



Children and Young People (Scotland) Act 2014

Consultation on Draft Statutory Guidance for Parts 4, 5 and 18 (Section 96)

A response from the Scottish Youth Parliament
April 2015

Introduction

The Scottish Youth Parliament welcomes the opportunity to respond to the consultation on the Draft Statutory Guidance for Parts 4, 5 and 18 (Section 96) for the Children and Young People (Scotland) Act 2014.

The Scottish Youth Parliament is the democratically elected voice of Scotland's young people. We seek to provide a national platform for young people to discuss the issues that are important to them and campaign for the change they wish to see.

We are committed to ensuring that the voices of young people are properly heard and accounted for in local and national policy development. Our response to this consultation is based on direct consultation with young people including: a mass online survey and a series of focus groups prior to the passage of the Children and Young People (Scotland) Act 2014; the policies passed by our Members of the Scottish Youth Parliament at our tri-annual National Sittings; the statements contained in our youth manifesto; and, the findings of an additional focus group conducted with young people in relation to this guidance. Therefore, our comments are fundamentally shaped by the genuine views of young people.

General Comments¹

- We continue to support the young person centred approach adopted in the Children and Young People (Scotland) Act 2014, and continue to be supportive of the general principles and provisions in this guidance. However, we believe that a rights based approach should be more prominent and explicit.
- **Realisation of Children and Young People's Rights** - We believe there is significant opportunity to improve and strengthen the guidance to ensure that

¹ A lack of comment in areas not explicitly referenced in this response should not be automatically considered as an endorsement.



the realisation of the rights of children and young people is a core principle in implementation, and that the guidance is sufficiently clear in this respect for all stakeholders.

- **Developing national practice guidance** - We appreciate that the guidance is not necessarily designed for practitioners or young people, and we support the development of practice guidance for young people to enable them to be key participants in these processes. We believe that young people and practitioners must be involved in the development of this guidance on the basis of co-design.
- **Involvement of Children and Young People** - We support the requirements to ascertain the views of children and young people in relations to Parts 4 and 5. However, we believe there is need for substantial improvement. We believe that the presumption must be to involve, and seek the consent, of children and young people in all cases, unless there is a justifiable and evidential basis for not doing so. Where this is the case, the relevant stakeholder should be required to ensure they can evidence their decision for not doing so. Presently, we do not believe that the guidance sufficiently reflects this in either Parts 4 or 5.

Realisation of the rights of Children and Young People

Our organisation is founded on the principles of the United Nations Convention on the Rights of the Child, particularly Article 12 which stipulates that children and young people have the right to have their views properly and genuinely considered in issues that affect their lives.

We believe that there is further opportunity to strengthen the guidance to reflect that the realisation of the rights of children and young people must be a key pillar of implementation. We believe that it is important that there is sufficient understanding, among those who are required to use this guidance, that the promotion and protection of the rights of children and young people are integral to the successful delivery of the GIRFEC framework.

With this in mind, the Scottish Youth Parliament recommends that a “A rights based approach” paragraph should be added under Section 1.3. We believe that the inclusion of this paragraph would also support the implementation of Part 1 of the Act, as well as more explicitly outline the importance of a rights based approach in the implementation of the whole Act. We would recommend that the Scottish Government work in consultation with the Scottish Alliance for Children’s Rights (Together) and Scotland’s Commissioner for Children and Young People (SCCYP) to draft this.



Furthermore, we support the call made by colleagues across the sector including Together and SCCYP for a Child's Rights and Wellbeing Impact Assessment (CRWIA) to be conducted on the guidance to ensure that the benefits of the GIRFEC approach reach every child and young person.

Part 18 (Section 96): Specific comments in relation to Wellbeing

The Scottish Youth Parliament welcomes the principle of taking a holistic and multi-dimensional approach to defining wellbeing, recognising the importance of an accurate definition and assessment framework for the successful implementation of almost every aspect of the Act.

However, we share the concerns of other organisations about the incoherency of the framework currently proposed in this guidance. While we appreciate the need for the indicators to be sufficiently high level to enable a holistic and wide ranging assessment of wellbeing, we are unclear as to how these indicators are to be interpreted, measured, recorded, and the degree to which they will require a subjective judgement. We also note the significant difference to the approach in defining each of the indicators individually, with some considerably more prescriptive than others.

The young people who participated in our focus group were especially concerned around some of the language used in the descriptor for the "Responsible" indicator, particularly the phrases "self-control", "anti-social behaviour", "being patient when your wishes are not instantly gratified." While appreciating that it is not practical to define every aspect of how the indicators contribute, or are detrimental, to wellbeing, the young people did not feel that the present indicators were sufficiently clear.

We share the view from our colleagues at Together that this approach to a framework to define and assess wellbeing is not rights based and threatens to undermine the overall well intended principles.

We believe that further work is needed in this section to clearly define these indicators, how they should be interpreted, and the framework in which they should be assessed so as to provide professionals with a much clearer understanding of wellbeing in the context of their duties under the Act. Our view is that this framework should be rights based and be accompanied by supporting practice guidance.



Part 4 (Sections 3.1-10.4): Specific comments in relation the Named Person Provisions

The Scottish Youth Parliament has always been supportive of the principles of the Named Person. We see the value that such a person may have in the promoting and defending the wellbeing of our young people. We further understand the importance of information sharing if the Named Person provisions are to operate effectively in the interests of the young people.

However, we believe that the guidance could be significantly strengthened in the areas where the views and consent of children and young people should be taken into account, in line with Article 12 and 16 of the UNCRC. We believe that the guidance should explicitly outline the presumption that the views and consent of children and young people should be sought and taken into account in every instance, unless there are exceptional circumstances whereby doing so would compromise their wellbeing. Where this is the case, there needs to be clear and evidenced justification behind the decision not to do so.

More specifically, we recommend the following:

Named Person

- Adding provisions in sections pertaining to the role and duties of the Named Person to ensure that the views of young people are taken into account in issues such as who their Named Person is and the process to find a new Named Person should the break down.
- Expanding the range of people who can assume the Named Person role. The young people we consulted with in our focus group felt that other professionals such as youth workers would also have the skills and abilities to perform this role effectively. Many of the young people felt that they would be more comfortable if their Named Person was a youth worker, and expressed concerns about a head teacher performing this role in all instances.

Information Sharing

- Significantly strengthening the language and tests in relation to the sharing of information in all instances. We believe the current guidance does sufficiently protect the young person's right to privacy. We are concerned by the consistent use of the language "where reasonably practicable", "where appropriate" and "proportionate". We believe that such language is unclear, providing practitioners with little clarity, and places a disproportionate amount



of responsibility on subjective judgements about what is “reasonable” or “appropriate”.

- The presumption should always be to get the consent of the young person to share information, unless there are exceptional circumstances that suggest this should not be the case. Again, where this is the case, a justification behind a decision not to get consent should be clear and grounded in evidence.
- Developing practice guidance that provides clarity in relation to the circumstances whereby not seeking the consent of the young person is appropriate.

Part 5 (Section 11): Child’s Plan

The Scottish Youth Parliament has always supported the principle of the Child’s Plan as a single statutory plan that takes into account all of the possible support that a young person may require.

In particular, we support Section 33(6) of the Act which requires that the views of children and young people are taken into account. However, as with other aspects of this guidance, we have concerns that the language is insufficiently strong or clear to ensure that this happens consistently in line with the rights of children and young people. We are particularly concerned by use of language such as “so far as reasonably practicable”, and how this will be interpreted.

More specifically, we recommend the following:

- The language in relation to this aspect of the guidance is significantly strengthened to reflect the presumption that the views of children and young people and their parents are always sought and taken into account, in line with their rights, unless there are exceptional circumstances for not doing so.

Other issues

We believe that more consideration needs to be given to young carers, and how their particular circumstances are reflected in this guidance. Furthermore, careful consideration needs to be given to the link between the provisions of the Children and Young People (Scotland) Act and the Carers (Scotland) Bill which will introduce a duty to local authorities to offer a Young Carers Statement.



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