



## **Consultation on Draft Statutory Guidance on Parts 18, Section 96 (Wellbeing) 4 (Named Person), and 5 (Child's Plan) of the Children and Young People (Scotland) Act 2014**

### **Introduction**

Includem is a specialist charity which provides intensive one to one support to some of Scotland's most vulnerable, troubled and challenging young people. We primarily work with young people aged between 12 and 18 who are subject to formal measures of care who are looked after at home. Our work challenges young people to achieve positive change in their behaviour and relationships so they can move towards leading fulfilling lives.

We believe young people are never beyond help and that they need a responsible service at their time of most need. By achieving better outcomes for young people we reduce public spending and by improving their future, the whole of society benefits.

Includem has been supportive of the Children and Young People (Scotland) Act and the Guidance on the various elements which has been released so far. We are broadly supportive of the principles in this current set of Guidance but have made a number of comments, particularly around ensuring the role of non-statutory organisations (such as Includem and other charities) is made clear throughout the Guidance. This is particularly important when it comes to information sharing between the Named Person, Lead Professional and those providing the 'targeted interventions'.

**Consultation inviting views on Draft Statutory Guidance on Parts 18, Section 96 (Wellbeing) 4 (Named Person), and 5 (Child’s Plan) of the Children and Young People (Scotland) Act 2014 and draft Orders made under Parts 4 and 5.**

**Respondent Information Form (RIF)**

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately.

**1. Name/Organisation Name**

Includem

**Title** Mr  Ms  Mrs  Miss  Dr

**Please tick as appropriate** (if completing electronically, double click on box and select default value as ‘checked’)

**Surname**

SHANKS

**Forename**

MICHAEL

**2. Postal Address** (if organisation, please provide organisation address)

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**3. Permissions - I am responding as...**



**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

**Please tick as appropriate**  
 Yes  No

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

**Please tick ONE of the following boxes**

Yes, make my response, name and address all available

**or**

Yes, make my response available, but not my name and address

**or**

Yes, make my response and name available, but not my address

Are you content for your **response** to be made available?

**Please tick as appropriate**

**Yes**  **No**

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**Please tick as appropriate**

**No**

**Yes**

**No**

**Yes**

## Consultation questions

### General

1) Overall, do you think that the draft guidance gives a clear interpretation of the Act to support organisations' implementation of the duties?

Yes  No

(if responding electronically, please double click on one of the boxes above and select the default value as 'checked')

### Please provide details:

Overall, we think the draft guidance does give sufficient detail, although there are several areas where further clarity would be beneficial.

- Some sections of the guidance give much more detail than others, including several which have practice examples and others which do not. This could lead to differing interpretations of the guidance in different sections which could lead to confusion. We would suggest there are either examples given for each section or there is a separate practice note prepared with examples given separately.
- With regard to wellbeing, although we very much support the inclusion of this in the guidance and support the definition given, it should be noted that it is a very broad definition which may be challenging to interpret. Our work informs us that without proper support to discuss in detail their wellbeing some young people would not immediately identify as having a wellbeing concern at all.
- The definition of a 'targeted intervention' is, in our view, open to interpretation and could become a determination on the basis of financial availability to commission services rather than addressing the needs of the young person. For example, the Named Person will in most cases not be a commissioner of services, so there should be some guidance for Named Persons on what their role is on recommending a particular service, such as Includem, to those who do commission within the local authority.
- The 'separate practice materials' will be critical to the success of this guidance and we would be happy to give further comment on the preparation of these.

### Part 18, Section 96 - Wellbeing

2) Do you think the draft guidance on wellbeing provides clarity about what wellbeing means in the context of the Act?

Yes  No

### What is helpful and/or what do you think could be clearer?

As above, we welcome the use of 'wellbeing' in the guidance and the definition of it does provide some clarity, but inevitably given this is a new term in legislation it will be open to interpretation. We would suggest that there should be much more robust definitions used, and in particular clearer guidelines on how these will be measured or benchmarked to avoid some wellbeing

indicators being measured differently to others. We would also welcome greater detail on the proposed process to engage young people in assessing their wellbeing. We know from the young people we work with that many do not identify wellbeing concerns until they go through a detailed process with one of our workers looking at the relationships in their lives and all the other factors which affect their wellbeing. Without robust guidance on the need to carry out assessments many young people who have wellbeing concerns will not be identified.

**3) Are the explanations of the eight wellbeing indicators helpful? (2.5)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

It is useful to include explanations of the eight indicators and we welcome the broad range of examples given. However, as with (2) above, the plethora of definitions makes them very broad concepts with the resultant risk of potential confusion in interpreting them. This is addressed in part by the linking of examples of wellbeing concerns with wellbeing indicators but this is not consistent and there is a differing tone displayed in some of the indicators which suggests some are more important than others, and leaves them open to interpretation.

**4) Are the descriptions and examples of wellbeing concerns sufficiently clear and helpful? (2.7)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

This section is very helpful and puts the wellbeing indicators into a practical form which will be very useful for practitioners.

**5) Please provide any other general comments about the draft guidance on wellbeing:**

Part 4 - Named Person

Section 19 – Named Person Service

**6) Is the draft guidance clear on the organisational arrangements which are to be put in place by the service provider to support the functions of the Named Person? (4.1.3 - 4.1.4)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

**7) The Named Person Order and the draft guidance in support of this relate to training, qualifications, experience and position of who can be a Named Person. (Named Person Order and 4.1.5 – 4.1.17)**

**Are they sufficient to promote reliability in the quality of the Named Person service while supporting the flexibility to ensure that organisations can provide the service universally and consistently?**

Yes  No

**Do they provide clarity?**

Yes  No

**Please give reasons for your answers, including if you think they should be changed:**

**8) Is the level of detail provided on the delivery of the Named Person functions within the draft guidance appropriate to guide service providers in the provision of the service? (4.1.19 – 4.1.27)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Generally we are supportive of the detail provided on the Named Person functions. However there is a significant question about how information sharing will work in practice, particularly as a third sector organisation commissioned (mainly but not exclusively) through social work departments. We would welcome further guidance on how we then share information from the young people we work with via the lead professional and the Named Person.

**9) The draft guidance outlines how arrangements for making the Named Person service available during school holiday periods and other absences should be put in place. Do you agree that this provides sufficient clarity while allowing local flexibility? (4.1.30 – 4.1.32)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Section 20 – Named Person service in relation to pre-school children

**10) This section of the draft guidance outlines arrangements for making the Named Person service available for pre-school children. Do you think it provides clarity?**

Yes  No

**What is helpful and/or what do you think could be clearer?**

We have no view on this.

Section 21 – Named Person service in relation to children who are not pre-school children

**11) This section of the draft guidance outlines arrangements for making the Named Person service available for children who are not pre-school children. Do you think it provides clarity? (6.1.1 – 6.1.8)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

**12) Does the draft guidance make clear arrangements for providing the Named Person service for children who leave school before their 18<sup>th</sup> birthday? (6.1.9 – 6.1.25)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

We work with many young people who have left school before their 18th birthday and so this question is important to us. This is a group of young people who often fall through the net of services that are available to them and as a result it is perhaps even more important they have an identified individual they can approach for support.

**13) Does the draft guidance make clear arrangements for providing the Named Person service for children of Gypsy/travellers? (6.1.26 – 6.1.31)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

**14) Does the draft guidance make clear arrangements for providing the Named Person service for children who are home educated? (6.1.32 – 6.1.39)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

**15) Does the draft guidance make clear arrangements for providing the Named Person service for those families with more than one Named Person? (6.1.41 – 6.1.43)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Section 24 – Duty to communicate information about the role of the Named Person

**16) Does the draft guidance make clear the requirements and expectations in relation to communicating information about the Named Person service and the Named Person?**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Generally, the requirements and expectations are clear in this section of the guidance. However, we would emphasise the importance of having in place clear systems to support young people in the transition between primary and secondary school which is a very challenging time for some. In section 8.1.11 the guidance states “where there are not processes in place new processes should be considered”. We would suggest this could be spelled out in greater detail in this guidance to ensure it is not missed when implemented.

We would also suggest that more detail should be given regarding the need for the Named Person to communicate with young people directly. For the system to work effectively young people need to know how they can engage with it – it shouldn’t simply be seen as a system for Named Persons to work with young people when a concern is present but for young people to raise concerns with the Named Person. Much greater emphasis should be put on communicating the service to young people and their families and also to have robust processes in place should a young person not feel comfortable with their assigned Named Person – i.e. for them to know they have the right to request someone else.

Section 25 – Duty to help the Named Person

**17) Does the draft guidance make clear the arrangements which should be in place for service providers or relevant authorities to help a Named Person? (9.1.1 – 9.1.8)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

In our view, this area of guidance requires to be reviewed to ensure that recommendations made by the Named Person are acted upon. At the moment the Guidance states “this power is not expected to be used in a directive way” which suggests, perhaps unintentionally, that recommendations by a Named Person could simply be overlooked. This could lead to the Named Person identifying a wellbeing concern under previous sections of the Guidance but not be able to act to resolve that concern which makes the whole process somewhat irrelevant. In 9.1.7. for example, a request for help from a Named Person can be declined, and a good reason must be provided. Perhaps this could be strengthened by stating ‘an alternative service or method of support should be identified’.

Sections 23, 26 and 27 – Information sharing

### General

**18) Is the draft guidance on these sections clear on requirements in relation to consideration and sharing of relevant and proportionate information when there are wellbeing concerns?**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Sharing information is critical to the success of GIRFEC and this Act, balanced carefully with the need to respect the confidentiality and privacy of children and young people. We would make the following general points on the guidance:

- Section 10.2.2. – specific mention should be made here of the extremely important transition between primary school and secondary school. Although this is mentioned elsewhere in the guidance, this transition can be very challenging for young people and any wellbeing concerns – whether they resulted in an intervention or not – must be passed on to the new Named Person in such a way that support is provided without a gap in provision. This should be more clearly spelled out in the Guidance and perhaps a more formal process of ‘handing over’ before the actual transition itself – i.e. perhaps before the school holiday period where the young person makes the transition.
- Section 10.3.5 – specific mention should be made of non-statutory organisations, such as third sector bodies, who are delivering services on behalf of statutory bodies. This would be an explicit recognition of the role that third sector organisations play in providing services for young people and the need for good communication not just between the lead professional and those third sector organisations but the Named Person too.
- There is an additional need for information sharing amongst Named Persons of the services which are available to be the targeted interventions. Without sharing information of what services are available, Named Persons may not be able to identify a suitable targeted intervention to deal with a wellbeing need.

**19) Does the draft guidance make clear the arrangements and processes that authorities will need to put in place to facilitate and support the consideration and sharing of relevant and proportionate information?**

Yes  No

**What is helpful and/or what do you think could be clearer?**

See comments above.

**20) Does the draft guidance make clear that the sharing of relevant and proportionate information under this Act must meet the requirements of the Data Protection Act 1998 and the European Convention of Human Rights?**

Yes  No

**What is helpful and/or what do you think could be clearer?**

See answer above (18)

Section 23/Section 26

**21) Does the draft guidance make clear the arrangements for managing and sharing information when duties of confidentiality are a consideration? (10.2.14 – 10.2.16 and 10.3.10 – 10.3.13)**

Yes  No

**What was helpful and/or what do you think could be clearer?**

This is made clear enough in the guidance, although in conjunction with our answer to question 18 above – an explicit reference to third sector organisations (or ‘non-statutory’ organisations more generally) would assist in information flow to all those agencies working with young people – including the sharing of confidential information when required.

**22) Are the arrangements set out for considering the views of the child clear? (10.3.3 – 10.3.4)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

The guidance effectively deals with the consideration of views of the child on a variety of issues but in particular on the process for sharing confidential information.

**23) Please provide any other general comments about the draft guidance on the Named Person service, including the information sharing sections:**

Simply to repeat an earlier point – the role of the Named Person in the relationship between a non-statutory provider of services (including provision of a targeted intervention for a young person) and the lead professional and potentially additional individuals will be crucial. It is necessary to define what role the Named Person will play as part of this – in particular around information sharing between a non-statutory service provider (such as Includem) and the Named Person – i.e. ensuring that information makes its way to all those who are working around the young person.

Draft Named Person Order

See question 7 above; and

**24) Please provide any other general comments about the draft order on the Named Person:**

Part 5 – Child’s Plan

Section 33 - Child’s Plan requirement

**25) Is the draft guidance clear about the definition and explanation of what constitutes a ‘targeted intervention’? (11.2.4. – 11.2.5)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Whilst the definition of a targeted intervention is clear in itself, the fact that the exact definition is to be left to local authorities to define makes it likely there will be significant differences in practice across the country. In particular, section 11.2.5. states “it will be for all relevant authorities to consider which of their services are not made generally available”. This is open to significant interpretation – what does ‘generally available’ mean? Secondary to access to an intervention is the definition of ‘targeted’ – two local authorities side by side may have the same service but one may define it as ‘targeted’ and the other as ‘generally available’ – as a result one may require a child’s plan and the other may not. This is likely to result in a lack of national coherence.

Furthermore, it would be helpful if a few more examples were given of targeted interventions that are provided by non-statutory providers – e.g. the service provided by Includem and similar organisations.

**26) Are the arrangements for seeking the views of the child, parents and others during consideration of the need for a Child’s Plan set out clearly in the draft guidance? (11.2.7 – 11.2.12)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Section 34 – Content of a Child’s Plan

**27) Do you agree that the content of the plan, as set out in the Schedule to the draft Order and described further in the draft guidance is clear and covers the full range of likely circumstances? (11.3.1. – 11.3.9 and draft Child’s Plan Order)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

It would be helpful if under “the relevant authority which is to provide the targeted intervention” it was acknowledged that it may be a non-statutory provider which delivers the intervention.

Section 35 – Preparation of a Child’s Plan

**28) Are the arrangements and processes set out in the draft guidance for preparing child’s plan clear? (11.4.1 – 11.4.6)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

**29) Does the draft guidance give clear support on how the child’s plan and the co-ordinated support plan should be integrated? (11.4.7 – 11.4.10)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Sections 36, 37 and 38 – Responsible authority: general, Responsible authority: special cases and Delivery of a Child’s Plan

**30) Does the draft guidance make clear the different roles of the responsible, relevant, directing and managing authorities?**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Section 39 – Child’s Plan: management

**31) Does the draft guidance make clear the processes and arrangements for managing the child’s plan? (11.8.1 – 11.8.13)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

The processes and arrangements for managing the child's plan are clear in the guidance, however it would be beneficial to include a specific reference to non-statutory agencies as part of the professional judgement the lead professional will make in reviewing and implementing the plan. This is particularly relevant when a non-statutory organisation such as Includem may be able to inform the Child's Plan in more detail than the Named Person or any other agency directly working with the young person and their family.

**32) Does the draft guidance make clear the arrangements for transferring management of a child's plan? (11.9.1 – 11.9.21)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

Section 40 – Assistance in relation to Child's Plan

**33) Is the draft guidance helpful in describing the processes and arrangements for providing assistance in relation to functions under this part of the Act? (11.10.1 – 11.10.8)**

Yes  No

**What is helpful and/or what do you think could be clearer?**

**34) Please provide any other general comments about the draft Child's Plan guidance:**

Draft Child's Plan Order

See question 26 above, and:

Part 1, Article 2 - General

**35) Whenever possible we have referenced existing regulations to show the interaction with the new duties. Do you find this helpful?**

Yes  No

**Please provide any comments on this approach:**

Part 3, Article 6 – Preparation and content of a child’s plan

**36) In terms of the 2014 Act, the Named Person; and, as far as reasonably practicable, the child and their parents, are to be consulted on the preparation of a child’s plan. The draft Order sets out who else should be consulted in certain circumstances. Under the Act, the responsible authority can also consult with anyone it considers appropriate in any particular case. Do you think any other people should be consulted, as far as reasonably practicable, for the preparation of every plan?**

Yes  No

**Please provide details, including who and why.**

It is probably unlikely that other people and organisations will be consulted on the preparation of every plan, but in many of the cases we work with consultation with us as a non-statutory organisation will be crucial in drawing up a Plan that is appropriate and takes account of the young person’s needs, in particular in recognising wellbeing concerns that we have identified through our focused work with the young person that were perhaps not picked up on by the Named Person or Lead Professional. We would therefore suggest that explicit reference to third sector organisations is made in the Guidance.

Part 3, Article 7 – Copies of a child’s plan

**37) Copies of the child’s plan should be provided to persons specified in the draft order, except in certain circumstances. This is set out in article 7 of the draft Order. Does this article meet the intention to ensure that others are not placed at risk of harm as a consequence of copies of the plan being provided?**

Yes  No

**If no, please provide details including what you think should be changed:**

**38) Please provide any other general comments about the draft Child’s Plan Order:**

Thank you, please send with your respondent information sheet to:

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