Children and Young People (Information Sharing) (Scotland) Bill

*COSLA Response to the Education and Skills Committee*

**Introduction**

COSLA welcomes the opportunity to respond to the Committee’s call for evidence on the Children and Young People (Information Sharing) (Scotland) Bill. We have responded separately to the Financial Memorandum.

Information sharing is an essential aspect of ensuring we get it right for every child – the GIRFEC approach – to which COSLA are fully committed. Whether in identifying and addressing a wellbeing need or taking action to protect children, local authorities are committed to a multi-agency, holistic approach. This is made possible when those within and out with Local Authorities are operating within a clear framework towards a shared vision. It is important that policy and legislation converge to support this environment.

It is recognised that the Bill focuses narrowly on ensuring that the information sharing provisions in relation to Parts 4 and 5 of the Children and Young People (Scotland) Act 2015 are complicit with both data protection regulations and human rights. It is also recognised that the accompanying Code is necessarily illustrative because of unknown changes which the General Data Protection Regulation will bring.

**Key Points**

- An important outcome of this legislative process must be clarity in moving forward – for professionals within the system, for parents, children and young people.
- COSLA welcomes the “duty to consider” sharing information and the respect this awards professional judgement. However, clear guidance will be required to provide assurance to professionals in decision making processes.
- The Code of Practice will be vital to the achievement of the policy intention. It must be clear who the code is aimed at, with the context and content of the Code flowing from that.

**Context**

While it is recognised that the Bill has a narrow focus, it is important to outline the wider context for this legislation as it will relate to Local Authorities.

As key bodies in the delivery of both Named Person and Child’s Plan, Local Authorities had reached an advanced stage in planning for implementation when the legal challenge to the legislation was launched. Local Authorities were funded for their preparations which allowed for the building of understanding across delivery arms (education, social work, child protection, etc.) about roles as individual professionals and as part of overall implementation.

The legal process meant a delay in commencement of Parts 4 and 5 which brought with it confusion about implementation: Could the term ‘Named Person’ still be used? What did the legal challenge mean for existing information sharing protocols? What was the process for the identification of wellbeing concerns?
Locally, solutions to these issues have varied. While all Local Authorities have continued to operate to the highest standards and within available guidance, some have used the language of ‘Named Person’ and ‘Child’s Plan’ while some have removed all references. Some have noticed a difference in the information flow with external bodies such as Police Scotland while others have not.

An important outcome of this legislative process must be clarity in moving forward. All professionals, whether within a Local Authority, NHS or wider body, must understand the policy and their role in delivery as must parents, children and young people. The guidance (discussed in more detail below) and communications from Scottish Government will play a crucial role in achieving this.

The Bill

Within the provisions of the Bill, COSLA particularly welcome the introduction of the duty to consider sharing information as a change from the duty to share in the original Act. This newly formed duty places a rightful importance on professional judgement. However, given the confusion which has built around this policy, a key role for the guidance is to support professionals to be confident in the judgements they are to make and in harmonising the understanding of thresholds across different agencies, organisations and sectors.

We also welcome the duty for Ministers to consult on the Code of Practice, especially as that timing of the General Data Protection Regulation (GDPR) has necessitated that the draft Code produced alongside this Bill is illustrative. Ensuring that the Code of Practice is accessible and usable will be essential and COSLA are very happy to engage with any consultation at the appropriate time.

The Illustrative Code of Practice

The Code of Practice will be vital to the achievement of the policy intention. It is addressed to those exercising functions under Parts 4 and 5 but the current highly legal tone is not accessible. As discussed above, clarity for professionals will be essential to achieving the policy intention of the legislation which means clarity in operational understanding. COSLA would urge that in development of the final code:

- There is clear communication about who the code is aimed at, whether it is intended for frontline professionals or whether it is intended as a basis upon which organisations develop their own codes for their own frontline workers. The content and style should be appropriate to the intended audience.
- Illustrative examples should be included to assist professionals. It is important to illustrate where information can be shared between as well as within organisations.
- It should be clear what the status of the Code is and where it sits within the wider context of the legislation.
- Legal terms should be clearly defined so that individual organisations do not interpret the same term differently.
Children and Young People (Information Sharing) (Scotland) Bill:  
*Finance Committee scrutiny of the Financial Memorandum*

COSLA welcomes the opportunity to submit evidence to scrutiny of the Financial Memorandum accompanying the Children and Young People (Information Sharing) (Scotland) Bill. We will submit evidence to the Education and Skills Committee on the substantive policy aspects of the Bill.

The Bill addresses the achievement of the policy intentions within the Children and Young People (Scotland) Act 2015 and has a narrow focus on ensuring that information sharing provisions in relation to Parts 4 and 5 are complicit with both data protection regulations and human rights. COSLA recognises that the Bill, and therefore the Financial Memorandum, is limited to this focus.

**Financial Implications for Local Authorities**

The financial impact of this legislation for local authorities is considered expressly in the Financial Memorandum as local authorities will largely be responsible for the enacted duties.

Resource was allocated to local authorities in preparation for implementation of the original legislation in years 14/15 and 15/16. This was intended to support preparations for commencement of the original legislation and the money was used for this purpose. However, given the paused implementation of the legislation, there is a need to ensure that local authorities are not at a disadvantage when the amended provisions come into force and Named Person and Child’s Plan are operationalised.

The main resource issue identified in the Financial Memorandum for local authorities is around training. While we agree that training is the main issue, we would caution some of the assumptions made around resource implications:

- There is no provision made for staff from specialist services or core local authority support teams who will also be required to undertake updated training.
- There is an assumption that no training will be required for staff across the early years sector because Named Person responsibility will sit with the NHS. In reality, early years workers will be required to understand and engage with the policy regardless of where Named Person responsibility lies.

It is likely that it will also be necessary to supplement national publicity campaigns with local publicity given the strength of public opinion around the original legislation. This will require time, and may also have financial implications in the production of local resources.

COSLA would be pleased to discuss these points in more detail and look forward to the Committee’s consideration.