

# Children (Care, Care Experience and Services Planning) (Scotland) Bill

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## Policy Memorandum

### Introduction

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Children (Care, Care Experience and Services Planning) (Scotland) Bill introduced in the Scottish Parliament on 17 June 2025.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 74–EN);
  - a Financial Memorandum (SP Bill 74–FM);
  - a Delegated Powers Memorandum (SP Bill 74–DPM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 74–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### Overview of the Bill

4. In 2020, the Scottish Government made the Promise that all children in Scotland will grow up feeling loved, safe and respected. The Government promised to achieve this by implementing the conclusions of the Independent Care Review by 2030.
5. Since 2020, significant work has been undertaken at both a national and local level across Scotland to keep the Promise<sup>1</sup>. This has focused on ensuring that the right support is available to families at the right time, whether through the Whole Family Wellbeing Fund; the introduction of the Scottish recommended allowance for kinship and foster carers which benefits more than 9,000 families; or the ending of the placement of children in young offenders institutions in Scotland.

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<sup>1</sup> [The Promise - PDF](#)

6. There is clear evidence that progress has been made, and Scottish Government will continue to track and review the progress towards keeping the Promise through the Promise Progress Framework and the Promise Stories of Change, developed jointly between Scottish Government, COSLA and the Promise Scotland. However, there is still a way to go to ensure that the Promise is kept by 2030 and, as recognised by the Promise and across our work, some of the necessary changes require legislation. This Bill takes forward a series of measures necessary to keep the Promise.

7. This Bill has been informed by the key findings of the Independent Care Review and the Scottish Government's December 2023 response<sup>2</sup> to the independent 'Hearings for Children' report<sup>3</sup>, published in May 2023, combined with the wide range of engagement and consultation work that has been underway throughout 2024 and 2025. This consultation once again highlighted that every child's journey through the care system will be unique and the support they need will vary depending on these circumstances. Throughout this work, the focus has remained on the voices of those with care experience. As set out by Nicola Sturgeon, the then First Minister, at the start of the Promise journey in February 2020:

"the priority when a child needs our care must be the provision, not of a series of placements or arrangements driven by the needs of bureaucracy, but of stable, safe, secure, loving homes that allow them to experience the joys and normal challenges of growing up, and to fulfil their potential in life."<sup>4</sup>

8. In order to allow for these relationships to form, the Bill will make legislative changes in eight key areas. Each of these changes falls at different stages of a child's potential interaction with the care system, from the Children's Hearings Redesign, to expanding the support available to those who are transitioning out of children's services and into adulthood. The changes included in this Bill are only part of the wider work being done across Scotland to keep the Promise and only reflect the legislative changes that need to be made.

9. The key areas which are included in the Bill are:

- extension of eligibility to receive aftercare support;
- introduction of a right to advocacy for children, young people and adults with care experience;
- guidance in relation to 'care experienced';
- legislative steps to address issues around profit from residential care;
- strengthening the not-for-profit principle in relation to foster care;
- provision for a national register for foster carers;
- redesign of the Children's Hearing's System;

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<sup>2</sup> [Hearings for Children Report: Scottish Government Response](#)

<sup>3</sup> [Hearings for Children Report](#)

<sup>4</sup> [Report of Independent Care Review: First Minister's speech](#)

- extension of the statutory responsibility to Integration Joint Boards in the development of Children Services Plans.

## **A summary of each legislative proposal**

### **Extension of eligibility to receive aftercare support**

10. The Bill will expand eligibility for aftercare to a wider group of care experienced children and young people by introducing a right for those who were ‘looked after’ but who left care before their 16th birthday to apply for aftercare from their 16th birthday up to age 26, subject to an assessment of their needs. By widening eligibility for aftercare, the Scottish Government will frontload support for those who require it at a time when it is most needed. By upstreaming support, it will improve outcomes for young people with care experience who may require support from social work services and their partners to enable a positive transition into adulthood and to help them thrive.

### **Introduction of a right to advocacy for children, young people and adults with care experience**

11. The Promise states that “care experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond.” There is already a complex advocacy landscape in Scotland, but in order to ensure that lifelong independent advocacy is available to those with care experience when they need it, the Bill places a duty on Scottish Ministers to make provision for advocacy support for people with care experience.

### **Guidance in relation to ‘care experience’**

12. The Promise states that language is important in normalising care experience. It can address stigmatising assumptions, attitudes and behaviours that can impact on all areas of a child or young person’s life, now and into the future. There are also a range of existing supports and entitlements available specifically to those with care experience, however eligibility for existing supports is not currently connected by a universal definition. To build on existing local good practice, the Bill places a requirement on Scottish Ministers to publish guidance in relation to ‘care experience’. The guidance will raise awareness and understanding of care and care experience and set a national and consistent direction for the language used in and around the care system.

### **Legislative steps to tackle profit from residential care:**

13. The Promise is clear that there is no place for profiting in how Scotland cares for its children and that Scotland must avoid the monetisation of the care of children and prevent the marketisation of care by 2030<sup>5</sup>. To align with this and uphold the principles

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<sup>5</sup> [The Promise – PDF](#) – pages 77 and 110.

of the Promise, the Bill enables the Scottish Ministers through regulations to enhance financial transparency by requiring certain residential childcare providers to provide financial and other relevant information about the operation of their services. In addition, should it be determined that excessive profits are being made, Scottish Ministers also have enabling powers through this Bill to make further regulations to limit profit being made from children's residential care. This seeks to ensure that excessive levels of profit are not made from local authorities and from finite public funds, in relation to the provision of accommodation and services for vulnerable looked after children in Scotland.

## Strengthening the not-for-profit principle in relation to foster care

14. To align with the vision and commitment in The Promise and in response to the call that no one should profit from the care of children, the Bill will require all Independent Fostering Agencies (IFAs) in Scotland to be registered charities. This change will close existing loopholes that may allow public funds to be diverted for private gain, ensure that all surplus is reinvested into services for children and carers, and create a consistent legal and regulatory framework across the sector. The measure strengthens financial transparency, public accountability, and fairness between fostering providers, while supporting long-term stability in the fostering system.

## A national register for foster carers

15. The Promise states: "Scotland should consider a national register for Foster Carers recognising that they care for children within their own home. That must operate in a supportive way that is aligned to the underlying values of how Scotland must care." The Bill gives the Scottish Ministers the power to make arrangements for the establishment (and maintenance) of a national register for foster carers. The approval of carers are functions of the foster care panel, and prospective foster carers are required to undergo suitability checks prior to being approved as foster carers. These checks include a criminal background check facilitated by Disclosure Scotland. The creation and maintenance of a national register is intended to increase safeguarding; provide the data to enable a better understanding of where more foster carers are needed; and improve the status of foster carers by bringing foster carers in line with other parts of the children's workforce who are registered and regulated.

## Redesign of the Children's Hearings System

16. The children's hearings system offers legal protections to children who are in need or at risk, and who require its support. Limiting compulsory measures of care only to those children for whom that is required, and only for as long as compulsory intervention is needed, remain fundamental principles. The changes outlined below are part of a much wider redesign of the children's hearings system which aims to protect children and families from further trauma.

## **Extending the statutory responsibility to Integration Joint Boards in the development of Children Services Plans:**

17. The Bill places the same duties on local authorities and health boards to participate in the development and implementation of children's services planning under Part 3 of the Children and Young People (Scotland) Act 2014 on integration joint boards (IJBs). This will create a tripartite accountability between the three public bodies in respect of children's services plans (preparing, reviewing, implementing, reporting and directions from Scottish Ministers).

18. This Bill is only one aspect of the work that is being done to keep The Promise by 2030 but it is a vital one. The legislative changes made by this Bill will enable the Scottish Government to ensure that change and progress continue.

## **The Bill's guiding principles**

19. The changes required to keep The Promise are significant and wide-ranging and legislation is an important factor in making these changes. However, there is a need to maintain focus when drafting legislation and therefore, the changes proposed by the Scottish Government in this Bill are based on the guiding principles laid out below:

### **Only legislate where necessary**

20. We know that the legislative landscape surrounding the care of children and young people is already complex and wide ranging, and further legislation should aim not to add unnecessarily to this. For this reason, careful consideration has been given as to whether the changes proposed require a legislative response in particular through primary legislation or would be better addressed through strengthened application of existing legislative provision, an improved partnership approach, structural or practice change or revisions to resourcing.

### **All changes must be evidence-based**

21. Any legislative changes must be based on sound evidence and analysis. The Independent Care Review provides a strong foundation for what is required, informed by the voices of 5,000 children, young people and representatives of the workforce across Scotland. Over the course of the last five years progress has been made and further engagement has been undertaken that is informing what we need to do next.

### **The changes made by the Bill must be sufficiently resourced**

22. Scottish Government considers it vital to ensure that all changes made by the Bill are sufficiently resourced. More information on the consideration of this principle is contained within the Financial Memorandum which outlines the best estimates of the administrative, compliance and other costs to which the provisions of the Bill will give rise.

## Retain focus on Keeping the Promise by 2030

23. There are a number of changes that need to be made within the realm of children's care, however, in order to ensure that the Bill remains focused, the Scottish Government is focussing on those areas directly related to the Promise. There are a number of areas of wider policy change for which a legislative solution may be required and as 2030 approaches, there may be requirement to consider these within future legislative activity.

## Ensure that the lived experience of children and young people and their families remains at the heart of the legislation

24. The Promise is clear that the voice and experience of the care experienced community must inform and be involved the work that we do. Throughout the development of the Bill and onward through its implementation, the Scottish Government considers that it is imperative to ensure that the changes proposed truly meet the expectations and needs of the communities that they are intended to support.

## Policy objectives of the Bill

### Support for young people transitioning from care, including aftercare

#### Background

25. Young people with care experience may have experienced adversity in early life. The Independent Care Review<sup>6</sup> highlights the impact of having been in care can have on outcomes in later life including increased risk of poor mental health, addiction, homelessness and exploitation. People with care experience are reported to be over one and a half times more likely to experience financial difficulties and have more than double the chance of experiencing homelessness, mainly before age 30. The transition into adulthood is one where young people with care experience may be particularly vulnerable and we need to ensure that the right supports are in place at the right time. The Scottish Government recognises that young people who leave care prior to their 16th birthday may face similar adversity to those who leave care at age 16 and beyond. By expanding the provision of aftercare, more young people with care experience will receive person-centred support from age 16 up to age 26, and potentially beyond, to help them successfully transition to adulthood and thrive.

26. Aftercare is a policy to support young people who fall within the definition of 'looked after'<sup>7</sup> in Scotland. Local authorities are currently under a number of legal duties to safeguard the needs of children and young people who are engaged in the children's care system, including as they transition to adulthood.

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<sup>6</sup> [Independent Care Review – The root and branch review of Scotland's care system.](#)

<sup>7</sup> As defined by sections 17(6) and 17A of the [Children \(Scotland\) Act 1995](#)

27. Young people leaving care on, or after, their 16th birthday who are not in receipt of continuing care are eligible for aftercare up to age 26 (subject to an assessment of their needs). Some adults continue to receive support through aftercare beyond this age where a local authority assesses that this is appropriate for their needs. Aftercare constitutes advice, guidance and assistance beyond universal support services to meet the needs of securing accommodation, accessing education and employment opportunities and maintaining financial wellbeing.

## Changes being made by the Bill

28. Section 1 of the Bill amends section 29 of the Children (Scotland) Act 1995 (“the 1995 Act”) to expand the provision of aftercare to a wider group of children and young people with care experience by introducing a right for those who were ‘looked after’ but left care before their 16th birthday to apply for aftercare from their 16th birthday up to age 26.

29. Eligible young people who leave care prior to their 16th birthday will have the right to request advice, guidance and assistance from a local authority, and the local authority will then be under a duty to conduct an assessment of need for that young person. If the young person is found to have ‘eligible needs’<sup>8</sup>, the local authority must provide support to meet those needs.

30. Eligible young people are those who have been “looked after”<sup>9</sup> within the meaning of section 17(6) and 17A of the 1995 Act before their 16th birthday. That includes those who were looked after at home, within foster or kinship families, or in residential care, as well as those who have been adopted and were previously looked after. Eligibility will also extend to children and young people who left secure accommodation before their 16th birthday, as well as unaccompanied asylum-seeking children who arrive in Scotland before their 16th birthday and disabled children and young people who have received care under section 25<sup>10</sup> of the 1995 Act. It should be noted that the proposed guidance on the “Definition of Care Experience” will not alter eligibility requirements to aftercare.

31. The Bill also amends section 30 of the 1995 Act, expanding local authorities’ powers to provide financial assistance towards education and training expenses to include those aged 16 to age 26 who were looked after but who left care before their 16th birthday. Furthermore, section 3 of the Bill amends the corporate parenting duties at section 57 of the Children and Young People (Scotland) Act 2014, so that those aged under 26 who have left care at any point in their life are also in scope.

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<sup>8</sup> Article 2 of the Aftercare (Eligible Needs) (Scotland) Order 2015 specifies, for the purposes of section 29(8) of the 1995 Act, types of support which constitute “eligible needs”.

<sup>9</sup> The Independent Care Review heard from children and young people that language, including terms such as “looked after” and “aftercare”, can compound a sense of being different, exacerbate low self-esteem and be stigmatising. Many of Scotland’s data collections use these terms to reflect legal definitions or precise statistical details. In those cases, these specific words or phrases are used to ensure clarity about what is being described, and to avoid any confusion or misinterpretation around the analysis presented.

<sup>10</sup> Section 25 [Children \(Scotland\) Act 1995](#)

## Alternative approaches

### Retaining current eligibility for aftercare

32. An alternative approach to expanding aftercare eligibility would be to retain current eligibility criteria. Though many respondents to the 'Moving On' from Care into Adulthood consultation<sup>11</sup> favoured extending eligibility for aftercare, some of the public bodies and social work organisations which responded were of the view that there should be no changes to the eligibility criteria for aftercare on the basis that the focus should be on improving implementation and the current uptake of aftercare. Overall policy development will include work to improve the provision and uptake of aftercare.

33. However, the Scottish Government has heard through engagement events and from other respondents to the consultation that some young people who have been "looked after" and left care before their 16th birthday may face the same challenges as those who leave after their 16th birthday. It is important therefore to extend support to those young people.

### Removing the upper age limit for aftercare eligibility

34. Another alternative approach considered was to remove the 26 age cap for aftercare. In responses to the consultation and during engagement events, some respondents expressed concern about the abrupt end to support, highlighting the anxiety that this can cause some young people as they approach age 26. Several respondents were in favour of removing the 26 age cap and offering aftercare support beyond that age if required.

35. The Independent Care Review recommended that, "Aftercare must take a person-centred approach, with thoughtful planning so that there are no cliff edges out of care and support."

36. Part 10 of the Children and Young People (Scotland) Act 2014 extended entitlement to aftercare to those leaving care post-16 and up to age 26. Aftercare aims to help young people to thrive in adulthood.

37. Local authorities have a discretionary power to continue to support adults beyond this age and some local authorities responding to the consultation stated that they use this discretion. This discretionary power will be available to local authorities in respect of the expanded cohort of children and young people who will now be eligible for aftercare under the new provisions.

38. Removing the upper age limit for aftercare may place pressure on resourcing and finance within the system which could act as a blocker to the policy intention of providing aftercare to those who are most in need. Aftercare is a service led by Children's Services and their partners, and it would not be appropriate for Children's

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<sup>11</sup> ["Moving On" from care into adulthood: consultation analysis - gov.scot](https://www.gov.scot/publications/moving-on-from-care-into-adulthood-consultation-analysis/pages/11.aspx)

Services to support adults indefinitely. Those aged 26 and above who are in need of support can of course seek this through universal service provision or relevant Adult Services.

## Consultation

39. On 9 August 2022, a public petition<sup>12</sup> was submitted to the Scottish Parliament calling on the Scottish Government to extend aftercare to those who were previously “looked after” before their 16th birthday. The petition was closed on 25 September 2024, in light of work being undertaken by the Scottish Government to keep The Promise.

40. On 11 July 2024, the Scottish Government published the ‘Moving on’ from care into adulthood consultation<sup>13</sup> which invited views on a wide range of issues impacting young people as they transition from care, including a question on whether there should be a change in the eligibility criteria for aftercare. A formal 12-week public consultation was undertaken from 11 July 2024 to 3 October 2024, and 69 responses were received from a wide range of stakeholders from public, private and third sector organisations and individuals. Non-confidential consultation responses were published on 6 January 2025 on the Scottish Government Citizens Space website<sup>14</sup>. The Scottish Government commissioned the independent consultancy organisation The Lines Between to undertake a formal analysis of consultation responses, and this report<sup>15</sup> was published on 6 January 2025.

41. Running parallel to the consultation exercise, the Scottish Government conducted a series of engagement events to discuss the issues impacting young people as they transition from care with a range of stakeholders and young people. In total over 100 people attended these events, 29 of whom were young people. These events were held online and in person, in Edinburgh, Glasgow and Polmont, from mid-2024. Questions on the issues impacting young people as they transition from care were posed to attendees, and their views were captured qualitatively through discussions. During the engagement sessions, young people and practitioners stated that some young people may benefit from expanding the criteria around who is eligible for support through aftercare where their experience of care may mean that they require support beyond universal service provision.

42. It was essential that the views of children and young people were represented in the consultation process, so, in addition to the consultation events facilitated by Scottish Government officials with young people, to further support engagement, Who Cares? Scotland were awarded a contract through the Children and Young People Participation (CYPP) Framework to lead engagement with care experienced children and young

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<sup>12</sup> [PE1958 Extend aftercare for previously looked after young people and remove the continuing | Scottish Parliament Website](#)

<sup>13</sup> [“Moving on” from care into adulthood: consultation - gov.scot](#)

<sup>14</sup> [Published responses for “Moving on” from care into adulthood consultation - Scottish Government consultations - Citizen Space](#)

<sup>15</sup> [“Moving On” from care into adulthood: consultation analysis - gov.scot](#)

people. The CYPP Framework was developed as part of the UNCRC implementation programme to respond to the growing need for children and young people's participation in decision-making and policy development. Through this programme of engagement, between November 2024 and January 2025, a further 34 care experienced young people (aged 9 to 25) from across Scotland shared their views and experiences. Concerns were raised by these young people about support available to young people who leave care prior to their 16th birthday.

43. The analysis of consultation responses indicated that respondents were broadly supportive of extending eligibility for aftercare to a wider group of children and young people. Respondents recognised that young people who leave care before age 16 may require additional support as they move into adulthood and that this should be based on previous care experience and current need. Feedback from the engagement undertaken alongside the consultation was similarly supportive. Many flagged that any extension of aftercare must be properly resourced.

44. Young people with care experience are likely to face additional challenges compared with other young people in terms of employment, education, training and housing<sup>16</sup>. The Scottish Government recognises the challenges for young people with care experience who are moving into adulthood. At any age and for any young person, moving on from home is a challenging time but when there are limited support networks in place, the challenge can be exacerbated. Through the expanded provision of aftercare, more young people with care experience will receive person-centred support from age 16 up to age 26, and potentially beyond, to help them successfully transition to adulthood and thrive.

## **Lifelong advocacy for people with care experience**

### **Background**

45. The Promise states that “care experienced children and adults must have the right and access to independent advocacy, at all stages of their experience of care and beyond.”

46. In 2022, The Promise Scotland undertook work to scope a national lifelong advocacy service and published their findings in a report [‘Scoping and Delivering A National Lifelong Advocacy Service For Care Experienced Children, Adults And Families’](#). Published in February 2024, the report scoped the core issues and identified the core principles that should underpin a national lifelong advocacy service and provided proposals and recommendations to inform next steps. The report did not include any financial analysis or modelling on the potential demand on an advocacy service. The Scottish Government has since taken forward engagement with key providers to further scope the advocacy landscape in Scotland for care experienced people. This includes considering the feasibility of the recommendations and potential resource requirements.

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<sup>16</sup> [Independent Care Review – The root and branch review of Scotland's care system.](#)

47. Who Cares? Scotland also submitted a report to the Scottish Government covering their own scoping work around potential approaches to provision lifelong advocacy for people with care experience. This is one of the calls for change in their Lifelong Rights Campaign, which was launched in 2023. The campaign stated that rights for people with care experience must be laid out in policy and legislation to address the additional barriers and that support to realise their rights must be available at any stage throughout their lives. Who Cares? Scotland also launched an Action on Advocacy campaign in March 2025, which includes calls for a statutory right to advocacy for people with experience of care.

48. A key recommendation to come from The Promise Scotland and Who Cares? Scotland is that a right to advocacy should be introduced, and that Children (Care, Care experience and Services Planning) (Scotland) Bill provides a potential legislative route to do this.

49. It is not intended that the legislative change will cut across or duplicate existing bespoke entitlements to advocacy services. There are challenges in understanding what the potential demand for advocacy support for people with care experience may be, which is acknowledged by stakeholders. Consideration has been given to the uptake of existing advocacy provision, such as through Children's Hearings System advocacy and Social Security advocacy to support disabled people in applying for benefits.

50. For children and young people, the existing advocacy provision provided through the Children's Hearings System will continue to be pivotal, as well as the current local authority led advocacy. However, scoping work has identified that while there is significant existing provision for children and young people with care experience in local authorities, there is inconsistency in terms of the level of provision. Work is underway to further develop the picture of existing advocacy support and where there are differences in support available.

51. The Independent Care Review <sup>17</sup> highlights the impact of having been in care can have on outcomes in later life including increased risk of poor mental health, addiction, homelessness and exploitation. Providing access to independent advocacy for young people transitioning out of care and throughout their lives can assist them in understanding their rights to various benefits and services and enable them to access these resources effectively.

## Changes being made by the Bill

52. Section 4 of the Bill includes a requirement on Scottish Ministers to make arrangements by regulations for the provision of independent advocacy support to those who have experience of care. This will enshrine a legal right of access to advocacy services.

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<sup>17</sup> [Independent Care Review – The root and branch review of Scotland's care system.](#)

53. In taking this approach, the regulations will enable an approach to implementation that will be tailored to fit the needs of care experienced people based on the stage they are at on their journey through care. Consideration is being given to ensure that advocacy support is available at the right stage of a person's care journey rather than focused exclusively on age.

54. It is intended that the approach to an advocacy service, which would inform the development of the regulations, will be co-designed with the care experienced community and the sector and supported by a clear timeline and programme for implementation.

## Alternative approaches

55. Stakeholders, including advocacy providers, have supported the view that there should be a right to advocacy for people with care experience. Consideration was given to setting out detailed provisions on how an advocacy service would operate on the face of the Bill. However, as part of engagement relating to advocacy and the potential universal definition of care experience, it is considered that doing this through regulations will provide a degree of flexibility to ensure that the right support is available during an individual's care journey and will be able to be updated in the future, to reflect future circumstances and needs of the care experienced community.

## Consultation

56. Scottish Government officials have facilitated a series of workshops with advocacy providers to discuss The Promise Scotland's scoping report<sup>18</sup> recommendations and further inform the understanding of the potential practical impacts and resource requirements of the recommendations. Advocacy providers have strongly supported the view that there should be a right to advocacy for people with care experience. Although they have acknowledged the risk that in some areas the resource is not currently in place to meet potential demand.

57. The Promise Scotland engaged with Barnardo's Scotland, CAPS Advocacy, the Scottish Independent Advocacy Alliance, East Ayrshire Advocacy Services, Who Cares? Scotland, and Aberlour Childcare Trust during the lifelong advocacy scoping exercise to facilitate regular feedback and gather suggestions and insights. This final scoping report reflects these discussions and incorporates the feedback and perspectives from the aforementioned advocacy organisations.

58. The recently published analysis report for the 'Moving On' consultation<sup>19</sup> sets out that several respondents highlighted the important role of advocacy as young people leave care. They felt they should have access to advocacy support to ensure they are being listened to and that their preferences and needs are heard as they leave care. It

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<sup>18</sup> <https://thepromise.scot/the-promise-scotland/what-the-promise-scotland-does/change-projects/national-lifelong-advocacy-service/>

<sup>19</sup> [Moving On Consultation Analysis Report](#)

also highlighted the need for improved planning, multi-agency working and systems between children's and adult services. Respondents suggested a more joined-up approach was required, as was the need to listen to young people or ensure lifelong access to advocacy services when they need them.

## Guidance in relation to care experience

### Background

59. The Promise sets out that the term 'care experience' has meaning for many people and it can be helpful as an understanding of personal identity and in understanding shared experiences. The Promise also outlines that there are existing supports and entitlements available specifically to people with care experience, however the definition and eligibility criteria for these supports can vary across different organisations.

60. As well as providing a sense of identity, there are existing supports and entitlements available to people with care experience, particularly young people with care experience. This is relevant in areas such as education, including further and higher education. However, there is not currently one cross-sector definition which is commonly understood and used in practice; or that acknowledges the individual experience of care that different people can have.

61. Eligibility for existing supports is not currently connected by a universal definition. This means that while eligibility for some existing supports may be linked to legal provisions such as the statutory definition of 'looked after', the wording used to define who is eligible to access support can vary between different organisations.

62. For example, the definition of 'care experience' published by [Universities Scotland](#) and the definition used by the [Care Inspectorate](#) are worded differently, but could, in practice, cover the same individuals so they can access certain rights and entitlements. However, the lack of a concise and shared definition risks causing confusion about who is included with both service providers and those with experience of care.

63. Examples of existing supports for people with care experience where the organisations administering support determine eligibility using their own definitions include:

### Support for care experienced students<sup>20</sup>

64. The Student Awards Agency Scotland (SAAS) is an Executive Agency of the Scottish Government which administers financial support to Scottish domiciled students studying a course of Higher Education in the UK. Since the 2017/18 Academic

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<sup>20</sup> [SAAS – Support for Care Experiences Students](#)

Year, SAAS have been administering a bespoke bursary for students who have care experience.

65. The Care Experienced Students Bursary (CESB) is available to students with care experience studying a full-time undergraduate course of Higher Education or a full-time course of Further Education. Students with care experience in Higher Education who need help with their accommodation costs during the summer period may also be eligible to apply for the Summer Accommodation Grant. The CESB is available to students who have experienced a range of types of care including kinship care and having been 'looked after' at home, however local authority involvement is required.

## **Care Experienced Children and Young People Fund (Scottish Government)<sup>21</sup>**

66. The Care Experienced Children and Young People Fund is a targeted resource provided to local authorities to support children and young people with care experience from birth to the age of 26. The term 'care experienced' refers in this context to anyone who has been or is currently in care at any stage in their life, no matter how short, including adopted children and young people who were previously 'looked after'.

67. The care may have been provided in one of many different settings such as in residential care, foster care, kinship care, or through being 'looked after' at home with a supervision requirement. This could include children and young people who are on the edges of care and who need support in order to avoid becoming care experienced. The funding is provided to local authorities and aims to improve the educational outcomes and experiences for children and young people with care experience.

68. As well as national level funding and support, there is local level funding and non-financial support available to people with care experience, which is managed by, for example, local authorities or higher and further educational institutions which use operational definitions and eligibility to set out who is able to access this.

69. As well as their duty to provide access to funded early learning and childcare (ELC) to all eligible pre-school children<sup>22</sup> (including care experienced two-year-olds), local authorities have powers to provide discretionary access to funded ELC to any other child, as they see fit. Scottish Government and COSLA agreed in 2021 that all local authorities will use these discretionary powers to provide early access to funded ELC to the children of care experienced parents, when the child turns two. Statutory guidance for local authorities provides high level guidance that they should use of a wide definition of 'care experience', and a pragmatic and sensitive approach to establishing eligibility. ([Eligible 2 year olds - Early learning and childcare: statutory guidance](#))

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<sup>21</sup> [Scottish Government Care Experienced Children and Young People Fund – Operational Guidance](#)

<sup>22</sup> [Funded Early Learning and Childcare](#)

70. The Promise states that language is important in normalising care experience and can address stigmatising assumptions, attitudes and behaviours that can impact on all areas of a child or young person's life, now and into the future. This includes overly formal language such as technical language, legal language or acronyms, which does not resonate with many people with care experience. The Promise tells us that for children, unintentional use of professionalised language can compound a sense of them being different, and the Care Review heard that it can feel belittling and have an impact on sense of self.

71. Since publication of The Promise, many areas have developed language of care guidance and changed practice to move away from some terminology. This includes:

72. Each and Every Child<sup>23</sup> - A key priority of the Each and Every Child initiative is to work alongside people with lived experience to explore the reframing techniques when they speak about care experience and the care system. A key part of this work is to raise awareness of framing and its potential to who have experience of care across Scotland.

73. Language in the Children's Hearings System - Our Hearings Our Voice <sup>24</sup> - a board of young people with current or recent experience of the children's hearings system are working on a project to improve language in the Children's Hearings System. They have created a group called 'Language Leaders', which includes young people and professionals who work in the Hearings System. They want to ensure that all children who attend children's hearings are supported to understand and be included, by changing the use of written and spoken language.

74. Language of Care: Clackmannanshire Council Language Policy<sup>25</sup> - A Language Policy for Clackmannanshire was developed through a Participation Network to address reframing the language of care. It includes key themes such as 'easy to understand' and 'non-judgmental'.

75. Write Right About Me: Aberdeen's multi-agency records improvement work, Aberdeen City Council<sup>26</sup> - Write Right About Me (WRAM) is a multi-agency improvement team aimed at developing ways of writing about children, young people and adults so that their voices are more strongly heard, and they can exercise their rights in their records.

## Changes being made by the Bill

76. Section 5 of the Bill includes a requirement on the Scottish Ministers to publish guidance relating in relation to 'care experience'. The purpose of this guidance is to develop a better understanding and awareness of care experience and the care system,

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<sup>23</sup> Each and Every Child

<sup>24</sup> Language in the Children's Hearings System - Our Hearings Our Voice

<sup>25</sup> Language of Care: Clackmannanshire Council Language Policy

<sup>26</sup> Write Right About Me: Aberdeen's multi-agency records improvement work | Aberdeen City Council

which in turn should help reduce stigma associated with individuals who have care experience. This will apply to all public authorities including Scottish Ministers, local authorities and wider corporate parents, in the course of their work and interaction with the care experienced community.

77. The guidance will describe what is meant by the term ‘care experience’, as well as wider guidance around language and terminology. It will also assist in raising awareness of social factors that can lead to involvement with the care system and how we drive the change required on how people think about care experience. The guidance will be co-designed with people with care experience and trusted organisations that have a leading role in the sector to address language and an understanding of the care system. This will enable a more flexible approach, which acknowledges a broad range of care experience, to developing guidance which can be reviewed and developed going forward to reflect future circumstances as we move towards 2030 and beyond.

78. It is not intended that the guidance will replace existing statutory definitions which apply to those who are care-experienced or affect their existing legal entitlements.

## Alternative approaches

79. A statutory definition of ‘care experience’ was considered throughout development of the Bill, including during consultation engagement. The consultation highlighted how the term care experience is currently understood and used in practice in a broad and inclusive way. While a statutory definition would enshrine the definition in primary legislation, on balance it was considered that the rigid nature a statutory definition risked the potential to exclude groups of people from such a definition due to too tightly setting parameters.

80. It was therefore proposed that the Bill includes a requirement on Scottish Ministers to publish guidance in relation to care-experience including in relation to the language of care. Publishing the guidance would provide the opportunity to progress views heard during the consultation about wider language and terminology. This would be progressed with a view to bringing about greater consistency around the language of care among those providing services, as well as potentially encouraging a more expansive view as to who is included as care experienced rather than who is excluded when services are provided.

## Consultation

81. A public consultation on ‘Developing a Universal Definition of “Care Experience”<sup>27</sup> was launched on 9 October 2024 and ran for a period of 16 weeks, closing on 31 January 2025.

82. The consultation included two sections. The first section asked for views on the need for a universal definition of ‘care experience’, the potential scope of a definition

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<sup>27</sup> <https://www.gov.scot/publications/consultation-developing-universal-definition-care-experience/>

and who this could include, and what the potential impacts of a universal definition could be. The second sought views on the wider language of care, and how to build on existing local good practice to set a national direction for language that is used relating to care.

83. A programme of engagement was progressed to support the consultation which consisted mainly of online workshops with stakeholders and the care experienced community. Stakeholders from a range of sectors and organisations engaged in this process including health, local authorities and the third sector. The outputs of these engagement sessions were considered alongside written responses to the consultation.

84. A total of 142 written responses to the consultation were received. Of these, 71 responses were received from individuals and 71 responses were from organisations. Of the organisational respondents, 41 had duties as corporate parents under the Children and Young People (Scotland) Act 2014. Scottish public bodies defined as corporate parents include local authorities, health boards and post-16 education bodies for further and higher education. Written consultation responses and the independent analysis report will be published once these are available.

85. While respondents were not asked directly about the involvement of young people in preparing their response, 11 organisations provided information highlighting the contribution of young people or people with experience of care. For example, Falkirk Council's Champions Board Under 16s group held a focus group and South Ayrshire Council's response was informed by questionnaires completed by 31 individuals who identified as care experienced and 14 young people who took part in four focus groups. The Care Inspectorate spoke with young people with care experience who volunteer with them, MCR Pathways received input from young people with care experience who are part of their Young Talent Programme and Young National Advisory Board, and the Scottish Youth Parliament also held focus groups. Similarly, some individuals referenced their own lived experience in their response.

86. Consultation respondents were broadly supportive of creating a universal definition of 'care experience', with 80% of all respondents agreeing to some extent that this is needed. A range of reasons were provided to support the view that a universal definition of care experience would have a positive impact. This included that a universal definition would bring consistency in the understanding of care experience across sectors and services and be particularly useful in relation to multi-agency partnership working.

87. Other positive impacts included that a universal definition would provide clear pathways for assistance and support and increased awareness of the assistance and support available for people with care experience and clear pathways for how to access support, and that a universal definition of care experience, alongside wider work to improve language, was important in addressing stigma and discrimination that can be associated with being in care. Many respondents also highlighted that a universal definition would be useful in helping people to embrace their experiences and create a community around a shared identity and shared experiences.

88. The consultation sought views on the potential disadvantages or unintended consequences of a universal definition of care experience. Many respondents suggested that the biggest potential disadvantage was that it could exclude certain groups or people who currently identify as care experienced. Concerns highlighted included that a universal definition could set rigid limits around who can be considered to have care experience and narrow the scope of care experience as it is currently understood and used in practice. Conversely, there were also respondents concerned about a definition being too broad or vague, that this could oversimplify care experience and that a one-size-fits-all approach could be off putting.

89. Other concerns highlighted included resourcing pressures on services if a universal definition broadens eligibility of accessing support and that a universal definition could increase the stigma around care experience. The importance of the input of people with lived experience, service providers, and carers to ensure the definition is inclusive and supportive was highlighted.

90. The potential scope of a definition was also explored as part of the consultation. This was focused on the experiences of care settings that individuals can have including, but not limited to, foster care, kinship care (looked after children and non-looked after children), children who are looked after home and residential care. Responses demonstrated support for a definition which is broad and inclusive.

91. To further support engagement, Who Cares? Scotland were awarded a contract through the Children and Young People Participation (CYPP) Framework to lead engagement with care experienced children and young people. Who Cares? Scotland engaged with 28 care experience children and young people specifically about Developing a universal definition of 'care experience' consultation.

92. Through this engagement, the majority of participants agreed the definition taken from The Promise is fully reflective of care experience. Several participants felt that any definition should be inclusive of all ages and types of care experience and care journeys. Hopes for the future for care experienced individuals included greater inclusion, genuine agency, appropriate lifelong support, and better, fairer life.

93. The second section of the consultation sought views on wider language relating to care. Responses indicated that people felt that existing language can be unclear or inconsistent, be stigmatising and create barriers. The involvement of children and young people was commonly mentioned by respondent to the consultation, such as local Champion Boards and Our Hearings Our Voice, an independent children and young person's board for the Children's Hearings System. Specific initiatives mentioned included:

- Language Leaders, a collaborative group of young adults with lived experience and professionals from across the children's hearings system, who have produced 'Principles of Language',
- A Language and Communication Group in East Dunbartonshire's Health and Social Care Partnership that engaged with care experienced people, foster

carers and practitioners to understand issues and concerns regarding language used across social work and wider services.

94. A range of language initiatives focused on changing professional practice or raising awareness were mentioned by several respondents in the consultation. Several of the respondents highlighted the work of Each and Every Child<sup>28</sup> and their professional development resources. Other examples of learning opportunities mentioned by singular respondents included:

- Ongoing discussions on the use of language as part of the Skills Development Scotland Care Experienced Community of Practice.
- Multi-agency Promise awareness sessions across Inverclyde focused on learning from the Independent Care Review and the impact language can have. Incorporating training on intersectionality into professional development to enhance understanding of how different identities influence care experiences.

95. The consultation responses also suggested ways to encourage people to give their views on the next steps, including using a variety of methods such as facilitating focus groups. It is proposed that we take a co-design approach to developing guidance that includes people with care experience and trusted organisations. The co-design group will be tasked with identifying current best practices and using existing knowledge to develop clear policy guidance, training resources and a feedback process.

## **Requirements on children’s residential care service providers, including powers to limit profits**

### **Background**

96. The Promise is clear that there is no place for profit in how Scotland cares for its children and that Scotland must avoid the monetisation of the care of children and prevent the marketisation of care by 2030.

97. The [Competition and Markets Authority published its report and recommendations](https://competitionandmarkets.gov.uk/reports-and-recommendations/childrens-social-care) arising from its market study into children’s social care in England, Scotland and Wales on 10 March 2022. The study was launched in March 2021 in response to two major concerns that had been raised with them about how the placements market was operating. First, that local authorities were too often unable to access appropriate placements to meet the needs of children in their care. Second, that the prices paid by local authorities were high and this, combined with growing numbers of looked-after children, was placing significant strain on local authority budgets, limiting their scope to fund other important activities in children’s services and beyond.

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<sup>28</sup> <https://eachandeverychild.co.uk/>

98. In seeking to meet the principles of The Promise and address key points arising from the CMA market study, the Scottish Government is determined to first address limitations which exist across the children's residential care landscape.

99. To that end, this Bill will require Scottish Ministers to introduce regulations to enhance financial transparency by requiring certain residential childcare providers to provide financial and other relevant information about the operation of their services. This is crucial for the public sector in terms of ensuring agency for local authorities in managing their budgets and making decisions about residential care placements. While a very small number of stakeholders collect snapshot data on the financial situation of a service, either at the point of seeking registration approval or in order to operate through Scotland Excel's framework, there is no nationally consistent, detailed, method of understanding the fees charged for placements nor the final costs paid by local authorities. Therefore, the Scottish Government's policy intention is to collect information from certain services operating in Scotland to understand the range of different types of care support offered, and to understand what "need" and "complex need" of children and young people looks like in more detail, in order for the sector to build clarity around how that translates into fees charged and subsequently determine whether or not excessive profit is being made.

100. In light of the above, should it be determined that excessive profits are being made, Scottish Ministers also have powers through this Bill to make further regulations to limit profit being made from children's residential care. Any such limiting of profit would be considered as a result of thorough analysis of the financial transparency information collected and would be subject to a full public consultation. This seeks to ensure that excessive levels of profit are not made from local authorities and from finite public funds, in relation to the provision of accommodation and services for vulnerable looked after children in Scotland. This approach is in line with the powers being introduced for England via the UK Children's Wellbeing and Schools Bill.

101. Alongside these powers and development of any subsequent regulations, in-depth consideration of the profit issue alongside a number of interlinked issues will be crucial, including commissioning frameworks, workforce recruitment, retention and learning and development, as well as forecasting future needs of children and young people to respond to future demand. This very much aligns with the recommendations of the CMA in terms of taking steps towards improving commissioning of placements in the market, addressing barriers to creating new, not-for-profit capacity in Scotland, and ensuring resilience of service provision.

## Changes being made by the Bill

102. Section 78 of the Bill will enable Scottish Ministers to make provision by regulations to require providers of residential childcare services such as children's care homes or school accommodation run by persons other than local authorities to provide financial and other information pertaining to the operation of those services, and submit those returns to Scottish Ministers, including in such form as set out in the regulations. This is for the purpose of assessing the level of profit being made in relation to the

provision of those services in order to inform consideration of whether a profit limitation requirement should be imposed and in what way.

103. In light of that financial information, the Bill will also enable Scottish Ministers to introduce regulations to limit the profits of the providers of those services, in accordance with a framework to be set out in those regulations, where Ministers are satisfied that it is necessary to do so, having regard to the public interest in securing that providers are providing care on terms which represent value for money and having regard to the welfare of the children placed there, the interests of local authorities and the interests of providers. Moreover, before imposing profit limitation requirements, the Scottish Ministers must consult local authorities, those representing the interests of providers and such other persons as considered appropriate,

## Alternative approaches

104. Other nations of the UK have introduced legislation in recent years to restrict or remove profit from residential childcare services.

105. On 18 November 2024, the UK government set out plans to prevent companies making excessive profit from children's care homes through the Children's Wellbeing and Schools Bill. This Bill contains similar provisions to increase financial transparency and introduce the power to set a profit cap. Similarly to the approach being taken in England, the Scottish Government has determined that it is necessary to legislate in order to ensure that all non-local authority providers of residential childcare are transparent with their finances.

106. In March 2025, Wales passed the Health and Social Care (Wales) Act to support their 'Eliminate [Profit] Programme.' This Act will limit profit-making provision of residential childcare services and restrict local authorities from placing children in privately run homes from 2030. The Scottish Government has decided not to follow this approach at this time due to the evidence from the CMA report indicating that significantly lower levels of profit are being made in Scotland than in England and Wales, and due to the need to ensure stability of placements for children and young people currently in Scottish residential care, as well as ensuring sustainable provision of future residential childcare placements in Scotland.

## Consultation

107. The issue of profit in residential care was previously explored by the Independent Care Review, however due to the timescales of the Bill there has not been a public consultation on these provisions. The Scottish Government intends to work closely with the children's residential care sector on the issues of financial transparency and profit alongside the many inter-connected and complex issues requiring to be worked through collaboratively. This will enable a focused approach to be taken to the development of regulations on increasing financial transparency and, subject to assessment of information received in exercise of that, any subsequent regulations to be made in

relation to profit limitation provisions. Public consultation will be undertaken on any such regulations before they are introduced.

## **Strengthening the not-for-profit principle in relation to foster care**

### **Background**

108. A core principle of The Promise is that no one should profit from the care of children. It states: “Scotland must avoid the monetisation of the care of children and prevent the marketisation of care.” The Scottish Government shares this view and is committed to ensuring that the care of children operates on a not-for-profit basis.

109. The fostering sector in Scotland comprises local authority fostering services and Independent Fostering Agencies (IFAs)<sup>29</sup>. All IFAs are required to be voluntary organisations in order to provide fostering services in Scotland under section 59(3) of the Public Services (Scotland) Reform Act 2010 (the 2010 Act). Section 105(1) of the 2010 Act defines “voluntary organisation” as meaning a body, other than a public or local authority, the activities of which are not carried on for profit. However, this is not easily verifiable or enforceable. Currently, 16 of Scotland’s 25 IFAs are registered charities, while the remainder operate under private or corporate structures, with some linked to parent companies which are not subject to the not-for-profit requirement. This variation has led to concerns about financial transparency, public value, and the reinvestment of public funds.

110. Recent reports, including those from the Competition and Markets Authority and Scottish stakeholders, have raised concerns that some IFAs may be transferring funds to parent companies through mechanisms such as unsecured loans, undermining the not-for-profit principle<sup>30</sup>.

### **Changes being made by the Bill**

111. Section 9 of the Bill introduces a requirement that all IFAs must be registered charities within the United Kingdom before being authorised to provide fostering services in Scotland. This will be achieved by amending the Public Services Reform (Scotland) Act 2010 to replace the existing requirement that fostering providers must be “voluntary organisations” with a requirement that they must be charities registered in the UK.

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<sup>29</sup> Regulation 48 of the Looked After Children (Scotland) Regulations 2009 allows local authorities to enter into arrangements with registered fostering services, also known as Independent Fostering Agencies, for the provision of foster placements. This regulatory framework enables IFAs to operate in Scotland, provided they meet the necessary registration and legal requirements.

<sup>30</sup> “Children’s Social Care Market Study: Final Report”, Competition and Markets Authority, March 2022, pp. 118–120. Available at: <https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report>

“Crisis in Foster Care: Ending the Profiteering in Scotland’s Foster Care System”, Common Weal, June 2023, p. 12 and Appendix. Available at: <https://www.commonweal.scot/policies/crisis-in-foster-care>

112. This change will ensure that all IFAs are subject to the charity test, overseen by the relevant charity regulators, and must reinvest any surplus into their charitable aims. This will enhance transparency, prevent private profit extraction, and reinforce public trust in fostering services.

113. A transition period of 18 to 24 months will be provided to allow existing IFAs time to adapt and complete the charity registration process, subject to consultation with the sector, including existing IFAs.

## Alternative approaches

114. An alternative option considered was to retain the existing requirement that IFAs be “voluntary organisations” and instead introduce enhanced financial reporting requirements or strengthen Care Inspectorate oversight. However, this approach was not considered sufficient to address the structural issues identified - namely, the lack of transparency over how IFAs operate financially, the absence of effective mechanisms to verify ongoing compliance with the “not-for-profit” requirement, and the inability to enforce it in practice. Requiring IFAs to register as charities would provide a clearer, regulated framework to ensure that public funds are used appropriately and reinvested in services post-registration.

115. Another option considered was to permit Community Interest Companies (CICs) or other forms of social enterprise. However, these entities may still allow limited profit distribution, which would not fully align with The Promise or the Scottish Government’s objective to ensure all public funds are reinvested into care.

116. Requiring charitable status provides the strongest legal and regulatory framework to protect the not-for-profit principle and aligns with the model already in place for all voluntary adoption agencies in Scotland.

## Consultation

117. The Scottish Government consulted on the future of foster care between December 2024 and February 2025<sup>31</sup>. This included specific questions on whether further regulation was required to strengthen the not-for-profit principle and whether IFAs should be required to have charitable status.

118. The majority of respondents to the consultation, including local authorities, third sector organisations and individual carers, supported requiring IFAs to become charities. They highlighted concerns about profit-making in care and a desire for increased transparency and reinvestment directly into services. Many respondents felt this change would better align the sector with the vision of The Promise and help restore public trust in the fostering system.

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<sup>31</sup> “The Future of Foster Care: A Consultation”, Scottish Government, October 2024. Available at: <https://www.gov.scot/publications/future-foster-care-consultation/>

119. Some concerns were raised by IFAs and a small number of local authorities in their consultation responses about potential impacts on placement availability and provider flexibility. These concerns related particularly to changes such as requiring IFAs to have charitable status, setting limits on fees and mandating payment of the Scottish Recommended Allowance. However, the policy intention is not to remove IFAs from the sector but to ensure they operate within a regulated, not-for-profit framework. The proposed transition period and support for affected providers will mitigate these risks and maintain placement stability.<sup>32</sup>

## **A national register of foster carers**

### **Background**

120. The Promise specifically highlighted the need for better support for foster carers, stating that “Scotland must better support its foster carers to be the best parents. Foster carers must feel valued, cared for and supported to care.” It also recommended consideration of a national register for foster carers, which should operate in a supportive manner and align with Scotland’s values in caring for children.

121. A national register could offer multiple benefits, including enhancing safeguarding, improving portability for foster carers across services, supporting better matching processes, and providing valuable data to inform policy and recruitment strategies. The Scottish Child Abuse Inquiry (SCAI) heard evidence highlighting concerns with the current fragmented system and the risks it poses, particularly its reliance on carers disclosing previous fostering history. While SCAI’s final findings are awaited, the testimony has reinforced the case for exploring a consistent, national approach.

### **Changes being made by the Bill**

122. Section 10 of the Bill introduces provisions to allow for the establishment of a national register of foster carers in Scotland. The core objectives of such a register include:

- Enhance safeguarding by ensuring agencies can check if a prospective carer has had their approval removed previously;
- Support the professional recognition of foster carers by establishing a register that promotes consistency, visibility and alignment with the wider childcare and social care professionals;
- Support the mobility of foster carers by improving visibility of approval history and fostering status across agencies, recognising that further streamlining the process of transferring between agencies may be needed;

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<sup>32</sup> Scottish Government (forthcoming). Future of Foster Care: Analysis of Consultation Responses. Pages 24–26 and Appendix C (pp. 78–80) refer to concerns raised by Independent Fostering Agencies and a small number of local authorities regarding potential impacts on placement availability and provider flexibility.

- Support better respite care arrangements by improving coordination between local authorities;
- Provide robust national data on foster carers to inform recruitment and policy development;
- Enable local authorities to find and commission placements more effectively, improving matching for children in care;
- Provide a national platform to support and inform foster carer training and professional development by enabling greater visibility of participation in learning or training and ongoing development needs.

123. The Bill will give the Scottish Ministers the power to make arrangements to establish and maintain a register of foster carers. It also provides regulation-making powers to define the parameters of the register, including data management and oversight responsibilities. Additionally, the Bill grants Ministers the authority to delegate the maintenance and operation of the register to an appropriate organisation.

## Alternative approaches

124. The concept of a national foster carer register has been previously explored. In 2013, a Foster Care Review considered the idea but ultimately recommended against it, citing concerns about costs, administrative burdens, and data security.<sup>33</sup> A short-life working group in 2015 revisited the proposal but decided not to proceed at the time, given ongoing changes in the care landscape.<sup>34</sup>

125. Technological advancements and improved data security measures now mitigate many of the challenges identified in earlier reviews. Alternative approaches, such as strengthening local authority oversight mechanisms without a national register, were considered but found to lack the consistency and coordination a central register could provide. These approaches would have relied on voluntary data sharing between 32 local authorities and IFAs, risking duplication, incomplete datasets and varied standards of information management. They were also unlikely to support national workforce planning, mobility of carers across agency boundaries, or a streamlined view of capacity within the fostering system. By contrast, a national register would provide a unified framework for oversight, ensuring equitable standards, real-time visibility of approved carers and a platform for future enhancements in placement matching, training and carer support.

126. Other nations have also explored or implemented national foster carer registers. In England, the UK Government has considered the introduction of a register as part of wider foster care reforms, although no formal commitment or timeline has been announced. In Wales, the Welsh Government has publicly stated its intention to

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<sup>33</sup> “Foster Care Review – Final Report”, Scottish Government, 2013. Available at: <https://www.celcis.org/application/files/5814/3878/4789/Foster-Care-Review-Final-Report.pdf>

<sup>34</sup> Alternative Strategies to a Foster Carer Database – Final Report, Short-Life Working Group, Scottish Government, June 2015. Available at: <https://www.gov.scot/publications/alternative-strategies-to-a-foster-carer-database-final-report/>

introduce a national register of foster carers; however, progress has been limited to date in part due to prioritisation of work on eliminating profit from children's social care. Existing international models offer insights that inform Scotland's approach while taking account of the specific features of the Scottish fostering system. These include the NSW Carers Register and Residential Care Workers Register in New South Wales, Australia<sup>35</sup>, which support system-wide oversight and workforce mobility; the Working With Children Check (WWCC) used across Australian states and territories<sup>36</sup> to monitor suitability of individuals working with children; and the centralised adoption databases used in Ontario, Canada<sup>37</sup> and Scotland<sup>38</sup>, which facilitate matching, information sharing and oversight in the adoption system. While differing in scope, these registers demonstrate the role that national or centralised systems can play in ensuring transparency, safeguarding standards and improving placement coordination.

## Consultation

127. Stakeholder views on a national register were explored in the Scottish Government's consultation on the future of foster care<sup>39</sup>. Consultation responses highlighted both strong support and concerns:

- a) Supporters, including many individual foster carers, local authorities and third sector organisations, emphasised the potential to improve safeguarding, support foster carer mobility, and strengthen national data collection for planning and policymaking.
- b) Concerns included the potential for additional administrative burdens, data protection risks, and potential unintended consequences, such as more children placed outside their local communities.

128. Overall, responses were in favour of introducing a national register, with many noting its potential to improve consistency and oversight across the fostering system, particularly if developed in close collaboration with the sector and with appropriate safeguards.

129. The Scottish Government's policy intent is that the register will enhance visibility and planning, not override local decision-making or lead to inappropriate placement decisions. It will be designed to support compliance with the UNCRC, particularly Article

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<sup>35</sup> "NSW Carers Register" and "Residential Care Workers Register", Office of the Children's Guardian, New South Wales. Available at: <https://ocg.nsw.gov.au/organisations/statutory-out-home-care-and-adoption/carers-register> and <https://ocg.nsw.gov.au/organisations/statutory-out-home-care-and-adoption/residential-care-worker-register>

<sup>36</sup> "Working with Children Checks", Australian Government Department of Education. Available at: <https://www.education.gov.au/early-childhood/providers/howto/who-can-administer/working-children-checks>

<sup>37</sup> "Adoption Resources Databank", AdoptOntario. Available at: <https://adoption.on.ca/adoptontario/adoption-resources-databank>

<sup>38</sup> "Scotland's Adoption Register", Scottish Government. Available at: <https://scotlandsadoptionregister.org.uk/>

<sup>39</sup> "The Future of Foster Care: A Consultation – Analysis Report", Scottish Government (forthcoming, 2025).

3, by helping services make informed, needs-based decisions that prioritise a child's best interests and right to remain connected to their community where possible.

130. The Fostering Network's 2024 State of the Nation report indicated growing support for a national register of foster carers, with 53% of foster carers expressing support and only 9% opposed.<sup>40</sup> Responses to the Scottish Government's consultation on the future of foster care reflected a range of views, though a majority of respondents recognised the potential benefits of a register for safeguarding, workforce planning and improving consistency across the system.

131. The Bill takes a balanced approach, ensuring flexibility in the design and implementation of the register. Further engagement with stakeholders will shape the development of regulations, ensuring the system is proportionate, effective, and supportive of foster carers and children in care.

132. The Bill introduces an enabling framework for the establishment of a national foster carer register, reflecting The Promise's commitment to improving foster care in Scotland. While challenges remain, modern systems and ongoing sector engagement provide an opportunity to implement a register that enhances safeguarding, supports foster carers, and strengthens Scotland's fostering system for the future.

## **Children's hearings system redesign**

### **Background**

133. The children's hearings system is Scotland's unique system offering legal protections to children who are in need or at risk, and who require its support by way of compulsory supervision or through other means. Limiting compulsory measures of care only to those children for whom that is required, and only for as long as compulsory intervention is needed, remain fundamental principles.

134. The system has successively been reviewed and reformed at a number of points over the past 60 years. One of the key strengths of the children's hearings system has been its ability to evolve and adapt roles, practices and functions - to better meet the needs of children and their families - while remaining faithful to its established founding principles.

135. The philosophy and principles of the Children's Hearings system are well established and continue to be the right ones to underpin a redesigned children's hearings system:

- the welfare principle;
- the minimum intervention or 'no order' principle;

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<sup>40</sup> State of the Nations' Foster Care: Spotlight on Scotland Report 2024, The Fostering Network, July 2024, p. 8. Available at: <https://www.thefosteringnetwork.org.uk/media/kbbnsgcz/sotn-spotlight-on-scotland-final.pdf>

- the consideration of children's needs alongside deeds;
- the appropriate forum of the hearing as the best place to make decisions on compulsory measures of supervision intended to support children through difficult times; and,
- the imperative of the involvement of the child in discussions.

136. The system considers all those who come within it, either on welfare or offending grounds, as being children in need and facing risks either from their own behaviour or the behaviour or omissions of others. The Scottish Government has no plans to change this fundamental approach.

137. The Social Work (Scotland) Act 1968 first brought into law the children's hearings system, with further legislation bringing subsequent improvements and developments, including (but not limited to) the Children (Scotland) Act 1995 ('the 1995 Act'), the Regulation of Care (Scotland) Act 2001, the Children's Hearings (Scotland) Act 2011 ('the 2011 Act'), the Age of Criminal Responsibility (Scotland) Act 2019, the Children (Scotland) Act 2020 and the recent Children (Care and Justice) (Scotland) Act 2024.

138. The Promise (2020) expressed how to take forward the findings of Scotland's Independent Care Review. Following recommendations in The Promise, the Scottish Government's Programme for Government 2021 committed to a redesign process for the children's hearings system, rethinking the underpinning structures, processes and legislation. The Promise Scotland commissioned a separate independent review which led to a 20-month initiative led by the Hearings System Working Group under the leadership of Sheriff David Mackie.

139. That work led to the "Hearings for Children" report in May 2023<sup>41</sup>. This independent report was subsequent to the previously accepted recommendations of The Promise in 2020 and contained recommendations with implications beyond the existing parameters of the children's hearings system. Following detailed policy, legal and resourcing analysis across Government and affected agencies, the Scottish Government produced a specific response to the recommendations of "Hearings for Children" in December 2023<sup>42</sup>. While many of that report's recommendations were accepted (with or without caveats), a significant number were identified as requiring further work, broader consultation or requiring additional evidence before a decision could be made on how to proceed. A small number of recommendations were declined at that stage.

140. The December 2023 Scottish Government response, and the extensive and detailed sector- wide responses to the public consultation conducted between July and October 2024<sup>43</sup> have directed the approach to the legislative proposals presented in this Bill. In developing plans for the redesign of the children's hearings system, the capacity of those working within it and the landscape of other pre-existing policy and practice

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<sup>41</sup> [thepromise.scot/resources/2023/hearings-for-children-the-redesign-report.pdf](https://thepromise.scot/resources/2023/hearings-for-children-the-redesign-report.pdf)

<sup>42</sup> [Hearings for Children report: response - gov.scot](https://gov.scot/hearings-for-children-report-response)

<sup>43</sup> [Children's hearings redesign - policy proposals: consultation - gov.scot](https://gov.scot/childrens-hearings-redesign-policy-proposals-consultation)

change commitments, are central considerations. These factors apply alongside the primary objective for the redesigned children's hearings system to deliver the best possible experiences and results to children and their families, and to make necessary changes as soon as possible. The proposals in this Bill are focused on the areas where legislative changes are required to improve children's experiences and outcomes.

141. To deliver non-legislative and practice focussed change, a Children's Hearings Redesign Board ("the Board") has been established to accompany the legislative reform programme. The Board is jointly chaired by the Scottish Government and the Convention of Scottish Local Authorities (COSLA) and includes membership from the senior leadership of key statutory partners responsible for the delivery of the children's hearings system. The Board will set and promote a vision for children's hearings redesign and oversee a collaborative programme of workstreams with cross sectoral participants and ongoing input from children and young people. This will run in parallel to, and will complement, the developing legislation to deliver a fully redesigned system by 2030.

142. The sequence of any changes to the hearings system must be planned with care, involving all key parties, to ensure that children and families continue to be supported. Those working within the system must have the requisite capacity and confidence to give of their very best. The children's hearings system must continue to deliver for children who need its support in the period to 2030, operating safely and effectively throughout the months and years during which any change is implemented.

## Consultation

143. Following the publication of the independent 'Hearings for Children' report, policy teams across the Scottish Government undertook several stages of analysis of the report across the summer and autumn of 2023. Work also took place with statutory delivery partners in the children's hearings system to ensure the government's response to the report's recommendations was informed by those responsible for each facet of system's day to day running. That work confirmed that many 'Hearings for Children' recommendations had in some way been anticipated, or work had already begun to make progress on other key areas for change. Practice changes were being delivered or planned, and other improvement programmes were already underway, all of which would help deliver the overall intentions of system redesign.

144. The Scottish Government's work with partners also identified that there was capacity for further positive change, and it has drawn on partners' professional expertise to identify those 'Hearings for Children' recommendations that can be driven forward by practitioners, managers and other leaders without the need for new law or Government action. However, many of the issues considered by the 'Hearings for Children' report and then supported by the Scottish Government response, cannot progress without changes to primary legislation or significant changes to existing systems or structures, roles and responsibilities.

145. To progress these matters, the Scottish Government launched the ‘Children’s Hearings Redesign – legislative proposals’ consultation on 26 July 2024 for a 13-week period, which closed on 28 October. The consultation comprised a detailed paper seeking views on potential legislative changes to the children’s hearings system. A series of public engagement events also took place online and in person, reaching over 500 people. Engagement sessions with children and young people were held by a number of organisations, and a composite set of young people’s responses was provided directly to Ministers. There were 105 responses to the consultation, many of which presented detailed views on the complex issues being considered. A comprehensive, independent analysis of the responses was undertaken by the Children and Young People’s Centre for Justice at the University of Strathclyde and published in February 2025.<sup>44</sup>

146. The consultation exercise revealed that there are strong and differing (but equally valid) views on many of the issues featured in the paper, confirming the necessity of the consultation process to further illuminate issues raised in the ‘Hearings for Children’ report and to bring clarity to the best ways of fulfilling the agreed recommendations’ underlying intentions.

147. The outcomes of the consultation exercise indicate that the ‘Hearings for Children’ report’s recommendations did not command full support from key stakeholders, with policy analysis revealing unintended consequences of some of the proposals. In many areas there was no clear consensus and the answers to some questions revealed differing views from organisations involved in producing the ‘Hearings for Children’ report.

148. The detailed responses submitted during the consultation exercise point to the complexity and sensitivity of the issues being considered and the need to progress with care and attention to detail. The responses also demonstrate the commitment and dedication of all those with an interest in improving the system, including the children and young people who wish to see improvements.

149. In a number of areas related to this topic, changes can be progressed without the need for primary legislation. Reflecting concerns that some stakeholders, including the Promise Scotland, have raised about a cluttered legal landscape, the Scottish Government has only sought to progress issues in primary legislation where it is necessary and proportionate to do so.

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<sup>44</sup> [Children's hearings redesign: consultation analysis - gov.scot](https://www.gov.scot/publications/childrens-hearings-redesign-consultation-analysis/pages/10/)

## Changes being made by the Bill

### Single member panels

#### Policy objective

150. Section 111 of the Bill provides the National Convener with the authority to convene children's hearings composed of a single panel member for certain defined preliminary decisions and, in narrow circumstances, Interim Compulsory Supervision Orders (ICSOs) where necessary. Any single panel member decisions will be taken by the Chairing Member, without the need for a full three-member hearing to be convened. The Bill maintains current appeal elements for certain preliminary decisions made via a single panel member.

151. It is anticipated that allowing such decisions to be taken by a single Chairing Member would reduce the requirement for many three member hearings to be arranged to consider such matters, thereby releasing capacity to the system, preserving volunteer time for dispositive decision-making.

#### Alternative approaches

152. The practice of three tribunal members sitting on each and every type of hearing is well understood and well established. While viable to maintain the status quo, even with the associated changes being made to the functions of the National Convener, this would not utilise the additional capacity introduced by remunerated Chairing members, nor fulfil the policy intent of addressing drift and delay in the decision-making process.

153. Consideration was given as to whether a single-member hearing could take any decision which is currently open to the tribunal but this was discounted. A three member tribunal represents best practice in decision making for dispositive decisions, allowing for discussion, different perspectives and ensuring public confidence in impartiality of the hearing.

#### Consultation

154. Half of the consultation respondents answered the question: should Children's Panel members or chairing members, for certain procedural decisions, be able to take decisions without recourse to a full three member children's hearing? Of those, 47% said "Yes" and 53% said "No".

155. Responses provided much more nuanced views to this question than the statistical analysis would suggest. Likewise, young people who responded expressed mixed views. For those who were supportive of this proposal, such as Children's Hearings Scotland and some local authority social work teams, the most common arguments related to the capacity that this change could lead to reduced delays and enhanced efficiency and practice for substantive decisions. Further benefits included: a reduced number of pre-hearing panels; increased flexibility; consistency with other parts of the system where significant decisions are made by lone decision makers.

156. For those who were not supportive of this change, including some current members of the Children's Panel, they adopted a view that there may be potential impacts related to balanced, fair, transparent and accountable decision making, with some respondents concerned this change introduced a risk of bias. A similar point was that the decisions made by a hearing were too much responsibility for one individual and should be shared, with a majority decision reached.

157. The Scottish Government takes the view that the enhanced training, or qualifications, expected of a remunerated Chairing Member, along with safeguards related to appropriate appeals or reviews processes, are important inclusions which help mitigate these concerns. Further, there is significant precedence in other legal tribunals which have long established principals of allowing single member panel decision-making where appropriate.

## **The appointment and remuneration of Children's Panel members**

### **Policy objective**

158. Section 112 of the Bill amends schedule 2 of the 2011 Act, to enable the National Convener of CHS to remunerate certain children's panel members to fulfil identified chairing member roles within the redesigned children's hearings system and also section 10(2) and (11) provide powers to appoint and remunerate "specialist" children's panel members.

159. In relation to specialist children's panel members, the identification of this cohort wherever necessary or expedient would be for the National Convener. A specialist panel member could, by way of non-exhaustive illustration, be someone with a particular expertise in child services or healthcare, or an additional Chairing member for a Children's Hearing whose particular legal competence is required in the event of an acutely complex case. However, the power to appoint such members is not prescriptive. The actual use of specialist panel members is intended to be limited – adding value and insight to decision-making rather than material additional capacity. It would be the sole decision of the National Convener to consider their use in particular cases, and subject to meeting appropriate appointment, qualification and ongoing training criteria.

160. The policy intent is not to replace the essential volunteer component of the tribunal model but offer a level of remuneration in recognition of the expanded scope and complexity of the Chairing Member role, and the potential for appointment of specialist panel members whose particular expertise may enhance the ability the decision-making tribunal in a particular case. The training and recruitment of panel members, including the Chairing Member, remains the domain and responsibility of the independent National Convener.

### **Alternative approaches**

161. The consultation on children's hearings redesign sought views on nine potential changes to the current tribunal model. These changes were proposed following Ministers' response to the Hearings System Working Group proposals, taking into

account the data held by the National Convener around sustainability and capacity of the current model.

162. The proposals considered ranged from a fully paid and professionalised hearing to a mix of paid and volunteer members, to retaining a wholly unpaid lay volunteer approach.

Table 1

Model Number	Description
2	1 Paid Chair, 2 Paid Panel Members (Complex Cases Only), volunteers staff all others.
3a	1 Paid Chair and 2 Paid Panel Members
3b	1 Paid Chair and 2 Volunteer Panel Members
4	1 Paid and 1 Paid Panel Member
5	1 Volunteer Chair and 1 Volunteer Panel Member
8a	1 Paid Chair, 1 Paid Specialist, 1 Volunteer Panel Member
8b	1 Paid Chair and 2 Paid Specialist Panel Members
8c	1 Volunteer Chair, 1 Volunteer Panel Member and 1 Paid Specialist Panel Member
8d	1 Volunteer Chair and 2 Paid Specialist Panel Members

163. Each model was subjected to analysis in terms of what would be best for children and young people as well as against practical deliverability and affordability. This analysis was supported by in-depth data modelling on the number of hearings held and the complex data set associated with the different types of hearings that are convened.

164. In summary: models which considered a change to the number of sitting tribunal members carried too great a potential impact on rights and may lead to imbalance in decision-making; models which relied on an entirely paid structure were considered to be unsustainable due to the significant cost implications for this tribunal and setting unaffordable benchmarks and precedents for other Scottish tribunals.

165. The core component of a volunteer led approach is central to the role local communities can play in the children's hearings system and was considered an essential part of the redesigned system's decision-making approach and personnel. There is recognition, however, that some roles have grown in complexity and responsibility since the last fundamental review of the system, and of panel member's central role within it. The role of the Chairing Member requires additional training to be discharged effectively in each and every child's case within this more complex context. As a result of additional and accruing complexity in the legislation and policy landscape, it has become an increasing challenge for the volunteer cohort to meet these expanded expectations, given the additional management of hearings requirements of this particular role. Introducing remuneration for the Chairing Member signals an understanding of the additional responsibilities while also providing additional support

and resilience to the volunteer model, which will remain a mainstay of the children's panel, and of Scotland's approach.

## Consultation

166. Less than half of the respondents to the consultation paper answered the question relating to retaining the unpaid lay volunteer model in whole or in part, or the question asking 'would you support some measure of payment for panel members?', over and above the current system of expenses, in return for the introduction of new and updated expectations. Of those respondents that did answer the questions, the majority were in favour of both some amount of volunteering and some measure of payment.

167. Respondents had mixed views on these topics, especially in relation to the payment of panel members. Some rejected entirely the proposal to introduce new roles or make changes to existing roles in the context of the hearings system, even if that system itself was being redesigned. Many responses reflected a perceived tension between respondents' own belief in the valued principle of the unpaid volunteer model and an acknowledgement of the issues currently facing the system in terms of panel member recruitment, retention, and the expertise needed to tackle complex cases.

## The child's attendance at their hearing

### Policy objective

168. The 'Hearings for Children' report recommended:

"The existing obligation for a child to attend must be removed and replaced with a presumption that a child will attend their Hearing, with some limitations. There must be no presumption that babies and infants will attend their Hearing."

169. Within Chapter eight of the 'Hearings for Children' report, the report makes a number of statements about the way the presumption to attend should work in practice, including:

"The Chair should operate based on the presumption that a child will attend and should ensure that the child is fully informed of their right to attend and how this would be facilitated. However, children must have the right not to attend if they would prefer."

170. Section 13 of the Bill removes the existing obligation on a child to attend their hearing. It allows a children's hearing to require the child's attendance at the hearing, or that part of the hearing, where it is necessary for a fair hearing, or to assist the children's hearing in making any decision relating to the child. In doing so, the hearing must have regard to whether the child would have the capacity to understand proceedings and whether their attendance would place their health, safety or development at risk, as well as their general duties under sections 25 and 26 of the 2011 Act.

171. The policy objective of these changes is to embed child-friendly and trauma-informed approaches to the child's participation. Removing the obligation to attend will promote and respect individual children's preferences regarding whether they attend their hearing, and how they participate in it. Physical attendance at a hearing does not necessarily equate to, and should not be conflated with, effective participation in the hearing itself, and the overall process. While removing the obligation to attend could, in isolation, risk losing the child's voice in proceedings, that risk will be mitigated through robust engagement with the Reporter at an earlier stage, enhanced offers of advocacy, and changes in practice to promote and uphold the child's effective participation throughout, in a way that suits them.

172. However, we recognise that there will be some situations where the child must attend, regardless of their preferences. For example, where the grounds of referral relate to the child's conduct which has brought them into conflict with the law, and the consequences for the child may include long-term disclosure of criminal offences, or restriction or deprivation of liberty, the hearing may well consider that the child's attendance is essential to uphold their right to a fair hearing or to assist the hearing in making its decision.

173. Responses to the public consultation, particularly from Panel Members, indicated that since the Covid-19 pandemic fewer and fewer children are attending their hearing, because the tight current statutory criteria for excusal are being applied more broadly in practice than was intended. However, the experience of the pandemic, and the increased use of virtual or hybrid hearings, has also helped to develop, test and validate other options for the effective attendance and participation of children. While the Scottish Government appreciates the concerns that fewer children are attending their hearing, the changes proposed in the Bill will give hearings the power to require attendance where it can be justified, and it is expected that proper use of this power will ensure that where a hearing does not see a child, it is because it does not need to.

## Alternative approaches

174. The Scottish Government considered retaining the existing obligation to attend and broadening the criteria for excusal which may offer a more child-friendly way of accommodating a child's needs and preferences. Additional criteria could include greater consideration of the potential impact on the child, and a broader consideration of whether their attendance was necessary for a fair hearing regardless of the grounds for referral. Both considerations could allow for the child's preference to become a more prominent factor in decisions as to whether to excuse the child from attendance.

175. However, that option will not address concerns that fewer children are attending their children's hearings than was the case prior to the Covid-19 pandemic. Without putting the onus on the hearing to make a positive and justified decision to require the child to attend, this approach risks exacerbating the issue by persisting with the current approach, but in a more relaxed form. It would also not respect the child's preferences where, unless there is a specific need for their attendance, they may participate effectively through other means.

176. Consideration was given to including a presumption that the child would attend, as recommended in the Hearings for Children report. However, creating a presumption which can be departed from would, in effect, replicate the current approach of an obligation which can be disregarded in some circumstances, and would risk the law's meaning becoming unclear - that there is no longer an obligation to attend.

## Consultation

177. Consultation respondents tended to agree with the proposal to remove the obligation to attend, with the majority in favour. However, the balance of views on this issue is less clear within the detail of the submitted written responses. Young people were particularly supportive of the Hearings for Children report proposal to replace the child's obligation to attend their hearing with a presumption as a child-friendly approach which respects the child's choice. Despite efforts to improve children's experiences being recognised, various respondents highlighted the potentially detrimental impacts of mandatory attendance at a hearing, including to the child's wellbeing, safety, and mental health.

178. Several respondents, including Social Work Scotland and the Children and Young People's Centre for Justice, advanced the view that the decision about attendance should be based on the assessed needs, welfare and best interests of the individual child. Very young children or children whose development was delayed or who did not have the maturity or capacity to understand the children's hearing were groups to whom this change could be particularly beneficial.

179. The Law Society of Scotland's Child & Family Law Sub-Committee considered that the main disadvantage or risk of this approach was that children could be "tacitly deprived" of their option to attend a hearing or for this to become the default where the adults in the child's life deemed this to be in the child's best interests, but without proper consideration of how this could be facilitated or the existing safeguards of requiring a hearing or pre-hearing panel to excuse attendance. Existing inconsistencies in practice, despite legally enshrined tests for excusal, were highlighted, with the risk that this change could increase inconsistency.

180. Some individual responses stated specifically that some children should be obliged to attend their hearing, namely where a child had committed a serious offence, was attending on conduct or behavioural grounds, or where a child's right (such as to liberty), was going to be restricted. Others stated that children over 12 (or 14) should be required to attend or where this was the child's first or last hearing, an emergency hearing, or a change of placement was being considered. However, one respondent cited the risk that this approach could create different "types" of children, which was contrary to the fundamental holistic principles of the children's hearings system, with this view echoed in responses to other questions.

## **Preparation and engagement with the Principal Reporter**

### **Policy objective**

181. In order to support children and families to feel better prepared for a children's hearing, section 14 of the Bill puts in place a requirement that the Principal Reporter offers the opportunity, when it is appropriate, for the child and family to discuss certain matters.

182. This will have a particular emphasis on the statement of grounds prepared by the Principal Reporter, as it is essential in a redesigned hearings system that children and families are fully enabled to understand the grounds of referral and the supporting facts before they attend a hearing. These discussions may also include consideration of how to support the child's participation in their hearing, including whether and how they will attend, and what means would be most appropriate for the child's views to be fully and effectively communicated.

183. This process may also have benefits for the Principal Reporter in helping to identify issues that may need to be considered by a pre-hearing panel, or sources of further information in relation to the child which will be needed for a hearing to make a decision. Furthermore, it links to the newly created processes around the consideration of grounds, informing the Principal Reporter's decision about how to appropriately direct the referral to the next step in the process. It will also support the new element of the process whereby the Principal Reporter can record the child's understanding and acceptance of the grounds of referral in advance of a hearing where the child will not attend the hearing.

### **Alternative approaches**

184. Policy analysis considered whether these matters could be addressed in practice rather than legislation as concerns were raised during stakeholder engagement that the proposed approach would add an extra level of bureaucracy into the system. However, it was felt that this statutory function would provide a consistent approach for all children and ensure that their views are better captured and shared with the children's panel members, particularly if a child is very young, or chooses not to attend their hearing.

185. Consideration was also given to a further option whereby this legislative obligation would sit within the remit of the chairing member of the hearing. However, analysis suggested that this function would better sit within the functions of the Principal Reporter as children need to be supported and have their views gathered in the early pre-hearing stages of the process to the greatest extent possible.

186. The Scottish Government considers that further improvements to engagement between the Principal Reporter and children and families are primarily practice-based issues that can, at least in part, be addressed by SCRA. A programme of continual practice improvement, commencing with a review of current arrangements and efforts by the Principal Reporter to engage with children and families, is being considered. Seeking further improvements entirely through practice-based developments was

considered, but it was felt that a consistent systematised approach would only be achieved through the introduction of a statutory requirement.

## Consultation

187. 63% of respondents to the consultation answered the question asking if they would support the introduction of the offer of a “post-referral discussion” between the Principal Reporter and the child and family. Of those respondents, 75% said “Yes” and 25% said “No”.

188. Young people were particularly supportive of the idea of a “post-referral discussion” between the Reporter, the child, and their family. However, across all responses there was little agreement as to how or with whom the discussion should be conducted. The range of answers reflected some confusion among respondents about which “referral” was the subject of the consultation question: the referral of the child to the Reporter for investigation, or the referral of the child by the Reporter to the hearing. There was also some disagreement among respondents about whether legislative change was needed to make improvements in this area, however the Scottish Government is content that a legislative approach will bring rigour and consistency in this area.

## The process in relation to establishing grounds

### Policy objective

189. Section 14 of the Bill makes a number of changes that are intended to improve the experiences of children and their families in relation to the grounds hearings process. Multiple sources, from the “Hearings for Children” report and beyond, have indicated that the current process of establishing grounds in all cases can feel demeaning, transactional, confrontational and challenging. However, the Scottish Government considers that it should remain an important legal safeguard of the system that children’s and family members’ views on the grounds should be formally presented and recorded, with appropriate support, advice and representation. There are clear benefits to investing in making this process better for children and families while retaining its significance as the formal entry point to the hearings system that establishes the reasons for compulsory intervention in the life of the child.

190. The Bill proposes an enhanced role for the Principal Reporter in relation to ascertaining scope for agreement and understanding of the statement of grounds, through engagement with the child and their relevant person(s) in advance of a hearing without cutting across the role of the hearing or, as the case may be, the court, to decide whether those grounds are established. The Bill retains the current approach for grounds of referral before a children’s hearing in more simple cases where, following the Principal Reporter’s engagement with the child and family at an earlier stage, it is clear that there is informed agreement with the grounds. This hearing will necessarily open with the formal recording of the child and relevant persons’ acceptance of the grounds, but it will be primarily focussed on making a dispositive decision in relation to the child.

191. In cases where the Principal Reporter's earlier engagement has established that there is no clear agreement but constructive discussion of the grounds may be possible and effective, the Bill proposes creating a process which can facilitate a streamlined, inquisitorial and constructive process focussed on achieving this. Drawing on the valuable resource of a remunerated chairing member, a hearing will be convened with a single chairing member to lead a collaborative and positive discussion to enhance understanding and resolve any disputed elements of the grounds.

192. The Bill fully preserves the role of the sheriff in establishing grounds where they are not agreed or understood. It creates a mechanism which allows the Principal Reporter to apply directly to the sheriff to establish grounds where there is no reasonable prospect of agreement or constructive discussion of the grounds with all necessary parties. This seeks to eliminate the need for unnecessary grounds hearings where at all possible, pending the sheriff's determination of the application, while facilitating a determination by the sheriff as soon as reasonably practicable.

193. The Bill removes the current requirement that, where the child is not capable of understanding the grounds for referral (for example, a child of a very young age) this must automatically be referred to the sheriff to determine grounds even if all relevant persons are able to agree to the grounds. In these cases, the Bill provides for the hearing to retain such cases within the hearings system for a decision to be made as soon as practicable.

194. This measure responds to the recommendation in the "Hearings for Children" report that:

"There must be no requirement for young children to agree with the grounds for referral. When all relevant persons agree the grounds and Statement of Facts, this must be sufficient to consider the grounds as agreed, with no need for additional proof proceedings."

195. Approximately one in five of all grounds determinations by a sheriff are as a result only of the ground not being understood by a child or relevant person (whether they are considered incapable of understanding or have not understood after the ground was explained at the hearing). Of those cases, approximately 90% of those established are determined by the sheriff without a proof hearing, including cases where a child is not capable of understanding the grounds but a relevant person is capable of understanding the grounds and has accepted them. The Bill therefore provides scope for the hearing to be able to make a decision on the grounds in such a case, without the need for the hearing to be postponed pending an application and determination by the sheriff.

196. However, this is subject to two important safeguards. Firstly, a children's hearing must still refer such a case to the sheriff for a determination of the grounds if it is requested by or on behalf of the child, a relevant person or a safeguarder. Secondly, the hearing will also have the option to refer the case to the sheriff where the hearing considers this to be necessary and appropriate.

## Alternative approaches

197. The public consultation put forward the proposal that all grounds hearings could be considered by a single, legally qualified decision maker instead of by a hearing or sheriff. This model sought to ensure independent decision making, take a significant volume of hearings out of the ambit of the court, and ensure there was a forum as required in rights terms. However, having considered the consultation responses, particularly from the judiciary and other prominent legal stakeholders such as the Faculty of Advocates and the Law Society of Scotland, it has been concluded that this is not a viable policy and legal option at this stage. Children and young people do not want to further layers of complexity, and another person inserted into proceedings who would need to speak to the child and their family and hear their story. There would be resourcing implications that could be significant, and these would be difficult to justify given the availability of other options and investment in the remuneration of panel members.

198. The Hearings for Children recommendations envisioned an end to all grounds hearings, and an expanded administrative role for the sheriff in determining all grounds of referral in all cases. Following extensive analysis, however, the Scottish Government has a number of concerns about this approach. It is not considered proportionate for a sheriff to have a role in every case referred and would attach significant resourcing implications for the Scottish courts. It would lead to a significant hardening of the system, with potentially more children exposed to courts unnecessarily. In addition, the Scottish Government considered that the proposal to dispense entirely with grounds hearings would have constituted an infringement of engaged human rights such as, for example, under Articles 6 and 8 ECHR, given the grounds constitute the legal basis for a children's hearing consideration of compulsory supervision measures in relation to a child.

## Consultation

199. Proposals developed for the children's hearings redesign consultation -were overall not supported<sup>45</sup> – the introduction of a “legal member”, who would oversee the grounds process including the fact-finding element currently undertaken by sheriffs, was for the most part considered unnecessary, and there were concerns about unanswered questions on how this would function.

200. Young people were overall against this proposal, as they did not want to introduce another layer of complexity within the system and risking further re-telling of their story. While there was recognition of the potential for specialism, consistency and more child-friendly approaches in this proposal, there were concerns regarding the resourcing, structure and independence of the function.

201. Through questions on the Government's proposals, respondents provided valuable feedback on the grounds process as it stands, and how it needs to change. There was broad agreement that the formal and prescriptive format of grounds hearings was unhelpful, and created an adversarial atmosphere between the Panel Members,

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<sup>45</sup> [Children's hearings redesign - policy proposals: consultation - gov.scot](https://www.gov.scot/publications/childrens-hearings-redesign-policy-proposals-consultation/pages/10.aspx)

the child and their family, and other professionals. The process should be more accessible, constructive and inquisitorial. There was agreement that the process should become more streamlined, minimising the need for court attendance as far as possible, and where possible grounds should be agreed or established ahead of the first substantive children's hearing.

202. Some respondents expressed support for greater involvement of the Reporter in the grounds process, with some respondents supportive of the Reporter presenting the grounds to the child and family in a more child-friendly manner. There was also some support for the idea of a single panel member (potentially a paid chair) presenting the grounds to the family prior to a full hearing. The Scottish Government considers that the benefits offered to children by those proposals are appropriately reflected in the Bill provisions which create flexibility to respond to the needs of individual children and their families.

## **The participation of relevant persons**

### **Policy objective**

203. Section 15 of the Bill clarifies the existing powers of the chairing member of the hearing to manage the attendance of relevant persons in challenging cases. It fully provides for decisions to exclude relevant persons to be made in advance of a hearing, where the relevant person's presence is causing, or is likely to cause, significant distress to the child.

204. Section 16 of the Bill provides a power for automatic relevant person status to be removed from an individual where they meet clearly defined criteria that form part of a high-bar test. The Bill requires the Principal Reporter to refer consideration of an individual's relevant person status to a children's hearing. Where the hearing is satisfied that the individual's ongoing status as a relevant person is likely to cause serious harm to the child, and infringe on the child's Article 8 ECHR rights, the hearing must refer the matter for determination by a Sheriff. Where the Sheriff is similarly satisfied, they must make an order that the individual is not a relevant person.

205. The test is sufficiently high to ensure that this is only used in the most extreme circumstances where it can be fully justified. Removal of automatic relevant person status will last for the duration of the child's referral but will not automatically apply to any future referrals. There is a right of appeal to the Sheriff Appeal Court, and a further appeal can be made to the Court of Session on point of law or procedural irregularity.

206. Relevant persons are essential to the conduct of children's hearings. The purpose of the category is to confer rights and obligations in relation to the hearings process on the key people in the child's life. There are two current categories of relevant person – automatic and deemed. Automatic relevant persons have this status by virtue of parenthood, and it cannot be straightforwardly removed. Deemed relevant persons gain this status by meeting a test of significant involvement in the upbringing of the child, either current or recent. Deemed relevant person status can be removed if the

relationship changes to the extent the individual no longer has had current or recent significant involvement in the child's upbringing.

207. In the recent case of *A v. Principal Reporter* [2025] CSIH 9, the Inner House of the Court of Session found that it is lawful to disapply automatic relevant person status where the participation of that relevant person would unjustifiably interfere with the rights of the child. It is therefore necessary for the Scottish Government to provide a robust mechanism in law for doing so, with appropriate safeguards.

208. Regarding the exclusion of relevant persons, currently a hearing, or the chair of a hearing, has limited power to do so. Section 76 of the 2011 Act provides for exclusion of a relevant person due to their impact, or potential impact on the child. Section 77 duplicates this provision in relation to the representative of a relevant person. The Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 ("the 2013 Rules") also provides for the exclusion of a certain persons due to their impact, or potential impact on another relevant person, or whose conduct is violent, abusive, or otherwise extremely disruptive. This power cannot be exercised in advance of a hearing and so cannot offer meaningful assurance to the affected parties that the individual will be excluded.

## Alternative approaches

209. The Scottish Government has considered how to respond to the issues raised in *A v Principal Reporter*. Consideration was given to allowing the hearing to make decisions on disapplying automatic relevant person status, as it is able to make decisions regarding deemed relevant persons. However, the closest comparator in law is the process to remove Parental Responsibilities and Rights under the Children (Scotland) Act 1995, and in the Government's view this power requires the same level of oversight. Regarding the powers of excluding relevant persons, there are no alternative options available which give sufficient assurance to children and other relevant persons that such decisions can be made to fully safeguard their rights and wellbeing and protect them from trauma.

## Consultation

210. The 2024 public consultation paper invited responses to a question on the creation of a power for the hearing to remove automatic relevant person status. While this prompted strong opinions both for and against, it attracted broad support from a number of key stakeholders, including statutory public bodies and third sector organisations such as Scottish Women's Aid, Who Cares? Scotland and Aberlour. Many of those in favour considered it a potentially valuable safeguard against the involvement of persons whose status would be incompatible with the child's ECHR Article 8 right to privacy, and their right to recover from abuse or neglect under Article 39 of the UNCRC. Some respondents, particularly Scottish Women's Aid, set out concerns about the way in which the participation of relevant persons guilty of domestic abuse can run counter to the rights of children, their siblings, and the non-abusive parent. Responses from legal organisations recognised that the removal of automatic relevant persons status could represent a significant infringement on the rights of a parent, and that this should

be a measure of last resort, if considered at all. There were dissenting views from some legal academics who argued that such a power would represent an unjustifiable interference in parental rights.

211. The consultation paper also asked questions on the topic of the chairing member's management of the hearing in relation to what enhanced powers they may need. Some respondents including Scottish Women's Aid and Police Scotland were of the view that there may be a need for greater use of the power to exclude or remove individuals from hearings or part of a children's hearing. This reflects concerns about difficult, disruptive, or intimidating relevant persons, whose attendance in whole or in part could be detrimental to the child.

## **Test for referral to Principal Reporter**

### **Policy objective**

212. Section 17(1) to (5) of the Bill adopts the proposal from the 'Hearings for Children' report for the threshold for referral to the Reporter to be amended in relevant provisions of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act") from "might be necessary" to "is likely to be needed." Sections 17(6) and (7) of the Bill amend relevant provisions of the 2011 Act add a reference to the term "support" to the current "protection, guidance, treatment or control". These provisions concern referrals to the reporter and, subsequent to the outcome of that, to a children's hearing.

213. The change to the threshold for referral is intended to lead to a reduction in unnecessary referrals to the Principal Reporter and a higher conversion rate from referrals to children's hearings being convened. It is intended to support the development of clear and robust guidance to referring agencies to ensure referrals are being made for the right children at the right time.

214. The further language change introducing "support" is a first step intended to modernise the language of the statutory referral criteria, while remaining consistent with the ethos of the children's hearing system and the measures which it can consider for inclusion in a compulsory supervision order where satisfied that is necessary to safeguard and promote the welfare of the child. A detailed project exploring the language of referral and grounds will run in parallel to the primary legislative process, so that any necessary additional changes can be made in tandem through secondary legislation or by other legislative means.

### **Alternative approaches**

215. The Scottish Government is supportive of the broader need to create a common, trauma informed use of language across the children's hearings system and recognises that legislation should reflect this where possible. Removal of the terms "treatment" and "control", and the implications of doing so, has received careful consideration. However, changes to language must not come at the expense of the specificity and clarity of the legislation's legal effects or its meaning. Concerns about child-friendly language, and the understandable desire to minimise technical terms and usage, are not as acute

where the language in the legislation is not regularly used when communicating with children. Skilful explanation, interpretation and confirmation of children's understanding will always be required. As detailed above, an extended piece of work considering modernisation of the language of referral and grounds will be commissioned to run alongside the passage of the Bill.

216. On the threshold for referral to the Principal Reporter, consultation responses revealed some concerns that the proposed change could exclude children who should be referred from benefitting from legal protections, and the Scottish Government considered leaving the current test unaltered. However, the Scottish Government is concerned that the current number of referrals which do not progress to a hearing is disproportionately high, and that the proposed change will form part of broader practice changes on referrals to ensure fewer unnecessary referrals are made, without increasing the risk of missed referrals. The vast majority of referrals are from public authorities, and it is appropriate to rely on the professional judgement of those authorities to make the right referrals at the right time. The Scottish Government considers that the risk of "missed" referrals can be appropriately mitigated through the development of clear guidance.

## Consultation

217. There is broad consensus that language should be modernised where possible, and many respondents to the consultation agreed that the words "treatment" and "control" were out of step with child-friendly, trauma-informed practices. However, concerns were expressed by others that modernisation of language cannot come at the expense of legal certainty and specificity. The Faculty of Advocates, for example, considered the proposed changes to be problematic and did not support any changes to the existing criteria. They consider it would be misleading to remove "treatment" or "control" as many compulsory measures will result in interventions that are characterised by precisely those features. Similarly, the Law Society of Scotland were clear in their view that there should not be any change, and that no benefit had been identified in making changes.

218. The Senators of the College of Justice, while recognising the need for modernised language, expressed concerns about losing specificity and the necessary connection to the section 67 grounds for referral should the changes be made, particularly where the grounds mention control.

219. Police Scotland, the largest source of referrals to the Principal Reporter, noted in their consultation response that the change in the threshold in the suggested criteria would potentially raise the bar and prevent unnecessary referrals. This was noted by others, including Children's Hearings Scotland (CHS) and Scottish Children's Reporter Administration (SCRA). One respondent pointed out that the majority of all referrals to the Principal Reporter do not result in any further action (in over 60% of referrals a Compulsory Supervision Order (CSO) was not considered necessary by the reporter in 2023/24), which may suggest that the current threshold for Reporter referral is not where it needs to be.

## **Information about the availability of children's advocacy services in relation to Children's Hearings**

### **Policy objective**

220. Section 18 of the Bill places new duties on local authorities, police constables, health boards and the reporter in the context of potential children's hearings referrals, to provide a child who has been informed about the referral with information about the referral and children's hearings process, as well as the availability of children's advocacy services under section 122 of the 2011 Act.

221. In enhancing section 122 of the Children's Hearings (Scotland) Act 2011 by placing a duty on other statutory bodies who might engage with the child, as well as retaining the duty on the chairing member of the hearing, the Bill will ensure more flexibility to the advocacy offer. The possibility of advocacy should be considered at all appropriate stages of a child's children's hearings journey. It is widely accepted that children may feel overwhelmed as they are experiencing an overload of information at the early stages, just when they are initially offered advocacy support. This can result in the child not fully understanding what they are being offered, or why it may help them either at that point or further down the line.

222. Under the current 2011 Act section 122 provision, by the time children come to most hearings it would self-evidently be too late if the chairing member's mention of advocacy were to be the first time advocacy is raised with the child. This seeks to provide a clear opportunity, enshrined in law, to have the possibility of advocacy, and its potential value to the child, explained at an early stage. The possibility of the children's advocacy worker representing the child across a wide range of situations, will be a marked improvement. The advocacy worker must be appointed, if so wished by the child, by the time of the first referral to a hearing.

### **Alternative approaches**

223. An opt out model of children's advocacy akin to the model used in England, where the court appoints a Children's Guardian to represent the rights and interest of the child and to provide the court with independent advice about the child's best interests was considered. There was also consideration given to opposing responses from, for example, panel member and 3<sup>rd</sup> sector organisations expressing concern that making this a legal requirement for every child and family may unintended consequences that this may "drown out" the voices of children if there are too many adults speaking on their behalf. However, it was supported, including by local government and social work that independent advocacy should be offered and available to those who need it, and the services are provided in a way that meets the needs of the child as early as required. The extent of existing presenting demand for children's advocacy at around 20% of hearings in the year to November 2024 and the cost for advocacy in the Hearings System was approximately £2m in 2024-25 along with cost implications and resourcing issues for the wider system ruled out that alternative approach.

224. Policy analysis considered the legislative reform to reflect an earlier and more agile approach allowing families multiple opportunities to learn about and consider the offer of independent advocacy would be the most effective and supported approach to further enhance SCRA practice to signpost services. In addition, there should be acknowledgement of the work taking place as part of Keeping the Promise and the provisions in this Bill to introduce lifelong advocacy for care experienced people. There is also provision for children's advocacy contained in the Children (Scotland) Act 2020, which has not yet been commenced. The intention is for these provisions will extend and complement the availability of children's advocacy services out with the Children's Hearings System.

## Consultation

225. In response to the Children's Hearings Redesign 2024 public consultation, the analysis report showed diverse, and sometimes opposing, views voiced in terms of what children's hearings advocacy should look like. Of those who responded to the question about the offer of advocacy to the child being reformed to reflect an earlier, more agile and flexible approach, 88% said "Yes" and 13% said "No".

226. In the consultation analysis report by some respondents, for example, advocacy organisations commented that children should have a "right" to advocacy, and that all children in the system should automatically receive independent advocacy, making advocacy provision an opt-out model. Several respondents, for example, third sector organisations, local government and social work mentioned it was important that advocacy services be offered multiple times throughout the hearings process, and advocacy and its benefits should be clearly explained to children. There was support for the offer or promotion of advocacy should start at an earlier stage, linked to the point where the need for a hearing is identified.

## **The sharing of hearings scheduling information with advocacy workers**

### Policy objective

227. As reflected in the proposed new section 69A(7) of the 2011 Act (as inserted by section 15(5) of the Bill), the child's advocacy worker should be provided with sufficient information by the Principal Reporter about when and where a children's hearing or, as the case may be, hearing before the sheriff is to take place in a timely manner to enable them to represent the views of the child in a children's hearing. Beyond that there should be no requirement for sharing sensitive and personal information in relation to the child.

### Alternative approaches

228. Some respondents, for example, advocacy organisations to the Children's Hearings Redesign consultation were of the view that advocacy workers should receive all the same papers, at the same time that other professionals received the information from SCRA. However, this way of working was contested by others and on the balance of consideration it was decided that a statutory obligation relating to full information

sharing about the child was not a viable solution. For example, concerns were highlighted around; undermining the advocacy relationship, the child having a choice to give explicit permission about what personal information is shared about them and with whom, as well as possible infringements to the child's right to privacy. Policy analysis supported the importance that an advocacy worker should have information, at the earliest opportunity, to effectively represent the child and their views. The approach was explored to allow advocacy workers to consistently receive the basic information about when and where a hearing for a child they are supporting is to take place to allow them to child to attend with the child, or the child's permission represent their views on their behalf, where the child wishes.

## Consultation

229. Of those respondents to the Children's Hearings Redesign consultation, who responded who did answer the question about a statutory obligation to support the sharing of information to advocacy workers 58% said "Yes" and 42% said "No". There were wide ranging diverse views in the consultation analysis report around the sharing of information to advocacy groups and other people who might help the child and their family understand their rights. Views were in some cases fundamentally opposed to one another. While some, individuals, felt all information should be provided to advocacy workers, others suggested that the wholesale sharing of information would not only be disproportionate for example panel members, Children's Hearings Organisations and individual respondents, but breach UNCRC Article 16 and Article 8 of the ECHR, in addition to risking GDPR breaches - the status quo should therefore remain.

230. The proposal to make it a statutory obligation to share information was also contested. Some respondents felt that there were already sufficient duties covering these circumstances, some were concerned about who the "other people" might be and that by creating a statutory obligation there was a risk of inadvertently creating a tick box culture. Everyone who responded to say that sharing of information should take place agreed advocacy workers and others must be given ample time to consider their shared information.

## **The duration of interim compulsory supervision orders and interim variations of compulsory supervision orders**

### Policy objective

231. Section 19 of the Bill amends the maximum duration of an Interim Compulsory Supervision Order (ICSO) once the first order is made. The first ICSO, put in place as a matter of urgency, will remain at a maximum of 22 days with subsequent orders and non-urgent extensions moving to a maximum of 44 days. Similarly, where an interim variation of a Compulsory Supervision Order requires to be made urgently, it will apply for a maximum period of 22 days, but 44 days will become the maximum period in less urgent cases. While the maximum period is to be increased in certain circumstances, it is not intended to be the default duration but introduces, along with other measures in the Bill, necessary flexibility to allow for more complex cases. It can also better accommodate geographic variations in court capacity and scheduling. The ability for a

sheriff or hearing to put in place an amended duration of ICSO/interim variation of a CSO will better reflect a child's particular needs and circumstances.

232. One of the key principles guiding the approach to children's hearings redesign has been to minimise obligations on children and families to attend repeated and successive procedural meetings, thereby minimising the risks of avoidable further trauma and disruption to children. This applies particularly in cases where there has been no material change in circumstances during the relevant period covered by the first ICSO or an urgent interim variation of a CSO for children and families to reflect, or for decision-makers to consider. Another objective of the approach was intended to fulfil the clear intention of the 'Hearings for Children' report to invest decision-makers with more discretion to apply child-centred and tailored flexibility to scheduling timescales. A firm and clear 'backstop' to that discretionary flexibility is also required to protect rights and mitigate against drift and delay, by providing certainty to children and to families. A further benefit of the proposed changes in the Bill would be to relieve parties, and (depending on the stage and characteristics of the case) other agencies, solicitors, safeguarders and children's advocacy workers from preparing, supporting and attending procedural ICSO renewal proceedings every 22 days in certain circumstances - thereby releasing them to more substantive, value-adding and child-centred tasks. Of course, in instances where an individual child's needs and circumstances are more volatile, and demand closer monitoring, a shorter application period for an ICSO or interim variation of a CSO may still be imposed by a decision-maker to ensure children's rights and interests are upheld.

## Alternative approaches

233. The Scottish Government did consider adhering to the current timescales provided for in the 2011 Act. A range of other applicable timescales - from 28 days to 3 months were also considered for the duration of interim orders in the redesigned children's hearings system. Extending timescales to 44 days in appropriate cases was considered sufficient to allow the policy intentions above to be realised, without being excessive.

## Consultation

234. The consultation paper asked if there should be more flexibility in the duration of interim orders. 60% of respondents did not answer this question. Of those respondents who did answer this question, 90% said "Yes" and 10% said "No".

235. The most frequently mentioned advantages of increasing the 22-day limit were that it would relieve children and families of the obligation to attend multiple hearings in the context where there had been little or no material change in their needs, wishes or circumstances and that it would allow more time to resolve issues, to see evidence of progress, and to gather information. A number of respondents, including several local authorities, also said that increasing the limit would relieve pressure on the system and its personnel (including social workers) and would help to save resources, especially in terms of money and time spent on hearings, which would be more beneficially deployed elsewhere. Others, such as CHS and Action for Children highlighted the need for

flexibility in relation to a time limit and advocated tailoring the length of an order to the needs of the child in question.

236. Some respondents, such as Includem, were concerned that increasing the 22-day limit would introduce unnecessary and problematic drift and delay into the system. Some stated concerns in this vein included the potential stress and frustration caused to children and families by extended periods of waiting and prolonged periods of uncertainty, and the consequent negative impact on a child's sense of stability. On balance, the Scottish Government is persuaded that the flexibilities introduced by the change are essential, and that risks around drift and delay can be mitigated through clear guidance to decision makers on ensuring that the child's best interests are reflected in the length of ICSOs/ interim variations of CSOs, to prevent 44 days becoming the default length as opposed to an upper limit.

## **The Reporter's ability to initiate a review**

### **Policy objective**

237. Section 21 of the Bill gives the Principal Reporter the power to call a review hearing, in certain circumstances, without the need for new grounds to be investigated and established, and before the expiry of the relevant period. This will ensure that there is not a reliance upon the child, relevant person or local authority to initiate a review of an order where it comes to the attention of the Principal Reporter in a given case that a child would benefit from an earlier review. It is intended to reduce delays for the child and ensure all issues and concerns are addressed by the independent tribunal in timely fashion.

238. The Bill therefore amends Part 13 of the Children's Hearings (Scotland) Act 2011 to confer a power on the Principal Reporter to initiate a review, under the conditions:

- a) that there is significant new information;
- b) that the order is no longer required or;
- c) that there are problems identified with implementation which suggest that the entirety of the CSO or ICSO would benefit from review.

239. Furthermore, the power can only be exercised when it is clear that no other party such as the child, family member or implementing authority has requested the review.

### **Alternative approaches**

240. This was considered the only option to addressing the identified issue.

### **Consultation**

241. The majority of respondents agreed that it would be appropriate for the Principal Reporter to be able to initiate a review hearing before the expiry of the relevant period, in certain circumstances: for example, if doing so would be in the best interest of the child, if new concerns or evidence were to come to the Reporter's attention in a

manner that raises issues with the terms of the extant CSO or with its implementation, if the child's circumstances change, or if the child requests it.

## Children's Services Planning Partnerships

### Background

242. Part 3 (Children's Services Planning) of the [Children and Young People \(Scotland\) Act 2014](#) ("the 2014 Act") requires each local authority and territorial health board to jointly plan and deliver a 3-year Children's Services Plan (CSP). This must be done working collaboratively with local children, young people, families and communities; legislatively specified 'other service providers'; and other relevant public bodies, funded providers, and third sector organisations.

243. The overarching aims of children's services plans are outlined in section 9 of the 2014 Act:

- (a) that children's services in the area concerned are provided in the way which—
  - (i) best safeguards, supports and promotes the wellbeing of children in the area concerned,
  - (ii) ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising,
  - (iii) is most integrated from the point of view of recipients, and
  - (iv) constitutes the best use of available resources,
- (b) that related services in the area concerned are provided in the way which, so far as consistent with the objects and proper delivery of the service concerned, safeguards, supports and promotes the wellbeing of children in the area concerned.

244. Part 3 duties under section 7(1) of the 2014 Act apply not only to the provision of 'children's services' (those provided wholly or mainly to, or for the benefit of, children and young people up to their 18th birthday (such as schools), or available to children and young people with specific needs (such as looked after children or children with a disability)); but also to 'related services' (those which are not provided directly to children/young people but are still capable of having a significant effect on the wellbeing of children and young people), such as housing, leisure services, or adult services provided to a parent or carer in relation to their own needs.

245. Children's services planning requirements also set out responsibilities to ensure local strategic planning and delivery arrangements support a smooth transition for young people as they move from the receipt of children's services to the receipt of adult services.

246. The 2014 Act places less onerous duties on ‘other service providers’ to those placed on a local authority and relevant health board. Currently, integration joint boards (IJBs) are listed as a specified ‘other service provider’ in section 7(1) of the 2014 Act. This means that they must be given the opportunity to participate in, or contribute to, the preparation of the plan (section 10) as well as duties in relation to implementation (section 12) and assistance (section 14). Evidence suggests that the level of IJB involvement in the 3 year planning cycle has not been consistent across the country. The significant range of services and supports provided under the auspices of integration joint boards in Scotland means that IJBs have a different role to ‘other service providers’ such as the Scottish Children’s Reporter Administration.

247. The Public Bodies (Joint Working) Scotland Act 2014 resulted in 30 local authority areas in Scotland adopting the IJB model of health and social care integration (whereby the planning of adult health and social care services is led by the integration joint board). 10 of these areas have also delegated children’s health and social care services (full structural integration). Although the IJB does not deliver services itself it commissions or “directs” the local authority, the health board, the voluntary and private sector to deliver services in line with the strategic plan, and the IJB allocates the budget for delivery accordingly.

248. There is a need, therefore, to ensure appropriate and consistent input and involvement from IJBs in all parts of Scotland. An enhanced level of IJB accountability for the execution of children’s services planning duties is necessary due to the IJBs responsibility for:

- Adult services key to the provision of holistic whole family support;
- The interrelationship between adult and children’s services including transitions. Particularly in relation to disabled young people where transitions to adult services may involve wide-ranging complex needs requiring continued multi-agency support across health and social care; identifying and meeting the needs of young carers and care leavers;
- The impact of services provided to a parent, carer, or other significant adult, on child wellbeing (e.g. in relation to alcohol and drug use, or mental health).

249. It is clear that the services commissioned or directed by an IJB can have a significant positive impact on improving outcomes for children, young people and their families if they are strategically planned and commissioned as part of an inclusive process involving local authorities (regardless of whether children’s services are delegated to the IJB) and health boards. The Children’s Services Planning Partnership is the obvious vehicle for that inclusive, joined up strategic planning process to take place in relation to services for children and young people.

250. Evidence has consistently shown and Scottish Government legislation, policy and guidance has consistently emphasised the positive outcomes that can be achieved by multi-agency, integrated working (in the formal and informal sense). It will enhance this process if the strategic planning and commissioning of these services also models an integrated, joint strategic, multi organisational and multi-agency model.

## Changes being made by the Bill

251. Section 22 of the Bill ensures that the statutory duties for Children's Services Planning in Part 3 of the Children and Young People (Scotland) Act 2014 placed upon a local authority and the relevant health board, are also placed upon integration authorities (IJBs) where those have been established. Placing the same duties onto IJBs as are conferred on local authorities and health boards, would create a tripartite accountability between the three public bodies in respect of children's services plans (preparing, reviewing, implementing, reporting and directions from Scottish Ministers). By strengthening the legal duty, it would further ensure the IJBs central role in the strategic planning landscape.

252. The objective is to improve outcomes for children, young people and their families by enhancing collaborative working and join up of strategic planning activities across adult and children's services, and in doing so bolster the Government's ability to deliver The Promise.

253. This Bill provision would act as an enabler by enshrining in law a requirement to share responsibility across the three key bodies responsible for planning, delivering and commissioning children and adult's health and social care services. This amendment specifically focuses on the IJB, as the lead agency model of integration is already covered by the existing legislation given the local authority or, as the case may be, remains legally responsible for children's services planning under those other forms of integration.

## Alternative approaches

254. An alternative approach would be to not make provision for legislative change but rather strengthen messaging on the importance of the IJB role within the existing Part 3 Children's Services Planning statutory guidance. This would leave the existing legal responsibilities and variation in approach. However, given that the current barriers to implementation often relate to behaviours and relationships between organisations and culture, putting the three bodies on equal legal footing is considered more likely to make clear the centrality of the IJB role in the strategic planning landscape.

## Consultation

255. There has not been a public consultation on the proposed provision. Learning from the Independent Review of Adult Social Care<sup>46</sup> in 2021 (Feeley Report), the Independent Care Review<sup>47</sup> in 2020, the CELCIS Children's Services Reform research<sup>48</sup> in 2023, The Promise Oversight Report 3<sup>49</sup> in 2025, in addition to the

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<sup>46</sup> [Independent Review of Adult Care in Scotland](#)

<sup>47</sup> [Independent Care Review – The root and branch review of Scotland's care system.](#)

<sup>48</sup> [Children's Services Reform Research reports : Celcis](#)

<sup>49</sup> [Oversight Board Report THREE: Scotland behind schedule— but still able to keep promise by 2030](#)

Scottish Government's statutory review<sup>50</sup> of three cycles of children's services plans has identified barriers which impact on realisation of Scotland's ambitions for a joined-up approach to strategic planning/commissioning, operation delivery and frontline practice which results in improved outcomes for children, young people and families.

256. The Scottish Government considers that the Bill provision has the potential to strengthen the responsibilities and the holding of integration joint boards to account for their obligations to keep The Promise to care experienced children and young people, particularly at the transition point between children and adult services.

257. The Scottish Government considers that the Bill provision also has the potential to be a helpful first step towards streamlining of the planning and reporting landscape in relation to children and families policy. While the proposed change will not achieve this on its own, it equalises the level of planning and reporting duties conferred on local authorities, health boards and IJBs. Streamlining of the planning and reporting landscape, in order to reduce the burden locally, has been a repeated ask from a range of stakeholders including the Children's Services Planning Strategic Leads Network.

## Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

### Equal opportunities

258. An Equality Impact Assessment (EQIA)<sup>51</sup> has been carried out and found several significantly positive impacts across several protected characteristics, particularly in Age. The provisions to extend Aftercare and create a right to advocacy for people who have experienced care will bring a level of parity across different age groups that has not been present in the current system.

259. The Promise directly addresses socio-economic inequalities experienced by care-experienced children and young people. It acknowledges that poverty, inequality, and systemic disadvantage are both causes and consequences of care experience. The Promise also recognises that care-experienced children face compounded disadvantages in education, health, housing, and employment and that to address this, support must be made available that goes beyond age-based cutoffs. The impact of the provisions in this Bill will be largely positive and will support Scottish Government's work to eradicate child poverty<sup>52</sup>.

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<sup>50</sup> [Scotland's children's services plans 2023-2026 review: improving outcomes for children, young people and families - gov.scot](https://www.gov.scot/publications/scotland's-childrens-services-plans-2023-2026-review/pages/2/)

<sup>51</sup> [Equality Impact Assessment – Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill](#)

<sup>52</sup> [Programme for Government 2025-2026](#)

260. A full Children's Rights and Wellbeing Impact Assessment<sup>53</sup> has been carried out in relation to the provisions in this Bill. Overwhelmingly the impact from the provisions detailed above will be positive. Although some provisions were assessed as not having a direct impact on children and young people, where impact was identified, it was recognised that each would uphold the UNCRC and would contribute positively to the wellbeing indicators.

## Human rights

261. As discussed in more detail below, there are a number of areas covered by the Bill that potentially engage rights under the European Convention on Human Rights (ECHR) or the United Nations Convention on the Rights of the Child (UNCRC). However, the Scottish Government considers the provisions of the Bill are compliant with the ECHR and UNCRC.

## Provision of care services

262. The provisions on profit limitation of children's residential care services potentially engage Article 1, Protocol 1 ECHR ("A1P1") (rights of property) in relation to care service providers. However, the Scottish Government considers that the Bill sets out an appropriate framework to ensure that any future exercise of the powers would be carried out in an A1P1 compliant way. To be able to exercise the profit limitation powers, the Scottish Ministers would need to be satisfied that those are necessary and in the public interest (in light of assessment of the exercise of the information requirements in the Bill) Moreover, Ministers would need to consider further matters, including the interests of care service providers. Finally, the exercise of such powers would also be subject to prior consultation, including with those providers.

## Children's hearings

263. While the Bill makes a number of significant changes to the operation of the children's hearings system, including in relation to the process for referral, determination of grounds, the composition of children's panels, and means of participation in relation to children's hearings, they do so in a way which ensures that the children's hearing system can continue to operate compatibly with engaged ECHR rights such as Article 6, 8 and 14, while ensuring compliance with engaged UNCRC rights such as Articles 3, 9, 12 and 16, as assessed in the Children's Rights and Wellbeing Impact Assessment. In particular, the provisions continue to ensure compatibility with fair decision-making requirements and ensure appropriate respect for family life considerations both in relation to the child and their family members, and that children's hearings decision-making takes appropriate account of the views of the child and is informed by their best interests. The Bill provisions do not change the underlying principles which inform decision-making by children's hearings in sections 25 to 29 of the 2011 Act such as the welfare of the child as the paramount or primary consideration, the importance of ascertaining the views of the child as far as possible, or the minimum intervention

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<sup>53</sup> [Children's Rights and Wellbeing Impact Assessment – Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill](#)

principle, The Bill does not change the parameters for determining whether compulsory supervision orders might be necessary or the measures which can be included in a CSO as set out in for example section 83 of the 2011 Act.

## Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

264. The First Minister for Scotland, John Swinney MSP, has made the following statement regarding children's rights:

"In accordance with [section 23\(1\) of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), in my view the provisions of the Children (Care, Care Experience and Services Planning) (Scotland) Bill are compatible with the UNCRC requirements as defined by [section 1\(2\) of that Act](#)."

## Island communities

265. The Scottish Government is aware of the challenges faced in rural and island communities in relation to social work and care, particularly around resourcing, recruitment, retention and workload. While the provisions in this Bill will have an impact on the workforce, it is not expected to be substantially different to the current landscape. The pressures on the workforce in relation to the care system are well known in respect of impact across Scotland.

266. Scottish Government will, of course, carry out further engagement with stakeholders from across Scotland, including island communities, to ensure that any further impact is both proportionate and mitigated where needed.

## Local government

267. In relation to provisions on to expand eligibility for aftercare, local authorities will be required to carry out an assessment of need for eligible young people requesting aftercare support and, where satisfied that eligible needs exist, provide aftercare support. Expanding eligibility for aftercare will have financial and resourcing implications for local authorities as it will increase the number of eligible young people requesting an assessment of needs and receiving aftercare support.

268. In relation to provisions relating to lifelong advocacy, consultation and engagement has taken place with Who Cares? Scotland, Barnardo's and other advocacy providers. As part of the development of regulations, further consultation and engagement will be undertaken to inform how any new provision fits within the current advocacy landscape.

269. In relation to provisions relating to the language of care, local authorities may incur some resource requirements on local authorities associated with updating and

changing their practices and materials in line with the guidance and a definition of care experience, raising awareness of the guidance and the sharing of any related resources. This will be carefully considered during the development of guidance and local authorities will be engaged appropriately throughout.

270. The provisions relating to profit in residential care within this Bill, in of themselves, do not carry any impact for local government as they provide the Scottish Ministers solely with enabling powers. Should those powers be exercised in future, it would enable the Scottish Ministers to firstly introduce regulations to enhance financial transparency by requiring certain residential childcare providers to provide certain types of financial information. The implementation of financial transparency regulations, and assessment of information provided to the Scottish Ministers in relation to those regulations, would not have an impact on local authorities. Should the Scottish Ministers then come to a view that excessive profit is being made from children's residential care, they may make further regulations to limit such excessive profit. Any subsequent limit on profits being made in children's residential care would be fully consulted on. There could a future impact to Local Government, in terms of local authorities' ability to exercise statutory duties to place children and young people into residential care placements, should providers choose to exit the market and the number of placements available to local authorities significantly reduces as a consequence of the introduction of any such profit limitation.

271. At this stage, there will be minimal impact from the provisions regarding a duty on Scottish Ministers to make arrangements to establish and maintain a register of foster carers. This has been consulted on and the approach identified is the least likely to cause undue impact to local government. Prior to the introduction of any register, relevant organisations will be engaged appropriately to ensure there is minimal administrative or financial impact.

272. There may be impacts on placement availability and provider flexibility in relation to the provisions on the not-for-profit principle in foster care, which would potentially have an impact on local government in relation to service provision. While the aim of the provisions is not to remove IFAs from the sector but to ensure they operate within a regulated, not-for-profit framework, should any IFAs not register as charities there may be an impact on Local Government. The proposed transition period and support for affected providers will mitigate these risks and reduce any impact faced by Local Government.

273. The majority of impact of the legislative provisions relating to children's hearings redesign will not be on local authorities. Most of the direct impact will be limited to SCRA and Children's Hearings Scotland. The provision which will have a direct impact relates to sharing information with advocacy workers and is estimated to cause minimal additional pressure on local government.

274. There is little direct impact on local government from the provisions relating to Children's Services Planning. The provisions aim to equalise the level of planning and reporting duties conferred on local authorities, health boards and IJBs.

## Sustainable development

275. The Bill is expected to have a positive social impact by contributing to improved outcomes for children.

276. The legislation will build on Scotland's overall approach to children's rights and welfare, in-line with UNCRC, the Scottish Government Youth Justice Vision and GIRFEC principles. It also aims to improve experiences and outcomes for all children who interact with the Children's Hearings system and provide support for care experienced children and young people at every stage of their journey.

277. In addition, the Scottish Government envisages that the Bill will have a positive economic impact over time. Scotland has already seen dramatic positive changes in those with care experience, with a decrease in the number of 'looked after' children falling by 18.1% between July 2020 and 2024, to 11,844.

278. As set out in the Financial Memorandum, the Bill should be seen within this wider backdrop of the benefits change programmes are engendering and potential savings to public expenditure. The 'Independent Care Review' in 2020 included a report called 'follow the money' which aimed to quantify the human costs and financial impacts of the current care system. While acknowledging that there were some areas where data was lacking, this report estimated that the cost of services required by care experienced people as a result of the current 'care system failures' was £875m per annum and that a further £732m per annum is lost as a result of the lower incomes care experienced people have on average.

279. Regarding financial sustainability of the organisations discharging the new legislative duties, the Bill creates no new public bodies. Although existing delivery bodies are already subject to existing value-for-money and financial prudence obligations, the requirement for IFAs to register with OSCR and the enabling powers around financial transparency and future regulations around limiting excessive profit in residential care are likely to have an impact. There will be an additional burden on IFAs to register, which may take the form of additional financial and resource pressure. There will be engagement with the sector and a transition period implemented to mitigate these pressures. In relation to limiting excessive profit in residential care, this will likely have an impact on the business models of providers which may then leads to market exit. As noted above, public consultation will be carried out ahead of regulations being introduced.

280. The potential environmental impact of the Bill has been considered, with a pre-screening report completed. No significant environmental effects are expected.

## Crown Consent

281. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.



# Children (Care, Care Experience and Services Planning) (Scotland) Bill

## Policy Memorandum

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