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PUBLICATION SPEECH / MINISTERIAL STATEMENT

Children and Young People Act: statement on information sharing provisions

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Delivered by: **Deputy First Minister John Swinney MSP**

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Deputy First Minister John Swinney MSP addresses Parliament regarding Parts 4 and 5 of the Children and Young People (Scotland) Act 2014.

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Introduction

Improving the lives of all of our children, young people and their families is something that Members of this Parliament have been working together to achieve for many years. Getting it Right for Every Child (GIRFEC) has been the national approach in Scotland to improving outcomes and supporting the wellbeing of our children and young people since 2006. Its core premise – of offering the right help at the right time, from the right people – was supported by all parties then, and I still believe, now. And this Government remains wholly committed to applying the Getting it Right for Every Child approach as part of our determination to ensure all of Scotland's children get the best possible start in life.

The foundations on which Getting it Right for Every Child is built are the principles of the United Nations Convention on the Rights of the Child. Above all, it seeks to ensure that public policy and practice decisions are taken in the best interests of the child and delivers the Government's responsibility to protect and support families to nurture their children.

The Named Person service is central to fulfilling the responsibility of Government and the wider public sector to enhance and support children's rights. The Named Person service is a simple but important concept that came from families themselves: that having a single, named contact such as a health visitor or teacher, that you know you can go to for advice, information and support about any aspect of your child's wellbeing, is helpful for children and parents. And for practitioners, having that same, clear point of contact, at the core of a team of professionals and services around a child, enables agencies and individuals to work more effectively together to better support, safeguard and promote the wellbeing of children and young people.

It makes access to early support available for all families because, although it can be clear in some circumstances that help may be required, it is impossible in all cases to predict if or when a family or a child might need extra help. Whether families are faced with difficulties posed by the debilitating cycle of deprivation, an unexpected diagnosis of a disability, a breakdown of family relationships or other challenges when circumstances change, there are clearly times when children, young people and their families will benefit from a clear point of contact for information and support to help them navigate the system and get the help they need.

Presiding Officer, as I made clear in my statement to Parliament in September, this Government remains absolutely committed to the Named Person service as a way to support children and their families.

On 28 July last year, the Supreme Court ruled definitively that the intention of providing a Named Person for every child to promote and safeguard their wellbeing was 'unquestionably legitimate and benign'. The judgment itself did not require current policy to change and did not relate to current practice under Getting it

Right for Every Child. A local authority or health board can continue to nominate a person to be responsible for the provision of services to a child and organisations can, within the framework of the existing law, continue to deliver or engage with such existing or developing Named Person services. I want to reiterate my support for practitioners across Scotland who continue to live up to their commitment to develop and deliver a Named Person service to families in their local areas within the framework of the existing law.

However, the Supreme Court judgment requires us to change the statutory provisions relating to one aspect of the Named Person service, and that is on information sharing. I believe that the aims of the policy justify broad support and that when the way forward on information sharing is accurately understood, it too will command support.

The Supreme Court determined that Ministers needed to provide greater clarity about the basis on which health visitors, teachers and other professionals who support families will share and receive information in their Named Person role. It ruled that the information-sharing provisions of part 4 of the Children and Young People (Scotland) Act 2014, as they were originally framed, are incompatible with article 8 of the European Convention on Human Rights, and that changes are needed to make those provisions compatible with article 8, to ensure respect for a person's 'private and family life, his home and his correspondence'.

The Supreme Court judgment has provided an opportunity therefore to revisit the information-sharing provisions in the 2014 Act in a way that will not only secure the protection of those rights, but will improve the Named Person service and reassure parents and practitioners and the wider public that this service will work with and for families.

Intensive engagement

Since the Supreme Court judgment, I have led a three-month period of intense engagement. I have listened to parents, charities, practitioners, children and young people, and from those who support the Named Person policy and those who have concerns about it.

Over three months, this engagement involved over 50 meetings and some 250 organisations and groups. This included around 700 young people, parents and carers, practitioners, professionals and leaders from education, health, local authorities, police, faith communities, unions and charities.

Importantly, we listened to those who had concerns about information sharing and were prepared to consider a revised way forward. We reached out to others including Care Scotland, Clan Childlaw, Together and the Scottish Parent Teacher Council among others.

We are grateful to all those people who took part in what was a genuinely open engagement.

A key part of our engagement was to listen to children and young people. Our commitment to the United Nations Convention on the Rights of the Child requires us to uphold children's rights by ensuring that their voices are heard, listened to and acted upon by all those who support them and provide services to help them. On a more personal level, young people recognised the benefit of having access to someone they trusted to help them get support if needed.

This Government listened to parents. The Named Person service provides a point of contact and support who works in partnership with parents and families to help them navigate the wider system. Parents told us

that they don't always get the support their families need, so they have to tell their stories over and over. Parents also told us they want the Named Person service to work in partnership with them and that having a say in the sharing of information about their families matters to them. Their views and their experience reinforce the initial rationale for creating the Named Person service.

This Government listened to practitioners. As with families, nursing and medical professional organisations and trade unions told us that information sharing that was rooted in consent, engagement and empowerment of families was the best way forward. Only in exceptional circumstances, such as where the risk of harm was present, should we consider departing from those core principles. Practitioners highlighted that professional judgment and discretion remains vital in working with families to decide whether, when and with whom information should be shared.

The Care Inspectorate highlighted to us that sharing of relevant and proportionate information in relation to the wellbeing of children had improved as organisations prepared for the implementation of the Named Person service. Joint inspections of services for children and young people in the period 2014 to 2016 showed that most Community Partnership areas had developed mechanisms for sharing information about individual children with relevant services, while working within the requirements of data protection legislation and duties of confidentiality. However, their reports also show that practice remains inconsistent across services in localities and between localities, meaning families will experience different levels of support. A recurring issue in tragic cases has been a failure to share information when remedial action could have been effective.

Putting the findings from this extensive engagement and Care Inspectorate reports alongside the ruling of the Supreme Court makes clear what needs to be remedied.

Presiding Officer, we must provide consistency, coherence and confidence in the approach to sharing information below the threshold of risk of significant harm. This is where the Named Person's role is so important for support to families to get the assistance when they need it.

The way forward

I propose to bring forward a Bill that will include new provisions on when and how information can be shared by and with the Named Person service. The new provisions will ensure that we address the Supreme Court's judgment, live up to our objective of supporting children and young people and give them and their families reassurance that their rights are fully respected. I intend to introduce the Bill ahead of the summer recess and I will work with Parliament to agree a timetable to enable commencement in 2018.

Without legislation, there is a risk that the benefits of a coherent and consistent approach, delivered through good practice in some places, are not made available to all families. This means a longer time frame for commencement than originally anticipated but I believe, given the significance of the issues involved, Parliament must be given the full and proper opportunity to legislate on these issues.

This approach will involve replacing some of the provisions in the 2014 Act that the Supreme Court was concerned about with new provisions requiring Named Person service providers, and others involved with children and young people, to consider whether sharing information would promote, support or safeguard the wellbeing of the child or young person; and requiring them then to consider whether sharing that

information would be compatible with data protection law, human rights law and the law of confidentiality. Only if information can be shared consistently within these legal constraints will there be a power to share it and the legislation will make this clear.

This approach aims to promote good and consistent practice by imposing an explicit duty on Named Person service providers and others to consider whether or not to share information where that would promote, support or safeguard the wellbeing of a child, while making clear that this may only be done where there is compatibility with data protection law, the law of confidentiality and human rights law. Through both practice and the legislative framework, the importance of involving families in the sharing of their personal information will be central to how the Named Person service works with families.

There is also a crucial balance to be struck. We must ensure that the 2014 Act supports children, young people and families to access support easily if they need this. But we must also strive to ensure that the amendments to the 2014 Act do not result in unnecessary bureaucracy or a burden on services. I have reflected on this very carefully.

To support implementation of this approach, it is proposed that a new section be added to the 2014 Act to provide for the making of guidance – specifically on information sharing – designed to address the Supreme Court's judgment. This guidance will be an important resource which will assist practitioners to take a systematic approach to information sharing in appropriate cases. It is envisaged that the guidance could incorporate suitable case studies to assist understanding by practitioners, and it will also help address the concerns expressed in the Supreme Court judgment about the question of proportionality. This approach supports the ambitions shared by practitioners for enabling continued improvements in working together, while leaving appropriate scope for practitioner judgment and discretion.

I would intend that draft guidance will be presented to Parliament as early as possible during the Bill's passage. I am aiming for a draft to be available at the same time as the introduction of the Bill ahead of summer recess.

This Government will also work with practitioners and organisations to enable them to implement the new legislation. We will work with key partners to develop and deliver national training and capability building programmes to ensure that proportionate information sharing that works for and with families is the norm.

We will engage key partners in the inspectorates and in the statutory, third and independent sectors to develop resources for robust self-evaluation and review mechanisms for use by practitioners.

I also recognise that, after a campaign that has involved a lot of misinformation about the Named Person service, it is also important for Parliament and the country to have confidence in the Getting it Right for Every Child approach. Ensuring the trust of families and young people across Scotland is critical in ensuring the future success of the Named Person service. The legislative process will create the opportunity to do this.

We will also deliver public information campaigns with partners that provide accessible information for children, young people and parents on their rights and entitlements embodied in Getting it Right for Every Child.

Conclusion

Presiding Officer, I want to reassure Parliament that we have taken seriously our responsibility to provide an appropriate response to the Supreme Court judgment. We have sought advice and listened to a wide range of views and experiences.

We now intend to put in place measures so that the aims of the Named Person service, as supported by Parliament and described by the Supreme Court as 'unquestionably legitimate and benign', are compatible with data protection law, human rights law and the law of confidentiality. By making these changes, we will respond to the Supreme Court ruling in a way that improves the Named Person service and gives families, practitioners and the wider public greater confidence that information sharing for Named Person service will be in line with the founding principles of Getting it Right for Every Child, and will respect their rights fully.

The approach I have set out today seeks to bring consistency, clarity and coherence to the practice of sharing information about children and young people's wellbeing across Scotland.

But it also seeks to achieve something more fundamental. To enable us to work together, as Government and Parliament, to deliver the original aims of a policy journey begun over 10 years ago. Presiding Officer, let us agree today to ensure we Get it Right for Every Child.

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