



The Scottish Parliament
Pàrlamaid na h-Alba

EDUCATION AND SKILLS COMMITTEE

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By Email

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Dear John

I am writing to update you on the deliberations of the Education and Skills Committee on the Children and Young People (Information Sharing) (Scotland) Bill at Stage 1.

For any proposed legislation, committees have a crucial role at Stage 1 to consider the evidence and whether the general principles of a bill should be supported. This includes scrutinising the policy intentions of a bill but also considering whether the way a bill seeks to deliver a policy is workable in practice. In relation to this bill that includes whether the information sharing provisions in the bill can be implemented in such a way that provides practitioners, such as health visitors and teachers, clarity in the delicate process of identifying a) whether they hold relevant information and b) whether they should seek to share it to "promote, support or safeguard the wellbeing of the child or young person". The whole Committee shares the Scottish Government's desire to provide clarity for practitioners and families and to pass robust legislation that is not open to further successful legal challenge.

Throughout scrutiny the Committee has been very clear that it is being asked to scrutinise a bill that is seeking to enable consistency of approach in information sharing in a manner that addresses the Supreme Court's concerns. It is not being asked to consider the merits of the named person scheme as a whole as the Parliament passed the legislation proposing the scheme in 2014 and the Supreme Court found the aim of the scheme to be "unquestionably legitimate and benign".

As you are aware, two of the main themes in our evidence taking have been:

- whether the bill, in conjunction with the binding Code of Practice on information sharing that the bill would create, could satisfy the concerns raised in the Supreme Court judgment on the named person information sharing provisions in the 2014 Act; and
- whether the Code of Practice will be a clear and usable document for those considering whether to seek to share information under the terms of the bill.

As we have conveyed to you previously, the Committee considers that the contents of the Code of Practice is vital to the effective implementation of this bill. A number of organisations have highlighted how crucial the operation of the code is to the implementation of the bill. Indeed some organisations have suggested that their support for the bill is contingent upon the contents of the code.

The Committee understands from your correspondence, on 27th September and 24th October respectively, that you are not minded at this stage to consult on a code until after both the UK data protection bill and the information sharing bill before this Committee have been passed. The Committee is concerned that, if this approach is followed, there will be no opportunity for this Committee to consider a draft code alongside the bill at Stage 1.

Based on the evidence heard to date, the majority of the Committee do not consider that they are able to make a decision on whether to recommend that the general principles of the bill be approved at Stage 1 until the Scottish Government has provided the Committee with an authoritative draft of the code. By an authoritative draft, the Committee means a draft that reflects changes in data protection law which will result from the passage of the UK Data Protection Bill and the subsequent Scottish Government consultation on a draft code.

If the Committee was able to scrutinise an authoritative draft of the code alongside the Bill, and establish how the two would operate in conjunction, the Committee would then be in a better position to consider whether to recommend the general principles of the Bill at Stage 1. This approach would require the Committee to seek an extension to its Stage 1 deadline from the Parliamentary Bureau for approval by the Parliament. The whole Committee agreed that we should highlight this position to the Scottish Government at this stage. In responding to the current position, it would be very helpful if you could indicate an estimated timescale for the provision of such a draft code.

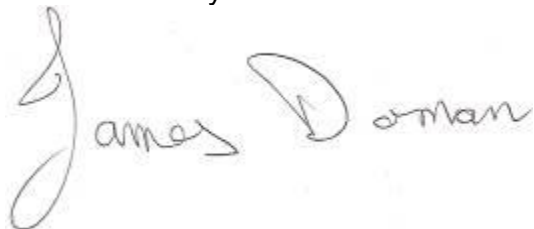
One merit of extending Stage 1 in this way would be that all stakeholders would be afforded the opportunity to consider any further measures to strengthen the implementation of the Bill that you announced in November. These measures, including additional funding, a public awareness campaign and a desire to ensure the Parliament has final approval of the Code may well increase support for the bill. On that basis stakeholders may wish to submit supplementary evidence to the Committee reflecting a revised position.

The whole Committee absolutely recognises the need for the Scottish Government to explore with stakeholders ways in which legislation and any associated policy proposals can be improved, including with a view to amending a bill at stages 2 and 3 where necessary. The Committee is aware that a number of stakeholders that Government officials have engaged with have altered their position on the Bill as a direct result of these discussions.

As you are aware some members of the Committee have questioned whether the Scottish Government sought to directly influence evidence to the Committee. In order to ensure we can remain entirely focussed on scrutiny of this bill, the Committee has asked if you could confirm that the Government's discussions with witnesses were limited to explaining the Scottish Government position, seeking deeper understanding of the issues stakeholders were raising and where appropriate discussing potential solutions.

The Committee would be grateful if you could consider this letter at your earliest opportunity.

Yours sincerely

A handwritten signature in black ink that reads "James Dornan". The signature is written in a cursive style with a large, looped initial 'J'.

**JAMES DORNAN MSP
CONVENER**