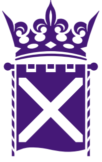

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Children (Care, Care Experience and Services Planning) (Scotland) Bill

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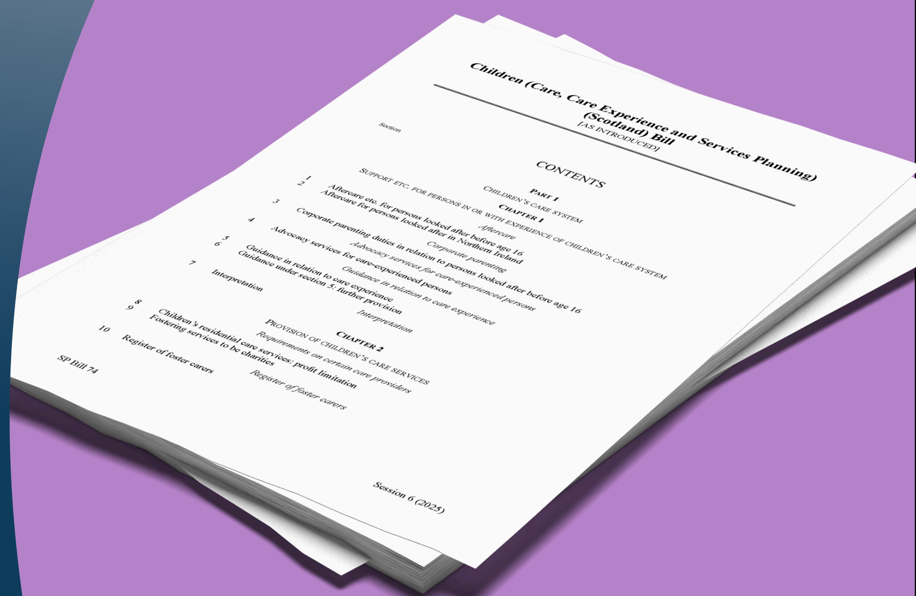
The Children (Care, Care Experience and Services Planning) (Scotland) Bill is a Government Bill introduced to the Scottish Parliament on 17 June 2025. It takes forward a number of changes intended to meet various recommendations of the 2020 Independent Care Review (also known as The Promise).


Children (Care, Care Experience and Services Planning) (Scotland) Bill
[AS INTRODUCED]

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Summary

The Children (Care, Care Experience and Services Planning) (Scotland) Bill was introduced to the Scottish Parliament on 17 June 2025.

The Bill is in three parts:

- Part 1, Chapter 1 extends eligibility for aftercare support for young people leaving care prior to their 16th birthday. It also extends corporate parenting duties for certain publicly funded organisations to include those leaving care prior to their 16th birthday, and puts a duty on Scottish Ministers to issue guidance in relation to care experience in order to aid understanding of their circumstances.
- Part 1, Chapter 2 gives Scottish Ministers power to make regulations requiring non-local authority residential care providers to provide financial and operational information through an initial information request. It introduces a requirement for Independent Fostering Agencies (IFAs) to be registered charities, and gives Scottish Ministers powers to create a register of foster carers.
- Part 1, Chapter 3 makes changes to the operation of the children's hearings system, including to the tests for referral to a hearing, the composition of panels, requirements around children's attendance at hearings, and terms of compulsory supervision orders (CSOs) and interim variation of CSOs.
- Part 2 makes changes to planning arrangements for children's services, providing for any Integration Joint Boards (IJBs) covering an area to join local authorities and health boards on the list of bodies required to plan children's services.
- Part 3 contains the final provisions for the Bill.

This briefing explores the provisions of the Bill in more detail. It also considers the policy context and relevant background.

Glossary

Legislation

The legislation referred to throughout the Bill and in this SPICe briefing is set out below:

Children (Scotland) Act 1995: The primary piece of legislation relating to the care, welfare, protection and rights of children and young people in Scotland. It provides a definition of 'looked after' and also makes provision on a range of areas including: local authority duties to children looked after by them; local authority service provision for children and families in need of support; the Children's Hearings System; and parental responsibilities and rights of birth parents regarding how their child is brought up and situations in which these rights may be removed.

Amendments to the 1995 Act via the Children (Scotland) Act 2020 introduced duties for the local authority, when making decisions about the care of a looked after child, to take the views of their siblings into account; and to promote direct contact and personal relations between a looked after child and any of their siblings.

Adoption and Children (Scotland) Act 2007: This Act modernised adoption, introducing Scotland's Adoption Register to help match children placed for adoption with families. It also gives local authorities the ability to apply to court for 'Permanence Orders', vesting parental responsibilities and rights in the authority or being shared between the authority and parents and/or carers. The Act also gives unmarried couples the right to adopt.

Education (Additional Support for Learning) (Scotland) Act 2009 : This Act amended the 2004 Act of the same name to clarify that all looked after children are automatically considered to have additional support for learning needs, and that they must be assessed to determine whether or not they require a Co-ordinated Support Plan. Under the 2004 Act, local authorities and other agencies have a duty to assess, monitor and support any child who requires additional support in order to engage in education.

Public Services Reform (Scotland) Act 2010: Part 5 of the 2010 Act provides the current regulatory regime for residential care providers.

Children's Hearings (Scotland) Act 2011 : This Act fundamentally overhauled legislation on the children's hearings system and sought to strengthen children's rights in the context of that system.

Children and Young People (Scotland) Act 2014 : This Act introduced a range of reforms across children's services, including: the introduction of corporate parenting duties for certain publicly funded individuals and organisations to meet the needs of care experienced people; local authority duties to provide services and support for children at risk of becoming 'looked after' and to provide assistance for kinship carers; extension to the age of eligibility for aftercare support for young people leaving care to 26; the introduction of 'continuing care', providing those leaving care up to the age of 21 with the opportunity to continue with accommodation and support they were provided with immediately before they ceased to be looked after.

Public Bodies (Joint Working) (Scotland) Act 2014: Provided the framework for integrating health and social care services in Scotland by establishing new integration authorities.

Children (Care and Justice) Act 2024 : This Act introduced changes in relation to the care of children involved in the care system and the criminal justice system. Provisions in the Act ending the placement of under 18s in Young Offenders Institutions (YOIs) were enacted in September 2024. [1] Provisions giving children in secure accommodation 'looked after' status for the purposes of accessing support were also enacted in 2024. Once fully enacted, the Act will:

- raise the age of referral to the Children's Hearings System from 16 to 18
- make changes to the prevention and protection measures available within the system
- introduce additional regulation and recognition for cross-border placements where children from outwith Scotland are placed in secure accommodation here
- introduce new standards and reporting procedures for secure transportation to and from secure care
- establish a single point of contact for victims.

The 2024 Act also repealed the Named Person and Child's Plan provisions in the Children and Young People (Scotland) Act 2014, which were never enacted.

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 : This Act came into force on 16 July 2024. It protects children's rights in law, giving them access to legal redress if their rights are breached in relation to laws originally made in the Scottish Parliament.

Regulations

Regulations relevant to the Bill are listed below.

Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003: These regulations set out local authorities' legal duties to prepare young people for leaving care, providing for advice and assistance - known as 'aftercare' support.

Looked After Children (Scotland) Regulations 2009: These regulations underpin many processes around the care of looked after children, making provision for the duties and functions of local authorities in relation to children looked after by them and revoking and amending previous regulations. They make provision for the care planning process; children 'looked after at home'; kinship care; foster care; and residential care.

These regulations were amended in 2021, introducing a duty for local authorities to place siblings together in care, as long as this is in their best interests. If it is not in their best interests to be placed together, brothers and sisters must be placed in homes near to one another.

Terms

Advocacy: Helps people express their views and make informed decisions. Advocates do not reach a decision on an issue for someone, instead they support that person to make their own choices.

Aftercare: Support provided to an eligible young person leaving care on or after their 16th birthday.

Care Experienced: While there is not a definition in law, a care experienced person is someone who has spent any length of time in the care system during their life.

Children's hearing: A children's hearing is a legal meeting during which panel members (the tribunal decision makers) make legal decisions about the care and protection of young people referred to them.

Compulsory supervision order (CSO): Children's hearings can decide whether or not to make a CSO. Introduced by the Children's Hearings (Scotland) Act 2011, CSOs can contain conditions of residence stating where the child must live, in addition to other conditions such as contact with family members. A CSO is a legal order that means the local authority is responsible for implementing the child's care plan and promoting their welfare.

Corporate parenting: Scottish public bodies defined as corporate parents in the Children and Young People (Scotland) Act 2014 have duties toward care experienced young people, including promoting their interests, assessing their needs and providing opportunities and support.

Foster care: Where children or young people cannot be cared for by their birth parents or by a kinship carer, the local authority may place them into foster care with an approved foster carer. Often this is a temporary arrangement, but it can become permanent under some circumstances.

Independent Care Review: This review made recommendations about the reform of the children's care system in its final report, The Promise, published in 2020.

Integration Joint Boards (IJBs): Introduced by the Public Bodies (Joint Working) Scotland Act 2014, IJBs are responsible for planning health and care services. Certain services that were traditionally the responsibility of either the health board or the local authority became the responsibility of the IJB: these are called delegated services. For other services, including children's health services, and children’s social care services, the partners could decide whether to integrate them or not. What emerged were 31 health and social care partnerships for planning and delivery purposes. However, most staff continued to be employed by either the health board or local authority. 10 health and social care partnerships also have delegated children's health and social care services.

Interim compulsory supervision order (ICSO): Where a hearing defers a decision regarding a child not already subject to a CSO, an ICSO may be made where a children's hearing panel is satisfied it is necessary as a matter of urgency.

Kinship care: This is where a child or young person who can no longer be cared for by their birth parents is looked after by extended family or someone known to them. The Looked After Children (Scotland) Regulations 2009 defines a kinship carer as “a person who is related to the child” or “a person who is known to the child and with whom the child has a pre-existing relationship”.

Looked after: The term 'looked after' is used where a local authority has taken on some legal responsibility for the care and wellbeing of a child or young person. The Children (Scotland) Act 1995 sets out the definition of 'looked after' and local authority duties to looked after children in their care.

Residential care: Children and young people may be placed in care in residential children's homes via a children's hearing or on a voluntary or emergency basis.

Residential children's homes can be run by local authorities or the voluntary or independent sector. There is variation in terms of provider, purpose and size of these.

Scottish Children's Reporter Administration (SCRA): When children are referred for hearings, these are organised by SCRA. The SCRA Principal Reporter prepares a list of reasons, known as ‘grounds’ why a child may be considered to be at risk. This forms the basis of a referral to a children’s hearing.

Background: Care system reform and The Promise

The children's care system in Scotland is currently going through a period of reform. This began with the Independent Care Review, commissioned in February 2017 to carry out a 'root and branch review' of the care system. A key purpose of the review was to look at how Scotland might address the inequality of outcomes care experienced people face in many areas of their lives, such as health and education.

The review findings, set out in The Promise, were published in 2020 and accepted by the Scottish Government. A further review of Scotland's children's hearings system was also carried out, with findings published in 2023.

The Children (Care, Care Experience and Services Planning) (Scotland) Bill forms part of the Scottish Government's work to implement the recommendations of The Promise. It follows consultations on: moving on from care into adulthood; the future of foster care; developing a universal definition of care experience; and children's hearings redesign.

Further information on the reviews and consultations highlighted above can be found in the following sections of this briefing.

The SPICe briefing Scotland's care system for children and young people: Subject profile 2025 update sets out further background on Scotland's care system for children and efforts to reform it. [2]

The Independent Care Review and The Promise

The Independent Care Review was commissioned in February 2017 to carry out a 'root and branch review' of the children's care system. A key purpose of the review was to look at how Scotland might address the inequality of outcomes care experienced people face in many areas of their lives, such as health and education.

People with experience of the care system represented half of the review group's co-chairs and working group members. During the lifetime of the review, the views of over 5,500 care experienced children and adults, as well as parents, carers and the care workforce, were listened to.

The review findings were published in February 2020 [3] . The main findings were set out in The Promise [4] , and accompanying reports examined different aspects of the care system [5] . The Promise gives a vision for a Scotland where, by 2030, all children grow up loved, safe and respected with effective support reducing the need for children to go into care. This vision is built on five foundations:

- **Voice:** Children must be listened to and involved in decisions about their care.
- **Family:** Children feel loved and safe in their families and families are given the support they need.
- **Care:** Children must not be separated from their brothers and sisters wherever possible. Legislation to help siblings in care stay together has since come into force in

July 2021. [6]

- **People:** Care experienced children must be supported to develop relationships.
- **Scaffolding:** Children, families and the workforce must be supported by an accountable system that provides help and support when required.

The Scottish Government accepted the recommendations of the review in February 2020 .

Following publication of the recommendations, The Promise Scotland was set up by Ministers as an independent organisation to oversee change. Its goal is to enable Scotland to 'keep the promise' to care experienced children and young people by 2030. In addition, the Oversight Board was set up to review progress.

The Promise Scotland does not hold statutory powers or responsibilities; its role is to oversee, drive and support change. It works with organisations and individuals all over Scotland to help others deliver change for care experienced children and young people.

In a written answer published in March 2021 [7] , the then Minister for Children and Young People, Maree Todd MSP, stated that the role of The Promise Scotland is to:

> " ... help drive forward the change needed for Scotland to keep "The Promise". [7] "

The Minister also described the role of the Scottish Government to:

> " ... underpin the work that needs to be done to make the real transformation to developing policy and focus on what matters, the people, the children and families most in need of support. [7] "

Ministerial responsibility for The Promise currently sits with the Minister for Children, Young People and The Promise, Natalie Don-Innes MSP, reporting to the First Minister.

A Cabinet sub-committee on The Promise was set up to monitor progress and decision making in relation to the Promise across a number of portfolios. Sub-committee members are: the First Minister; the Minister for Children, Young People and The Promise; the Cabinet Secretary for Finance and Local Government; the Cabinet Secretary for Justice and Home Affairs; the Minister for Drugs and Alcohol Policy; the Minister for Equalities; and the Minister for Social Care, Mental Wellbeing and Sport. [8]

Hearings System Working Group

The Hearings System Working Group chaired by Sheriff David Mackie published recommendations for the redesign of the children's hearings system in May 2023. Recommendations in the report included:

- Children and families must understand their rights and how to access them. Advocacy support must be offered at the point of referral, and children must be told about their right to legal representation.
- The Principal Reporter should work closely with children and families, and grounds should be agreed in a separate process prior to a hearing. There should not be long

waits while grounds are being established, and children and families must understand why they have been referred.

- The working group found evidence children's hearings are viewed as confrontational. This should change, with the focus being on what is best for the child.
- There should be a consistent, remunerated and highly-qualified Chair of the Panel and two Panel Members.
- There should be consistency of Sheriffs and Panel Chairs, so that children become familiar with them and they are familiar with the circumstances of the case.
- Sheriffs should have special training in order to work alongside children and their families, with Sheriff Court experiences feeling similar to that of a hearing.
- The Principal Reporter should be able to work with families before the birth of a child, to enable planning and avoid rushed decisions after birth.
- Preparation before a hearing should give children and their families the opportunity to meet the Chair, provide clear communication in the name of the Chair about the meeting and meetings should be scheduled at a time which causes the least disruption to a child's life.
- Children, families and the related workforce must have the time they need to read information prior to a hearing taking place.
- The plan for system change must be led by the Scottish Government.

The Scottish Government response to the report accepted a number of recommendations, identified others requiring additional analysis, and declined to accept several others including proposals to introduce salaried professional Chairs and remunerated Panel Members. However, the Bill does propose the introduction of remuneration for Chairing Members and Specialist Members of the children's panel.

Scottish Government consultations

Ahead of the Bill's introduction, the Scottish Government held consultations on:

- Moving on from care into adulthood
- The future of foster care
- Developing a universal definition of 'care experience'
- Children's hearings redesign.

Key themes emerging from these are summarised in the following sections.

Moving on from care into adulthood consultation

The consultation on moving on from care into adulthood sought information about the experiences of those leaving care in relation to areas including planning and preparation,

continuing care, aftercare, health and wellbeing support, education, employment and housing.

The consultation analysis was published in January 2025. There were 69 responses to the consultation, with 22 from individuals and 47 from organisations. Respondents highlighted issues including:

- the need to involve the young person and their family in timely planning
- supporting young people to develop life skills including financial management and self-care
- the role of advocacy for care experienced young people
- extension of eligibility for continuing care and aftercare to other groups of care experienced young people, particularly those leaving care before their 16th birthday
- greater need for awareness around rights and corporate parenting responsibilities
- a need for lifelong support for care experienced people; and
- the importance of trauma informed multi-agency collaboration.

Future of foster care consultation

The Scottish Government consulted on the future of fostering in Scotland between October 2024 and February 2025. The consultation asked for views on a flexible fostering approach, how people could be encouraged to become foster carers and what support foster carers need.

The future of foster care consultation analysis was published in July 2025. There were 100 responses, with 55 of these from individuals and 45 from organisations. 21 consultation events were held with children and young people, foster carers and other professionals, and findings from conversations Who Cares? Scotland held with 42 children and young people are also noted in the analysis.

Issues highlighted by respondents included [9] :

- While there was support for the Scottish Government's proposed vision for foster care, many felt it would be difficult to achieve due to issues such as limited funding and falling numbers of foster carers.
- Support for the development of a flexible fostering approach, including a bigger role in supporting families at the edge of care. However, there were also concerns that this could pose some risk to foster carers and lead to them being expected to carry out work currently done by professionals such as social workers.
- The need for foster carers to have terms and conditions and roles and responsibilities more clearly defined in order to support a flexible fostering approach.
- The need for improved terms and conditions for foster carers was also highlighted, with 47% stating the current financial model was not effective. 82% said there should be a national approach to fees and additional payments. 92% said foster carers

should have a retainer fee when they do not have a child placed with them.

- 96% of respondents said there should be a national approach to continuing care allowances.
- Questions around what role Independent Fostering Agencies (IFAs) should play in the future of foster care, with 84% of respondents stating they should have the status of a charity in order to restrict profit. 90% agreed IFAs should pay their foster carers at least the Scottish Recommended Allowance (SRA).
- Concerns around the impact of changes relating to IFAs on the number of foster carers.
- Support for a national foster carer recruitment campaign.
- 83% of respondents said there was a need for a new training and skills framework for foster carers.
- There was support for the proposal to create a National Register of Foster Carers, with many respondents favouring a register managed by central government, and other suggestions including the Scottish Social Services Council (SSSC), the Association for Fostering, Kinship and Adoption (AFKA) Scotland or other third sector. AFKA Scotland currently hold Scotland's adoption register. A national approach to matching children and carers was supported by respondents, though there were concerns this would be hard to put into practice and cause problems with current placements.
- The proposal for a national charter for foster carers was supported by many.
- 91% of respondents said national guidance for dealing with allegations and raising concerns about foster carers should be updated to be made clearer. Respondents also said foster carers should have a right to raise concerns.
- Housing, cost of living support for foster carers and resources and information were other areas highlighted.

Developing a universal definition of care experience consultation

The Scottish Government launched a consultation on the development of a universal definition of care experience in October 2024.

The consultation sought views on the need for such a definition, the impact of introducing this and about language used to speak about care experienced people. Consultation analysis was published in July 2025.

There were 142 responses to the consultation - 71 from individuals and 71 from organisations. 58% of the responding organisations had corporate parenting duties under the Children and Young People (Scotland) Act 2014. Eight stakeholder events were also held, with representatives from local authorities, health boards, membership bodies, and third sector and higher and further education organisations.

On a universal definition, the consultation found:

- 80% support for a universal definition of 'care experience'.
- Respondents identified that a definition might be useful for research and data collection and may also enable 'care experience' to be included in adjustments to the Equality Act 2010.
- Concerns around the potential impact of a universal definition on resources and budget.
- Concerns around the potential for a definition to exclude some people and create stigma around care experience if not appropriate.
- There was support for looked after at home, kinship care (both looked after children and non-looked after children), foster care, residential care, residential special school, supported accommodation, secure care and adoption being included in the definition.
- A number of respondents also said unaccompanied asylum-seeking children should be included in the definition.
- Respondents also noted the need to consider how a definition interacts and impacts on existing and future legislation and policy.

On the language around care, the consultation found:

- Many felt current language is unclear and/or inconsistent and existing terms had negative impacts on care experienced people.
- Support for consultation with care experienced people about language used.

Children's hearings redesign

A Scottish Government consultation on children's hearing system redesign proposals launched in July 2024, which ran to October 2024. An independent analysis of responses was published in February 2025.

The analysis found there was general support for a move away from an adversarial approach to children’s hearings toward an inquisitorial one, though some expressed concerns about a complete move away from this in terms of legal rights. There was also support for ensuring children’s voices are at the heart of the system and alignment with the United Nations Convention on the Rights of the Child (UNCRC). The need to consider the unintended consequences of changes to the system was also highlighted by many respondents.

While 51% of respondents did not answer a question on whether there should be “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 the 49% that did answer, 26% said no and 74% said yes.

A proposal for the creation of a new ‘legal member’ was not a recommendation of the Hearings System Working Group, but was included in the consultation. The qualified legal member would reform the role in determining grounds for referral to a children’s hearing

currently performed by a sheriff. The legal member would operate in the children's hearing centres but would not be a children's panel member.

Of the 43% of respondents answering a consultation question on whether the creation of a legal member would fulfil the recommendation of the Hearing System Working Group that there should be a consistent specialist sheriff throughout the children's hearing process, 41% said yes and 59% said no.

What the Bill does

This part of the briefing describes the Bill in detail.

Where there was a relevant consultation prior to the Bill's introduction, this part of the briefing includes consideration of what was said on consultation in relation to each section of the Bill.

Part 1: Children's care system

Part 1 of the Bill relates to the children's care system. It is organised into three chapters

- Chapter 1: Support etc. for persons in or with experience of children's care system
- Chapter 2: Provision of children's care services
- Chapter 3: Children's hearings.

Chapter 1: Support etc. for persons in or with experience of children's care system

Chapter 1 of Part 1 proposes changes relating to aftercare duties (sections 1 and 2) and corporate parenting duties (section 3) for those looked after, or who have previously been looked after.

Chapter 1 also covers advocacy services for care experienced individuals (section 4) and guidance in relation to care experience (sections 5-6).

The final provision of Chapter 1 (section 7) is an interpretation section for Chapter 1.

Section 1 and 2 - Aftercare

Section 1 and 2 of the Bill deal with aftercare.

Aftercare is the term used to describe advice, guidance and assistance beyond universal services provided to children who leave care from age 16. Section 29 of the Children (Scotland) Act 1995 (the 1995 Act), as amended by section 66 of the Children and Young People (Scotland) Act 2014 (the 2014 Act), sets out that any child leaving care on or after their 16th birthday is no longer a looked after child and will be eligible for aftercare support services. [2]

Currently, local authorities have a duty to provide aftercare support services to eligible young people leaving care under the age of 19. In addition, eligible young people aged 19- 25 can also request assistance from their local authority, and the local authority must assess their support needs and provide aftercare support to meet those needs if required. [10]

Most recently, Section 24 of the Children (Care and Justice)(Scotland) Act 2024 made provision for children remanded or sentenced in secure accommodation to be treated as 'looked after' children, with entitlements to aftercare support. [2]

Examples of aftercare support can include helping a young person find accommodation; access education and employment opportunities; and/or support their wellbeing through provision of financial support. [11]

Under the current duties on local authorities, those who left care **prior** to their 16th birthday are not eligible for aftercare support. The Independent Care Review recommended:

> “ Aftercare must take a person-centred approach, with thoughtful planning so that there are no cliff edges out of care and support. Scotland should behave and act like a good parent that supports young people as they enter adulthood. [4] , p92”

A 2022 Who Cares? Scotland petition (PE1958) submitted to the Scottish Parliament's Citizen Participation and Public Petitions Committee included a call for aftercare provision to be extended to those 'previously looked after' young people who left care before their 16th birthday, on the basis of individual need. The petition gathered 533 signatures and was considered by the Committee. In September 2024, the Committee closed the petition on the basis that the Scottish Government was taking forward work on support for the care experienced community and planned to introduce legislation on the Promise before the end of the parliamentary session. [12]

The Scottish Government's moving on from care into adulthood consultation also found support for extending the eligibility of aftercare provision to other groups of care experienced people, particularly those leaving care before turning 16.

Section 1 of the Bill amends the aftercare provisions in the 1995 Act to extend aftercare eligibility. Section 1(2) introduces a right for children and young people who were formerly looked after before their 16th birthday to request an assessment of their eligible needs between the ages of 16 and 25 and extends the local authority's power to provide aftercare support to meet those needs if required. It is proposed that this will be introduced incrementally for those turning 16 from April 2027.

Section 1(3) amends section 30 of the 1995 Act on provision of financial assistance toward

expenses of education or training to extend eligibility for this to those between the ages of 16 and 25 who were looked after at any point before their 16th birthday.

The Scottish Government's Policy Memorandum accompanying the Bill sets out groups eligible for aftercare support:

> " Eligible young people are those who have been "looked after" 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 of the 1995 Act. [13] ,p7"

Section 2 of the Bill amends section 29 of the 1995 Act to include those between the ages of 16 and 18 who were looked after in Northern Ireland and are now resident in Scotland as a group eligible for aftercare support from a local authority. This brings parity with current provisions already in place for children from England and Wales.

Section 3 - Corporate parenting

Section 3 of the Bill relates to corporate parenting.

A **corporate parent** is one of the publicly funded individuals or organisations with legal responsibilities under Part 9 of Children and Young People (Scotland) Act 2014 ('the 2014 Act').[i]

These responsibilities are called **corporate parenting duties**. They aim to ensure that looked after children, and young people leaving care from age 16, receive the same support and opportunities as any good parent would provide. Corporate parents must work together to meet the needs of this group.[ii] Examples of corporate parents include Scottish Ministers, local authorities, NHS health boards, Police Scotland and further and higher education bodies.

At present, corporate parenting duties apply to looked after children, as well as those who left care **on or after** their 16th birthday but who are under 26.[iii]

Section 3 of the Bill amends the 2014 Act in a manner similar to the way in which section 1 of the Bill amends the Children (Scotland) Act 1995.

The effect of section 3 is that the corporate parenting duties would now apply for the first time to those children and young people who were looked after, but who left care **before** their 16th birthday.

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i Children and Young People (Scotland) Act 2014, Part 9 and schedule 4.

ii Children and Young People (Scotland) Act 2014, section 60.

iii Children and Young People (Scotland) Act 2014, section 57(1) and 97(2); Children (Scotland) Act 1995, sections 17(6) and 17A(2).

Scottish Government consultation

Unlike the proposal for aftercare in section 1, the Scottish Government's 'Moving on' Consultation did not contain a specific question on the proposal now contained in section 3. [14] However, some of the consultation responses still addressed themes relevant to corporate parenting. [15]

A common theme was a need for greater awareness and access to information for young people on corporate parenting responsibilities. [16] Several respondents suggested that corporate parents should work more closely and plan better to support young people moving from care into adulthood. [17]

Section 4 - Advocacy services for care-experienced persons

Advocacy helps people express their views and make informed decisions. Advocates do not reach a decision on an issue for someone, instead they support that person to make their own choices.

Section 4 of the Bill says that Scottish Ministers must, by regulations, confer rights of access to what it refers to as **care experience advocacy services**.

Policy background

Section 4 of the Bill relates to the recommendation from The Promise that care-experienced individuals should have a statutory right to advocacy throughout their care journey and beyond. Key principles from The Promise in this area include, for example:

- care experienced children and adults must have the right and access to advocacy, at all stages of their experience of care and beyond
- advocacy should be based on need, with no upper age limit
- advocates must be independent, representing the individual's interests—not those of service providers or other organisations
- to ensure independence, advocacy services must be structurally, financially, and psychologically separate from statutory bodies. [18]

In practice, advocacy is likely to be most needed when children, young people, or care-experienced adults are navigating the care system or interacting with key services like health, education, police, or social work.

At present, **Scotland's advocacy landscape is complex and uneven.** While some rights to advocacy are legally protected, in other areas it remains a matter of good practice.

Scoping work for the Bill suggests that local authorities provide a "significant" level of advocacy services for care-experienced children and young people, but the extent of this provision still varies widely between different local authority areas (Policy Memorandum, para 50). [13]

Some examples of advocacy provision in other legislation are set out below.

Advocacy in existing legislation

Key legislation on advocacy includes:

- the Mental Health (Care & Treatment) (Scotland) Act 2003, which requires local authorities and health boards to work together to ensure that independent advocacy services are available for those with a mental health condition, learning disability, or dementia[iv]
- the Education (Additional Support for Learning) (Scotland) Act 2004 , which, as amended in 2009, provides free, publicly funded advocacy for families and young people involved in cases before the Additional Support Needs Tribunal for Scotland [v]
- the Children's Hearings (Scotland) Act 2011, which has, since the relevant provision was brought into force in 2020, required that a child or young person is informed of a specialist advocacy service to support their participation in a children's hearing [vi]
- the Social Security (Scotland) Act 2018, which gives disabled people the right to access free advocacy when applying for Scottish social security benefits[vii]
- section 21 of the Children (Scotland) Act 2020, **not in force**, and with no concrete plans for future implementation [19] - this requires Scottish Ministers to make what they consider to be "necessary and sufficient" provision for advocacy services for children and young people involved in certain court disputes, typically between their parents over childcare arrangements following separation or divorce.[viii]

Section 4 - in more detail

The Policy Memorandum (paragraphs 49–50) states that the new right to advocacy is not intended to "cut across or duplicate" existing, bespoke advocacy entitlements. It also highlights that current advocacy services, such as those provided through the children's hearings system and local authority-led advocacy, will remain pivotal. [13]

Much of the detail around the right to advocacy under section 4 is **left to secondary legislation**. The Scottish Government argues this approach will "provide a degree of

iv Mental Health (Care & Treatment) (Scotland) Act 2003, section 259 and 328.

v Education (Additional Support for Learning) (Scotland) Act 2004, section 14A, inserted by the Education (Additional Support for Learning) (Scotland) Act 2009 sections 10 and 26(3).

vi Children's Hearing (Scotland) Act 2011, section 122; The Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020 SSI 2020/370.

vii Social Security (Scotland) Act 2018, sections 10-11.

viii Children (Scotland) Act 2020, section 21.

flexibility", allowing updating of the scheme "to reflect future circumstances and the needs of the care experienced community" (Policy Memorandum, para 55). [13]

Examples of areas that may be covered by secondary legislation include (section 4(4) and (5)):

- **eligibility for advocacy:** who qualifies for advocacy and the level of support they should receive. For instance, as one option, broader rights could be granted to those who spent most of their childhood in care, while individuals with shorter care histories might receive more limited support (the Explanatory Notes, para 21) [20]
- **service standards:** the standards that providers of advocacy services must meet - for example, a definition of what constitutes 'independent' in the context of care experience advocacy services does not appear on the face of the Bill, but the Scottish Government intends to set this out in secondary legislation [21]
- **register of service providers**: the possible creation of a register of approved care experience advocacy providers, including who would be responsible for its maintenance
- **qualifications and training:** the required skills, qualifications, and training for individuals delivering care experience advocacy services
- **notification procedures:** how eligible individuals will be informed of their right to advocacy.

The Policy Memorandum (at para 54) says, without giving further details, that the Scottish Government will develop "a clear timeline and programme for implementation" associated with the advocacy service. [13]

Scottish Government consultation

Since The Promise, the Scottish Government has not consulted publicly on the contents of section 4 of the Bill. In accordance with section 4(7), the Scottish Government's intention is to consult in advance of making any regulations (Policy Memorandum, para 55). [13]

Although the Scottish Government's Moving on from care into adulthood consultation did not ask specifically about advocacy, [14] as mentioned earlier, several respondents emphasised the importance of advocacy for young people leaving care. [22]

Separately, The Promise Scotland published a report in December 2023, entitled Scoping and Delivering A National Lifelong Advocacy Service for Care Experienced Children, Adults and Families. [23] Development of this report included engagement with advocacy providers. [20]

The Scottish Government then held workshops with advocacy providers to discuss the report, where providers strongly supported creating a legal right to advocacy for people with care experience. However, they also raised concerns that, in some areas, resources

may be insufficient to meet future demand (Policy Memorandum, para 56). [13]

Section 5 and 6 - Guidance in relation to care experience

The Independent Care Review found that the term 'care experience' has meaning for many people, and concluded that there should be:

> “ ... an expansive and holistic understanding of 'care experience' that includes all the various settings and experiences of care. Within this there must be an understanding of how the role of the state in individuals’ upbringing relates to ongoing rights and entitlements. The experience of being cared for must not be stigmatising. [3] , p10”

There are existing definitions used by organisations, but these are different and while some may be based on legal provisions such as the definition of 'looked after' in legislation, others are not. The Policy Memorandum accompanying the Bill points to the Universities Scotland and Care Inspectorate definitions as two such examples where different wording is used. [13]

The Scottish Government's Developing a Universal Definition of 'Care Experience' consultationasked respondents for their views on a universal definition. It found broad support (80%) for a universal definition.

The Policy Memorandum states that eligibility for existing support available to care experienced people is not connected by a universal definition, and notes that:

> “ ... 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. [13] , p12”

The Policy Memorandum states that while a statutory definition of 'care experience' was considered when developing the Bill, this was not taken forward:

> “ 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. [13] , p16”

Sections 5 and 6 of the Bill deals with guidance for public authorities and organisations exercising public functions in relation to care experience.

Section 5(1) puts a requirement on Scottish Ministers to issue guidance relating to care experience people and their experiences, in order to promote understanding.

The Policy Memorandum describes what the guidance will do as follows:

> “ 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. [13] . p14”

Section 5(2) lists that the guidance issued may "promote best practice in" [24] :

- identifying and communicating with people who are or may be care experienced
- ensuring the needs of care experienced people are taken into account in the planning and provision of public services
- facilitating access to public services.

Section 5(3) puts a duty on public authorities to have regard to the guidance at subsection (1) when carrying out their functions. In addition, where a public authority arranges for any functions to be carried out on its behalf (for example, by entering into a contract with another person/organisation), the arrangements must include a requirement to have regard to guidance issued under subsection (1) where dealing with people who are or may be care experienced.

Section 5(4) places a duty on public authorities to take appropriate steps to raise awareness of guidance issued under subsection (1).

However, the Policy Memorandum sets out:

> “ 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. [13] , p14”

In recognition of this, section 5(5) sets out that a public authority exercising functions relating to a particular description of 'care experience' as specified elsewhere in legislation need only comply with the duties in subsections (3) and (4) as far as is consistent with the exercise of those functions.

Section 5(6) sets out the definition of care experienced persons for the purposes of guidance issued under section 5(1). The Explanatory Notes accompanying the Bill state:

> “ The definition includes children who are or have been looked after or subject to a kinship care order, as well as adults who were looked after by a local authority or subject to a kinship care order at any point during their childhood. [21] , p5”

Section 5(7) sets out that a 'public authority' for the purposes of the section is part of the Scottish Administration, or is a Scottish public authority with "mixed functions or no reserved functions". [24] It also states that a 'function' refers to a function within the legislative competence of the Scottish Parliament to place on the authority.

Section 6 makes further provision relating to the guidance at section 5. Section 6(1) sets out that Ministers must consult care experienced people, those representing the interests of care experienced people and other appropriate people "as the Scottish Ministers consider appropriate". [24]

Section 6(2), (3) and (4) set out publication and revision of the guidance issued under section 5(1).

Section 7 - Interpretation

Section 7 sets out that, for the purposes of the Bill:

- a 'child' refers to someone under the age of 18
- a'kinship care order' has the meaning given by section 72 of the Children and Young People (Scotland)Act 2014
- 'looked after' has the meaning set out in sections 17(6) and 17A(2) of the Children (Scotland) Act 1995.

Chapter 2: Provision of children's care services

Chapter 2 of Part 1 relates to the requirements imposed on certain residential care providers (section 8) and fostering agencies (section 9).

Chapter 2 also provides for the creation and maintenance of a register of foster carers (section 10).

Section 8 - Requirements on residential care providers

Residential care is one option for the care of looked after children. It can be provided by a local authority, the third sector or a private provider.

Part 5 of the Public Services Reform (Scotland) Act 2010, and associated secondary legislation, provides the current regulatory regime for residential care providers. The regulator is the Care Inspectorate (although it is referred to as 'SCSWIS' in the 2010 Act).

Section 8 of the Bill would enable Scottish Ministers, through regulations, to enhance the financial transparency of (non-local authority) residential care providers.

Should it be determined that excessive profits are being made, section 8 of the Bill would also enable the Scottish Ministers to make further regulations to limit residential care providers' profits.

The proposed processes associated with section 8 are described in more detail later.

Section 8 of the Bill applies to two types of (non-local authority) residential care service:[ix]

- a **children's home**, or home mainly for the care of children - these are usually run by paid staff and, in practice, often accommodate young people over the age of 12. [25] [x]

  They provide care and support and, in some cases, education

- a **residential school**, usually a small-scale specialist residential setting that provides care and education to children whose support in the family home or school has not met their needs because of a range of challenges.[xi]

Policy background

Related to section 8 of the Bill, there have been a number of policy developments.

The Promise

The Promise (at p 110) said that Scotland must make sure that its most vulnerable children are not profited from. [3] It also said that Scotland must avoid "the monetisation of care" and "the marketisation of care" by 2030. [3]

The Competition and Market Authority's report

In 2022, the Competition and Markets Authority (CMA) published a report and recommendations following its market study into children's social care, including residential care and foster care, in England, Scotland and Wales. [26]

The market study, based on data from 2019 to 2022, found that the private sector provided the majority of children’s home places in England (**78%**) and Wales (**77%**), compared to only **35%** in Scotland. [27]

The CMA also found significant problems with how the placements market operates, especially in England and Wales. Its report highlighted a shortage of suitable placements for children, especially those with complex needs; rising costs from private providers; cases of excessive profits; and financial instability due to high debt levels among large providers. Overall, the market was described as fragile and at risk of disruption if providers were to suddenly withdraw.

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ix Children (Care, Care Experience and Services Planning) (Scotland) Bill, section 8(3)(b).

x Children (Care, Care Experience and Services Planning) (Scotland) Bill, section 8(3)(a)(i); Public Services Reform (Scotland) Act 2010, schedule 12, para 2.

xi Children (Care, Care Experience and Services Planning) (Scotland) Bill, section 8(3)(a)(ii); Public Services Reform (Scotland) Act 2010, schedule 12, para 3.

For Scotland, the report's recommendations included:

Recommendation 2.1: The Scottish Government is implementing wide policy reforms ... As these changes are made, and as any changes are made to the legislative and regulatory framework, the Scottish Government should consider the potential for unintended consequences, and for these changes to impact on the ability and incentive of providers (of any type) to create and maintain provision to meet the care needs of children.

Recommendation 3.1: The Scottish Government should create an appropriate oversight regime that is capable of assessing the financial health of the most difficult to replace providers of children's homes and warning placing authorities if a failure is likely. Due consideration should be given to placing this regime on a statutory footing.

The market study considered, but ultimately rejected, a **ban on private provision** or a **cap on provider profits**. [28] The report warned that capping profits could worsen the shortage of capacity in children's homes, especially in England and Wales, unless the public sector invests significantly to fill the gap. [28]

Approach in other parts of the UK

Following the CMA report, **England** introduced the Children's Wellbeing and Schools Bill in 2024, which is now being considered by the House of Lords. It includes proposals similar to those in section 8 of the (Scottish) Bill.

Wales passed the Health and Social Care (Wales) Act in March 2025, aiming to eliminate private profit from children's residential care. However, the Scottish Government has rejected this approach, citing lower profit levels in Scotland and emphasising the importance of maintaining placement stability and ensuring sustainable future provision (Policy Memorandum to the Bill, para 106). [13]

Section 8 in more detail

Section 8 of the Bill would allow Scottish Ministers to **make regulations** requiring non-local authority residential care providers to provide certain financial and operational information through an **initial information request**.

This information would be used to assess profit levels, and if certain key criteria are met (see the box below), Scottish Ministers could impose a **profit limitation requirement** through regulations.

Any imposed profit limitation requirement would be paired with a **continuing information requirement**. This would be used to determine whether the profit limitation requirement should be adjusted or removed over time.

Before any such measures could be introduced or changed, Scottish Ministers must **consult** with local authorities, representatives of service providers, and any other stakeholders they consider appropriate.

Scottish Ministers could also make regulations enabling them to **impose financial penalties** for failure to comply with a profit limitation or information requirement.

Under **section 8**, Scottish Ministers would be able to **impose or change a profit limitation requirement** only if:

1. It is necessary in the public interest, specifically to ensure that the residential care providers offer services that represent value for money.
2. Scottish Ministers have considered:
    - initial information from providers (if it is the first time the requirement is being imposed)
    - ongoing information (if the requirement is being modified or reimposed).
3. Scottish Ministers must also take into account:
    - the wellbeing of children looked after by local authorities
    - the interests of local authorities
    - the interests of care providers, including their ability to make a profit.

Scottish Government consultation

While the subject matter of section 8 of the Bill was considered in the Independent Care Review, the Scottish Government has not since undertaken a public consultation on what is now in section 8 of the Bill.

The Scottish Government "aims to work closely with the children's residential care sector on the issues of financial transparency and profit", with a view to developing regulations associated with section 8. These will be subject to public consultation before they are introduced (Policy Memorandum, para 107). [13]

Section 9 - Fostering services to be charities

Foster care is another option for the care of looked after children. When children cannot be cared for by their birth parent(s) or by a kinship carer, they may be placed in foster care. This can be a temporary arrangement, but it can also become permanent under some circumstances.

Foster care is primarily organised through the local authority or, where a local authority enters into an arrangement with an external provider, through an Independent Fostering Agency (IFA).[xii] In practice, local authorities directly provide most placements, with IFAs filling around a third of the remaining need. [29]

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xii Looked After Children (Scotland) Regulations 2009, SSI 2009/110, regulation 48.

Fostering services (through both local authorities and IFAs)[xiii] are regulated by Part 5 of the Public Sector Reform (Scotland) Act 2010 ('the 2010 Act') and associated secondary legislation. As noted earlier, the regulatory body under Part 5 of the 2010 Act is the Care Inspectorate.

Section 9 of the Bill relates to IFAs. It requires an IFA to be a **charity** - either registered in Scotland, England and Wales or Northern Ireland.

The Scottish Government has said that the proposed change aligns with The Promise's core principles/recommendations on profit in care. Furthermore, because of the legal requirements relating to charities, it will ensure IFAs are overseen by the relevant charity regulators (OSCR for Scottish charities), and must reinvest any surplus into their charitable aims. This, in turn, the Government argues, will boost transparency, prevent profit extraction by the private sector, and enhance public trust in fostering services (Policy Memorandum, paras 108 and 112). [13]

As discussed in more detail in the next section, the proposed change aims to strengthen an existing not-for-profit policy approach to fostering services in Scotland.

The Policy Memorandum states (at para 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.”
>
> Scottish Parliament, 2025[13]

Policy background

Under the 2010 Act, and unlike residential care providers, all IFAs must be **voluntary organisations**, meaning they are already legally required to operate on a 'not for profit' basis.[xiv]

However, the Care Inspectorate does not have formal market oversight role or function in relation to fostering services. It asks providers to declare that they are ‘not for profit’ at registration. [30] The Policy Memorandum (para 109) notes that, in practice, not-for-profit status is difficult to verify or enforce. [13]

The Policy Memorandum (at para 109) says that 16 of Scotland's 25 IFAs are registered charities, but the remainder "operate under private or corporate structures." [13]

In recent years, there have been some policy concerns expressed about IFAs (Policy Memorandum, para 109). For example, a 2025 policy paper by the think tank, Common Weal, entitled The Crisis In Foster Care In Scotland, argues:

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xiii Public Sector Reform (Scotland) Act 2010, sections 47(1)(i) and 105; schedule 12, para 9.

xiv Public Sector Reform (Scotland) Act 2010, sections 59(3)(4) and 105(1).

> “ The regulations on foster care continue to allow the subcontracting of local authority responsibilities to agencies. While the regulations specify that these must be non-profit, a number of private companies have now joined in creating provision and these can transfer money to for-profit parent companies through service fees. These compete with local authorities to recruit care experts and foster carers. The Care Inspectorate has not investigated this practice or the often opaque finances of some involved.”
>
> Common Weal, 2025[31]

As alluded to earlier, to qualify as a **charity** in Scotland or elsewhere in the UK, any organisation must meet further, stricter legal requirements. These cover an organisation's charitable purposes and public benefit; use of its property and funds; registration; and oversight by a charity regulator. See, for example, an explanation of the legal requirements for Scottish charities.

Scottish Government consultation

As noted earlier, of those answering the relevant question in the 2024 Scottish Government consultation on the future of foster care (68% of all respondents), over four fifths (84%) agreed that all IFAs should be required to have charitable status, with 16% opposed. [9]

Respondents mainly supported requiring charitable status for IFAs to prevent profit-making and ensure decisions focus on children's best interests. Charitable status would mean surplus funds are reinvested into services, benefiting children rather than shareholders. Some also said that this change would helpfully bring IFAs under the oversight of Scotland’s charity regulator, OSCR.

However, against the proposed change, some IFAs and local authorities raised concerns that the charitable status requirement could reduce placement availability and limit flexibility in how providers manage their revenue (Policy Memorandum, para 119). [9] [13]

The discussion about requiring IFA to have charitable status was part of a broader debate in the Scottish Government consultation about IFA's role in the foster care system, particularly regarding cost, quality, and accountability. [32] On this wider issue, respondents expressed mixed views. [9]

Section 10 - Register of foster carers

Section 10 inserts new section 30A into the 1995 Act to give Scottish Ministers the power to "make arrangements for the establishment and maintenance of a register of foster carers" in order to facilitate approval of carers and placement of children at local level.

Section 26(1)(a) of the 1995 Act enables local authorities to provide accommodation to a looked after child by placing them with "any other suitable person". Regulation 21(1) of the Looked After Children (Scotland) Regulations 2009 (the 2009 Regulations) sets out that where a local authority approves a person as a suitable carer, they shall be known as a

'foster carer'. The 2009 Regulations also set out detail on approval of foster carers, fostering panels and placement of children with approved carers.

Approval of foster carers and placement of looked after children is carried out at local level. The Bill does not seek to change this - the Policy Memorandum sets out the objectives of the proposals are to:

> “
>
> - 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;”
> - 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. [13] , p24”

New section 30A(2) sets out that, in relation to approved foster carers, the register is to include: name and address; approval (or termination of approval) as a foster carer; foster care being provided; reasons for termination of approval where applicable; information relating to the approval (for example, number of children permitted to be in their care); and other information about the person or their family as specified in regulations made by Scottish Ministers. Section 30F sets out the regulations will be subject to affirmative procedure.

New section 30A(3) states the register may also include other information about prospective carers who have not been approved, as is specified by Scottish Ministers.

New section 30B gives further detail of what may be included in regulations made by Scottish Ministers, including provision and removal of information on the register, the creation of offences where fostering services fail to provide information or provide late or incorrect information, and the payment of fees in relation to inclusion and disclosure of information on the register.

New section 30C(1) states that the register will not be open to the public and Scottish Ministers must authorise the disclosure of entries on the register to fostering services or other organisations by regulations. Conditions around disclosure of information and steps taken by a fostering service following disclosure of information can also be set out in the regulations.

New 30C(4) makes unauthorised disclosure of information in the register an offence, with (6) setting the penalty for this as a fine and/or up to three months in prison, though (5) clarifies that this does not apply where information is disclosed by Scottish Ministers or with their authority.

New section 30D enables Scottish Ministers to authorise an organisation to carry out functions related to the register and to make payments to the authorised organisation.

New section 30E allows for Scottish Ministers to provide in regulations for the register to operate on a pilot basis for a specified time and in relation to certain types of fostering services (e.g. In one geographical area) and/or all fostering services but only in relation to certain matters.

Policy background

A review of foster care was published in 2013, and its recommendations led to the introduction of:

- the Scottish Social Services Council (SSSC) 2017 publication of The Standard For Foster Care
- national agreed definitions for foster care placements
- a foster care placement limit of three unrelated children (with exemptions in certain emergency circumstances).

The review also explored the development of a national foster carer database to follow on from Scotland's Adoption Register, introduced by the Adoption and Children (Scotland) Act 2007. However, a foster care register was not taken forward due to concerns about costs, administrative burdens and data security. [13]

The report of the Independent Care Review in 2020 recommended that a national register should be considered:

> “ 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. [3] , p78”

Following this, the Scottish Government's 2024 Future of Foster Care consultation asked for views on a National Register of Foster Carers and found overall support among respondents for this proposal. There were also concerns raised around the potential administrative burdens, data protection risks and unintended consequences such as children being placed outwith their local communities. [13]

Many respondents favoured a register managed by central government. Other suggestions included the Scottish Social Services Council (SSSC), the Association for Fostering, Kinship and Adoption (AFKA) Scotland or other third sector. AFKA Scotland currently hold Scotland's adoption register. A national approach to matching children and carers was also supported by respondents, though there were concerns this would be hard to put into practice and cause problems with current placements.

The Policy Memorandum accompanying the Bill states that the policy intent of a register is to:

> " ... 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 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. [13] , p26"

The Policy Memorandum also states that concerns highlighted in earlier reviews about data risks have been mitigated by advancements in technology and improved data security measures.

Chapter 3: Children's hearings

Chapter 3 of the Bill includes provisions relating to changes made within the children's hearings system.

The legislative proposals contained within this Chapter of the Bill have been directed by the Scottish Government's response to the Hearings for Children report and the responses to the Children's Hearings Redesign – legislative proposals public consultation, held between July and October 2024.

The Hearings for Children report was published in May 2023 following an independent review of the children's hearings system by the Hearings System Working Group, commissioned by the Promise Scotland. The Group were asked to produce proposals that redesigned the hearings system and defined the legislative changes that were required.

In terms of this redesign, and the legislative changes that are made within the Bill, the Policy Memorandum (p 28) sets out the context in which this has been done, stating:

> " 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 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. [13] "

The changes made by the Bill in this chapter come under the following headings, and are set out in more detail below:

- composition etc. of Children's Panel, children's hearings and pre-hearing panels
- child's attendance at children's hearings and hearings before sheriff
- grounds hearings
- relevant persons
- other changes.

Sections 11 and 12 - Composition etc. of Children's Panel, children's hearings and pre-hearing panels

This part of the Bill makes changes to the composition of children's panels, allowing them to be composed of a single panel member (rather than the current 3 panel members) in certain defined circumstances (Section 11).

It also allows certain panel members to be remunerated (Section 12).

These sections are set out separately below.

Section 11 - Single member children's hearings and pre-hearing panels

Currently, all children's hearings and pre-hearing panels must consist of three panel members.

Section 11 of the Bill allows children's hearings and pre-hearing panels to be composed of a single panel member in certain circumstances.

These circumstances are set out in the Bill as :

- grounds hearings arranged under new section 69C of the 2011 Act (as inserted by Section 14(5) of this Bill - see Grounds hearings section below for more details) which are for the purpose of considering the statement of grounds where the Reporter has assessed agreement **may** be possible from their meeting with the child and relevant person(s). Single member panels cannot then go on to make a decision on whether to put a compulsory supervision order in place for a child.

- where a child has failed to attend their hearing and another grounds hearing is arranged under section 95(2) of the 2011 Act, or where a child has not been in attendance and the panel members have not been satisfied that the grounds have been accepted, or not, and arrange a further hearing under new section 89C(8) of the 2011 Act.

- certain circumstances where the hearing is making (or extending) an interim compulsory supervision order (ICSO) (or making an interim variation of a compulsory supervision order). This is where the Reporter has directly referred the grounds to a sheriff (under new sections 69D or 69E) and feels an ICSO is needed, and where a grounds hearing has made an ICSO but it will run out before a sheriff has decided on the grounds so a further ICSO may be needed.

For pre-hearing panels, the Bill does not specify the circumstances in which these could be single member, but allows these to be specified by rules made under section 177 of the 2011 Act by Scottish Ministers. These rules would be subject to the affirmative procedure.

Where there is only a single panel member, they must be someone who has been appointed as a 'chairing member'. The role of chairing member does currently exist under the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"), however it is not currently possible to appoint someone as a chairing member.

Therefore, this Bill formally provides for separate categories of:

- ordinary members

- chairing members

- specialist members[xv].

Where a single member panel is permitted, the decision on whether to constitute the panel in this way will be taken by the National Convenor.

The Bill, under section 11(5), inserts provision into the 2011 Act relating to having regard to the desirability of having consistency of panel members where a single member panel has previously considered any matter relating to a referral where a three member panel is now being constituted.

The Bill maintains the current appeal elements for certain preliminary decisions made via a single panel member.

The Policy Memorandum (p 31) sets out the reasoning behind these changes stating:

> “ 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. [13] ”

Going on to note (p 31) that while it was "viable to maintain the status quo" (i.e. panels of three members) that this would not "fulfil the policy intent of addressing drift and delay in the decision-making process".

The report by the Hearings System Working Group did not contain a recommendation specifically relating to single member hearings, though did note that there were various decisions that could be made by the Chair of the Panel within the redesigned system.

The Scottish Government's Children's Hearings Redesign - legislative proposals public consultation saw an almost equal split of respondents when asked if panel members should be able to take decisions without recourse to a full three member children's hearing for certain procedural decisions (Yes - 47%, No - 53%). Though the Policy Memorandum does note that there was more nuance to the views provided than the numbers alone indicate.

The Policy Memorandum summarises these views (pp 31-32), concluding with the following:

> “ 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.”

Section 12 - Remuneration of Children's Panel members

Section 12 of the Bill allows for panel members to be remunerated as well as paid

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xv The Bill does not define 'specialist member' but the Policy Memorandum (p 32) notes that it could "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". The identification of this cohort would be for the National Convenor.

allowances. The new powers of remuneration are, in particular, intended to apply to panel members fulfilling identified 'chairing member' roles and any 'specialist members'.

The Policy Memorandum (p 32) sets out the reason behind this change:

> “ 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 of the decision-making tribunal in a particular case.”

The Financial Memorandum (p 36) sets out that the Daily Fee for Chairing Members will be set at £385 per day, in line with the tribunal tiers outlined within the Scottish Government pay policy. Though it also notes that it may be subject to ongoing review.

The Hearings System Working Group had recommended within their Hearings for Children report that "a decision-making model of a redesigned Children's Hearings System must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate" (p 36).

In the Scottish Government's response to this report, they stated the following in respect of this recommendation (p 8):

> “ The Scottish Government is of the view that while the case has been made to increase capacity in the hearings system it is not clear that removing the volunteer element entirely and moving to salaried and pensionable fulltime Chairs, along with wholesale children's panel remuneration, is the appropriate route at this time.”

They set out their reasoning for this, based on the need to maintain the community links panel members bring, along with their motivations for being involved in the system, as well as resource issues and the potential impact on wider services.

In the subsequent Scottish Government consultation, less than half of the consultation respondents answered the questions relating to the unpaid volunteer model in whole or in part. The Policy Memorandum (p 34) states that the majority of those who did respond "were in favour of both some amount of volunteering and some measure of payment".

Section 13 - Child's attendance at children's hearings and hearings before sheriff

Section 13 of the Bill deals with the child's attendance at children's hearings and hearings before a sheriff.

Current position on children's attendance

Currently, a child must attend each time a children's hearing is considering their case and where there are proceedings in front of a sheriff. The child can be excused from attending, with sections 73 and 103 of the 2011 Act setting out the following conditions that must apply for this to happen:

- the hearing relates to a ground mentioned in section 67(2)(b), (c), (d) or (g) of the 2011 Act and the attendance of the child is not necessary for a fair hearing
- the attendance of the child would place the child's physical, mental or moral welfare at risk
- taking account of the child's age and maturity, the child would not be capable of understanding what happens.

The Bill removes the child's obligation to attend hearings and proceedings before a sheriff, though they retain the right to do so.

The Policy Memorandum (p 35) sets out that 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."

While the Bill removes the obligation on the child to attend, it allows children's hearings and sheriffs to require a child's attendance where it is necessary in the following circumstances:

- for a fair hearing
- to assist the children's hearing in making any decision relating to the child.

The Policy Memorandum (p 35) sets out some situations where it is expected a child must attend:

> " 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."

In requiring this attendance, the hearing or the sheriff must have regard to the following:

- if the child's attendance would place the child's health, safety or development at risk

- taking account of the child's age and maturity, whether the child would be capable of understanding what happens.

The Hearings for Children report had recommended that "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". The Scottish Government set out their reasons for not taking this approach in the Bill in the Policy Memorandum (p 36):

> “ 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.”

The Policy Memorandum also sets out the varying responses from the Scottish Government's Children's Hearings Redesign - legislative proposals public consultation (p 36), initially stating:

> “ 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.”

Section 14 - Grounds hearings

Section 14 of the Bill makes changes in relation to the process of establishing grounds. The Policy Memorandum (p 38) sets out that these changes "are intended to improve the experiences of children and their families in relation to the grounds hearings process".

The Hearings for Children report made a number of recommendations about the process of drafting and establishing grounds. These included the following:

> “ Grounds must be established in a separate process before a child and their family attend a Children's Hearing. There must be no more Grounds Hearings.”

> “ A more relational way of working to agree grounds and confirm the Statement of Facts should be encouraged, where the Reporter exercises professional judgement to determine when children and families might be able to discuss grounds.”

In response to these recommendations the Scottish Government noted that in order to address these recommendations that “a greater role for the sheriff court would require the functional, structural and resourcing implications to be explored further with the Lord President and the Scottish Courts and Tribunals Service” (SCTS) and that “there would be significant additional costs”. Discussions with SCTS are currently ongoing.

They went on to note that:

> “ It would be important to recognise the efforts Reporters already make in terms of reaching agreement with children and families on statements of grounds. It is also important not to underestimate the challenges that accompany attempts to reach consensus with children and families who, by the time they reach the stage of being referred to hearings are - in most cases - assessed as being unlikely to engage with services. Introducing extra measures and processes for reaching agreement may just delay an inevitable need for judicial determination.”

Current process for grounds hearings

Where the Reporter determines that there is a need for compulsory measures of supervision they will currently arrange a children's hearing and prepare a statement of grounds. This is all governed by the 2011 Act.

A 'grounds hearing' must take place where the chairing panel member (of a panel consisting of three members) will explain each ground to the child and all relevant persons (except where they would not be capable of understanding - e.g. due to the child's age). They would then each be asked if they accepted the ground and the supporting facts in relation to the ground.

The panel can then proceed as follows:

- if sufficient grounds are accepted they can decide whether to make a compulsory supervision order (CSO)
- if the grounds are not accepted, or not accepted sufficiently to enable the panel to proceed, they can refer the case to the sheriff or discharge the referral in respect of the ground
- if the child or relevant persons do not have the capacity to understand the ground, or they have not understood the explanation by the panel, the panel will refer the case to the sheriff to determine whether a ground is established.

Where the ground(s) is/are referred to the sheriff the panel can make an interim compulsory supervision order (ICSO) at this point.

The Bill proposes changes to this process. Firstly, that the Principal Reporter has an enhanced role within it, and secondly, sets out new processes where:

- the child is not capable of understanding the ground
- the child is deemed capable of understanding the grounds and
    - is not in attendance at their hearing
    - is in attendance at their hearing.

These are set out in more detail in the two sections below.

Enhanced Principal Reporter role

Under provisions in **section 14** of the Bill, rather than simply moving to arranging a grounds hearing after a decision that compulsory measures are needed for a child,

Children's Reporters would be able to engage with children and family members at this stage. The process around this engagement is set out in new section 69A of the 2011 Act and includes discussion of the statement of grounds and the child's participation in any children's hearing or hearing before a sheriff. The Principal Reporter must also prepare a report which can include the results of this discussion, as well as other information held by the Reporter, as set out in new section 69G of the 2011 Act.

Following this engagement, the Principal Reporter could then proceed under one of the following new sections as introduced by the Bill:

- where there will be agreement with the grounds, a hearing (with three panel members) will be arranged and will open with a formal recording of the acceptance of the grounds but will primarily be focused on making a dispositive decision in relation to the child (i.e. should a CSO be made) - new section 69B
- where it is not clear, but it is possible, there will be agreement to the grounds (or if the Reporter cannot reach a view on possible agreement or the understanding of the ground(s) by a relevant person) a hearing can be convened with either a single chairing member or three panel members to lead a discussion and resolve any undisputed elements of the grounds (the panel cannot go on to make a decision on whether to make a CSO where it consists of a single member) or to decide whether a CSO should be made (this must be a three member panel) - new section 69C
- where there is no reasonable prospect of agreement or constructive discussion of the grounds the Principal Reporter must apply directly to the sheriff to decide whether the grounds are established - new section 69D
- where it is considered that a relevant person does not have the capacity to understand an explanation of the ground(s) the Principal Reporter must apply directly to the sheriff to decide whether the grounds are established - new section 69E.

New section 69F of the 2011 Act replicates current provision where the Principal Reporter has received information under section 53 of the Criminal Justice (Scotland) Act 2016 and the child is in a place of safety under the 2011 Act. This sets out that a children's hearing must be arranged to take place no later than the third day after the receipt of the information.

If the Principal Reporter proceeds under new section 69D or E as set out above, they may arrange a children's hearing to decide whether an ICSO is required at this point, if they consider that an ICSO may be necessary as a matter of urgency. This decision can be made by either a single or three member panel.

The Policy Memorandum (p 38) states that 75% of respondents to the Scottish Government's Children's Hearings Redesign public consultation who answered the question on whether they would support the offer of a "post-referral discussion" between the Principal Reporter and the child and family said that they would. It goes on to note that young people were particularly supportive of this idea.

However, the Policy Memorandum (p 38) also notes that there was "little agreement as to how or with whom the discussion should be conducted", and that the answers reflected some confusion from respondents about which "referral" was the subject of the consultation question (e.g. the referral of the child to the Reporter or the referral of the child to a hearing).

Consultation respondents also disagreed over whether legislative change was needed to make improvements in this area.

Process of putting grounds to a child and relevant person(s)

Section 14(12) of the Bill makes changes to the process of putting grounds to a child and relevant person(s). It makes changes to the 2011 Act which means that, where a child is not capable of understanding the grounds of referral, a grounds hearing can continue to decide whether to make a CSO where all relevant persons agree to the grounds (and the panel consists of three members); they do not have to automatically refer the grounds to a sheriff as is currently the case.

The grounds hearing does, however, retain the ability under the 2011 Act to require an application to be made to a sheriff for determination of the grounds in these situations where it is considered necessary and appropriate. The hearing must also 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 safeguarder.

Where a child is deemed to be capable of understanding the grounds, the Bill introduces a new section 89C and new section 90 to the 2011 Act, and the hearing must proceed in accordance with one of these sections.

Section 89C sets out that even where the child is not in attendance at their hearing (as is no longer required under section 13 of this Bill) that the hearing can take the grounds as accepted or not accepted by the child based on the information available to it (for example, from the report by the Principal Reporter under new section 69G of the 2011 Act). Where the hearing is not satisfied of the acceptance (or non-acceptance) from the information available it must rearrange the grounds hearing and require the child to attend.

New section 90 sets out the process where a child is in attendance at their hearing. In this case the grounds must be explained to the child and relevant person(s) and the panel will decide whether they have understood and accepted the grounds (as is currently the case). Where the child has not understood the ground(s), the Bill allows the panel to proceed, if it is appropriate to do so, on the basis that all relevant persons have agreed the grounds (as set out above).

Sections 15 and 16 - Relevant persons

'Relevant persons' are defined in section 200 of the 2011 Act and are any parent of the child (whether or not they have parental rights or responsibilities) and any other person who has obtained these rights and responsibilities through the courts.

It is also possible for someone to be 'deemed' a relevant person under section 81 of the 2011 Act. This is where the panel:

> “ ... considers that the individual has (or has recently had) a significant involvement in the upbringing of the child.”

The status of those deemed relevant persons can be removed under section 81A of the 2011 Act, but those defined under section 200 of the Act cannot currently have this status removed.

Relevant persons who are notified of a children's hearing are required to attend unless they are specifically excused or excluded. Grounds will be put to all relevant persons for acceptance as well as the child at a grounds hearing.

Section 76 of the 2011 Act currently allows relevant persons to be excluded from a children's hearing, however, this power cannot be exercised in advance of a hearing.

This part of the Bill makes changes in relation to relevant persons.

It expands the current circumstances under which a relevant person can be temporarily excluded from a children's hearing and alters this decision-making process (Section 15).

It also makes changes that allow relevant person status to be removed from someone who automatically has this status as defined under section 200 of the 2011 Act (Section 16).

These sections are set out separately below.

Section 15 - Powers to exclude persons from children's hearing

Section 15 of the Bill slightly expands the current circumstances under which a relevant person can be temporarily excluded from a children's hearing, including a pre-hearing panel, and allows a pre-hearing panel to make this decision prior to a hearing.

The expansion to the circumstances currently set out in the 2011 Act for excluding a relevant person is shown below with emphasis added to show the change made by the Bill:

(a) is preventing, **or is likely to prevent**, the hearing from obtaining the views of the child, or

(b) is causing, or is likely to cause, significant distress to the child.

Similar provisions are also made by the Bill in relation to the representatives of relevant persons.

Section 16 - Removal of relevant person status

Section 16 of the Bill enables relevant person status to be removed from someone who automatically has this status as defined under section 200 of the 2011 Act . This is currently not possible, with only the status of those who are 'deemed' as relevant persons being able to be removed in certain circumstances.

Section 16(2) sets out that this could take place where the relevant person in relation to the child continuing to be such a person is likely to:

> “ ... cause serious harm to the child, and infringe the child's rights under Article 8 of the European Convention on Human Rights and that the relevant person in relation to the child ceasing to be such a person is the only way to avoid or sufficiently minimise such harm and infringement.”

The Bill sets out that where a children's hearing decides that a relevant person under section 200 of the 2011 Act should cease to be such a person, this must be referred to a sheriff to make a decision. The Bill sets out the procedure around this in section 16(2). The test applied by the sheriff in making their decision is the same as that set out for the children's hearing above.

The Policy Memorandum notes this automatic status will only be removed "where they meet clearly defined criteria that form part of a high-bar test". Going on to state (p 41):

> “ 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.”

The Scottish Government also note a recent case in the Court of Session within the Policy Memorandum and the need to respond to this (p 42):

> “ 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.”

The Bill enables the decision to remove automatic relevant person status to be appealed to the Sheriff Appeal Court, and that a further appeal can be made to the Court of Session on a point of law or procedural irregularity

The Policy Memorandum sets out information from the Scottish Government public consultation on Children's Hearings Redesign question on the power to remove automatic relevant person status (pp 42-43), stating:

> “ 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.”

Other changes

Sections 17 to 21 of the Bill set out further changes to the Children's Hearings System.

Information about each section is set out in more detail in the following sections:

- Tests for referral to Principal Reporter and making of compulsory supervision order or interim supervision order
- Information about referral, availability of children's advocacy services etc.
- Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect
- Making of further interim compulsory supervision orders
- Principal Reporter's power to initiate review of compulsory supervision order

Section 17 - Tests for referral to Principal Reporter and making of compulsory supervision order or interim supervision order

Section 17 makes changes to the test for referral to the Children's Hearings System.

Section 17(1) to (5) amend relevant referral provisions in sections 60 (local authority's duty to provide information to Principal Reporter), 61 (constable's duty to provide information to Principal Reporter), 64 (provision of information by other persons) and 66 (investigation and determination by Principal Reporter) of the the 2011 Act from "might be necessary" to "is likely to be needed".

These changes are in response to the Hearing System Working Group recommendation that the referral criteria should be made clearer with the aim of reducing the number of unnecessary referrals [33] .

Sections 17(6) and (7) add the word "support" to the existing criteria of "protection, guidance, treatment or control" for referrals to the reporter, and following this, a children's hearing where applicable. As above, sections 60, 61, 64 and 66 of the 2011 Act will be amended by these subsections. In addition, "support" will be added to sections 91, 92, 93, 95, 96, 98, 99, 100, 109, 115, 117, 119, 120, 138 and 139 of the 2011 Act relating to grounds applications and hearings, application of interim compulsory supervision orders, determination of application, review of a sheriff's determination, and functions of children's hearings and the Principal Reporter.

Police Scotland - the largest source of referrals to the Principal Reporter - stated in their response to the Scottish Government's consultation on changes to the hearings system that the proposed changes to referral criteria "will undoubtedly prevent unnecessary hearings, unnecessary criminalisation of children and the negative impact of same". [34]

The Scottish Government's Policy Memorandum states the Hearing System Working Group recommendation that consideration should be given to removing the words "treatment" and "control" from referral criteria [33] was considered, but that opinion was split amongst consultation respondents. The Policy Memorandum explains:

> " ... concerns were expressed by others that modernisation of language cannot come at the expense of legal certainty and specificity. [13] "

Organisations expressing concerns included the Faculty of Advocates, the Senators of the College of Justice and the Law Society of Scotland.

Section 18 - Information about referral, availability of children's advocacy services etc.

Section 18 places new duties on local authorities, police constables, health boards, and the children's reporter to provide information to children informed about their referrals about: their referrals, the children's hearings process and available advocacy.

Section 18 amends sections 60 (local authority's duty to provide information to Principal Reporter), 61 (constable's duty to provide information to Principal Reporter), 64 (provision of information by other persons) and 66 (investigation and determination by Principal Reporter) of the 2011 Act so that local authorities, police constables, health boards and the children's reporter must inform a referred child about:

> " a) what will happen in relation to the referral to the Principal Reporter, (b) the children's hearing process, and (c) the availability of children's advocacy services. [24] "

Currently, under section 122 of the 2011 Act, the chairing member of a hearing must inform a child about the availability of children's advocacy services, but this may come too late for the child. The Bill's Policy Memorandum states that the amends in section 18 of the Bill:

> " ... 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. [13] "

Section 19 - Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect

Section 19 of the Bill makes changes to the time period for which interim compulsory supervision orders and interim variations of compulsory supervision orders have effect. These terms are explained in the emphasis box below.

Compulsory Supervision Orders and Interim Compulsory Supervision Orders

Children's hearings can decide whether or not to make a **compulsory supervision order (CSO).** Introduced by the Children's Hearings (Scotland) Act 2011 (the 2011 Act), a CSO is a legal order that means the local authority is responsible for implementing the child's care plan and promoting their welfare. Section 83 of the 2011 Act sets out the meaning of CSOs and the conditions they can contain. These include conditions of residence stating where the child must live, in addition to other conditions such as contact with family members.

Where a hearing defers a decision regarding a child not already subject to a CSO, an **interim compulsory supervision order (ICSO)** may be made. The Scottish Government's 2013 Children's hearings training resource manual states an ICSO may be made where the panel is satisfied it is "necessary as a matter of urgency" [35] .

Section 86 of the 2011 Act sets out the meaning of ICSOs and the length of time they have effect – which is currently 22 days following the making of the order at most.

Section 140 of the 2011 Act provides for **interim variations of CSOs.** An interim variation can be made to an existing CSO, with effect for the 'relevant period' - which is again at most 22 days following the making of the interim variation.

The Policy Memorandum accompanying the Bill describes a key principle of the reforms to the system as being 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. [14] , p 48"

Section 19(2) of the Bill makes changes to section 86 of the 2011 Act in relation to the maximum duration of an ICSO following the initial order being made. While the maximum duration of the initial ICSO will remain at 22 days, subsequent orders and non-urgent extensions will increase to a maximum duration of 44 days.

Section 19(3) of the Bill makes changes to section 140 of the 2011 Act in relation to the maximum duration of an interim variation of CSOs. Where an interim variation requires to be made urgently, it will apply for a maximum of 22 days. The Policy Memorandum states that for "less urgent" cases, 44 days will be the maximum duration.

60% of respondents to the Scottish Government's consultation on changes to the children's hearings system did not respond to the question asking whether there should be more flexibility in the duration of interim orders. However, of the 40% who did, 90% said there should be more flexibility. Relieving children and their families of the obligation to attend multiple hearings where there had been little change to their circumstances was a key reason for supporting flexibility. [36]

Those who did not support increasing the maximum duration expressed concerns about the potential for the changes to introduce further drift and delay into the system [36] . In the

Policy Memorandum accompanying the Bill, the Scottish Government states that such risks:

> " ... can be mitigated through clear guidance to decision makers on ensuring 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. [13] "

Section 20 - Making of further interim compulsory supervision orders

Section 20 makes technical changes to sections 96 and 98 of the 2011 Act. The Policy Memorandum states this is in order to "improve the congruence between the two" in relation to extensions of interim CSOs. Further detail on the provisions in both sections is explained below.

The Principal Reporter can apply to the sheriff for an extension of an interim CSO where an application has also been made to the sheriff for a grounds determination under section 93 of the 2011 Act.

In the period before the sheriff hears the application, two further interim CSOs may be made. Where this does not cover the period up to the hearing, an extension can be applied for by the Principal Reporter.

Section 21 - Principal Reporter's power to initiate review of compulsory supervision order

Section 133 of the 2011 Act contains a duty for the Principal Reporter to initiate a review of a CSO where the order will expire within three months and would not otherwise be reviewed prior to expiry.

Section 21(2) of the Bill inserts a new power into the 2011 Act (new section 133A) setting out further circumstances in which the Principal Reporter can initiate a review hearing for a CSO, before the expiry of an existing order and without the need for new grounds to be investigated and established.

These changes will mean that the Principal Reporter can initiate a review where:

- there is significant new information
- the order is no longer required
- there are problems with implementation, suggesting the order could benefit from a review.

New section 133A(2) states that 'relevant information' that might trigger a review is:

> " ... information which was not available to the children's hearing ... other than information by virtue of which the Principal Reporter has, since that hearing, prepared a further statement of grounds in relation to the child. [24] "

The Explanatory Notes accompanying the Bill state that the new power cannot be used where a new section 67 ground applies in relation to the child. [21]

The Policy Memorandum accompanying the Bill states:

> " ... 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. [13] "

The Explanatory Notes state that, where a review is initiated under new section 133A, the Principal Reporter must arrange a children's hearing to carry out the review. At the hearing, the panel may decide to terminate, vary or continue the CSO. [21]

The Scottish Government's children's hearings redesign consultation asked respondents whether it would be appropriate for the Principal Reporter to be able to initiate a review hearing before the expiry of the relevant period. Only 42% or respondents answered this question, but of these, 67% said yes. [36]

Part 2: Children's services planning

Part 2 of the Bill amends existing provisions in Part 3 of the Children and Young People (Scotland) Act 2014 (the 2014 Act) on the planning of children's services.

The Policy Memorandum accompanying the Bill states that, while there was no public consultation on the changes proposed in this part of the Bill, barriers to realising a joined-up approach to planning and commissioning services were identified in a number of recent reviews including the Independent Care Review in 2020, the Independent Review of Adult Social Care in 2021, and CELCIS Children's Services Reform research.

CELCIS's 2023 concluding report on children's services reform found that simplification of the 'integration landscape' of public services in Scotland had the potential to remove "some of the uncertainty and risk being experienced currently"(p 29), stating that different planning and reporting requirements for Children's Services Planning Partnerships (CSPPs) and Health and Social Care Partnerships (HSCPs) posed a challenge:

> " Effective co-operation between agencies can occur under different structural arrangements, and CSPPs and HSCPs may well work well together in some areas, but the benefits of the current complex picture are difficult to determine. [37] , p 29"

The report concluded that any changes to the structure and delivery of children's services must:

> " ... focus on creating the optimal conditions needed to enable success in improving the lives of the children, young people and families who need the support of services. [37] , p 31"

Part 2 of the Bill introduces the new term 'lead children's services planning bodies'. It also provides for any Integration Joint Boards (IJBs) covering an area to join local authorities and health boards on the list of bodies required to plan children's services. Further information on these provisions is set out in the next section.

Integration Joint Boards

The Public Bodies (Joint Working) Scotland Act 2014 was introduced in the same year as the Children and Young People (Scotland) Act 2014. The aim of the Act was to bring health boards and local authorities closer together in the planning of health and care services in the already extant geographical areas (health boards and local authorities). The Act created new bodies - integration joint boards (IJBs), with no direct employees. Chief Officers were appointed, employed by either the relevant local authority or the health board. The IJB became responsible for planning health and care services, crucially, deciding how resources should be spent across health and social care.

Certain services, traditionally the responsibility of either the health board or the local authority became the responsibility of the IJB: these are called delegated services. Some had to be integrated or 'delegated', but with others, including children's health services, and children's social care services, the partners could decide whether to integrate them or not. What emerged were 31 health and social care partnerships for planning and delivery purposes. However, most staff continued to be employed by either the health board or local authority. 10 health and social care partnerships also have delegated children's health and social care services.

Further information about integration can be found on Audit Scotland's website.

Section 22 - Children's services planning

The Bill's Policy Memorandum states the Bill's potential to be a "helpful first step towards streamlining of the planning and reporting landscape in relation to children and families policy" through changes intended to 'streamline' this landscape. It adds:

> " 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. [13] , p 53"

In addition, the Policy Memorandum notes the aim of the proposed change:

> " 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. [13] "

Given the role of the Integration Joint Board in planning and commissioning adult health and social care services, the Policy Memorandum states the Bill has the potential to improve provision of whole family support and support smoother transitions between children and adult services for a range of groups including disabled young people.

Part 3 of the Children and Young People (Scotland) Act 2014 (the 2014 Act) legislates for the planning of children's services. It requires each local authority and territorial health board to jointly plan and deliver a three-year Children's Services Plan (CSP). Children, young people, families, communities, 'other service providers' and other relevant public

bodies, funded providers and third sector organisations must be consulted in relation to the development of CSPs.

In the 2014 Act, 'integration joint boards' (IJBs) are listed as an 'other service provider' for the purposes of children's services planning. This creates an unusual situation for children's services, especially where they have been delegated to the IJB. **Section 22** of the Bill amends Part 3 of the 2014 Act to change the status of IJBs in relation to children's services planning where there is a relevant IJB in the local authority area. This change will see IJBs join local authorities and health boards on the list of bodies required to plan children's services. Collectively, and to reflect service planning on the ground, the three bodies are to be known as 'lead children's services planning bodies'.

Section 22(2) inserts the new term 'lead children’s services planning bodies' into the 2014 Act. This refers to the local authority, health board and, where applicable, the IJB covering the area.

Section 8(1) of the 2014 Act contains a duty to prepare children's service plans every three years. Section 22(3) of the Bill amends the Act to place this duty on lead children's services planning bodies.

Section 22(4) replaces existing reference in section 10 of the 2014 Act to "a local authority and the relevant health board" with the new term 'lead children's services planning bodies', placing a duty on lead children's service planning bodies to jointly exercise functions conferred on them by Part 3 of the 2014 Act.

Section 22 (5) to (12) change references to local authorities and health boards acting jointly in the 2014 Act to refer instead to lead children's services planning bodies.

Children's service plans are defined by section 8(2) of the 2014 Act as:

> “ ... a document setting out their plans for the provision over that period of all-
> (a) children’s services, and (b) related services. [38] ”

The aims of children's services plans are set out by section 9 of the 2014 Act and are unchanged by the Bill. These aims are to deliver children's services in a way which:

- safeguards, supports and promotes the wellbeing of children in the area
- ensures action to meet needs is taken at the earliest appropriate time and, where possible, to prevent needs arising
- is integrated for those using services
- makes the best use of available resources.

Section 9 also sets out that related services should also safeguard, support and promote children's wellbeing in the area as far as possible.

Section 13 of the 2014 Act contains a duty to publish an annual report on children's services provision. The Bill at section 22(7) replaces reference to local authorities and health boards to put this duty on to lead children's services planning bodies.

Section 22 (12) of the Bill adds into section 18 of the 2014 Act an interpretation of 'IJBs' for the purposes of Part 3 of the Act. This defines IJBs as those established under section 9 of

the Public Bodies (Joint Working) (Scotland) Act 2014.

Costs of the Bill

The Financial Memorandum (FM) provides an overview of estimated costs associated with the Bill for 2026-27, 2027-28, 2028-29 and 2029-30.

The overall total costs provided in Table 1 (p 3) are: between £245,000 and £295,000 in 2026-27; £5,826,000 and £7,321,000 in 2027-28; £19,012,000 and £22,084,232 in 2028-29; and £20,730,575 - £23,812,750 in 2029-30.

As explored throughout this briefing, there are a number of proposals for which further consultation is planned to inform guidance to be issued by Scottish Ministers at later, non-specified dates.

Human Economic Cost modelling carried out as part of the Independent Care Review's work found the current care system costs around £942 million per year, while the cost of care system failures is around £875 million per year and a further £732 million is lost "as a result of the lower incomes care experienced people have on average". [39] (p5). The FM highlights that one of the aims of the Bill is to reduce the overall cost of delivering Scotland's care system:

> “ The Bill has an important part to play and the investment flowing from the Bill will support delivery of better outcomes for children, young people, adults and families. The consequence of the increased supports that the Bill will introduce will reduce demand pressures elsewhere in the public sector landscape, for example, by supporting children and young people to be more independent and economically active through the proposed changes to aftercare and advocacy; and improving children’s experience of the justice system and the decision making that surrounds this as a result of Children’s Hearing redesign. [39] , p5”

Estimates and costings provided in the FM are explored under the headings below:

- Estimating the care experienced population
- Aftercare
- Advocacy
- Profit from residential services
- Non-profit principle for foster care
- Register of foster carers
- Children's hearings
- Children's services planning

Estimating the care experienced population

Costs around provisions in the Bill relating to aftercare, advocacy and guidance on care experience have been worked out using estimates of the care experienced population as the actual figure is not currently known.

The Financial Memorandum (FM) accompanying the Bill sets out that the number of looked after children in Scotland has been falling and is currently at the lowest rate since 2005, noting that:

> " If this trend continues it can be anticipated that the care experienced population will reduce over time. The financial estimates included within the financial memorandum are based on the current care experienced population. As implementation of provisions within the Bill is progressed trends and data on the number of people with care experience will continue to be reviewed alongside the take up of the support to ensure that the budgets identified continue to appropriately match need. [39] , p4"

The FM also states that people whose care experience began prior to 2009 are not included in the data if they did not have further experience of care during 2009 or subsequent years. This therefore makes estimating the total number of care experienced people within this age group challenging. However, the FM contains estimates by age category. These are set out in Table 1.

Table 1: Estimated care experienced population, by age category

Age Cohort	Population size
Under 16	25,017
16-25 years	30,109
26-40 years	16,625
41+ years	138,075
Total	**209,826**

Source: [39] , p 5

Aftercare

The costs associated with the Bill provisions to extend aftercare support to everyone looked after before their 16th birthday will fall on local authorities as the numbers of eligible young people receiving support between the ages of 16 and 25 increases.

The FM puts the estimated aftercare cost per young person at £7,617 in 2025-26 prices. This figure comprises a £736 cost for assessment, £2,881 for support (which may include travel costs, emergency funding and other local authority expenditure) and £4,000 'set up' costs to support a young person moving into their own home.

The FM estimates that 484 young people will be supported in 2027-28, rising to 1,144 in 2028-29 and 1,872 in 2029-30. The summary costs to local authorities of providing aftercare support are estimated to be £2,511,000 in 2027-28, £4,954,000 in 2028-29 and £7,435,000 in 2029-30.

The percentage of eligible young people coming forward for assessment for aftercare support has been "assumed throughout to be 48% in line with current uptake" , with 65% of those assessed going on to require support. [39]

Advocacy

The FM anticipates the earliest the advocacy provisions in the Bill could be available is 2028-29, due to time needed to develop and implement changes and required regulations.

Projected costings for advocacy provisions in the Bill are provided looking at uptake of one case of advocacy from 5% and 10% of the full care experienced population.

A 5% uptake is estimated to cost £5,292,00 in 2028-29 and £5,381,000 in 2029-30. A 10% uptake is estimated to cost £7,101,000 in 2028-29 and £7,220,000 in 2029-30.

Consultation costs of between £50,000 and £70,000 are also anticipated for 2026-27.

Guidance in relation to care experience

The FM estimates that the costs arising from provisions for Scottish Ministers to issue guidance in relation to care experience will be minimal. Total costs of between £95,000 and £105,000 are expected in 2026-27 only. Of this, between £5,000 and £10,000 is estimated for the development and publication of guidance. The remainder of the total is staff costs, however the FM notes that existing staff will lead on the work.

Profit from children's residential services

The FM estimates cost to residential childcare providers of between £800,000 and £3,700,000 over ten years in 2025-26 prices. This is based on the costs of a similar scheme - the Financial Oversight Scheme - in England. The FM acknowledges that the Scottish system may differ from this, and estimates will be updated following further consultation.

It should be noted that the Bill itself will not introduce profit limitation requirements. It introduces a regulation-making duty on Scottish Ministers to require certain residential childcare providers to provide financial information about their services. After further consideration, Scottish Ministers may then decide to exercise regulation-making powers imposing profit limitation powers.

Non-profit principle for foster care

The total cost of removing private profit from Independent Fostering Agencies (IFAs) is estimated by the FM to be between £2,025,000 and £3,230,000 in 2027-28, £1,418,000 and £2,227,000 in 2028-29 and £1,442,000 and £2,264,000 in 2029-30.

While most of these costs would fall on local authorities, the FM also highlights that, at £50,000 to £79,000 per child, IFA placements are often "significantly more expensive" than placements provided by local authorities themselves at a cost of between £20,000 and £48,000 per child. Therefore, the Scottish Government believes there is an opportunity for savings of between £6 million and £10 million made as a result of profit limitation to be reinvested into the fostering system from 2028-29 onwards.

Register of foster carers

Total costs to the Scottish Administration for establishing a register of foster carers are estimated to be between £120,000 and £400,000 in 2027-28, £65,000 and £195,000 in 2028-29 and £66,000 and £198,000 in 2029-30.

Potential costs to local authorities of between £160,000 and £649,600 per year from 2028-29 are also included, though these are illustrative costings at this stage. Future expansion costs of between £100,000 and £304,500 are also included as an illustration.

Children's hearings

The majority of costs associated with Bill provisions on the children's hearings system fall on the Scottish Children's Reporter Administration (SCRA) and relate to the remuneration of panel chairs. The FM estimates a cost of £6,530,000 for this in 2028-29 and reoccurring costs from 2029-30 of £6,160,000 per year.

One-off capital costs of £1,100,000 are provided in 2027-28 for updates to SCRA case management systems.

The 2028-29 total cost for all provisions related to children's hearings is between £7,283,000 and £7,607,000. In 2029-30 this falls to between £6,406,575 and £6,695,341.

Children's services planning

The FM states there should be no additional costs resulting from Integration Joint Boards (IJBs) joining local authorities and health boards on the list of bodies required to plan children's services.The FM states this is because IJBs are already expected to be involved in children's services planning, and the provisions in the Bill are intended to "reinforce and formalise these existing responsibilities". [39] (p 35)

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