

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

### Call for Evidence

1. Children in Scotland is the collective voice for children, young people and families in Scotland as well as the organisations and businesses that have a significant impact on children's lives throughout the country. It is a membership organisation, comprised of more than 500 representatives from the voluntary, public and private sectors.
2. We aim to identify and promote the interests of children and their families, influencing the development of policy and services in order to ensure that they are of the best possible quality, capable of meeting the needs of children and young people living in Scotland.
3. We are glad to be able to provide evidence on the Information Sharing (Scotland) Bill and illustrative Code of Practice. The evidence presented in this response is based on our own views and those of our members, gathered at a children's sector forum meeting in August 2017. This comprised 36 individuals from a range of organisations representing third sector and statutory children's services providers and national child rights organisations.

### General points

4. Children in Scotland welcomes the Scottish Government's action to address the Supreme Court decision, which found that the information sharing provisions of the Children and Young People (Scotland) Act 2014 did not comply with article 8 of the European Convention on Human Rights (ECHR)
5. We recognize that Part 4 of the Act (the Named Person service) was found by the Supreme Court to be 'benign' in its aims and intent.
6. We remain fully committed to the principles of Getting it Right for Every Child and support the Scottish Government's policy to promote the wellbeing of all children and young people living in Scotland.
7. We do however have a number of concerns relating to the draft Children and Young People (Information Sharing) (Scotland) Bill and its illustrative Code of Practice. These are outlined below.

### The Bill

8. We recognize that the draft Bill changes the duty to share information to a duty to consider sharing, and to only share information where this can be done legally, in line with the ECHR and Data Protection Act 1998 and any other directly applicable EU instrument relating to data protection. We view this as a positive step in terms of ensuring legal compliance.

9. We are also pleased to see that the Bill states that information must be shared in line with a Code of Practice, as this if written clearly and accessibly, should provide clarity on how information can be shared legally.
10. However, we are concerned that one of the key requirements of the new Bill is that it provides clarity over when and how information should be shared, and we believe that at present the Bill does not achieve this.
11. Further, since this Bill's success or failure relies so significantly on the associated Code of Practice, we feel we cannot support the Bill until our concerns about the Code of Practice, as outlined below, are addressed. Indications that the Code of Practice will be written once the Bill has been passed do not provide adequate reassurances at this stage.
12. Finally, we are concerned that any reference to the requirement to seek children and young people's consent to sharing information is absent from the face of the Bill. We do not believe reference to this within the Code of Practice alone is sufficient in terms of ensuring that child rights are upheld in this regard.

### **The Code of Practice**

13. We recognize that the code of practice produced alongside the draft Bill is for illustrative purposes.
14. However, we are strongly of the opinion that the Code of Practice as it currently stands fails in terms of providing clear, accessible information about how practitioners can share information legally. This was confirmed by participants in our children's sector meeting.
15. Particular concerns have been raised about compliance with new General Data Protection Regulations (GDPR) due to commence in 2018, particularly with relation to obtaining children and young people's consent. We recognise the need to provide clear guidance on this issue.
16. Further, members at our event were uncertain about how to navigate the various requirements of ECHR, GDPR and confidentiality common law in a simple way that did not require a three stage process, with associated time and paperwork demands. There were concerns raised that if the process to decide whether information could be shared legally was not simplified, that some practitioners may be deterred from sharing information, even where a wellbeing need would justify it. Clarity over this process is therefore essential.
17. Finally, we believe the Code of Practice needs to acknowledge and address other risks relevant to sharing information, such as the requirement to keep children safe where they may be at risk of domestic abuse.