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Information Sharing -The Facts Bob Fraser Scottish Government

TAKING CARE OF OUR FUTURE

A CELEBRATION OF HEALTH VISITING ACROSS SCOTLAND



Information Practices

- Seeking, using and sharing information
- Everyday occurrence
- Personal and professional
- Dynamic
- Vast majority of information shared by individuals for a clear purpose within an understood context of data processing

Governance

- Data Protection Act (1998)
- Human Rights Act (1998) inc ECHR
- Duties of confidentiality
- Codes of conduct, standards, practice, behaviour, performance, ethics, etc
- Documentation & systems
- Policies, procedures, protocols and guidance
- Data sharing agreements

New Legislation

- EU General Data Protection Regulation (GDPR) (2016)
Coming into force in the UK 25 May 2018
- Data Protection Bill (UK) anticipated to be introduced to Parliament Sept 2017, intent is to address requirements of GDPR
- Children and Young People (Information Sharing) (Scotland) Bill - intent is to amend the yet to be commenced
- Parts 4 and 5 of the Children and Young People (Scotland) Act 2014
 - Provision of Named Persons and Child's Plan
 - Ambition to commence in 2018

General Data Protection Regulation

Changes to data protection law include:

- New interpretation of when 'consent' can be relied on as a valid legal ground to share information
- Changes to how data is classified
- In some specific circumstances - when consent should be sought from children or sought from those with parental responsibility
- Specific requirements and restrictions in relation to children's data

General Data Protection Regulation

Recital 43

“In order to ensure that consent is freely given, consent should not provide a valid legal ground for the processing of personal data in a specific case where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and it is therefore unlikely that consent was freely given in all the circumstances of that specific situation.

Consent is presumed not to be freely given if it does not allow separate consent to be given to different personal data processing operations despite it being appropriate in the individual case, or if the performance of a contract, including the provision of a service, is dependent on the consent despite such consent not being necessary for such performance. “

Data Protection Law is Changing

- Anticipated that the Data Protection Bill will result in a new UK Data Protection Act (2018)
- GDPR will be commenced on 25 May 2018
- Requirements in relation to data protection in the UK will change on 25 May 2018
- You and your representative organisations through the Parliamentary process can inform the Data Protection Bill, Code(s) of Practice associated with it and guidance issued in relation to any resultant Act

Supporting and Improving Practice in Information Sharing in Relation Children and Young People

Scotland's approach to improving outcomes for children and young people

- Getting it right for every child
- Core component - access to a Named Person Service
- Making available a Named Person who can offer parents, children and young people advice, information, support or help to access other services with the aim of helping promote, support or safeguard the wellbeing of the child or young person
- Approach includes information sharing by and with the Named Person Service that is lawful, necessary, proportionate, relevant, adequate, accurate and timely, and sharing this in a secure way.

Children and Young People (Scotland) Act 2014 Part 4 - Provision of Named Persons

- Duties on specific organisations to provide Named Person Service and on others to cooperate with the service
- **No duties on individuals**
- Part 4 of the 2014 Act has not yet been commenced
- Supreme Court ruling of July 2016 requires that there are changes to the information sharing provisions in Part 4 before commencement
- 3 month engagement September – December 2016

Importance of Information Sharing

“Information sharing is vital to safeguarding and promoting the welfare of children and young people. A key factor identified in many serious case reviews (SCRs) has been a failure by practitioners to record information, to share it, to understand its significance and then take appropriate action.”

Information sharing - Advice for practitioners providing safeguarding services to children, young people, parents and carers

UK Government 2015

Named Person Service Necessity for Information Sharing Legislation

Findings from 3 month engagement late 2016

- Wide variety of views
- Inconsistent practice in information sharing to facilitate early support
- Families experience differing access to and quality of early support
- Significant room for improvement
- Majority of stakeholders indicated that legislation that promoted fair and legal information sharing giving scope for professional judgement and discretion on sharing information by and with the Named Person Service could support improvement
- Need for consistency, clarity and coherence of practice
- Practitioners need capacity, capability, competence & confidence

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

Proposes to address the issues raised by the Supreme Court by:

- Amending Part 4 of the CYP (S) Act 2014 - Provision of Named Persons
- Amending Part 5 of the CYP (S) Act 2014 – Child’s Plan
- Amendments make significant changes to provisions related to information sharing
- New provisions to provide for safeguards in relation to information sharing under these Parts of the CYP (S) Act 2014
- Provide for accessible information on how the law will be applied through a Code of Practice

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

Sharing information with and by the Named Person Service

- When information is acquired in relation to a child or young person there is a duty to consider whether sharing that information on its own or that information together with other information could promote, support or safeguard wellbeing of the child or young person
- If such information exists then there is a duty to consider whether sharing would be compatible with law (e.g. Data Protection, Human Rights and Confidentiality).
- If the above conditions are met, information can be shared – *(scope for professional judgement and discretion as well as organisational and professional requirements)*
- The provision or consideration of the provision of information under this Part of the Act **must** be done in accordance with a Code of Practice issued by Scottish Ministers
- Part 4 of the Act provides for Scottish Ministers to issue Guidance (statutory guidance)

Children and Young People (Information Sharing) (Scotland) Bill - Timetable

- Introduced to Parliament 19 June 2017
- Call for evidence from the Education and Skills Committee closes 5pm on 25 August 2017
- Oral Evidence to the Committee on the Bill (provisionally) on the mornings of 20 September, 27 September, 4 October and 25 October
- Focus group on the Code of Practice and the wider provisions for the Bill on the evening of Wednesday 13 September at the Parliament

Children and Young People (Information Sharing) (Scotland) Bill –Getting involved

- You and your representative organisations through the Parliamentary process and engagement with Scottish Government can inform:
 - The Bill
 - Code of Practice
 - Statutory guidance
- These will shape the practice guidance on the operation of Named Person Services and delivery of Child's Planning processes across public services, for NHS Scotland and ultimately for Health Visiting Services.

What does this mean for children's services now?

- Getting it right for every child policy update issued in July 2017
- Scottish Government is fully committed to the Getting it right for every child approach
- Partners should continue to deliver a Getting it right for every child approach to improving wellbeing through working in partnership and offering early support
- Scottish Government are setting out to engage with stakeholders including children, young people and parents to understand how best to promote the key message of the policy – it's about getting it right for every child.
- Scottish Parliament and Scottish Government are engaging widely to make sure they get the policy, legislation and guidance on information sharing right

Information Sharing - The Facts

- Data protection law is changing and this will impact on how information in relation to children and families is sought, used and shared
- There is a Bill going through the Scottish Parliament to address the Supreme Court's concerns in relation to information sharing by and with Named Person Service providers
- Consideration is being given to a mandatory Code of Practice in relation information sharing under Parts 4 and 5 of the CYP (Scotland) Act i.e. by and with Named Person Services and in relation to Child's Plans
- There is an opportunity to get engaged to ensure that information sharing works for you and the '7Cs' are achieved:
 - consistency, clarity and coherence of practice
 - capacity, capability, competence & confidence of practitioners

Thank you

Contact us:

Email cyp.information.sharing.bill@gov.scot

Keep up to date:

<http://www.gov.scot/Topics/People/Young-People/gettingitright/information-sharing/cyp-information-sharing-bill-2017>

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

<http://www.parliament.scot/parliamentarybusiness/Bills/105191.aspx>