure accommodation
- The child moves into/out of the custody of SPS

These transition points will also trigger a review of the Child's Plan, and may necessitate a change in managing authority.

11.9.17 Each transition is a decision point. The outgoing Managing Authority will need to decide what information is likely to be relevant to the new relevant authority. This information will in most cases be of a confidential and sensitive nature. Any further sharing of that type of information must be as a result of a decision made by the managing authority having followed all the following steps, and

satisfied themselves that information is likely to be relevant to the incoming managing authority's functions.

The outgoing managing authority must:

- consider that the information ought to be shared in order to address the child's wellbeing need;
- consider that the information is relevant to the provision of the identified targeted intervention;
- ascertain and have regard to the views of the child, so far as is reasonably practicable;
- ascertain and have regard to the views of the parent, so far as is reasonably practicable;
- ascertain and have regard to the views of such other persons as the authority considers appropriate, so far as is reasonably practicable;

11.9.18 It is important to remember that having regard to the child's, parent's or other appropriate persons' view does not necessarily mean having to comply with their wishes. Whilst the expectation is that the managing authority and the child and their parents will be working in partnership, the managing authority may not always be able to comply with their wishes. It is important in such instances that the managing authority clearly explains their decision.

11.9.19 In reviewing and deciding to transfer a plan, a managing authority is to ascertain and have regard to the views of the child, their parent and such other people the authority considers appropriate, so far as reasonably practicable. Examples of where it might not be reasonably practicable to do this may be because the child cannot be located, because the child is a baby, and is unable to express their view, or because obtaining the views would not be possible without compromising the wellbeing of the child. The managing authority will have to have a reasoned justification as to why they had not been able to ascertain and have regard to the child's views. It would not, for example, be sufficient to say that they did not have time to obtain the views unless they could demonstrate that there was a need to share the information quickly and before they were reasonably able to communicate with the child, parent or other persons.

11.9.20 At times, the managing authority will have to make decisions which may be challenged by the child or parents. It is important that the managing authority has the resources and expertise available to support them in making such decisions and that they record all decisions. Throughout this engagement the managing authority should make it clear that while the views of the child and parents are valued and will be taken into account, their consent is not being sought and that the managing authority will, where appropriate, share information without consent, in accordance with the DPA, if that is in the best interests of the child.

11.9.21 There will be times where the managing authority remains the same but the child's Lead Professional changes, whether due to staff changes, or changes in the circumstances of the child. The terms of section 39 do not apply to these transitions.

11.10 Section 40 – Assistance in relation to Child’s Plan.

11.10.1 This section places a duty on relevant and listed authorities to give anyone exercising functions under Part 5 of the Act, such as an employee or someone acting on behalf of a responsible authority, or where appropriate a relevant authority or a managing authority, information, advice or assistance when they are considering the requirement for preparing, managing or reviewing a Child’s Plan. In practice, the request might come from the Named Person (in their capacity as an employee of the responsible authority) or a Lead Professional (in their capacity as an employee of the responsible, relevant or managing authority).

11.10.2 A relevant authority or listed authority must comply with the request unless to provide it would:

- be incompatible with other duties of the relevant or listed authority; or
- unduly prejudice the exercise of any function of the relevant or listed authority.

11.10.3 Section 40 specifically provides for the disclosure of information between authorities exercising Child’s Plan functions. However this provision does not require or permit the breaching of any rule of law or legislation on information sharing – the only exception to this is a duty of confidentiality. At times, achieving the balance between confidentiality and sharing can be challenging. The Act permits the appropriate sharing of confidential information, when it is likely to be relevant to functions relating to a child’s wellbeing. At times, a child or an organisation may disclose information on the basis that it is treated as confidential and not shared further. However, the information holder, or their service, may consider that it is necessary to further share in the interest of the child’s wellbeing. These are professionally challenging cases, and the rationale for sharing such information, in particular the child’s views, and the likely effect on the child’s wellbeing, must be carefully considered and adhered to. Any other legal requirements relating to the information must also be carefully considered, including the requirements of the DPA, and the child’s right to private and family life under Article 8 of the ECHR. Decisions such as these will need to be evidenced, and the rationale for sharing clearly recorded. Section 40(6) applies only where information has been shared, in breach of a duty of confidentiality, under the provisions of Part 5 of the Act. Where a person is providing the information in breach of such a duty, they should make the recipient aware of this fact. Where they do so, this section then provides that the information should not be further shared by the recipient, unless to do so would be required or permitted by virtue of any legislation or rule of law (including the provisions of Part 5). In other words, where someone receives information under Part 5 in breach of a duty of confidentiality, they cannot automatically share that information further; they must consider whether any rule of law or enactment permits or requires them to share further. The legal basis which can be used to justify onward sharing of information in breach of a duty of confidentiality can include Part 5 of the Act itself.

11.10.4 When sharing information in accordance with this section consideration should be given to whether there are any restrictions on the disclosure of information and the risk to a child or an adult should personal details be disclosed and whether or not any non-disclosure provision applies. There are a number of provisions within

the 1995 Act and the 2011 Act, which relate to non-disclosure. Further details can be found at:

www.scra.gov.uk/children_s_hearings_system/children_s_hearings_scotland_bill.cfm

11.10.5 When making the request, the requesting authority should where possible be specific in identifying the information, advice or assistance a relevant or listed authority is required to provide.

11.10.6 When declining to comply with a request for information, advice or assistance, the relevant or listed authority must provide clear reasoning.

11.10.7 The duty to provide information in this section sits within the bounds of the DPA. This means that all information that is shared needs be considered in terms of the eight Data Protection Principles.

11.10.8 Further information on the DPA can be found at:
www.legislation.gov.uk/ukpga/1998/29/contents

And:

ico.org.uk/for_organisations/data_protection/topic_guides/data_sharing

11.11 Section 41 – guidance on Child’s Plans

11.11.1 Section 41 of the Act specifies that relevant authorities and listed authorities are to have regard to guidance issued by the Scottish Ministers about the exercise of functions under Part 5 of the Act (other than the function of complying with section 38). Section 38 is excluded from this duty because it is about the delivery of the Child’s Plan. See guidance on Section 38 – **paragraph 11.7.1** for further information. This section is excluded from the duty because delivery of a Child’s Plan is a matter for a relevant authority.

11.11.2 Before issuing or revising guidance under section 41, the Scottish Ministers must consult any person to which it relates, and such other persons as the Scottish Ministers consider appropriate.

11.12 Section 42 – directions in relation to Child’s Plan

11.12.1 Section 42 of the Act gives the Scottish Ministers power to issue directions about the exercise of functions under Part 5.

11.12.2 Section 42 stipulates that relevant authorities and listed authorities, subject to exceptions listed in section 44, are to comply with any directions issued by the Scottish Ministers about the exercise of functions under Part 5 (other than the function of complying with Section 38). Section 38 is excluded from this duty, because it is about the delivery of the Child’s Plan. See guidance on Section 38 for further information. Section 38 is excluded from the duty because delivery of the Child’s Plan is a matter for relevant authorities.

11.12.3 Before issuing or revoking a direction, the Scottish Ministers are required to consult any person to which it relates, and any other people as they consider appropriate.

11.13 Section 43 – complaints in relation to Part 5

11.13.1 This section creates an order-making power for the Scottish Ministers to make provision about the making, consideration and determination, of complaints concerning the exercise of Part 5 functions. Any complaints about the exercise of functions under this Part should be pursued via the process to be set out in this order. Work is underway on developing the order, including consultation with stakeholders. A formal consultation is also planned later in 2015 on the draft order and the associated guidance.

11.14 Section 44 – listed authorities

11.14.1 The listed authorities are in [schedule 3](#) of the Act.

11.14.2 Scottish Ministers are a listed authority for all sections of Part 5 excluding sections 41 and 42. This exclusion is necessary as Scottish Ministers cannot be subject to guidance or directions issued by Scottish Ministers.

11.14.3 The following bodies are considered to be listed authorities for all sections of Part 5 excluding section 42:

- The Commissioner for Children and Young People in Scotland
- A body which is a 'post-16 education body' for the purposes of the 2005 Act

These two bodies are required to have a degree of independence and therefore cannot be subject to the direction of Scottish Ministers as laid out in section 42.

11.14.4 The Act gives Scottish Ministers the power by order to add, remove or modify an entry in schedule 3, therefore changing the schedule of listed authorities.

11.14.5 As outlined in Section 40, the bodies listed are included as listed authorities as it is considered that in the course of their normal operation, they may be able, by taking action, to respond to a reasonable request to support a responsible or relevant authority in the exercise of their functions under this part of the Act. This means that the listed authority may be called upon to provide information, advice or assistance in relation to any aspects of a Child's Plan as outlined in Part 5 of the guidance.

11.14.6 Depending on the nature of the operations of each of the listed authorities, the support they may be called upon to provide will vary but is likely to include providing information, advice or assistance in relation to the requirement for, preparation, management and review of a Child's Plan.

11.15 Section 45: Interpretation of Part 5

11.15.1 This section provides a definition of terms used within Part 5 as they are intended to apply for the purposes of that part of the Act. Further information on these definitions is in the glossary (**paragraph 1.6**).

12 APPENDICES

A. Named Person Service for the new-born – wellbeing of pregnant women

All children in Scotland should get the best possible start in life, even before they are born. Maternity care plays a vital role in providing women, their partners and their babies with the care and support they need at this important time to improve wellbeing. Although legislation does not apply to pregnant women the wellbeing needs of a new born child should be anticipated and plans put in place to promote, support and safeguard wellbeing at birth.

We know from the evidence that maternal and parental circumstances and behaviour during pregnancy have an impact on children's outcomes. High risk factors such as alcohol and drug misuse, domestic abuse and smoking as well as diet and maternal nutrition impact on health outcomes at birth, in infancy, and throughout the course of life. Crucially we now know that there is a strong link between antenatal anxiety and maternal depression, and poor outcomes for children including development, parental bonding and behavioural problems.

Health boards should have in place systems and processes to promote and support the practice of working with women and their families pre-birth using strengths-based approaches to harness the high levels of motivation women have to do what's best for their babies. This will include identifying and managing the potential risk of particular maternal and parental circumstances and behaviour that may impact on the wellbeing of the pregnant women and her unborn child.

In anticipating the needs of the new-born, the GIRFEC National Practice Model will be helpful to support the identification of concerns, assessment of needs, agreeing actions and outcomes, based on the wellbeing indicators. Health boards where possible should take action to remove or reduce anticipated wellbeing risks to the new born this may include coordinated pre-birth planning with partners e.g. social services.

Practice to promote, support and safeguard a child's wellbeing at birth

From the first contact of a pregnant woman with health services, practitioners should consider if the woman's wellbeing and/or circumstances may affect the unborn child or potentially affect the new-born's wellbeing in terms of the 8 wellbeing indicators. The principles of the GIRFEC National Practice Model should be applied when considering the wellbeing of the pregnant woman and the anticipated wellbeing risks and needs of the new-born and relevant and proportionate action should be taken to eliminate, reduce or mitigate risks to the pregnant woman's and new-born's wellbeing.

As soon as reasonable practicable, but not later than at 28 weeks gestation, the health board should identify the prospective Named Person for the baby at birth – this will normally be the health visitor or a Family Nurse, where one is identified, but in exceptional circumstances this may be a nurse of a different designation, a midwife or a medical practitioner. Where additional wellbeing needs are anticipated at birth, the health board should identify the prospective Named Person for the baby as soon as reasonably practicable following booking.

Consideration should be given to offering all pregnant woman a joint contact between the named midwife and the prospective Named Person or where the named midwife is not leading on maternity care the clinician who is leading on maternity care. Where additional wellbeing needs are anticipated at birth the prospective Named Person should be involved in planning and providing supports 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). This will establish a relationship in the antenatal period that can be continued through the early years.

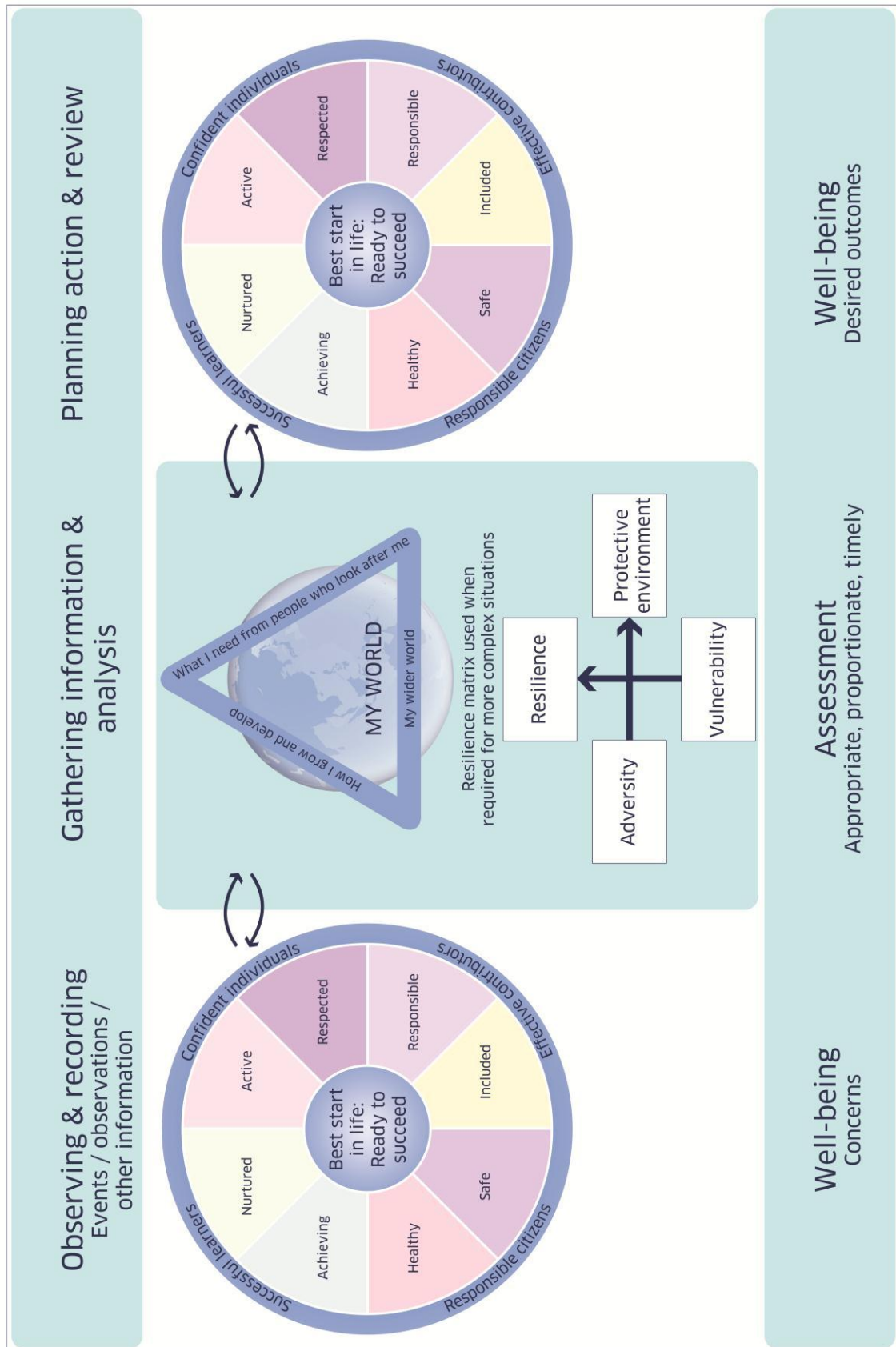
At around 30 weeks gestation, but not later than 36 weeks gestation, all pregnant women should be offered a joint contact with their named midwife or the clinician leading on maternity care and the prospective Named Person for their baby. Preferably, this should be in the home setting.

When a pregnant woman's (or anticipated baby's needs) will require support that is not generally available within the routine service – that is, when a targeted intervention is required – a single or multi-agency plan should be initiated as appropriate. Where there are anticipated needs for the new-born that will require support from outwith those generally available, this ante-natal planning should inform the Child's Plan that will be put in place after birth. The pregnant woman should be fully involved in planning care and support for her and her baby. The prospective Named Person, normally the Health Visitor should have a lead role in this to ensure continuity from birth.

At times it will be good practice to develop a draft Childs Plan pre-birth, for example, where there are child protection concerns or where the baby is expected to be born with significant health needs. It may also be appropriate to identify a prospective Lead Professional to manage the Child's Plan at this time. The prospective Lead Professional will work with the named midwife/clinician leading on maternity care to manage and review the draft Child's Plan. The prospective Named Person, normally the health visitor should have a lead role in this to ensure continuity from birth

B. National Practice Model

National practice model



C. European Convention on Human Rights (ECHR): Article 8, The United Nations Convention on the Rights of the Child (UNCRC) and The Data Protection Act 1998

The ECHR has been in existence since the 1950s, but was given legal force in Scotland through the Human Rights Act 1998 and the Scotland Act 1998. The Convention rights are set out in schedule 1 to the Human Rights Act.

Under the Human Rights Act, all public authorities in Scotland, whether reserved or devolved, must act in accordance with the Convention rights in everything they do: this includes private bodies that are carrying out public functions.

The Scotland Act places a specific duty on Scottish Ministers and the Scottish Parliament to act in accordance with the 'Convention rights'. In addition, under the Scotland Act, every Executive Bill introduced to the Scottish Parliament must be certified by a Scottish Government Minister as compliant with the Convention rights.

Together, these Acts provide a framework within which Ministers, the Parliament and public authorities must operate in conducting their activities, the aim of which is to ensure that our human rights are properly protected and that we are able to claim the protection of the 'Convention rights' in our own national courts.

Article 8 of the Convention is of particular importance in the context of data sharing and privacy.

It provides that:

'8.1. Everyone has the right to respect for his private and family life, his home and his correspondence.

8.2. 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 well-being 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 is broad in scope and covers the collection, use and exchange of personal data as well as issues such as telephone tapping, parental access and custody of children, the right to be free from noise and environmental pollution and a person's right to express his or her identity and sexuality.

Article 8 is not an absolute right. It is a qualified right that allows a public authority to interfere where that interference is:

- in accordance with law;
- in the pursuit of a legitimate aim; and
- necessary in a democratic society.

The first element requires a legal basis to permit data sharing that is a clear, reasonably accessible legal basis for the interference. Legislation, delegated legislation, the common law and even rules of a professional body may suffice. The

second element encompasses a broad range of legitimate aims such as economic wellbeing, crime protection or reduction, and the protection of health or morals. the third element is 'necessary in a democratic society', A key factor in determining this element is whether the exercise of the power is 'proportionate'.

UNCRC – All children and young people share the same fundamental rights. These are clearly set out in the UNCRC. The convention helps us all to articulate what makes for a safe, healthy, happy childhood and a good start in life. It underpins our approach to children's rights in Scotland, providing us with a framework for ensuring we consider children's rights whenever we take decisions. Whilst ensuring that all of the Articles of the convention are applied to all children is extremely important, Articles 3,12 and 16 are particularly relevant to information sharing sections of the Act.

- Article 3 – The best interests of the child must be the primary consideration in all actions concerning children.
- Article 12 – Every child who is capable of forming their own views has the right to say what they think in all matters affecting them, and to have their views given due weight in accordance with their age and maturity.
- Article 16 – Every child has the right to privacy. The law should protect the child's private, family and home life.

Full list of Articles:

www.unicef.org/crc/files/Rights_overview.pdf

Further information on the UNCRC can be found at:

www.unicef.org/crc/

The GIRFEC approach has been built up from the UNCRC. Accordingly, ensuring that the approach applies in the way public services operate will put the UNCRC into practice for each child.

To show how the GIRFEC approach and UNCRC relate to each other, the Scottish Government commissioned Professor Jane Aldgate to consider the approach and how it links to the Convention. Her findings can be found at:

www.scotland.gov.uk/Resource/0041/00417256.pdf

The Data Protection Act 1998/ Information Commissioner's Office Code of Practice

The general principles of information accuracy, relevance, proportionality and appropriateness as prescribed by the Data Protection Act 1998 should be considered when information is shared.

The ICO published the Data Sharing Code of Practice in May 2011. It provides practical advice to all organisations, whether public, private or third sector, that share personal data and covers systematic data sharing arrangements as well as *ad hoc* or one off requests to share personal data.

Adopting the good practice recommendations in the code will help organisations to collect and share personal data in a way that complies with the law, is fair, transparent and in line with the rights and expectations of the people whose data is being shared. It can be accessed at ico.org.uk/for_organisations/data_protection/topic_guides/data_sharing

The eight principles to the Data Protection Act

Personal data must be:

- fairly and lawfully processed;
- processed for specified lawful purposes;
- adequate, relevant and not excessive;
- accurate and where appropriate, up to date;
- kept no longer than is necessary;
- processed in accordance with the individual's rights;
- secure;
- only transferred outside the European Economic Area with adequate protection.

Data controllers must ensure that:

- They will hold the minimum personal data necessary to perform their function and will not hold it for longer than necessary for the purposes it was collected for;
- every effort will be made to ensure that data held is accurate, up to date and that inaccuracies are corrected without unnecessary delay;
- all personal data will be fairly obtained in accordance with the "Privacy Notice" and lawfully processed in accordance with the "Conditions for Processing"
They have a Data Protection Policy
- Staff are aware of who the Data Protection Officer within the organisation is;
- a responsible person on behalf of the Data Controller is identified as having overall responsibility for ensuring that the Named Person complies with organisational guidance and/or the DPA in their handling of data, and who identifies and responds to risks related to handling of personal data;
- risk assessments are carried out; (guidance on Privacy Impact Assessments is available on the ICO website)
- they have clear and understood arrangements for the security, storage and transfer of personal data;
- individuals know that they have rights of access and there are clear procedures agreed for this to be obtained;
- there are clear and understood policies and routines for the deletion and disposal of data;
- there is a policy for reporting, logging, managing and recovering from information risk incidents;
- there are clear Data Protection clauses in all contracts where personal data may be passed to third parties;
- there are clear policies about the use of cloud storage/cloud computing which ensure that such data storage meets the requirements laid down by the Information Commissioner's Office;

Data includes information which is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system. Therefore the principles apply to all such manually held records. The Data Protection Act says that:

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

This is the seventh data protection principle. In practice, it means you must have appropriate security to prevent the personal data you hold being accidentally or deliberately compromised. In particular, organisations will need to:

- design and organise security to fit the nature of the personal data held and the harm that may result from a security breach;
- be clear about who in the organisation is responsible for ensuring information security;
- make sure the right physical and technical security is used, backed up by robust policies and procedures and reliable, well-trained staff; and
- be ready to respond to any breach of security swiftly and effectively.

When handling data, staff must ensure that they take care at all times to ensure the safe keeping of personal data, minimising the risk of its loss or misuse; and when handling Data through technical means:

- use personal data only on secure, password-protected computers and other devices, ensuring that they are properly “logged-off” at the end of any session in which they are using personal data;
- transfer personal data using encryption and secure, password-protected devices;
- When personal data is stored on any portable computer system, memory stick or any other removable media:
 - the data must be encrypted and password-protected;
 - the device must be password-protected (many memory sticks/cards and other mobile devices cannot be password-protected);
 - the device must offer approved virus and malware checking software;
 - the data must be securely deleted from the device, in line with the organisation’s policy once it has been transferred or its use is complete;

If information is no longer relevant it should be archived and omitted from the records that are transferred.

In line with the requirements of Principle 3 of the DPA, organisations should not hold more personal data than needed. Nor should the data held include irrelevant details. Where sensitive personal data is concerned, it is particularly important to make sure that only the minimum amount of information needed is collected or retained.

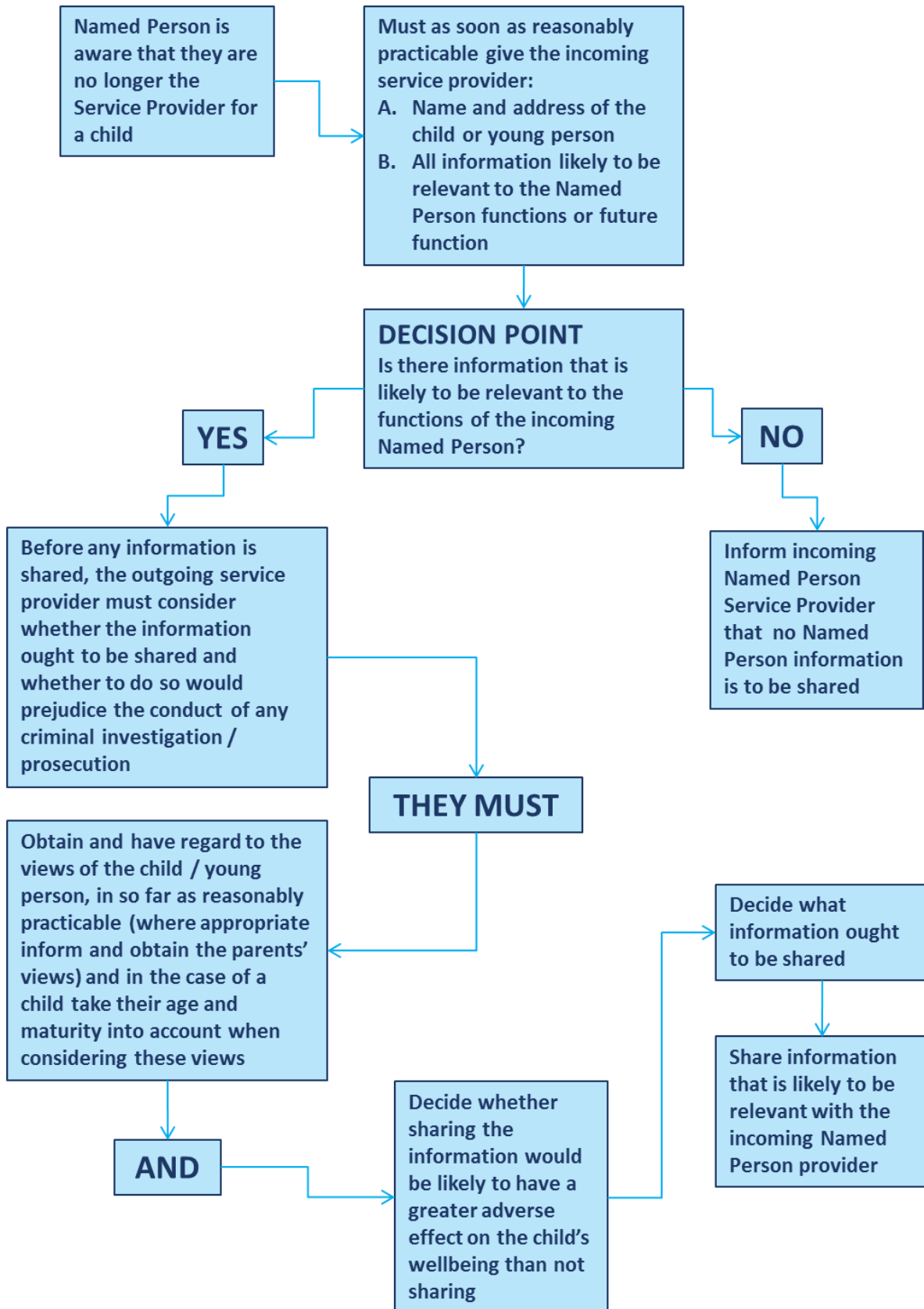
Handling and storage of information

Further information on the DPA can be found at
www.legislation.gov.uk/ukpga/1998/29/contents

And

ico.org.uk/for_organisations/data_protection/topic_guides/data_sharing

D. Communication in relation to movement of children and young people





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