

**Scottish Government**  
**Children and Young People (Scotland) Act 2014:**  
**Revised Draft Statutory Guidance for Part 18 (Section 96)**  
**4 February 2022**

**Introduction**

1. The NASUWT welcomes the opportunity to comment on the revised Draft Statutory Guidance for Part 18 (Section 96) of the Children and Young People (Scotland) Act 2014.
2. The NASUWT is the Teachers' Union, representing teachers and school leaders in all sectors of education.

**General**

3. The NASUWT agrees with the principles of GIRFEC, and the aspiration that we all work together to help children and young people grow up loved, safe and respected so that they realise their full potential. We share the desire that all children and young people should live in an equal society which enables them to flourish, to be treated with kindness, dignity and respect, and to have their rights upheld at all times.
4. The NASUWT also supports the principles on which the United Nations Convention on the Rights of the Child is based, particularly its aspirations that children and young people are recognised as citizens in their own right and where their human rights are embedded in all aspects of society – a society where all children and young people have a voice and are empowered to be human rights defenders.

5. We are also clear that the effects on children of the COVID-19 pandemic have been deep and wide-reaching, causing long-lasting issues that will undoubtedly be felt for many years. In these circumstances, it seems opportune to review and refresh guidance and we particularly welcome the recognition within the refreshed values and principles of GIRFEC that children can experience multiple and overlapping inequalities and a commitment to address these is vital, not just by schools and teachers, but by all parts of society.
6. The NASUWT feels that there is a real opportunity to achieve a fairer and more equal post-COVID Scotland for its children and young people. Recovery should be understood as a long-term process, given the pandemic's far-reaching impacts. It should also be viewed as an opportunity to tackle deep-rooted structural issues affecting children and young people, in all aspects of their lives, which have been exposed and exacerbated by the pandemic and must be addressed if we are truly to achieve the aim of getting it right for every child.
7. The NASUWT recognises the profound impact the disruption from the pandemic has had on the educational progress and achievement of many children and young people, as well as their emotional wellbeing. This is notwithstanding the commitment, dedication and professionalism demonstrated by teachers and school leaders in delivering high-quality learning during the lengthy crisis.
8. As part of a broader approach to deliver a continuous and sustainable recovery from the pandemic, the NASUWT stands firm in its view that substantially more investment is needed to provide increased capacity to meet the needs of children, young people and their families.

**1. How clear and easy is the guidance to understand?**

9. The high level policy concepts are clearly articulated within the draft statutory guidance however the practical realities of meeting the policy intents are not as easily understood. Inter alia, detailed supportive guidance and training will be required in order to meet that aim.

**2. With regard to the assessment of wellbeing, within the overall GIRFEC approach, does the guidance make practitioners' roles and responsibilities clear?**

10. The NASUWT does not subscribe to an automatic assumption that schools should be responsible for the Named Person or for co-ordinating the planning process. The rationale for this was set out in our response to the original consultation process in 2012, an extract of which is below:

*'While Curriculum for Excellence (CfE) sets out that teachers will have regard to and will support a child's wellbeing, this is different from the specific role set of Named Person. Requiring teachers to assume the responsibilities of cross-sector collaboration would have implications for the quality of education and support that child receives. It is not necessarily appropriate to expect teachers to be responsible for co-ordinating meetings and communicating actions. These tasks are more appropriately undertaken by support staff specifically employed to undertake the role by the local authority. Experience elsewhere in the UK shows that teachers are not best placed to carry out these roles and often it can detract from their core role. In addition, a co-ordinating role for schools has placed very real time and financial burdens on them.'*

*'Teachers are already struggling with the bureaucracy and workload associated with multi-agency working and cross-collaboration across services. In particular, feedback indicates that there are considerable costs involved in co-ordinating and hosting meetings. Teachers also report that it is often difficult to identify times when some professionals can*

*attend meetings and that there can be considerable work involved in the follow-up actions. It is important that teachers are able to focus on the teaching and learning needs of their pupils and not be diverted from their primary role and responsibilities. More exploration is needed regarding the links between Named Person and Lead Professional, and the NASUWT suggests consideration should be given to allocating the role to new posts whose primary function would be to undertake the specific tasks associated with organising and enabling communication and collaboration across services.'*

11. The NASUWT notes in section 7.2 that *'[a] wide range of practitioners are required to think about children's wellbeing...'* and in section 7.6 that, *'[n]ationally available practice materials will give detail on how a wellbeing assessment should be completed in a range of circumstances'*.
12. The NASUWT would strongly argue that the failure to offer clear guidance on roles and responsibilities and leaving it to local agencies is one of the key reasons why there has been inconsistency in putting GIRFEC into practice. Indeed, in a formal communication to NASUWT members in 2017, we said: 'There is a continued lack of clear information surrounding the implementation of the 'Named Person' Scheme, with employers interpreting the legislation differently.' Enabling such an approach to continue only serves to further embed inconsistency.
13. The NASUWT would argue that no teacher should be compelled to take on the role of Named Person, despite the expectation of some employers that this should fall within the remit of Principal Teachers in primary schools or Guidance/Pastoral staff in secondary schools. There are clear implications in terms of additional workload and distraction for teachers from their core role of teaching and learning.
14. Whoever ends up being a Named Person faces a significant addition to their workload, given the guidance that it is insisted they must follow, being responsible for: collaboration and discussion with the child and their family,

and other agencies if needed; exploring what support could be provided to address the child's identified wellbeing needs; always making children and families aware of their rights around information sharing; and asking the five GIRFEC questions all practitioners should ask when faced with each and every concern about a child's wellbeing. The NASUWT does not believe that it is possible or desirable for a teacher to fulfil the role of the Named Person.

15. The NASUWT also notes reference to the key role of the Lead Professional, where children and families require the help of two or more agencies for support. Given the wide-ranging responsibilities of the Lead Professional, it is the strongly-held view of the NASUWT that teachers would not have the time nor the appropriate training to take on the role of the Lead Professional without there being a negative impact on their responsibility for all of the other children they teach. The guidance should make clear that neither the Named Person nor Lead Professional role should be undertaken by teachers.

**3. Are the definitions provided for the wellbeing indicators (section 6.1) clear and easy to understand?**

16. Any definition and process for assessing wellbeing indicators must first factor in how any assessment would be undertaken on the ground. The NASUWT has a concern that workload has not been considered in section 6.5: *'Communication and shared decision-making between the child, family and professionals has always been, and will continue to be, a crucial part of wellbeing assessments'*. Teachers (including guidance/pastoral staff) certainly do not have the time to do this each and every time a concern about wellbeing is raised for an increasing number of pupils. Also, the question does need to be raised about exactly when and how such discussions would take place and who would organise them. While not wishing to undermine the importance of such discussions, which could clearly be helpful, the NASUWT has serious doubts about the capacity to

meet this commitment, in particular bearing in mind the inevitable increase in wellbeing concerns as a result of the COVID-19 pandemic.

17. As well as having concerns about information sharing (outlined in the next section), the NASUWT has worries about the administrative burden inherent in these activities and questions who would actually be undertaking this work.

**4. To what extent do you think that the guidance will help practitioners understand how to embed the United Nations Convention on the Rights of the Child, and to protect, respect and uphold children's rights within the assessment of wellbeing?**

18. Pending the formal incorporation of the UNCRC, the Union has noted the increasing reference of the UNCRC in the development of a very wide range of policy areas by the Scottish Government as well as its use in defending and justifying its decisions. The UNCRC will place wide ranging responsibilities on national bodies and Scottish Government. The incorporation of the UNCRC will have important impacts on the working lives of NASUWT members. This guidance is insufficient to support practitioners' understanding the interaction between the UNCRC, children's rights and the assessment of wellbeing and the NASUWT has been advocating for clear, coherent, timeous, central advice from both the Scottish Government and Education Scotland.

**5. Can you outline anything specific that would be helpful to add to this guidance to assist the assessment of wellbeing?**

19. While the general principles of non-discrimination are referenced, greater weight needs to be given to the substantial impact on wellbeing of both individual and institutional discrimination.

**6. Are there any areas where the further development of resources or guidance would be helpful in supporting the assessment of wellbeing?**

20. There remain unanswered questions regarding information sharing. In December 2016, the NASUWT met with Scottish Government ministers, to discuss the Supreme Court's decision in the case of *The Christian Institute and others v Lord Advocate*. At this meeting, the Union suggested that in the absence of any clear proposals from the Scottish Government as to how it would address the concerns of the Supreme Court, proposals around information sharing breached the right to privacy and a family life under the European Convention on Human Rights. It was time to reconsider this policy and look at developing an alternative approach.

21. The Scottish Government seems to be attempting to move forward this matter without legislative support and by shifting the burden for making difficult judgements about information sharing onto schools, teachers and others who work with children and young people: this is wholly unacceptable. As well as the unseemly passing of the buck, this would place another intolerable workload burden on staff in schools.

22. Furthermore, if a so-called Expert Panel, commissioned by the Deputy First Minister to write a workable code of practice on this, failed in this task because the complexity would have made it difficult to understand or apply in practice, then it seems unfair, unjust and unworkable to ask schools, teachers and others who work with children and young people to foist the task on them.

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