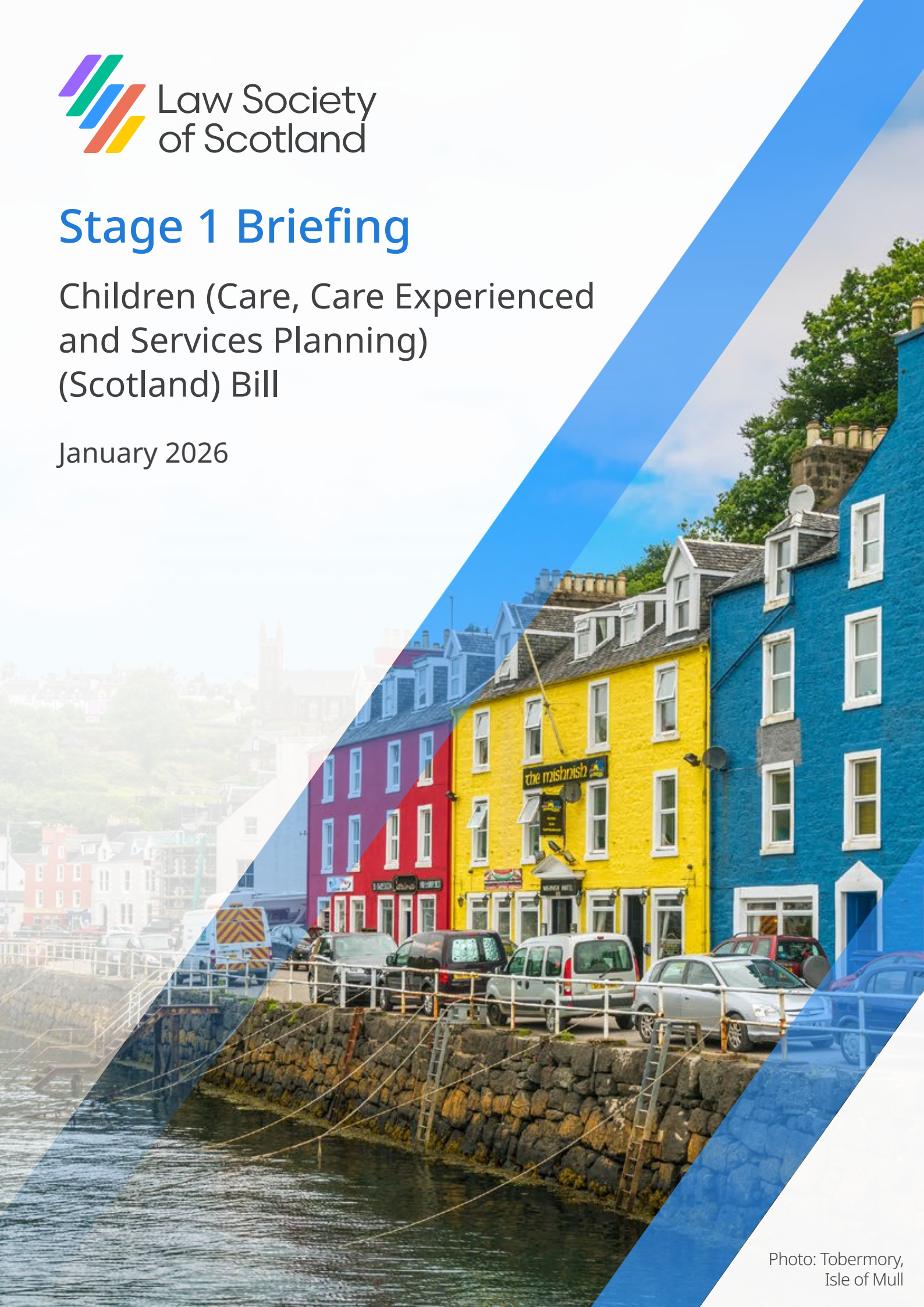
Law Society of Scotland

Stage 1 Briefing

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

January 2026



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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.

The Children (Care, Care Experience and Service Planning) (Scotland) Bill ("the Bill)[1] was introduced as a Government Bill on 17 June 2025. We submitted written evidence to the Education, Children and Young People Committee of the Scottish Parliament ("the lead committee") in August 2025.[2] We provided oral evidence as part of the lead committee's stage 1 consideration of the Bill on 10 September 2025.[3] The Education, Children and Young People Committee's stage 1 report on the Children (Care, Care Experience and Service Planning)(Scotland) Bill ("the stage 1 report")[4] was published on 17 December 2025.

We welcome the opportunity to consider and provide comment on the Bill ahead of the stage 1 debate scheduled for 14 January 2026.

[1] Children (Care, Care Experience and Services Planning) (Scotland) Bill as introduced
[2] Written Evidence
[3] Minutes for Education, Children and Young People Committee 25th Meeting, 2025 Wednesday, September 10, 2025 | Scottish Parliament Website
[4] Stage 1 Report on the Children (Care, Care Experience and Services Planning) (Scotland) Bill

General Remarks

We repeat some of the concerns raised in our *Response to the Children's Hearings Redesign - Policy Proposals: Consultation*[5], 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 to be given, in the first instance, to further consolidation and codification of child law in Scotland.

[5] Consultation Response

Part 1 – Children's care system

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

Section 1

Section 1 of the Bill proposes to amend section 29 and section 30 of the Children (Scotland) Act 1995 ("the 1995 Act") to widen the eligibility for aftercare rights. The amendment would extend eligibility to those aged 16–25 who, although not looked after on or after their sixteenth birthday, had previously been looked after at an earlier stage.

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.[6]

Subject to our comments 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 1995 Act), 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[7].

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.

Section 2

[6] Financial Memorandum accessible
[7] Under the The Cross-border Placements (Effect of Deprivation of Liberty Orders) (Scotland) Regulations 2022

Section 2 of the Bill updates section 29 of the 1995 Act so that young people who were looked after in Northern Ireland are treated in the same way as those looked after in England and Wales, bringing them within the scope of aftercare duties and rights where they were looked after on or after age 16 (or fall within an order under s29(1)(b)).

We have no comments on section 2 of the Bill.

Section 3

Section 3 of the Bill proposes to amend section 57 of the Children and Young People (Scotland) Act 2024 ("the 2024 Act") so that the corporate parental duties in Part 9 apply to all formerly looked after children and young people from the point they leave care, until they reach the age of 26.

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 ("the 2014 Act").

Section 4

Section 4 of the Bill proposes to give Scottish Ministers the power to create rights of access to care experience advocacy services and requires them to ensure those services are available. It also defines who is care experienced and allows Ministers to set or adjust the circumstances and groups to whom these rights apply.

We support these provisions 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[8] has been clear that in order to satisfy a State's obligations, advocacy services are not enough on their own, and

[8] 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

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 note from the stage 1 report[9] that the lead committee believes that advocacy services should be carried out alongside legal representation, rather than a replacement for it. We agree with this recommendation.

We emphasise the need for timely implementation to bring 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.

We note that this issue of, 'Non-implementation of Acts of the Scottish Parliament' is currently being considered by the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament.[10]

We would question whether there are sufficient resources to fulfil the provisions set out in the Bill.

Section 5

Section 5 of the Bill requires the Scottish Ministers to issue guidance to improve understanding of care experienced people and their experiences, including best practice on matters such as the use of non stigmatising language. Public authorities must have regard to this guidance, ensure those delivering public functions on their behalf do the same, and take steps to make people aware of it.

We agree with the provisions for guidance in relation to care experience.

Section 6 & 7

Section 6 sets out the consultation and publication requirements for guidance issued under section 5, while section 7 provides the definitions needed to interpret sections 4 to 6.

We have no comments on section 6 & 7 of the Bill.

Chapter 2 - Provision of children's care services

*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.

[9] Stage 1 report, para 226
[10] Non-implementation of Acts of the Scottish Parliament

Section 8

Section 8 proposes to insert new provisions into the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") requiring care service providers to supply financial and other information so that the Scottish Ministers can assess profit levels in children's residential and school accommodation services and determine whether profit limiting regulations should be imposed. It also enables Ministers to introduce and enforce profit limitation requirements, collect ongoing information, and apply penalties or regulatory action where providers fail to comply.

We agree in principle with limiting profits in children's residential care services. We note that Scottish secure accommodation providers are currently managed under charity law, that the Scottish Government are currently consulting on the future of secure care[11], and the publication of the CYCJ Report, 'Reimagining Secure Care'[12].

Concerns about profiteering and accountability in privately funded children's homes have been highlighted in *The Promise*, which states there is no place for profiting in how Scotland cares for its children and calls for an end to marketisation by 2030.[13]

Adequate consideration of consultation outcomes and the future of secure care is essential before legislating in this area.

Section 9

Section 9 proposes to amend the 2010 Act so that fostering services must be registered charities rather than any non-profit voluntary organisation, and gives Ministers regulation-making powers to expand the definition of "charity." Failure to meet this requirement would lead to cancellation of a fostering service's registration, and the section also updates definitions to ensure charities remain included within the meaning of "voluntary organisation" for adoption services.

For the reasons set out in the *Policy Memorandum*[14] 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[15].

[11] Consultation on the future of secure care
[12] CYCJ Report, 'Reimagining Secure Care'
[13] Financial transparency and profit limitation in children's residential care - Scottish Government consultations - Citizen Space
[14] Policy Memorandum accessible
[15] 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

We note that the provisions are amendments to pre-devolution legislation and refer to our comments in our answers to section 1 and section 10.

Section 10

Section 10 proposes to create a statutory register of foster carers by inserting new sections 30A–30G into the 1995 Act, enabling the Scottish Ministers to establish, maintain, and regulate the register, including what information it must contain and how it is to operate. It also provides for rules on disclosure, delegation of functions, and the ability to run the register on a pilot basis, with all associated regulations subject to the affirmative procedure.

We would agree that the case for introducing a register of foster carers made within the policy memorandum[16] 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 - Children's hearings

Section 11

Section 11 proposes to amend the 2011 Act to allow, in specific circumstances, children's hearings and pre-hearing panels to be constituted by a single chairing member rather than the usual three member panel. It formally creates separate categories of Children's Panel members- ordinary, chairing and specialist- to support this model and gives the National Convener the power to appoint single member hearings or panels where permitted. Certain decisions, such as whether to make a compulsory supervision order, must still be made by a three member hearing, and additional amendments provide rules on selection, consistency of membership, and disclosure arrangements connected to the new structure.

While some of the proposed changes are to be welcomed, others risk undermining the ethos of the children's hearings system (CHS) which is generally respected and regarded as an alternative, quasi-judicial, welfare based system.

For example, the fundamental question of whether there should be a legally-qualified chair is not addressed sufficiently within the Bill or in previous reviews.

We would suggest the modern iteration of the Kilbrandon ethos[17], the system must meet all the requirements of a judicial, decision-making body, with a sufficiently

[16] Policy Memorandum accessible, paras 120-132
[17] THE KILBRANDON REPORT

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[18] and notwithstanding the unsatisfactory delays in bringing into force some of the critical provisions, it will take time for that to be accommodated. We would suggest a comprehensive review of the CHS is needed to avoid inconsistency and confusion.

Ordinary and chairing panel members

The proposal to distinguish between ordinary and chairing members is 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[19] 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."[20]

Introducing "specialist members" risks undermining the Kilbrandon ethos and creating hierarchies within panels. Selection criteria appear arbitrary and could raise equality concerns. Again, a legal chair and two lay panel members seems by far the best solution.

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 may be appropriate for purely administrative matters, however, 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 (section 11(13) of the Bill amending section 96 of the 2011 Act) and the making of an interim variation to a compulsory supervision order (section 14(18) of the Bill inserting new section 95A(2) to be suitable for a single member hearing. Bearing in mind that such decisions could

[18] Children's Hearings (Scotland) Act 2011, s.199(1), as amended by the Children (Care and Justice) (Scotland) Act 2024, s1(2)(a)(i)
[19] *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.")
[20] Scottish Government, *Children's Hearings Redesign Public Consultation on Policy Proposals* (Edinburgh: Scottish Government, 2024), p.42.

involve deprivation of liberty,[21] it is arguable that they are substantive decisions and, as such, appropriate only for a three-member panel.

The stage 1 report[22] highlights that single member hearings have potential to expedite some procedural aspects of the CHS, however, it further recognises the concern that the role of single member panels as described within the Bill goes beyond what was envisaged by the 'Hearings for Children' report.[23] We note the lead committee believes that substantive decision making should sit with a three person panel.[24]

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 (section 1(5) of the Bill inserting a new (4B) into section 6 of the 2011 Act). That is fairly bland and, as such, seems unobjectionable.

We would question whether this is necessary and could more appropriately be addressed 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.

Section 12

Section 12 permits members of the Children's Panel to receive remuneration rather than only allowances, by amending paragraph 4 of schedule 2 of the 2011 Act.

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.

[21] 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).

[22] Stage 1 report, para 398
[23] hearings-for-children-the-redesign-report.pdf
[24] Stage 1 report, para 399

Section 13

Section 13 proposes to remove the automatic obligation on children to attend children's hearings and related sheriff court proceedings, while preserving their right to attend. It also allows hearings, pre hearing panels and the sheriff to require a child's attendance where necessary for a fair hearing or decision making, subject to safeguards relating to the child's wellbeing and understanding, and makes consequential amendments across the 2011 Act.

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 section 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.

The child's participation has always been central to the Children's Hearings System (CHS). Section 73 of the 2011 Act reflects this by requiring attendance, subject to limited exceptions for welfare or understanding. Decisions to excuse must fully consider the child's rights and views. Panels should strive to ensure every child can participate meaningfully, with appropriate support and access to legal advice.

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 the obligation to attend, as proposed in section 13, risks undermining European Convention on Human Rights (ECHR) Articles 6 and 8 and United Nations Convention on the Rights of the Child (UNCRC), Article 12**.** 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 section 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.[25] 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)

[25] 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."

rather than considering the longer-term benefits (e.g. understanding the whole picture and having an input into the decision).

While pre-hearing panels could require attendance, this does not guarantee consistency, and non-attendance especially in offence cases could damage confidence in the system. The presumption of attendance should remain to ensure a rights-respecting process.

Section 14

Section 14 proposes to reform the process for grounds hearings by allowing certain grounds to be considered by a single chairing member and by restructuring how the Principal Reporter's statement of grounds is dealt with. The section reshapes the sequence of decisions made when grounds are accepted or disputed, and updates procedures for referring cases to the sheriff or returning them to a children's hearing. These changes are designed to accommodate the removal of the child's obligation to attend hearings introduced by section 13.

The reform proposed in section 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[26] anticipated that the family meeting with the Reporter would replace decision-making by the Panel Members, and we expressed concern that any such meeting raises questions 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.

Section 15

Section 15 expands the circumstances in which a relevant person can be excluded from a children's hearing and allows pre-hearing panels to make exclusion decisions in advance of the hearing. It also extends the same power of exclusion to representatives of relevant persons, mirroring the changes made to section 76 of the 2011 Act.

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.

Section 16

[26] Children's hearings redesign - policy proposals: consultation - gov.scot

Section 16 provides a new procedure, via new sections 128A and 128B of the 2011 Act, that allows relevant person status to be removed from someone who holds that status under section 200, where their involvement is causing serious harm to the child and cannot be mitigated within the hearing system. The procedure can be initiated by the child, another relevant person, a safeguarder, the Principal Reporter, or the children's hearing itself, and requires both the children's hearing and the sheriff to apply a statutory test before status can be removed. Removal lasts only for the duration of the current referral or compulsory supervision order, and appeal rights are provided through new sections 164A and 164B.

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.

Section 17

Section 17 proposes to raise the threshold for referring information about a child to the Principal Reporter by requiring that it be likely, rather than merely possible, that a compulsory supervision order will be needed. Second, it updates the statutory test throughout the Act to include "support" alongside "protection, guidance, treatment or control," aligning the language with the wider purpose of compulsory supervision orders.

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.

Section 18

Section 18 provides that when information about a child is passed to the Principal Reporter, the child must also be given information about what will happen next, the children's hearing system and available advocacy services, with a matching duty placed on the Principal Reporter when they initiate or undertake a determination.

This can only improve the provision of information to the child and, as such, is welcomed. However, as indicated in comments in relation to section 4, 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 highlighted above, there is no unreasonable delay in the bringing these rights into force and for adequate funding in implementation.

Section 19

Section 19 proposes to update the rules on how long interim compulsory supervision orders (and interim variations) remain in effect. It keeps the current 22 day limit where the order is made urgently, but extends the maximum duration to 44 days in cases where urgency is not part of the test. These changes apply both to interim compulsory supervision orders and to interim variations of existing compulsory supervision orders.

We have no comments on section 19.

Section 20

Section 20 proposes to make minor technical amendments to sections 96 and 98 of the 2011 Act to ensure consistency in how interim compulsory supervision orders and their extensions operate when cases are referred to the sheriff.

We have no comments on section 20.

Section 21

Section 21 proposes to give the Principal Reporter a new power to initiate a review of a compulsory supervision order when new information suggests it may need to be changed, and requires them to arrange a children's hearing to consider whether the order should be continued, varied or terminated.

Where new information becomes available, it is desirable that it should be acted upon and, thus, this provision is welcomed.

Section 22

Section 22 of the Bill proposes to make Integration Joint Boards full partners in children's services planning, alongside local authorities and health boards, wherever an IJB exists. It renames these joint partners as "lead children's services planning bodies" and removes IJBs from the category of "other service providers." It also updates the 2014 Act to replace old references to the local authority/health board partnership with this new three-body planning arrangement.

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 public authorities.

Section 23-26

We have no specific comments on these sections.

Final remarks

We are concerned by the drafting approach, given previous commitments to minimise amendments to UK Acts and ensure future legislation falls within the scope of the UNCRC Act 2024.[27] Certain provisions[28] amend Westminster legislation and therefore fall outside that scope of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024. Piecemeal changes without a comprehensive review risk exacerbating 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, a review of legislative gaps and constitutional scope, and full consideration of financial implications are essential to ensure reforms are effective and adequately resourced. In the context of implementing The Promise and Children's Hearings Redesign, serious consideration should be given to codifying child law in Scotland.[29]

We also highlight the persistent issue of delayed commencement of statutory provisions, which creates uncertainty and complexity. Advocacy rights under the Children's Hearings (Scotland) Act 2011 took over nine years to come into force[30], and similar delays risk undermining this Bill. To avoid this we would suggest section 25(2) should be replaced with a commencement provision requiring the Bill to come in to force within six months of Royal Assent or earlier by regulation.

[27] Equality and Human Rights and Civil Justice Committee: Response from the Cabinet Secretary for Social Justice – 28 November 2023.
[28] Sections 1 (re aftercare), and Section 10 (re Register of foster carers), amend the Children(Scotland) Act 1995
[29] 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
[30] Children's Hearings (Scotland) Act 2011 (Children's Advocacy Services) Regulations 2020, SSI 2020/370.

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