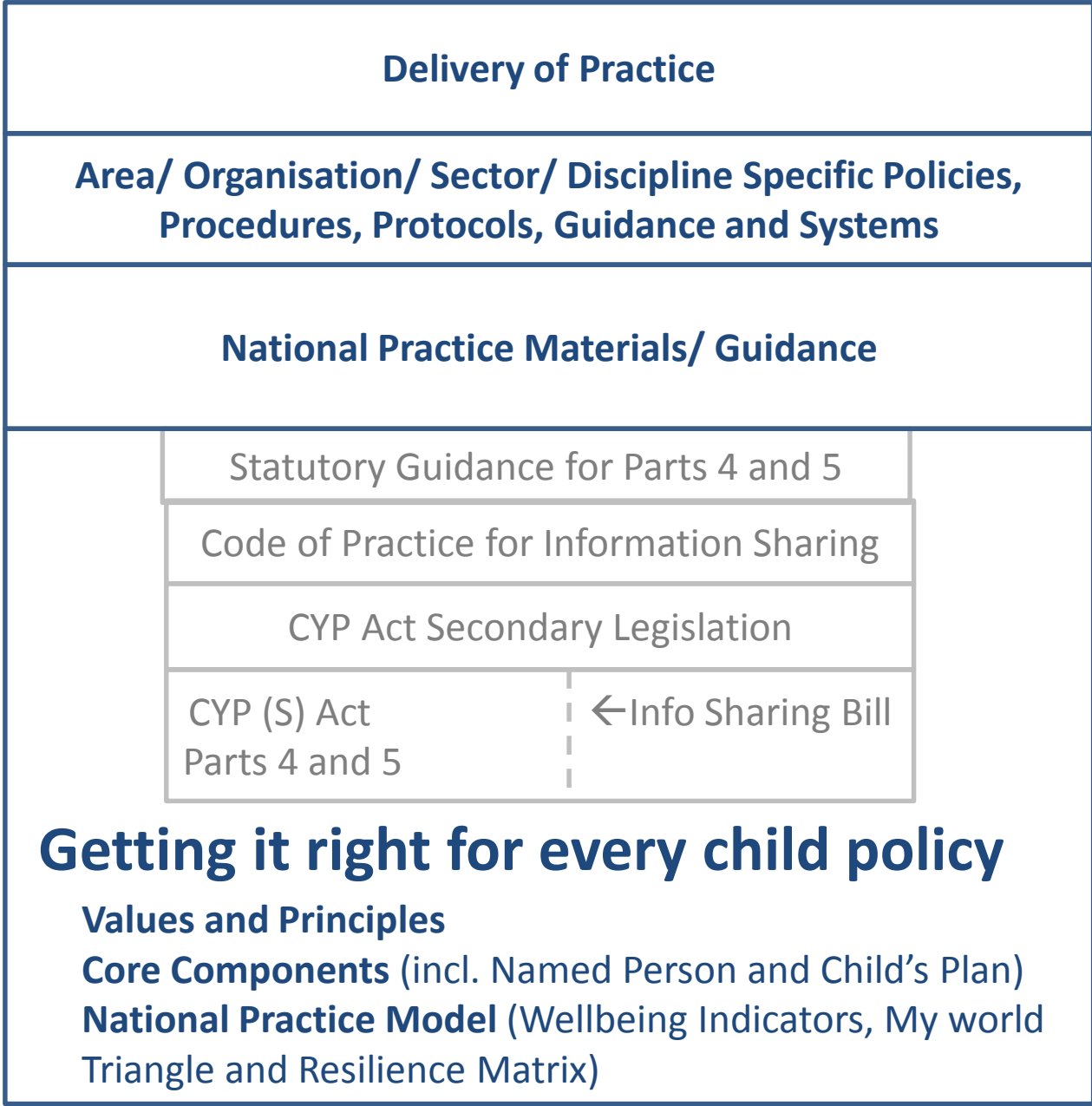


**Named Person policy,
Information Sharing &
Part 4 of the 2014
Children and Young
People Act**

Improving Outcomes
for Children and
Young People in Scotland

Supporting delivery of Getting it right for every child



- Data Protection Law
- Human Rights Law
- Law in relation duties of confidentiality
- Other law e.g. Children specific, Criminal Justice, Public Protection, Health, Social Work, Education, etc
- Regulations in relation to practice and associated Codes of Standards/ Practice/ Conduct/ Ethics/ Performance/ Behaviour, etc
- UNCRC
- Professional Guidance and Codes
- Scottish Government Policies

Background

- **Getting it right for every child policy**
- **Children and Young People (Scotland) Act 2014**
 - Part 4 Named Person
 - Part 5 Child's Plan
- **Challenged in Court** (Christian Institute case)
 - Supreme Court held: Law to provide Named Person “*unquestionably legitimate and benign*” but information sharing provisions “*not in accordance with law*” –
 - Specific judgment relates to Human Rights concerns rather than Data Protection
 - serious difficulties in accessing the relevant legal rules
 - concern about the lack of safeguards in the provisions which would enable the proportionality of an interference with Article 8 rights

Addressing Supreme Court Concerns

- ***Children and Young People (Information Sharing) (Scotland) Bill 2016***
 - Makes changes to Part 4 & 5 of the 2014 Act
 - Moving from duty to share ➡ duty to consider sharing
 - Moving from sharing to support the functions of the Named Person ➡ sharing could promote, support or safeguard the wellbeing of a child or young person
 - Places a duty on ministers to issue a binding Code of Practice for information sharing, including safeguards

Information Sharing Bill

- Bill currently at Stage 1
- Parliament has extended this while the Education and Skills Committee awaits an '*authoritative draft code of practice on information sharing*'
- DFM has asked an independently chaired Panel – GIRFEC Practice Development Panel - to provide the draft Code for Committee
- DFM has asked that a the Panel also provide a version of the Code that can be used on a non-statutory basis ahead of the commencement of Parts 4 and 5 of the Children and Young People (Scotland) Act 2014.
- DFM has asked that the Panel report back to him by September 2018

Panel Membership

Ian Welsh OBE - Chair	Health & Social Care Alliance
Mike Burns	Social Work Scotland
Norrie Conway	Police Scotland
Chris Creegan	Scottish Commission for Learning Disability
Eddie Docherty	Scottish Executive Nursing Directors
Maureen Falconer	Information Commissioner's Office
Lorna Greene	Royal College of Nursing
Juliet Harris	Together Scotland
Peter Hessett	Society of Local Authority Lawyers and Administrators in Scotland
Annette Holliday	Community Practitioners and Health Visiting Association
Anne Houston	Child Protection Committees Scotland
Sally-Ann Kelly	Coalition of Care and Support Providers in Scotland
Jennifer King	Association of Directors of Education Scotland
Professor Paul Martin	University of West Scotland
Joanna Murphy	National Parent Forum Scotland
Susan Quinn	Educational Institute of Scotland
Norma Shippin	Central Legal Office (NHS National Services Scotland)

Code of Practice

- Clarifies the legal duties in relation the information sharing provisions under Parts 4 & 5
- Code does not change the law on data sharing, human rights or duties of confidentiality but sets out the safeguards that must be followed to ensure that information sharing is in compliance with the law.
- Code is binding so if Code is breached, law is breached
- Benefits of having a Code:
 - Complex legal duties set out clearly and accessibly
 - Explains steps to follow to ensure legal compliance
 - Supports information sharing that is necessary, proportionate, relevant, adequate, accurate, timely and secure

Additional DFM Commitments to Committee

- Commitment to a positive awareness raising campaign
- A Stage 2 amendment to give Parliament final say on Code of Practice
- Practice Development Panel also to support development of revised Statutory Guidance
- A suite of materials accessible to practitioners, parents and children/young people
- A multiyear approach to additional financial resources to support implementation informed by stakeholder engagement

Timescales

- Three Bill stages and Royal Assent needed before a bill is an Act
- Bill to become Children and Young People (Information Sharing) (Scotland) Act if passed by Scottish Parliament and given Royal Assent
- Once commenced the Information Sharing Act will change the information provisions in the Named Person and Child's Plan sections of the 2014 Act
- The Code must then go through the following process before Parts 4 & 5 of the 2014 Act can become law:

Consultation



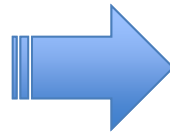
Parliamentary scrutiny



Code published



Commencement of Parts 4 & 5 of 2014 Act



Revised Statutory Guidance (Consultation)
Revised Practice Materials/ Guidance
Learning and development
Revised systems and processes

- There is an opportunity to get engaged to ensure that the policy, information sharing & the legislation works for you:
 - Getting it right for every child Policy and Practice Guidance
 - “Non statutory” Code of Practice for information sharing
 - Part 4 and 5 legislation, the Code, statutory guidance
 - workforce planning and development
 - national learning and development resources, communication, systems & processes

To support.....

- consistency, clarity and coherence of practice
- capacity, capability, competence & confidence of practitioners

Framework for Statutory Guidance SLWG

Supporting Delivery of Parts 4 and 5 of the CYP Act

Data Protection Law

Human Rights Law

Law in relation duties of confidentiality

Other law e.g. Children specific, Criminal Justice, Public Protection, Health, Social Work, Education, etc

Regulations in relation to practice and associated Codes of Standards/ Practice/ Conduct/ Ethics/ Performance/ Behaviour, etc

UNCRC

Professional Guidance and Codes

Scottish Government Policies

Delivery of Practice	
Area/ Organisation/ Sector/ Discipline Specific Policies, Procedures, Protocols, Guidance and Systems	
(National) Practice Materials - (General GIRFEC Practice Guidance, National Practice Guidance to sit alongside the Statutory Guidance parts 4,5 and 18, practice resources developed locally, third sector resources etc.)	
Statutory Guidance for Parts 4 and 5 (Explains what should be done to comply with the provisions including expanding on how information sharing will work) Must have “due regard” to this guidance – this allows for justifiable departure from expanded detail where there are no other binding restriction	
Code of Practice for Information Sharing (Clarifies applicable safeguards and relevant law in relation to sharing information under Parts 4 and 5 of the CYP Act) Must “adhere” to Code – no scope for departure unless allowed for in Code	
Complaints Order, Child’s Plan Order Named Person (Training, Qualifications, Experience & Position) Order	
CYP (S) Act Parts 4 and 5	← Info Sharing Bill

Supporting Delivery of Parts 4 and 5 of the CYP Act

<p>Statutory Guidance for Parts 4 and 5</p>	<ul style="list-style-type: none"> • The primary audience is strategic leaders and operational managers of organisations legally responsible for implementing parts 4, 5 and 18 (Sec 96) of the Act • Should also be accessible to children and families as well as other interested organisations • Must reflect and accurately explain the law and the steps service providers must take to comply with it & how the secondary legislation are to be interpreted. • Should be rights-based and that it would be helpful to link to the United Nations Convention on the Rights of the Child (UNCRC) and human rights • Provide a high level of clarity on the links between Getting It Right For Every Child, the data protection legislation and the GDPR • Clarify how the Statutory Guidance and Code of Practice will work together
<p>(National) Practice Materials</p>	<ul style="list-style-type: none"> • A robust and clear national practice resource that is available in one single document containing practical materials and tools such as case studies/ examples, flow charts/ decision trees, graphics etc • Address the needs of practitioners who will have formal responsibilities in relation to Parts 4, 5 and 18 (Sec 96) of the Act, and also those practitioners that won't have formal duties but who will still have a role in supporting children, young people and families, including the third sector. • Aim to achieve a consistent approach to delivering the services outlined in Parts 4 and 5 as well as allowing the flexibility required by service providers to develop practice that suits the needs of each individual organisation and the children and families they serve • Allow flexibility in terms of other issues that it can cover (such as Information Management) and the option to continually update the resource according to emerging best practice.
<p>Area/ Organisation/ Sector/ Discipline Specific Policies etc</p>	<ul style="list-style-type: none"> • The Scottish Government, Local authorities, health boards, the third sector and other organisations may wish to develop other supporting materials in addition to the Statutory Guidance and national practice resource
<p>Supporting Activities</p>	<ul style="list-style-type: none"> • Accessible information to help children, young people and families to understand the core elements of Parts 4, 5 and 18 in a variety of formats as part of wider comms activity • National learning and development materials developed by the Scottish Government and partners to be used by local organisations to support staff in their areas and organisations, and drive national consistency.

Workshop

Asks and Offers

Ask 1

Continue to support the development and embedding of practice to support the delivery of the Getting it right for every child approach across children and families services

Offer 1

What help can Scottish Government provide?

Asks and Offers

Ask 2

Support the GIRFEC Practice Development Panel in its work

Offer 2

How can Scottish Government help you to engage/inform/ communicate with the Panel?

Asks and Offers

Ask 3

Support preparedness, introduction and embedding of practice to support delivery of new statutory duties detailed in Parts 4 and 5, secondary legislation, Code of Practice, Statutory Guidance and Practice Guidance

Offer 3

How can Scottish Government help you prepare for introduction of the legislation, what may be required to support introduction and what could support embedding and delivery of the legislative duties?