ECYP/S6/25/25/2

Education, Children and Young People Committee
Wednesday 10 September 2025
25th Meeting, 2025 (Session 6)

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

Introduction

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

2. The Bill aims to makes changes in the law in relation to the children's care system. It also aims to change who is responsible for the planning of children's services.

3. The Education, Children and Young People Committee has been designated as the lead committee for the Bill at Stage 1.

Call for views

4. The Committee issued calls for views on the provisions of the Bill, which ran from 27 June 2025 until 15 August 2025.

5. There was a call for views aimed at individuals with care experience and those providing support and a call for views for organisations and academics. The Committee also produced easy read and BSL versions of the call for views.

6. The responses to the calls for views have been published. Summaries of the responses received are included at **Annexe A**.

Committee meeting

7. The Committee will taking oral evidence at its meeting at this meeting. The Committee will also take evidence at its meetings on 17 September, 8 October and on 5 November.

8. At today's meeting, the Committee will take evidence from two panels.

9. On panel one, the Committee will take evidence from:

    - Sheriff David Mackie, Chairperson, Hearings System Working Group
    - Fiona Duncan, Independent Strategic Advisor
    - Fraser McKinlay, Chief Executive, The Promise Scotland

10. On panel two:

    - Claire Burns, Director, CELCIS

- Kate Thompson, Policy Officer, Children and Young People's Commissioner Scotland
- Katy Nisbet, Head of Legal Policy, Clan Childlaw
- Maria Galli, Convener of the Child and Family Law Sub-Committee, Law Society of Scotland.

Supporting information

11. A SPICe briefing on the Bill was published on Monday 25 August.

12. Sheriff Mackie, The Promise Scotland, CELCIS, Children and Young People's Commissioner Scotland, Clan Childlaw and the Law Society of Scotland all responded to the call for views. Their responses are included at **Annexe B**.

Clerks to the Committee
September 2025

Annexe A

Education, Children and Young People Committee
Wednesday 10 September 2025
25th Meeting, 2025 (Session 6)

Children (Care, Care Experience and Services Planning) (Scotland) Bill – Summary of the call for views - Individuals

Summary

The Committee's call for views was open between 27 June and 15 August 2025. There were four opportunities to respond to the call – one aimed at organisations and academics, one for individuals with care experience and those providing support, an easy-read version and a final call for BSL users. This summary covers the responses from individuals with care experience and those who are providing support. It also takes into account any easy read responses received.

This version of the call for views received 35 responses and included nine questions on the Bill. Four of the responses were from organisations, and their views will be included in the separate summary paper focussed on organisation's views on the Bill. This paper provides a short, anonymised summary of the 31 responses from individuals. These are also available to read in full online.

Aftercare support

The first question asked by the call for views was for individual's opinions on the provisions in the Bill to extend aftercare support. The respondents were generally strongly in favour of these changes. Comments included:

> "Absolutely essential to all care leavers."
>
> And,
>
> "All young people leaving care should have aftercare support regardless of the age they left."

Respondents also shared opinions relating to the delivery of aftercare support. There were those who suggested that support needed to be delivered through suitable trusted adults who are already in the young person's life, and that any support needed to be "based on the individual needs rather than a one size fits all."

One respondent told the Committee that:

> "I've experienced Hearings where extending the CSO beyond a child's 16th birthday (just to ensure aftercare) has been part of the consideration about whether to continue a CSO. This change will remove this distracting consideration from the Hearing discussion allowing the decision-making to focus fully on the needs of the child."

There were also some concerns raised by individuals regarding this part of the Bill. A few respondents raised the resource implications of extending aftercare provisions and asked that the costs to local authorities as well as the wider financial impact to areas such as support in tertiary education, were considered by the Committee.

There were also comments raising the concern that by extending aftercare provisions this may lead to an inadvertent encouragement to young people to leave care prematurely. These respondents suggested that proper safeguards would be needed to avoid such situations.

Corporate parents

The call for views also asked respondents for their views on extending corporate parenting duties. The comments for this question were broadly similar to the ones for the previous question on extending aftercare provisions. One individual told the Committee that:

> "I am in favour of the Bill insisting that corporate parenting duties should now also apply to care experienced people who left care before their 16th birthday, and these duties should apply until that young person turned 26. If 'Parent' is in the title then parenting is what should be done."

A few of the submissions reflected on the need for a balance between individual rights and the duties of corporate parents. One respondent suggested that:

> "…we need to be mindful of potential encroachment and ensure these duties remain fair and not too overbearing. Corporate parenting should enhance opportunities and remove barriers, not create additional bureaucracy or paternalistic oversight that might actually discourage independence."

Other submissions returned to the topic of resource implications and the need to appropriately fund local authorities to ensure that they can meet the demand for services. Others focussed on the need to extend current services, with one individual explaining to the Committee that:

> "As a foster carer I have helped fund things such as driving lessons, prom dresses, items required for first flat, etc - this is when the young person has not counted as in our care and we got no help or funding for this. Corporate parenting really needs to consider what a young person who is not care experienced gets support or help with from their parents rather than the token services that are currently in place."

Right to advocacy

The third question asked for views on the proposed changes to the right to advocacy for children, young people and adults with care experience. Again, the majority of the responses were positive about the provisions in this area of the Bill. Comments from the submission included:

> "An advocacy system is required and it needs to be independent and fit for purpose."
>
> And,
>
> "I'm all for it. Anything we can put in place to encourage a [young person] to speak up, help find solutions, and take control of their lives, rather than bottling things up and becoming withdrawn."

Another respondent replied:

> "Yes. Absolutely a must. Independent Advocacy. If Scotland wishes to uphold the UNCRC, and the European Convention of Human Rights, this is a must."

While there was general support for the provisions, some respondents expressed concerns regarding the reality of implementing such services. One submission noted that:

> "Independent advocates need good training, support and supervision. They also need oversight so we know young people are getting a good service. Advocates also need 'teeth' they must have powers to require meetings to be held or decisions reviewed if they think they are not in the young person's best interests. If the LA can ignore advocates then it will diminish their effectiveness."

Another expressed reservations regarding existing advocacy services. They told the Committee that:

> "At the moment, Who Cares Scotland acts as an advocacy service. The concept of this is great: Care experienced people supporting other care experienced people. The reality is that for many of those helping in advocacy roles, it triggers their own trauma and means that the necessary support often stops abruptly, or isn't healthy. Furthermore it's not an independent service. It's mostly funded by the Scottish Government so that does not make it independent from the agencies who are placing the young people in care."

Guidance in relation to 'care experience'.

The proposals to change the guidance in relation to 'care experience' were also supported by most of the individual respondents to the call for views. One individual who answered the question stated that it was a:

> "Great idea, and a clear definition of 'care experience' is the starting point, nowhere in the UK is there a clear and unambiguous definition."

Many of the comments reflected concerns that the guidance needed to strike the correct balance in terms of the language used. One person told the Committee that:

> "Language used is critical, as is the approach to issues experienced. It has to be language that is led by the care experienced person. Care experienced people should be consulted on how to make what's proposed in this bill work."

Another suggested that:

> "There is a fine balance between recognising the disadvantages that care leavers face on a range of measures but not stigmatising them through eligibility for extra support. In my experience this is all about individual relationships rather than rules and I am intrigued to know how this will be dealt with through guidance."

Residential and foster care

The opinions expressed by respondents when asked for their views on the proposals for residential and foster care in the Bill were mixed.

Some respondents were strongly in favour of the proposals, making comments such as:

> "I agree with this bill too many of us have been used to profit financially secure units"

> And,

> "Making all IFA's charities is an excellent idea and should be extended to residential care also. It is the only sure way to stop profiteering from children's social care…The key to the approach suggested is communication and allowing enough time."

One respondent shared their experience as a foster carer with the Committee, explaining that:

> "As a foster carer who is dual registered with my local authority and an independent fostering agency (IFA), I have found myself becoming increasingly uncomfortable when looking at the enormous profits made by IFAs. I find the amount IFAs charge LAs for foster carer support unbelievably high with a real concern that the money is being gathered to serve IFA shareholders rather than the children and young people in the care of IFAs. Certainly, very little of the amount IFAs charge go towards supporting the young people in their care or their foster carers."

Other submissions expressed concerns that the proposals may lead to a scarcity of places, with companies pulling out of the sector as a result of the proposed changes. These comments included:

> "I would worry this may reduce the numbers of places available as they cannot be run as a profitable business."

And,

> "If profit restrictions lead to some providers leaving, what plans does the Scottish Government have to invest in public and charity-run services to ensure there are enough safe, stable homes for children in care?"

There were a couple of mentions in the responses of the situation in Wales, with one individual suggesting that:

> "It is clear that there needs to be moves first of all to look at the proposals in Wales where a commitment has been made to end profit in care by 2030, mirroring the commitment in the Independent Care Review in Scotland. The proposal in this bill does not end profit in children's residential services therefore does not meet the commitment in the Promise. Yet it seeks (rightly) to end profit in foster care. This creates a two tier system and does not meet the aspirations of the children who took part in the ICR"

Other comments also suggested that the Bill does not go far enough in its proposals. These comments included:

> "They whole system needs an overhaul and it needs to be fit for purpose today. If the whole care system was reformed, it might well encourage more foster carers. If they were better supported and resourced, there would be less need for care homes."

Another respondent stated that:

> "the entire system with regards to finances needs to be reviewed as a whole and not in parts. For example, once a young person turns 18, they fall into another budget (children to adult services) and this leads to care experienced people falling between the cracks."

National register for foster carers

The views expressed on the proposals for a national register for foster carers fell into three distinct groups.

The first group of responders were strongly in favour of the idea, with one submission sharing that:

> "This is an idea I've been hoping would come to fruition in all my 18 years as a foster carer."

Another respondent told the Committee that:

> "If a national register is something that would hopefully help encourage and support more parity across the board for all Foster Carers, I am definitely in favour of this."

The majority of the respondents to this question expressed views that were generally supportive of the idea, but concerned about the way that the national register is envisioned in the Bill. One individual stated that they were:

> "Disappointed at this. Government have really not listened to what foster carers want. We want an independent professional register like health care workers and other public services… We do not want LA i.e. fostering network to oversee our register… We want a national training…I urge you to listen to our voices."

The desire for an independent professional register was expressed repeatedly across the submissions. One such comment was that:

> "Foster carers need a register run by a totally independent professional body—no local authority or government control. Only then do we get proper recognition, training, fair treatment, and real say in our profession."

Some of the responses that expressed concerns about the format of the proposed registered highlighted concerns about a perceived conflict of interest. For example, one told the Committee that:

> "Many carers would strongly prefer an individual and independent register, rather than one controlled by the same authorities that employ and oversee us. The current proposal creates an inherent conflict of interest - local authorities and fostering services have a vested interest in controlling who can foster, yet they would also control the register that determines our professional standing."

Other concerns also centred on a perceived increase in bureaucracy that would stem from the proposals. One individual expressed the view that:

> "The pitfalls highlighted in recent consultations include risks of increased bureaucracy without added value, duplication of existing systems, and lack of clarity on safeguarding improvements. These concerns must be addressed by ensuring any register enhances, rather than complicates, carers' roles and protections."

There were also a few submissions that were against the idea of a national register being created. For example, one submission stated that:

> "I find it hard to see the value in a national register. There are already clear safeguarding measures in place within LAs."

Children's Hearings

The call for views next asked for individual's views on the proposals for changes to Children's Hearings.

On the topic of renumeration of panel members, there were opinions expressed both in favour of the proposals and against them. One submission in favour of renumeration stated that:

> "It's very welcome to see the Government make moves to implement the changes needed to remunerate Panel members. From the Redesign Report,

> it's clear that the primary purpose for this change is to enable a consistent chair as far as possible."

In contrast, another response suggested that:

> "Paying Children's Panel members who chair Panels or, more rarely, specialist panel members, creates more imbalances of power in the panel; therefore, adopt a system reflective of the Mental Health Tribunal Service."

Similarly, there was no consensus in the views expressed by individuals to proposals to allow some panels to meet with one person. While a couple of respondents agreed that having only one person on a panel could make young people more comfortable, there were more respondents who expressed concerns with this idea. In support of the proposals, a respondent explained that:

> "The hearings need to be flexible and tailored to the needs of the young person. For some young people having one panel member will work. For others, they need different perspectives."

On the other hand, another submission shared the view that:

> "The proposal to reduce panel members from three to one for some hearings represents a fundamental threat to the fairness and integrity of the Children's Hearings system. Having three panel members has been absolutely essential to ensuring balanced decision-making. Three members provide different perspectives and life experiences, ensuring decisions aren't based on one person's viewpoint. This creates vital safeguarding against individual bias or prejudice that could affect a child's future."

Many of the views shared with the Committee highlighted a need to ensure that any changes to the system should be "carefully considered with lived-experience at the centre."

There were also a number of responses that focussed on where foster carers may contribute to the panel system. For example, one submission asked:

> "How can the government ensure that the voices of foster carers, when advocating for the child or young person in their care, are given equal weight and professional respect in decision-making processes?"

Children Services Planning

The final question on specific proposals in the Bill asked respondents for their views on the proposals for changes to Children Services Planning. This section garnered mixed views on the topic. This mixed response is best summed up by the individual who told the Committee that:

> "While I support better coordination across services, we need clarity about what this change actually means in practice. Integration Joint Boards are separate legal entities which I associate with adult health and social care services. In contrast, local authorities are democratically elected councils that

> have always been responsible for children's services and are directly accountable to voters. The fundamental concern is that IJBs were explicitly designed for adult services; their expertise and focus have traditionally been on care homes, community nursing for adults, and older people's services. Adding children's services planning represents a significant shift that could dilute specialist knowledge."

Others who raised concerns about the place of children's services within an IJB, highlighted "a risk that children's needs could be overlooked or become a lower priority if not carefully managed" or that there's "a risk that nobody takes full responsibility for the entire problem and some parts fall between the gaps."

One respondent suggested that:

> "It is unclear what the thinking is behind this proposal. There is precious little evidence that IJBs are working to improve the services they are already responsible for and evidence from Audit Scotland suggests they are woefully underfunded for what they are already expected to do."

One of the few positive comments on this section of the Bill focussed on the transition process, stating that:

> "…this will be better for those who are in children's service who will move onto adult services as this may provide a smooth transition and make it easier."

The call for views also gave respondents the opportunity to provide any other comments on the Bill, however the points made in answer to this question reflected themes already brought out by the comments made to the previous questions.

Laura Haley, Researcher, SPICe

04/09/2025

Education, Children and Young People Committee
Wednesday 10 September 2025
25th Meeting, 2025 (Session 6)

Children (Care, Care Experience and Services Planning) (Scotland) Bill – Summary of the call for views - Organisations

Introduction

The Education, Children and Young People Committee's consultation on the Children (Care, Care Experience and Services Planning) (Scotland) Bill ran from 27 June until 15 August 2025.

The Committee ran four versions of the consultation: one for academics and organisations, one for individuals with care experience and those providing support, a BSL version and an easy read version.

This paper provides a summary of the main issues raised in response to the consultation from organisations. There were 79 responses in total; the summary provides an overview of key themes and is not intended to be exhaustive.

Part 1 Chapter 1

1. What are your views on the aftercare provisions set out in the Bill?

There was general support for the expansion of aftercare eligibility, with many responses highlighting that those leaving care before the age of 16 are not currently eligible for support.

The Children and Young People's Commissioner Scotland (CYPCS) stated the proposals are out of scope of the 2024 UNCRC Act due to the Bill provisions amending the Children (Scotland) 1995 Act rather than an Act of the Scottish Parliament. The Children and Young People's Centre for Justice (CYCJ) also noted this point, as did Who Cares? Scotland, Includem and Together (Scottish Alliance for Children's Rights).

CYCJ said a key marker of success of the proposals would be consistency on aftercare across the whole of Scotland, but the current picture showed inconsistency, with CELCIS research finding less than half of eligible young people receiving aftercare services in 2024.

Clan Childlaw's submission suggested modifying the proposed amendments to section 29 of the Children (Scotland) 1995 Act to remove the "cliff edge" on aftercare

support, simplify the regulations and avoid potential complication caused by the amendments as proposed. The submission said the proposals as drafted would mean 16-18 year olds looked after before their 16th birthday would not be eligible for financial support in terms of the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 SSI 2003/ 608 Regulation 13:

> "Regulation 13 requires regular financial support only for compulsorily supported person under 18 - that is a person supported in terms of s29(1) – and they must have been looked after and accommodated for a period of, or periods totalling, 13 weeks or more since the age of 14." – Clan Childlaw submission

The Fostering Network's submission recommended "amending section 1, subsection 2, to create a duty on local authorities to assess a young person's need for aftercare up to age 26, and to meet any needs identified."

Hub for Success, the Fostering Network, the Nationwide Association of Fostering Providers (NAFP), the Adolescent and Children's Trust (TACT), Cyrenians and Children in Scotland all supported further extension of support, with lifelong entitlement and a broader offer of support amongst the ideas put forward.

Barnardo's Scotland said eligible young people must be made aware of their rights and entitlements, e.g. through a public information campaign. The Promise Scotland called for robust plans and guidance in place to support local authorities to implement new duties and to help children and young people know and understand their rights.

The Promise Scotland, Scottish Children's Reporter Administration (SCRA) and Children First said that children should not be required to apply for aftercare support, and the offer should be available to all care-experienced young people. Adoption UK called for "a full and transparent appeals process" and more clarity around what support will be provided.

South Ayrshire Council and Health and Social Care Partnership and the Scottish Throughcare and Aftercare Forum (STAF) expressed concerns about extending aftercare support in the way proposed by the Bill. On this, STAF said:

> "…increasing the numbers of care experienced people eligible for support without increasing the budget fully and proportionately could end up being the worst of both worlds: more people become eligible and apply for support; less money over all is available per capita to provide that support. Everyone is underserved and services over stretched." – STAF response

The proposed care-leaver payment and its interaction with aftercare and social security was also highlighted by STAF as an issue needing further exploration. STAF said the Scottish Government could address potential issues by prioritising individual needs-led planning, ending age-based cut offs, improving transition between child

and adult services and guaranteeing lifelong support. In addition, STAF called for clarity on the upper age limit for the application of UNCRC rights regarding aftercare.

The Promise Scotland and the Fostering Network said the Bill is an opportunity for the Independent Care Review recommendation of a right to return to care to be put into statute.

Transition to adulthood was identified by Adoption UK and others as a particularly challenging time for care experienced people, with their research showing a need for support to access training, education and employment.

UNISON Scotland's response said a child spending two weeks in care at the start of their life prior to adoption would be entitled to support while a child on the edges of care throughout their childhood would not be eligible, and this risks "entrenching inequality". Local authority, health and social care partnership and adoption organisation submissions also raised similar points about the eligibility of those who had spent a short amount of time in care, for example via kinship care or short-term respite. SCRA called for clarification as to whether children looked after for the first time following their 16th birthday (in line with the provisions still to be enacted of the Children (Care and Justice) Scotland Act 2024) will be eligible for aftercare.

Our Hearings, Our Voice and Who Cares? Scotland submissions highlighted their previous calls for aftercare provisions to be extended. While Who Cares? Scotland's submission welcomed the proposals, it noted the need for "clear communication" of the phased approach outlined in the Bill's Financial Memorandum, with eligibility criteria clearly set out. The response from the Centre of Excellence for Children's Care and Protection (CELCIS) also stated the need for clear communication.

Scottish Families Affected by Alcohol and Drugs' response highlighted the experiences of young care experienced people, with difficulty accessing support and reaching their social work points of contact a common theme.

Social Work Scotland's (SWS) response noted support for the principle of young care experienced people being able to access required support, however the submission stressed "significant concerns" about the proposals contained in the Bill. SWS stated that extending the right to assessment opened this up to "a huge group" that would be "difficult to resource" with no real data on the numbers involved.

SWS questioned whether proposals incentivise being in care as a means of accessing additional support and therefore contradict principles of minimum intervention, calling for proposals to be "tested rigorously" to ensure benefits outweigh risks. In relation to those subject to a Section 11 Kinship Care Order, SWS raised concern about a potential human rights issue as many children with such an order may never have had direct contact with the care system.

SWS also stated concern that extending the right to aftercare could have the unintended consequence of increasing stigma. Instead, the organisation called for

consideration of how support in adulthood might otherwise be made available – e.g. via upskilling and targeted services.

The Law Society of Scotland's submission said some care experienced people "could fall through the gaps" as consideration had not been given to those who have been adopted, children on cross-border placements at residential and secure care in Scotland or children subject to non-compulsory care arrangements under section 25 of the Children (Scotland) Act 1995.

Aberlour's submission highlighted that unaccompanied asylum-seeking children coming to Scotland are over the age of 16, and it is unclear from the Bill as drafted whether they will be eligible for aftercare support. Hub for Success also pointed to a lack of clarity around how care experience will be recognised for those without formal documentation. The Scottish Refugee Council and Guardianship Scotland's joint response stated that children arriving in Scotland often receive aftercare first, but they should instead receive care and be assessed by an Independent Reviewing Officer. The response called for statutory guidance providing a clear understanding of the rights and entitlements of unaccompanied asylum-seeking children is required.

Organisations including Children First and UNISON Scotland set out concerns about the resource implications. UNISON stated: "we are not convinced that the resource implications have been properly assessed", adding there was uncertainty as to whether resource implications of extending council tax exemption and support for college and university students had been factored into costings.

Children's Services, Renfrewshire Council also sought clarity on finances, funding and implementation, questioning how the costs of aftercare extension were calculated:

> "The absence of co-production with frontline professionals, coupled with unrealistic assumptions about current financial capacity, further undermines the Bill's potential impact." - Children's Services, Renfrewshire Council

SWS and COSLA both stated that figures used for the costs of assessment were two years out of date. In addition, SWS said the housing shortage faced by local authorities is not addressed by the Bill or Financial Memorandum.

Angus Council's submission stated housing services should be involved in planning transitional accommodation and homelessness prevention strategies for those eligible for aftercare support. NAFP suggested a duty to provide a child with a home when they attend university away from their foster home should be introduced. CELCIS also highlighted the housing shortage and stated that care experienced people must have choices about where they live.

Local authority submissions also raised concerns around which local authority will be responsible for administering aftercare support, i.e. the authority the person lived in when they were in care or the authority in which they currently live. Glasgow City Health and Social Care Partnership stated a preference for the Bill to set out clearly

that aftercare responsibilities will fall on the authority that took the child into care, and also to ensure robust data sharing arrangements are in place.

A number of submissions from local authorities and other organisations including Who Cares? Scotland, the Promise Scotland, Glasgow City Health and Social Care Partnership and CELCIS highlighted ongoing social work workforce issues, stating that the extension of aftercare support would increase pressure on the workforce.

COSLA's submission echoed local authorities' concerns about resourcing, financing and workforce issues and emphasised the need to ensure appropriate planning and resourcing. COSLA said learning should be taken from the implementation of continuing care where planning and resourcing work was not done, and local authorities face challenges delivering it ten years on.

Clan Childlaw and a number of local authority submissions sought clarity on cross-UK arrangements and eligibility of care experienced people from elsewhere in the UK for aftercare support.

2. What are your views on the corporate parenting provisions set out in the Bill?

While many organisations responding to the call for views welcome the intention behind the proposed extension of corporate parenting duties to bring these in to line with the aftercare provisions in section 1 and 2 of the Bill, the majority of respondents also had concerns. A summary of key concerns is set out below.

CELCIS called for further consultation on the proposed changes.

SWS stated that extending corporate parenting duties to those who have not had state intervention in their lives contradicts minimum intervention principles and may represent a potential rights issue. For example, a child adopted as an infant would be classed as 'care experienced' but may have had no other interaction with the state following adoption. Families requiring short-term interventions were listed as another example. SWS stated that the extension of corporate parenting duties for these groups could constitute state interference in family life. CELCIS and Shetland Islands Council submission also highlighted these issue, and COSLA's submission called for consideration of how the proposals will interact with parental rights and responsibilities. Angus Council and Education Scotland submissions stated that widening out the definition may overwhelm the system.

Several organisations including St Mary's Kenmure, STAF, Children in Scotland, Hub for Success, Who Cares? Scotland, MCR Pathways, Aberdeen City Children's Social Work and Family Support and Children's Services Renfrewshire Council, Aberdeen City Council, Moray Council/Health and Social Care Moray, North Ayrshire Council and Includem highlighted the need to ensure the responsibilities are understood, with national guidance, appropriate resources, monitoring and the development of a shared understanding of good corporate parenting in practice.

Respondents including the Scottish Association of Social Work (SASW), UNISON Scotland, SWS, CELCIS, Quarriers, Renfrewshire Council, Highland Council, South Ayrshire Health and Social Care Partnership, Glasgow City Health and Social Care Partnership, The Adolescent and Children's Trust (TACT), Children's Services, East Lothian Council, NHS Ayrshire and Arran, South Lanarkshire Council, Promise Scotland and others said that these provisions required investment in resources and workforce, and may not be fully realised without this.

The Care Inspectorate, Children in Scotland, Who Cares? Scotland, Scottish Borders Champions Board and the Fostering Network called for the corporate parenting provisions to recognise lifelong care experience.

Children in Scotland highlighted the need to ensure progress on new corporate parenting responsibilities is monitored.

The Care Inspectorate, CELCIS and SSSC suggested replacing the term 'looked after' to something more trauma informed, in line with The Promise.

Children in Scotland noted article 12 of UNCRC on the right of children and young people to be heard in relation to decisions affecting them and stated care experienced children and young people should be involved in shaping relevant services and policies.

Some respondents such as Inspiring Scotland Intandem programme noted that those in kinship care or looked after at home have been excluded from the protections provided by corporate parenting in the past. Adoption UK, Scottish Adoption and Fostering, the Children and Young People's Planning Partnership (CYPPP) Scottish Borders and others stared it was unclear how the provisions will apply to adopted and kinship groups.

The joint response from the Scottish Refugee Council and Guardianship Scotland stated corporate parenting responsibilities in the context of unaccompanied asylum-seeking children needed to be better understood.

The Law Society of Scotland's response set out concerns about the legal status and accountability of Integration Joint Boards in relation to corporate parenting duties and remedy and redress.

3. What are your views on the advocacy proposals set out in the Bill?

The majority of respondents was supportive of the principle of extending advocacy, however there were concerns about related issues such as provision of resources.

The need to provide improved, sustained resourcing of advocacy support was raised by respondents including St Mary's Kenmure, Quarriers, Law Society of Scotland, SASW, STAF, Rock Trust, NHS Ayrshire and Arran, COSLA, Children's Services Dumfries and Galloway Council, Aberdeenshire Council, Aberdeen City Council, Moray Council/Health and Social Care Moray, North Ayrshire Council, Angus Council, South Lanarkshire Council, Clackmannanshire Council and Renfrewshire Council. Education Scotland, SWS and Who Cares? Scotland also highlighted this,

stating that the take up rates in the Bill's Financial Memorandum may underestimate demand. SWS suggested a pilot scheme would aid understanding. The submission from Common Weal stated:

> "At £5m, rising to £7m by 2028/29, this is by far the most expensive part of the bill after that pertaining to children's hearings, and significantly more than it is proposed is spent on direct services to the newly eligible cohort of care experienced people to continuing care." – Common Weal submission

Shetland Council stated that if services were delivered in a rights-based way, advocacy provision would not be needed.

CYCJ and Inspiring Scotland/Intandem's response stated that care experienced young people must be aware of their right to advocacy and advocacy should complement services rather than replace them.

Inconsistency of available support between local authority areas was highlighted by the Care Inspectorate, Quarriers and Who Cares? Scotland as an issue to address. CELCIS' submission said advocacy should not be offered on a one-off basis.

Children's Services, East Lothian Council said there was a lack of clarity in the Bill around who will be responsible for providing advocacy, particularly for those no longer in care.

The Promise Scotland, Care Inspectorate, Includem, Glasgow City Health and Social Care Partnership, Who Cares? Scotland, MCR Pathways, Common Weal and the Fostering Network stated the need to provide a more precise definition of 'independent advocacy'. Who Cares? Scotland and the Scottish Independent Advocacy Alliance suggested using the definition of independent advocacy used in the Mental Health (Care and Treatment) (Scotland) Act 2003.

Who Cares? Scotland and the Scottish Independent Advocacy Alliance highlighted a need to ensure those involved in planning or delivering services to care experienced young people cannot also act as independent advocates.

Other respondents including Children's Services, Renfrewshire Council mentioned the need to define 'lifelong advocacy'.

Hub for Success said increased regulation of advocacy services must not introduce more bureaucracy or reduce accessibility.

Our Hearings, Our Voice expressed strong support for children receiving advocacy support as soon as they are referred to the children's hearing system.

Respondents including Adoption UK Scotland, South Ayrshire Council and H&SCP, SWS, COSLA, Children First and UNISON Scotland expressed concerns about the detail of advocacy provision being left to subsequent regulations.

CELCIS stated that access should be "flexible and inclusive", with the process of proving care experience minimally invasive, clarity on how it interacts with proposals for guidance on care experience and safeguards in place to ensure people are not

inadvertently directed to apply for their full care records before they are ready to do so. The Promise Scotland said guidance must be developed through collaboration.

Adoption UK Scotland's response also stated that the Bill could be an opportunity to establish advocacy services for adult adoptees. Scottish Adoption and Fostering said advocacy should be available to all adoptees. Who Cares? Scotland and Cyrenians sought further safeguards to ensure all care experienced people can access advocacy. MCR Pathways said those in informal kinship care were excluded from advocacy by the proposals in the Bill.

South Ayrshire Council and H&SCP stated that if advocacy services are to be nationally commissioned, they must be designed to take local needs into account.

Barnardo's stated that access to advocacy for children with disabilities and support needs required consideration. Children's Services, Renfrewshire Council also said that communication supports such as PECS and Makaton needed consideration.

CYCJ highlighted low levels of accessing advocacy, stating this issue needed to be addressed for the Bill provisions to have maximum impact.

Children First said the care system needed to improve the way it listens to and respects the views of children, and advocacy alone cannot do this. The Law Society submission also said advocacy was only one aspect of access to justice. Stirling Council said that the proposal could also be seen to stigmatise care experienced people, giving the perception they cannot advocate for themselves. Clan Childlaw stressed "advocacy is not a substitute for legal representation".

Children First and NSPCC also raised concerns about how 'non-instructed advocacy' for infants and young children will work in practice. NSPCC said an opt-in model of advocacy excludes babies and young children.

NSPCC Scotland and the joint submission from Scottish Refugee Council and Guardianship Scotland stated that while they were broadly supportive, clarity was needed on how the advocacy proposals will interact with existing statutory services. The Scottish Refugee Council and Guardianship Scotland submission also highlighted that advocacy services should be anti-racist and trauma informed, and stated support for an advocacy service aimed at supporting age-disputed young people.

4. What are your views on the proposals for guidance in relation to care experience?

The majority of respondents were broadly supportive of the proposals for guidance in relation to care experience, however there were several specific concerns raised.

Many of those with positive comments placed an emphasis on the importance of co-production with those who have experience of care. This included responses from St Mary's Kenmure, Scottish Social Services Council (SSSC), Care Inspectorate, The Fostering Network, NAFP, SCRA, and Clackmannanshire Council.

There were differences in opinion expressed regarding who should be included in any definition of 'care experienced.' Those favouring as broad a definition as possible included Adoption UK Scotland and Aberdeenshire Council which stated:

> "…the definition must reflect the full spectrum of care experience — including children and young people who may not have been formally "looked after" but have nonetheless experienced care arrangements, such as informal kinship care… These experiences are equally valid and must be recognised within the guidance." - Aberdeenshire Council submission

Respondents who raised concerns about creating too broad a definition included Social Work Scotland who were "particularly concerned" that leaving the definition to be set out in secondary legislation may lead to "the sort of broad and all-encompassing definition we advise against, including children who have not been 'looked after'." COSLA expressed similar concerns, noting that:

> "The inclusion of all of those on kinship care orders could be difficult for some people. Some individuals will live with family members and never have experience of state care or any social work involvement. They may therefore not see themselves as care experienced." – COSLA submission

Many of the respondents raised concerns that the Bill did not include a universal definition, but instead left this to secondary legislation. The Cyrenians were "slightly disappointed" and MCR Pathways stated that it was "discouraging that despite the vast majority of respondents to this consultation being in favour of universal definition, it was not included in the Bill."

Who Cares? Scotland raised the concern that not including a clear definition in regulations would mean that eligibility requirements will "continue to be guiding not binding, and exclusive," to a range of young people including adoptees and unaccompanied asylum-seeking children.

CYPCS also noted the lack of a universal definition and suggested that the Bill uses "different criteria for access to aftercare, corporate parenting duties and advocacy services." The Commissioner's response went on to state that:

> "Our view is that if work is undertaken to develop a universal definition via guidance, it should aim to align the definition with eligibility criteria for support, at the very least in devolved services." – CYPCS submission

Children First, however, agreed with the decision not to create a statutory definition of care experience in the Bill. They suggested that given the diversity of young people's experiences "a fixed legal definition could very quickly accidentally limit or exclude children who may not meet technical thresholds but who are experiencing a form of care."

Quarriers, Barnardo's Scotland, SASW and SWS said any change to definitions needed to ensure that no one who needs access to support was inadvertently excluded from it. Aberdeen City Council stated that the definition must ensure "inclusivity, practicality, and sustainability are all carefully balanced."

The potential compatibility of a new definition of 'care experienced' with existing legal frameworks was an area of concern raised by East Lothian Council, who expressed the opinion that close collaboration will be "essential to ensure that the introduction of new terminology does not result in confusion or conflict."

In relation to the proposals for new guidance, some respondents raised specific concerns with the Bill. Children's Services, Renfrewshire Council raised a concern with the lack of a "clear mechanism" to ensure compliance with any new guidance. Their response also highlighted concerns that the Bill did not build in a way to evaluate the effectiveness of any guidance.

The Promise Scotland and CYPCS both raised a privacy concern with subsection 5(2)(a). CYPCS stated that:

> "We have serious concerns about the compatibility of subsection 5(2)(a), which potentially places a proactive duty on public authorities to identify care experienced people. Our view is that this is not compatible with care experienced people's right to privacy and family life in Article 8 of the ECHR (and in the case of children, Article 16 of the UNCRC). Attempts to comply with this could result in a register of care experienced people being created and this risks increasing stigma…This can be easily addressed via an amendment to remove the words "identifying and" from the start of section 5(2)(a)." – CYPCS submission

Who Cares? Scotland said that the requirement for public authorities to 'have regard to' future guidance when exercising their functions in relation to Care Experienced people should be strengthened. The submission suggested that this "would be stronger if it was a "due regard" duty, so public authorities could be subject to judicial review."

Hub for Success, NSPCC Scotland, CELCIS and Aberdeenshire Council were amongst the respondents who discussed the need for adequate training and resources to support the implementation of any new guidance. Aberdeenshire Council suggested that "practitioners must be equipped with the knowledge, skills, and confidence to apply it in a way that is rights-based, trauma-informed, and person-led." NSPCC Scotland took the view that:

> "…a more robust and thorough financial analysis and forecasting process is required to ensure that all potential implications are fully understood and appropriately resourced, enabling effective implementation in line with the recommendations of The Promise." – NSPCC Scotland submission

Some of the respondents made suggestions for items that they felt should be included in the proposed guidance. SASW, SWS and the Scottish Refugee Council both highlighted the need for best practice in relation to Unaccompanied Asylum-Seeking Children, with the Scottish Refugee Council noting that guidance "must be anti-racist, trauma-informed, culturally competent, informed by children's rights and reflective of the lived experiences of Unaccompanied Asylum-Seeking Children."

Children in Scotland focussed on the relationship between any new definition of care and existing legislation, particularly in regard to the Additional Support for Learning

(ASL) Act. The submission expressed the view that the ASL Act will need to be expanded to include all young people with 'care experience' and not only those who are 'looked after.'

Chapter 2

5. What are your views on proposals designed to limit profits for children's residential care services?

The responses to this question provided very mixed views on the proposals in the Bill to limit profits for children's residential care services.

There were a small number of submissions who felt that the provisions in the Bill had got the right balance between preventing excessive profits from being made and ensuring that the supply of private residential care facilities continues. CYPCS stated they were "generally supportive of the approach taken," while Children in Scotland suggested that the Bill appeared to be a "proportionate response to long standing concerns about the role of private profit in the care system."

Some respondents felt further consultation, analysis and development is required before legislating on profit limitation. SWS described this part of the legislation as a "plan to have a plan," while the Law Society of Scotland suggested that "this Bill is premature, pending the outcomes and any recommendations made within related reviews and consultations." CELCIS stated that:

> "…behind such a proposal for reform there would ordinarily be a depth of understanding and preparedness which seems to be missing at this stage. While these concerns around profit are valid and reflect urgent ethical considerations, a legislative response has been progressed prior to there being proper consultation, comprehensive analysis of the implications of the changes and the development of co-designed solutions." – CELCIS submission

There were many comments suggesting that the Bill needed to be clearer in its definition of "excessive profit." Organisations such as St Mary's Kenmure, SASW, SWS, the Promise Scotland, the Scottish Children's Services Coalition, Quarriers and Aberlour all discussed this point.

St Mary's Kenmure called for a "clear statutory definition of "profit"" within the sector, while the Scottish Children's Services Coalition "would urge caution in relation to overly limiting profits for providers." Quarriers explained that:

> "It is vital that any financial framework distinguishes between excessive profit-taking by for-profit providers, and reasonable surplus generation that enables reinvestment in services. For Quarriers and similar organisations, the ability to reinvest is essential to maintain quality, develop staff, and improve outcomes – especially within the wider financial context of increasingly difficult to access funding." – Quarriers submission

A number of responses called for greater clarity regarding the measures in the Bill to gather and use data on the profits of private residential care services. Children in Scotland described a "disconnect" between the financial and policy memorandums regarding the anticipated administration costs of data collection. They said that "there is limited clarity on how data will be collected, managed and published and the associated cost around this particularly in how realistic they are or if the policy aims are achievable."

South Ayrshire Council and H&SCP suggested that:

> "The costs included on Table 1 of the Financial Memorandum for Profit Limitation - £100k to £120k for initial analysis of the financial information appears to be low. The level of financial analysis required will be extensive as there is a variation in how residential organisations are legally set up." - South Ayrshire Council and H&SCP submission

Aberdeen City Council also raised concerns regarding the practical implementation of these proposals, suggesting that there is a "lack of a clear regulatory framework," and that implementation will require "much more detail and scrutiny."

Other respondents expressed the view that the legislation as set out does not go far enough. Most of these respondents referred to The Promise Scotland, especially the line "There is no place for profiting in how Scotland cares for its children." (p.111) Their submissions state that the Bill does not meet this part of the 'Promise.'

Submissions from NSPCC Scotland, Children First, Common Weal and Who Cares? Scotland all set out their objections to this section of legislation, based on it only providing Minister's with the power to limit profits for providers, rather than for preventing them. The Fostering Network highlight the proposed addition of section 78F, subsection 2, to the Public Services Reform (Scotland) Act 2020 in their response, suggesting that requiring Ministers to have regard to the interests of residential care service providers before imposing or modifying a profit limitation requirement "means the Bill not only fails to take action to eliminate profit, but appears to actively prevent these provisions from being used to this end in future."

There were also respondents who discussed the differences set out in the legislation between independent fostering agencies (IFAs) and residential care services, with COSLA stating that it is "unclear why a different approach" has been taken between them. UNISON Scotland, Common Weal and COSLA all suggest that residential services should be treated in the same way as IFAs and register as charities.

The submission from the CYCJ questioned "the exclusion of secure care provision and transport from these proposals." They go on to state that:

> "We would consider the extension of these profit proposals to include these key players in the residential childcare landscape to be in keeping with the promise and act as a necessary bulwark against any future changes." – CYCJ submission

Some of the respondents, including COSLA, Glasgow City Health and Social Care Partnership and Education Scotland raised the concern that this section of the

legislation risks providers withdrawing from the market with the result that there are not enough residential places to meet the need for them. Glasgow City Health and Social Care Partnership suggest that "relevant impact assessments" are undertaken in order "to understand potential disruption on supply and alternative resourcing and placements models."

South Lanarkshire Council's submission states that any proposals for profit limitation must be accompanied by "strategic investment in expanding and strengthening public sector and charitable provision."

6. What are your views on proposals to require fostering services to be charities?

There were fewer responses to this question than to some of the others, although the majority of those who did respond were broadly in favour of the proposals in the Bill. Children in Scotland, for example, discussed the potential loopholes for IFAs who are currently set up as voluntary organisations and agreed that replacing the current rules with "a clear requirement for fostering providers to be UK registered charities introduces stronger accountability, transparency, and public confidence."

The concerns raised by the submissions focussed on the practicalities of transitioning IFAs to the charity model. The Fostering Network, Who Cares? Scotland, Social Work Scotland and Aberdeenshire Council all expressed the view that sufficient time needed to be given to allow for this to happen, and that clear guidance must be provided to facilitate the change.

There was also general agreement that any change had to be managed in a way that did not negatively impact children in fostering arrangements. The Promise Scotland was one of these organisations, and their submission stated: "this must be carefully and sensitively managed to avoid disruptions to children who are currently living in homes affected by these changes."

St Mary's Kenmure cautioned that "Charities are also not immune to financial strain," and that any change to how the IFAs are set up must take place within a:

> "…commissioning and funding framework that prioritises stability, transparency, and the best interests of children. Charitable status should not be seen as a guarantee of quality or sustainability without the right safeguards, investment, and oversight in place." - St Mary's Kenmure submission

There were also questions raised by some of the organisations regarding how this transition would be monitored in practice. The Care Inspectorate were concerned about potential unintended consequences from the transition, and stated that it "would be helpful to understand how these proposals are to be monitored in practice."

NHS Ayrshire and Arran notes that the financial memorandum states that savings will be made by IFAs becoming charities, but there is no explanation of who will monitor whether savings are actually achieved.

Children's Services, East Lothian Council asked for clarification regarding the implications of any IFAs that choose not to register as charities, especially if they remain registered in England but continue to place children in Scotland. They suggested that this "raises important questions about cross-border regulation and accountability."

The Fostering Network and Who Cares? Scotland suggested that independent adoption services should also be included in the legislation as services that should require to be charities. They explained that while currently all such services were charities, they did not have to be and including them in the legislation would prevent any future agencies from being set up without charitable status.

The concern raised by the most organisations was the possibility that the change would lead to some providers closing. Organisations that brought this up included South Ayrshire Council and H&SCP, Scottish Adoption and Fostering, Aberlour, and COSLA. Children's Services, Renfrewshire Council stated that:

> "Without clear transitional arrangements, adequate funding support, and meaningful engagement with affected providers, there is a risk that the proposal could reduce diversity in service provision and create gaps in care particularly in areas already facing recruitment challenges." - Children's Services, Renfrewshire Council submission

Quarriers were concerned that if any IFAs were to close, that this could have a "disproportionate impact on children with complex needs, who may currently be supported by specialist IFAs." They recommended that "meaningful engagement" should take place to consider areas such as continuity of care and practical implications of the transition.

The Adolescent and Children's Trust expressed an opposing opinion, stating: "we urge the Scottish Government not to listen to the for profit voices who will claim this will lead to a sufficiency crisis." They suggested that so long as the transition was managed effectively, the loss of IFAs was unlikely to occur.

CELCIS stated that there "is a significant lack of evidence about profit within foster care in Scotland." The submission went on to suggest that more consultation and engagement is needed before this provision should be included in the Bill.

Other organisations were strongly opposed to the provisions. NAFP pointed out that IFAs must already follow a not-for-profit model and are monitored by local authorities. Their view was that this system already offered appropriate accountability without adding the additional reporting burden of accountability to the Charity Commission. They suggested that this would create extra costs to IFAs that would ultimately be passed on to local authorities.

Polaris Community discussed the current Care Inspectorate gradings for IFAs and noted that the ones that operated as charities did not provide a quality of service that was any better than that of services using other not-for-profit models. They agreed with NAFP that the current structure provides sufficient safeguards and that there would be costs associated with moving to a charitable model that may negatively impact the service that they provide.

Glasgow City Health and Social Care Partnership were concerned that the proposals would add further bureaucracies for local authorities, with additional pressures on recruitment and retention where there are already existing challenges. They stated that "we'd welcome other mechanisms being explored. Required fostering services to be charities feels like a neutral option at best."

7. What are your views on proposals to maintain a register of foster carers?

There was general support for a register of foster carers from several respondents, however many called for further detail on how the register will work in practice.

The Promise Scotland's summed up its support for a register as follows:

> "…[it] offers an opportunity for improved collaboration, information sharing, enhanced training, continuous professional development and a more standardised approach to recruitment, retention, training and support." - Promise Scotland submission

COSLA's response stated the purpose of the register was unclear, and it was unsure how the register would address aspects such as safeguarding and coordination of placements. NAFP, Aberdeenshire Council, Clackmannanshire Council and Children's Services, East Lothian Council, Glasgow City Health and Social Care Partnership, Adolescent and Children's Trust, Dumfries and Galloway Council and Children and Young People's Planning Partnership (CYPPP), Scottish Borders also said the rationale was unclear. Quarriers stated support for the register if it was clearly defined in scope.

Polaris Community and SWS stated that there was a potential for the register to create additional tasks for agencies and local authorities. Polaris Community called for clarity on how carer transfer would work in practice.

Several responses highlighted the declining number of foster carers across the country, and the Care Inspectorate, Highland Council and Angus Council said it was important to ensure the register of foster carers did not worsen this situation. Scottish Adoption and Fostering said if the provisions encouraged more people into fostering, this would be welcome. However, it cautioned against adding "extra layer of bureaucracy to what is already quite a lengthy process to recruit and retain foster carers". NSPCC Scotland requested assurance that the register would not stop dual registration of adopters as foster carers.

Children in Scotland said it was important to recognise foster carers as a vital part of the care workforce. South Ayrshire Council and H&SCP said the Bill needed to address issues of recruitment and retention within social work. SWS said recruitment and retention could be negatively impacted if the register was seen to be "a means to monitor what agencies are doing, and who is approved".

The Care Inspectorate also suggested amending new section 30C(2)(b)(ii) of the 1995 Act to reference the needs of children and young people cared for by foster carers, and how the proposed disclosure of information might benefit them.

Who Cares? Scotland, Children First, CELCIS, SWS, CYPCS, Children in Scotland, South Ayrshire Council and H&SCP, South Lanarkshire Council, Aberdeen City Children's Social Work and Family Support, Includem, Rock Trust, Children's Services, Renfrewshire Council, Polaris Community, Scottish Borders Champions Board and the Fostering Network highlighted potential safeguarding benefits. CELCIS warned that the register should not be seen as a "panacea" for all safeguarding concerns.

Includem and STAF suggested strengthening the register by including a record of complaints/comments made by children.

South Ayrshire Council and H&SCP and NHS Ayrshire and Arran suggested a separate register of previous foster carers may also support safeguarding and processes such as learning reviews.

The Fostering Network said that those who had not been approved as foster carers should only remain on the register where non-approval is due to concerns about their suitability to work with children. The submission suggested recording reasons a person was not approved to avoid unintended 'blacklisting' of potentially suitable people. Enabling foster carers to make updates, for example to their own personal details, would be welcome. Aberdeenshire Council also called for more clarity around removal from the register.

The Fostering Network suggested removing the reference to respite carers in new section 30E(2)(a)(ii) on establishing a pilot scheme, stating that piloting on respite carers may not provide a good indication of the effectiveness of a register. CELCIS said the pilot scheme needed to be co-designed with care-experienced children and young people.

Organisations including North Ayrshire Council, Aberdeenshire Council, SWS and CELCIS raised concerns about data protection in relation to information sharing and SWS questioned whether gathering details about family members was appropriate. Children First stressed the need to protect a child's right to privacy.

Responses including CELCIS, CYPCS, Stirling Council and Scottish Adoption and Fostering also mentioned the potential for the register to be beneficial in standardising training and support for foster carers. The Law Society of Scotland called for clarity as to whether the Scottish Government will monitor support and regulate foster carers with training and guidance on statutory and human rights duties. NES said would be well placed to offer advice on learning and development for foster carers.

The potential for the register to improve data collection on foster carers was highlighted by some, including CELCIS, SSSC and SASW.

Who Cares? Scotland said the register gave potential for better matches of carers with children, though highlighted the need to ensure the child's best interests is at the heart of placement decisions. The response also stated that children placed in foster care outwith their own local authority must be able to access aftercare in the authority they live in. Barnardo's Scotland said it would be necessary to ensure the register does not result in an unintended increase in out-of-area placements.

Several organisations including Barnardo's Scotland, CELCIS, the Care Inspectorate, Children's Services, Renfrewshire Council, the Promise Board Highland, Aberdeenshire Council and Children in Scotland called for clarity on who will manage the register and how it will be maintained. CELCIS and NSPCC Scotland said Scotland's Adoption Register provided an example to learn from.

SSSC stated that while it had been highlighted in responses to the foster care consultation as an organisation which might maintain the register, it was required to charge a fee for registration and does not carry out an equivalent role to 'matching'.

Independent Workers' Union of Great Britain said an independent organisation with no financial interests in local authorities should be created to maintain the register.

SASW stated that while the Bill's Policy Memorandum mentioned registering and regulating foster carers in line with other parts of the children's workforce, there was no mention of formal registration in the Bill, adding:

> "Whatever decisions are made in the future, we need to be careful not to increase barriers and bureaucracy for people wanting to become foster carers." – SASW submission

Submissions from the Promise Scotland, Together and Who Cares? Scotland stated that as the provisions amend the Children (Scotland) Act 1995, they are not in scope of UNCRC and must therefore be brought into scope. Together recommended redrafting section 10 of the Bill as a stand-alone provision.

Chapter 3

8. What are your views on the proposed changes to the children's hearings system?

Reponses to this question were mixed, with support for some proposals, opposition to others and further information and/or consultation on certain aspects also requested.

The response from independent chair of the Hearings System Working Group (HSWG) Sheriff David Mackie said while some measures in the Bill are welcome, other provisions:

> "…seem unnecessarily complex to the point of being, at times, unintelligible and inaccessible to anyone who is not a lawyer." – Sheriff Mackie submission

He also stated that the Bill showed a lack of ambition and "resistance to significant change" and said there had been a lack of consultation and engagement during drafting of the Bill. He suggested additional areas for inclusion in the Bill including: declaratory statutory statement recognising the inquisitorial nature of the children's hearings for all hearings; all children coming to a hearing to have a child's plan; and access to advocacy as early as possible in the process.

The Promise Scotland response called for the Scottish Government to provide clarity about work to transform the children's hearing system, giving a clear overview of

how it will align with the Independent Care Review recommendations and setting out what changes not requiring legislation will be made.

CYPCS response stated that the Scottish Government's Children's Rights and Wellbeing Impact Assessment for the Bill "has failed to identify the potential for a negative impact on children's rights and sufficiently mitigate against potential breaches", stating that there was no suggested mitigation or plan in place to mitigate against potential breaches. CYPCS stated concern about the potential implications of the proposals as a result of this.

Children's Services, Renfrewshire Council said that there was a lack of detail around the Bill proposals and how they will be resourced, along with uncertainty around how they might interact with existing systems.

Includem stated that the proposals for change required further development before it could support the Bill.

Sheriff Mackie, Barnardo's Scotland and Children First highlighted that family group decision making was not included in the Bill and would be beneficial.

Children First called for the Hearings for Children recommendation of continuity of Chair to be addressed ahead of Stage 2. Children and Young People's Planning Partnership (CYPPP), Scottish Borders also highlighted this issue.

Scottish Women's Aid expressed disappointment that the Bill and its documents did not focus more on domestic abuse, adding that all panel members should receive training in domestic abuse. In addition, training for the hearings system should be overseen by the Scottish Government.

The submission from the BeST? Services Trial Research Team stated its research found that outcomes for children were better where their cases were overseen by a "consistent, authoritative judicial figure". Time taken to reach permanence was highlighted as one improvement. The submission stated the proposals in the Bill did not go far enough to protect the rights and promote the welfare of children and babies.

NHS Education for Scotland (NES) stated it is "well-positioned to support workforce education, training and development in response to proposed changes".

Children's Hearing Scotland (CHS) proposed an amendment to the Bill for the removal of the requirement (relaxed during Covid) for gender composition of panels.

The Law Society of Scotland's submission suggested pausing the changes and legislating comprehensively, stating:

> "While some of the proposed changes are to be welcomed, others have the possibility of undermining the whole ethos of the established and respected children's hearings system." – Law Society of Scotland submission

Single Member Panels

The Promise Scotland's response stated that while ensuring a distinction between ordinary and chairing members is welcome, the Bill should provide further detail about the difference in role between ordinary and chairing members set out in primary legislation.

The SCRA response stated that the proposal for a single member panel could possibly be effective but needed further exploration. In addition, SCRA said that the decision about how many panel members sit on a hearing or pre-hearing panel should rest with the tribunal rather than the National Convener as proposed.

CYPCS said while it was not opposed to single member panels in certain cases, it urged caution and highlighted the need for decisions on this to be taken on a case-to-case basis to ensure EHRC Article 6 (right to a fair trial) and UNCRC Article 40 (right to be treated as a child if accused of breaking the law) rights are protected. CYPCS said considerations around privacy and information sharing were also needed, and as case sensitive information can only be provided by the Principal Reporter but the Bill proposes the National Convener should make the decision of whether to use a single member panel, this potentially creates "another layer in process for them to undertake".

Clan Childlaw, Children First, COSLA and CELCIS stated more clarity on the proposal was needed, with CELCIS stating:

> "…it is unclear how single member hearings are intended to improve the experiences of children and young people within the hearings system and any evidence to substantiate that these would achieve these aims is also unclear." – CELCIS submission

CHS, SWS, the Care Inspectorate and Children in Scotland all said single member panels had the potential to reduce delays in the system and speed up decision making. CYCJ and Who Cares? Scotland said that single member panels may be appropriate for decisions such as deeming an individual a relevant person or not or deferring a hearing in certain cases. The CYCJ response also said guidelines and rules would be needed to determine whether a single member panel was appropriate.

However, SWS said members generally opposed single member panels, particularly in relation to decisions about grounds. Our Hearings, Our Voice found most young people they spoke to did not support these proposals and Grandparents Apart stated no single member should be able to make decisions in relation to a child.

Children and Young People's Planning Partnership (CYPPP), Scottish Borders, also said single member hearings had the potential to free up capacity in the system, though noted similar concerns to other organisations such as concerns around perceived/actual bias.

The British Psychological Society (BPS) said guidelines for single panels must be clear and highlighted the benefits of multiple panels in mitigation bias.

The Law Society of Scotland submission stated that a legally qualified chair would be well placed to identify what decisions were administrative.

Specialist panel members and Appointment and Remuneration of Children's Panel Members

Sheriff Mackie's submission stated that while the provision to pay panel members was "welcome in principle" it was not the enhanced role recommended by the HSWG. He also stated that the provisions did not set out the distinguishing competencies, qualifications and criteria for a chair:

> "This begs the question as to how chairing members should be appointed. How will the National Convener assess legal competence in the exercise of their proposed new power of appointment? It is respectfully submitted that these issues should be addressed in the Bill." – Sheriff Mackie submission

The Law Society of Scotland stated that a paid, legally qualified chair and two lay panel members seemed "by far the best solution", though this would "reinforce the notion of a hierarchy of panel members". CELCIS also highted the potential for the proposals to create a hierarchy.

The Promise Scotland's submission welcomed provisions in the Bill setting out that panel members should be local to the community, adding that finding panel members able to relate to the child should also be a focus. On specialist panel members, the Promise Scotland said more information was needed about how these would work in practice.

CHS welcomed proposals for the enhanced role of the chairing member.

On remuneration of panel members, COSLA called for clarity around the skills required for chairs and the Promise Scotland said this should be for those with certain skills, qualities and competencies laid out in the HSWG recommendations, and this should be clearly set out in the Bill. In addition, an amendment at Stage 2 should be made introducing a duty for each child's hearing chair to be consistent where possible. NSPCC Scotland also said the Bill must provide for consistency of chair, via a duty on the National Convener and must also set out the competencies and qualifications for the chair.

CELCIS and CYPCS said there was no strong evidence for the creation of additional specialist Panel Members as this had not been piloted. CYCPS highlighted the costs and operational implications of the proposals as concerns.

> "It is important to consider the balance of power across the three panel members when considering changing roles. There is a risk that panels become three person in name only with decision making in reality driven by members who are paid, specialist in some way or full time. Specific training could help to address these imbalances." – CYPCS submission

CHS suggested the Bill should include data sharing provision for it and SCRA, and set out provisions giving the chairing member statutory powers to appoint a

safeguarder, request National Convener advice, request additional and independent reports and appoint a specialist panel member.

SCRA stated it was "not averse to panel member remuneration", but were not aware of any evidence linking remuneration with improvement, adding:

> "The Bill gives a 'power' for the National Convenor to remunerate panel members. We hope that this means that the approach can be fully tested and a positive evidence base in relation to the benefits of payment will be developed before remuneration is rolled out nationally." – SCRA submission

Our Hearings, Our Voice's submission stated the majority of young people they engaged with are in support of paid chairs.

The SASW said that remuneration of panel chairs may make the role more attractive to those unable to give their time voluntarily, but this must be accompanied with clear expectations around training, experience and ability to manage the complex system.

SWS said its members saw some benefits in remunerated panel members but were concerned about the introduction of specialist panel members due to concerns about conflict between specialist panel members and the chair or other panel members. Similarly, Clan Childlaw stated it saw the argument for remuneration of chairs, but further information was needed and the weight places on the views of specialist members was also unclear.

CYCJ disagreed with the remuneration proposals as contained in the Bill, though expressed support for financial compensation for all panel members in the current system as a means of improving recruitment and retention.

Children in Scotland supported the remuneration of panel chairs, but questioned why this should also extend to specialist panel members.

CHS and SCRA responses stated that, currently, specialist reports can be provided to hearings to assist decision making. SCRA stated that sourcing specialist decision makers for panels could be challenging as they would, in SCRA's view, have to be fully trained panel members.

SASW stated the idea of the paid specialist member was potentially at odds with the Kilbrandon principle of bringing the child's community together with specialists. SASW argued that a specialist member may not have the time needed to see a situation fully and come to a view. In addition, SASW, NHS Ayrshire and Arran, South Ayrshire Council, CYCJ and H&SCP and Children in Scotland said the impact of payment for some roles needed to be monitored and could have an impact on power dynamics, with volunteer panellists feeling less valued and therefore less likely to challenge colleagues. COSLA stated there was a lack of information around specialist panel members, and clarity was needed to ensure they do not "undermine the multi-agency assessment already carried out".

The CELCIS response stated it would be helpful to know what the evidence for the introduction of specialist panel members was, detail on appointment and

engagement criteria was lacking and clarification of the reference in the Policy Memorandum to "an additional chairing member" was also needed.

CYCJ said specialist panel members may be helpful given the complexity of hearings, though power dynamics etc needed to be factored in to monitoring the use of these provisions.

Scottish Women's Aid said domestic abuse should not be a designated responsibility of a specialist panel member, and all panel members should receive training.

NSPCC Scotland said cases of infants must include a consistent member with specialist knowledge of early child development.

Child's attendance at hearings

The Promise Scotland submission raised concern about the potential for this proposal to breach UNCRC, stating:

> "The removal of the duty must be replaced with a presumption that a child will attend and the alternative ways that a child should share their views and engage with their hearing must be clearly set out. As it currently stands, we are concerned that the removal of the duty in the absence of anything further about obtaining a child's views is not compatible with the United Nations Convention on the Rights of the Child. " – The Promise Scotland submission

Sheriff Mackie also addressed the issue of presumption to attend in his submission, stating:

> "This is a welcome provision that reflects the recommendations of the Hearings for Children Report but only partially. The recommendation of the Hearings for Children Report was to substitute a presumption that the child would attend and, crucially, would receive advice and support in how to do so." – Sheriff Mackie submission

The Law Society of Scotland also raised concerns about this proposal breaching children's rights, stating that since the creation of the hearings system the child has been at the centre, and hearings should be striving for every child to be 'in the room', adding:

> "A further point is worth considering. While it would be open to a pre-hearing panel to require the child to attend (s.13(5) of the Bill, amending s.79(3)(a) of the 2011 Act), that does not guarantee that all children referred on an offence ground would be so required. There is the danger that publicity surrounding non-attendance of an accused, particularly by an older young person, would discredit the system in the youth justice context." – Law Society of Scotland submission

The Promise Scotland suggested amending the Bill at Stage 2 to ensure a presumption (with the exception of babies and infants) is included in the Bill. CHS highlighted the benefits of child attendance at hearings and suggested:

> "…we would propose that Section 14 of the Bill includes provision for the chairing member to work with the Reporter, on an equal legislative footing, to arrange and schedule a hearing in a way that works best for a child."- CHS submission

SASW, Clan Childlaw, CYPCS and CYCJ also expressed caution about these proposals, with CYPCS stating that in some cases removing the obligation to attend could negatively impact a child's right to be heard and have the effect of the child losing their voice in the hearing. CYPCS highlighted particular concern for the rights of disabled children and those not engaged with support services. In addition, children referred to the hearings system on offence grounds should be present and the Bill "does not explicitly cover these scenarios".

CYPCS said changes should not be made without further consideration of how effective participation can be promoted, listing concerns including the appropriateness of the Principal Reporter to reflect the child's views. In addition, CYPCS said additional funding for increased advocacy was missing.

CYCJ warned that removal of the obligation to attend should not become a route to excluding children and young people from decisions about them, and support to help children make these decisions is required. In addition, CYCJ noted concerns about the continued power to require a child to attend their hearing, stating this undermines their right to participate in a manner of their choosing and emphasising the need for a child to be informed of their right to a solicitor before making their decision to attend or not.

SCRA agreed with the proposed changes to attendance, though stressed the need to ensure good practice in working with a child.

CELCIS stated support for proposals removing the obligation to attend, but called for safeguards to ensure children's rights are respected and met in all circumstances. The appointment of a safeguarder early in the process was suggested to represent the child's best interests.

Our Hearings, Our Voice said overall, young people felt it should be easier for children not to attend their hearing and they should not be compelled to attend. Routine hearings in particular were felt to be not important to attend.

COSLA, NSPCC Scotland, Children in Scotland, Scottish Women's Aid, Inspiring Scotland/Intandem, Children First and the Fostering Network were among organisations expressing support for removal of a child's obligation to attend hearings, however the Fostering Network stated concern about the proposal to remove the presumption of attendance due to concerns around the erosion of a child's right to attend. Children First said there must be measures in place to ensure engagement with the child.

Barnardo's Scotland raised concern about the potential for the proposals to create a distinction between those referred on welfare grounds and those referred on offence grounds. Children First said justification for demanding attendance was not clear.

Who Cares? Scotland's submission stated:

> "The obligation to attend a hearing should be removed for all children and young people. They should receive an offer to attend or participate via alternative measures for every hearing. There should be an opt-out system of referral for independent legal advice and advocacy for all children on offence grounds and subject to a secure care "placement"." – Who Cares? Scotland submission

The Scottish Independent Advocacy Alliance (SIAA) stated support for Who Cares? Scotland's position. Scottish Borders Champions Board stated the decision of whether or not to attend should be the child's.

SWS said members did not consider this proposal to be controversial, though noted there were certain situations where a child should be required to attend such as consideration of secure care or where a child has committed an offence. Clan Childlaw said that, where a child has been referred on offence grounds, their absence may breach their right to a fair trial under Article 6 of the ECHR and Article 40 of the UNCRC.

Role of Principal Reporter

While Sheriff Mackie welcomed the enhanced role of the Reporter in relation to engagement prior to referral, he also stated:

> "…the Bill is quite prescriptive and the provisions quite convoluted and difficult to follow especially for someone who is not a Reporter or lawyer." – Sheriff Mackie submission

The Promise Scotland also said the proposals risked adding further complexity into the system, and don't align with the recommendations of the HSWG to simplify it and introduce a statutory duty for the Reporter to seek the views of the child and family (though not necessarily through the addition of an additional meeting). The Promise Scotland reiterated the HSWG's call for a:

> "…clearer separation between the potentially adversarial process of establishing grounds…and the inquisitorial approach taken by children's hearings." – The Promise Scotland submission

COSLA also highlighted concerns around the role of the Reporter within the process and the potential for additional meetings to be added to the system.

SCRA stated support for the proposal, though questioned:

> "…the inherent power imbalance in a state official determining the need for state intervention, drafting the reasons for state intervention, and then meeting with a family and authoring a report of that meeting for the next statutory decision maker." – SCRA submission

SCRA said the proposals could be logistically difficult to offer alongside the current offer of a pre-hearing visit. In addition, due to issues such as perceived power imbalance, SCRA stated that legal aid should be available for such meetings.

CYPCS said that there was potential for proposals to have a positive impact, but a further analysis of the rights implications was needed. The submission also stated that it may not always be appropriate for the Reporter to meet the family together and therefore there may need to be separate meetings. In addition, CYPCS said that explaining grounds and determining their understanding are not roles currently carried out by Reporters and checks would therefore be needed, and the proposals had the potential to "add another layer of complexity to an already difficult process".

CYCJ supported provisions for children and families to meet with the Principal Reporter as a means of increasing understanding and taking a trauma-informed approach. However, CYCJ also highlighted the for safeguards to ensure children are "fully supported and represented at this meeting is crucial to upholding their rights".

CYCJ also supported the Bill creating a power allowing the Principal Reporter to apply directly to the sheriff to establish grounds where there is no reasonable prospect of agreement or constructive discussion about the statement of grounds.

Who Cares? Scotland expressed support for the post-referral discussion with the Reporter.

Scottish Women's Aid highlighted the need for further understanding for the engagement process where domestic abuse is an issue.

Our Hearings, Our Voice said meeting the Reporter before attending a hearing had many benefits, including the potential to reduce stress, providing clarity and ensuring a child is listened to prior to the hearing taking place.

Information about referral

SASW stated agreement with provisions creating a duty to provide information about process and advocacy services.

Grounds

Sheriff Mackie's response stated that the only welcome change in relation to the establishment of grounds is the provision for the Reporter to refer directly to the Sheriff in cases where it is clear grounds and supporting facts will not be accepted.

His response said that single member hearings might be best restricted to chairing members, and also queried whether the proposals would have the effect of causing "an unnecessary additional hearing", making establishing grounds easier for the system but not taking into account HSWG recommendations around resolving grounds prior to reaching the hearing itself. Sheriff Mackie said that the proposals in the Bill do:

> "…nothing more than to reinforce the requirement for grounds hearings and rely upon the interpersonal skills of communication and experience of the chairing member and other panel members to set a tone for the hearing that will minimise the negative impact of the experience on the child and their parents. It is difficult to discern any difference with current practice." – Sheriff Mackie submission

He described the proposals as being made up of the "most complex legal language" that is "almost impossible to follow". The submission from Our Hearings, Our Voice also pointed to the complexity of these proposals.

The Promise Scotland's response stated the HSWG had recommended grounds hearings should be abolished, adding that it had since sought a legal opinion on this, which had concluded there was no legal impediment to this. The submission stated it was "unclear" why the HSWG recommendation could not be made in its entirety.

Clan Childlaw expressed concern about the Bill proposal, stating:

> "…we are concerned that children may agree to grounds without the opportunity to speak to a solicitor." – Clan Childlaw submission

The Law Society of Scotland expressed similar concerns about grounds being agreed to without full understanding.

In addition, The Promise Scotland called for a Stage 2 amendment bringing forward a statutory time limit for establishing grounds. NSPCC Scotland and CHS also supported a statutory time limit, with CHS stating further clarity was needed around the proposals related to grounds hearings and what the process will look like.

CYPCS said that while there was benefit in streamlining the process of acceptance/non-acceptance of grounds, concerns remained about protective measures – particularly in the most serious cases.

SASW, Glasgow City Health and Social Care Partnership and Children in Scotland expressed support for provisions to streamline the grounds process.

CYCJ's response stated guidance is needed in relation to, for example, who can accept grounds at a pre-hearing meeting and what might happen if a panel member later questioned this. CYCJ also stated:

> "It needs to be reinforced that the step to refer to the sheriff for proof should only be taken when necessary and proportionate." – CYCJ submission

CYCJ also stated that a three-member panel should be in place where grounds are not fully agreed or accepted by all parties.

Who Cares? Scotland also called for an opt-out system of referral for independent legal advice and advocacy in relation to agreement of grounds and expressed concern about whether the Bill would mean a single chairing member may be able to resolve disputes where there is no agreement on grounds.

CELCIS stated the proposals had the potential to "result in greater confusion in an already complex system", place the Reporter in vulnerable position, increase Reporter workload, contribute to delay in the system and lead to potential legal challenges in some cases. CELCIS also highlighted there are currently "several opportunities for a child and their family to discuss grounds before a hearing", and while this often takes place with a known social worker, the Reporter and/or advocacy worker can also be contacted.

Children First's response said:

> "It will be important to consider exactly what the process will look like for children when grounds still need to be agreed via a Sheriff, and how children and their families will be supported to share views and offer evidence." – Children First submission

NSPCC Scotland proposed a new role of 'infant safeguarder' should be present at grounds hearings for infants.

Relevant Persons

Organisations including Children's Hearings Scotland (CHS), CELCIS, The Promise Scotland, Our Hearings, Our Voice, Scottish Women's Aid, Who Cares? Scotland, CYPCS, CYCJ, the Fostering Network, Barnardo's, Glasgow City Health and Social Care Partnership, SWS, Children in Scotland and SASW expressed support for measures to remove relevant persons where necessary.

Sheriff Mackie's submission stated that the decisions around whether the presence of a person was causing distress to the child "may be fraught with difficulty" due to trauma responses etc. He instead suggested taking a rights-based approach, including giving the opportunity to hear from the child alone without parents/relevant persons present. The Law Society and COSLA asked for protections for parents'/relevant persons' rights in relation to this proposal.

SCRA's submission expressed support for provisions to remove relevant person status, though stated that the 3-day timescale was not enough time. SCRA also said that it was not clear how decisions made "at a prehearing panel could extend to the duration of any exclusion" and a relevant person may in practice need to attend a hearing to hear of a decision. SCRA suggest considering exclusion decisions alongside decisions on remote attendance.

SWS' submission made a plea for a "simpler relevant person process", where a child's carer is automatically deemed relevant.

Fostering Network said the child's view should be centred in decision making on relevant persons, and the Principal Reporter should seek the child's view on relevant persons as part of new section 69A, subsection 3a.

Scottish Women's Aid said there should be consideration of behaviour harming a mother, as well as behaviour harming a child, as a reason for removal.

Test for referral

CYPCS supported measures to modernise language to ensure children understand the reasons for referral. However, it stated that the terms 'guidance' and 'support' might be misleading, and that detailed legal analysis would be needed to understand the potential impact of the proposals around referral, expressing surprise that this had not already been carried out by the Scottish Government.

CYCJ, Who Cares? Scotland, CHS, SASW and SCRA agreed with the addition of 'support' and SCRA stated it was "pleased that the existing criteria remain

unchanged". CHS proposed that a review of the language of section 67 grounds should be undertaken.

SASW noted inclusion of the term 'support' was likely to have implications on expectations of support for children and there was uncertainty around whether the Financial Memorandum captured this.

SASW stated that, rather than legislating to change the referral test as a way of reducing the number of referrals, conversations should instead happen locally. SASW also said that the proposed wording of 'likely to be needed' could compound families' feelings of meeting outcomes being decided beforehand, and also put some off from referring families in need of support due to uncertainty around whether compulsory measures are likely:

> "Social workers may consider it a "fail" if they refer and their recommendation for compulsory supervision is not accepted. This could lead to referrals being seen as professionally risky decisions." – SASW submission

CYCJ also expressed concerns about the unintended consequences of the change to the referral test, stating that an increase in unnecessary referrals could be a consequence and testing the measure out before putting it into legislation would have been preferable. CELCIS said the evidence for this change was not clear, and stated the rate of referrals to hearings is not a good metric to use in order to assess appropriateness of referrals to the reporter.

The Fostering Network, Who Cares? Scotland and CYCJ expressed disappointment that the language of "treatment or control" will not be modernised by the Bill. Who Cares? Scotland stated these terms should be replaced with "nurture and support". The Promise Scotland said it would like to see amendments at Stage 2 updating the language around 'treatment and control'.

The Law Society of Scotland's submission stated:

> "Sections 17(2)-(5) [of the Bill] risk altering the thresholds for referral to the Principal Reporter and weaken the local authority and Police Scotland duties to report, and as such are undesirable."

Advocacy

The Promise Scotland submission stated that it was unclear how these provisions align with the changes to advocacy provision and the right to advocacy in Chapter One of the Bill. The submission also highlighted the need for those referred on offence grounds to automatically have access to legal representation, seeking assurances on how this might be introduced.

The Law Society, Clan Childlaw, COSLA, Our Hearings, Our Voice, CYPCS, the Fostering Network and SASW expressed support for the expansion of advocacy provision, though many highlighted this does not replace the need for legal representation.

SASW also stressed the need for independent advocacy to be offered to any child not attending their hearing.

Our Hearings, Our Voice said the child's advocacy worker needed to be provided with the information needed to represent a child in a timely manner. COSLA also stated support for sharing of appropriate information.

CYCJ said work was needed to ensure advocacy services understood the hearing system.

Who Cares? Scotland said opt-out advocacy was essential and should at least be established as a legal right for children and young people referred on offence grounds. Barnardo's Scotland also supported an opt-out system of advocacy, believing this would increase take-up.

Scottish Women's Aid said the advocacy provisions in the Bill needed to be streamlined to ensure clarity and accessibility.

Compulsory Supervision Orders (CSOs) and interim variations of CSOs

Sheriff Mackie described provisions for ICSOs to be decided by a single member and for existing ICSOs to be extended for up to 44 days from 22 days as "welcome and progressive". However, he described proposals for children's hearings to deal with ICSOs in cases where the Reporter has made an application to go straight to the Sheriff as "illogical and potentially confusing", and it would be best placed for the Sheriff to take this decision.

CYPCS supported these measures where in the child's best interests. SASW, COSLA and Who Cares? Scotland also agreed with the proposed changes.

Glasgow City Health and Social Care Partnership was not supportive of this proposal, stating that local authorities currently have the power to request a panel at any stage.

Who Cares? Scotland stated concern that proposals for single panel members to make or extend ICSOs may breach a child's right to a fair trial. The submission also highlighted the impact ICSOs can have on a child's life, stating that an opt-out right to independent legal advice should be available where an ICSO is being considered.

CELCIS stated:

> "Regarding this proposal in the Bill, if the application is with the court, then convening a hearing to decide on interim orders is likely to be confusing for children and families. In these circumstances, it would likely be less complicated and more understandable for children and families if the Sheriff were to issue any interim orders." – CELCIS submission

SCRA's response to these proposals highlighted the difficult of decision making around ICSOs, calling for further detail and evidence on the proposal showing it would offer an improved experience. SCRA expressed support for proposed changes to timescales of ICSOs.

Reporter's ability to initiate review

Sheriff Mackie's submission stated that Bill provisions for the Principal Reporter to initiate a review where they become aware of 'relevant information' were "hard to follow" and there were questions around what constitutes 'relevant information'.

COSLA, South Ayrshire Council and H&SCP said these proposals required more discussion in order to understand the implications of this change.

CYCJ said while this power could provide an opportunity to speed up the process for review, it should only be used when the child, family and local authority will not initiate the review.

SCRA stated this power was more appropriate for those working with the child, or the child and family themselves.

NSPCC Scotland's submission said the panel must be empowered to call a review where an infant's case is not progressing.

Clan Childlaw stated concerns that this along with other proposed changes had the potential to cause confusion between roles.

The Law Society welcomed this provision.

Part 2

9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill

Many organisations stated further guidance would be needed to ensure the changes proposed by the Bill were effective.

South Ayrshire Council and H&SCP and SASW gave tentative support for the inclusion of Integration Joint Boards (IJBs) as statutory partners alongside local authorities and health boards, stating this had the potential to be a positive step toward integrated and collaborative planning, though clear roles and responsibilities are needed to avoid duplication, and monitoring and evaluation mechanisms were needed to assess impact.

CELCIS said that the legislative change would not improve outcomes alone and would only be effective alongside an implementation plan along with effort and resources to improve joint working. The Promise Scotland stated it was supportive of the measures, but that there will be a need for further legislation to ensure reporting requirements are not "overly bureaucratic". Dumfries and Galloway Council also stressed the need for national protocols, especially for cross-border authorities and rural areas. NHS Ayrshire and Arran also suggested collaboration could be improved with greater coordination between Children's Services Plans, Corporate Parenting Plans, Local Child Poverty Action activity UNCRC activity and the development of a trauma informed and responsive workforce. CYCJ welcomed steps toward a whole family approach but highlighted concerns over governance and oversight and the potential for provision and expertise for children to be deprioritised or lost.

Glasgow City Health and Social Care Partnership said it was currently working in this way and the Bill would formalise arrangements. Aberdeenshire Council shared a similar view.

South Lanarkshire Council said that any proposed changes should be focusing on streamlining processes, suggesting that non-legislative steps could be taken instead of the provisions in the Bill.

Quarriers stated that while it supported strengthening planning, it did not support transferring the lead planning role to IJBs unless robust safeguards are in place, with guidance on roles and responsibilities.

Stirling Council said tripartite accountability should "only come into effect in those areas where the HSCP is responsible for Children's Services". It suggested using the refresh of statutory Children's Services Planning guidance instead of the Bill to strengthen the role of IJBs and HSCPs in planning.

Children's Services, Renfrewshire Council said as health boards and local authorities already hold statutory duties the proposals would not support children's services planning and may work against collaboration:

> "The absence of explicit provisions for key sectors such as education, mental health, housing, and justice limits the scope for truly integrated planning and risks perpetuating siloed approaches." - Children's Services, Renfrewshire Council submission

The Promise Board (Highland) stated that the changes may not "have any meaningful difference to what is already in place" and may result in duplication. Councillor John Caffrey also stated the proposal had the potential to add onto existing scrutiny, with no additional value.

NAFP expressed support on the condition of inclusive implementation, calling for the involvement of independent fostering providers, joint commissioning with social care, health and education and co-production with care experienced people and foster carers.

The response from Grandparents Apart UK questioned the proposals, stating:

> "What is the point of saying any integration joint board has to be included in planning if there may not be one in a particular area?" – Grandparents Apart UK submission

Children in Scotland expressed a similar view, stating that IJBs in some areas may not have relevant responsibilities for adult services relevant to transitions and children's services. NHS Education for Scotland said as the provisions only apply to IJBs with delegated children's functions, this "creates a potential risk of inconsistency in planning approaches across Scotland" and consistent standards for children's services were needed.

SWS said its members were unclear what difference the proposals would make, suggesting that solutions to issues around the attention IJBs give to children's services "lie in the regulations governing IJBs, or in guidance issued to IJBs and

NHS Boards". Angus Council and Shetland Islands Council also stated it was unclear how the Bill proposals would increase collaborative working and planning. Education Scotland said it was not clear if the proposal was a substantive change or a rebranding.

The Care Inspectorate said the changes had the potential to improve transitions in the lives of children and called for the changes to improve focus on trauma informed service delivery for health, education, and support services for care experienced children, their families and carers.

NSPCC Scotland and Children in Scotland said the rationale for extending statutory responsibilities to IJBs was not clear. COSLA said it was unclear how the proposals would improve collaborative working as IJBs commission and direct rather than deliver services. COSLA also highlighted the need to ensure resource constraints were taken into account:

> "…analysis by Health and Social Care Scotland identified a real terms budget shortfall of £497.5 million across all 31 IJBs between 2024/25 and 2025/26. This financial gap raises significant concerns about the ability to consistently deliver national policies, meet strategic priorities, and maintain high-quality local health and social care services. Any legislative changes that expand responsibilities— particularly in children's services—must be carefully assessed against this backdrop to avoid exacerbating existing pressures and undermining the sustainability of care provision across the lifespan." – COSLA submission

Some submissions including COSLA and NSPCC Scotland also said there had not been consultation on this proposal prior to its inclusion in the Bill.

Children in Scotland asked for the Scottish Government to provide resources to enable the changes to be effectively communicated and raised concerns about the inclusion of voting members on Integration Joint Boards and the potential for this to result in political decision making.

Children First said the Bill is an opportunity to streamline current reporting requirements, which are "very burdensome", distracting from services' ability to focus on families.

The proposals were welcomed by organisations including the Fostering Network, Cyrenians, Includem, Who Cares? Scotland, Clackmannanshire Council, Moray Council/Health and Social Care Moray, Children's Services East Lothian and Polaris Community.

UNISON Scotland stated it did not support the proposals, seeing them as a way to centralise control and accountability away from local government to ministers and undermine local government.

Highland Council noted that its 'lead agency' joint working model is to end, and the council and health board will align with other integrated health and care boards. Highland Council intends that children's services remain with it. The submission expressed support for the proposals in the Bill.

The Law Society submission said clarity around effective remedy for breaches of duties by integrated boards made up of individual public authorities was needed.

The Children and Young People's Planning Partnership (CYPPP), Scottish Borders suggested the Bill should be amended to allow for local variation in governance structures so that IJB involvement should only be required where the IJB has an established remit.

The Scottish Refugee Council expressed support for the proposals and called for improved data collection on unaccompanied asylum-seeking children.

STAF called for a review of existing guidance before making any further changes to children's services planning. It also called for the government to standardise nationwide support with a framework for resource eligibility and create regional knowledge hubs to share best practice.

Other

10. Are there any other comments you would like to make in relation to this Bill?

Overall there was support for the Bill, however many organisations expressed concerns about aspects of the legislation and how it has been progressed.

Areas highlighted by respondents included:

- The Promise Scotland called on MSPs to support the Bill and "commit to further legislation that will be required to keep the promise".
- The need for continued consultation and collaboration on the Bill (SASW, South Ayrshire Council and H&SCP, CELCIS, Shetland Islands Council, COSLA)
- The drafting of the Bill is not always accessible or clear (SCRA, Clan Childlaw)
- Concerns about the short timescale for scrutiny of the Bill and responding to the call for views (Children in Scotland, Children's Services, Renfrewshire Council, CELCIS, MCR Pathways. Stirling Council, COSLA, Scottish Borders Champions Board, Fife Councillor John Caffrey)
- Sections 1, 2 and 10 of the Bill are out of scope of the UNCRC (Incorporation) (Scotland) Act 2024 as currently drafted, and should be redrafted as stand-alone provisions (Children in Scotland, Together, Scottish Women's Aid, Aberlour)
    - The Law Society of Scotland also called for further consideration of the issues around the Bill and UNCRC.
- The need for the Bill to reference other legislation and policy, such as UNCRC and GIRFEC (Care Inspectorate, Education Scotland)
- The need for the Bill to go further on support for care experienced people in education (Hub for Success)
- The need for the Children (Scotland) Act 2020 to be fully implemented (Grandparents Apart UK)
- Further measures for foster carers, including on financial support, guidance on allegations, development of a national recruitment agency and a learning and

development network (Fostering Network, NAFP, Scottish Adoption and Fostering)
- Lack of mention of kinship care in the Bill (Inspiring Scotland - Intandem programme)
- Post-legislative scrutiny of the Bill, reviewing implementation after two years (Who Cares? Scotland)
- The Bill being a 'framework' Bill, with detail left to secondary legislation, whilst also creating additional duties for social work and adding to the overall complexity of the system (UNISON Scotland, Social Work Scotland)
- A suggestion of streamlining the Bill to remove parts where there is a lack of detail and plans, due to concerns about much being left to secondary legislation (Social Work Scotland)
- Pausing the legislation to enable further meaningful engagement (COSLA)
- The Bill not recognising the needs of families not subject to legal orders (Glasgow City Health and Social Care Partnership)
- The need to monitor the impact of the Bill and its interaction with the Children (Care and Justice) (Scotland) Act 2024 (Glasgow City Health and Social Care Partnership)
- The need to include a definition of 'independent advocacy' in the Bill (Glasgow City Health and Social Care Partnership)
- The Bill does not address children's justice issues such as raising the age of criminal responsibility (CYCJ)
- Little mention in the Bill of continuing care, this could extend to age 21 (Polaris Community)
- No mention in the Bill of enshrining early permanence in law (CELCIS)
- No mention in the Bill of preventing homelessness (Rock Trust)
- The submission from the Family Group Decision Making (FGDM) Steering Group highlighted the work being done to offer FGDM to families across Scotland and called for legislation to mandate the use of the approach Scotland-wide. Children First also highlighted the impact of FGDM and NSPCC suggested the introduction of guidance in this area.
- A trial of a 'safe baby' approach to children's hearings and provision for appointment of infant safeguarders should be included in the Bill (NSPCC)
- No child-friendly version of the Bill produced (Scottish Borders Champions Board).

As highlighted elsewhere in the call for views analysis, there were also significant concerns expressed by a number of organisations about the Financial Memorandum accompanying the Bill. Concerns particularly related to costings around aftercare provisions.

ECYP/S6/25/25/2

Lynne Currie, Senior Researcher (Further and Higher Education and Children's social work, child protection and adoption), Laura Haley, Researcher, SPICe

4 September 2025

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Annexe B

Children (Care, Care experience and Services Planning) (Scotland) Bill 2025 Response by Sheriff David N Mackie

General

The Bill introduces certain measures that are welcome and reflect some of the recommendations of the Hearings for Children Report. Some of the provisions seem unnecessarily complex to the point of being, at times, unintelligible and inaccessible to anyone who is not a lawyer. The Bill is most notable however for what is not contained in it and for the lack of ambition it displays; it seems to reflect a resistance to significant change that might result in any disruption to the *status quo*. The lack of consultation during the preparation of the consultation document and then the drafting of the Bill has meant a lack of engagement with or input drawing on the expertise of the sector or those with lived experience of the Children's Hearings. If, as Officials have indicated, significant consultation has taken place in respect of the drafting of the Bill it is not clear when or with whom as none in the sector have been approached. Officials have indicated that Scottish Government was not looking to adhere to the entire content and implications of the Hearings for Children Report. Instead, the aim remained to honour the spirit and intentions of the Hearings for Children Report's approach to redesign wherever possible and appropriate. That is apparent in provisions that are system oriented and gradualist in their impact reinforcing rather than disrupting the elements that caused the greatest concern. This approach implies that policy proposals other than those contained in the Hearings for Children Report have taken priority and the Hearings for Children Report followed only where its recommendations happen to align, however, it is not clear what those other policy proposals are or their source or evidence base.

This note will focus on two main aspects: the establishment of grounds and the role of the Chair. More detailed comments on other provisions are included. It is difficult to undertake a meaningful critique of the Bill without engaging in a sometimes technical discussion about practice; so, apologies for that.

Grounds

Section 11(9) introduces a new s.89A "Membership of grounds hearings" permitting a single member to adjudicate on grounds except in relation to the making of a Compulsory Supervision Order when a three-member panel is required.

This provision is welcome in principle but, having regard to the complexities that might arise even if grounds are not opposed, it might have been more appropriate to restrict single member hearings to Chairing Members.

There seems a tension between the preparedness displayed in the Bill to entrust the conduct of a grounds hearing to any single member with no legal knowledge or experience in assessing evidence including inferences from forensic evidence or in offence-based grounds the criminal standard of proof but the reluctance, based partly on a perceived lack of safeguards, to entrust unopposed grounds decisions to Sheriffs or Chairs without a hearing.

While sub-section (10) allows a single member to decide on the statement of grounds whether grounds for referral have been established it bars that single member from making a dispositive decision to make a Compulsory Supervision Order and establishes the requirement for that decision to be made by a panel of three. It seems implicit that if the single member considers that compulsory measures of care are not required despite finding the grounds established it is open to them to discharge the referral. That seems equal to the power and authority to make a Compulsory Supervision Order and inconsistent with the prohibition?

So, notwithstanding the measures introduced by the new ss. 69A-G (enhanced role of the Reporter in arranging a hearing or referral direct to the Sheriff), grounds hearings in accordance with the new ss. 89A, 89B, 89C, 90, 90A of the Children's Hearings (Scotland) Act 2011 remain in the vast majority (c.97%) of cases that are not opposed. Where the grounds hearing is before a single member it will be one in which a Compulsory Supervision Order cannot be made and so a second hearing will be required. One wonders in how many cases that will not be the case and whether, in order to suit the administration and management of panel members, an unnecessary additional hearing has been created?

One of the strongest calls from those with experience of the Children's Hearings system was to dispense with grounds hearings and resolve the grounds before the referral reached the Children's Hearing and away from the hearing. This was to avoid the child's and parents' first experience of the hearing being the often demeaning, embarrassing and reductive experience of having grounds read out to all present and having to admit or deny each statement of fact. In the vast majority of cases the grounds are not disputed and are capable of being resolved without any hearing at all with a possible qualification around offence-based grounds where the desire for accountability might counsel in favour of proof.

The Bill provisions will facilitate the growing challenge of management of a diminishing resource of volunteer panel members and the fixing of hearings by

not requiring three panel members each time. This gives the impression of making it easier for the system but does little to improve the lot of children or their parents or other relevant persons. On the contrary, if the single member considers that compulsory measures of care are required, they are not empowered to make a Compulsory Supervision Order and must adjourn for a three-person panel to be convened which can make a Compulsory Supervision Order. This will surely happen in most cases. For the child, their parents and other relevant persons they will be obliged to attend an additional hearing. Far from taking the opportunity to simplify and streamline the process to the advantage of the children and their families the Bill is achieving the opposite and adding a new layer of process, inconvenience and the concomitant emotional strain of an additional hearing. Furthermore, it will slow down the decision-making process as everyone has to wait for the second three-member hearing. The Committee will require to be fully satisfied that an evidence base exists to justify the approach proposed to be established by the Bill. It is not one that emerged in the two years of engagement with the sector by the Hearings System Working Group.

If the regime set out in the Bill is to be established, it is suggested that there should be very strict time limits for convening the second three-member panel and to ensure that this does not become another cause of drift and delay in decision-making around the child.

Grounds without hearings

Transformational change cannot be achieved without making actual and probably disruptive changes. The Bill provisions around grounds aim to ameliorate the experience of children, their parents and other Relevant Persons but in fact change very little, reinforce the requirement for grounds hearings in all but the small proportion of cases in which grounds will definitely be opposed, and shows a disappointing lack of ambition and resolve.

The Hearings for Children Report recommendations raise the possibility of avoiding any hearing at all in the large majority of cases in which grounds for referral and the accompanying Statement of Facts are not disputed[1]. This would relieve children and their families from the negative aspects of a grounds hearing whilst, at the same time, streamlining the process to a considerable degree without engaging panel members at all. What it would mean in practice is that either the Sheriff or the Chair, sitting at their computer, would have presented to them a set of papers probably comprising the grounds for referral, Statement of Facts, witness statements (maybe affidavits), reports if any and perhaps accompanying written submissions by the Reporter. If satisfied that the evidence thus presented supported the Statement of Facts and the establishment of grounds for referral they would approve an order for a referral.

Such a process could not work satisfactorily unless the Court / Chair were satisfied that the decision not to oppose grounds was properly informed and this, therefore, ties in with the notion of the enhanced, more relational role of the Reporter walking children and families towards a referral and the availability of

[1] Hearings for Children Report p.138

independent advocacy from the earliest possible stage. One might expect some certification to this effect as an additional safeguard.

The child's first experience of the Children's Hearings system would be to walk into a pleasantly appointed room with people they could trust as having their interests at heart in an informal process overseen by a Chair they have already met and become acquainted with. The reason for their being there, the grounds for referral, have already been established and do not need to be gone over except as part of the conversation about to take place.

So called chambers work is now done by Sheriffs mainly through a computerised case management system working from their chambers at Court or at home. This type of process of assessing evidence at the computer is something quite familiar to Sheriffs who encounter it in relation to undefended divorces in which they regularly make orders affecting the status of individuals by the granting or refusal of decrees of divorce and orders relating to children on the basis of evidence presented as affidavits and without any hearing. They are accustomed to casting a critical legal eye over papers presented to them, to call for additional evidence if it is somehow lacking or even to insist upon an in person, undefended proof, although the latter is rare. They are not averse to refusing to grant decrees if the affidavits are deficient and are, in no sense, rubber-stamping in an administrative process. In proceedings relating to children and in making decisions on grounds Sheriffs would be strong guardians of the rights of those children, being, themselves, accountable in terms of the United Nations Convention on the Rights of the Child Incorporation (Scotland) Act 2025 to observe the terms of the Convention.

And so, the question arises, where does the application for a referral start; where should the Reporter submit the application for a referral? Should it be the Sheriff Court or the Children's Hearings? The answer to that question depends upon who will consider the unopposed applications, the Sheriff or the Chair.

The current practice is for applications to start in the Children's Hearings and so Children's Hearings Scotland, with the National Convener at its head, administer the processing of applications. If the Sheriff Court were to take over this function it might be reasonable to expect this to be a relatively cost neutral change but might entail the transfer of Children's Hearings Scotland staff to the Scottish Courts and Tribunal Service and the establishment of processes (cf. the transfer of the old District Court to the Sheriff and Justice of the Peace Court). Sheriffs are already in post.

If the process of deciding unopposed referrals were to be undertaken by the Chairs of Children's Hearings, it is difficult to envisage this being done by Chairs who are not employed in a paid role. The Hearings for Children Report recommendation envisaged the establishment of salaried Chairs.

There might be a perception that if applications for referrals to the Children's Hearings were to be started in the Sheriff Court this would impose an additional burden on an already overburdened resource. It is important to recognise, however, that such a process will not impose a burden on the courts or court timetable as the administrative process for the processing of unopposed referrals

would not require any court time. It would require the time of Sheriffs when not sitting on the bench and the time of the clerking staff in the office. Whether this additional administrative workload could be absorbed by Sheriffs would require some modelling as to the extent of the additional work and consultation with the judiciary and the Scottish Courts and Tribunal Service.

It has proved difficult to elicit a clear rationale for not wanting to determine referrals, where the grounds are unopposed, without a hearing. Scottish Government policy advisers seem reluctant to countenance the resolution of unopposed grounds for referral without a hearing believing, possibly, that it would be inappropriate to leave the matter so much in the hands of the Reporter and creating a vacuum where the grounds hearing previously existed. Both of these reasons are fallacious. The Reporter's role does not change and does not extend to either advising children and relevant persons or adjudicating on their acceptance of grounds for referral. There is no vacuum created by the avoidance of a grounds hearing. It means simply that the referral can proceed immediately to a substantive dispositive hearing on the need or otherwise for compulsory measures of care and, where thought appropriate and necessary, the nature of the measures to be employed in a Compulsory Supervision Order.

Unnecessary and inappropriate complexity

The regime for the establishment of grounds sought to be introduced by the Bill seems a well-intentioned endeavour to facilitate and accelerate the establishment of grounds in some cases and where a grounds hearing is required, to ameliorate the experience for children and their families. This by allowing the Chair to discuss the grounds and supporting statement of facts with the child first with an apparent policy intention of allowing for a more truncated grounds hearing thus minimising the negative elements of the experience. Nothing on the face of the Bill indicates that this is the purpose, and, in fact, the opposite seems to be the case as the proposed new s.90(4) still requires the chairing member at the hearing, notwithstanding any discussion that might have taken place, to explain each ground and the supporting facts and to ask the child in the hearing in front of everyone present whether the child accepts each relevant ground and its supporting facts. If the process is meant to allow the chairing member at the hearing and after the discussion with the child to skip over the grounds with a reference to their discussion and a general indication of acceptance by the child questions might arise as to the legality of the process and the absence of safeguards for the child.

The regime sought to be introduced by the Bill does nothing more than to reinforce the requirement for grounds hearings and rely upon the interpersonal skills of communication and experience of the chairing member and other panel members to set a tone for the hearing that will minimise the negative impact of the experience on the child and their parents. It is difficult to discern any difference with current practice.

This begins to seem a futile exercise of legislation, but it is one that has been achieved by a shameful use of the most complex legal language containing multiple cross references to other sections and sub-sections that are almost

impossible to follow. The proposed new s.90 contains so many cross references and double negatives that they are impossible to retain in an ordinary reading of its provisions[2]. Shameful, because at the heart of the improvement of the Children's Hearings system lies an imperative to change the language, to eliminate the use of legal or professional jargon and acronyms. Our Hearings Our Voice have undertaken remarkable work in this regard and, if they have not seen it already, Committee members are urged to view the short but highly instructive animation produced by that group of young care experienced people whose contribution to the preparation of the Hearings for Children Report was invaluable. Their Language Leaders project is addressing these very issues. It cannot be beyond the wit of Scottish lawyers used to working with children in the Children's Hearings system who have experience and expertise in its ways to draft legislation capable of being readily understood by lay panel members and, especially, children and families engaged in the hearings. More than that, Scotland and its drafters of law should go further by setting new standards of clarity and simplicity of language in relation to a tribunal system with children and families at its heart. Where the ambition? It is well understood that there exist certain principles, rules, practices and protocols around the drafting of legislation but a slavish adherence to such rules that produces such impenetrable language at the expense of alienating those whom the system serves must and can be avoided.

These observations have added poignancy in the year when Scotland has incorporated into its domestic law the United Nations Convention on the Rights of the Child and with it the rights of children to their best interests being a primary consideration in all actions undertaken by, among others, legislative bodies (Art. 3) and to the assurance to children capable of forming their own views the right to express those views and the views being given due weight (Art. 12). The Committee and government officials will have in this legislative process the chastening experience of hearing from Our Hearings Our Voice that they will not comment on certain parts of the Bill because they cannot understand them.

The only discernible and, it must be acknowledged, welcome change in relation to the establishment of grounds in this Bill is the facility for the Reporter to refer direct to the Sheriff those cases where it is clear grounds and supporting facts will not be accepted. The remaining provisions add nothing but unnecessary complexity and confusion without meaningful change to the *status quo*.

The Chair and remuneration

The Hearings for Children Report envisaged a significantly enhanced role for the Chair of the Children's Hearings. While studiously avoiding any suggestion that the Chair should be a lawyer or belong to any other specific profession the Hearings for Children Report, nonetheless, imagined someone with adequate legal competence to bring sufficient weight to the proceedings with appropriate tribunal skills to be able to manage the room and the loudest voices including legal representatives; someone with sufficient confidence in their knowledge and

[2] See notes on the new s.90 at the Appendix

understanding of human rights and children's rights law to be able to assure parents and their representatives that due weight would be given to the impact of decisions on their rights whilst balancing the rights of children even to the extent of asking parents and their representatives to leave the room so that the panel could hear from the child alone. Someone having the skills and competence to collate the views of other panel members, to arrive at a decision and to write a substantive and fully reasoned decision, recording, if necessary, dissenting views. The Chair would be, at the same time, someone with excellent skills of communication with children and family members as well as with other professional participants, an ability to relate to children and to put them at their ease in a get-to-know meeting in advance of a hearing. The Hearings for Children Report envisaged, furthermore, that in response to the strong call from those with experience of the hearings system not to have to repeat their story at every hearing to a new panel of three, usually older, strangers about to make important decisions in their lives, the same Chair should, so far as reasonably practicable, preside over the child's hearings throughout their journey through the hearings system. The Chair would become a familiar point of contact for the child and someone in whom they would have trust and confidence. Communications would run in the name of that Chair. After the making of a Compulsory Supervision Order that Chair would have a role in receiving expressions of concern from the child, their parents, other relevant persons or others regarding the implementation of the order and the provision of services. The Chair would have a discretion in how to deal with such expressions of concern including the fixing of a review hearing outwith any other statutory regime for reviews, in concept, a role not unlike that of a Sheriff reviewing a community-based order in criminal proceedings or a breach of an order.

It was in recognition of the considerably enhanced role of the Chair and especially the availability to offer the continuity sought by children and families that the Hearings System Working Group recognised that it would be difficult to fulfil the role without it being a job. It was this process of reasoning that led to the key recommendation, ultimately rejected by Scottish Government, that Chairs be salaried. That is lost in the Bill.

While the principle of a salaried appointment was rejected by Scottish Government, the enhanced role of the Chair was not and this remains an area for development. The general notion of remuneration was not wholly discarded and has manifested itself in a stand-alone provision in a proposed amendment to Schedule 2 of the Children's Hearings (Scotland) Act 2011 permitting the payment of remuneration to panel members. This provision is welcome in principle, but it lacks any association with the enhanced role imagined for the Chair or specification as to how it is to be deployed. It is implicit that this will be a matter for the National Convener as part of his role in the appointment and management of panel members.

The proposed amendment to s.4 of the Children's Hearings (Scotland) Act 2011 contained in s. 11 of the Bill Creates a distinction between ordinary panel members and chairing members. This is a welcome change that reflects the reality that many panel members shy away from the responsibility of being Chair and others carry the burden of fulfilling the role of Chair more frequently. The

provision fails, however, to specify what distinguishes a chairing member from an ordinary member in terms of competences, qualifications and criteria for appointment. In particular the provision fails to grasp the proposition that chairs require legal competency in respect of human rights and children's rights especially in order to manage with parity the strong voices in the room including those of legal advisers. This begs the question as to how chairing members should be appointed. How will the National Convener assess legal competence in the exercise of their proposed new power of appointment?[3] It is respectfully submitted that these issues should be addressed in the Bill.

Lost opportunity

It has already been observed that the Bill is notable for what is not in it. There follow some key elements that might have been included.

Inquisitorial and non-adversarial once grounds are established

"It is recognised that a court of law, with its adversarial traditions, procedures and atmosphere, may well be an appropriate forum to resolve disputes of fact but is a singularly inappropriate forum for determining, in a welfare context, what if any form of protection, guidance, treatment or control an individual child needs. The child's needs can best be determined by a relatively informal but carefully structured discussion involving the child, the child's primary carers and representatives of the local authority that will be providing social services to the family. The Supreme Court described the children's hearing system in the following terms:

> "The hearings are designed to be child-friendly and to be conducted in a manner which prizes informality, minimises the numbers involved at a hearing and avoids legalistic procedures. The hearing is conducted as a discussion. It is not like a court of law; there is no cross-examination of witnesses. Panel members are not lawyers but are skilled and experienced in communicating with children and understanding their needs."[4]

The Children's Hearings had become much more adversarial, and the Hearings for Children Report recognised that it was essential to return to the values of the original concept devised by the Kilbrandon Committee and to recognise the truly inquisitorial nature of the Hearings once grounds have been established. The breadth of investigation and discussion is not bound by artificial limits. Once the grounds in respect of which the child has been referred have been accepted or established it is open to the hearing to explore any aspect of the child's life that affects the child's welfare. The hearing's powers of investigation are limited only by what might be relevant to the child's overall interests.[5]

It is respectfully submitted that it would serve the interests of all engaged in the

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[3] s.11(17) of the Bill

[4] Prof. K. Norrie 4th ed. #1-07&08

[5] Kilbrandon #77; Prof. K. Norrie 4th ed. #1-07&08; **ABC v Principal Reporter 2020 SC (U.K.S.C.) 47** at **[5]**.

Children's Hearings to have a clear, declaratory statutory statement recognising the inquisitorial nature of the Children's Hearings. This would provide a strong foundation for all participants and a source of authority for the panel and chairing member[6].

Role of Child's Plan

The Hearings for Children Report recognised the importance of the child's plan, concluding that it should be at the heart of the information shared with the entire Children's Hearings System, as the golden thread running through the child's journey through the 'care system' and not just an add-on to the papers[7]. The compulsitor for every child coming to a Children's Hearing to have a plan or a timescale for its production and the development of a national framework is worthy of primary legislation and should have been included in the Bill.

Provision of independent advocacy support services at the earliest possible stage

It is provided by s.122 of the Children's Hearings (Scotland) Act 2011 that the chairing member of the children's hearing must inform the child of the availability of advocacy services. The Hearings for Children Report recognised, however, that advocacy services should be available to a child at the earliest possible stage and certainly at the stage of initial reporting to the Principal Reporter[8]. The Report recognised, moreover, that the offer of advocacy support required to be constantly repeated at every stage of the process.

The Bill provisions around the enhanced role of the Reporter in having discussions with the child include discussion on the question whether the child intends to use children's advocacy services (proposed new s.69A(6)). This enquiry comes too late in the process for the child should not be at a meeting with the Reporter without having had the opportunity of securing the support of children's advocacy services for that meeting and should have been made aware of the availability of services in advance of that.

A key point at which the Hearings System Working Group learnt from those with experience of the hearings system that children need support is upon receipt of the papers for the hearing. This has the potential to be a distressing, even traumatising moment and one when the child should have support.

These matters should be addressed in the Bill.

Family Group Decision Making (FGDM)

The Hearings for Children Report recognised the existing statutory underpinning for the provision of family group decision making services[9] which should be,

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[6] Cf. similar provisions in the Courts Reform (Scotland) Act 2014 in relation to the review of the Sheriff Court, establishment of the role of Summary Sheriff and role of the Sheriff Principal

[7] Hearings for Children Report pp.92-94 @ 92

[8] Hearings for Children Report p.32

[9] Children and Young People (Scotland) Act 2014 (Relevant Services in Relation to Children at Risk of Becoming Looked After etc. Order 2016/44

ideally, available at the earliest possible stage of intervention in a child's life. It is a means by which a troubled family, with appropriate support, can maintain an engagement in the making of decisions in the lives of its children and other members. It is a means by which some families can be helped to avoid a referral to the children's hearings. This crucial measure of early and effective intervention whilst still retaining the involvement of the family in decision- making is one that should be consistently and widely available. The relevance to the UNCRC Article 12 right of a child to have their views heard need hardly be highlighted. It is respectfully submitted that the Hearings for Children's Report's recommendations in this regard[10] can only properly be brought to fruition by rendering this a statutory requirement and corresponding right, and for that reason, should be included in the Bill.

Further Commentary on the Bill

Interim Compulsory Supervision Orders

The s.11(13) provision for Interim Compulsory Supervision Order continuations to be decided by a single member is a welcome and progressive measure. The extension of Interim Compulsory Supervision Orders to 44 not 22 days is also welcome[11]. There will be flexibility within the 44 days to continue to specific Court or hearing dates. It is right that an Interim Compulsory Supervision Order should be reviewed anyway if nothing is to happen or has happened at Court or the Hearing for as long as 44 days.

There would be merit in including a specific provision that an Interim Compulsory Supervision Order can be continued to the next hearing or court date so as to avoid unnecessary callings or hearings simply to continue Interim Compulsory Supervision Orders.

Children's attendance

The child's attendance at children's hearings and hearings before Sheriff is addressed in

s.13 of the Bill which removes the current regime of compulsory attendance unless excused with a requirement to attend if ordered to do so. This is a welcome provision that reflects the recommendations of the Hearings for Children Report but only partially. The recommendation of the Hearings for Children Report was to substitute a presumption that the child would attend and, crucially, would receive advice and support in how to do so[12]. It is respectfully submitted that this should be addressed in the Bill.

Role of Reporter

The enhanced role of Reporter empowering greater engagement with children, families and relevant persons before a referral to the Children's Hearings is

[10] Hearings for Children Report pp.72-82 @ p.76
[11] S.19 amending s.86 of the 2011 Act
[12] Hearings for Children Report pp.195-7

addressed in s.14 of the Bill. This is a welcome provision reflecting recommendations from the Hearings for Children Report with the qualification that, on the face of it, the Bill is quite prescriptive and the provisions quite convoluted and difficult to follow especially for someone who is not a Reporter or lawyer.

In terms of process these provisions appear to empower the Reporter to form a judgement in respect of cases in which they believe there is no prospect of the grounds being agreed or accepted to go straight to the Sheriff[13]. This is a small, common-sense step in the right direction and very welcome but leaves the vast majority of cases – 97% or so – in which grounds are not opposed still requiring a grounds hearing in accordance with the new ss. 89B, 89C, 90 and 90A Children's Hearings (Scotland) Act 2011.

The real value of this provision is to allow greater engagement in the lead up to a referral and fulfil the notion of the Reporter working more relationally with children and families and 'walking them to a referral'; a soft means of possibly minimising the number of cases in which grounds are opposed and taking some of the heat and anxiety out of the process.

The new provisions introduce an "opportunity to discuss" for the child, their parents and other relevant persons the statement of facts founding the proposed referral, the child's participation in the hearing and any other matters the Reporter considers appropriate[14]. As presented in the Bill an imbalance of power in a meeting between a Reporter and the child or relevant persons might arise or be perceived. It would seem appropriate for there to be included balancing provisions obliging the Principal Reporter to inform the child and relevant person of the opportunity to be supported at the meeting and regarding the availability of independent children's advocacy support services. In relation to the latter it was perceived by the Hearings for Children Report that such services should be offered repeatedly at every stage of the process[15].

The Principal Reporter is provided with a very wide discretion whether to offer or hold such a meeting and need not comply with sub.s. (3) and (4) (opportunity to discuss and discussion of statement of grounds) in accordance with their judgement. The Committee may wish to consider whether provisions are required to prohibit a meeting, for example, in relation to children or relevant persons who experience any particular or extreme neuro-diversity, or are otherwise vulnerable or suggestive. It may be that consideration could or should be given to the appointment of a safeguarder in certain circumstances in addition to advice about the availability of support of independent advocacy.

A question arises whether the discussions should be recorded given the requirement in the new 69G for the Reporter to provide a report on the discussion where the preparation of the report is one-sided and not apparently checked or adjusted by the child or relevant persons?

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[13] s.14 of the Bill introducing new s.69D of the Children's Hearings (Scotland) Act 2011

[14] s.14(5) of the Bill introducing new s.69A of the 2011 Act

[15] Hearings for Children Report p.42

Interim Compulsory Supervision Order awaiting decision by Sheriff

The proposed new s.71A and B introduced by s.14(7) of the Bill specifies that where the Reporter has made an application under s. 69D or E straight to the Sheriff, but an Interim Compulsory Supervision Order is needed to regulate the position it is not the Sheriff who will deal with that, but a Children's Hearing arranged by the Reporter to decide whether to make an Interim Compulsory Supervision Order, and see s.14(18) of the Bill providing for a single member to be able to decide an Interim Compulsory Supervision Order.

This provision seems illogical and potentially confusing for children and families who will be advised that owing to their disagreement with the statement of facts the matter will be decided by the Sheriff whether to refer to the Children's Hearings or not but that as measures need to be put in place to address the needs of the child meantime this will be decided, not by the Sheriff who is going to decide whether a referral should happen or not but by the Hearing which, as yet, has not been engaged.

If a referral is going to start life in the Sheriff Court and before grounds have been established, then it would seem the Children's Hearing is not engaged but the Sheriff is. There is an illogicality in conferring on the Children's Hearings an authority to make what could be significant interim orders when, for ought yet seen, grounds may not be established, and the application will be discharged. Legal challenges around jurisdiction may arise.

Children and their families will find it easier to understand that when before the Sheriff the Sheriff makes decisions and when before the Hearing the Hearing makes the decision. Sheriffs are used to making, renewing and reviewing Interim Compulsory Supervision Orders; so, this would be nothing new for them and it is respectfully suggested that would be the more appropriate approach.

s.15 Powers to exclude persons from hearing

This provision introduces an amendment to s.76 of the 201 Act (empowering the hearing to exclude a relevant person from the hearing) by introducing a test, either that the presence of that person is preventing the hearing from obtaining the views of the child or one of "causing … significant distress to the child".

The second element of assessing significant distress may be fraught with difficulty. Who is to decide whether the child is significantly distressed and what constitutes significant distress when it is well known that the demeanour of a child at a hearing may disguise an inner distress because children with a background of trauma might regulate their external presentation to suit the expectations of others in the room – a child who smiles at or acknowledges an abusive parent in the room or who smiles and says they're fine may be anything but? And a lawyer representing a parent could challenge a decision to exclude with a demand for evidence of the child's significant distress or there might be a debate whether the child is just ordinarily distressed but not significantly distressed.

It is respectfully suggested that rather than provide the hearing with a questionable authority to make a subjective assessment of a person's level of

distress, it would be more appropriate for such decisions to be taken adopting a rights-based approach. Such decisions might be taken by the Chair, who should have a competent grasp of the European Convention on Human Rights and the United Nations Convention on the Rights of the Child, so that parents or other relevant persons whose rights will be affected by the decision by the Panel can be assured that their rights are understood, that the Panel has either heard all it needs to hear in respect of those or can arrange to hear more later but now needs to hear from the child alone and without them in the room. Perceived distress might be one of the justifications, but an assessment of significant distress should not be the main requirement.

s.21 Principal Reporter's power to initiate review of CSO

This section provides for the Principal Reporter to initiate a review if they become aware of 'relevant information', that is information which was not available to the 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.

The provision is hard to follow. Reporters have spoken of the frustration of having no means to simply call for a review if they received new information about a child and could only initiate a fresh referral and drafting of grounds.

This provision defines 'relevant information' as information which was not available to the hearing. This is then qualified to exclude information by virtue of which the Principal Reporter has prepared a further statement of grounds. A question arises if the Principal Reporter has new information that was not available to the hearing, that would justify the preparation of new grounds but new grounds are not or not yet prepared, can this count as relevant information?

A welcome provision in principle addressing one of the frustrations of Reporters but seems an odd approach rather than just conferring a discretion.

Sheriff David N Mackie

APPENDIX

New s.90

(1) This section applies –

a. In relation to a child where the grounds hearing is –

i. In relation to a ground, required by section 89B(5)(b) to proceed in accordance with this section – *(s.89B applies where a grounds* hearing is held and imposes an obligation on the grounds hearing to consider whether, taking account of the child's age and maturity, the child would be capable of understanding an explanation of each s. 67 ground specified in the statement of grounds in accordance with s. 90(3) (chairing member explaining and asking); sub. s.(3) applies where the grounds hearing is satisfied in relation to a ground that the child would not be capable of understanding an explanation whether or not in attendance (sub s (3)(a)) or where the child is not in attendance that the child has not understood (subs. (3)(b) –

presumably on the judgement of the Principal Reporter – and sub s. (5)(b) applies where sub s. (3) does not apply (so a child who would be capable of understanding whether or not in attendance or a child not in attendance who has understood?) and is in attendance at the hearing

ii. *Arranged by virtue of section 89C(8)(a) –* ***(s. 89C provides that the grounds hearing must consider whether the ground is accepted by the child but where sub s. (7) applies must require the***

Principal Reporter to arrange another grounds hearing and

require the child to attend (sub s. *8)(a) and (b) – and sub s. (7) applies where the grounds hearing is, for any reason, not satisfied that the child accepts that the ground applies in relation to the child (sub s. (2)) or does not accept that the ground applies or sufficient of the supporting facts to support the conclusion that the ground applies)sub s. (5))

b. *In relation to each relevant person in relation to the child, in the case of every grounds hearing.*

s.90 actually addresses a quite simple category and could be easily and better expressed in positive terms as applying to two categories of children and every relevant person.

The children are those:

- Who understand the grounds or have understood an explanation by the Reporter and

- Children not in attendance in respect of whom the Panel are not satisfied with their acceptance or rejection of grounds

Then the Reporter must arrange a hearing and require the attendance of the child.

s.90 then sets out a framework whereby the Chairing Member can discuss the grounds and supporting statement of facts in whatever way the panel (not the Chairing Member) considers appropriate with the child and each Relevant Person before complying with

the requirement in sub.s3 and 4 to effectively conduct a grounds hearing by explaining each relevant ground and supporting statement of facts and asking whether the child accepts them and exposing them to the negative experience of a grounds hearing all of this is meant to eliminate.

The Promise Scotland's response to the Children (Care, Care Experience and Service Planning) (Scotland) Bill call for views

"Scotland must create a clear legislative, enabling environment that supports families to stay together and protects and allows relationships to flourish."

The promise, Page 112

"Although this can be easily seen as just words in a report, there are real people and real lives behind these pages. ***To those responsible for making these changes happen, we ask that you don't miss this opportunity to change lives****."*

Our Hearings Our Voice, 'Hearings for Children', Pg 10

A note on terminology

This response mirrors the terminology used by the Independent Care Review. Wherever possible, 'system language' has been avoided, but on occasion it has been used in line with current and existing legislation for the purpose of clarity.

The term 'children' is used to mean those under the age of 18, in line with the UNCRC and 'young people' aged up to 26, in line with corporate parenting.

The Independent Care Review concluded that Scotland must change the language of care. Language must be easily understood, positive and not create or compound stigma. A language of care that better reflects the views and experiences of children and care experienced adults must be developed, with the implications of changing statutory terms clearly understood. In consideration of this, there must be a concerted effort from the Scottish Government to ensure the language used in this Bill, and any accompanying work, aligns with the commitment to keep the promise and change the language of care.

Background and Summary

The Promise Scotland is the organisation set up to support Scotland in the delivery of the implementation of the findings of the Independent Care Review.

The Independent Care Review resulted in a promise to Scotland's care experienced children, young people and adults that all would grow up loved, safe, and respected. This response to the Education, Children and Young People's Committee's call for evidence on the Children (Care, Care Experience and Services Planning) (Scotland) Bill should be read in the context of the seven reports produced by the Independent Care Review, specifically the promise and 'The Rules', and alongside Plan 24-30, Scotland's plan to keep the promise, which identifies 'legislation' as one of 25 core themes where a route map for change must be developed.

'The Rules', produced by the Independent Care Review as one of its final reports, outlined a number of key areas where legislative change was required, while also

recognising that further change in the future may be required. The key areas identified at that time were:

- Ensuring the legal rights of children are protected and upheld in all circumstances, particularly in the Children's Hearings System.
- Acknowledging, protecting and promoting brother and sister relationships in and on the edges of care, meaningful participation in decision-making and simple rights of appeal.
- Treating unaccompanied asylum-seeking children as 'looked after' children and placing them in caring, supportive settings, whilst ensuring access to legal support, advice and advocacy.
- Understanding the complex consequences for the legal identities of children and young people after adoption breakdown.
- Preventing lengthy detention in hospital settings through mental health legislation.
- Ensuring access to legal advice for children with additional support needs, those living in rural communities and those for whom English is a second language.
- The legislative environment that governs data.

There must not be any delay between well-intentioned changes to legislation and their implementation.

This response is informed by more than 5,500 voices and experiences heard by the Independent Care Review, as well those children, families and care experienced adults and members of the workforce who have shared their views since 2020 to inform implementation, for example during The Promise Scotland and Staf's joint work on the Moving On Change Programme and 100 Days of Listening and the work of the Hearings System Working Group.

It also draws on five years of work across Scotland to keep the promise, understanding what is getting in the way of change and what is helping. It is critical that this legislation supports further change and does not create new barriers.

The Bill presents an essential step at a critical time, the mid-point in the decade long change programme towards keeping the promise. It will make some of the necessary and significant changes in the lives of children, families and care experienced adults. We therefore **urge MSPs to support the principles of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 1.**

The Promise was made to all children, families and care experienced adults in and on the edges of care. The ten-year programme of change recognises the time required to deliver transformation across multiple interwoven systems, to a wide range of front-line services and to culture. Legislative change is critical to this.

When Scotland keeps the promise, more children will be safe with their families. There will be fewer children and young people in the 'care system', and they will

grow up loved, safe and respected, going on to thrive as adults, and able to rely on the state for support when they need it.

With that in mind, The Promise Scotland urges Members to consider four things regarding this legislation:

1. to what extent it supports delivery of the entirety of the legislative challenges identified by the Independent Care Review five years ago and what it does not do;

2. whether it will accelerate the ongoing programme of change by building on the bridges and overcoming the barriers identified at the midpoint of a decade of work to keep the promise;

3. how to ensure new voices raised during the programme of change by people to whom the promise was made are properly heard and taken account of; and

4. to what extent it is future proofed, recognising that the coming five years have to be when Scotland keeps the promise in full everywhere to everyone.

The Promise Scotland will work with systems and services to help ensure those who must be heard but often continue to struggle to be – including people of colour, adult adoptees, those with a disability, or families experiencing deep and persistent poverty – will be meaningfully engaged in the changes still to come and urge members to do the same.

As well as demanding changes to systems and services, the promise requires cultural change in how Scotland cares for its children, young people, families and care experienced adults. For this to be realised, a fundamental shift in how the workforce (paid and unpaid) is supported is required.

Importantly, keeping the promise means embedding a culture with voice at its heart; one that is always listening, always learning, always improving. Scotland must honour the voices it heard during the Care Review, and it also needs to listen to all the voices of people who the promise was made, including new ones as they emerge.

This Bill cannot be the final legislative step. Further legislation will be required in the future to keep the promise, in particular to ‘declutter’ the landscape and create a legislative environment which is more cohesive and easier to understand for children, families, and care experienced adults. A more enabling legislative environment will also reduce bureaucracy for the paid and unpaid workforce.

We therefore **ask the Scottish Government and all parties to commit to progressing further legislation relating to the promise in the next Parliamentary term.**

We ask MSPs to build on cross party support for the promise and work constructively and collaboratively to strengthen the Bill as it progresses, including to ensure that there is appropriate support and resources for local authorities and other duty

bearers to implement the proposed changes and for children, families and care experienced adults to understand them.

Key messages

- Changes to legislation around the 'care system' in Scotland must be rooted in and align with the conclusions of the Independent Care Review and the voices and experiences of those who have shared their stories about their experience of care in Scotland.
- The impact of this legislation will be felt most acutely by children, families and care experienced adults, so it must avoid incentivising the system in a way that negatively impacts them.
- While this Bill as currently drafted does not fulfil the vision of the Independent Care Review when it concluded in 2020, The Promise Scotland is nonetheless supportive of the main principles of the Children (Care, Care Experience and Services Planning) (Scotland) Bill and asks MSPs to support it at Stage 1.
- In addition, we urge MSPs from all parties to commit to the further legislation that will be required to keep the promise, in particular to 'declutter the landscape of care'.
- Concerns have been raised about the process to develop this Bill and an absence of engagement before it was laid in June. Now that the Bill process is underway, it is critical that a collaborative approach is taken to ensure the voices of children, families, care experienced adults and members of the workforce are heard and their views are taken into account to develop strong and effective legislation.
- The work to develop this Bill must include a sharp focus on implementation and sequencing, recognising that the burden of delivery sits with duty bearers and the workforce.
- The provisions in the Bill must be fully resourced so that children, families and care experienced adults feel the benefits of the changes and there must be a clear understanding of how the changes will be aligned with other significant aspects of the promise where change is also underway, for example the implementation of the Children (Care and Justice) (Scotland) Act 2024.
- This response highlights a number of questions and suggestions for how the Bill can be strengthened at Stage 2, including amendments around early help and support, Family Group Decision Making and the 'right to return' to care and by ensuring that the inquisitorial approach outlined by the Hearings System Working Group is set out in primary legislation.
- The courage of the children, families, care experienced adults and members of the workforce that contributed to the Independent Care Review and since 2020 must be matched by the courage of decision makers and politicians who have the power to implement the required changes.

Our approach to this consultation

In order to help Committee members and MSPs understand our positioning on the Bill, we have answered Q.10 first, setting out the context for legislation around the promise and our overall views on the Children (Care, Care Experience and Services Planning) (Scotland) Bill.

Q10. Are there any other comments you would like to make in relation to this Bill?

Legislative change and keeping the promise: the route map to get there

The need for legislative change was clear five years ago when the Independent Care Review concluded and the promise was made. The Independent Care Review concluded that the 'care system' is a complex, fragmented, multi-purposed and multi-faceted entity which does not lend itself to easy definition. In 2020 it found a 'system' underpinned by 44 pieces of legislation, 19 pieces of secondary legislation and three international conventions (the promise, Pg 112). Since the promise was made this has expanded further as additional pieces of legislation and policies – many welcome - have been layered on to the 'system' including the Children (Care and Justice) (Scotland) Act 2024. **This Bill will add to that complexity.**

The promise is clear that the current legislative environment is too complex and cluttered and legislative change is required to simplify it and ensure that children, families and care experienced adults understand, can navigate and access their rights and duty bearers understand their duties—and, crucially, are supported to implement them.

In March 2022, the Scottish Government's Keeping The Promise Implementation Plan committed to undertaking a review of the legislative framework relating to the 'care system' in Scotland and to considering the desirability and extent of a restatement of the law in this area so that it is identifiable and understandable (Pg 98). As far The Promise Scotland is aware, this review has not been undertaken. The Promise Scotland remains committed to advancing the work that we have already begun around 'decluttering the landscape' to ensure that children, families, care experienced adults and members of the workforce find it easier to navigate and understand their rights and duties as they relate to the 'care system' in Scotland.

Plan 24-30 states that by 2030: "Scotland will have a clear legislative, enabling environment that keeps the promise" (Pg 112). The legislative framework must bring clarity, streamline bureaucracy and reduce stigma. It must uphold the rights of those in care and with experience of care. This means:

- Legislation will be in place that supports families to stay together wherever safe to do so, that protects and allows relationships to flourish and children to thrive and that enables care experienced adults to access lifelong support (Pg 112)
- A strong legal framework will be in place that acknowledges, protects and promotes brother and sister relationships in and on the edges of care. Those

legal protections will include the right to time together, meaningful participation in decision making about their relationships and clear, simple rights to appeal (Pg 62/63)

- There will have been full consideration of the legislative environment that governs data to ensure Scotland is able to measure and collect what it needs to ensure it understands what is happening and how services are working (Pg 13).

- The UNCRC will be the bedrock upon which all legislation is based to ensure that children's rights are upheld as a matter of course (Pg 112)

(Page numbers are references to the promise).

The Promise Scotland is working alongside the Scottish Government and other duty bearers to develop a route map for how this can be achieved—**the passage and implementation of this Bill forms part of the milestones that must be achieved by 2030**. This is in addition to other legislative changes such as those set out in the UNCRC (Incorporation) (Scotland) Act 2024, the Children (Care and Justice) (Scotland) Act 2024 and the Restraint and Seclusion (Scotland) Bill, which is currently progressing through the Scottish Parliament.

There is also a need to focus on implementing and better resourcing existing legislation that has already passed but has either not yet been commenced or has not yet been fully implemented due to challenges in practice. This includes provisions of the Children and Young People (Scotland) Act 2014 and duties within the Children and Young People (Scotland) Act 2020, which have not yet commenced.

The Promise Scotland's position on the Children (Care, Care Experience and Services Planning) (Scotland) Bill

To support the Scottish Government and the Scottish Parliament in the development and scrutiny of the legislative framework, The Promise Scotland has produced the following:

- A draft route map on 'legislation' as part of Plan 24-30

- A briefing for the Scottish Government on key areas of consideration for the 'Promise Bill' (legislation around the promise)

- A summary document of the different pieces of legislation, secondary legislation and policies that relate to the 'care system' in Scotland

- An options paper setting out the different ways that Scotland can declutter and simplify the legislative and policy landscape in Scotland with respect to the 'care system' in the way envisioned by the promise.

It is clear that the Children (Care, Care Experience and Services Planning) (Scotland) Bill as introduced will not 'declutter' the landscape and will not be the broad and overarching piece of ambitious legislation required to capture all of the changes needed to keep the promise by 2030**. Further legislation will be required**

in the future to keep the promise, in particular to 'declutter' the landscape and ensure promise's conclusions about simplifying policy and legislation and creating a more enabling legislative environment are realised.

The Bill does, however, represent a significant step forward to keep the promise, in line with what the Independent Care Review heard and the experience of The Promise Scotland since 2021.

In particular, it makes changes to ensure improved access to 'aftercare' support and of a statutory right to advocacy, which was one of the recommendations that we made in our advocacy scoping work, published in December 2023. We are also supportive of many of the proposed changes to the Children's Hearings System which will begin to make the necessary legislative changes to align with the proposals in 'Hearings for Children' and the conclusions of the Independent Care Review.

We therefore:

- **Ask MSPs to support the principles of the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 1** and to work constructively and collaboratively to strengthen the Bill as it progresses.
- **Urge MSPs to commit to the further legislation** that will be required to keep the promise, in particular to 'declutter the landscape of care'.

The process to develop this Bill

It has been noted there has been an absence of meaningful engagement during the development of the Bill, which has limited the depth of discussion needed to shape a Bill of this importance. While the four Scottish Government consultations were informative, they cannot replicate the detailed dialogue required to fully understand the broad package of legislative change required now and, in the future, to keep the promise and the impact of the proposed changes.

Looking ahead, the Scottish Government must engage in a significant and genuine process of engagement with members of the care community, duty bearers and the paid and unpaid workforce to both better inform the work to progress the provisions contained within this Bill and to help people understand why certain provisions have been included and not others.

Since the Bill was laid in June, there has been a welcome increase in levels of engagement. Given the proposed timetable for the Bill progressing through parliament, care must be taken to avoid overwhelming the sector and the care experienced community, and to ensure the impacts of proposed changes are carefully managed and not rushed through in the absence of detailed engagement earlier in the process.

The vision for change

When Scotland keeps the promise, more children will be safe with their families. There will be fewer children and young people in the 'care system', and they will

grow up loved, safe and respected, going on to thrive as adults, and able to rely on the state for support when they need it. This will result in a significantly smaller, more specialised 'care system'.

In order to achieve this, there must be a renewed focus on ensuring an adequately resourced workforce, a simplified and cohesive legislative and policy landscape and sufficient, reliable funding. This must take into account the broader picture of transformational change, recognising that when significant changes are made in one part of the 'care system', the impact will be felt elsewhere, including those systems experienced simultaneously. It must also recognise the links with other significant change agendas, including broader public service reform in education, health and social care and upholding the rights of children and young people through the UNCRC (Incorporation) (Scotland) Act 2024.

As the Bill progresses, it is important to keep in mind the broader vision for change set out in the promise and the ambition described in 'Hearings for Children', produced by the Hearings System Working Group of a redesigned Children's Hearings System that is inquisitorial and better upholds the rights of children and families.

The Hearings System Working Group was established by The Promise Scotland, secretariat provided, and Sheriff David Mackie appointed by the Independent Strategic Advisor to chair it. The Promise Scotland urges members to take account of Sheriff Mackie's detailed submission.

The promise is not about making small tweaks to an imperfect system but about delivering lasting, transformational change. The courage of the children, families, care experienced adults and members of the workforce that contributed to the Independent Care Review and since 2020 must be matched by the courage of decision makers and politicians who have the power to implement the required changes.

Strengthening the Bill further

The Promise Scotland is mindful of the current pressures and the sense of overwhelm for the sector, and how this affects implementing of legislation, existing and future. However, there are a number of areas where this Bill can be better aligned with duties and provisions and have indicated in the responses to the respective questions below where this is possible

There are also a number of areas that are not yet in the Bill that we have brought to the attention of the Scottish Government for consideration at Stage 2. These include:

- **Early help and support.** A core element of the promise is that where children are safe in their families and feel loved they must stay—and families must be given support together to nurture that love and overcome the difficulties which get in the way (Pg 15). There is a need to assess whether the current statutory framework around family support is sufficient, or whether this needs to be strengthened through, for example, clearer definitions around 'family support' and 'early help' and putting in place preventative spend targets that align with the Scottish Government's ambitions around holistic whole family support.

- **Right to return to care.** The promise states that young adults for whom Scotland has taken on parenting responsibility must have right to return to care and have access to services and supportive people to nurture them (Pg 92). This Bill is an opportunity to enshrine that right into statute.

- **Statutory timescales and dual registration of foster and adoptive parents.** The promise was clear that children's rights are most often realised through relationships with loving, attentive caregivers (Pg 26) and that the consistency of these caregivers is particularly important. This Bill is an opportunity to explore statutory timeframes for decision making, in particular with respect to time limits for establishing grounds in the Children's Hearings System and to consider a statutory framework for dual registration of foster and adoptive parents.

- **Kinship care.** The promise states that Scotland must ensure that children living in kinship care get the support they need to thrive (Pg 74). The development of a 'kinship care vision' for Scotland provides an opportunity for the Scottish Government to review the existing legislation for kinship carers that sits within Part 13 of the Children and Young People (Scotland) Act 2014 and consider what additional help and support can be provided to better support children and families living in kinship care arrangements.

- **Family Group Decision Making (FGDM).** The promise states that Family Group Decision Making and mediation must become a much more common part of listening and decision-making (Pg 33). 'Hearings for Children' also made specific recommendations about access to Family Group Decision Making and restorative justice. The Bill presents an opportunity to enshrine an approach where children and families have a right to access FGDM and local authorities have a duty to provide it.

- **Places of Safety.** There remains a need to amend the Criminal Justice (Scotland) Act 2015 to ensure that children in police custody are able to be placed in alternative places of safety to police stations.

Additionally, The Promise Scotland, the Children and Young People's Commissioner for Scotland, the Scottish Human Rights Commission and the Equality and Human Rights Commission have collectively called for a statutory framework around restraint. We are supportive of the current Restraint and Seclusion in Schools (Scotland) Bill currently making its way through the Scottish Parliament, which places a statutory framework around education. We urge the Scottish Government to ensure that there are plans for the introduction of a human rights based statutory framework around restraint which covers all settings of care through either the Children (Care, Care Experience and Services Planning) (Scotland) Bill at Stage 2 or an alternative piece of legislation in the next parliamentary term.

Children's rights

The Promise Scotland's expectation, as set out in the briefings previously shared with Scottish Government, is that all provisions within the Bill would be within scope of the United Nations Convention on the Rights of the Child Act 2024.

At present, we understand that two specific provisions, those that amend the Children (Scotland) Act 1995, are currently outwith the scope of the UNCRC Act. We encourage the Scottish Government to work collaboratively at Stage 2 with Together (Scottish Alliance for Children's Rights) and the Children and Young People's Commissioner for Scotland to ensure that the Bill is fully compliant with the UNCRC.

Implementation of the Bill and sequencing with other aspects of the promise

As with any new legislation, careful consideration must be given to implementation of this Bill, ensuring it is planned, sequenced and resourced effectively. This will require close scrutiny of the Financial Memorandum as the Bill progresses through the parliamentary process, and a clear understanding of the impact of the proposed changes on the workforce.

The Promise Scotland is committed to working alongside the Scottish Government and other duty bearers to ensure that there is a clear sequenced plan for implementation across the commencement dates for the provisions within this Bill and other policy and legislation. For example, work must be stepped up to understand the interaction between further investment in early help and the Children's Hearings System. There must also be sequencing between this Bill and:

- The implementation of the Children (Care and Justice) Act 2024
- The work of the Hearings Redesign Board, co-chaired by the Scottish Government and COSLA
- The work to implement the findings within the Reimagining Secure Care report, which will transform the model and delivery of Secure Care in Scotland.

The detail of a significant number of duties and provisions in this Bill (including, for example, the provisions around advocacy, guidance around the definition of care experience and the proposed register of foster carers) has been left to guidance and secondary legislation. While this will allow for further consultation and co-production, there is a considerable amount of work required to ensure practical applicability that can be delivered by the workforce and felt by children families and care experienced adults in and on the edge of the 'care system'. It is important that this process is robust and that the Scottish Parliament is able to adequately and appropriately scrutinise these significant changes.

Part One, Chapter One

Q1. What are your views on the aftercare provisions set out in the Bill?

The Independent Care Review heard from care experienced young people and adults about the 'cliff edges' of care and the lack of support they felt when their legal orders ended before their sixteenth birthday. It was also clear that the term 'aftercare' itself is fundamentally at odds with the principles of the promise – how many families would think of their caring responsibilities towards their older children as 'aftercare'?

The promise concluded that 'aftercare' must take a person-centred approach, with thoughtful planning so that there are no cliff edges out of care and support (Pg 92). It

was clear that the current system does not ensure that those who leave care prior to their sixteenth birthday are able to access legal entitlements, even though they have been removed from their families by a decision of the state (Pg 188).

These issues were raised by Jasmin Kasaya-Pilling in her petition to the Scottish Parliament, and repeatedly by those who shared their views and experiences as part of the 100 Days of Listening project.

Our consultation response to the Scottish Government was clear that rights of care experienced young people must not be dependent on arbitrary age limits or definitions that create 'cliff edges'. Support must be available for children, families and care experienced adults when they need it, including access to advocacy and legal representation.

We therefore welcome the Scottish Government's commitment to addressing this issue, and the extension of 'aftercare' within the Children (Care, Care Experience and Services Planning) (Scotland) Bill to children and young people who left care prior to their sixteenth birthday.

In order to ensure that this change is accessible to children and young people it will be important for there to be a robust plan and guidance in place to support local authorities to implement this duty and to let children and young people know and understand their rights. The views, experiences and rights of children and young people must be the starting point for making changes to the current policy, practice and legislative landscape for children and young people transitioning into adulthood from Scotland's 'care system'.

In our consultation response we stated that the legislative duty for an 'eligible needs' assessment when young people reach 19 must be removed. Young people should not require an assessment to be able to access additional help and support. This must be clearly set out in the Bill and not left to guidance.

In order to realise the new provisions around 'aftercare', it is important to ensure that there is an accurate reflection of the resource requirements in both human and financial terms to deliver on the ambitions of this policy. Our understanding is that local authorities will need additional support to:

1. Resource the teams that will be required to undertake additional engagement with increased numbers of children and young people including potential expansion of teams and recruitment and training costs. This may take some time to put in place, and we note that at present there are no resources in the Financial Memorandum for 2026/27.

2. Ensure that additional funding is in place to provide local authority financial support, such as grants and exemption from Council Tax etc. to additional numbers of care experienced young people.

3. Ensure that support services are fully resourced to meet the demands of additional numbers of children and young people who will be entitled to access them under the new legislation.

It is essential that the Scottish Government and local areas work together collaboratively to ensure that funding is available and that there are no unintended consequences where funding is diverted from other work to keep the promise, such as early help and family support, to deliver on these additional duties.

There is also a need to fully understand the implications of the changes when children and young people move between local authorities. Accessing support when a young person has moved is a problem that was highlighted to Staf and The Promise Scotland during 100 Days of Listening. Provisions must be in place to ensure that children and young people can access the help and support they require regardless of where they currently live. This must include placing local authorities adhering to notifying hosting local authorities of their young people. Providers of care, that care for children originating from beyond their local authority, must plan for supporting a successful move on from their provision of care.

It would also be helpful to understand more about the provisions to ensure that young people living in Scotland and previously looked after in Northern Ireland, England or Wales will be able to access aftercare services in practice regardless of where they choose to reside.

As we have stated above, our understanding is that this is an area that, as currently drafted, sits out of scope of the UNCRC (Incorporation) (Scotland) Act 2024. We encourage amendments to this section so that the drafting brings it into scope and young people have the right to legal redress in the way set out in the UNCRC (Incorporation) (Scotland) Act 2024 where necessary.

Finally, the promise states that young adults for whom Scotland has taken on parenting responsibility must have a right to return to care and have access to services and supportive people to nurture them (Pg 92). **This Bill is an opportunity to enshrine that right into statute and this must be explored as the Bill progresses.**

Q2. What are your views on the corporate parenting provisions set out in the Bill?

It is positive to see the expansion of corporate parenting provisions to include those without a care leaver status but who have care experience, within the proposed Bill.

The Promise will only be kept by 2030 if all corporate parents commit to fulfilling their duties completely and consistently.

As we have stated in our response to Q1 on the extension of aftercare, there is a need to ensure the Financial Memorandum accurately reflects the additional resources that may be required to implement the changes in the intended spirit.

Q3. What are your views on the advocacy provisions set out in the Bill?

Scotland has a large number of skilled and valued providers of independent advocacy to children and adults. The promise is clear that care experienced children and adults must have the right to and access to independent advocacy, at all stages of their experience of care and beyond (Pg 115).

The Hearings System Working Group Redesign Report, 'Hearings for Children', also made specific recommendations about improved access to advocacy for children and families.

We therefore welcome that the Children (Care, Care Experience and Services Planning) (Scotland) Bill includes provision for Scottish Ministers to confer by regulations rights of access to care experience advocacy services. A lot of work is still to be done to understand how this will work in practice—and we welcome the Scottish Government's intention to co-design this with the care community and advocacy providers.

In December 2023, The Promise Scotland produced a report, in collaboration with advocacy providers, which set out the core issues and identified the core principles that should underpin a national advocacy service.

It sets out a path towards delivery, identifying how it should be operationalised and what can be done in order to realise the conclusions of the promise with respect to advocacy. As part of this work, the report recommended that: "**The upcoming Promise Bill could be the legislative mechanism for the development of a statutory right to advocacy provision and associated redress and complaints processes**" (Pg 24).

We welcome the specific reference to advocacy services as "independent services of support", ensuring that advocacy provision is independent from the implementing authority and/or care provider. Clarity would be welcome on how this will be ensured in practice and how the definition of "independence" used by this Bill and guidance aligns with the provision of advocacy in other pieces of legislation in Scotland. Page 27-28 of our report sets out the need for further development of a clear and shared national definition and understanding of what is meant by "independent advocacy".

We also welcome provision for specific standards and qualifications and training for persons providing advocacy services.

The promise expects advocacy to also be available for families: *"Advocacy must be readily and quickly available to all families who are in contact with the 'care system'"* (Pg 115). The proposed right of access to care experienced advocacy services **must therefore also apply to family members.**

The Bill proposes in Chapter 3 that children in the Children's Hearings System are offered advocacy at an earlier point. **In our view this offer should be extended even further**, in line with Recommendation 4.1.2 of Hearings for Children, which states that:

"The Promise Scotland's work to develop a lifelong advocacy service for care experienced children and adults ***should include the extension of advocacy support beyond the entry point to the Children's Hearings System to children working voluntarily alongside local authorities and to parents and carers too****."*

This recommendation was accepted in full by the Scottish Government in their response to 'Hearings for Children'. The legislation in Wales follows a similar approach, ensuring a statutory right to advocacy for children at a much earlier

point—including for when children become the subject of child protection enquiries or when they become looked after (Social Services and Wellbeing (Wales) Act 2014). Learning from Wales needs to be reflected in the Scottish Government's approach, along with learning from other jurisdictions, and the Bill should be amended to ensure the right to advocacy applies as early as necessary.

The approach that the Scottish Government has taken to developing a statutory right to advocacy within this Bill means that a substantial amount of detail is still to be worked out and will be included in guidance. It is essential that any guidance is developed through collaborative discussion about the most appropriate service delivery model and financial framework.

There is also a need to clearly understand how the provision for advocacy through the National Practice Model and the proposed changes in Chapter 3 of the Bill in relation to rights of children going through the Children's Hearings System, link to the right for care experienced children to access advocacy under this part of the Bill. Recognising that children, families and care experienced adults may experience multiple systems simultaneously, Scotland must ensure they are not in a position of also having multiple different advocacy workers.

The promise was also clear that children and families should also be able to access appropriate legal representation: *"Children and their families must have a right to legal advice and representation if required"* (Pg 116). The Committee may wish to seek clarification on how this right will be upheld in addition to the right to advocacy.

Q4. What are your views on the proposals for guidance in relation to care experience?

The Independent Care Review heard that, as a definition, 'care experience has meaning for many. It has supported movement-building and is helpful as an understanding of personal identity. The Independent Care Review also heard that it is an identity definition that some who have experienced care do not wish to identify with as it can feel like a perpetuation of 'othering'. It concluded that:

"there must be a more universal, commonly understood definition as it relates to rights and entitlements. There must also be an understanding that the purpose of those rights and entitlements is to support young people for whom Scotland has had ongoing parenting responsibilities, recognising that parents seek to provide care and support for their children beyond the age of 18" (the promise, Pg 118)

We therefore welcome the intent behind s.5 and 6 of the Bill 'Guidance in relation to care experience'. We are supportive of proposals within the Bill to ensure that guidance is used to ensure the experiences and needs of care experienced people will be accounted for in the planning and provision of public services and proposals to ensure public bodies have "due regard" to the guidance.

There is a need for clarity regarding what is meant by the "due regard" duty to be sure it is clear and fit-for-purpose plus what reporting and monitoring is planned to ensure it is ultimately effective.

In terms of the proposals in s.2(a) around identifying and communicating with care experienced people, there is a need to better understand more about how this will be used and operated in practice. It is important to ensure that the need for and access to support is balanced with the right to privacy and to recognise that some care experienced people may not wish or need additional identification or support.

The work The Promise Scotland stated must be carried out by Scottish Government in our consultation response on developing a universal definition of care experience has not taken place and is essential to inform the production of guidance around a definition of care experience. Although the provision in the Bill is to create guidance around a definition of 'care experience' the Bill does, in effect, already create this definition (in s.4(6) and s.5(6)) and there is a need to understand how the definition will be applied in practice and the impact this will have in people's lives.

Specifically, we urge:

- The Scottish Government's focus must be to bring clarity as to how the definition of 'care experience' will be applied and, in particular, how associated rights and entitlements are known and understood by children and adults with experience of care, and easily accessible.

- The purpose of creating a definition must be clear to both members of the care community and to the workforce. The Independent Care Review is clear about the need for an inclusive, non-stigmatising approach to defining care experience in order to better support and uphold the rights of those for whom the State has parenting responsibility.

- It is not enough to create a new definition of 'care experience'. There is a need for a broader and comprehensive understanding of existing rights and entitlements to ensure that support and services, including access to advocacy, legal representation, mental and physical health report, trauma recovery support and education are available for children, young people and adults who have experience of care when they need it—rather than according to complex statutory definitions.

- In order to do this, there is a requirement to:

  o Map the existing rights and entitlements at all stages of a child, young person and adult's journey of care to ensure that Scotland has got this right and there is a clear statutory and non-statutory framework in place that sets out rights and entitlements in line with the UNCRC.

  o Understand how these current rights and entitlements are accessed and what changes are needed—including legislative and financial in order to ensure that they are clearly set out in legislation (where appropriate), policy and practice.

The provision in the Bill relating to consultation prior to guidance being issued (s.6(1)) allows the Scottish Government the opportunity to incorporate the work referred to above into the consultation with care experienced people and those who work alongside them. We strongly support an approach of co-production and the measures to publicise and share the guidance. There is a need to understand more

about how local authorities will be expected to utilise the guidance, including additional resource requirements if they apply a broader definition of care experience to existing support services.

In summary, we support creating a broad, inclusive definition of “care experience” in line with the Independent Care Review’s conclusions. However, this must be applied carefully to avoid adding to an already complex system or creating confusion for the workforce and for care-experienced children, young people and adults. The definition must not reinforce stereotypes about growing up in care, and its implementation must not divert already stretched resources from other vital areas, such as early help and support.

Part One, Chapter Two

Q5. What are your views on proposals designed to limit profits for children’s residential care services?

The promise is clear that Scotland must end the marketisation of care and ensure that its most vulnerable children are not profited from. There is a need to take a different approach to how it invests in its children and families.

The conclusions of the Independent Care Review around profit must be met:

- Services within the ‘care system’ must not profit from care.
- Any presence of surplus funds generated within any part of the ‘care system’ must be directed to the care and support of children.
- Targets associated with adopting children, including financial and profit based targets, must be removed.
- Processes of regulation, scrutiny and commissioning must support the removal of profit from the care system.

The rise of for-profit companies among residential childcare providers across the UK has occurred by default, rather than policy design. The provisions in the Bill are a careful first step in addressing these issues, and we are pleased to see there is now a Scottish Government consultation on the provisions to give members of the care community, duty bearers, decision makers and those working in the sector an opportunity to engage with and inform these provisions as they are developed and strengthened.

We are supportive of regulations to enhance financial transparency by requiring certain residential childcare providers to provide financial and other relevant information about the operation of their services. There is a need for greater clarity on what is meant by ‘limiting profit from children’s residential care should it be determined that excessive profits are being made’. It is essential that following this initial step Scotland works towards removing all profit from the ‘care system.’

We understand that the Scottish Government is consulting with and learning from Wales about the process of becoming the first nation in the UK to legislate to end private profit in children's residential and foster care. This will ensure that care for children will only be provided by the public sector, charitable or not-for-profit organisations in the future, and that all money going into the system is reinvested into children's welfare, rather than taken as profit for shareholders.

The regulations in this Bill make the initial step as Scotland works towards removing all profit from the 'care system.'

Q6. What are your views on proposals to require fostering services to be charities?

As stated in our answer to Q.5, the promise is clear that Scotland must end the marketisation of care and ensure that its most vulnerable children are not profited from. Whilst we appreciate that not all businesses make profit, the proposals included in the Bill to require fostering services to be charities helps mitigate against that and note that there may be a need to extend this to alternative legal structures for not-for-profits such as Community Interest Companies and social enterprises.

As stated in our response to the Scottish Government's consultation on the future of foster care in Scotland, if Independent Fostering Agencies (IFAs) continue to operate in Scotland, they must ensure there is no profit in care and that all funds are properly directed to the care and support of children:

- The new approach to foster care must facilitate a managed transition to ending profit in care.
- There must be increased transparency around fees charged, pay and allowances to foster carers, other costs incurred - and critically profit.
- IFAs must prioritise children's needs and rights rather than administrative costs. There is a need for greater accountability around how funds are allocated.
- Multiple moves and moving children away from local communities linked to use of IFAs must be stopped.
- IFAs must be required to pay their foster carers at least the Scottish Recommended Allowance (SRA) or higher.
- There must be clearer mechanisms for formal market oversight in respect of care services and scrutiny of IFA costs.
- There is a need to ensure alignment between any proposed changes to IFAs and other efforts to reduce and remove profit in Scotland's 'care system'.
- There is a lack of consistency across local authorities and compared to IFAs – whether that is access to training, peer support, and 24/7 assistance. There is an opportunity for the Scottish Government and local authorities to work

collaboratively to identify what is working and how some of the training and support can be enhanced and shared.

As we stated in our response to Q5 about the broader changes linked to profit, this must be carefully and sensitively managed to avoid disruptions to children who are currently living in homes affected by these changes.

Q7. What are your views on proposals to maintain a register of foster carers?

The Independent Care Review was not definitive about the need for a national register for foster carers, but concluded that it should be considered, recognising that foster carer's care for children within their own home. The promise states that this "*should operate in a supportive way that is aligned to the underlying values of how Scotland must care"* (Pg 78).

The Promise Scotland believes the proposed register offers an opportunity for improved collaboration, information sharing, enhanced training, continuous professional development and a more standardised approach to recruitment, retention, training and support.

The national register could provide valuable data that is up to date to inform workforce planning and better help align the interests of children, young people and foster carers better. It would also bring the foster care role in line with other roles that have significant daily contact with children and require national registration.

The register could also better enable children to be matched with foster carers from within communities to which they belong, or as close as possible to these. A realisation of this would be in alignment with keeping the promise.

There is a range of views in terms of how effective the creation of a register would be and some risks in setting up and implementing it. In balancing these views, it will be helpful to consider other areas where a national register approach has been taken where significant lessons can be shared, for example, the Safeguarders Panel in the Children's Hearings System, and the National Register for Foster Carers in Wales.

There may also be an opportunity to align or amalgamate existing national registers which may also assist with reducing bureaucracy.

As we have stated above, our understanding is that this is an area that, as currently drafted, sits out of scope of the UNCRC (Incorporation) (Scotland) Act 2024. We encourage amendments to this section so that the drafting brings it into scope and young people have the right to legal redress in the way set out in the UNCRC (Incorporation) (Scotland) Act 2024 where necessary.

Part One, Chapter Three

Q8. What are your views on the proposed changes to the Children's Hearings System?

The Independent Care Review heard a variety of experiences of the Children's Hearings System, some positive and others less so. Some of the challenges raised included (the promise, Pg 39):

- The rotation of panel members can result in a lack of consistency.
- Hearings struggle to manage the complexity of the families appearing before them and to recognise the trauma they have faced.
- A lack of holistic understanding of families, siblings and their respective legal rights.
- Overly formal reports and language with inconsistent variation in quality of information received from social work teams.

Despite the difficulties raised, the Independent Care Review heard of significant support for, and commitment to, the underlying principles of Kilbrandon. The promise is therefore clear that to effect change, the following must happen:

- The focus of the Children's Hearings System must be the children and families who appear before it, where their rights and upheld and protected (Pg 40)
- There must be particular attention paid to the rights of brothers and sisters to ensure that they have all their legal rights upheld
- Scotland must comprehensively assess and consider the role of volunteers in the decision-making structure of Hearings (Pg 44)
- The Children's Hearings System must plan to shrink and specialise (Pg 44)
- Everyone involved in the Children's Hearings System must be properly trained in the impact of trauma, childhood development, neurodiversity and children's rights.

In direct response to these conclusions, The Promise Scotland convened and facilitated the Hearings System Working Group and appointed Sheriff David Mackie to independently chair a redesign. The Working Group included Children's Hearings Scotland, the Scottish Children's Reporters Administration, and The Promise Scotland, with the Scottish Government observing. Our Hearings, Our Voice and other young people with experience of the Children's Hearings System informed the groups work. The group published a report, 'Hearings for Children', in May 2023 after an extensive period of engagement and collaboration, including a Collaborative Redesign Project.

The report, along with documents and videos to help members of the care community and the workforce to understand the conclusions, are available on The Promise Scotland's website: hearings-for-children-the-redesign-report.pdf.

The recommendations were agreed, in their entirety, by the Hearings System Working Group, including Children's Hearings Scotland and the Scottish Children's Reporter Administration (Pg 14).

Following the report's publication the Scottish Government published a response to the report, and the specific recommendations from the Hearings System Working Group. Of the 97 recommendations, the Scottish Government accepted 63, accepted with conditions 26, declined 7 and sought to further explore or consult on 42. They have also set up a Redesign Board (jointly Chaired by the Scottish Government and COSLA). Sheriff Mackie was appointed by the Minister for Children, Young People and The Promise as Independent Adviser on Children's Hearings Redesign but is not a member of the Redesign Board.

The provisions in this Bill go some of the way towards making the significant changes demanded by the Independent Care Review and reflected in 'Hearings for Children'. However, there are some significant omissions from the Bill which will prevent the aspirations set out in 'Hearings for Children' and the Independent Care Review from being realised. There are also a number of areas where further clarification is required to ensure the full intent is clear and there are no unintended consequences or the introduction of added complexity for children, families and members of the workforce.

Members may find reading the following section alongside Sheriff Mackie's technical response helpful to informing the Committee's understanding.

It is important for the Scottish Government to be clear about the entirety of work to transform the Children's Hearings System, articulating the clear way the future redesigned Children's Hearings System will look that aligns with what the Independent Care Review said must change. Not all of the changes required need legislative change —some policy and practice changes are being led by the Redesign Board. The Committee must be provided with a clear and coherent picture of the overall change programme, including what still remains to be implemented, in order to scrutinise and understand the proposed changes in the context of the broader redesign. It is also important that the workforce and children and families understand the nature of what is being proposed in legislation, in addition to the other changes, to determine what difference they will make, when and how.

The 'Hearings for Children' Redesign

The recommendations set out in 'Hearings for Children' must be viewed as the implementation of a crucial aspect of the Independent Care Review, alongside a modern update on the work of the Kilbrandon Committee—a new and bold interpretation of what those core concepts mean in a Scotland that has cross-party commitment to keeping the promise and to incorporating legally binding children's rights (Pg 10).

The implementation of the recommendations will **result in a redesigned Children's Hearings System that listens—with the intention of hearing what is said**.

One that inquires, that **asks what families' strengths as well as their challenges** are.

One that makes **strong and robust decisions by consistent and competent decision makers** right alongside children and their families and makes sure that everyone understands what those decisions are and what they mean.

One that **values kindness, compassion, openness and helps children and families** to know and access their rights.

One where the **people who know children and families best have the time and space to work in a relational way** or to build relationships with them, where appropriate.

One that **asks duty bearers across Scotland to work much more closely together** when children and their families need care and support—and where they are held to account if things are not working the way they should (Pgs 10-11).

In order to realise this redesign there are some crucial parts that must happen—without which transformational change is not possible and upon which all the other policy, practice and legislative changes depend:

- The conditions for change as set out in Chapter 1 of 'Hearings for Children' being met, **including increased investment in early help and support for families and addressing the significant challenges to workforce recruitment and retention**. Without this, the Independent Care Review's vision for a smaller and more specialised Children's Hearings System (and therefore 'care system') cannot (or will not) be realised.

- **There must be a clear overarching inquisitorial approach**. A strong feature throughout the Hearings System Working Group's engagement and deliberation was a widespread desire to lessen the adversarial nature of the Children's Hearings System and to 'lower the temperature' in Children's Hearings (Pg 151). 'Hearings for Children' recommends (rec 2.1) an *"overarching principle in primary legislation or procedural rules and a shared set of national standards for the workforce should be made that explicitly describes the children's hearings system as inquisitorial. This will foster an inquisitorial approach and culture within the Children's Hearings System and ensure there is a clear understanding across the entire system of what this means."* This was part of the Scottish Government's consultation and accepted with conditions in the Scottish Government original response to the report and should be considered at Stage 2. The Scottish Government's response stated that there was a need to engage with the judiciary in respect of these potential changes—it would be helpful to understand what engagement has taken place and what the response was. Pages 142-154 of the report describe in detail what an inquisitorial approach will look like in practice in a redesigned Children's Hearings System.

- **There must be consistent decision makers.** There must be an amendment at Stage 2 to introduce a duty to ensure that, wherever safe and practicable, the Chair of a Hearing should be consistent. This is in line with views heard repeatedly during the course of the Hearings System Working Group (see below).

- **There must be changes to the role of the Chair.** A cohort of Chairs with the skills, qualities and competencies described in pages 167-169 of 'Hearings for Children'. The role of the Chair must be set out in primary legislation in the same way that the role of the Reporter is. It must not be left to secondary legislation or to guidance. This should be amended at Stage 2.

- **There must be more focus on the increased and meaningful participation of children, families and the important people in their lives** as set out in Page Chapters 8 and 9 of 'Hearings for Children' (see below).

- **The complexity must be reduced and not increased.** Some parts of the (Children's Hearings System) system are necessarily complex, given the grave and significant decisions that are being made. However, efforts must be made to streamline and simplify and not further complicate the existing landscape making it harder for children and families and members of the workforce to navigate. The changes outlined in the Bill and the accompanying document are hard to understand and interpret—including for those who are familiar with the Children's Hearings System. It is essential that the Scottish Government ensures that this complexity does not transfer to the experiences of children and families and members of the workforce.

We offer the following more specific observations and comments to support the Committee's consideration of the Bill at Stage 1. Given the complexity of the changes and the limited time available for engagement, we have prioritised the most significant areas of change and how they align with 'Hearings for Children'.

Single member Children's Hearings and pre-Hearing Panels

The role of Panel Members is complex and demanding. Many understandably feel the weight of the significant, life changing decisions being made. Hearings can be increasingly adversarial and more complex and while Panel Members are trained with the expectation of chairing Children's Hearings, that role and the prospect of undertaking it becomes a source of anxiety for many. Ensuring a clear distinction between ordinary and chairing members in the Bill is therefore a welcome change. **However, the Bill should be more specific about the difference in role between the ordinary and chairing member** (see below).

We are also supportive of changes to ensure that certain, carefully selected, procedural decisions can be **made by a Chair** of a Children's Hearing. 'Hearings for Children' made the recommendation (rec 8.8):

"In a redesigned children's hearings system there must be a separation between procedural decisions relating to the hearing itself and the decisions made by the hearing. There should be an assessment to understand which procedural decisions ***a Chair*** *can take without the need to convene a full Panel in advance of a hearing. This should include scrutiny of whether anything needs to change in legislation or procedural rules to better facilitate decision-making and eliminate structural drift and delay in the system."*

The assessment of the Hearings System Working Group was that this would reduce drift and delay in the current system and in recognition of the enhanced role of the

Chair described in Pages 165-169 of the report. In a redesigned Children's Hearings System this Chair would have the skills, competencies and qualities described in the report. Our support for the changes in the Bill is entirely conditional on the procedural decisions that can be taken by a single Panel Member being the Chair described in the report. It would not be fair to expect a volunteer without additional training and support.

In our view, **this must be more clearly set out in primary legislation** so that there can be absolute certainty about the role of the Chair, and in particular the way that they are expected to conduct Hearings in an inquisitorial manner and the oversight, enforcement, accountability and overview of a child's order (Chapter Eleven).

Recommendation 7.2.5 is clear that the recruitment and training of Panel Members and maintenance of standards should continue to be undertaken by the National Convener, however there is no reason that there cannot be a clearer definition of the role of the Chair of the Hearing in primary legislation.

Many of the changes in this part of the Bill place significant additional decision-making powers on the National Convener, who will be expected to play an enhanced role in directing proceedings. There must be careful consideration of the impact of this and how this aligns with human rights duties, including the right to a fair trial.

Panel Members local to the community

The Bill makes provision to ensure that, where possible, the National Convener must ensure that the member of the Children's Hearing lives or works in the area of the local authority which is the relevant local authority for the child to whom the Hearing relates (new section 6A to the 2011 Act). While this is welcome and matches recommendation 7.2.2, which states that *"Where possible, Panel Members should be local to the community that the child and family are from*" it is important to be clear that **there was a second part to that recommendation:**

"…but there should be a focus on matching Panel Members to children and families to whom they can relate and who are empathetic to their experiences, challenges and circumstances."

The young people that shared their stories with the Hearings System Working Group spoke about it being important that the Panel Members were able to relate to them. The focus, therefore, should not be solely on 'locality', but finding Panel Members that are able to relate to the child. For example, young people said they liked the idea of Panel Members having the same aspirations or background as them or having things in common (Page 170 of 'Hearings for Children').

Specialist Panel Members

Recommendation 7.2.4 in 'Hearings for Children' stated:

"The potential value of specialist Panels or Panel Members with specialist training should be considered."

The Hearings System Working Group reached this conclusion after hearing from different stakeholders about the bespoke, complex and changing needs of children and families in 2025. The report states *"For example, Panel Members with additional training and expertise in the developmental needs of infants and babies or with a special focus on children in conflict with the law"* (Pg 172).

This is in recognition of the fact that some of the children and families who attend Children's Hearings have complex circumstances and situations that require significant insight into specialist subjects. The provisions in this section of the Bill are therefore welcome, but more information is needed as to how 'specialist Panels' and/or 'Panel Members' would work in practice and the broader intention of this part of the Bill.

This also has to evolve to adapt to the change needed to how Scotland cares including more focus on anti-racism and unconscious bias, neurodiversity and disability.

Remuneration and consistency of Children's Panel members

We are supportive of the section of the Bill that makes provision to remunerate Panel Members. This is in line with recommendation 6.1.2 in 'Hearings for Children' which stated:

"The decision-making model must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate."

Crucially, this was followed by recommendation 6.1.3 which states *"As far as possible the Chair must be the same Chair each time a child and family attend a Hearing. This should also apply to Panel Members where possible and desirable."*

The reasons for this are set out in detail on Pages 156-158 of 'Hearings for Children'. It is important to be clear that, for the Hearings System Working Group **remuneration was never an end in and of itself**, but rather it was the assessment of the Group that the consistency so often called for by children, families and members of the workforce and the additional asks placed on the Chair could only be achieved by remunerating Panel Members:

"Achieving the level of continuity that is desired alongside improvements in the quality of decision-making and comprehensive writing is likely to only be achieved by the appointment of salaried Chairs and remunerated Panel Members" (Page 157).

The Children's Hearings System is currently served by approximately 2,483 volunteers who give their time, skills, energy and dedication to uphold the welfare-based approach to children that is embedded within the Children's Hearings System. The evidence is clear that the needs of the families referred to the system are increasingly complex, with multi-faceted issues and oftentimes historic involvement with the 'care system' and inter-generational trauma. The assessment of the Hearings System Working Group was that the burden of this responsibility should not be placed on the unpaid workforce, however skilled that workforce might be (Page 36).

This also has the added benefit of ensuring a broader cohort of people are able to become Panel Members, rather than just people who can afford to volunteer. In our view this moves the Children's Hearings System closer to—and not further away from—the original intentions of the Kilbrandon Committee. Indeed, the Committee acknowledged that options for remuneration may become a necessary part of the Children's Hearings System, writing in its report (para 225) that it might *"well be necessary for the efficient working of individual panels and in view of the likely volume of business and frequency of sittings, to make provision for appointment of one or more full time salaried Chairmen of the Panels".*

It is also important to be clear that **remuneration must be for the Panel Members with the skills, qualities and competencies set out in Chapter Seven of 'Hearings for Children'**. As we have stated above, we believe that **these roles should be more clearly set out on the face of the Bill.**

In addition to the provision for remuneration in this Bill, therefore, an **amendment should be made at Stage 2 to introduce a duty that ensures, wherever safe and practicable, that the Chair of each child's Hearing is consistent**. New subsection 4b of s.6 of the 2011 Act goes some way to achieving this—referring to the "desirability of consistency of membership in cases where a single member Children's Hearing or pre-Hearing Panel has previously dealt with a case", but in our view this is not strong enough.

Continuity of the Chair will ensure continuity of involvement and engagement in the lives of children and families, working alongside them from the very beginning and seeing the impact of their decisions. Trusted relationships are the foundation of making sure the Chair can work in the best interests of children and families, and be able to recognise when their opinions on needs to happen do not align. Quite simply, consistent decision makers is the single biggest change that has been identified by children, families and members of workforce that will make the biggest difference to the current operation of the Children's Hearings System.

Child's attendance at Children's Hearings and hearings before a Sheriff

We are supportive of the removal of a duty for children to attend their Hearing, particularly for very young children, which is in line with recommendation 8.12 of 'Hearings for Children'. However, we are extremely concerned that the second part of the recommendation has not also been translated into the Bill. The recommendation in full states 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****. There must be no presumption that babies and infants will attend their Hearing."*

The removal of the duty must be replaced with a presumption that a child will attend and the alternative ways that a child should share their views and engage with their Hearing must be clearly set out. As it currently stands, we are concerned that the removal of the duty in the absence of anything further about obtaining a child's views is not compatible with the United Nations Convention on the Rights of the Child.

The Hearings System Working Group did not recommend that children should no longer attend their Hearing. Rather, there was a specific recommendation that babies and infants should not be required to attend for reasons set out on Page 195 of 'Hearings for Children' relating to their ability to understand what happens at a Hearing). The report was also clear that:

- Particular attention should be paid to ensure effort has been made to capture the views and experiences of babies and infants and that the reports and information provided to the Hearing should set out the importance of making decisions in accordance with their developmental timescales and milestones.

- For other children, it is important that that exclusion provision is not habitually or routinely applied but rather there is a balanced and informed discussion, with the child, to make a determination about their attendance.

- The existing obligation should be replaced with a presumption that the child will attend their Hearing, and the Chair should operate based on a presumption that a child will attend.

- The existing range of options available to help facilitate children's attendance within the Children's Hearings System should remain in place and expand in accordance with emerging research, evidence and shared learning from other tribunals and ongoing improvement work.

- Ensure that attendance minimises disruption to their childhood, as far as possible.

- If a child does not wish to attend their Hearing, then there should be clear mechanisms in place to help the child understand what will be discussed at the Hearing and what decisions were made. If a recording was made of the Hearing consideration should be given to whether the child should have access to that—with support in place—after the Hearing has taken place. The Collaborative Redesign Project made a number of suggestions to ensure children fully understand what happened at their Hearing, whether or not they attend their Hearing in person (Pages 195-197).

Chapter Nine of the Redesign report (the voices and involvement of children and their families in the Hearing) goes into considerable detail about the changes required to improve the participation and involvement of children and the important people in their lives in Hearings. We understand that many of these changes are being led by the Redesign Board and the Scottish Children's Reporter Administration given that they do not require legislative change.

However, **this section of the Bill must be amended at Stage 2 to ensure that the presumption (with the exception of babies and infants) as envisioned by the Hearings System Working Group is included on the face of the Bill** and that there is a clear legislative understanding that the Hearing will seek to understand the child, and their families', views and experiences to help inform decision making. There must be additional options to ensure that children and young people are able to participate in their Hearing and to share their views in ways that make sense to

them, in line with Article 3 and 12 of the United Nations Convention on the Rights of the Child.

The role of the Reporter and changes to processes around grounds

The changes set out in the Bill with respect to the Reporter and the grounds process are extremely complex and due to a lack of prior engagement before the Bill was laid we do not yet have an understanding of children, families and members of the workforce's views of the proposed changes. As the Committee considers the changes within the Bill we ask them to keep in mind the original intention of the Hearings System Working Group as set out in Chapters Five and Six of 'Hearings for Children' and the importance of ensuring that the changes help to improve children and families' experiences of the Children's Hearings System rather than to add additional complexity. **Adding additional complexity to the system is contrary to the conclusions of the Independent Care Review, which calls for 'decluttering' and simplifying** and to the overall aims of the Hearings System Working Group which aimed to improve children, families and members of the workforce's experiences rather than confuse them further.

We are supportive of changes being made to the role of the Reporter, in line with the conclusions of 'Hearings for Children':

"The role of the Reporter prior to a referral being made to the Children's Hearings System must be enhanced. The engagement of the Reporter must routinely be considered during other child protection and care and support meetings and discussions, and there must be a consistent approach to partnership working between agencies and the children's hearings system" (rec 3.5)

"Once a referral has been received, the Reporter must work more closely alongside children and families, where possible" (rec 4.3)

The Hearings System Working Group redesigned the Children's Hearings System where the voices, views and experienced of children and their families are routinely part of the Reporter's investigation. The recommendation was that a **statutory duty on the Reporter to seek the views of the child and family, if they wish to share, should be considered**. This does not necessarily mean that the Reporter needs to meet with the child and their family, adding in new people into their lives and asking them to repeat their stories, but rather that the Reporter should be satisfied that they are aware of the child and families' views and perspectives to help inform their decision making. Social workers, advocacy workers and other important people in their lives have an important role in ensuring children's voices are heard, particularly very young children.

The new provisions in s.69A of the Bill make a provision where before arranging a Hearing or making an application to the Sheriff, the Principal Reporter must offer the child and each relevant person an opportunity to discuss the statement of grounds, the child's participation and other matters. We welcome the intent of this provision, but **we are concerned that this does not align entirely with the recommendation in 'Hearings for Children',** which was not about a meeting, but about ensuring the child and families' views were taken into account. Further work is required to understand how this would work in practice and how the recommendations in

'Hearings for Children', which were based on extensive engagement and collaboration, including with children and families, can be realised in practice.

Additionally, 'Hearings for Children' makes a recommendation (8.4) about a **meeting with the Chair, rather than the Principal Reporter**—with the intention of being an opportunity for the child and their families' preferences about how they would like the Hearings to take place to be discussed and to understand more about the practical support that should be in place to keep them safe. This is described in detail on Pages 187-188 of the report. The proposed changes in the Bill appear to conflate the two issues—and underline the need for a clearer understanding, in statute, as to the role of the Chair. 'Hearings for Children' described a **clearer separation between the potentially adversarial process of establishing grounds (despite the introduction of additional measures to 'lower the temperature') and the inquisitorial approach taken by Children's Hearings** and led by the Chair.

Grounds Hearings

The recommendations in 'Hearings for Children' relating to Grounds Hearings based on extensive discussion and deliberation, were:

"The process of establishing grounds must change.

The drafting of grounds and the Statement of Facts should be reframed to take a rights-based approach to help families to better understand why grounds are being established and recognise themselves in the drafting.

Where relevant and appropriate, the Statement of Facts should include strengths and positive elements of a child's care in addition to the challenges in their lives.

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."
(Recommendation 5.1)

The recommendation was very clear: there must be no more Grounds Hearings. This was not something that the Hearings System Working Group arrived at lightly. The current process of establishing grounds in the Children's Hearings System was one of the areas that was constantly and consistently pointed out by children, families and members of the workforce as being distressing and must change. The process was described as being adversarial, combative and traumatic. As a result, 'Hearings for Children' provided an alternative view about how grounds should be established—this is set out on Pages 137 -142.

The Promise Scotland has sought a legal opinion regarding this, which concluded there was no legal impediment to grounds being established in the way described in 'Hearings for Children'.

Some of the changes to the existing process as set out in the Bill are extremely welcome. We are extremely supportive of measures to help children and families understand the process and the grounds themselves better and to ensure that where grounds are not contested a Hearing can be immediately convened which will reduce the current drift and delay in the system.

We are also extremely supportive of the measures in the Bill where a Reporter can make a direct referral to a Sheriff where grounds are contested. These are significant and transformational changes that will make a difference to children and families and all those working alongside them in the Children's Hearings System.

We are concerned, however, about the new approach that is being introduced alongside these changes which allows for the Chair and Reporter to have an 'inquisitorial' discussion with children and families where it is possible that some or all of the grounds may be accepted. Although we recognise the good intentions behind this proposal, **we are concerned that it is being introduced without significant discussion and consultation with children, families and members of the workforce**—including Children's Hearings Scotland and the Scottish Children's Reporter Administration. In our view further work is required to ensure that the proposals are compliant with human rights legislation, including the United Nations Convention on the Rights of the Child, and to ensure that the changes will help to meet the conclusions of the Independent Care Review. As drafted it is currently unclear how decisions will be made about which families would engage in this new process and what the basis for this decision-making is. There is also a danger that this will add drift and delay into the system if a referral is then made to the Sheriff—although we recognise that the reverse may also be true.

It is unclear to The Promise Scotland why the changes set out in 'Hearings for Children' cannot be made in their entirety, and why the new element (s.69C) relating to a 'possibility' of grounds being accepted needs to be introduced.

Additionally, the recommendations in 'Hearings for Children' regarding eliminating drift and delay in establishing grounds should be considered by the Committee. In particular, recommendation 5.4.1 which states that statutory timescales for establishing grounds (with the appropriate caveats) should be considered:

"The benefit of a statutory three month set time limit for the determination of grounds should be considered. Importantly, the recommendation is also clear that there should be scope for this to be extended in extreme circumstances, at the discretion of the Sheriff. This could be similar to the introduction of mandated timescales for decision-making in England and Wales."

The average length of time between the Reporter receiving a referral about a child, grounds being established and a Hearing making a decision about a child and their family is approximately 8.5 months. Establishing grounds for referral, when the facts are disputed, can take on average approximately 3.5 months, although the Hearings System Working Group has heard examples of children and families waiting up to 6 months or even more than a year. These are extraordinary lengths of time for children and families to be in limbo, waiting for significant decisions that will impact on the rest of their lives.

Members of the workforce have spoken about the help and support for children and their families to address the challenges in their lives being 'paused' or not put in place while they were waiting for a decision from a Hearing. This is despite the evidence which shows that the first six months are most effective in terms of working alongside children and their families after an acute incident has taken place. This should be urgently addressed. Children and families must feel supported while they are waiting for their Hearing to take place and efforts should be made to address systemic delays.

The Promise Scotland would welcome amendments at Stage 2 to bring forward a statutory time limit for establishing grounds which would introduce a discipline among practitioners, relevant persons, and other participants in the proof that would have the overall effect of limiting unnecessary drift and delay.

Relevant persons

We are supportive of the proposed changes regarding relevant persons, which was not an area considered by the Hearings System Working Group, though the Group was clear that redesigned Children's Hearings System must work harder to hear the views of the important people in a child's life and make sure they feel involved in the decision-making process. In our view the proposed changes will help to add in additional protections and ensure that children's rights are upheld.

Changes to language

We are supportive of the changes to the language around tests for referral to the Principal Reporter (from "might be" to "is likely to be" and other changes), which is in line with recommendation 3.3 of "Hearings for Children'. We note that the recommendation goes further and also refers to the need to update the language around 'treatment and control'. We understand the Scottish Government is considering the impact of this change and would **welcome amendments at Stage 2 to progress this if possible.**

Access to advocacy and legal representation

We are supportive of the proposed changes to advocacy within the Children's Hearings System. 'Hearings for Children' concluded (recs 4.1.1, 4.1.3) that:

- *If a child does not already have an advocacy worker, there should be an immediate offer of advocacy at the point of referral to the Reporter for all children. This must be fully explained to children in ways that they understand so that they are aware of what an advocacy worker is and the role that they can play. Independent advocacy and legal advice at point of referral.*

- *The offer of advocacy should be repeated to children and to their families at different stages of the process.*

The Scottish Government accepted these recommendations in full. We note that the Bill states that local authorities, police officers and the Principal Reporter must inform children earlier about "the availability of advocacy services" in s.21. It is important

that these services are available at an earlier point if children are being informed of them.

We are unclear how the provision for advocacy in this part of the Bill aligns with the changes to advocacy provision and the right to advocacy described in Chapter One of the Bill. Children must not be offered multiple different advocacy workers and there must be a clear alignment and transition for children as they leave the Children's Hearings System, including the option to retain their advocacy worker if they have established a relationship with them. As we have stated above, The Promise Scotland's recommendation to the Scottish Government in December 2023 was that the National Practice Model for the Children's Hearings System is expanded for children and young people.

Recommendation 10.1 of 'Hearings for Children' makes specific reference to the conduct of lawyers, which was an area consistently raised by children, families and members of the workforce with the Hearings System Working Group. In line with the broader ambition for an inquisitorial system, the report recommended a review of the pre-existing Code of Practice that lawyers are required to adhere to, mechanisms to review practice and consideration of the development of rights of audience.

The report also recommended (4.2) that children should be fully informed of their right to legal representation and that there should be an exploration and understanding of whether the current mechanisms for them to access legal aid and their right to legal support is sufficient.

In our view, **consideration of these areas is missing from the Bill.** We understand that discussions are ongoing to ensure that regulations are laid to ensure children who are referred to the Reporter on offence grounds are automatically able to access legal representation. We strongly support this and seek assurance that an alternative legislative vehicle has been identified in addition to consideration of what may be done to introduce rights of audience and ensure that all children are able to access legal representation in addition to the right to advocacy.

Part Two

Q9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill?

The Promise highlights that Scotland's 'care system' is burdened by complex and incoherent legislation, placing strain on the workforce, and that despite the levels of bureaucracy, current data and reporting focus more on system processes and settings, what can be easily measured, than on the real experiences and outcomes of children, families and care experienced adults – the things that matter most to them. It concluded that Scotland must declutter the landscape for how it cares.

Services and provision must be designed on the basis of need and with clear data, rather than on an acceptance of how the system has always operated (pg.110). As the 'care system' shrinks and specialises, the nature and needs of the children requiring care will change and therefore the data captured must evolve too.

The Oversight Board for the promise's Report ONE highlighted how complex the existing governance landscape is, and the myriad of accountabilities across many organisations, concluding that "accountability needs to shift away from the individual parts of the 'system' and towards a collective accountability framework, focused on the needs of children, young people and their families" (pg.8).

The Promise Scotland's 'Resetting public services: Governance and accountability to keep the promise' paper sets out five principles that should be built into a reset of how Scotland's public services are governed, and is clear that to sharpen accountability for outcomes, the reporting burden on public bodies must be minimised.

The Promise Scotland is supportive of measures to ensure that Integrated Joint Boards are part of children's services planning. That said, this section of the Bill is a missed opportunity to enable the more substantive changes that are required to address the reporting burden on local areas and to consider how to streamline reporting duties and improve monitoring and data collection to ensure that what is being measured matters to children and families and care experienced adults.

There will be a need for further legislation in these areas to ensure that reporting requirements around children's services make sense to the workforce and are not overly bureaucratic. There is also a need to improve children's services planning to ensure that plans are more accessible to children and families and local communities. This could include requirements to ensure meaningful involvement of care experienced children, young people and families in shaping local plans, including them playing a role in deciding what information is used to report on and to measure outcomes, so that plans reflect a combination of national measures and locally co-designed indicators of what matters to children and families.

CELCIS, the Centre for Excellence for Children's Care and Protection response to the Children (Care, Care experience and Services Planning) (Scotland) Bill 2025 call for views

Information about your organisation

CELCIS, the Centre for Excellence for Children's Care and Protection, based at the University of Strathclyde, is a leading improvement, innovation and research centre. We improve children's lives by supporting people and organisations to drive long-lasting change in the services they need, and the practices used by people responsible for their care.

We welcome the opportunity to submit our views in response to the Education, Children and Young People Committee's call for views on the Children (Care, Care Experience and Services Planning) (Scotland) Bill.

Our response is underpinned by research evidence, practice experience, and extensive insight and intelligence from lived experience and professional practice gathered through our long-standing, cross-organisational and interest-specific networks, as well as our group of consultants with lived experience of care. These networks include people across the workforce, including leaders working across the spectrum of children's services and other public services working in support of children, young people and their families and adults with care experience, amongst others.

Four public consultations were undertaken by Scottish Government to inform the development of this Bill: 'Moving On' from Care into Adulthood; Children's Hearings redesign - policy proposals; Developing a Universal Definition of "Care Experience"; and The Future of Foster Care.

CELCIS provided responses to each of these consultations as follows:

- CELCIS's response to the Scottish Government's consultation on 'Moving On' from Care into Adulthood: https://www.celcis.org/knowledge-bank/search-bank/celcis-response-scottish-governments-consultation-moving-care-adulthood
- CELCIS's response to the Scottish Government's consultation on Children's Hearings Redesign: https://www.celcis.org/knowledge-bank/search-bank/celcis-response-scottish-governments-consultation-childrens-hearings-redesign
- CELCIS's response to the Scottish Government's consultation on developing a universal definition of 'care experience': https://www.celcis.org/knowledge-bank/search-bank/response-celcis-scottish-governments-consultation-developing-universal-definition-care-experience
- CELCIS's response to the Scottish Government's consultation on the 'Future of Foster Care': https://www.celcis.org/knowledge-bank/search-bank/response-celcis-scottish-governments-consultation-future-foster-care

Where relevant, our response to this Call for Views draws on the evidence and

information we provided within these consultation responses, including specific information relating to provisions included within the Bill.

What are your views on the aftercare provisions set out in the Bill?

CELCIS welcomes the provision to expand the eligibility to apply for aftercare. This Bill provision acknowledges that the impact of childhood experiences can be felt into adulthood and that support may be required as a result. As explained in our 'Response to the Scottish Government's Consultation on 'Moving on' from Care into Adulthood (CELCIS, 2024a, p.3), all young people need support as they enter adulthood. Currently, many of the entitlements regarding children who needed care and protection are only available if they are also 'care leavers', which means they have ceased to be 'looked after' on or after their 16th birthday. This proposed extension of aftercare would amend the current inequity in access to aftercare and include those who cease to be 'looked after' at any point prior to their 16th birthday.

The intention of this provision is to meet the needs of a wider group of children and young people with experience of care. Aftercare in the form of practical, emotional and financial support is essential to keeping The Promise of the Independent Care Review, recognising the potential longer-term impacts of needing alternative care when young, and upholding the United Nations Convention on the Rights of the Child (UNCRC) (1989). Article 20 of the UNCRC is clear that children are entitled to special protection and assistance from the State where they are bought up in alternative care; specifically, they have a right to continuity in their upbringing. This is also in keeping with the principles of the Getting it right for every child (GIRFEC) approach in Scotland, specifically to "providing support for children, young people and families when they need it, until things get better, to help them to reach their full potential" (Scottish Government, 2022, p.6). Expanding aftercare could be part of the answer to how Scotland better responds and attends to the variety and individuality of the needs and circumstances of every and each individual care experienced young person as they approach and navigate adulthood.

However, we have concerns about the financial modelling as set out in the Bill's Financial Memorandum (Scottish Government, 2025a). The expansion of aftercare will require robust financial modelling and attention to workforce capacity if this policy is to be delivered so that these policy aspirations can be realised to improve the lives of care experienced children and young people.

Workforce and financial implications

An adequately resourced, skilled and supported workforce is crucial to successful implementation of this provision. It is likely that social work practitioners would conduct most of the assessments with children and young people required for aftercare eligibility, and we welcome that under this provision these would be undertaken by skilled practitioners. This would bring additional responsibilities to the social work workforce, which would be challenging within the current context. The children's services workforce is in crisis, tasked with increasing demands in what has been described by the workforce as a cluttered, insufficiently aligned and at times,

contradictory legislative and policy landscape (Ottaway et al., 2023, p.25).

The Financial Memorandum notes that eligibility for these provisions would be sequenced, based on a “gradual eligibility” model (Scottish Government, 2025a, p.8). Clear communication of this phased approach would be vital so that children, young people, their carers and practitioners who support them are aware of their entitlements, as well as who is not eligible for support. It is essential to set clear, achievable expectations and ensure alternative support is available for children and young people who need help but do not qualify for aftercare.

The Financial Memorandum notes that: “all costs are steady-state - i.e. do not include any recruitment, training or other costs which might be required to expand capacity to provide aftercare” (Scottish Government, 2025a, footnote 17). This is a concern and warrants further consideration. The social work and children’s services professions are already working with limited and reducing resources, during a recruitment and retention crisis (Ottaway et al., 2023, p.25). The Scottish Social Services Council has reported a reduction in filled children and families and justice social work posts by 2.4% between June and December of 2024, with vacancy rates varying between 0% and 26.2% - but the highest in children and families social work (Scottish Social Services Council, 2024a).

Communication and further consultation with the social work profession regarding implementation would be vital and necessary if this provision for children and young people is to be successfully implemented.

Communication

It would be necessary to co-produce guidance on aftercare with children, young people, adults and the workforce, alongside quality training, support and coaching to embed learning, to support implementation of this provision. A good practice example that we can offer is the co-produced ‘Your Right to Continuing Care’ information materials (CELCIS, 2022). The content and format of these materials was led by a group of young people with experience of care, who worked with CELCIS, Clan Childlaw and the Care Inspectorate to develop these resources as a tool for having conversations about entitlement to Continuing Care. These resources are available in multiple formats and all hosted and freely available online.

Any guidance produced will need to include clarity around which local authority would be the implementing authority offering support. That is, would it be the local authority in which someone lived, or last lived, when they were a ‘looked after’ child (if known); or would it be the local authority in which someone is currently living at the time of being eligible for aftercare?

The Policy Memorandum states that: “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” (Scottish Government, 2025b, p.7).

Unaccompanied asylum-seeking children who arrive in Scotland before their 16th

birthday should currently be entitled to aftercare as they would be considered 'looked after' by a local authority when known to them. It is important that all information about the needs and entitlements of this group of care experienced children is clear and accurate, in order to promote a consistent understanding of their rights and entitlements across Scotland.

A communication strategy will also be vital to ensure that young people are aware of their entitlement to support and how to access this. Consultation with care experienced young people about this Bill provision and its implementation would be essential to develop effective communication strategies. Taking a co-design approach with young people will help to make the information more accessible and engaging.

Implementation of support

All 'care leavers' whose care and protection remains the responsibility of the state on their 16th birthday must continue to get the support that they need. Scottish Government Children's Social Work Statistics for 2023-24 show that whilst the number of children eligible for support via current aftercare provisions has risen steadily over time, not enough young people are receiving this support (Scottish Government, 2025d).

Evidence on the support for care experienced people transitioning to adulthood shows that gaps in the implementation of these entitlements must be addressed (Lough Dennell et al., 2022). CELCIS Consultants with lived experience have consistently said that practice and resourcing across Scotland for aftercare provision needs to improve to ensure young people can access this support. Any changes must be properly resourced, otherwise these will not be effective. Getting this implementation right is necessary to uphold the commitments made to care experienced people in The Promise of the Independent Care Review (2020).

Policy and practice change, such as this proposed extension to aftercare, takes considerable time to be successfully implemented. Much can be learned from implementation frameworks, as well as from the implementation challenges that have been, and continue to be, experienced in relation to Continuing Care in Scotland (Lough Dennell et al., 2022).

Housing

Getting aftercare right for young people is inextricably linked to the circumstances and stability of their lives, and having a safe, appropriate place to live is central to this. Housing is a continual and pressing issue for care experienced young people. This is an issue that our Consultants with lived experience have consistently raised as essential support in transitions to adulthood:

"What are they [the Bill] saying about housing? In relation to financial support for education, which is specifically mentioned - surely financial support includes stable and secure housing?"

CELCIS Consultant with lived experience

As of July 2025, twelve local authority areas in Scotland have declared a housing emergency, with the Scottish Government announcing a national housing emergency in May 2024 (Scottish Government, 2024). This lack of affordable housing in general, plus a lack of local authority housing, has meant that many young people with experience of care simply cannot access suitable accommodation. Care experienced young people must have choices about where and how they wish to live. Too often, policy and practice move them towards supported accommodation or local authority procedures for assisting people requiring social housing: this can limit access to quality housing and increase young people's exposure to potentially vulnerable situations. Current funding and commissioning structures are focused on the provision of homelessness services, which can exacerbate this situation for young people. Key organisations must address these anomalies to fulfil the Scottish Government's Housing First approach (www.gov.scot/collections/housing-first-publications), that prioritises choice, dignity, and stability over crisis-driven systems.

It is also worth noting that care experienced young people will often be living independently at a much younger age compared to many of their peers, with data about the age they leave home out of date and urgently in need of updating so that their experiences and support needs can be better understood (CELCIS, 2015).

It is not only the bricks and mortar of housing availability, affordability and security that must be considered. Living independently means having the practical skills required to run a home; being able to budget and pay bills; and having life skills and knowing how to maintain a tenancy - these are all essential. Support to do all this is vital and all young people need help and assistance to navigate these. Many young people will have the safety net and networks of family and others to help them; young people with experience of care need this too and may be far younger – 16-21 years of age – than their peers when leaving home. This must be considered in financial and workforce planning for supporting this vital part of aftercare.

Footnote

'Looked after' is the term used in the Children (Scotland) Act 1995 to refer to a child with care and protection needs who is cared for under a formal arrangement with a local authority.

References

- CELCIS (2015) Housing Options and Care Leavers: Improving Outcomes into Adulthood. Glasgow: CELCIS. https://www.celcis.org/application/files/7114/3938/6983/Inform-Housing_Options_and_Care_Leavers.pdf
- CELCIS (2024a) CELCIS's Response to the Scottish Government's Consultation on 'Moving On' from Care into Adulthood. Glasgow: CELCIS. https://www.celcis.org/application/files/2417/2831/0488/Moving_on_from_care_into_adulthood_consultation_-_CELCIS_response.pdf.
- CELCIS (2022) Your Right to Continuing Care. https://www.celcis.org/ccrights.
- Convention on the Rights of the Child (1989) Treaty no. 27531. United Nations Treaty Series, 1577, pp. 3-178. Available at:

https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf.
- Lough Dennell, B. L., McGhee, K. and Porter, R. (2022) Continuing Care: An exploration of implementation. Glasgow: CELCIS. https://www.celcis.org/application/files/5816/4751/7713/continuing_care_an_exploration_of_implementation.pdf.
- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C. A., and Mackinnon, K. (2023) Children's Services Reform Research: Learning and Implications for Scotland: Concluding Report. Glasgow: CELCIS. https://www.celcis.org/application/files/6117/0245/9620/CSRR_Concluding_Report_-_CELCIS_-_13_December_2023.pdf.
- Scottish Government (2022) Getting it Right for Every Child: Policy Statement. Edinburgh: Scottish Government. https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2022/09/getting-right-child-girfec-policy-statement/documents/getting-right-child-policy-statement-2022/getting-right-child-policy-statement-2022/govscot%3Adocument/getting-right-child-policy-statement-2022.pdf.
- Scottish Government (2024) Ending Homelessness Together: Annual Report to the Scottish Parliament. Edinburgh: Scottish Government. https://www.gov.scot/publications/ending-homelessness-together-annual-report-scottish-parliament-november-2024/documents/.
- Scottish Government (2025a) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Financial Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74fms062025accessible.pdf.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74pms062025accessible.pdf.
- Scottish Government (2025d) Children's Social Work Statistics: Looked After Children 2023/24. Edinburgh: Scottish Government. https://www.gov.scot/publications/childrens-social-work-statistics-looked-after-children-2023-24/.
- Scottish Social Services Council (2024a) Social Worker Filled Posts and Vacancies Six-monthly Survey: Analysis of the Data Collected as at 6 December 2024. Dundee: Scottish Social Services Council. https://data.sssc.uk.com/data-publications/409-social-worker-filled-posts-and-vacancies-december-2024.

Further reading

- CELCIS (2019) Homelessness and Care Experience, Beyond the Headlines. Glasgow: CELCIS. www.celcis.org/application/files/7215/5835/3996/Beyond_The_Headlines__Homelessness_May_2019.pdf
- Doull, K. (2025) 'Looking beyond the data at continuing care and aftercare', CELCIS Blog, 17 July 2025. www.celcis.org/knowledge-bank/search-bank/blog/looking-beyond-data-continuing-care-and-aftercare.

What are your views on the corporate parenting provisions set out in the Bill?

CELCIS is supportive of current corporate parenting measures set out in the Children and Young People (Scotland) Act 2014, alongside the suite of measures already in place to ensure that care experienced children and young people who need support can receive it. In theory, an expansion of these measures may be beneficial for children and young people who need support but who were not previously entitled to do so, but any legislative changes aimed at enhancing support should look at and learn from the impact of current policies. We are concerned that the Bill's provisions extending corporate parenting will not necessarily provide children and young people with the type of greater support they need without the focus on assessment, resourcing and implementation, and indeed the specific provisions could be an inadvertent encroachment into private family life.

These Bill provisions amend corporate parenting duties so that they would apply to every formerly 'looked after' child and young person from the time they cease to be 'looked after' until they turn the age of 26. The rationale for extending such duties to apply to children who have not been 'looked after' for some time, is unclear. Currently, the state has no locus to intervene in such family arrangements where no care and protection concerns have been identified. Consequently, whilst this proposed extension to corporate parenting duties could helpfully offer additional support to a wider group of children and young people with experience of care, it could also infringe on the right to private and family life under Article 8 of the Human Rights Act 1997. This would be a significant shift regarding the role of the state in family life in Scotland. As such, it may be helpful for this proposal to be publicly consulted on - including with stakeholders and children and families who may be affected – before being included in the Bill.

It may be helpful to outline an example to illustrate this. A child may have been 'looked after' by foster carers from their birth until they were adopted at the age of 5. The position currently is that their adoptive parents take on parental responsibilities and rights in relation to their child's care and wellbeing, and there is no locus for corporate parenting duties. The proposed corporate parenting change would mean that the child's local authority (as the corporate parent) would retain its corporate parenting responsibilities in relation to that child, up to their twenty-sixth birthday. Whilst it is possible that this child may benefit from support from corporate parents as they grow up, such as support to understand their time in care, this proposed change brings children and young people who would not otherwise be interacting with the 'care system' anymore, back into this system. Doing so may risk affecting the family's relationships and responsibilities. It would also require increased resourcing in terms of workforce capacity and funding. This one example alone illustrates what a significant change this provision would be and why this proposal should not be advanced without further consultation.

Supporting care experienced children and young people

It is crucial that current support for care experienced children and young people is sustained and not impacted by extending the provision. Any extension of entitlements to support should be focused on children and young people getting the support they need, when they need it, in line with Scotland's GIRFEC approach.

All children and young people need support at some point in their lives and care experienced children and young people who have experienced disruption to their relationships, trauma and/or adversity will often require additional support and will have diverse experiences and needs. Some children, young people and adults will not need support and, some might want support to understand their time in care if it was when they were much younger. However, some care experienced people will require more intensive support to mitigate the impact of significant adversity, trauma or disruption during their young lives and we need to ensure that those with the greatest need are prioritised. It is essential that individualised support is available which is suitable for the different circumstances that have been experienced. For many, more specialist support such as aftercare or adoption support services will be more appropriate than support provided through more general corporate parenting provisions.

Workforce and financial implications

The extension of corporate parenting provisions would have significant financial and capacity implications for the social work profession as well as other corporate parents, as they would have duties in respect of a larger number of Scotland's children and young people. There are already inconsistencies in the provision of many specialist services care experienced children and young people in Scotland require, for example in post adoption support, or the uptake of Continuing Care entitlements (Ottaway et al., 2024; Lough Dennell et al., 2022). These must be also addressed alongside addressing the financial and workforce constraints that would be necessary for effective service delivery.

Further consultation

There is a need for a clearer rationale as to why this change to corporate parenting duties has been proposed. If this extension of corporate parenting duties has been created to align with the extension to the eligibility to apply for aftercare, further information is required about whether these changes are necessary to facilitate the proposed changes to aftercare provisions. There is very limited discussion and information around the extension to corporate parenting duties in the Bill's Policy Memorandum (Scottish Government, 2025b). Additionally, current Statutory Guidance on corporate parenting was published in 2015 (Scottish Government, 2015). It is no longer up to date, as there are references to Parts 4 and 5 of the Children and Young People (Scotland) Act 2014 which have now been repealed, and would require further updating if this new provision were to be enacted (Scottish Government, 2015).

We are concerned that these provisions have not been consulted upon, either to afford care experienced children, young people and adults the opportunity to talk about their experiences and hopes for support through Corporate Parenting provisions, or for the practitioners and others in the sector who will provide this

support, to inform legislators and policy-makers about what would be needed to implement this provision, and the implications and consequences of the changes.

References

- Lough Dennell, B. L., McGhee, K. and Porter, R. (2022) Continuing Care: An exploration of implementation. Glasgow: CELCIS. https://www.celcis.org/application/files/5816/4751/7713/continuing_care_an_exploration_of_implementation.pdf.
- Ottaway, H., Fowler, N., McIver, L. and Davidson, L. (2024) Towards Modernising Adoption in Scotland: A Focused Mapping Review. Glasgow: CELCIS. https://www.celcis.org/application/files/8217/3209/5671/CELCIS_-_Towards_modernising_adoption_in_Scotland_A_focused_mapping_review.pdf.
- Scottish Government (2015) Children and Young People (Scotland) Act 2014: Statutory Guidance on Part 9: Corporate Parenting. Edinburgh: Scottish Government. https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2015/08/statutory-guidance-part-9-corporate-parenting-children-young-people-scotland/documents/00483676-pdf/00483676-pdf/govscot%3Adocument/00483676.pdf.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74pms062025accessible.pdf.

Further reading

- CELCIS (2017) Inform Briefing: The Children and Young People (Scotland) Act 2014: Part 9 (Corporate Parenting). Glasgow: CELCIS. https://www.celcis.org/application/files/3114/8542/6899/Inform_Briefing_Part_9_2017updated.pdf.

What are your views on the advocacy proposals set out in the Bill?

All children, young people and adults may need support at some point during their lives to navigate systems and services. Children, young people and adults with experience of care should have the right to access advocacy at the time they need and be supported to access it.

In responding to this question, we would like to offer some insights into good practice in providing advocacy support for all children, young people and adults with care experience and to highlight some principles and considerations to contribute to the Committee’s deliberations about these provisions.

Rights and participation of children, young people, adults and families

Advocacy can support children, young people, adults and families to better understand their rights to access a wide range of services, support and entitlements, such as housing, welfare and benefits, further and higher education, employability, and childcare.

The Scottish Government's national commitment to children and young people, through the Getting it right for every child (GIRFEC) approach, is "to provide all children, young people and their families with the right support at the right time - so that every child and young person in Scotland can reach their full potential" (Scottish Government, 2022, p.1). Access to advocacy support should be in line with the GIRFEC approach to ensure that all children and young people grow up with the support they need.

All children require supportive relationships with adults to allow them to develop to their full potential. Children in need of care and protection will often be subject to legal proceedings and processes such as the Children's Hearings System. The support from an adult to articulate their needs to ensure their rights are upheld is crucial here, as well as paying attention to the particular needs of infants and young children, and children with disabilities, learning difficulties or communication needs. The offer of advocacy should be made at the earliest possible time and should allow for choice. This is particularly important for children who do not have any supportive adult connections (or where these connections may be in dispute).

Offer of advocacy

Advocacy should not be offered on a one-off basis. The Hearings for Children report (The Promise Scotland, 2023) recommends that children and their families need to be repeatedly offered information about advocacy and access to advocacy services. Creating spaces for repeated offers of advocacy support is an approach which is both trauma-informed and good practice. It is important to recognise that how and when advocacy is offered is significant to people's experience in addition to the quality and nature of the advocacy that is provided.

When seeking advocacy, children, young people and adults should be enabled to nominate a supportive adult in their lives to help them share their views. This is in line with GIRFEC values and principles (Scottish Government, 2022, p.6) which include: "Placing the child or young person and their family at the heart, and promoting choice, with full participation in decisions that affect them". Supportive relationships may already be in place with adults that children, young people and adults trust. Such relationships should be explored as a source of advocacy, in addition to the offer of support from an advocacy worker. That being said, it may be necessary to support practitioners so that they can effectively advocate for children, young people or adults.

Proof of experience of care

The development of a care experience advocacy service may be predicated on a need for children, young people and adults with experience of care to need to prove their 'status'. Drawing on the findings from O'Neill et al. (2019), we suggest that any

proof required regarding experience of care to access advocacy services should be flexible and inclusive. The process of proving your care experience should be minimally invasive, relational and trauma-informed. Any agency requiring proof of someone's care experience should ensure that practitioners are able to sensitively and supportively guide people through their processes and can be signposted to relevant additional services who can help care experienced people navigate any potentially upsetting or harmful emotions or outcomes they may experience from providing this proof.

There is also a risk that a person with care experience who approaches a local authority to obtain proof of their care experience could inadvertently be directed to make an application for their full care records before they are ready to do this. There must be guidance to ensure practitioners and local authority staff are clear about what is required of them to fulfil a care experienced person's request for proof of their care experience, including a need to distinguish whether this is a request for their care records, or a letter confirming that they have previously been 'looked after'.

Interaction with other Bill provisions

This provision relies on the creation of regulations related to a definition of care experience, as outlined in subsection (6) of the explanatory notes (Scottish Government, 2025c). Further clarity is needed regarding how any regulations produced would interact with guidance in relation to care experience as outlined in Section 4 of the Bill, to avoid any misunderstandings and policy fragmentation.

References

- O'Neill, L., Harrison, N., Fowler, N. and Connelly, G. (2019) 'Being a Student with Care Experience is very Daunting': Findings from a Survey of Care Experienced Students in Scottish Colleges and Universities. Glasgow: CELCIS. https://www.celcis.org/knowledge-bank/search-bank/survey-care-experienced-students.
- The Promise Scotland (2023) Hearings for Children, Hearings System Working Group's Redesign Report. Edinburgh: The Promise Scotland. https://thepromise.scot/resources/2023/hearings-for-children-the-redesign-report.pdf.
- Scottish Government (2025c) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Explanatory Notes. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74ens062025accessible.pdf.

What are your views on the proposals for guidance in relation to care experience?

In our response to the consultation on creating a universal definition of care experience (CELCIS, 2025a), CELCIS highlighted the potential implications of more clearly articulating what is meant by the term 'care experience' and the impact that providing a definition could have on care experienced people. We also indicated that

the proposals in the consultation were unclear and insufficient to truly create meaningful change for care experienced people. Many of the opportunities and gaps that we raised remain relevant to the context that the Bill's measures in this area would be operating in.

The Bill sets out requirements on Scottish Ministers to publish guidance in relation to use of the term care experience. We welcome the indication that the proposed guidance would encompass a "broad range of care experience" (Scottish Government, 2025b, p.16). This very much speaks to what people with experience of care have fed into the consultation:

"We aspire for this to be wide, inclusive and broad, but because this is being implemented by a government, I worry that this will end up being a very narrow definition."

CELCIS Consultant with lived experience

The provisions in the Bill to create guidance in relation to use of the term care experience may be helpful for creating consistency of language and establishing clarity on the meaning of frequently used terminology, which would be welcome. Nonetheless, we caution that this approach alone is unlikely to be sufficient to achieve the desired impact. Implementation support and consideration of the effect of these changes is required.

Involving care experienced people

"Pretty much every minority group in history has been able to define itself, and it sits deeply uncomfortably with me that Scottish Government are consulting on it, rather than co-producing it, or better yet, let the community define themselves."

CELCIS Consultant with lived experience

The Policy Memorandum states that the guidance produced would 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' (Scottish Government, 2025b). Co-designing this guidance with people with care experience and trusted organisations is welcome, and we appreciate that the calls for this in response to the consultation earlier this year, including our own, have been heard. No work in this area should be progressed without the engagement of children, young people and adults with experience of care, families and carers and practitioners.

"Whatever conclusion this consultation reaches, it should come from people with care experience, and as long as it has, I could get behind whatever the definition ends up being."

CELCIS Consultant with lived experience

Raising awareness and reducing stigma

“As soon as you start to define this, you will inevitably always miss out at least one person, who just so happens to not quite be ‘care experienced enough’, so how do you build in flexibility?”

“We don’t stigmatise people who are hungry because we know everyone needs to eat. But we stigmatise care experienced people for their needs because we don’t widely understand them [as a general public].”

CELCIS Consultants with lived experience

The Policy Memorandum (Scottish Government, 2025b) accompanying the Bill states that the guidance on the term care experience would describe what is meant by the term and outline wider guidance around language and terminology. The Financial Memorandum also states that, should the Bill be passed, the new legislation would mandate public authorities to “have regard” to the language of care guidance in the course of their work and interaction with people with experience of care (Scottish Government, 2025a, p.17). In addition, the Policy Memorandum states that the proposed guidance would “apply to all public authorities including Scottish Ministers, local authorities and wider corporate parents, in the course of their work and interaction with the care experienced community” (Scottish Government, 2025b, p.16).

Creating guidance in relation to care experience, as well as wider guidance around language and terminology, may help to improve consistency across different services, particularly those public authorities that opt to change their language to align with any guidance created by Scottish Ministers. Doing so could contribute to reducing stigma and discrimination and raising awareness of what care experience means.

However, there is no guarantee that agencies and organisations would make any changes to how they define and use the terminology of care experience as a result of the changes the Bill seeks to introduce. While public authorities would be required to “have regard” to the language of care, and the guidance itself is expected to apply to all public authorities including Scottish Ministers, local authorities and wider corporate parents in the course of their work and interaction with the care experienced community, it is not possible to know if they would in fact update their own policies and guidance accordingly nor how they would implement any changes in their services or workforce.

Furthermore, there is no information in the Bill or its accompanying documents regarding how any new guidance would be implemented. The Financial Memorandum suggests that costs other than those estimated for Scottish Ministers incurred when producing the proposed guidance are unclear (Scottish Government, 2025a). There are no costs identified for any awareness-raising activities or changes to practice by the Scottish Government, local authorities or other bodies, individuals or businesses as a result of the proposed guidance. There is also no information on the approach that would be taken to help raise awareness of care experience and reduce stigma for care experienced people.

These unknowns pose a risk to the aims of the Bill, as it is possible that the desired

impact will not be achieved. Guidance alone will be insufficient. It is the implementation of this guidance, and any changes that are made to policy and practice as a result of any new guidance, that could help to reduce stigma.

Reframing language and shifting societal attitudes

The Policy Memorandum states that the proposed guidance would raise awareness of social factors that can lead to people's involvement with the 'care system' and drive forward how changes to the way that care experience is thought about (Scottish Government, 2025b). For some care experienced people, the language used to write or speak about them and their care can contribute to stigma and discrimination felt across generations (Independent Care Review, 2020). At times, language can continue to focus on the deficits of people with care experience and reinforce negative stereotypes about what people with care experience are like or what they can achieve.

There are many examples of Scotland leading the way in changing how care is understood, contextualised and experienced, and in developing more inclusive and respectful approaches to speaking of or writing about care. For example, the Each and Every Child initiative, founded by The Robertson Trust, the Life Changes Trust, CELCIS, the Scottish Government, Social Work Scotland and the Esmée Fairbairn Foundation, which began in 2021, provides free, evidence-informed tools, training and learning on how care and care experience is framed and understood, and has worked with and informed practitioners across workforces in the public, private and voluntary sectors and children and adults with lived experience of care.

"Tinkering with language doesn't deliver The Promise"

CELCIS Consultant with lived experience

While guidance in relation to care experience may help to develop some consistency in how the terminology is used across sectors and organisations, that guidance alone won't raise awareness of these social factors or change how care experience is thought about. The Bill does not suggest changes to existing statutory definitions, such as 'looked after' or 'care leaver', both of which are acknowledged to be stigmatising (Independent Care Review, 2020). The stigma and discrimination that some care experienced people report feeling can also be exacerbated by the use of short-hand phrases and acronyms by some practitioners (Independent Care Review, 2020; McTier et al., 2023a). While excellent work has been undertaken to stop the use of acronyms such as 'LAC (Looked After Child)' or 'TCAC (throughcare and aftercare)', particularly when speaking or writing directly to care experienced people, this language is sometimes still used when writing or speaking in practitioner-focused spaces, or in wider literature. It is unclear how guidance produced in line with the Bill would seek to address the use of language like this, or how the implementation of the proposed guidance would change the language that is used throughout society, including that used by wider media and literature which ultimately affects how people think about and understand care experience (Armitage, 2018).

"A policy definition means nothing without a cultural shift that truly embraces it."

CELCIS Consultant with lived experience

Continued efforts to reframe the language of care experience in wider society is needed. The work of the Each and Every Child initiative demonstrates how it is possible to speak and write about care experience without unduly labelling or othering people (Each and Every Child, n.d.; Each and Every Child and The Lines Between, 2023). The initiative's emphasis on focusing on what all children and families need to thrive, while acknowledging the scaffolding that some children and families will need to support them, shows that it is possible to speak about the unique features of care experience without contributing to negative narratives about care experience as something that is wholly different. This is an example of reframing work, and we have seen similar advances in changing public understanding and language around social issues through reframing approaches including on poverty and on homelessness. Significant, consistent effort continues to be needed to improve how everyone views and speaks about care experience, not only public authorities and statutory organisations, and guidance for public authorities is only one part of the jigsaw here.

Impact on entitlements to financial and practical support

"If this is not going to have an impact on what people are entitled to, then this is just yet another tick box exercise that has no real benefit for us."

CELCIS Consultant with lived experience

Although not expressly outlined in the Bill or accompanying documentation, it seems likely that any guidance in relation to care experience may have wide-reaching consequences, impacting other proposals in this Bill, such as entitlement to advocacy support. The Policy Memorandum outlines that any guidance produced as a result of the Bill is not intended to replace existing statutory definitions which apply to children and young people who are care experienced or affect their existing legal entitlements (Scottish Government, 2025b). Therefore, it is unclear whether the Bill could impact on other, existing, support available to care experienced people. For example, the Bill's Financial Memorandum highlights the Care Experienced Students Bursary, administered by Student Awards Agency Scotland, and the Scottish Government funded early learning and childcare for eligible two-year-olds with a care experienced parent as two examples of support already using "a broad understanding of care experience" to determine eligibility (Scottish Government, 2025a, p.16). The documentation goes on to state that "it is not anticipated that a universal definition will impact on eligibility for these types of support" (p.16).

This assertion would seem to be inconsistent with the duty of public authorities to "have regard" for the proposed guidance and the statement in the Policy Memorandum that this guidance would apply to all public authorities including Scottish Ministers, local authorities and wider corporate parents, in the course of their work and interaction with the care experienced community (Scottish Government, 2025b). It is possible that, if new guidance is produced, then the Student Awards Agency Scotland and the Scottish Government may seek to make changes to the eligibility criteria for these supports, especially if they were to determine that the new guidance was, for example, more inclusive than their existing

criteria. This is also a possibility for other support offered to care experienced people whereby the eligibility criteria are not prescribed by statutory definitions such as ‘looked after’ and ‘care leaver’, such as discretionary support offered by local authorities or third sector organisations.
The evidence for our response to the consultation indicated that any attempts to define care experience would need to be accompanied with increased entitlements to support, where this is needed. If public authorities and other organisations elect to update their guidance based on new guidance, it is currently unknown whether this would in fact lead to more people receiving support, or less people receiving support. By making provisions to provide further details in forthcoming guidance, rather than outlining the specific proposals on the face of the Bill, the Bill and its accompanying documents cannot say explicitly what the actual impact on care experienced people and the organisations that provide support to them will be. In addition, the potential resource implications of any changes to entitlements to support people with experience of care in the context of current fiscal strains and workforce crisis (McTier et al., 2023a) cannot be underestimated and would need to be more fully explored.

References

- Armitage, C. (2018) ‘Telling stories’, REACH: The CELCIS Magazine, Issue 12. Available at: https://www.celcis.org/knowledge-bank/search-bank/blog/2018/12/telling-stories.
- CELCIS (2025a) Response by CELCIS to the Scottish Government’s Consultation on Developing a Universal Definition of ‘Care Experience’. Glasgow: CELCIS. https://www.celcis.org/application/files/7217/3833/6182/CELCIS_Response_to_the_Scottish_Government_consultation_on_developing_a_universal_definition_of_care_experience.pdf.
- Each and Every Child (n.d.) It’s Time to Change the Story. https://eachandeverychild.co.uk/.
- Each and Every Child and The Lines Between (2023) Evaluation of Each and Every Child: Final Report. Edinburgh: Each and Every Child and The Lines Between. https://eachandeverychild.co.uk/wp-content/uploads/2024/05/2024-Each-and-Every-Child-The-Lines-Between-Evalation-Report.pdf.
- Independent Care Review (2020) The Promise. Glasgow: Independent Care Review. https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf.
- McTier, A., Manole, M., Scott, J., Young, E., Fowler, N., McIver, L., Anderson, C. A., Porter, R. and Ottaway, H. (2023a) Children’s Services Reform Research: Scotland’s Children’s Services Landscape: The Views and Experiences of the Children’s Services Workforce. Glasgow: CELCIS. https://www.celcis.org/application/files/3716/9998/1465/CSRR_The_views_and_experiences_of_the_childrens_services_workforce_-_CELCIS_-_November_2023.pdf.
- Scottish Government (2025a) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Financial Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74fms062025accessible.pdf.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-

bill/introduced/spbill74pms062025accessible.pdf.

Further Reading

- Busso, D., O'Neil, M., Down, L. and Gibbons, C. (2018) Slipping Through the Cracks: Comparing Media and Organisational Discourse on the Children's Care System in Scotland. Washington, DC: FrameWorks Institute. https://eachandeverychild.co.uk/wp-content/uploads/2024/03/Slipping-through-the-Cracks.pdf.
- CELCIS (2018) REACH: The CELCIS Magazine, Issue 12. https://www.celcis.org/knowledge-bank/reach/issue-12-winter-2018.
- Each and Every Child (2022) Theory of Change. Each and Every Child. https://eachandeverychild.co.uk/wp-content/uploads/2024/03/2022-THEORY-OF-CHANGE-DOCUMENT-LRG-2-2.pdf.
- Each and Every Child and FrameWorks UK (2024) Framing Toolkit: Each and Every Child. FrameWorks UK. https://eachandeverychild.co.uk/wp-content/uploads/2024/06/Each-and-Every-Child-Toolkit-2024.pdf.
- Each and Every Child and National Leadership Network (2024) Our Lives, Our Language: Working Together for Meaningful Change. https://eachandeverychild.co.uk/wp-content/uploads/2024/11/Our-Lives-Our-Language-Report.pdf.
- Independent Care Review (2020) Evidence Framework. Glasgow: Independent Care Review. https://www.carereview.scot/wp-content/uploads/2020/07/ICR_Evidence_Framework_v2-1.pdf.
- O'Neil, M., Pineau, M. G. and Hyatt, T. (2020) Each and Every Child: How to Talk About Care Experience in Scotland. Washington, DC: FrameWorks Institute. https://eachandeverychild.co.uk/wp-content/uploads/2024/03/Strategic-Brief-Each-and-Every-Child-How-to-talk-about-care-experience-in-Scotland-FrameWorks.pdf.
- Pineau, M. G., Kendall-Taylor, N., L'Hote, E. and Busso, D. (2018) Seeing and Shifting the Roots of Opinion: Mapping the Gaps Between Expert and Public Understandings of Care Experience and the Care System in Scotland. Washington, DC: FrameWorks Institute, The Robertson Trust, CELCIS, Life Changes Trust. https://eachandeverychild.co.uk/wp-content/uploads/2024/03/Seeing-and-Shifting-the-Roots-of-Opinion.pdf.

Part 1, Chapter 2

What are your views on proposals designed to limit profits for children's residential care services?

We note that on 11 August 2025 the Scottish Government launched a consultation on 'Financial transparency and profit limitation in children's residential care': www.consult.gov.scot/children-and-families/financial-transparency-childrens-residential-care (Scottish Government, 2025f). Our response here to this Call for Views concerns the draft Children (Care, Care Experience and Services Planning) (Scotland) Bill, its provisions and the accompanying documentation including the

Policy Memorandum (Scottish Government, 2025b). We will respond to the new government consultation and its contents separately.

The latest data for Scotland (2024) shows that there are 377 residential child care services: 342 children and young people homes, 31 residential special schools, and 4 secure care centres, caring for 1324 children and young people (Scottish Government, 2025d).

CELCIS agrees with the principle that the care of children should not be profited from, and that the true value of any 'care system' must be measured by the outcomes and experiences of the children and young people it seeks to support.

The inclusion of profit regulation in residential child care within the Children (Care, Care Experience and Services Planning) (Scotland) Bill marks recognition of long-standing concerns about the role of private profit in the care of children and young people. However, behind such a proposal for reform there would ordinarily be a depth of understanding and preparedness which seems to be missing at this stage. While these concerns around profit are valid and reflect urgent ethical considerations, a legislative response has been progressed prior to there being proper consultation, comprehensive analysis of the implications of the changes and the development of co-designed solutions.

Engagement with care experienced people and the workforce

The inclusion of profit regulation in the Bill has not been preceded by a period of structured engagement, data gathering and evidence-based approaches, which we would argue is imperative in order to fully and better understand the current context of the provision in Scotland and what related concerns may be necessary to solve. Consultation with care experienced people, providers, Social Work Scotland, the Convention of Scottish Local Authorities (COSLA) and commissioners of services, to explore the implications of different ownership models and regulatory approaches, is needed. Such preparatory work would help to ensure that the proposed reforms are grounded in evidence and that these are aligned with meeting the needs and rights of children.

To support ethical and sustainable reform of residential child care in Scotland, several areas must be addressed:

• Robust data needs to be collected on how ownership models (e.g. private, public, not-for-profit) impact care quality, stability, and outcomes;
• A shared definition or framework should be created for understanding the term 'profit' specifically in the context of residential child care;
• A co-designed process to shape the future of residential care needs to be developed with care experienced people;
• There needs to be improved understanding of financial reporting and reinvestment practices among providers of residential child care;
• Better insights to inform the development of any future framework for ethical commissioning and funding of care services.

Any proposals to prevent or limit profits must be grounded in robust evidence. The

current evidence on the impact of profit-making on the quality of care and outcomes for children is limited, particularly in the Scottish context. While research from England suggests a correlation between for-profit provision and lower quality ratings, this cannot be directly extrapolated to Scotland, where the independent sector provides only 47% of residential house places and profit margins are significantly lower (Competition and Markets Authority, 2022).

Quality care provision

Consistent standards of care should be in place across all providers, underpinned by evidence-informed models, with support and care delivered by trained staff who are committed to therapeutic, rights-based practice. Regulation should focus not only on financial structures but also on ensuring that all services, regardless of sector, are delivering high-quality, attuned care that enables children to flourish.

Cross-border placements across Scotland's border

Cross-border placements, that is between England and Scotland, and local commissioning arrangements must also be considered in this discussion. These factors can significantly influence placement availability, cost, and continuity of care, and should be part of any comprehensive review of residential care profit regulation.

Implementation

Taking a measured, evidence-led approach that prioritises children's rights and wellbeing, would help to ensure financial accountability and to avoid unintended consequences that could destabilise the residential child care sector or reduce placement availability. This is what would be required, and this should be accompanied by a clear understanding of the range of children and young people's experiences and needs, as well as the resource and commissioning challenges currently faced by local authorities. Only then would Scotland be able to ensure that reforms in this area are not only principled but also practical, sustainable, and in the best interests of children and young people.

References

- Competition and Markets Authority (2022) Children's Social Care Market Study. London: National Archives. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1059575/Final_report.pdf.
- Scottish Government (2025d) Children's Social Work Statistics: Looked After Children 2023/24. Edinburgh: Scottish Government. www.gov.scot/publications/childrens-social-work-statistics-looked-after-children-2023-24/.
- Scottish Social Services Council (2024b) Scottish Social Service Sector: Report on 2023 Workforce Data. Dundee: Scottish Social Services Council. https://data.sssc.uk.com/data-publications/22-workforce-data-report/359-scottish-social-service-sector-report-on-2023-workforce-data.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government.

https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74pms062025accessible.pdf.
- Scottish Government (2025f) Financial transparency and profit limitation in children's residential care. https://consult.gov.scot/children-and-families/financial-transparency-childrens-residential-care/.

What are your views on proposals to require fostering services to be charities?

CELCIS agrees with the principle that the care of children should not be profited from, and that the true value of any ‘care system’ must be measured by the outcomes and experiences of the children and young people it seeks to support. This principle is vital when considering the structure and funding of foster care services.

Quality care

The Promise of the Independent Care Review (2020, p.111) says that “Scotland must make sure that its most vulnerable children are not profited from. The application of that principle must be delivered in a way that does not impact the current delivery of good, important services for children.” We agree that the care and protection of children should not be profited from. The ‘value’ in any ‘care system’, should be in the outcomes and experiences of those in its care. What matters is the experiences and outcomes for the children and young people in its care.

Standards of care must be consistent across providers, be subject to independent scrutiny and accreditation, based on what children and families value and need, rather than to serve ‘the system’. This is paramount. Provisions within the Bill to limit profit within foster care must not inadvertently impact upon quality care for children and young people in Scotland.

There is a significant lack of evidence about profit within foster care in Scotland. A greater understanding of the evidence and current context and nature of profit-making within foster care in Scotland is required before any provisions are proposed and implemented. While a not-for-profit/charitable status and purpose for all fostering agencies was consulted on with the 2024 Future of Foster Care consultation, there should have been further engagement with children and young people, and the sector in Scotland, before this specific provision was included in the Bill. This should have included:

• Robust data on how ownership models (e.g. private, public, not-for-profit) impact care quality, stability, and outcomes;
• A shared definition or framework to understand the term 'profit' in the context of foster care;
• A co-designed process to shape the future of foster care with care experienced people;
• Improved understanding of financial reporting and reinvestment practices among providers of foster care;

• A new framework for ethical commissioning and funding of care services.

Potential challenges

Phased and planned transitions would need to take place for any move to a new model of delivery for independent foster care agencies in Scotland. The prioritisation of care, stability and belonging for children and young people should be paramount. There is a risk that requiring existing independent fostering agencies to obtain charitable status could result in them leaving or destabilising the current landscape if they struggle to adapt to a new model of delivery. Introducing a new legal requirement for charitable status would require clear guidance, transitional support and regulatory oversight to avoid unintended consequences.

Furthermore, if smaller or specialist providers are unable to meet the new criteria or sustain operations under a charitable model, there could be a reduction in the diversity of the different types of provision available to support children in Scotland. All this potential change would require partnership working with stakeholders, including children, young people and families, quality training, and appropriate remuneration for providers, safeguarding children as the paramount priority, regardless of the legal status of the foster care provider agencies.

Learning and evidence across the UK landscape

There is some information on evidence and legislation from elsewhere in the rest of the United Kingdom which should be considered. However, it is important to understand what may be distinct about the nature of care provision in Scotland.

Wales

The Welsh Government completed an evidence review regarding eliminating profit from children's residential and foster care (Ablitt et al., 2024). This found that:

"It is clear that the impact of the private sector in children's foster and residential care services on the quality of care and outcomes for children is an under-researched area, particularly in the UK. This is surprising, considering it is a multi-million pound and growing sector and has been the subject of so much critical commentary" (Ablitt et al., p.41).

To our understanding, no such review has been completed within Scotland. Considering the Welsh findings, we recommend significant further evidence should be gathered before any legislation is taken forward for Scotland.

The Welsh Government's response to this evidence review included passing the Health and Social Care (Wales) Act 2025, aiming to eliminate profit from care experienced children. The approach has similarities to what is proposed in the Children (Care, Care Experience, Services Planning) (Scotland) Bill but there are distinct differences. The Welsh Act will introduce a requirement on new social care providers to be one of the following from April 2026:

• A charitable company limited by guarantee without share capital
• A charitable incorporated organisation
• A charitable registered society
• A community interest company limited by guarantee without a share capital.

Evidence regarding the impact of these provisions is currently not available as implementation of this part of the Act has not started.

Further information on the changes the Welsh Government is going to introduce has been outlined in information leaflets for children, young people, foster carers and the workforce: www.gov.wales/removing-profit-care-children-looked-after-information-leaflets.

England

Using evidence from the Children's Social Care Market Study (Competition and Markets Authority, 2022), the Independent Review of Children's Social Care in England (McAlister, 2022), recommended the development of Regional Care Co-operatives to enable local authorities to build not-for-profit foster and residential care homes.

The UK Government is seeking to enshrine the not-for-profit principle for foster care provision within the Children's Wellbeing and Schools Bill, which is currently making its progress through the UK Parliament (UK Government, 2024) including powers for the Secretary of State to be able to limit profits of specified non-local authority independent fostering agencies by regulations. This would take the form of enabling a cap on the profits of foster care providers and a requirement to submit an annual return for compliance purposes. The Bill also includes a power for the Secretary of State to direct the creation of Regional Care Co-operatives.

Next steps

Effective policy-making is informed by robust evidence and attention to implementation and resourcing. The desire to address the principle behind this provision in the Bill needs requisite evidence to ensure that any new legislative measures can work and that the impacts and consequences are only helpful to the improvement of the quality and provision of foster care in Scotland. Significant further work must be undertaken, including with children, young people and their families and the sector, to fully understand how profit currently impacts upon children and young people living in foster care. Proposals to address this principle should also consider learning from the Welsh and UK Government's approaches.

References

- Ablitt, J., Jimenez, P. and Holland, S. (2024) Eliminating Profit from Children's Residential and Foster Care: Evidence Review. Cardiff: Welsh Government, GSR report number 34/2024. https://www.gov.wales/eliminating-profit-childrens-residential-and-foster-care-evidence-review.
- Competition and Markets Authority (2022) Children's Social Care Market Study.

London: National Archives.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1059575/Final_report.pdf.
- MacAlister, J. (2022) The Independent Review of Children's Social Care: Final Report. London: The Independent Review of Children's Social Care.
https://webarchive.nationalarchives.gov.uk/ukgwa/20230308122449/https://childrenssocialcare.independent-review.uk/final-report/.
- UK Government (n.d.). Children's Wellbeing and Schools Bill.
https://bills.parliament.uk/bills/3909/publications.

What are your views on proposals to maintain a register of foster carers?

The Bill gives Scottish Ministers the power to make arrangements for the establishment and maintenance of a national register for foster carers to support safeguarding, provide data to support foster carer recruitment, and improve the status of foster carers by bringing foster carers in line with parts of the children's workforce who are registered and regulated. In our response to the Scottish Government's consultation on the 'Future of Foster Care' we supported proposals for a register for foster carers, however we are concerned about the level of detail offered in the Bill: not enough detail is provided on how a register of foster carers would be implemented. Clarity on governance, data management and operational processes is essential to ensure the register can deliver its intended benefits without unintended consequences.

Safeguarding

A benefit of the proposed national register would be improved safeguarding by sharing registration decisions nationally. Currently there is no national register of foster carers. This means that a carer who has been de-registered could move to another local authority area and re-register if they withhold information, without any previous concerns or information being shared or known to a different fostering agency. There should also be further detail about the interaction with the Disclosure Scotland Protecting Vulnerable Groups scheme.

However, such a national register should not be viewed as a panacea for all safeguarding concerns, nor be considered a replacement for the robust safeguarding checks already undertaken as part of the assessment and approval of prospective foster carers. In addition, consideration needs to be given to whether the register would share information in relation to, for example, a foster carer who resigned after allegations had been made against them but were not proven, rather than who was de-registered.

A national skills and training framework

A national register could potentially inform the creation of a national skills and training framework, offering ongoing development opportunities for foster carers, which is also required in Scotland. It is important to note that the provision of foster

care in Scotland includes both local authority and independent fostering agencies. These agencies may not agree with this proposal in the Bill and so ongoing engagement with this workforce is also vital.

Data protection

Several data protection considerations would also need to be explored further should a national register be developed. This includes whether registration will be voluntary or compulsory, for instance, whether a fostering agency would be compelled to provide a foster carer's details for such a register if that foster carer did not want to provide their details. Whilst not detailed in Bill provisions - which sets out that some of the provisions for a register of foster carers would be taken forward through secondary legislation - we would urge for consideration of the potential risks and benefits of developing any provisions that create offences in relation to failures by fostering services to provide certain information, and the provision of late or incorrect information. This all requires further exploration: for example, the implications of whether a fostering agency would be determined to be at fault if incorrect information were inadvertently provided.

In the Bill's Policy Memorandum, it states that an expected benefit of the register includes "supporting better matching processes" (Scottish Government, 2025b, p.24). A child may have to move away from their local community when they are cared for by foster carers. The Promise of The Independent Care Review recommended that children should be able to "grow up loved, safe, and respected within their families and communities" (The Independent Care Review, 2020). Children should remain in their community when it is in their best interests to maintain relationships that are important to them. This is necessary to support their wellbeing as well as to uphold their rights under the United Nations Convention on the Rights of the Child (1989) and the UK-wide Human Rights Act 1998. It is not clear how such a national register would improve matching for children whilst enabling them to stay in their home community.

The Bill's provisions in Section 30E for the national register of foster carers to be operated on a pilot basis would need to take forward a co-design process with children and young people with experience of foster care, foster carers, social work practitioners, and other key stakeholders. Their voices are critical to ensuring that the register reflects real-world needs and challenges. The evaluation of any pilot must be robust and transparent, with its findings forming the basis for any future decisions about a national register of foster carers for Scotland.

There are several practical considerations to be worked through that are not detailed in the Policy Memorandum (Scottish Government, 2025b) and are not on the face of the Bill, as the Scottish Government's intentions here are that some provisions for a national register of foster carers would be set out through secondary legislation. Further engagement with key stakeholders and foster carers will be required to fully consider the purpose and scope of a register of foster carers, and consideration as to who would host and maintain a register will be crucial. Much can be learned from the approach taken with Scotland's Adoption Register, whilst noting that a national foster care register would have a different function: www.scotlandsadoptionregister.org.uk.

Data for improvement

A national register may present an opportunity to gather data on a national basis that would help to measure, evaluate, and plan foster care for Scotland and any future reform of provision and support. This is an important consideration in the context of a recruitment and retention crisis in foster care (The Fostering Network, 2024). It could enable, for example, the measurement of the impact of any recruitment campaigns on the total number of foster carers across Scotland, and their retention.

References

- Convention on the Rights of the Child (1989) Treaty no. 27531. United Nations Treaty Series, 1577, pp. 3-178. https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf.
- Human Rights Act 1998, c. 42. https://www.legislation.gov.uk/ukpga/1998/42/contents.
- Independent Care Review (2020) The Promise. Glasgow: Independent Care Review. https://www.carereview.scot/wp-content/uploads/2020/02/The-Promise.pdf.
- Scottish Adoption Register (n.d.) Scotland's Adoption Register: Helping Find Families for Children. https://scotlandsadoptionregister.org.uk/.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74pms062025accessible.pdf.
- The Fostering Network (2024) State of the Nations' Foster Care Full Report 2024. London: The Fostering Network. https://www.thefosteringnetwork.org.uk/media/fbldiwhh/sotn24-full-report.pdf.

Further reading

- CELCIS (2025b) CELCIS's Response to the Scottish Government's Consultation on 'Future of Foster Care'. Glasgow: CELCIS. https://www.celcis.org/application/files/9017/3877/1713/Response_from_CELCIS_to_the_Scottish_Governments_consultation_on_Future_of_Foster_Care.pdf.
- Scottish Social Services Council (n.d.) Registration: Information about applying to join or rejoin the register and managing your registration. https://www.sssc.uk.com/registration/.

Part 1 - Chapter 3

What are your views on the proposed changes to the Children's Hearings system?

We have considered all the Bill provisions in detail and have identified the following areas as those that require specific feedback and consideration.

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

In CELCIS's response to the Scottish Government consultation on Children's Hearings Redesign (CELCIS, 2024b), we stated that it was unclear why single-member children's Hearings and pre-hearing panels were being proposed and we highlighted that single member decision-making at pre-Hearing panels, grounds Hearings, or decisions about a child's attendance at a Hearing, could undermine the basis of the Hearings system.

When considering the provisions in the Bill, CELCIS Consultants with lived experience were clear that they felt that a single person panel should not hold decision-making powers. Consultants talked about the importance of protecting the collaborative approach in three-person panels, and the need to ensure accountability which may help to mitigate any conscious or unconscious bias panel members could have.

CELCIS recognises and agrees that changes that would help to minimise drift and delay in decision-making and providing support, and would provide some continuity for families, are desirable. However, it is unclear how single member Hearings are intended to improve the experiences of children and young people within the Hearings System and any evidence to substantiate that these would achieve these aims is also unclear. Without a fuller understanding of this proposal, this provision appears to be designed to make the co-ordination and arrangement of some panels easier for the system without consideration for how this may affect decision-making for children. Despite the provision within the Bill to promote the presence of any single-member panel in subsequently convened Hearings (s.11(5)), we have a concern that single-member panels could potentially result in variation in the decision-making experienced by children and young people across the country. Indeed, elsewhere in the Bill's Policy Memorandum, in relation to remuneration of panel members, the Scottish Government says:

"Models which considered a change to the number of sitting tribunal members carried too great a potential impact on rights and may lead to imbalance in decision-making" (Scottish Government, 2025b, p.33).

Section 11: (2) and (17) "Membership of grounds hearings: specialist panel members"

Whilst the introduction of a 'specialist panel member' would allow for the inclusion of specialist knowledge as part of decision-making, it would be helpful to understand the evidence for this provision, to ensure that this change would meet the needs of

children and families in the Hearings System. Currently, specialist knowledge can be requested from those in the Team Around the Child, or a practitioner with specialist knowledge in a given field, where it is thought helpful to support decision-making.

If this new provision is introduced, there are several issues that may need to be considered.

The Bill's Policy Memorandum states that the identification of this cohort of panel members would be the responsibility of the National Convener (Scottish Government, 2025b). Greater detail is needed on the prerequisites for the appointment of specialist members, which should be part of the robust scrutiny this Bill. For example, more information would be helpful on the qualifications, skills, and knowledge required to be considered a specialist, as well as information on the support and supervision that would be in place to ensure all specialists offer high-quality support for decision-making that upholds children's rights.

Careful consideration is also needed on the criteria to be used when engaging a specialist member, which is clear to all parties. This will also require careful matching of specialist skills with individual Hearings. Little detail on this has been provided in the Bill's accompanying documents. This matching process is likely to add an additional layer of bureaucracy to an already complex system and will run alongside the need to monitor, support, and update the skills of all Panel members more generally.

Our response to the Scottish Government's consultation on Children's Hearings Redesign (CELCIS, 2024b), reflected that children and young people in the Hearings System need their situation to be considered holistically. Some children and young people with particular needs will benefit significantly from specialist input, but this needs to be considered in the wider context of a child or young person's life. It will be critical to guard against reducing the child or young person's circumstances and needs to one singular area or question.

One of CELCIS's Consultants with lived experience reflected that children's identities and experiences are intersectional and asked:

"How do we ensure we're not unintentionally giving one specialist's view disproportionate influence when children or young people's circumstances can't be captured by a single specialism."

More detail is needed about the role of specialist Panel members within Hearings: for example, what weight would be given to the views of the specialist in panel member decision-making? There is also reference in the Policy Memorandum to a specialist potentially being "an additional Chairing member" (Scottish Government, 2025b, p.32). This needs to be clarified to ensure that there is a clear understanding about this proposal which implies that some Hearings could have two chairs.

It is feasible that an unintended consequence of introducing specialist panel members would be to introduce a hierarchy or power imbalance in the decision-making that would happen in Hearings.

Further information is also required regarding the scope of specialist members' expertise. Specialist members may consider that their role is to consider matters solely within the scope of their 'specialism'. That may conflict with a holistic assessment of the child or young person's needs. The way a child, young person or family understands, interprets, or is informed about the presence or absence of a specialist panel member, should also be considered. This may be particularly acute where a specialist member is present in one, but not subsequent, Hearings.

Section 12: "Remuneration of Children's Panel members"

The Bill's Policy Memorandum states: "The policy intent is not to replace the essential volunteer component of the tribunal model but offer a level of remuneration in recognition of the expanded scope and complexity of the Chairing member role, and the potential for appointment of specialist panel members whose particular expertise may enhance the ability the decision-making tribunal in a particular case" (Scottish Government, 2025b, p.32).

If renumeration is to be introduced, then we suggest that all Panel members should receive appropriate financial recompense given the time and commitment they bring to the role. Keeping the role as unpaid may act as a barrier to some individuals coming forward to volunteer; for example, those who cannot afford to take unpaid time from their employment may not put themselves forward for selection.

We are also concerned that an unintended consequence of renumeration for Chairs but not for all members, may be to introduce a hierarchy to the structure and operation of Children's Hearings. The supporting documents for this Bill do not explain or demonstrate how having both paid and unpaid Panel members would improve decision-making for children, nor are we aware of evidence that such a change would lead to an improvement in decision-making. Given the financial investment this proposed change would require in the context of limited financial resources, it would be helpful to identify the evidence available to support these proposed measures and to understand what would be needed to assess the impact on Hearings and decision-making for children and young people.

"If you pay panel members, you run the risk of people doing it for the money and not because they care or are passionate. Especially in this economic climate where everyone is struggling."

CELCIS Consultant with lived experience

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

CELCIS agrees with the proposals set out in Section 13 of the Bill, which removes the child's obligation to attend their Hearing. However, there should be safeguards to ensure that the rights of the child are always respected and met.

The Hearings System needs to support children who wish to attend and participate in their Hearing, while simultaneously protecting those who wish to participate, but do not wish to attend, or for whom attendance is unnecessary or re-traumatising. Children should not need to be present at a Hearing to be heard. Infants and very

young children require bespoke arrangements to have their needs articulated to ensure that their rights are upheld and that they are always kept at the centre of all decision-making. Guidance will be needed on the interpretation of terms and any decision-making compelling a child to attend in specific circumstances. This will be necessary to ensure consistent practice across Scotland, alongside training, support, and monitoring of the implementation of the proposed changes. A variety of materials will be needed to communicate this to children and families and inform children and families of their rights to ensure that they are able to understand and use these.

Section 13: 89C “Child’s understanding of grounds and child’s acceptance (or otherwise) of grounds where not in attendance”

The acceptance (or otherwise) of grounds of referral to the Children's Hearings System is a matter of significant importance, with the potential to impact on a child’s life for years. As such, children’s rights should be prioritised in all processes and procedures relating to this decision.

Providing for the acceptance or otherwise of grounds to be determined solely by the views of each relevant person, when a child is not present, should be treated with caution. All children have a right to participate and be represented in decisions affecting their lives, in line with Article 12 of the United Nations Convention on the Rights of the Child.

We suggest children’s rights could be better protected by considering the appointment of a Safeguarder to independently represent the child’s best interests earlier in the process, when a Children’s Reporter (Section 69), or a Hearing (Section 89B) does not consider that the child would be capable of understanding an explanation of the grounds. This would not necessarily introduce delay to the process.

Section 14: “Role of Principal Reporter, pre-hearing discussion, and grounds hearing”

CELCIS agrees with the statement in the Bill’s Policy Memorandum that “it is essential in a redesigned hearings system that children and families are fully enabled to understand the grounds of referral and the supporting facts before they attend a hearing” (Scottish Government, 2025b, p.37).

Currently, there are several opportunities for a child and their family to discuss grounds before a Hearing. Discussion often takes place with their social worker with whom they have an established relationship. Children and families can also contact the Reporter if they need more information to help them prepare in advance of a grounds Hearing, as well as their solicitor or advocacy worker. Advocacy services can also be engaged as soon as a referral to the Hearings System is made, and this support provides a clear route for the child’s views to be fully and effectively communicated.

It is not clear why a new statutory process in addition to these current opportunities is being proposed in this Bill to help children and their families understand grounds or to gather a child’s views and ascertain how they wish to participate in their

Hearing. Alternatively, it may be helpful to simplify the language used around grounds to support children and families to better understand these and supporting statements of fact, with simplified language presented alongside the 'legal' language.

Provisions for a Reporter to meet with the child and their relevant persons to discuss grounds will require clear guidance around, for example, how people who wish to be deemed a relevant person for a child in this context will or will not be involved.

CELCIS's Consultants with lived experience have diverging views about who may be best placed to hold this discussion, with some favouring social workers and others preferring Reporters. When considering the Bill's provisions in this area, all commented that it should be a practitioner who would be most likely to remain with a child during their Hearings' experience, build a relationship with them, and have the time to have this discussion.

In summary, these changes proposed in Section 14 of the Bill are complicated and we believe that if enacted may result in greater confusion in an already complex system. Any proposed changes should aim to simplify and streamline the Children's Hearing System for the benefit of children and families as well as the workforce who support them. Whilst we agree that the views of children and families on their grounds should be formally presented and recorded at their point of entry to the Hearings System, this pre-Hearing discussion may not be the most appropriate place to do so.

The Bill presents the pre-Hearing meeting, conducted by the Reporter, as an informal part of the preparation stage. However, because it will be essential that an accurate record is made of these meetings to evidence reporter decision making on whether the grounds will go to a Hearing or to court for proof, it's questionable this could be informal in practice. This is in effect the start of the grounds process.

This apparent formality, alongside the likelihood of these meetings being held in Hearings centres or SCRA offices, means they are likely to be viewed from a child's perspective as a formal meeting. Children and relevant persons may therefore wish to have their solicitor/s or advocacy worker/s present.

Furthermore, in the absence of rules or guidelines on how these meetings are to be conducted, it could be difficult for a single Reporter to manage the meeting and may place them in a position of vulnerability. There are significant unanswered questions to be considered here: what powers would they have to speak to the child in the absence of their parents or carers to ascertain the child's views? Will separate meetings be scheduled if there are domestic abuse allegations? Will separate meetings be scheduled if there are several relevant persons? What happens if parties are not represented at the meeting and later claim they were not consulted or misled?

There is also potential for this change in the Reporter's role to contribute to drift and delay in the Hearings' process if, for example, several meetings need to be set up to hear the views of several relevant persons before deciding whether grounds go to a Hearing or to court. If only some of the grounds and supporting facts are accepted, then the next step proposed in the Bill is a one-person Hearing, followed by the

three-person Hearing, which then decides what order and measures are necessary to support a child. This means that the family would have three meetings instead of the current process of one, which suggests adding potential further complexity, as well as a risk of further delay for families.

The implications of this specific proposed change could mean:

• Confusing the child and family as to the role of the Reporter and the decisions they can/cannot make;
• An increase in workload for Children's Reporters; and
• Potential for legal challenge or appeals if a decision is made to convene/not convene a Hearing based (in part) on information provided by relevant persons in the absence of legal representation.

Furthermore, in the Bill, the requirements listed for the report of the meeting to be prepared by the Principal Reporter are detailed and appear contradictory to the stated intention that the meeting with the Reporter to explain the grounds is an informal discussion. Clarity will be required as to whether the report would be counter-signed by the child and other relevant persons, as there is potential that this report could face legal challenge if this is not the case.

Finally, the language in the Bill referring to a child or relevant person being "likely" or "unlikely" to accept grounds is not sufficiently clear. A lack of clarity could mean different approaches to practice across local areas or between Children's Reporters. Further guidance on how Children's Reporters should assess this 'likelihood' would support consistent practice across the country.

Section 14: 71A "Application to sheriff: referral to children's hearing for making of interim Compulsory Supervision Order"

Regarding this proposal in the Bill, if the application is with the court, then convening a Hearing to decide on interim orders is likely to be confusing for children and families. In these circumstances, it would likely be less complicated and more understandable for children and families if the Sheriff were to issue any interim orders.

Section 15: "Powers to exclude persons from a children's hearing"

CELCIS welcomes the proposal that a pre-Hearing panel will be able to consider excluding people from a Hearing so this can be done in advance of the Hearing taking place. This reduces the chances of causing distress to children and families during the Hearing itself and may also help with planning of the Hearing.

Section 16: "Removal of relevant person status"

CELCIS supports the provision in the Bill that enables the removal of relevant person status in certain circumstances to allow the Hearing to focus on a child's needs and wishes. The power to remove a relevant person may act as an important safeguard against, for example, sensitive information about the child being shared with a parent who has abused the child. It may also help to reduce drift and delay in cases where,

for example, the continued absence of a relevant person has hampered the panel in decision-making.

Section 17: “Tests for referral to Principal Reporter and making of Compulsory Supervision Order or Interim Compulsory Supervision Order”

The Bill’s Policy Memorandum sets out how the threshold for referral to the Reporter would be amended from “might be necessary” to “is likely to be needed” (Scottish Government, 2025b, p.43). It states the rationale for this is that it is “intended to lead to a reduction in unnecessary referrals to the Principal Reporter and a higher conversion rate from referrals to children’s hearings being convened” (Scottish Government, 2025b, p.43).
However, this was not a recommendation of the Report of The Promise Scotland ‘Hearings for Children Hearings: System Working Group's Redesign Report’ (The Promise Scotland, 2023).

The conversion rate from referral to Hearings is not a good metric on which to assess the appropriateness of referrals to the Reporter.

We do not know whether this is a change that children and families have asked for elsewhere, and we are not aware of evidence that would suggest that the purpose of this provision would be achieved. We are concerned that this change could risk some children in vulnerable positions not being referred to the Children’s Hearings System due to the perceived higher threshold for referral.

Other considerations

What this will mean to children and families

The priority for legislation should be whether the measures proposed will result in desired outcomes, in this case, more positive changes for children and families who are involved in the Children’s Hearings System. Our reading of the Bill suggests that many provisions in the sections relating to the Children’s Hearings System will increase complexity in the processes involving children, families, and the practitioners who support them. This presents the very real potential to increase delay in decision-making for children. We are concerned that these changes will not significantly improve children’s and families’ experiences of the Hearings System, nor achieve the ambitions set out by the ‘Hearings for Children: Hearings System Working Group's Redesign Report’ (The Promise Scotland, 2023). In addition, they are likely to require considerable resourcing, at a level commensurate to support practice change.

Evidence base

It is crucial to understand the existing evidence related to these changes and how this could support an assessment of whether the Bill’s provisions would achieve the desired changes for children and families. We are not alone in seeking to understand the evidence to substantiate the rationales given. Our Consultants with lived experience have questioned the evidence base for these provisions including the remuneration of panel members and the appointment of specialist members.

Should the Bill go through in its current form, gathering evidence on the potential impact of these changes on children and families' experiences through research, participatory activities, and where appropriate, tests of change, would be essential.

Implementation and resourcing

Robust planning, with financial and workforce modelling for these changes, would be integral to the successful implementation of the provisions in this Bill. Several implementation programmes which impact on the Children's Hearings System are already currently underway. It will be important that any provisions enacted by new legislation are suitably co-ordinated with ongoing activities within the Children's Hearings System.

Furthermore, the ongoing crisis in the recruitment and retention of social workers, and its impact on resourcing and capacity (Ottaway et al., 2023), must be considered within any change or implementation work in the Children's Hearings System. These factors present a challenge to how effective measures set out in legal orders made in Children's Hearings to support children and their families can be, and this would remain so unless the resourcing and capacity context is addressed.

References

- Ottaway, H., McTier, A., Manole, M., Anderson, M., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C. A., and Mackinnon, K. (2023) Children's Services Reform Research: Learning and Implications for Scotland: Concluding Report. Glasgow: CELCIS. https://www.celcis.org/application/files/6117/0245/9620/CSRR_Concluding_Report_-_CELCIS_-_13_December_2023.pdf.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74pms062025accessible.pdf.
- The Promise Scotland (2023) Hearings for Children: Hearings System Working Group's Redesign Report. Edinburgh: The Promise Scotland. https://thepromise.scot/resources/2023/hearings-for-children-the-redesign-report.pdf.

Further reading

- CELCIS (2024b) CELCIS's Response to the Scottish Government's Consultation on Children's Hearings Redesign. Glasgow: CELCIS. https://www.celcis.org/knowledge-bank/search-bank/celcis-response-scottish-governments-consultation-childrens-hearings-redesign

Part 2 of the Bill

What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill?

The proposals in the Bill seek to place the same duties on Integration Joint Boards as those which already exist on local authorities and health boards under Part 3 of the Children and Young People (Scotland) Act 2014. The Policy Memorandum for the Children (Care, Care Experience and Services Planning) (Scotland) Bill highlights that this action would "create a tripartite accountability between the three public bodies in respect of children's services plans" (Scottish Government, 2025b, p.5). CELCIS acknowledges that the suggested changes may bridge any potential divides between the two planning structures governed by the Children and Young People (Scotland) Act 2014 and the Public Bodies (Joint Working) (Scotland) Act 2014, the relationship between which is not necessarily clear currently (Brock and Everingham, 2018).

However, the Bill's Policy Memorandum states that "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" (Scottish Government, 2025b, p.52). We would emphasise that this action alone will not bring about changes in practices to improve outcomes for children, young people and families. The proposals in the Bill could helpfully apply a standardised, universal approach to how all Children's Services Planning Partnerships and Integration Joint Boards work together in Scotland. These are, by their nature, not currently standardised, as each local area takes a different approach to the composition of Integration Joint Boards and the services that they are responsible for.

Introducing these provisions will only provide an avenue for the desired change if there are also continued efforts to create strong, collaborative working relationships, with functional infrastructure and well-resourced capacity to enable everyone with a responsibility to support children and young people in need of care and protection to work together. As CELCIS's Children's Services Reform Research study highlighted, creating systems and structures that enable services to work collaboratively is not an easy task, and changing legislation alone will not be sufficient (Ottaway et al., 2023; Porter et al., 2023).

Strengthening the interaction between planning processes

Extending the statutory duties of Part 3 of the Children and Young People (Scotland) Act 2014 to include Integration Joint Boards may have a positive impact for children, young people and families. Doing so could strengthen and formalise the interaction between the two planning processes that currently exist under the Children and Young People (Scotland) Act 2014 and the Public Bodies (Joint Working) (Scotland) Act 2014. Ensuring that Integration Joint Boards hold the same responsibilities as local authorities and health boards may help each body and agency involved to feel equally represented during children's services planning and processes and allow

organisations whose voices may not be currently heard as loudly as others' to be more fully involved. However, as Integration Joint Boards are already consulted during the children's services planning process, it is unclear whether there would be a significant difference in the outcomes for service planning and delivery. It is possible that Integration Joint Boards are already well-represented in Children's Services Planning Partnerships in some local areas, meaning that the new duties and responsibilities placed on them in these areas may not provide additional value.

Moreover, the desired outcomes of this proposal would not be achieved by this legislation alone. Evidence tells us that relationships are at the heart of successful collaborative working between organisations (McTier et al., 2023a; Porter et al., 2023). The proposals in the Bill would need to be supported by an implementation plan, and the existing relationships between local authorities, health boards and Integration Joint Boards in planning for children's services would need to be fully understood to help each body come together to work in this way.

Local variation and unclear structures

The Bill's Policy Memorandum notes that Integration Joint Boards vary from one local area to another, with some areas opting to delegate children's services and others opting not to (Scottish Government, 2025b). It also states that "the level of IJB [Integration Joint Board] involvement in the 3-year planning cycle has not been consistent across the country" (Scottish Government, 2025b, p.51). Placing the same duties on Integration Joint Boards as local authorities and health boards could be a step towards standardising Children's Services Planning Partnerships nationally, encouraging more active involvement and accountability for Integration Joint Boards and minimising the variation that currently exists.

At present [August 2025], 30 Integration Joint Boards operate across Scotland and cover 14 territorial NHS Scotland boards and 32 local authorities in Scotland; in addition, a Lead Agency model used for the Highland area (Audit Scotland, 2023). Extending the Children and Young People (Scotland) Act 2014's Part 3 Duties to Integration Joint Boards may create the desired accountability on paper and ensure that the central role of Integration Joint Boards is recognised, but it will remain necessary to fully understand local structures and models of delivery, and work together with all 32 local authority areas, to strengthen the connections between local authorities, health boards and Integration Joint Boards.

As the Policy Memorandum recognises (Scottish Government, 2025b), extending these duties alone will not achieve the desired consistency or streamlining of planning and reporting. Difficulties are likely to persist as local structures and responsibilities will continue to vary, with arrangements known to be complex and often subject to change (Anderson et al., 2023; Ottaway et al., 2023). While the proposals would change existing duties, different agencies will remain responsible for the on-the-ground delivery of children's health and social care services.

Additionally, the make-up of Integration Joint Boards themselves varies locally. The involvement of specific bodies is dependent upon the services available in each

area. For instance, while Integration Joint Boards do have representatives from third sector agencies, which agencies these are will vary depending on local priorities. This could mean that some bodies who hold responsibilities for providing support to children, young people and families are well-represented in the Children's Services Planning Partnership, but it could also mean that others are not.

The composition of Integration Joint Boards at local level would need to be more fully understood to determine whether the proposals in this Bill will contribute to helping children, young people and their families to thrive. Without the work needed to understand local systems and structures - and ongoing implementation support for the delivery of Children's Services Planning Partnerships which adopt a whole family approach - the suggested changes to the responsibilities of Integration Joint Boards may not have the desired impact and would not in themselves lead to achieving The Promise.

Interaction between children's and adult services

In theory, the proposals in this Bill could help to improve the interaction between children's and adult services, by strengthening the responsibilities placed on Integration Joint Boards during the direction and commissioning of services for children and adults. It is possible that "related services" – those which do not fall into the definition of a 'children's service' but have a significant effect on the wellbeing of children and young people – could be more actively represented and included in children's services planning. Related services can include community-based services, libraries or sports centres, and services for adults that can support care experienced adults and/or address a parent or carer's needs to benefit their children (including health services, support for disabled people, drug and alcohol services, and criminal justice).

The Scottish Government's last review of Children's Services Plans highlighted variability in the information provided concerning related services (Scottish Government, 2025e). Extending the duties of Integration Joint Boards could help to ensure that children, young people and families more readily receive the support that they need to thrive when they need it. By having a statutory responsibility for Children's Services Plans, adult services represented by the Integration Joint Board could more readily be involved in the planning and provision of support to adults in a family to ensure a whole family approach to supporting children and young people to thrive.

Nonetheless, there is a risk that the priorities of children's services could be misaligned in Children's Services Planning Partnerships if the Integration Joint Board is overwhelmingly representative of adult services. Currently, as the Policy Memorandum acknowledges, children's services have been delegated to Integration Joint Boards in only 10 local areas (Scottish Government, 2025b). Although the needs of children and adults are interconnected, the needs of children are distinct from those of adults. Concerns have previously been raised that the profile and needs of children's services may not be prioritised in comparison to adult services within existing structures (Brock and Everingham, 2018), and it is unclear what further or different impact these new proposals could have. Careful navigation of the roles and responsibilities of each of the three entities – the local authority, health

board and Integration Joint Board – will be needed to ensure that the needs of children remain at the heart of children's services planning.

It is anticipated that bodies and agencies would need time and support to adjust to these changes the Bill proposes, especially if there are not existing relationships between individual services and practitioners, given the importance of supporting and supportive relationships (Porter et al., 2023). It is also known that for practitioners and leaders, the current legislative and policy landscape is cluttered and can be confusing. Service structures need to enable and support practitioners to work together at the local level (McTier et al., 2023a). It is important to consider, therefore, whether the changes proposed in this part of the Bill are necessary and workable to achieve the desired change.

Supporting transitions

One area where these proposals in the Bill could be useful is where this could help to improve the transition of young people from the support of children's services to that of adult services. This may be especially so where adult services are more readily represented in the Integration Joint Board than the local authority and health board services that are already subjected to the duties in Part 3 of the Children and Young People (Scotland) Act 2014. In the most recent review of Children's Services Plans, support for the transition of young people from children's to adult services was mentioned in two-thirds of Children's Services Plans (20 out of 30) (Scottish Government, 2025e). The transitions services that were highlighted varied across local areas, with services such as Early Learning and Childcare for care experienced parents, employability services in schools to support young people leaving school, and support for young people with neurodevelopmental conditions, all mentioned.

The Bill's Policy Memorandum acknowledges that the transition of young people from the support of children's services to adult services is not always smooth, highlighting the difficulties experienced by disabled young people specifically (Scottish Government, 2025b). Evidence also demonstrates that transitioning from the support of children's services to adult services is complex and can mean some young people lose the support that they have come to rely on to thrive (CELCIS, 2025c; Prendergast et al., 2024; McTier et al., 2023a; Ottaway et al., 2023; Palmer et al., 2022). Extending the responsibilities of Integration Joint Boards in children's services planning could contribute to improving the links between children's and adult services and facilitate a smoother transition between these services. However, this would only be possible if the relationship between services on the ground – those practitioners responsible for delivering services and the resources and infrastructure available during the delivery of services – is also strengthened. Introducing this change without providing adequate implementation support and addressing the potential power imbalances at play between the local authorities, health boards and Integration Joint Boards during children's services planning would limit the effectiveness of these changes proposed by the Bill.

Understanding the impact of the Bill proposals

It is important to say that no public consultation on the proposals in this area of the Bill has been undertaken, although the Policy Memorandum states that learning from

independent research (Independent Care Review, 2020; Scottish Government, 2021; Anderson et al., 2023; McTier et al., 2023a; McTier et al., 2023b; Ottaway et al., 2023; Porter et al., 2023; The Oversight Board for The Promise, 2025) and the Scottish Government's statutory review of three cycles of Children's Services Plans, has informed these (Scottish Government, 2025b). CELCIS would caution, therefore, that the impact of the changes proposed in the Bill has not been fully explored. The views of everyone with a responsibility and duty to support children and young people in need of care and protection – those working in social services, health and education – as well as people, businesses and organisations that these changes may impact, including people with experience of care, should be sought.

References

- Anderson, M., Soraghan, J., Bowman, A., Anderson, C. A., Young, E., McTier, A. and Ottaway, H. (2023) Children's Services Reform Research: Mapping Integration and Outcomes Across Scotland: A Statistical Analysis. Glasgow: CELCIS. https://www.celcis.org/application/files/4416/9340/8294/CSRR_Mapping_Integration_and_Outcomes_Across_Scotland_-_CELCIS_-_August_2023.pdf.
- Audit Scotland (2023) Integration Joint Boards: Financial Analysis 2021/22. Edinburgh: Audit Scotland. https://audit.scot/uploads/docs/report/2023/nr_230406_financial_analysis_ijbs.pdf.
- Brennan, R., Bush, M., Trickey D., Levene, C. and Watson, J. (2019) Adversity and Trauma Informed Practice: A Short Guide for Professionals Working on the Frontline. London: YoungMinds, Anna Freud National Centre for Children and Families, and Body & Soul. https://www.derbyshiresab.org.uk/site-elements/documents/pdf/adversity-and-trauma-informed-practice-guide-for-professionals.pdf.
- Brock, J. and Everingham, S. (2018) Integrated Children's Services in Scotland: Practice and Leadership. Dundee and Edinburgh: Social Work Scotland, Healthcare Improvement Scotland and Care Inspectorate. https://childreninscotland.org.uk/wp-content/uploads/2018/06/Integrated-Children%E2%80%99s-Services-in-Scotland-Practice-and-Leadership.pdf.
- CELCIS (2025c) Children's Services Reform Research Study: Improving Transitions for Care Experienced Young People. [Webinar]. http://www.celcis.org/learn-with-us/emerging-insights-webinars-reforming-childrens-services/celcis-emerging-insight-webinar-childrens-services-reform-research-improving-transitions-care-experienced-young-people.
- Independent Care Review (2020) The Promise. Glasgow: Independent Care Review. https://www.carereview.scot/wp-content/uploads/2020/03/The-Promise_v7.pdf.
- McTier, A., Mackinnon, K. and Ottaway, H. (2023b) Children's Services Reform Research: Case Studies of Transformational Reform. Glasgow: CELCIS. https://www.celcis.org/application/files/8216/9346/8290/CSRR_Case_Studies_of_Transformational_Reform_Programmes_-_CELCIS_-_June_2023.pdf.
- McTier, A., Manole, M., Scott, J., Young, E., Fowler, N., McIver, L., Anderson, C. A., Porter, R. and Ottaway, H. (2023a) Children's Services Reform Research: Scotland's Children's Services Landscape: The Views and Experiences of the Children's Services Workforce. Glasgow: CELCIS. https://www.celcis.org/application/files/3716/9998/1465/CSRR_The_views_and_experiences_of_the_childrens_services_workforce_-_CELCIS_-_November_2023.pdf.

- Ottaway, H., McTier, A., Manole, M., Anderson, A., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C. A. and Mackinnon, K. (2023) Children's Services Reform Research: Learning and Implications for Scotland. Glasgow: CELCIS. https://www.celcis.org/application/files/6117/0245/9620/CSRR_Concluding_Report_-_CELCIS_-_13_December_2023.pdf.
- Palmer, A., Norris, M. and Kelleher, J. (2022) 'Accelerated adulthood, extended adolescence and the care cliff: Supporting care leavers' transition from care to independent living', Child and Family Social Work, 27(4), pp. 748-769. https://doi.org/10.1111/cfs.12922.
- Porter, R., Young, E., Scott, J., McIver, L., Mackinnon, K., Fowler, N., Ottaway, H. (2023) Children's Services Reform Research: Rapid Evidence Review. Glasgow: CELCIS. https://www.celcis.org/application/files/3116/9346/8290/CSRR_Report_Rapid_Evidence_Review_-_CELCIS_-_June_2023.pdf.
- Prendergast, L., Davies, C., Seddon, D., Hartfiel, N. and Edwards, R. T. (2024) 'Barriers and enablers to care-leavers engagement with multi-agency support: A scoping review', Children and Youth Services Review, 159, pp. 1-13. https://doi.org/10.1016/j.childyouth.2024.107501.
- Scottish Government (2020) Children and Young People (Scotland) Act 2014: Statutory Guidance on Part 3: Children's Services Planning – Second Edition. Edinburgh: Scottish Government. https://www.gov.scot/publications/children-young-people-scotland-act-2014-statutory-guidance-part-3-childrens-services-planning-second-edition-2020/documents/.
- Scottish Government (2021) Independent Review of Adult Social Care in Scotland. Edinburgh: Scottish Government. https://www.gov.scot/binaries/content/documents/govscot/publications/independent-report/2021/02/independent-review-adult-social-care-scotland/documents/independent-review-adult-care-scotland/independent-review-adult-care-scotland/govscot%3Adocument/independent-review-adult-care-scotland.pdf.
- Scottish Government (2025b) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Policy Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74pms062025accessible.pdf.
- Scottish Government (2025e) Improving Outcomes for Children, Young People and Families: Review of Scotland's Children's Services Plans (2023-2026) and Strategic Engagement: Final Report. Edinburgh: Scottish Government. https://www.gov.scot/publications/improving-outcomes-children-young-people-families-review-scotlands-childrens-services-plans-2023-2026/documents/.
- The Oversight Board for The Promise (2025) Report THREE. https://oversightboard.scot/ob-resources/2025/oversight-board-report-three.pdf.
- UK Trauma Council (n.d.) Childhood Trauma and the Brain. http://www.uktraumacouncil.org/resources/childhood-trauma-and-the-brain?cn-reloaded=1.

Are there any other comments you would like to make in relation to this Bill?

We recognise the importance of this Bill: it has potential to contribute to the delivery of The Promise of the Independent Care Review; however, several concerns must be addressed. Alongside the rigorous scrutiny that parliamentary committees and parliamentarians will be dedicating to the content of this Bill and the requirement to do likewise for any secondary legislation that could result, further insight must be obtained, considered and included to ensure any legislative solutions taken forward are likely to be effective in solving the issues these seek to address. This includes meaningful engagement and consultation with children, young people, families, carers and organisations and individuals who need be at the heart of delivering effective change, and comprehensive evidence gathering and research.

The extent to which the ambitions of The Promise could be fulfilled by this Bill will depend not only on the content of the legislation but on the depth, quality, and integrity of its implementation. A Bill bringing forward legislation in this area needs to deliver meaningful and sustainable change for those it seeks to support. Our response to the Call for Views has been shaped by an understanding of the practical realities of the support and structures needed to make it work. In doing so, we have identified concerns and limitations that must be addressed if the Bill is to deliver on the transformational changes being sought.

For any new legislation to be effective, there must be:

• Robust scrutiny of its provisions, including considering what evidence there is behind suggested measures and actions;
• Meaningful engagement with children, young people, adults, families, carers, and practitioners;
• Involvement of key representative bodies and stakeholders to assess and appraise options and provisions;
• Well-resourced and evidence-informed implementation, including accurate financial and workforce modelling, investment and sustainable recruitment and retention across and within all relevant workforces who work to respond to the needs of children, young people and their families; and
• A clear plan for how new legislation aligns with current and future legislation and policy, to avoid duplication and fragmentation.

Improving outcomes and experiences for children, young people and families

The priority of any work to change legislation, policy or improve practice, including scrutiny of this Bill, must be to consider the difference it will make to children, young people and families, and whether it will be able to deliver the change intended to keep The Promise and to uphold rights. As the Committee is aware, this Bill requires robust scrutiny and engagement with children, young people and families, as well as the carers and workforces who support them. The Committee will wish to ensure that the Scottish Government makes adequate provision for the evidence-informed implementation of any measures that become new legislation, and that accurate financial and workforce modelling is able to support delivery. The Parliament will wish

to be assured that new legislation and its implementation is able to underpin, guide and inform policy and improvement work to uphold The Promise.

Sequencing, engagement, and consultation on the Bill's provisions

Some Sections of the Bill have been informed by consultations undertaken by Scottish Government over the past year. However, as the Committee will be aware, there are other areas of the Bill where there has either not been any public consultation or there are new or subsequent specific measures that were not in the original consultations. For example, in the Scottish Government's consultation 'Moving on' from Care into Adulthood, broad questions were asked about aftercare and experiences of aftercare but there was not a proposal setting out an extension to aftercare entitlements and an extension to corporate parenting duties as is now included in Sections 1 and 3 of the Bill. Neither has there been consultation on the provisions set out in Section 3 regarding corporate parenting duties in relation to persons 'looked after' before the age of 16, Section 8 to limit profit in children's residential care services, nor the proposed changes to children's services planning in Section 22.

The introduction of the Bill by the Scottish Government to the Scottish Parliament at the end of June 2025 means that the Call for Views has occurred during Scotland's school holiday period, which limits engagement in this part of the process with children and young people, and key members of the workforce, who may, for example, work in education. There is a very real risk that insufficient engagement and consultation prior to the introduction of the Bill, coupled with the timing of the Call for Views over the summer, means that necessary stakeholders have been unable to engage and consider the provisions of the Bill.

We are concerned about lack of engagement with several relevant workforces prior to the introduction of this Bill. We are aware of the concerns about lack of engagement with the social work workforce that Social Work Scotland has highlighted (Trainer, 2025). It is these workforces who support children, young people, adults, and families, and who would deliver the changes set out in this Bill. The Bill is being introduced into the context of an already cluttered policy and legislative landscape and will contribute to a 'layering on' of responsibilities and tasks for the workforce to take forward, when there is also a recruitment and retention crisis within the children's services workforce (Ottaway et al., 2023). Successful planning, implementation, and monitoring of any new legislative provisions will depend on the skills and capacity of these workforces so their engagement and communication with them regarding the Bill is essential.

A significant proportion of the measures covered by this Bill would be established through secondary legislation and regulations. This includes advocacy provisions set out in Section 4; provisions to limit profit in children's residential care services set out in Section 8; and some of the provisions to establish a register of foster carers set out in Section 10. As the Committee will understand, this means that there are significant unknowns that will need to be explored, determined, and consulted on at a later stage. There is no guarantee therefore that the detail required for these not yet drafted areas will meet the intended aims for these areas in the Bill.

Whilst the proposed changes to children's services planning in Section 22 of the Bill would be established though primary legislation, there isn't sufficient detail drafted within this section of the Bill or the associated memorandums to fully assess the potential benefits, risks, and impact of this provision and there been no consultation on these proposals.

As part of scrutiny of this Bill, the Committee will wish to ensure there is:

• A firm commitment to meaningful consultation on all secondary legislation;
• Clear achievable timelines and transparency in the drafting and development of provisions and regulations; and
• Active involvement of children, young people, families, and key stakeholder organisations and workforces in co-designing these provisions, ensuring they are grounded in lived experience and capable of delivering the outcomes the Bill wishes to pursue.

Without these assurances, the Bill risks being shaped in isolation from those it most directly affects, undermining its legitimacy and effectiveness.

Legislative coherence

It must be noted that two Bill provisions would not fall within the scope of the UNCRC (Incorporation) (Scotland) Act 2024 as these are currently drafted. This is a concern as this means children would not be able to seek remedy through that legislation if their rights were not upheld under those sections. Namely, Section 1 – Aftercare for persons looked after before age 16 - amends sections of the Children (Scotland) Act 1995, and Section 10 – Register of foster carers – inserts new sections into the Children (Scotland) Act 1995.

The provisions concern functions that are covered by UK Acts passed before devolution. These Acts are outwith the compatibility duty and remedy provisions of the UNCRC (Incorporation) (Scotland) Act 2024. In practice, this means that children would not be able to use the UNCRC Act to seek remedy or redress if their rights are not upheld when these provisions are applied. This would compromise and undermine the commitment the Parliament has made to Scotland's children, and furthermore, would not be in the spirit of the intentions of this new Bill to address the needs of children and young people in ways that would be in line with the aspirations of The Promise.

CELCIS is a member of Together, the Scottish Alliance for Children's Rights, and supports their recommendation that the Bill is amended so that Section 1 and Section 10 are introduced as stand-alone provisions in this new Bill (Together, 2025).

Creating an enabling context and supporting implementation

Should this Bill be passed by the Parliament, its successful implementation will not be achieved by legislation alone. Scotland already has in place many policy levers to achieve improvements for children, young people and families. Yet there have been ongoing challenges to the implementation of these measures: longstanding gaps in access to and transitions between services (Ottaway et al., 2023); a recruitment and

retention crisis in the children's services workforce, a cluttered legislative and policy landscape; as well as issues regarding the sufficient and stable funding of services. All these factors contribute to these challenges in the implementation of existing policy measures (Ottaway et al., 2023).

Scrutiny of this Bill needs to consider whether the following factors are being addressed, so that the implementation of any new legislation could be planned for and delivered. These factors include:

• Workforce planning to address recruitment and retention issues across the relevant workforces;
• Engagement to develop clear guidance and training, in addition to ongoing coaching and support for the workforces who would deliver these changes;
• Measures that support collaborative multi-agency working across these workforces, for example pooling resources to fund services and roles that facilitate multi-agency working or providing time for practitioners to engage in multi-agency training and forums (Ottaway et al., 2023);
• Financial modelling to ensure that there would be funding available to invest in services and workforces to support these measures;
• Improved data collection and analysis to understand the experiences and needs of children, young people and families, as well as those who care for them, and inform delivery of support; and
• Resources dedicated to implementation support which are made available to enable implementation across local areas.

Housing

The provision of appropriate, sustainable and affordable housing is critical to enabling the changes this Bill aims to achieve. Without access to stable, affordable housing, the ambitions of this Bill cannot be realised. Housing is repeatedly raised in responses to consultations for improvements to children's social care, including our own. While high quality, stable and affordable housing is essential to achieving the desired changes to the provision of children and young people's care, it must be understood that this is also an essential component of preventative or early support for families which may mean that children do not then necessarily require the support of the 'care system'.

The Scottish Government announced a national housing emergency in May 2024 (Scottish Government, 2024). A lack of affordable housing and a lack of local authority housing has meant that many care experienced young people cannot access suitable accommodation, and that the circumstances affecting kinship carers and families experiencing poverty are as acute as ever. Housing supply shortages also affect the availability and capacity of foster carers, especially when foster care is needed for larger groups of brothers and sisters.

Financial resourcing to support the implementation of new legislation

The Bill's Financial Memorandum is not sufficiently robust, nor does it include key financial costs necessary to support implementation of the Bill's provisions as set out at Stage 1.

The Financial Memorandum states that costs for aftercare provisions have been estimated following engagement with COSLA and Social Work Scotland (Scottish Government, 2025a, p.8). However, Social Work Scotland has stated that they "do not have confidence in the Financial Memorandum" which they consider is "based on unrealistic assumptions and inadequate or out of date data." (Trainer, 2025, p.2). Key data such as the hourly costing of a social worker's time in Scotland is currently being updated and therefore would be out of date by the time any new legislation would be enacted. It is critical that data relating to resourcing is robust and it would need to be based on updated calculations.

Elsewhere, the Financial Memorandum does not provide for the full range of costs that would be incurred to support some of the Bill's provisions. For example, the recruitment, training or other costs to expand workforce capacity, are not included in the financial modelling provided to deliver the expansion of aftercare provisions (Scottish Government, 2025a, footnote 17). In the context of the current crisis in Scotland's children's services workforce (Ottaway et al., 2023), and high vacancy rates in children and families' social work services (Scottish Social Services Council, 2024a), the omission of these costs from financial modelling could result in significant shortfalls in what would be required to implement these provisions of the Bill. Similarly, the costs to implement guidance relating to care experience (Section 5) do not appear to be included. Costs for awareness-raising activities and changes to practice have also been excluded (Scottish Government, 2025a, p.16).

It is clear from our reading of the Financial Memorandum that delivering changes for children, young people and families will require a more up-to-date, robust and broader financial modelling than has been provided.

Future legislation

The care and protection of Scotland's children and support for its families is an interconnected, complex system of services, relationships, policy approaches and legislative requirements and provisions. There are many legislative changes in this Bill that may prove necessary and beneficial to uphold The Promise and achieve real, sustainable and meaningful improvement to support children, young people and their families. The scope of this Bill, as introduced, does not encompass all the potential necessary legislative requirements: what is not in this current Bill needs to be considered as the Bill is scrutinised.

One pertinent area which is not in the scope of this Bill is enshrining early permanence in law in Scotland. A literature review of adoption services and support in Scotland recommended the development of legislation to enshrine timescales for 'early permanence' in law, as is the case in law in England, Wales and Northern Ireland (Ottaway et al., 2024). This legislative measure would address the drift and delay that can occur in decision-making about how and where babies are cared for at a critical point in their development. Significant work on improving the 'permanence process' in Scotland has been undertaken over the last decade, not least through the Scottish Government's Permanence and Care Excellence Programme, in partnership with CELCIS – and provides further evidence for making this change.

In the Committee's scrutiny of this Bill, seeking assurance about further legislation to expect would be welcome, as well as plans for further policy change and improvement work where these are more appropriate than legislation. The thousands of people across Scotland with lived experience of care and protection, and the people and organisations, who are working to support them and respond to their needs are seeking real change and improvement across multiple areas to achieve the aspirations of The Promise. It is imperative that the Scottish Government and the Scottish Parliament not only recognise these expectations and pay attention to every new development, including this Bill, but that they also respond meaningfully to the outstanding questions and unresolved areas that continue to remain and have an impact on the progress that is able to be made:

"What about all the other commitments that were made in The Promise? When will we hear about those?"

CELCIS Consultant with lived experience.

References

- Ottaway, H., Fowler, N., McIver, L. and Davidson, L. (2024) Towards Modernising Adoption in Scotland: A Focused Mapping Review. Glasgow: CELCIS. https://www.celcis.org/application/files/8217/3209/5671/CELCIS_-_Towards_modernising_adoption_in_Scotland_A_focused_mapping_review.pdf.
- Ottaway, H., McTier, A., Manole, M., Anderson, A., Porter, R., Scott, J., Young, E., Fowler, N., Soraghan, J., McIver, L., Anderson, C. A. and Mackinnon, K. (2023) Children's Services Reform Research: Learning and Implications for Scotland. Glasgow: CELCIS. https://www.celcis.org/application/files/6117/0245/9620/CSRR_Concluding_Report_-_CELCIS_-_13_December_2023.pdf.
- Scottish Government (2025a) Children (Care, Care Experience and Services Planning) (Scotland) Bill: Financial Memorandum. Edinburgh: Scottish Government. https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/children-care-care-experience-and-services-planning-scotland-bill/introduced/spbill74fms062025accessible.pdf.
- Scottish Government (2024) Ending Homelessness Together: Annual Report to the Scottish Parliament. Edinburgh: Scottish Government. www.gov.scot/publications/ending-homelessness-together-annual-report-scottish-parliament-november-2024/documents/.
- Scottish Social Services Council (2024a) Social Worker Filled Posts and Vacancies Six-monthly Survey: Analysis of the Data Collected as at 6 December 2024. Dundee: Scottish Social Services Council. https://data.sssc.uk.com/data-publications/409-social-worker-filled-posts-and-vacancies-december-2024.
- Together (2025) Keeping our Promise: Bringing the Bill within reach of the UNCRC Act: Briefing to the Education, Children and Young People Committee. Edinburgh: Together. https://togetherscotland.org.uk/media/4139/cccesp_uncrc_scope_final.pdf
- Trainer, J. (2025) J. Trainer, Convenor, Social Work Scotland to Minister for Children, Young People and the Promise, Scottish Government, 3 July 2025. [Letter] Edinburgh: Social Work Scotland. https://socialworkscotland.org/wp-

content/uploads/2025/06/Children-Care-Care-Experience-etc.-Bill-Letter-to-Ms-Don-Innes_Social-Work-Scotland_3-July-2025.pdf

Children and Young People's Commissioner Scotland response to the Children (Care, Care Experience and Services Planning) (Scotland) Bill call for views

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Key Points

- **We welcome this Bill and the Scottish Government's direct response to calls for improvements from care experienced children and young people.**
- **We particularly welcome developments in Chapter 1, related to support for persons in or with experience of the children's care system.**
- **There is limited evidence that some of the proposals around children's hearings will further the realisation of children's rights (for example single panel member hearings or specialist panel members). Some of the proposed provisions are untested, it's hard to know at this time if they will be positive.**
- **Where there is a risk of changes potentially having a negative impact on children's rights (for example making changes to children's attendance at their hearings), there is insufficient detail of mitigations to reduce these impacts.**
- **Some sections of the Bill have been drafted in a way that means they are out of** scope of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

1. What are your views on the aftercare provisions set out in the Bill?

Article 20 of the UNCRC provides children who are in the care of the state with special protection and assistance. Throughcare and aftercare are some of the ways that Scotland has chosen to meet those requirements. **We therefore welcome the provisions in sections 1 and 2 which address gaps in provision in the 2014 Act. They represent an important step towards keeping The Promise.**

Children and care experienced young adults' need for ongoing support as they leave care and enter adulthood is an issue our office has worked on for a considerable length of time. In 2008, we published *Sweet 16? The age of*

leaving care in Scotland,[16] **campaigning for an increase in the age of leaving care from 16 to 18. We followed this up one year later**[17] **highlighting the work that was needed. Despite the changes made by the Children and Young People (Scotland) Act 2014, we know that some children are still not getting the ongoing support they are entitled to.**

Section 1 of the Bill extends the right to aftercare to all children who were looked after[18] **at any point in their childhood. At present, children cannot access aftercare if they are not looked after on their 16th birthday – even if they were looked after for most of their childhood and even if their order ended months or even weeks before they turned 16. Section 1 not only ensures that these children have a right to ongoing support, it also addresses potential unintended consequences i.e. children being kept on an order as they approach 16 simply to ensure access to aftercare and conversely, a potential financial incentive for orders to end before 16. While the 2014 Act provided statutory rights for some children, those who left care before they were 16 are still only eligible for discretionary support.**

We support section 2, which provides children and young people in Scotland who have been looked after in Northern Ireland with the same rights as those who have been in care in England and Wales.

We note that section 1, 2 and 10 of this Bill amend the Children (Scotland) Act 1995. This puts them outwith the scope of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. As a consequence, it will not be possible to challenge the exercise of any functions under these sections which are incompatible with the UNCRC. This UNCRC Act scope gap is not identified in the Bill's supporting documents. It is important to raise awareness in Parliament and across Government that different drafting choices will be needed to ensure that the UNCRC Act meets its full potential.

We would like to see out of scope sections re-enacted as stand-alone provisions, rather than amendments to the Children (Scotland) Act 1995. Where this is not possible, out of scope sections should be clearly identified through the CRWIA process and mitigations detailed.

There remains ambiguity about whether definitions adopted from UK Acts may also be considered out of scope of the UNCRC Act. For example, the definition of "looked after" in section 7 of this Bill references the 1995 Act. Therefore, we would recommend a drafting approach moving forward which does not adopt definitions from Acts of the UK Parliament.

We understand that the Scottish Government has not amended its drafting guidance, meaning that the need to ensure new legislation is in scope of the 2024 Act is unlikely to be consistently considered and balanced against other relevant factors.

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[16] CYPCS, 2008. *Sweet 16? The age of leaving care in Scotland.* https://www.cypcs.org.uk/resources/sweet-16-the-age-of-leaving-care-in-scotland/

[17] CYPCS. 2009. *Sweet 16? One year on is life any sweeter?* https://www.cypcs.org.uk/resources/sweet-16-one-year-on-is-life-any-sweeter/

[18] We use the term Care Experienced wherever possible in this response. Terms such as "looked after" which have a legal meaning are only used where necessary for clarity and accuracy.

When implementing policy changes, we acknowledge it may currently be considered more straightforward for an Act of the Scottish Parliament to amend the text of a UK Act rather than create new provisions. To demonstrate the effect of this; the Children (Scotland) Act 1995 is a key piece of legislation for children. Even when the Scottish Parliament is amending it to give effect to policy changes, the result is that none of these legislative provisions are subject to the operation of the UNCRC Act. Unless approaches to drafting and re-enactment are changed, there is an ongoing risk that future legislation will continue to undermine the reach of the UNCRC Act, leaving children without enforceable rights in key areas.

2. What are your views on the corporate parenting provisions set out in the Bill?

Section 3 extends the corporate parenting duties along the same lines as section 1 and 2 extends the right to aftercare. We support this provision.

3. What are your views on the advocacy proposals set out in the Bill?

The importance of advocacy for care experienced people has been highlighted by those with experience of care both in The Promise and by Who Cares? Scotland, with both recommending expansion of advocacy services. This would build on the provision of advocacy within Children's Hearings, which has had a positive impact on children's right to participate in their hearings (Article 12 UNCRC).

We support the principle of extending advocacy services, both within the children's hearings and to support children and young people with wider issues such as education, housing, benefits etc, particularly as they transition to adult services. Care experience appears to be broadly defined for the purposes of this section, which could maximise the children to whom this service is made available.

We note that the UNCRC only covers children under the age of 18. Our statutory remit only extends to care experienced young people under the age of 21.[19] On that basis we cannot comment on proposals for lifelong advocacy, save that where a care experienced person has a child, that child has a right for their parent(s) to receive "appropriate assistance" from the state should they need it (UNCRC Article 18(1)) and advocacy services could be one way of meeting this obligation.

This section provides the framework within which the Scottish Government can make regulations, including outlining who must be consulted when such regulations are made. We are pleased to see the inclusion of "care experienced persons", however there is no explicit requirement to include care experienced children and young people. Whilst they are a subset of "care experienced persons", if they are not listed separately, the duty to consult could be met without including them.

[19] Commissioner for Children and Young People (Scotland) Act 2003 section 16. https://www.legislation.gov.uk/asp/2003/17/section/16

4. What are your views on the proposals for guidance in relation to care experience?

Children and young people, through the Independent Care Review and the work of Our Hearings Our Voices have very clearly expressed the importance they place on professionals using less stigmatising language.[20] As a response to this, the term care experience is widely used in policy, though legal terms such as looked after remain in use where needed. At present there is no single, standard or legal definition of care experience.

In our response to the Scottish Government's consultation on *Developing a universal definition of 'care experience',* we said it was unclear whether such a definition would provide direct benefit to children and young people. We drew attention to the varied definitions currently in use to determine access to different types of support (i.e. SAAS bursaries, throughcare/aftercare and universal credit) and questioned whether the intention of this proposal was to bring these into line.[21]

This Bill does not create a universal definition. Indeed, it uses different criteria for access to aftercare, corporate parenting duties and advocacy services. By contrast, any future definition must be linked to entitlements. In the absence of such a link, there is a risk that a statutory definition would increase confusion and result in expectations from children and young people which cannot be fulfilled.

Our view is that if work is undertaken to develop a universal definition via guidance, it should aim to align the definition with eligibility criteria for support, at the very least in devolved services. Children and young people should be active participants in this process. Care must be taken to ensure that any universal definition doesn't remove existing entitlements for any children or young people (i.e. where there is currently a very broad definition of care experience or scope for discretion). A children's rights impact assessment must be undertaken to ensure any definition is compliant with children's rights in the UNCRC.

Section 5 requires Scottish Government to issue guidance to promote understanding of care experienced people and their experiences. We welcome this but reiterate that care experienced children and young people must participate in this process.

Section 5(2) outlines what must be included in this guidance. We have serious concerns about the compatibility of subsection 5(2)(a), which potentially places a proactive duty on public authorities to identify care experienced people. Our view is that this is not compatible with care experienced people's right to privacy and family life in Article 8 of the ECHR (and in the case of children, Article 16 of the UNCRC). Attempts to comply with this could result in a register of care experienced people being created and this risks increasing stigma. Care experienced people have the right not to identify themselves as care experienced if they wish. This can be easily

[20] Our Hearings Our Voices. *Language in the Children's Hearings System.* https://www.ohov.co.uk/about-us/projects/language-in-the-childrens-hearings-system/

[21] CYPCS, 2024. *Consultation Response to Scottish Government – Developing a universal definition of 'care experience'* https://www.cypcs.org.uk/resources/consultation-response-to-scottish-government-developing-a-universal-definition-of-care-experience/

addressed via an amendment to remove the words “identifying and” from the start of section 5(2)(a).

5. What are your views on proposals designed to limit profits for children’s residential care services?

We welcome legislative efforts to remove profit from the care of children in line with the Promise. The proposed legislation would enable Scottish Government to require care providers to share information on profits, and where it deems necessary, to set further regulations with regards to these. We are generally supportive of the approach taken, which appears intended to address excessive profits by some larger providers identified by the Competition and Markets Authority in its 2022 study, while avoiding any adverse impact on the current availability of provision and therefore protection of children. We would recommend Scottish Government ensure transparency in how these provisions are implemented, in particular by consulting with the sector and children’s rights groups on any profit limiting regulations it seeks to develop. We welcome commitment by Scottish Government in the Policy Memorandum accompanying the Bill that work to address profit in the sector will be continued through efforts to improve commissioning, workforce and monitoring/forecasting of needs and provision. Children’s rights in the care system will be best secured by well-funded, planned and regulated care provision, and we support further efforts to ensure this in Scotland.

6. What are your views on proposals to require fostering services to be charities?

As noted in response to question 5, we support efforts to remove profit from the care of children, to ensure children’s rights are the key consideration in the provision of care by the state. We understand the measures proposed at clause 9 are intended to ensure fostering services cannot exploit loopholes in previous provisions. We therefore support the proposals as a means of ensuring profits are not being made through the provision of fostering services.

7. What are your views on proposals to maintain a register of foster carers?

We support proposals to develop a national register of foster carers, consideration of which was recommended by the Promise. In our view, a national register is likely to have significant benefits in terms of safeguarding, ensuring that where, for example, concerns have been raised about a foster carer before they move local areas, these concerns would not be lost from their record and would be followed up in their new location. We agree with comments from others in response to the future of foster care consultation that a well implemented register could have benefits in terms of standardising training and support for foster cares.

8. What are your views on the proposed changes to the Children’s Hearings system?

We value the opportunity to respond to the proposed changes to the Children’s Hearing system contained within the Children (Care, Care Experience and Services

Planning) (Scotland) Bill. We previously outlined our position in our response to government consultation.[22]

CRWIA Analysis[23]/ Childs Rights Analysis

When considering the provisions on Children's Hearings redesign there are a number of relevant UNCRC rights –

- Article 3 - The best interests of the child must be a top priority in all decisions and actions that affect children.
- Article 9 - Children must not be separated from their parents against their will unless it is in their best interests.
- Article 12 - Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.
- Article 16 - Children have the right to privacy.
- Article 18 - Both parents share responsibility for bringing up their child and should always consider what is best for the child. Governments must support parents by creating support services for children and giving parents the help they need to raise their children.
- Article 19 - Governments must do all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them.
- Article 20 - If a child cannot be looked after by their immediate family, the government must give them special protection and assistance.
- Article 25 - If a child has been placed away from home for the purpose of care or protection (for example, with a foster family or in hospital), they have the right to a regular review of their treatment, the way they are cared for and their wider circumstances.
- Article 40 – A child accused or guilty of breaking the law must be treated with dignity and respect. They have the right to legal assistance and a fair trial that takes account of their age.

It is also important to consider wider human rights such as those protected by the Human Rights Act 1998, mainly Article 6 ECHR (the right to a fair trial) and Article 8 ECHR (the right to respect for private family life).

When considering the proposals for hearings redesign, we are primarily concerned with assessing whether these measures will serve to protect and promote children's rights under the UNCRC. We want to assess whether there is evidence of improvement of children's rights as well as whether there is any potential for a negative impact on those rights.

The Scottish Government prepared a CRIA to go alongside this Bill. The purpose of a CRIA is to help identify which rights are impacted by a policy or law and whether

[22] CYPCS, 2024. *Children's Hearings Redesign – Scottish Government consultation response.* https://www.cypcs.org.uk/resources/childrens-hearings-redesign-scottish-government-consultation-response/

[23] Scottish Government, 2025. *Child Rights and Wellbeing Impact Assessment for the Children (Care, Care Experience and Services Planning) (Scotland) Bill.* https://www.gov.scot/publications/children-care-care-experience-services-planning-scotland-bill-child-rights-wellbeing-impact-assessment/

this impact will be positive, negative or neutral. Where there are potential negative impacts these can be identified and mitigated against.

'CRIAs offer a proactive approach to upholding children's rights, through consideration of children's rights as part of decision-making processes. This supports early identification of issues and allows for preventative changes to uphold children's rights. It also strengthens decision making, reducing the risk of breaching children's rights and in turn needing to make further changes.'[24]

We feel that the CRIA for this Bill is lacking in this sort of critical analysis and has failed to identify the potential for a negative impact on children's rights and sufficiently mitigate against potential breaches. There is no suggested mitigation for these nor is there any plan in place for evaluation of the measures.

For example, when discussing the new measures regarding children's attendance at the hearing – there is no discussion on the potential downfalls of this or breaches of rights. This lack of consideration of potential defects or critical analysis of the provisions is not child's rights compliant and leaves us concerned about the potential implications of the new proposals.

Single Member Panels

We are cautious but not opposed to the introduction of authority to convene children's hearings composed of a single member for certain defined preliminary decisions and for some narrow circumstances in ICSO's. However, we feel that caution should be exercised as to how this is used and think the application of this should be narrow to ensure fairness.

The appropriateness of using such a panel must be determined on a case-to-case basis to ensure that EHRC Article 6 rights and UNCRC Article 40 rights are protected - it would be impossible to make a certain type of decision appropriate for single member panels in every case.

The deeming or 'undeeming' a Relevant Person is a decision of fact and law which has a potentially significant impact on the rights of the child and other participants. Similarly, excusing a child's attendance requires robust assessment and scrutiny of how, in their absence, a child's rights to participate in decision making and express their views will be upheld.

ICSO's can have serious consequences for a child or young person's life, including imposing secure conditions on them or requiring removal of a child from their current home.

While there is potential to free up capacity in the system, consideration should be given to the process by which a decision of whether to use a single member panel is made. The legislation gives this role to the National Convener but they will require case sensitive information to make the decision. This can only be provided by the Reporter which means that it will create another layer in process for them to

[24] Together, 2022. *Child Rights Impact Assessments guide.* https://www.togetherscotland.org.uk/media/3228/child-rights-impact-assessments-guide-003.pdf

undertake. There are also considerations around privacy – a child's rights under UNCRC Article 16 and ECHR Article 8, information should only be shared if it is for a legitimate purpose.

Appointment and Remuneration of Children's Panel Members

In relation to the introduction of paid chairing members of the Children's Panel we recognise that offering a 'level of remuneration in recognition of the expanded scope and complexity of the Chairing Member role' may be appropriate.

At this stage we do not see strong evidence for creating additional specialist Panel Members. There is a potential for this to have a positive impact on the Hearing's System leading to better experiences and outcomes for children and young people however, this is speculative. If there had been some form of pilot, then there might be a way to demonstrate a positive impact, but it is hard to know what benefits it could bring. We are concerned about the cost and operational implications of such a change when we do not know if this would ensure a more children's rights-based approach.

It is important to consider the balance of power across the three panel members when considering changing roles. There is a risk that panels become three person in name only with decision making in reality driven by members who are paid, specialist in some way or full time. Specific training could help to address these imbalances.

The Child's Attendance at their Hearing

The proposed legislation would remove the duty placed and instead allow for the hearing to require the child to attend where it is necessary. While we agree that a new approach to managing a child's participation and attendance at the hearing should be considered, we are cautious about supporting the new proposals.

General Comment No. 12 specifically explores and gives guidance on the right of the child to be heard – it importantly highlights that the right to be heard encompasses the right **not** to exercise this right as 'expressing views is a choice for the child, not an obligation.'[25]

It goes on to state that;

> 'After the child has decided to be heard, he or she will have to decide how to be heard: "either directly, or through a representative or appropriate body". The Committee recommends that, wherever possible, the child must be given the opportunity to be directly heard in any proceedings.'

While we are sensitive to concerns about requiring children to attend hearings when they do not wish to, we do see some issues with completely removing the obligation and serious concerns that in some cases this will negatively impact a child's right to be heard rather than serve to promote this. While we see that the proposal could better promote a child's right to be heard it equally could undermine this by

[25] UN Committee on the Rights of the Child. *General comment No. 12 (2009): The right of the child to be heard.* https://www.refworld.org/legal/general/crc/2009/en/70207

completely losing their voice within the hearing. There are serious possibilities for infringement of Article 6 ECHR rights.

At this stage we have not seen a critical analysis of the proposal and the fact this could create a disadvantage for some children. We are particularly concerned about how this may impact disabled children including those with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, foetal alcohol spectrum disorders or acquired brain injuries). This could include children who are generally disengaged from professional support services.

We are reluctant for changes to be made without proper consideration being given to how the hearing itself could better accommodate their rights and needs, or how in their absence their views will be expressed to the hearing so that decisions can be made in their best interests. In general, there has been a large fall in attendance since the COVID pandemic and existing concerns about hearings adequately supporting participation.

The policy memo states –

> '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.'

We do not feel that this has been addressed sufficiently to mitigate the potential negative impacts to children's rights. The CRIA highlights that this risk can be mitigated in part by the creation of the post referral discussion with the Reporter, however, this will not take place in every case. We do not think that the Reporter is the best placed person to reflect the child's views. There will be a limit in some cases as to whether it is appropriate to have these discussions and if they take place the nature of them is still to be determined. The increased advocacy offer is also suggested as an appropriate mitigation, and while we welcome enhanced offers, not every child will have or want an advocacy worker. There does not appear to be allocated funding for this increase to take place.

We want to see meaningful, robust and resourced plans and guidance about how the rights of all children to be heard will be upheld, to ensure the child's voice is not lost in the process. If the child is not attending what measures are being taken to ensure their voice is heard? And what are these measures in a range of complex circumstances?

Ensuring the child has due process and a fair hearing, Article 6 ECHR and Article 40 UNCRC, are crucial considerations. Where the hearing is to consider offence grounds (s67(m)) or the potential deprivation of liberty of a child we do not think that it would be appropriate or rights compliant for the child to be absent from attending. The Bill as drafted does not explicitly cover these scenarios. Offence grounds can lead to a range of significant consequences for children, some of which can be life-long. We suggest that caution should be exercised in creating further distinctions between children who come before a hearing on offence vs non-offence grounds.

Preparation and Engagement with the Principal Reporter

We see the potential for these proposals to have a positive impact on the experiences and outcomes for children and families however, we would like to see a better analysis of the rights implications of the changes as well as a better understanding of how these provisions will work in practice.

It will not always be appropriate for the Reporter to meet with the family together, especially where there are concerns surrounding abuse. They may need to meet relevant persons (which could include more than two in a case) separately from each other and also from the child. This will create a significant resourcing issue and pressure on the Reporter.

Part of this role will be explaining the grounds and ascertaining whether or not they are likely to be understood, this is not currently a role that is undertaken by the Reporter and there must be sufficient checks on such decision making either by the panel at a grounds hearing or by a Sheriff if referred to the Sheriff Court. Where this is being considered by the panel, we would suggest that it may not be a sufficient safeguard, in terms of Article 6 ECHR rights, for this to be a single member panel.

There is the potential for undue influence on someone to accept the grounds in these scenarios and the only real way to mitigate against this is through legal representation. The presence of legal representation at these discussions has not been mentioned in the Bill or accompanying documents.

This meeting could add another layer of complexity to an already difficult process, this could have a negative impact on the experience of the child in the hearing process. We would like some of these potential negative impacts to be given sufficient consideration.

Process in Relation to Establishing Grounds

We see that there is a benefit in attempting to ‘streamline’ the process for dealing with the acceptance or non-acceptance of grounds. We note that children and families have said that they do not always understand the grounds process and that it can feel accusatory and intimidating. Where it is clear that grounds are not going to be accepted then it is in everyone’s interest that matters proceed to the Sheriff.

However, we still have some concerns regarding the process, and this largely echoes what we have said in the last section. The concerns will largely arise in the most serious and complex cases. We would like to see more analysis of what protective measures will be in place here.

Establishing grounds is a legal process with significant consequences, there does have to be some means to put the grounds to families and have a recorded statement of whether they are accepted or not. This is a formality which many have found to be uncomfortable, but if Article 6 ECHR rights are to be upheld then due process must be followed.

Participation of Relevant Persons

We are supportive of the proposed provisions, it is in the best interests of a child that relevant person status be capable of removal when it is appropriate to do so.

Test for Referral to the Principal Reporter

We broadly support the proposal to modernise language. It is important that children and young people can understand the reasons they have been referred to the Reporter, and to a Hearing. That is an important part of the ECHR Article 6 right to a fair hearing and will condition the extent to which children and young people are able to meaningfully participate in decisions, in line with UNCRC Article 12.

We would note that both the terms ‘guidance’ and ‘support’ imply interventions that are not compulsory in nature and may potentially be misleading.

We are supportive of the terms ‘treatment’ and ‘control’ staying within the legislation as interference with a child’s rights should be given a high bar.

Care should be taken not to inadvertently change the thresholds for referral without good reason. Detailed legal analysis will be necessary here to understand the potential impact of the change before moving ahead with it. We note the Hearings for Children report recommended that Scottish Government undertake a detailed legal analysis. We are therefore surprised that a consultation has been issued without it seemingly having been done.

Information and the Availability of Children’s Advocacy Services in Relation to Children’s Hearings

We are supportive of the expansion of advocacy services and see the potential for this to positively impact the rights of children within the hearings system. We must be clear that the provision of advocacy does not replace the need for legal representation. Availability of legal representation for children within the hearing system is essential for upholding Article 6 ECHR and Article 40 UNCRC rights.

Sharing of Hearings Scheduling Information with Advocacy Workers

We are supportive of such sharing where it furthers the rights of children.

Duration of ICSO’s and Interim Variations to CSO’s

We are supportive where this flexibility is in the child’s best interests.

The Reporter’s Ability to Initiate a Review

We feel that SCRA will be best placed to advise on this provision. It is not clear to us under what circumstances it would be appropriate for the Reporter to call a review where the social worker does not support or request this.

Clan Childlaw response to the Children (Care, Care Experience and Services Planning) (Scotland) Bill call for views

About Clan Childlaw

Clan Childlaw is an award-winning, independent children's charity that actively supports children and young people to take ownership of their rights. We are the only charity in Scotland that provides free, independent legal representation that is dedicated exclusively for children and young people. We answer around 1000 enquiries about children and young people's rights every year and we work directly with around 200 children and young people a year, giving them legal help to use their rights. Consistently around 85% of Clan's clients are care experienced.

Clan wants a Scotland where all children and young people's rights are respected, protected, and fulfilled. For that to happen, children and young people need to be respected as rights holders, active agents in the realisation of their rights able to hold duty bearers to account when their rights are not fulfilled.

"A lot of people are not aware that we have rights, or if they are they don't respect you when you try to implement them. It isn't until you have someone like a lawyer involved that they actually become rights respecting, even though everyone claims to be." (client of Clan Childlaw)

We focus our legal and policy work with children and young people on four key areas:

- Right to be Heard – ensuring children are equally heard and fully involved when important legal decisions are being made about them in relation to every decision that is made about their lives and future, and they have the right to legal representation. This right always applies, for example leaving care, immigration proceedings, housing decisions, decisions about their care and education, or their family and home life.
- Right to a Family - Clan works to make sure that relationships remain a priority within the Children's Hearings system and other legal systems and that the law is implemented so that children and young people can have a say in decisions about seeing their siblings.
- Right to a Home - All children and young people, including those who cannot live with their families, should have a permanent home. Children and young people should have care when they need it, and a managed supported transition out of care only when they are ready. Children and young people should never leave care into homelessness. Clan continues to lead the way in ensuring the law is implemented and challenging procedure, policy and practice that does not respect children and young people's rights to needs based care, accommodation, and suitable housing.
- Right to be a Child. - All children have children's rights and must be treated as children. This includes children seeking asylum and children in conflict with the law, and care leavers who must be treated with respect and care and have access to the same needs and welfare-based support as every other child or young person. We

work to ensure that all children are cared for, supported, and given somewhere safe and suitable to live.

Summary of our Submission

1. After-care should be provided to all children and young people with care experience on the same basis so that:

a) mandatory After-care [s29(1)] is provided to all children (16-18) who were looked after before or after their 16th birthday and who cannot be accommodated and cared for through s25; and

b) Discretionary After-care [s29(2)]is available to all young people (19-26) who were looked after before or after their 16th birthday.

c) The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 should define the responsible authority consistently with s29(2) giving local authority an After-care duty to eligible children and young person in their area.

2. All children who do not have a home with their families should be in s25 accommodation. After-care and homeless services are not appropriate for children who need and are entitled to care assessments, relationship-based care dedicated social work involvement and s25 accommodation provided by Children and Families social work. After-care should be a safety net, not the default for any child.
3. All children who leave care before they are 18 and subsequently find themselves without a home, should 'return to care' and be in s25 accommodation.
4. Young People who are accommodated when they leave care should be able to stay in Continuing care placements in terms of s26A for as long as they need to, only requiring a managed transition from continuing care to After-care when they are ready.
5. To ensure Articles 12 and 40 UNCRC rights, and Articles 5, 6 and 8 of the ECHR. automatic access to lawyers should be available to all children in the Children's Hearings System and offered at the earliest stage.
6. Having considered the provisions in the Bill in Chapter 3, we remain unclear whether many of the proposals will have the effect of enhancing and protecting children's rights, and in some instances we are concerned that they will have a detrimental effect.

General Points in our submission

<u>Best Interest and UNCRC compliance</u>

We have framed our response, and consideration of these proposals, around the UNCRC – in particular whether the proposals are in the best interests of the children who will be impacted by the changes. Unfortunately it has been difficult to test many of the proposals in the Bill against this framework due to the lack of detail provided – particularly in relation to Chapter 3. In an already complicated and cluttered legislative landscape – change without being able to demonstrate that it will improve outcomes and experiences for children is not in keeping with Article 3, and will create complexity in the implementation and enforcement of their rights.

A better understanding of how these changes will work in practice, alongside a better insight into the non-legislative changes being undertaken to support children would

be helpful to aid our understanding and that of the Committee. It would also allow a more detailed analysis of the impact on children these changes will have.

Framework legislation and lack of scrutiny

We note that in many crucial aspects the detail of these proposals have been left to be developed by way of Regulation. This is an unsatisfactory way of making legislation.

Scope and the UNCRC

Some sections of the Bill have been drafted in a way that means that they amend legislation which falls out with the scope of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 [the UNCRC Act]. This particularly relates to the After-care provisions. As a consequence it is not possible to challenge the exercise of these new functions as being incompatible with the UNCRC. Drafting guidance should be amended to ensure that new legislation and new powers and duties are drafted to be within scope of the UNCRC Act. Any amendments to out of scope legislation contained in this Bill should be enacted as standalone provisions to ensure that children can fully enforce their rights when not fully implemented.

Financial Memorandum

We have concerns – particularly in relation to the proposals made in connection with After-care – that the assumptions upon which the financial memorandum is based are not fully reflective of the need, and potential uptake of the rights. There is a real issue in relation to implementation of current rights, duties and powers in continuing and After-care, so base figures and any assumptions flowing from them will not be accurate.

Part 1, Chapter 1

1. What are your views on the After-care provisions set out in the Bill?

Extending After-care to children and young people who were looked after before their 16th birthday

If it is the aim of the Bill to extend After-care to all children and young people who were looked after before their 16th birthday this can be achieved very simply by amending s29 as follows:

29After-care.

(1)A local authority shall, unless they are satisfied that his welfare does not require it, advise, guide and assist any person in their area who is at least sixteen but not yet nineteen years of age who, either—

(a)was looked after by a local authority ***~~(on his sixteenth birthday or at any subsequent time)~~*** *but is no longer looked after by a local authority; or*

(2) If a person within the area of a local authority is at least nineteen, but is less than twenty-six years of age and is otherwise a person such as is described in subsection (1) above, he may by application to the authority request that they provide him with advice, guidance and assistance;

It is not clear why this is not what is proposed, or why the proposal is to extend only "discretionary", limited After-care in terms of s29(2) to those who were not looked after on or after their sixteenth birthday.

Amending as set out above would:

- remove the 16 and over "cliff edge" that denies many After-care.
- remove the risk of losing the right to After-care for children who leave care before their 16th birthday.
- secure all children who have been looked after by a local authority who need After-care the same, mandatory, support that children looked after on or after 16 receive, including regular financial support.*
- secure all young people who have been looked after by a local authority the same, discretionary support that those over 19 receive.
- make the regulations less complicated, reducing barriers to entitlement and challenges to implementation
- avoid the multiple difficulties caused by amending in line with the substitution proposed which makes the provision of s29 After-care more inequitable and complicated than it currently is.

*Regular Financial Support.

The proposed changes to s30 of the Children (Scotland) Act 1995 to make all care experienced children and young people eligible for financial support is welcome, but if the statute is amended as proposed then 16-18 year olds looked after before their 16th birthday would not be eligible for financial support in terms of the Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 SSI 2003/ 608 Regulation 13. Regulation 13 requires regular financial support only for compulsorily supported person under 18 - that is a person supported in terms of s29(1) – and they must have been looked after and accommodated for a period of, or periods totalling, 13 weeks or more since the age of 14.

A person supported in terms of s29 (2ZA) is a discretionarily supported person – supported in terms of s29(2) – and not entitled to regular financial support even if s30 is amended as proposed. Even if they have been looked after and accommodated for a period of, or periods totalling, 13 weeks or more since the age of 14, they will not be entitled to the same regular financial support as children who were looked after on or after their 16th birthday. Financial support will still not be available to those who left care under 16.

After-care for Cross-Border children

S29 (1) of the 1995 act states that a local authority shall, unless they are satisfied that his welfare does not require it, advise, guide and assist any person *in their area"*

This clearly states that the duty for providing After-care to a young person in their area is on the local authority where the young person is. This is borne out by S. 29(7) which states that young people who have been looked after by a local authority in England and Wales are eligible for After-care.

This is contradicted by The Support and Assistance of Young People Leaving Care (Scotland) Regulations 2003 which sets out s29 duties as being owed by the "responsible authority" meaning in relation to a compulsorily supported (16-18) or a discretionarily supported (19-25) person, the local authority which last looked after the person. The Guidance further confuses matters by stating that a compulsorily supported or a discretionarily supported person is owed a duty of After-care from "their relevant local authority." Relevant local authority is defined as the local authority that had responsibility for their care when they were "looked after". As a result of this loophole we see children who have lived in Scotland for much of their childhood, who have settled lives here and who have built a community around them, who have no support in Scotland when they leave care. The Scottish local authority will say they are not responsible for providing After-care notwithstanding the wording of s29. These children and young people are forced to leave their homes and carers and return to an English local authority area where they have no connections, or they can apply as homeless in Scotland. Children and young people suffer as a result, usually in unstable homeless accommodation with no support while both local authorities refuse to take responsibility.

The proposed substitution is to s29(7):

"In subsection (1) But not in subsection (2ZA (b), the reference to a person having been looked after by a local authority include reference to a person having been –

(a) looked after, by a local authority in England, within the meaning of section 22 of the Children Act 1989

(b) looked after by a local authority in Wales, within the meaning of section 74 of the Social services and well-being Act 2014

(c) looked after by an authority in Northern Ireland, within the meaning of article 25 of the children (Northern Ireland) Order 1995.'

While the Regulations continue to state that Scottish local authorities are not responsible for provision of After-care, any amendment to the statutory provision will make little difference to young people looked after by authorities in Northern Ireland.

In addition – if the Regulations did not remove responsibility from Scottish local authorities, the proposal is that s29(1) mandatory After-care is only available to children looked after by English, Welsh and Northern Irish local authorities who were looked after on or after their 16th birthday. Children from other UK areas who came into care or returned to care after their 16th birthday will not be eligible for After-care in Scotland. This may discriminate against groups such as unaccompanied asylum-seeking children who have come to the UK after their 16th birthday.

This Bill is an opportunity to address this issue, and extend s29 after-care provision to all looked after children up to the age of 26. If s29 was amended as we propose

above, if the Regulations defined the responsible local authority in the same terms as the statute, and if s29(7) was amended as follows:

*"**In subsection (1) and (2) the reference to a person having been looked after by a local authority include** reference to a person having been –*

(a) looked after, by a local authority in England, within the meaning of section 22 of the Children Act 1989

(b) looked after by a local authority in Wales, within the meaning of section 74 of the Social services and well-being Act 2014

*(c) **looked after by an authority in Northern Ireland, within the meaning of article 25 of the children (Northern Ireland) Order 1995**.'*

Then Scottish local authorities would owe full After-care duties to children and young people from all UK areas who were looked after before, on or after their 16th birthday.

2. What are your views on the corporate parenting provisions set out in the Bill?

We support this provision.

3. What are your views on the advocacy proposals set out in the Bill?

Clan is supportive of all mechanisms which seeks to uphold a child's right to be heard, and participate effectively in their hearings.

However, it is important to remember that advocacy is not a substitute for legal representation for children and young people within the children's hearings system. This Bill is an opportunity to ensure that Article 12 compliance, along with Article 40 of the UNCRC and Article 6 of the ECHR is furthered by extending automatic access to solicitors within the Children's Hearings System - particularly where a child has been referred to the hearing for conduct or offence grounds.

ECHR Compliance

Article 6 of the ECHR applies to civil and criminal hearings and applies to a children's hearing. For criminal matters it is accepted that to be rights' compliant (and ensure the right to a fair trial) you need to have access to a free legal aid solicitor. European case law points to the fact that a consideration here is the impact on other rights that the criminal trial poses – Article 8 rights (Rights to a Family Life) and Article 5 (Right to Liberty and Security) being the most relevant here.

It is accepted that a children's hearing is not a criminal court. However the civil protections under Article 6 apply. It is accepted that in a civil case that the State does not need to provide free legal aid for every civil dispute. But the convention is intended to safeguard rights which are practical and effective, in particular the right of access to a court. So there are circumstances where the ECHR will compel the State to provide the assistance of a lawyer where such assistance proves indispensable for an effective access to court.

Specific circumstances looked at in these cases:

1. Importance of what is at stake for the applicant – including whether a right protected by the Convention is at issue. Children's Hearings make decisions which profoundly impact a child's Article 8 rights in all cases and, on occasion, Article 5 rights. There are additional impacts on Article 8 rights where a child has been referred to the Hearing on offence grounds.
2. Complexity of the relevant law or procedure. Although this Bill seeks to streamline procedures, the introduction of single member panels, specialist panel members, pre-hearing discussions with the Reporter coupled with the removal of compulsion to attend a hearing in person – means the procedural steps for a child in this decision making forum are not straight forward, and they will potentially require advice and support from a lawyer at a much earlier stage in proceedings. Neither the policy documents, explanatory notes nor the face of the Bill itself make it clear how, when or by whom the possibility of legal representation will be raised with the child. Where an offence ground has been raised this needs to be proved beyond a reasonable doubt and criminal defences are open to the child. These are often complex to understand.

3. Applicants capacity to represent him or herself effectively – with the obligation to attend in person being removed (with no indication of the measures that will be put in place to support the child's view being made known to the hearing) this criteria is particularly relevant to all children in the Hearings System.
4. Existence of a statutory requirement to have legal representation.

As indicated in the discussion above, the first three of these circumstances apply to all children referred to the Children's Hearing and support an argument that there should be automatic access to lawyers, or a duty scheme, for all children referred to the Children's Hearing on any ground. As we will go on to outline this is particularly so where a child has been referred to the Children's Hearing on offence grounds.

<u>Offence Grounds</u>

In offence grounds cases Article 8 ECHR is additionally impacted by the potential implications for disclosure further down the line. Acceptance or establishment of offence grounds means that the grounds will be treated as a conviction for the purposes of the Rehabilitation of Offenders Act 1974. While the conviction will be immediately spent it can still be disclosed. This will impact the range and choice of further education courses or jobs the child can apply for. Without legal advice the consequences of accepting offence grounds are not fully understood or explained to a child or young person.

In relation to the second and third considerations, the Scottish Courts in the case of S v Miller (No.1), 2001 S.L.T 531 set out clearly the complexities and ability (or inability) of a child or young person to effectively participate when a referral on offence grounds occurs:

'…it is important to bear in mind that many of the children who appear before hearings will be young, unable to read well and unused to expressing themselves beyond the circle of their family and friends, especially adults whom they do not know. I find it quite impossible to conclude that all the children appearing before a

hearing would be able to understand, far less to criticise or to elucidate, all the reports and other documents and all the factors which the hearing may be called upon to consider…'

In the S v Miller case the offence grounds were far from straight forward, with the possibility that the child acted in the defence of another. Yet under current arrangements a defence, that may not be obvious to him on the face of the charge, may go unexplored as he could simply agree the grounds without any referral to a solicitor. Considering these factors, and the potential impact on the child, Lord Penrose considered that in these circumstances 'special treatment of allegations of criminal conduct is justified'. This decision, issued over twenty years ago – highlights the potential incompatibility with the ECHR a lack of automatic legal representation for offence grounds poses and yet the practice continues.

UNCRC Compliance

This breach of duty to comply with the ECHR is only compounded by the incorporation of the UNCRC Act. Article 40 applies in relation to offence grounds and looks at criminality rather than justice system v civil cases as the ECHR is often claimed to do. Article 40(2) lists procedural guarantees where a child has been alleged as, accused of, or recognised as having infringed the penal law. These include having the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance.

This last phrase is given more meaning by General Comment 24 which states that:

'The Committee is concerned that children are provided less protection than international law guarantees for adults. The Committee recommends that states provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities. Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.'

'If children are diverted to programmes or are in a system that does not result in conviction, criminal records or deprivation of liberty 'other appropriate assistance; by well-trained officers may be an acceptable form of assistance, although states that can provide legal representation for all children during all processes should do so, in accordance with the article.'

A children's hearing for offence grounds can result in a conviction (for the purposes of disclosure), a criminal record and potentially deprivation of liberty. Article 40 therefore requires that 'effective legal representation, free of charge' be provided for children in these circumstances. Article 40 also demands that this be automatic and provided through a duty scheme so that if a decision is made to waive this right, by the child, it can be done voluntarily and under impartial supervision. Reference to a leaflet at the bottom of the grounds of referral letter is not an adequate State response and breaches not only Article 40 of the UNCRC but Article 6 of the ECHR.

4. What are your views on the proposals for guidance in relation to care experience?

We refer to our response submitted to the consultation on the Universal Definition of Care Experience. The Bill does not seem to seek to clarify 'the why' in relation to the purpose of the guidance or definitions of care experience used within the Bill itself. There is no attempt in the Bill to create a universal definition (indeed the Bill adds further different tests for access to After-care, corporate parenting and advocacy services) further complicating the already misunderstood entitlements criteria. Work needs to be done to link a definition with entitlements to simplify the landscape.

We would also echo the concerns of the Children and Young People's Commissioner Scotland [CYPCS] in connection with section 5(2)(a) which potentially places a proactive duty on public authorities to identify care experienced people. This risks breaching the right to privacy and family life found in Article 8 of the ECHR and Article 16 of UNCRC for care experienced people.

Chapter 2

5. What are your views on proposals designed to limit profits for children's residential care services?

No Comment

6. What are your views on proposals to require fostering services to be charities?

No Comment

7. What are your views on proposals to maintain a register of foster carers?

No Comment

Chapter 3

8. What are your views on the proposed changes to the Children's Hearings system?

We considered the Scottish Government's original proposals in relation to reform of the Children's Hearings System when responding to the Children's Hearings Redesign Consultation.

Our response was framed around the principles of the UNCRC and we called for children as rights' holders to be at the centre of any redesigned Children's Hearings System. If we do not properly and sensitively implement Article 12 then the children who come into contact with the Hearings System will face negative consequences, in complete contradiction to the ethos of Kilbrandon. We called for more detail and testing of the ideas that were trailed in this Consultation. Specifically we highlighted:

'…It is the pre-hearing stage that has the potential to set the tone for the rest of the proceedings, and allow the child to have access to the relevant support and advice that they need to be active as rights' holders. The consultation questions are

confused and lacking in detail in these pre-hearing stages. The suggestions in relation to excusing children from hearings; post-referral discussions; the thinking around relevant persons and the referral criteria could all contribute to a more rights respecting experience for children. However, in the absence of detail as to who is responsible for ensuring the child at the centre of the hearing is supported and informed throughout, and the scant detail on how it would come together in practice, leads us to fear that these intentions could be lost in practice.'

Having considered the provisions in the Bill, we remain unclear whether many of the proposals will have the effect of enhancing and protecting children's rights, and in some instances we are concerned that they will have a detrimental effect.

Grounds Hearings – Preparation and Engagement with the Principal Reporter

We understand the desire to streamline the referral process. We are unclear as to how this will work in practice and whether what is proposed would achieve that aim. It is not immediately obvious to us that what is proposed will make the experience of a children's hearing better for a child and it does not seem to align with proposals suggested by the Children's Hearings Redesign Report.

We have particular concerns around the enhanced role for the Principal Reporter and the proposed post-referral discussions. In the previous consultation what was proposed was a discussion, before the Principal Reporter had drafted grounds, to ensure the child and relevant persons understood what was happening. What is now proposed is a meeting with the child and relevant persons after the grounds have been decided. This is a very different stage in the process, marking a point at which parties require to consider the evidence and decide whether they are content to agree the grounds as drafted. There does not seem to be any safeguards or advice available prior to this meeting, and we are concerned that children may agree to grounds without the opportunity to speak to a solicitor. If the children's hearings process starts at this point, then access to support and advice requires to be put in at this very early stage, to avoid any procedural unfairness that could contravene their Article 6 ECHR rights and their rights under UNCRC. There is no mention of legal representation in this Bill.

There is no detail in relation to what form these meetings will take, whether both relevant persons and child will be present together or apart. The constitution and number of these meetings could have a serious impact on any pressure that a child might feel.

In addition, part of this process is to consider whether the child understands the grounds and to record their views. A report will be produced by the Reporter detailing these discussions. Where a child then does not attend their hearing, what reliance will be placed on this report as representing their views? Depending on the answer to the questions posed in the earlier paragraphs, these views may not accurately represent the child's opinion or could be subject to change.

Child's attendance at their hearing

We do not support this provision in its current form. Section 13 removes the obligation on a child to attend their hearing. Although it does allow for the hearing to

require attendance where it is necessary for a fair hearing, or to assist the Children's Hearing in making any decision relating to the child, there is no clear guidance on what those situations would be. There is a real risk with these proposals that the voice of the child, about whom important decisions are being made, will be lost completely. The Children's Hearings Redesign proposal in relation to attendance was focused on the ways in which the hearing could facilitate different communication needs and preferences rather than disengaging the child from the process completely. This is a particular risk where children have additional support needs.

We are particularly concerned in connection with situations where the child has been referred on offence grounds, and the fact that their absence may well breach their right to a fair trial as protected by Article 6 of the ECHR and Article 40 of the UNCRC.

Single Member Panels

In principle we can see some circumstances in which a single panel member making preliminary decisions could free up panel time and ease backlog in the system. However, as currently drafted the circumstances in which a single panel member can sit is to be left to Regulations, the power to draft these having been given to the Scottish Ministers. This makes it difficult to understand the extent of their proposed use. It is clear that some Interim Compulsory Supervisions Orders (ICSOs) may fall to be considered by single member panels. ICSOs can have serious consequences for children and under the Bill may last for longer periods than before. Moving away from three panel decision making in these situations could negatively impact a child's procedural rights in relation to a fair hearing.

In addition, the decision making power in relation to which hearings will proceed in this way will fall solely on the National Convener. They will require a level of information sharing to be able to make informed decisions in this regard, requiring the Reporter to pass on sensitive information which may breach a child (or parent's) right to privacy.

Remuneration of Children's Panel Members and Specialist Panel Members

We can see the argument for remuneration of the Chair in the panel setting, particularly if that is accompanied by strict expectations and training. We can also see that specialist panel members may assist the decision-making process in certain circumstances. The decision making in relation to the appointment of a specialist panel member is with the National Convener. It is not clear what type of information they may need to make that decision and the impact that may have on the child's right to privacy and the privacy rights of the parents or relevant persons. At what point will consideration of inclusion of a specialist member occur, and who can raise it as a potential option in a case?

We also have some concerns about the balance of the panel, in terms of one panel member being deemed an expert on an issue before them. What weight will be placed on this view? How will that be evaluated in the decision making? Will this make appeals more likely – both in relation to the failure to appoint a specialist panel member, or in relation to the impact their views had on the decision taken.

Participation of Relevant Persons

We can see the benefit of having a mechanism to remove relevant person status in extreme circumstances.

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

Clan is supportive of all mechanisms which seeks to uphold a child's right to be heard, and participate effectively in their hearings.

However, it is important to remember that advocacy is not a substitute for legal representation for children and young people within the children's hearing system. This Bill is an opportunity to ensure that Article 12 compliance, along with Article 40 of the UNCRC and Article 6 of the ECHR is furthered by extending automatic access to solicitors within the Children's Hearing System - particularly where a child has been referred to the hearing for conduct or offence grounds, and to provide information on this to individuals at an early stage. See our answer to Question 3.

Reporter's ability to initiate a review.

There may be situations where this provision could be helpful for the child. However, we have concerns that this, coupled with other changes proposed to the Reporter's role, risks confusion of roles within the Hearings System.

Part 2

9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill

No comment

10. Are there any other comments you would like to make in relation to this Bill?

The Promise makes clear that the current legislative environment is too complex and cluttered. Legislative change is required to simplify it to ensure that children, families and care experienced adults can understand it and, importantly, access their rights. This Bill in our view does not achieve that aim and, in fact, complicates an already difficult to navigate system of rights, powers and duties, without a clear indication that children's rights will be enhanced, and the system will become more streamlined.

The changes proposed to After-care and the grounds process in Children's Hearings are two such areas that would benefit from streamlining. The proposals in relation to After-care as currently drafted unnecessarily complicate an already misunderstood area of children's rights and potentially creates another 'category' of care experienced individual who can access inferior rights to those who have left the system after they turn 16.

There are also clear missed opportunities with the Bill, which indicates further legislation will be required to achieve the transformative change that was envisaged

by the Promise, and by the Children's Hearings Review. Onc such area is the lack of inclusion of automatic access to lawyers in the Hearings System. We have provided our views on that in an earlier section. Whilst our understanding is that some changes may be coming in separate Regulations in relation to offence grounds, there is a more general need to embed the right to a solicitor within the hearings system, particularly if some of the changes proposed in the Bill are implemented. The post-referral discussions have the potential to leave children particularly vulnerable to rights' breaches.

Additionally, this Bill is an opportunity to address some of the issues we have raised in our response to the Restraint and Seclusion in Schools (Scotland) Bill. The Scottish Government requires to take the opportunity to consider the legal tests and oversight required in relation to restraint and seclusion across all of the childcare sector to ensure that children's rights are being upheld. Both restraint and seclusion engage fundamental human rights that should only be breached in the most exceptional of circumstances. Seclusion should never occur without being authorised by the law, particularly where the period of seclusion extends beyond 72 hours during the course of 28 days. External safeguards and protections must be put in place as a matter of urgency. Children in secure care, for instance, currently have less procedural guarantees and safeguards that those deprived of their liberty in the prison estate. This is a pressing issue that requires to be addressed, and this Bill is a route to do so.

Law Society of Scotland response to the Children (Care, Care Experienced and Services Planning) (Scotland) Bill call for views

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Child & Family Law sub-committee welcomes the opportunity to provide evidence to the Scottish Parliament's Education, Children and Young People Committee on the Children (Care, Care Experience and Service Planning) (Scotland) Bill, ('the Bill').

The sub-committee has the following comments to put forward for consideration. Our comments focus on Chapter 3: Children's Hearings, although there are brief comments on the rest of the Bill.

We repeat some of the concerns raised in our *Response to the Children's Hearings Redesign - Policy Proposals: Consultation*[1], in October 2024. Our comments on the Bill include:

- There remains a need for a coherent approach regarding Scots law for children, including clarity on the disparities in the definition of the 'age' of a child, and determining issues of 'capacity' across all sectors and services. This is especially relevant to protection of the holistic rights of 16- and 17-year-old children, and care experienced adults, in the care, civil and criminal justice, education and mental health systems.
- Clarity is required on the effects of drafting some of the provisions as amendments to pre-devolution legislation, which will therefore fall outwith the scope of the UNCRC (Incorporation)(Scotland) Act 2024 ('the UNCRC Act').
- Delays in implementation, and the bringing into force, of existing, related provisions have the knock-on effect of overly complicating the law and restricting children's and care experienced people's access to justice and effective remedies.

- Further consideration is required to ensure that the reforms not only meet international human rights law and standards, but on a practical level that sufficient safeguards and resources are in place to implement the reforms. Important omissions include failing to provide a legally qualified chair in the Children's Hearings System (CHS). The proposals do not ensure that all children and care experienced adults have access to independent legal advice and representation. This is especially important where consideration is being given to removing requirement for a child's attendance.
- The approach in the Bill is piecemeal, exacerbating existing uncertainty and complexity across the child and family law landscape. Consideration ought be given, in the first instance, to further consolidation and codification of child law in Scotland.

Part 1 Chapter 1

1. What are your views on the aftercare provisions set out in the Bill?

We support the aims of the provisions relating to aftercare in the Bill and suggest amendments below to improve the provisions. We emphasise that the principle of support will only be realised if the system is resourced effectively and question whether the financial consequences have been underestimated in the Financial Memorandum.

Subject to our comments in answer to Question 10, below, we agree that an amendment could entitle a wider group of people to rights to aftercare, including those who were not 'looked after' on their 16th birthday. We note that no consideration has been given to the following groups of care experienced children and young people, who may be entirely unaware of their status and rights as a care experienced person:

- Those who have been adopted, many of whom have been involved in the care system.
- Children subject to voluntary measures of supervision and support (under section 25 of the Children (Scotland) Act 1995), and those who are looked after 'at home'.
- Children from outside the Scottish jurisdiction, who have been placed in residential care homes, secure accommodation, mental health or detention facilities, whilst under an English Care Order, or under the inherent Jurisdiction of the High Court and subject to the Deprivation of Liberty Orders[2].

There is a chance these groups of children and young people, could fall through the gaps in rights protections in the new provisions. The Scottish Government has been aware of these issues for some time and, whilst there has been some progress in improving the law and policy, there has been significant delay in remedying the disparity in practice.

2. **What are your views on the corporate parenting provisions set out in the Bill?**

We agree with the provisions in the Bill regarding corporate parenting.

However, we have concerns regarding the legal status and accountability mechanisms of Integration Joint Boards. We are also concerned that this uncertainty could prevent children and young people's being able to seek effective remedy and redress for any breaches of statutory duties by individual public authorities and/or the Integration Joint Board.

Clarity is also needed on whether the provisions will apply to groups of children, and young people, as noted above, who may fall outwith the corporate parenting duties under the Children and Young People (Scotland) Act 2014.

3. **What are your views on the advocacy proposals set out in the Bill?**

These proposals are supported and, again, the importance of adequate resourcing will be crucial to their success.

However, we are concerned that providing a statutory advocacy service is only one component in fulfilling access to justice.

The UN Committee on the Rights of the Child[3] has been clear that in order to satisfy a State's obligations, (and as we have previously suggested), advocacy services are not enough on their own, and the priority must be that every child, who is the subject of State intervention, has the right to access to justice and independent legal advice and representation with information on their rights for all children who are the subject of State intervention.

We emphasise the need to ensure that there are no unreasonable delays in bringing the advocacy proposals into force. We note, and as highlighted below, the section 122 provisions in the Children's Hearings (Scotland) Act 2011 relating to advocacy took over 9 years to come into force.

Other rights-based provisions across the Children (Scotland) Act 1995, Children (Scotland) Act 2020, Domestic Abuse Protection (Scotland) Act 2021; and the Children (Care and Justice) (Scotland) Act 2024, are not yet in force. We note that this issue of, 'Non-implementation of Acts of the Scottish Parliament' is currently being considered by the EHRCJ Committee, of the Scottish Parliament.[4]

We would question the resourcing to fulfill the provisions set out in the Bill.

4. **What are your views on the proposals for guidance in relation to care experience?**

We agree with the proposals for guidance in relation to care experience.

Chapter 2

5. What are your views on proposals designed to limit profits for children's residential care services?

While providers will only provide a service if they are able to make a profit, the scope for them to do so should be limited, and we would agree in principle that the proposals to limit profits for children's residential care services are sensible.

We are aware of the significant concerns raised in England and Wales regarding profiteering in children's and adults' social care.

We note that Scottish, secure accommodation providers are currently managed under charity law, and secure care is currently under review, and the publication of the CYCJ Report, 'Reimagining Secure Care'[5].

The concerns raised around the management and accountability of privately funded children's homes is a central issue raised in the Promise, concluding, "*that there is no place for profiting in how Scotland cares for its children and that Scotland must avoid the monetisation of the care of children and prevent the marketisation of care by 2030."*

However, we note that the Scottish Government is consulting further on this matter.[6] This consultation closes on 6 October 2025.

It therefore concerns us that inclusion of the provisions in this Bill is premature, pending the outcomes and any recommendations made within related reviews and consultations.

6. What are your views on proposals to require fostering services to be charities?

For the reasons set out in the *Policy Memorandum*[7] accompanying the Bill, paras 111-113, this amendment seems desirable. Irrespective of whether fostering services are required to have charitable status or are private businesses, they will ordinarily be fulfilling public authority functions, and will require to act compatibly with human rights law[8].

We note that the provisions are amendments to pre-devolution legislation and refer to our comments in our answers to question 1 and 10.

7. What are your views on proposals to maintain a register of foster carers?

We would agree that the case for introducing a register of foster carers made within the policy memorandum[9] is welcomed.

Clarity is needed on whether the Scottish Government will be required to monitor support and regulate foster carers with training and guidance on compliance with their statutory and human rights duties.

Chapter 3

8. What are your views on the proposed changes to the Children's Hearings system?

While some of the proposed changes are to be welcomed, others have the possibility of undermining the whole ethos of the established and respected children's hearings system (CHS) which is generally regarded as an alternative, quasi-judicial, welfare based system, and is seen as doing a reasonably good job in protecting children and addressing youth justice concerns.

Furthermore, rather than providing a comprehensive revision of the CHS, these reforms do an incomplete job.

For example, the fundamental question of whether there should be a legally-qualified chair is not addressed sufficiently here, in previous reviews.

We would suggest the modern iteration of the Kilbrandon ethos, against a background of the developments in human rights and equality laws over the past 50 years, the system must meet all the requirements of a judicial, decision-making body, with a sufficiently legally qualified chair sitting with lay panel members or panel members with specific sector experience.

The CHS has undergone a radical change recently with the extension of its jurisdiction to 16 and 17 year-olds[10] and notwithstanding the unsatisfactory delays in bringing into force some of the critical provisions, it will take time for that to be accommodated.

Rather than amending the system now and returning to difficult issues later (or not at all), it would be better to wait and legislate comprehensively in order to avoid inconsistency and confusion.

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

We suggest that this issue provides an example of why it is necessary to address whether there should be legally qualified chairs in the CHS.

Ordinary and chairing panel members

The proposal to embed the distinction between ordinary and chairing members and for individuals to be appointed as such seems sensible. It may be argued that the proposal undermines the ethos of decisions being taken by a group of equals, however, panel members bring different skills to the process.

We would question the provisions relating to "specialist members". They receive brief mention in Sheriff Mackie's Report[11] and the consultation on it gives the examples of people with "particular qualification or expertise in childhood development, adverse childhood experiences, ('ACEs'), or … a professional with prior experience of working with children in some other capacity."[12]

This is where Kilbrandon ethos really could be undermined as lay members of the community are by their very nature specialists in their own communities, and a hugely disparate group of individuals. The selection and appointment of 'specialists' is so arbitrary and we have concerns that this may bring major employment law and equality issues arising as entirely unintended consequences.

Again, a legal chair and two lay panel members seems by far the best solution.

Fundamental to the CHS, as envisaged by Kilbrandon, was the idea of lay people making decisions on disposals. The system has moved on and panel members now receive extensive training so they can be expected to have some understanding of child development, ACEs, etc.

A further point is worth noting in respect of "specialists". Experts on the psychosocial (and, to a lesser extent, neurological) development of children may differ quite profoundly in their views.

Differing expert views are accommodated in the court setting by each side being permitted to call their own expert. If a single specialist is having an input at a hearing, there is no opportunity for anyone to challenge the specialist's view and, indeed, the child and the family may not be aware that there are different expert views. Their legal representative might have that knowledge but, even then, there does not seem to be an opportunity to challenge.

It may be that such specialist members have a place in a modernised CHS, but there is no escaping the emergence of a hierarchy of lay panel members and that would only be exacerbated if some are paid while others are not.

Single member hearings

The use of single member hearings makes some sense in respect of decisions that are wholly administrative in nature, but all substantive decisions should be the province of three-member panels. Drawing the line between what is administrative and what is substantive may give rise to debate. For example, the Bill envisages the making or extending of an interim compulsory supervision order (s.11(13) of the Bill amending s.96 of the 2011 Act) and the making of an interim variation to a compulsory supervision order (s.14(18) of the Bill inserting new s.95A(2) to be suitable for a single member hearing. Bearing in mind that such decisions could involve deprivation of liberty,[13] it is arguable that they are substantive decisions and, as such, appropriate only for a three-member panel.

Having a legally qualified chair would be helpful in identifying what is purely administrative and what is substantive.

Consistency of membership

The National Convenor is required to "have regard to the desirability" of consistency of membership in respect of the composition of a three-member panel considering a

case previously considered by a single member panel (s.11(5) of the Bill inserting a new (4B) into s.6 of the 2011 Act). That is fairly bland and, as such, seems unobjectionable.

We would question whether this is necessary and is something that if only a due regard duty could be included in Guidance rather than on the face of the Bill. The risk is that children and parents will not have recourse to a remedy should they object to the Principal Reporter's view on desirability or otherwise. This could create more conflict rather than more efficiency.

s.12 Remuneration of Children's Panel members

We would again suggest the model of a paid, legally qualified chair and ordinary panel members who receive expenses only. That is in line with how other tribunals operate and it can be anticipated that there would be real difficulty in recruiting legally qualified individuals to take on chairing in the absence of payment. However, there is no escaping the fact that drawing such a distinction would reinforce the notion of a hierarchy of panel members.

s.13 Child's attendance at children's hearings and hearings before sheriff

[*The concerns discussed below in respect of children's hearings apply to the proposed amendments to the child's obligation to attend hearings before the sheriff under s.103 of the 2011 Act.]*

The reform proposed here is cause for considerable concern. It would remove the obligation on the child to attend his or her own hearing, effectively reversing the presumption that the child will be there.

Since the creation of the CHS, the child concerned has been at the heart of the CHS and the child's participation has been central to the process. That is reflected in the 2011 Act, s.73 which places the child under a duty to attend his or her own hearing, subject to the power of the hearing to excuse the child is certain circumstances. The circumstances in which the child's attendance may be excused cover the obvious practical situations (child being incapable of understanding what is happening) and those where there is a welfare concern (placing the child's physical, mental or moral welfare at risk). It is essential that this decision to excuse takes proper account of the child's rights and views. The system must stop making presumptions as to welfare wellbeing and best interests and even if a Panel determines nonattendance is in best interests, the child must be given the opportunity to attend and be supported throughout to mitigate risks. They should also be given opportunity to change their minds and as above should have full opportunities to seek legal advice before giving their views or seeking to participate in whatever creative way is best for them.

The hearings should be striving for every child to be 'in the room' (in whatever capacity) and central to the decision-making they should be 'child-friendly' and certainly not permitted to be a place the child will not feel safe. The downside of the current system is that children are excused by default and rarely with any meaningful

engagement to ascertain they understand their rights or can be helped and facilitated to express views on all matters that affect them.

Removing that obligation, as is proposed in s.13 of this Bill, undermines the child's rights under the European Convention on Human Rights (ECHR), articles. 6 and 8 and, as such, is open to challenge. It also runs counter to the whole import of one of the general principles of the United Nations Convention on the Rights of the Child (UNCRC), article. 12, guaranteeing the child's participation rights.

It might be argued that removing the obligation to attend does not deprive the child of anything since he or she retains the right to attend under s.78(1)(a) and may choose to do so.

However, that ignores all the evidence, some of relatively recent origin, on the psychosocial and neurological development of young people.[14] There is a chance that a young person may make the decision not to attend based on what he or she sees as a short-term benefit (e.g. avoiding something unfamiliar or daunting) rather than considering the longer-term benefits (e.g. understanding the whole picture and having an input into the decision).

This is particularly true where early decisions are taken to excuse and then the uncertainty and 'scary' or 'boring' image of hearings and courts sticks with the child. The evidence also suggests that when people of any age are enabled to participate in early decision-making where they are respected and listened to their sense of procedural and process justice is much greater.

For children accused of a crime, or even more so "harmful behaviours" or where they are being moved to an alternative care, or to have restrictions on contact, they must be given accurate information advice and support about the long-term consequences as well as of their human rights in statutory proceedings and not attending etc. The requirement to attend (with limited exceptions) is pivotal to ensuring the system is rights-respecting.

To some extent, this disempowering of children and young people would be offset by them having legal representation from the outset, who could advise on the importance and benefits of attending. While not the same thing, the reform proposed in s.18 of the Bill (discussed below) in relation to providing the child with information about the children's advocacy service may also be of assistance.

A further point is worth considering. While it would be open to a pre-hearing panel to require the child to attend (s.13(5) of the Bill, amending s.79(3)(a) of the 2011 Act), that does not guarantee that all children referred on an offence ground would be so required. There is the danger that publicity surrounding non-attendance of an accused, particularly by an older young person, would discredit the system in the youth justice context.

s.14 Role of Principal Reporter and grounds hearing

The reform proposed in s.14(5) has, on the face of it, the benefit of streamlining the process and removing the need for grounds hearings that serve no real purpose. It looks comprehensive.

We have concerns over what will come before decision is made, and how the Reporter will determine the likelihood of the child and the relevant persons accepting the grounds. The Bill does not appear to address that. Would the family meet with the Reporter to clarify matters? The practical implications could be significant. The role of the Reporter is as the assessor of sufficiency of evidence, and decision-maker as to whether compulsory measures of intervention, are required in the first place. These are evidence-based decisions that ought to now include consideration of the UNCRC requirements, under the UNCRC Act. We have further concerns that in practice, the Reporter will not fully consider the views of the child independently, nor be able to make a 'best interests' assessment without significantly more investigation than happens at present (for example, from a social work, police, or education referral).

Again, any administrative changes that streamline processes are to be welcomed. But this decision-making by a Reporter is the critical decision that constitutes an interference by the State.

From the parents' and children's' perspectives, they should be notified by the Reporter that they have received a referral, and what their initial decision is.

We note Grounds Hearings can often have no substantive outcome and can be very formal and stressful for all concerned. However, this is another situation where if children and parents are given the opportunity to participate in the Reporter's decision-making, at least by expressing their views, after having an opportunity to obtain independent, legal advice, then a formal acceptance or non-acceptance could be intimated to the Reporter. The Reporter would thereafter decide whether to proceed to Proof. However, a further issue is that even at a Grounds Hearing, the Panel members must consider whether any *interim* measures are required - such as appointment of a Safeguarder, or interim contact arrangements - and it is these decisions that can be very difficult to manage in terms of ensuring fairness and balancing rights.

Again, having a legally qualified Chair would mean that the process could be streamlined.

The Scottish Government's consultation on the Children's Hearings Redesign[15] anticipated the family meeting with the Reporter would replace decision-making by the Panel Members, and we expressed concern that any such meeting raises a red flag over compliance with the ECHR, article 6.

That concern would be reduced if both the parents and the child were afforded legal advice and assistance and could be legally represented from the outset: but that is

unlikely to happen in all cases. The danger is that families will agree to section 67 Grounds, without truly understanding that they are opening the door to what could be profound intervention in their lives. That may be no worse than what happens at present, but the goal of the Bill is to improve the law.

Of course, Reporters will be seeking what is best for the child and will not want to put the family under any pressure. Yet, the law should not be drafted on the assumption that everyone will behave as they should. It must be there to protect individuals from (well-intentioned), over-zealous, State intervention.

s.15 Power to exclude persons from children's hearings

To the extent that the point of excluding a Relevant Person is to enable the child's participation in the hearing and avoid distress to the child, this proposed reform is welcomed. However, there must be adequate safeguards for the protection of a Relevant Person's rights, such as being given the opportunity to make representations after obtaining legal advice; and for the power to be used only in the most exceptional circumstances.

Having a legally qualified Chair would provide an additional safeguard.

s.16 Removal of relevant person status

This provision is welcomed. We note the Judgment in the case of A v Principal Reporter [2025] CSIH 9; 2025 S.L.T. 537, where, in the exceptional circumstances of the case, the Inner House of the Court of Session *held* that a Children's Hearing had not erred in excluding the child's father to protect the ECHR article 8 rights of the child and their mother, and had not acted unlawfully by determining the father was not a relevant person.

We suggest that the use of this power to remove relevant person status should be closely monitored to ensure that it is used appropriately, in compliance with the child's and relevant person's' human rights. Having a legally qualified Chair would provide an additional safeguard.

s.17 Tests for referral to Principal Reporter and making of compulsory supervision order or interim compulsory supervision order

Sections 17(2)-(5) risk altering the thresholds for referral to the Principal Reporter and weaken the local authority and Police Scotland duties to report, and as such are undesirable.

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

This can only improve the provision of information to the child and, as such, is welcomed. However, as indicated in our response to Question 3, we have

reservations on lay advocacy alone, and stress that, in order to be human rights compliant the child must also have access to independent legal advice.

To ensure rights compliance, across the system, every child should also be told of their right to access information and assistance from a free and independent solicitor.

It is important that as we have previously commented, there is no unreasonable delay in the bringing these rights into force and for adequate funding in implementation.

s.19 Period for which interim compulsory supervision order or interim variation of compulsory supervision order has effect

No comments.

s.20 Making of further interim compulsory supervision orders

No comments.

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

Where new information becomes available, it is desirable that it should be acted upon and, thus, this provision is welcomed.

Part 2

9. What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill

Clarity is needed on how children and families have the right to effective remedy for breaches of duties by integrated boards where they are made up of individual pubic authorities.

Other

10. Are there any other comments you would like to make in relation to this Bill?

We were surprised by the approach taken in the drafting of this Bill, given the concerns raised about the limitations in scope of the UNCRC Act 2024. Scottish Government gave a commitment in 2023, to ensuring that, '…*as much future legislation as possible is in scope for the powers in the UNCRC Bill… try to minimise making amendments to UK Acts and instead make relevant provisions in standalone Acts of the Scottish Parliament."* [16]

We note however, that certain provisions[17] are drafted as amendments to Westminster legislation, rather than as standalone rights. These provisions fall outwith the scope of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024.

Without whole-scale review of the priority areas requiring reform, introducing new, piecemeal changes, whether by amendment or by new standalone provisions, exacerbates the existing legal issues.

We suggest that these important concerns require further consideration as the Policy Memorandum and Children's Rights and Wellbeing Impact Assessment fail to address many of the issues. Robust human rights impact assessments should be undertaken. A review of legislative gaps (and constitutional 'scope' issues) should be undertaken to inform a human-rights based, consistent approach to all legislative reforms. Further assessment of the financial implications should be undertaken to ensure reforms are adequately resourced in practice.

We further suggest that in the context of implementing the Promise, and the Children's Hearings Redesign recommendations, and ensuring that law reform is effective and meaningful in realising human rights, that serious consideration must be given to codification of child law in Scotland.[18]

Finally, we would further highlight that failure and, or unreasonable delay, to bring previous statutes into force has created uncertainty and complexity for children and families and across children's services.

Examples abound of statutory provisions being passed by the Scottish Parliament only to languish unimplemented for years. Of particular relevance to this Bill under discussion, is both the proposed provisions giving advocacy rights to children and young people, under the Children (Scotland) Act 2020, and the Children's Hearings (Scotland) Act 2011, s.122, which was not brought into force for over 9 years.[19].

As we outlined in our answer to Question 3, this issue is currently under consultation in the Scottish Parliament, and it is therefore considered premature to be proceeding with these reforms, without taking into account the wider consultation responses.

In any event, even if the provisions were enacted, there are clear concerns, as history has shown that there would be inordinate delays in bringing the rights and duties into force. In order to avoid that happening in the event that this Bill passes, we would suggest s.25(2) should be replaced with a provision along the following lines:

> "The other provisions of this Act come into force—
>
> (a) at the end of a period of 6 months beginning with the day of Royal Assent,
>
> (b) on such earlier day as the Scottish Ministers may by regulations appoint.

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[1] Law Society of Scotland, *Response to the Children's Hearings Redesign- Policy Proposals: Consultation*

[2] Under the The Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022

[3] For example, United Nations Committee on the Rights of the Child Concluding observations on the combined sixth and seventh periodic reports of the United Kingdom of Great Britain and Northern Ireland* 22 June 2023

*in 2023, para 17(c), and in consideration of draft UN CRC General Comment 27 on Children's Rights to Access to Justice and an Effective Remedy.

[4] Non-implementation of Acts of the Scottish Parliament

[5] CYCJ Report, 'Reimagining Secure Care'

[6] Scottish Government, *Financial Transparency and Profit Limitation in Children's Residential Care: Consultation* (Edinburgh: Scottish Government, 2025).

[7] Policy Memorandum accessible

[8]As outlined in the UN Committee on the Rights of the Child: General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights* CRC/C/GC/16

[9] Policy Memorandum accessible, paras 120-132

[10] Children's Hearings (Scotland) Act 2011, s.199(1), as amended by the Children (Care and Justice) (Scotland) Act 2024, s1(2)(a)(i).

[11] *Hearings for Children: Hearings System Working Group's Redesign Report* (Edinburgh: The Promise, 2023), p.299 ("The potential value of specialist Panels or Panel Members with specialist training should be considered.")

[12] Scottish Government, *Children's Hearings Redesign Public Consultation on Policy Proposals* (Edinburgh: Scottish Government, 2024), p.42.

[13] On deprivation of liberty, see, *Blokhin v Russia*, App. No. 47152/06, Grand Chamber judgment of 23 March 2016, where a 12 year-old was detained for 30 days to "correct his behaviour" and prevent him committing further acts of delinquency. Violation of Art.5(1) of the ECHR, as well as of Art.3 (denial of necessary medical treatment) and Art.6(1) and (3)(c) and (d).

[14] See, United Nations Committee on the Rights of the Child, *General Comment No. 24 on Children's Rights in the Child Justice System*, CRC/C/GC/24, 2019, for an overview. At para.22, the CRC Committee noted the "evidence in the fields of child development and neuroscience" indicating "that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing."

[15] Children's hearings redesign - policy proposals: consultation - gov.scot

[16] Equality and Human Rights and Civil Justice Committee: Response from the Cabinet Secretary for Social Justice – 28 November 2023.

[17] Sections 1 (re aftercare), and Section 10 (re Register of foster carers), amend the Children(Scotland) Act 1995

[18] Elaine E Sutherland, "How to Increase the impact of the UNCRC Act": Scottish Legal News, 25 January 2024: https://www.scottishlegal.com/articles/elaine-e-sutherland-how-to-increase-the-impact-of-the-uncrc-incorporation-scotland-act-2024

[19] Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020, SSI 2020/370.