

Stage 3 Briefing

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

March 2026

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 issued a briefing⁵ ahead of the stage 1 debate on 14 January 2026. The Scottish Parliament agreed to the general principles of the Bill on 14 January 2026.

The lead committee considered the Bill at stage 2 on 18 February 2026. The Bill was published, as amended, on 18 February 2026.⁶

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 3 proceedings scheduled for 18 March 2026.

¹ [Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill | Scottish Parliament Website](#)

² [Written Evidence](#)

³ [Education, Children and Young People Committee | Scottish Parliament TV](#)

⁴ [Stage 1 Report on the Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill](#)

⁵ [Stage 1 Briefing](#)

⁶ [Bill as amended at Stage 2](#)

General comments

While we recognise the policy intent underpinning many aspects of the Bill, significant concerns remain regarding the protection of children's rights, clarity of legal duties, and the accessibility and quality of the justice system for children, families and all care experienced people.

We remain concerned that the Bill further complicates an already fragmented landscape of child, care and family law. The volume and pace of amendments, introduced without sufficient consultation or scrutiny, as highlighted by CELCIS and others⁷, exacerbates this complexity. A piecemeal approach to the law in this area undermines legal certainty, reduces accessibility, and makes it harder for professionals, families and children to understand their rights and responsibilities. We therefore continue to urge the Scottish Government to commit to a comprehensive review and consolidation of child law in Scotland.

Introduction of restraint and seclusion provisions

We note **amendment 44** in the name of Natalie Don-Innes MSP, which would add provisions on guidance on use of restraint and seclusion in relevant care services. While we welcome the policy intention to regulate restraint and seclusion, and the repeated calls for greater protections for children experiencing alternative care, including in the clear recommendations of the Promise, the last-minute addition of these provisions without full consultation, clear policy grounding, financial scrutiny, or detailed human rights impact assessments is concerning.

The lack of a comprehensive framework risks undermining what is otherwise a positive step. It is important that any provisions and guidance concerning the use of restraint, seclusion or restrictive practices by the state against children, closely align across all public services and systems of care, health, education and justice. For example, the provisions must align with the extended rights and duties contained in the Restraint and Seclusion in Schools (Scotland) Bill⁸ in the implementation of children's rights.

These provisions require further engagement with practitioners, rights-holders and regulators to ensure they are workable, proportionate and compliant with human rights standards.

⁷ [Letter from Celcis, \(Centre for excellence for Children's Care and Protection\) to the Convenor and members of the Education, Children and Young People Committee, The Scottish Parliament, dated 28 February 2026.](#)

⁸ The Restraint and Seclusion in Schools (Scotland) Bill is scheduled for Stage 3 debate on 17 March 2026, the day before the stage 3 debate for this Bill.

Role of Children's Reporters in the Children's Hearing System

We note with concern the provisions in section 14 of the Bill, which extend the role and duties of the Principal Reporter. In particular, the proposed power to prepare a new "report" under section 69G of the 2011 Act, "*setting out details of discussions with the child or relevant persons prior to determining which of sections 69B to 69E applies*", and providing the Reporter's reasons for that decision, raises significant questions about the human rights compatibility of the process. The requirement to record or assess a child's purported acceptance of facts or section 67 grounds further compounds these concerns.

The role of the Children's Reporter does not currently require mandatory skills or training in assessing a child's capacity or understanding, yet the amendments would place the Reporter in a position of making determinations on whether a child "accepts" facts or grounds discussed. This is particularly problematic given the Reporter's dual role as the initial decision-maker and, in subsequent proceedings, the defender of the children's hearing's decision. This creates an inherent tension and heightens the risk of procedural unfairness.

There is also uncertainty around the evidential status, quality and reliability of any such report, particularly where it may later be produced or relied upon in court. In circumstances where neither children nor parents have a guaranteed right to independent legal advice or representation, and where there is no judicial oversight of this pre-determination process, the potential imbalance of power is concerning. These provisions may therefore give rise to risks of inadequate procedural safeguards and unlawful interferences with the rights of children and parents.

Rather than simplifying or streamlining procedures within the children hearing system (CHS), these amendments risk adding further complexity and confusion to an already challenging landscape.

Powers to Exclude Representatives and Restrict Reviews

We are concerned by the new provisions in sections 15⁹, and 15A¹⁰ of the Bill, which amend sections 77 and 79 of the 2011 Act.

Section 15 would expand the powers to exclude relevant persons and their representatives from hearings. The ability to exclude a representative, particularly where there is no explicit right to legal representation in the first place, risks further weakening procedural and human rights safeguards. Any restrictions on participation rights must be proportionate, clearly justified and subject to independent oversight. We would welcome clarification from the Scottish Government as to whether it is anticipated this provision could be used to exclude legal representatives from the hearing.

⁹ section 15 of the Bill, amending section 77 of the Children's Hearings (Scotland) Act 2011

¹⁰ Section 15A of the Bill, proposes amendment to s79 of the Children's Hearings (Scotland) Act

Section 15A would significantly constrain a relevant person's ability to request a review of a Compulsory Supervision Order (CSO). This right of review, under section 132 of the 2011 Act, is an important safeguard where compulsory measures interfere with family life. There is authority from the European Court of Human Rights¹¹ that a care order must in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permit. Access to a forum to independently review and determine any state interference is essential. Section 132(4) already restricts that right of review such that a relevant person (and/or a child) is only allowed to request a review after three months from the date of the order whereas the local authority can request a review at any time.

Any restrictions on review rights must be proportionate, clearly justified and subject to independent oversight.

The Bill's provisions at 15A, allowing a children's hearing to deem a review request "frivolous or vexatious" are, in our view, inappropriate. At present, the only context in which such a finding can be made is on appeal, where a sheriff, who is legally qualified, has access to all case materials, and hears legal submissions, is well placed to apply that test. A pre-hearing panel cannot realistically be expected to fairly assess the merits of a proposed review without having heard the substantive case. We do not consider it appropriate for a children's hearing, particularly a pre-hearing panel, to be delegated the power to restrict or remove a statutory review right, which operates as an essential safeguard against state interference with ECHR and UNCRC rights.

We are further concerned that there is currently no legal aid for representation at pre-hearing panels, except where a section 81 relevant person determination is required. The proposed amendments would therefore (i) introduce a new threshold for exercising a statutory right of review; (ii) permit interference with that right; and (iii) restrict participation in pre-hearing panels to those able to privately fund representation. This raises a clear and unacceptable barrier to access to justice.

The proposals create a structural imbalance whereby the state (through the panel) would determine whether decisions of the state (the children's hearing) may be reviewed at the request of an individual. Situations may readily arise in which a local authority considers no review is necessary, while the individual directly affected believes that a review or variation is required. There is no clear evidence that the proposed restriction is necessary or proportionate. Even if a small number of unmeritorious review requests exist, this does not justify curtailing a safeguard of such significance. Those with relevant person status either hold parental rights and responsibilities or have been deemed to have significant involvement in the child's upbringing; they should be trusted to request reviews on a reasonable basis.

¹¹ Including, *Strand Lobben and Others v. Norway* [GC], 2019, § 208; *Olsson v. Sweden* (no. 1), 1988, § 81).

If there were evidence that restricting review rights in truly exceptional circumstances could benefit children, any such assessment should only occur at the conclusion of a children’s hearing—when the decision-maker has a full understanding of the circumstances—not at a pre-hearing stage. Even then, any further restriction on rights of review would require compelling justification.

Taken together, these provisions raise substantive concerns regarding compliance with Articles 6 and 8 ECHR and Article 16 UNCRC, particularly in relation to fair hearing rights and respect for private and family life.

It is disappointing that despite repeated calls for the Scottish Government to honour the commitment made in 2023, “*to ensure that as much future legislation as possible is in scope for the powers in the UNCRC Bill, we can try to minimise making amendments to UK Acts and instead make relevant provisions in standalone Acts of the Scottish Parliament*”¹² the Bill has not been amended to provide rights that fall within scope of the United Nations Convention on the Rights of the Child (Incorporation)(Scotland) Act 2024 (‘the UNCRC Act’).

This approach continues to perpetuate complexity and creates disparities in the extent to which children’s rights can be directly enforced or relied upon. Greater alignment with the UNCRC Act, and consolidation of relevant legal duties within modern, post-devolution statutes, would significantly enhance clarity and compliance.

As previously highlighted in our stage 1 briefing¹³, drafting parts of the Bill as amendments to pre-devolution legislation risks placing key rights and duties outside the scope of the UNCRC (Incorporation) (Scotland) Act 2024. Specifically, there are continuing rights gaps for care experienced children under 18.¹⁴

Role of Solicitors in the Children’s Hearing System

We are concerned by provisions and proposed amendments, including **amendment 74** in the name of Jeremy Balfour MSP and **amendment 75** in the name of Roz McCall MSP, that would qualify or place conditions on the ability of solicitors and other representatives to act within the CHS through training or competency requirements that are undefined or risk being overly restrictive. Any attempt to qualify statutory rights of audience or representation must be evidence-based, clearly defined and developed in consultation with the legal profession.

Introducing accreditation requirements or restricted rights of audience would be likely to lead to reduced capacity within the CHS, with fewer solicitors undertaking this work. Representation in the CHS is often provided by legal aid firms, who are

¹² [Equality and Human Rights and Civil Justice Committee: Response from the Cabinet Secretary for Social Justice – 28.11. 2023.](#)

¹³ [Stage 1 Briefing](#)

¹⁴ It is noted that care experienced young people aged 18 may also have a right to raise proceedings under the UNCRC Act, prior to their 19th birthday, by virtue of sub-section 7(11).

already operating under significant financial and workload pressure. Solicitors within these firms may find it difficult to undertake mandatory training, particularly if a significant time commitment is required or the cost is high. Additionally, mandatory training or accreditation requirements may exclude newer members of the profession from appearing in children's hearings, further restricting capacity to represent those involved in the system. We are therefore concerned that introducing mandatory accreditation requirements or restricted rights of audience could limit children's and families' access to appropriately skilled representation and lead to more people being unrepresented in the CHS, ultimately leading to an adverse impact on access to justice.

We also note that, at present, solicitors do not have special status in the children's hearing and that individuals within the system can be represented by both legal and lay representatives. The approach proposed in the amendments would appear to create a disproportionately higher threshold for solicitors seeking to provide representation, with no equivalent requirements for lay representatives. It is also not clear if it would apply to members of the Faculty of Advocates, who may also, on occasion be instructed to represent parents, Relevant Persons or children in the children's hearings.

There would also be an irrationality to a situation where a solicitor could represent an individual in related court proceedings (including those concerned with making an interim CSO) for children; or authorisations for a child to be deprived of their liberty in secure accommodation, i.e. court hearings with the same decision-making powers as some children's hearings) but the solicitor could be prohibited from representing the individual at children's hearings.

We understand that the amendments tabled at stage 3 are well-intentioned and seek to ensure that children and relevant persons are represented at children's hearings by solicitors who have the requisite skills and experience to do so. However, solicitors, like many professionals involved in the CHS, are independently regulated and subject to professional and ethical obligations and standards. The Society's Rules provides that solicitors must only act in those matters where they are competent to do so.¹⁵ Specialist training and voluntary accreditation is available to practitioners, including accreditation as a specialist in child or family law, certification as a Trauma Informed Lawyer and certification in Child-Centred Practice. We note the Scottish Legal Aid Board already administers a competency-based system for those seeking to be registered for Children's Legal Aid. In this context, it is unclear how mandatory training or accreditation would better enable solicitors to carry out their role.

The Minister at stage 2, highlighted that "*Introducing a minister-driven accreditation scheme, as proposed in amendment 111 [amendment 75 at stage 3], would risk a significant departure from that long-standing position and would challenge the independence of the legal profession.*" Our current accreditation

¹⁵ [B1.10: Competence, diligence and appropriate skills | Law Society of Scotland](#)

standards are set by our specialist accreditation panels, and we consider that these panels are best placed to determine the requirements for those seeking specialist accreditation.

The changes such as those noted above are significant and may have unintended consequences. Such changes should be carefully and properly considered and scrutinised, rather than being added to the Bill at a late stage. There is a need for a comprehensive assessment of the human rights impact of these proposals, to ensure that the CHS respects and protects children and families' rights to access to justice at all stages of the proceedings.

Failure to Introduce Clear Rights to Legal Advice and Representation

The Bill still does not provide a clear, enforceable and unfettered right for children to access independent legal advice and representation, thus falling short of international child friendly justice standards, including the Council of Europe Guidelines on Child Friendly Justice¹⁶ and the UNCRC.

We agreed with the lead committee's view in their Stage 1 Report, that advocacy services should be carried out alongside legal representation, rather than a replacement for it¹⁷.

The policy intention behind the inclusion of a statutory right for a child to have access to legal advice and representation in the CHS is founded on the recommendations of the Promise's Redesign Report.¹⁸

The Scottish Government had indicated that, *from early 2024*, there would be "engagement and significant further work with social work, local authorities, the Scottish Legal Aid Board, and representatives of the wider legal profession, including the Law Society of Scotland, prior to introduction of the Bill."¹⁹ However, we would question whether this work has taken place.

It is therefore disappointing that there is only one reference to legal advice and representation for children in the Bill. Section 18 of the Bill amends sections 60, *et seq*, of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). We are concerned that whilst the introduction of a duty on local authorities includes a duty to, "*provide the child with information about...the availability of child-centred legal advice and representation*"; this duty only applies to local authorities (and to no other public authorities or corporate parents, such as police, health services, or even the Children's Reporter).

¹⁶ [Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice](#)

¹⁷ [Stage 1 Report on the Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill, para 226](#)

¹⁸ [Hearings for Children: Hearings System Working Group's Redesign Report \(Edinburgh: The Promise, 2023\)](#)

¹⁹ ['Hearings For Children' Scottish Government Response Policy Responses, page 9](#)

The other public authorities and corporate parents referred to in section 18 each have the same duty as the local authority to inform a child about, "*the availability of children's advocacy services,*" but not legal advice and representation.

While the provisions related to independent advocacy have been much improved after amendments at Stage 2, and are valuable, the right to lay advocacy is not a substitute for legally qualified advice and representation in what is a *quasi*-judicial system where decisions can significantly impact human rights, including rights to liberty and private and family life. The continued reliance on advocacy alone leaves a substantial gap in the structural and procedural safeguards necessary to ensure that children can meaningfully participate in proceedings and exercise their rights.

Conclusion

We support the broader aims of improving outcomes for children and care experienced people. However, we remain concerned that the Bill, even as amended at Stage 3, does not fully meet recognised human rights standards nor provide the legal clarity and consistency required in Scotland's child and family law landscape.

We urge the Scottish Parliament to address the issues set out above to ensure that the reformed system is accessible, rights compliant and equipped to deliver just and fair outcomes for all those affected.

For further information, please contact:

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