

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Provision of named persons

Section 19 – Named person service

51. Subsections (1) and (5) define “named person service” as meaning the service of making available an individual from within named person service providers who carry out the functions in order to promote, support or safeguard the wellbeing of the child or young person. They will do this through a number of activities, including: advising, informing or supporting the child or young person or their parent; helping them to access a service or support; or discussing or raising a matter about that child or young person with a service provider or relevant authority.
52. Subsections (2) and (3) provide that individuals can only be identified for the named person service if they are an employee of the service provider, or are either a person, or employee of a person, who carries out functions on behalf of the service provider. Individuals must also satisfy such requirements as to qualifications, training and experience as the Scottish Ministers may specify by order.
53. Subsection (4) provides that the named person function cannot be carried out by a parent of the child or young person. Subsection (6) provides that the named person functions are not to be exercised in relation to a matter arising at a time when a child or young person is subject to service law as a member of the reserve forces. But this does not prevent the named person functions from being exercised in relation to other aspects of the life of the child or young person.
54. Subsections (7) and (8) state that the named person functions are carried out on behalf of the service provider and the responsibility for carrying out the named person function lies with the service provider and not with the individual named person. So any legal action in respect of failure would lie against the service provider and not the named person.

Section 20 – Named person service in relation to pre-school child

55. Subsections (1) and (2) provide that it is the duty of the health board to make arrangements to provide a named person for each pre-school child in its area and defines “pre-school child” as a child who has not started primary school either because they are not old enough or the education authority has allowed the child to delay starting at primary school.
56. Subsection (3) explains that for the purposes of this section, school age should be taken to be that determined by the relevant education authority by reference to the school commencement dates fixed by it. Attendance at primary school does not include

attendance at a nursery class based in a school, and relevant education authority means that of the area where the child lives.

Section 21 – Named person service in relation to children not falling within section 20

57. Subsections (1), (2) and (3) state that an education authority must make arrangements to provide a named person service for each child living in its area unless: they are a pre-school child (as defined in section 20); they attend a school managed by a different local authority or attend a grant-aided school or independent school; they are kept in secure accommodation; or they are in legal custody (as defined at subsection (3) or subject to temporary release from custody. The duty to provide a named person does not apply to a child who is a member of any of the regular forces.
58. Subsection (5) provides that, during any period when a child is a pupil at a public school managed by a different authority from the one in which they reside, the different authority must make arrangements to provide the named person service for that child. Subsection (6) provides that at any time when the child attends a grant-aided school, independent school or is kept in secure accommodation, that establishment must provide the named person service for the child. Subsection (7) provides that, during any period when a child is in legal custody or subject to temporary release from such custody, the Scottish Ministers must make arrangements to provide the named person service for the child.

Section 22 – Continuation of named person service in relation to certain young people

59. This section provides that, where a young person attends a public school, the education authority must make arrangements to provide the named person service to that young person. Where the young person attends a grand-aided or independent school, the directing authority of the establishment, as defined in section 32, must make arrangements to provide the named person service. “Young person” is defined as anyone who has reached the age of 18 but still attends school.

Section 23 – Communication in relation to movement of children and young people

60. This section provides that where a service provider no longer provides named person service in relation to a child, they must provide the new service provider, or the person it considers will be the new service provider, with information it holds that is likely to be relevant in the exercise of any functions of the service provider under this Part, or the future exercise of the named person functions in relation to the child or young person, if it ought to be provided for that purpose and unless this information prejudices the conduct of a criminal investigation or the prosecution of an offence.
61. Subsection (4) provides that, when establishing whether information ought to be shared, the outgoing service provider is, so far as reasonably practicable, required to ascertain and have regard to the views of the child or young person. In having regard to the views of a child, the outgoing service provider is to take account of their age and maturity (subsection (5)).
62. Subsection (6) provides that the outgoing service provider can only decide that information ought to be shared, for the purpose of section 23(3)(b), if the likely benefit to a child or young person’s wellbeing in doing so outweighs any likely adverse effect on their wellbeing.
63. Subsection (7) makes it clear that section 23 does not permit or require the sharing of information in breach of any legal prohibition or restriction on the disclosure of information, except a duty of confidentiality.

Section 24 – Duty to communicate information about role of named persons

64. Subsection (1) provides that a service provider, as defined in section 32, must publish, in such a manner as it considers appropriate, information about the operation of the named person service provided by it, including: details of how the named person functions are exercised; how to contact named persons in their area or establishment; how the service provider exercises its functions under Part 4; and any other matters they consider appropriate.
65. Subsection (2) states that service providers must provide the child or young person for whom they are providing the named person, and their parents, with details of how to contact named persons in their area as soon as is reasonably practicable after they become the service provider for the child, and as soon as is reasonably practicable after there is any change in those arrangements.

Section 25 – Duty to help named person

66. This section provides that where it appears to a service provider that another service provider or relevant authority could, by doing something, help in the exercise of any of their functions as provider of a named person, the other service provider or relevant authority must comply with a request for help. This could entail the relevant authority providing assessments or analysis, chronologies of significant events or any other information which would assist the named person in assessing the overall needs of the child and determining how they can be met. This duty to comply with a request applies unless the request is incompatible with any of its own duties or unduly prejudices the exercise of any of its functions. Schedule 2 contains a list of relevant authorities.

Section 26 – Information sharing

67. Subsections (1) and (2) provide that a service provider or relevant authority (as listed in schedule 2) must provide to the service provider in relation to a child or young person information which it holds if it considers that: it is likely to be relevant to the exercise of the named person functions; it ought to be provided for that purpose; and its provision would not prejudice the conduct of any criminal investigation or the prosecution of any offence.
68. Subsections (3) and (4) provide that a service provider in relation to a child or young person must provide, to a service provider or relevant authority, any information which it holds that is likely to be relevant to the exercise of any function of the service provider or relevant authority which affects or may affect the wellbeing of the child or young person. This applies where the service provider in relation to the child or young person considers that the information ought to be provided for that purpose and where its provision would not prejudice the conduct of any criminal investigation.
69. Subsection (5) requires that, in establishing whether information ought to be shared, the information holder is, so far as reasonably practicable, required to ascertain and have regard to the views of the child or young person. In having regard to the views of a child, the information holder is to take account of their age and maturity (subsection (6)). Subsection (7) provides that the information holder can only decide that information ought to be shared, for the purpose of subsection (2)(b) or (4)(b), if the likely benefit to the child or young person's wellbeing in doing so outweighs any likely adverse effect on their wellbeing.
70. Subsections (8) and (9) provide that the named person service provider may provide to a service provider or relevant authority any information they hold which is necessary or expedient to help them carry out their named person role.
71. Subsection (11) makes it clear that section 26 does not permit or require the sharing of information in breach of any legal prohibition or restriction on the disclosure of information, except a duty of confidentiality.

Section 27 – Disclosure of information

72. Section 27 applies where a person (“the recipient”) receives information in accordance with Part 4 of the Act which has been provided in breach of a duty of confidentiality and where the recipient has been made known of this breach. The recipient is not then to provide that information to anyone else (a third party), unless they are permitted or required to provide that same information to the third party by virtue of any enactment (including Part 4) or any rule of law.

Section 28 – Guidance in relation to named person service

73. Section 28 provides that all persons listed in subsection (2) must have regard to any guidance issued by the Scottish Ministers about exercising functions under Part 4.
74. Subsection (3) provides that before issuing or revising guidance, the Scottish Ministers must consult with any person to which it relates and such other persons as they consider appropriate.

Section 29 – Directions in relation to named person service

75. This section provides that all persons listed in subsection (2) must comply with any direction issued by the Scottish Ministers about the exercise of functions conferred by Part 4. Before issuing, revising or revoking a direction, the Scottish Ministers must consult the any person to which it relates and such other persons as they consider appropriate.

Section 30 – Complaints in relation to Part 4

76. Section 30(1) provides that the Scottish Ministers may, by order, make provision about the making, consideration and determination of complaints concerning the exercise of functions conferred by or under Part 4. Subsection (2) details the matters which may be included in any such order. Subsection (3) provides that any order made under subsection (1) may modify any enactment.

Section 31 – Relevant authorities

77. Section 31(1) provides that the persons listed in schedule 2 are “relevant authorities” for the purposes of Part 4 (subject to subsection (3)). Subsection (2) allows the Scottish Ministers to modify schedule 2 by order. Subsection (3) provides that the Commissioner for Children and Young People in Scotland and a body which is a “post-16 education body” for the purposes of the Further and Higher Education (Scotland) Act 2005 are not relevant authorities for the purposes of section 29 – they are therefore not subject to the duty to comply with directions issued under that section. Subsection (4) provides that an order under subsection (2) which adds a person to schedule 2, may modify this section so as to provide that the person is not a relevant authority for the purposes of section 29 – this similarly allows the duty to comply with directions to be disapplied if required.