The NASUWT supports many of the intentions underpinning the existing Children and Young People (Scotland) Act 2014, in that support for children should be rounded and holistic as well as fully embracing the principles of the United Nations Convention on the Rights of the Child (UNCRC).

The NASUWT supports a full implementation of *Getting it Right for Every Child*, creating a single system of service planning and delivery across children’s services which is fundamentally rooted in co-operation between services.

The NASUWT is not in favour of an automatic assumption that schools should be responsible for the Named Person or for co-ordinating the planning process.

A co-ordinating role for schools will place very real time and financial burdens on them and will have implications for the quality of education and support that children receive. These tasks are more appropriately undertaken by support staff specifically employed to undertake the role by the local authority.
Teachers are already struggling with the bureaucracy and workload associated with multi-agency working and cross-collaboration across services. It is important that teachers are able to focus on the teaching and learning needs of their pupils and not be diverted from their primary role and responsibilities.

The Supreme Court highlighted significant difficulties in reading across the 2014 Act and the Data Protection Act (DPA). The NASUWT is concerned that the Government is underplaying some of the legitimate and significant concerns raised by the Supreme Court.

The NASUWT is deeply concerned at the lack of importance attached to equality proofing this legislation. A token mention of the need to support those with protected characteristics and to ensure appropriate training was given to staff working with LGBTI young people and families is not sufficient. There is no equality proofing mentioned in the code of practice at all.

Without a statutory basis, NASUWT is concerned the Code could not provide sufficient protection for practitioners making decisions on wellbeing.

The Union asserts that in the absence of any clear proposals from Scottish Government as to how they will address the concerns of the Supreme Court it is time to reconsider this policy and look at developing an alternative approach.

INTRODUCTION

1. The NASUWT welcomes the opportunity to submit evidence to the Scottish Parliament’s Education and Skills Committee on the Children and Young People (Information Sharing) (Scotland) Bill.

2. The NASUWT represents teachers and school leaders across Scotland.
3. The NASUWT supports many of the intentions underpinning the Children and Young People (Scotland) Act 2014, particularly that support for children should be rounded and holistic, as well as fully embracing the principles of the United Nations Convention on the Rights of the Child (UNCRC).

4. Focusing on the wellbeing of a child as a whole, and not examining in isolation their health, education or safety, for example, is a laudable aim. The NASUWT supports a full implementation of Getting it Right for Every Child (GIRFEC), creating a single system of service planning and delivery across children’s services which is fundamentally rooted in co-operation between services and providing a one-stop shop for children and young people through a simplified, coherent and more user-friendly system.

NAMED PERSON

5. The NASUWT does not, however, subscribe to an automatic assumption that schools should be responsible for the Named Person or for co-ordinating the planning process. The rationale for this was set out in our response to the original consultation process in 2012, an extract of which is below:

‘While Curriculum for Excellence (CfE) sets out that teachers will have regard to and will support a child’s wellbeing, this is different from the specific role set of Named Person. Requiring teachers to assume the responsibilities of cross-sector collaboration would have implications for the quality of education and support that children receive. It is not necessarily appropriate to expect teachers to be responsible for co-ordinating meetings and communicating actions. These tasks are more appropriately undertaken by support staff specifically employed to undertake the role by the local authority. Experience elsewhere in the UK shows that teachers are not best placed to carry out these roles and often it can detract from their core role. In addition a co-ordinating role for schools has placed very real time and financial burdens on them.'
‘Teachers are already struggling with the bureaucracy and workload associated with multi-agency working and cross-collaboration across services. In particular, feedback indicates that there are considerable costs involved in co-ordinating and hosting meetings. Teachers also report that it is often difficult to identify times when some professionals can attend meetings and that there can be considerable work involved in the follow-up actions.

‘It is important that teachers are able to focus on the teaching and learning needs of their pupils and not be diverted from their primary role and responsibilities. More exploration is needed regarding the links between Named Person and Lead Professional and the NASUWT suggests consideration should be given to allocating the role to new posts whose primary function would be to undertake the specific tasks associated with organising and enabling communication and collaboration across services.’

6. In December 2016, the NASUWT met with Scottish Government ministers, to discuss the Supreme Court’s decision in the case of The Christian Institute and others v Lord Advocate. At this meeting, the Union was again clear that no teacher should be compelled to take on the role of Named Person, despite the assumption being made that this should fall within the remit of guidance staff in secondary schools. The Union stressed that there are clear implications in terms of additional workload and that this role would be a distraction for teachers from their core role of teaching and learning. The Union suggested that in the absence of any clear proposals from the Scottish Government as to how it will address the concerns of the Supreme Court, it was time to reconsider this policy and look at developing an alternative approach.

7. The NASUWT is concerned that the Government is underplaying some of the legitimate and significant concerns raised by the Supreme Court relating to the implementation of the Named Person scheme.
DRAFT BILL – INFORMATION-SHARING PROVISIONS

8. The Supreme Court did not simply state that the information sharing provisions of the 2014 Act were not ‘in accordance with the law’, if highlighted significant difficulties in reading across the 2014 Act and the Data Protection Act (DPA):

‘The relationship between the Act and the DPA is rendered particularly obscure by what we have described as the logical puzzle arising from sections 23(7) and 26(11) when read with section 35(1) of the DPA… There are thus very serious difficulties in accessing the relevant legal rules when one has to read together and cross refer between Part 4 of the Act and the DPA and work out the relative priority of their provisions.’

9. Inserting the phrase ‘consider whether the identified information/relevant information could be so provided in compliance with the Data Protection Act 1998, any directly applicable EU instrument relating to data protection, any other enactment and any rule of law’ seems to be a very crude and ill-thought-out way of attempting to address the concerns raised by the Supreme Court regarding confusion, and fundamentally does not remove the need to read together and cross-refer the proposed amended Act and the DPA. This approach will simply make schools and teachers responsible for resolving the Supreme Court’s ‘logical puzzle’ in respect of the read-across between the Named Person requirements and the DPA, presumably because the Scottish Government does not know how the puzzle can be resolved in practice. In this context, it is hard to view the proposed draft as any more than a blatant and cynical attempt at buck-passing, where the focus is on protecting Scottish Ministers from further legal action, rather than providing meaningful support to practitioners on how the Named Person requirements can be implemented. If the highest judicial minds in the UK could not resolve the tensions between the DPA and the Named Person, how are legally unqualified staff across the education system expected to do so?
10. The Supreme Court also said that ‘the task facing the information holder is a daunting one because the Act does not address the factors to be considered in an assessment of proportionality and the RDSG gives exiguous guidance on that issue’ and further that ‘it can readily be foreseen that in practice the sharing and exchange of information between public authorities are likely to give rise to disproportionate interferences with article 8 rights, unless the information holder carries out a scrupulous and informed assessment of proportionality’. The NASUWT cautiously welcomes the slight narrowing of the rules regarding sharing information, in that the duty to share information that may affect a child or young person’s wellbeing has been replaced with one which asks practitioners to consider if sharing will promote, support or safeguard the wellbeing of a child or young person. However, this updated criteria in the Bill is still nebulous and, without further amendment, detailed guidance to support practitioners in considering proportionality would be required.

11. It is also notable that the intended safeguards regarding seeking the views of parents and children are not contained within the Children and Young People (Information Sharing) (Scotland) Bill but rather mentioned in the draft guidance which does not give this consideration the import it deserves, nor will it serve to ‘build public confidence’ as the call for evidence sets out.

THE ILLUSTRATIVE DRAFT CODE

12. The Policy Memorandum supporting the draft Bill states: ‘consistent practice will be supported by the introduction in the Bill of the requirement to provide a code of practice about the provision of information that must be adhered to’. The quality of the Code of Practice will be key and it is disappointing to see that much of the illustrative draft is simply a cut and paste of the relevant legislation or an outline of what the legislation says. The critical issue, as highlighted by the Supreme Court, is how a practitioner should read across the legislation.
13. Where guidance is given, such as in section 6 which examines reasons why you might not inform the person, the following reasons are given: ‘detrimental to… (c) the health or safety of the child or another person; or (d) the best interests of the child’. These statements are extremely wide and open to interpretation yet there is no guidance or information on how to analyse their meaning. Without greater clarity in the Code, each local authority will end up providing its own supportive guidance and the aim of a national system will not be met.

14. The draft Code of Practice does not feel very user-friendly. The manner in which it is drafted does not support practitioner use. A flowchart guiding staff through the steps in making a decision would be a practical and positive addition to any code.

15. The Policy Memorandum in section 45 highlighted that there were current gaps in the knowledge base around gender reassignment and experiences of trans children and parents. A cursory nod was given to the need to support those with protected characteristics and to ensure appropriate training was given to staff working with lesbian, gay, bisexual, trans and intersex (LGBTI) young people and their families. This is the only mention of equality proofing this legislation and it is a failed opportunity that it is not mentioned in the Code of Practice at all.

16. It is noted that a decision to use a code of practice rather than subordinate legislation was taken by the Government as it was felt a legislative form would be ‘too restrictive’. Currently there is insufficient detail in the draft to merit this conclusion. Without a statutory basis, the NASUWT is concerned the Code could not provide sufficient protection for practitioners making decisions on wellbeing. The NASUWT does, however, support the suggested requirement to consult on any code of practice before this is issued.

17. The NASUWT notes that there is an online survey currently being undertaken by the Scottish Government. Arguably, the questions contained in the survey
are weighted in favour of the legislative amendments and will provide insufficient detail on how useful the current draft would be to practitioners.

**FUNDING**

18. While it is accepted that there will be a requirement for training in relation to the new and amended provisions, this is to be a one-off cost of £219,431 for a one-day training event. The NASUWT believes this is a significant underestimate. As has repeatedly been highlighted by the NASUWT, the true cost is likely to be far greater, as teachers are being removed from their core responsibilities of teaching and learning. Furthermore, the complexity of the legislation and the current absence of clear and appropriate guidance will make this legislation difficult for practitioners to navigate and create unnecessary bureaucracy in the system.

**CONCLUSIONS**

19. The Union will continue to work with the government in applying the GIRFEC approach but considers, inter alia in light of the Supreme Court decision, that this will mean an alternative approach to the Named Person is required.

20. The NASUWT’s position remains that the role of Named Person does not require the qualifications, skills and abilities of qualified teachers, and the Scottish Government should consider this as a role for other professionals in the school workforce and avoid placing yet another responsibility on already overworked and overburdened teachers.

21. The NASUWT does not believe the Bill outlines clear steps for practitioners to follow when considering whether to share information to ‘ensure it is compatible with current law (Data Protection legislation, ECHR and law of confidentiality)’.

Chris Keates

**General Secretary**
For further information on the Union’s response, contact Jane Peckham, National Official Scotland.

NASUWT Scotland
35 Young Street North Lane
Edinburgh
EH2 4JD
0131 226 8480
www.nasuwt.org.uk
nasuwt@mail.nasuwt.org.uk