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Dear James,

Thank you for your letter of 17 October 2017 relating to issues raised in the evidence session with the Information Commissioner's Office on 4 October 2017. A response to the points in your letter is set out below.

The potential for the Data Protection Bill to be amended in a way that impacts on the Children and Young People (Information Sharing) (Scotland) Bill

As set out in the response from Dr Macdonald to the Committee's letter of 4 October, the General Data Protection Regulation (GDPR) will become effective across all member states on the 25th of May subject to agreed derogations. This area of law is reserved and the UK Government introduced a Data Protection Bill (DPB) on 13 September 2017. My understanding aligns with that of the Information Commissioner's Office which is that whilst the conditions for processing as set out the GDPR cannot be removed or dis-applied, the UK Government can provide for additional conditions for processing.

As the DPB is before the Westminster Parliament it remains subject to possible amendment which may or may not affect information sharing in practice under the Children and Young People (Scotland) Act 2014.

The approach which I have adopted, to introduce a Bill to be accompanied in due course by a binding Code of Practice enables full and proper account to be taken of the changes in data protection law introduced by the GDPR and any additional considerations which are required as a consequence of the DPB in due course. It also ensures that we can continue to make the progress required to deliver improved outcomes for children and young people by fully embedding the Getting it right for every child approach across Scotland.

The Information Commissioner's Office confirm in their written evidence to the Committee dated 25 August that, "there is nothing on the face of the Bill that contradicts or conflicts with either the current data protection regime or under the GDPR".



The procedure, as set out in the Children and Young People (Information Sharing) (Scotland) Bill, requiring consultation and then issuing of a binding Code of Practice (should this be approved by Parliament) will enable full account to be taken of the provisions of the GDPR and any new Data Protection Act as they will apply in practice.

The suggestion that the Government could have produced a draft Code of Practice reflective of GDPR at this stage to inform the Committee's scrutiny

As I explained in my letter to the Committee of 26 September, I decided to publish the illustrative draft Code of Practice in order to assist the Committee's consideration of how the powers set out in sections 26B and 40B of the Bill could be utilised. My intention was never to pre-empt the consultation process set out in the Bill. As the illustrative draft Code of Practice was intended for illustrative purposes only I considered it was appropriate for it to be drafted in accordance with the law as it presently applies.

As I have explained above, the full data protection framework which will apply from 25 May will not become clear until the UK Government has finalised its approach which will include the DPB completing its parliamentary consideration.

Given the influence of the contents of the DPB and potentially its associated regulations on the contents of the Code, the likely timing of the proposed final version of the Code being provided to Parliament (for the 40 day consideration period provided for in the Bill).

As I have explained above, I consider that the Bill timetable and the procedure associated with the Code of Practice (subject to approval by Parliament) enables full and proper consideration to be had to the impact of the GDPR and DPB in due course on the information sharing provisions contained in the Bill.

Timescales for the passage of the Bill are a matter for Parliament. The Bill provides for commencement of the substantive provisions of the Bill at the end of the period of 2 months beginning with the day of Royal Assent. Assuming this happens, the 2014 Act will at that point be amended by the provisions of the new Act (the current Bill).

Relevant provisions of Parts 4 and 5 of the 2014 Act will then require to be commenced at which time a consultation, as required in the Bill, will then be undertaken before a draft Code of Practice is laid before Parliament. It is my intention that this will be taken forward in collaboration with a wide range of stakeholders.

Next steps

I will continue to listen carefully to the evidence presented to the Committee at its final evidence sessions on 25 October and 1 November. It is my intention to provide the Committee with a written submission in advance of my appearance on 8 November which will seek to address some of the points raised so far during the evidence sessions and will provide greater clarity for the Committee in relation to the process and package of materials that will support effective implementation of Parts 4 and 5 of the 2014 Act.

Yours etc,



JOHN SWINNEY