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STATEMENT ON NAMED PERSON - Deputy First Minister

Deputy First Minister John Swinney
Parliament
8th September 2016

Since the Scottish Parliament was reconvened in 1999, there have been a number of issues on which it has spoken with one voice. One example of those issues is the importance of ensuring the best possible start in life for every child in our country.

This Parliament has agreed on a number of occasions, over a number of years and across different administrations, that the Getting It Right for Every Child (GIRFEC) policy is the best way of promoting the best interests of our children and young people.

I would like to take the opportunity to set out the principles which underpin the GIRFEC approach and why they are so crucial in driving Scottish Government policy for children.

GIRFEC is the national approach in Scotland to improving outcomes and supporting the wellbeing of our children and young people by offering the right help at the right time from the right people. It supports them and their parent(s) to work in partnership with the services that can help them.

It puts the rights and wellbeing of children and young people at the heart of the services that support them – such as early years services, schools, and the NHS – to ensure that everyone works together to improve outcomes for a child or young person. It is an agenda that enshrines the principle of early intervention that was championed by the Christie Commission and embraced by this Parliament and several of its committees over many years of inquiry.

Fundamentally decent aims and ones that this Parliament has endorsed repeatedly on a cross-party basis. Aims which have been welcomed by children's charities and the teaching and nursing professions.

And it is against that backdrop of a shared commitment to children's wellbeing that the Named Person service was developed.

It was through the recognition – based upon real life experiences and expert advice – that a timely and early offer of advice or help can prevent troubles from becoming crises and, in some cases, crises from becoming tragedies.

The GIRFEC approach is one that works. It was taken forward in Highland, where the value of the named person role as a central point of contact was first identified by parents, and rolled out across the authority between 2008 and 2010.

Since then, more families have been receiving additional support, and more quickly. This means there has been less need for compulsory measures, and the needs of many children have not escalated. Between 2007 and 2013, the number of referrals to the children's reporter in Highland dropped from 2,335 to 744 – a drop of 68% in these complex, sensitive and costly processes.

The number of children on the child protection register and the number of looked after children have been sustained at 15/20% lower than prior to the GIRFEC approach being introduced. Moreover, social work case-loads have reduced by up to 50% from previous levels, now averaging around 15 at any one time. Accordingly, early intervention is getting more support to more children, and those who need higher levels of intervention, are also receiving that.

Those figures represent progress. But the arithmetic represents something far more valuable. It represents the opportunity for young lives to be improved at an earlier stage and significantly so. Those are the benefits that we want to bring to the whole of Scotland.

While I accept that political support has not been universal, there has been - and continues to be - broad political and stakeholder support for the policy. However the named person service has been subject to a legal challenge which has cast uncertainty over its scope and legality.

Although both the Outer and Inner House of the Court of Session upheld the provisions of the Children and Young People (Scotland) Act 2014, on 28 July, the Supreme Court determined that Ministers needed to provide greater clarity about the basis on which health visitors, teachers and other professionals supporting families will share and receive information in their named person role. They ruled that the information-sharing provisions of Part 4 of the Children and Young People (Scotland) Act 2014 are incompatible with Article 8 of the European Convention on Human Rights and that changes are needed to make those provisions compatible with Article 8, to ensure respect for one's "private and family life, his home and his correspondence".

In recognition of the changes that are required in the legislation, I laid the necessary orders to pause commencement of the relevant parts of the Act, to ensure that all provisions were not commenced as intended on 31 August.

Since the Supreme Court judgment I have provided Parliament and key stakeholders and practitioners with regular updates on procedural progress in regard to amending the legislation. I welcome this opportunity to bring Parliament right up to date with the next steps.

Crucially, the Supreme Court ruled definitively that the principle of providing a named person for every child does not breach human rights and is compatible with EU

law. They described the intention of the policy as “unquestionably legitimate and benign.” They rejected the petitioners’ argument that the legislation relates to reserved matters.

So the attempt to scrap a service which can bring benefits to young people and their families in different areas of Scotland failed. And this Parliament – which passed the necessary legislation on a cross-party basis with no votes against – was vindicated.

For the avoidance of any doubt, this Government remains absolutely committed to the named person service. The Supreme Court judgment does not dilute our commitment but it has required us to revise part of the legislation to ensure that it is compatible with the ECHR.

We want the legislation to achieve exactly what the Supreme Court says it needs to achieve; compatibility with Article 8 along with greater clarity around the information sharing provisions.

I am keen to commence the provisions of this Act as early as possible. However I am also keen to pursue an inclusive approach – one that takes this Parliament, stakeholders and the wider public with it.

We recognise that information sharing has been an important issue for practitioners and the public alike. We want to ensure that there is a clear consensus across Scotland on how information sharing should operate. That must include the essential principle of consent, and the rare occasions when it is not appropriate to require or seek it.

That must be addressed through open dialogue. For that reason, the Scottish Government will undertake a three month period of intense engagement in Scotland – we will take input from practitioners as well as parents, charities as well as young people, those who support the Named Person policy and those with concerns. I intend to involve the offices of the Children’s Commissioner and the Information Commissioner as we look to address the Supreme Court judgment effectively.

In order to address the concerns raised by the Supreme Court we will discuss the principles that should underpin the legislation, and the development of a code of practice to set out how information should be shared under the legislation. This work will be taken forward by the Minister for Childcare and Early Years and by me.

Once that engagement ends and we have an agreed way to proceed I will return to Parliament and announce the next steps in terms of legislation. However it is my ambition to work towards a commencement date for the legislation of August 2017.

Let me address one final point - the judgment itself does not require current policy to change. The judgment relates only to the information sharing provisions that were intended to come into force under the 2014 Act, not to current practice under GIRFEC policy.

Any sharing of personal information that takes place now or in the future must be done in accordance with the Data Protection Act 1998 and the Human Rights Act 1998. A local authority or health board can nominate a person as the ‘Named Person’ for a particular child, and to arrange for that person to be responsible within the local authority or health board for the provision of services to that child. Organisations can, within the framework of the existing law, continue to deliver or engage with existing or developing ‘named person’ services.

So my message to local authorities and health boards is a clear one – please continue to develop and deliver a named person service in your area, to make the benefits of the service available to every child who needs it.

I am all too aware of the debilitating impact that the peddling of misinformation has on practitioners and stakeholders. And I say to them today – thank you for your efforts in providing the best support network possible for every child in our country. Ministers know that what drives you every day is doing the best you can for the children with whom you interact.

The commitment to the provision of a named person service has not wavered. The commitment to enshrining all aspects of the service in legislation, at the earliest possible date following appropriate and inclusive consultation, is absolutely resolute.

As a Parliament we have made significant progress on the GIRFEC agenda. That progress has been enabled and facilitated by cross-party consensus on what is important and how improvements to the life chances of Scotland's children and young people can be achieved.

The Supreme Court judgment provides us with an opportunity to amend the information sharing provisions in the 2014 Act in a way that improves the named person service and reassures parents and practitioners and the wider public. It provides us with the opportunity to continue in the spirit of shared purpose and consensus – to getting it right for every child.