

John Swinney MSP
Deputy First Minister
The Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG



Dear Deputy First Minister

Getting It Right For Every Child Practice Development Panel The draft Code of Practice for information sharing

This note is to update you on progress made by the GIRFEC Practice Development Panel in developing the draft Code of Practice for information sharing. This note will provide information on the Panel's approach to the draft Code and matters which the Panel wish to consider before finalising the draft Code prior to consultation.

Progress and the Panel's proposed approach:

The Panel and I in conjunction with their Legal Focus Group have met multiple times since February 2018 to develop a draft Code of Practice for information sharing to support consideration of the Children and Young People (Information Sharing) (Scotland) Bill.

The Panel and the Legal Focus Group have taken time to consider the legal bases for information sharing in the context of the current legal landscape. Our current thinking is that, in relation to data protection law, where a child or parent consensually engages to use a service or agrees to a referral for a service, then the legal basis for sharing the necessary information to access or deliver the service is likely to be the fulfilment of a "public task". Additional information on who the Panel and I have recommended the draft Code of Practice is for is attached in Annex A.

As you are aware, the UK Government recently issued updated guidance on "Information Sharing: Advice for practitioners providing safeguarding services to children, young people, parents and carers". While this does not apply in Scotland, the Panel, together with the Legal Focus Group would like to consider the UK Governments guidance further to understand what, if any, implications it may have before a draft Code of Practice is finalised.

Next Steps:

The Legal Focus Group are scheduled to meet on 31 October and aim to provide clarity for the Panel which will help to finalise the draft Code. Once the draft Code has been finalised and signed off, the Panel will launch a consultation paper, providing an opportunity for everyone with an interest to respond.

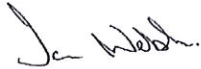
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During the consultation period, Panel members and I hope to host a number of engagement events providing opportunities for face to face discussion and the sharing of views. We have commissioned the Scottish Government to co-ordinate and support us in delivering these events.

I want to progress with this work as quickly as possible to fulfil the purpose of the Panel, but in order to fully consider the UK Government guidance, the timetable for consultation will need to be revised to allow further discussion to take place to ensure that the product reflects a consensus perspective.

A handwritten signature in black ink, appearing to read 'Ian Welsh'.

Prof. Ian Welsh
Chair of GIRFEC Practice Development Panel

Annex A

The Panel have recommended that the draft Code should be used by those who are responsible for exercising the functions in relation to provision of named persons and child's plan. This responsibility lies with the named person service provider, and relevant authorities under Part 4 of the 2014 Act and relevant authorities under Part 5 of the 2014 Act, and not the individual named person or individuals exercising functions in relation to child's plans.

This includes responsibility for the lawful collection, processing and sharing of information as the 'data controller'. As such, this Code of Practice is primarily for the data protection officers, legal advisers and the relevant head of service of those organisations that have duties under Parts 4 and 5 of the 2014 Act, namely:

- health boards;
- local authorities;
- the owners and managers of independent and grant-aided schools and secure accommodation services;
- the Scottish Ministers (of which the Scottish Prison Service forms part);
- the bodies and persons listed in schedules 2 and 3 to the 2014 Act; and
- the third sector commissioned to deliver duties.