8 July 2016

Dear James

I am writing to make you aware of a situation that may arise in relation to the commencement of the Named Person and Child’s Plan provisions in Parts 4 and 5 of the Children and Young People (Scotland) Act 2014. I am keen that you and your Committee are aware of what that situation would entail and am keen to offer you clarity about the Government’s position.

The relevant provisions of the Act are currently scheduled to commence on 31 August 2016. I remain committed to this timetable, and to the Act, which I believe will deliver real improvements in how we support children and families in Scotland. You will, however, be aware that a judicial review has been brought against the Named Person and the information sharing provisions of the Act. Although the Government’s position has been upheld twice in the Court of Session, we still await a decision on the matter by the UK Supreme Court. We have not had any indication yet of when this decision might be expected. There remain only two weeks prior to its summer recess in which the Supreme Court could hand down its judgement. While I still hope that this may still happen, we face the theoretical possibility that a judgement will not have been made prior to the commencement date of 31 August. It would not be prudent or responsible for government to commence legislation, while a decision from the court is still pending as this would create levels of confusion on both practical and legal grounds.

It is for this reason that I wish to advise that the Government will not move to implement Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 until there is a definitive judgement from the Supreme Court on this judicial review. This follows usual practice and provides clarity for all concerned.
I should emphasise that this contingency planning in no way undermines this Government’s commitment to the Named Person policy. I still hope that a Supreme Court judgement might be forthcoming before the Court’s summer recess, and that a positive judgement for the Government, in line with the Court hearings in Scotland, will allow the Government and its partners to proceed with the implementation of this important policy.

[Signature]

JOHN SWINNEY