

# **The Hearings System Working Group**

## Children's Rights Impact Assessment



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The Promise Scotland has used the Scottish Government's Child Rights and Wellbeing Impact Assessment template to conduct this assessment.

This Children's Rights Impact Assessment was undertaken by The Promise Scotland on the recommendations contained within the Hearings System Working Group (HSWG)'s Redesign Report 'Hearings for Children'. It is intended to be **the first stage of an ongoing assessment** of the impact of the changes described in the report on the rights of children as a result of the redesign of the Children's Hearings System in Scotland.

The HSWG anticipates and expects the Scottish Government and other duty bearers to undertake their own impact assessments as the implementation of the recommendations progresses, in particular where legislative change is required.

### Introduction

The Hearings System Working Group's Redesign Report is a direct response to the conclusion of the promise, one of the seven reports produced by the Independent Care Review, that the underlying structures of the Children's Hearings System must be more actively considered so that it is *"best placed to truly listen and uphold the legal rights of children and their families."*<sup>1</sup>

The Hearings System Working Group was a partnership between The Promise Scotland, CHS and SCRA with the Scottish Government as an observing member. The Group was created to oversee the redesign of the Children's Hearings System following the publication of the Independent Care Review's recommendations and Plan 21-24, which sets out a framework for keeping the promise. The Group facilitated a collaborative process that had the rights and voices of children, families, and adults with experience of the Children's Hearings System at the centre. More about the way in which the HSWG engaged with children, families, adults and members of the workforce with experience of the Children's Hearings System and formed recommendations based on what they heard is set out within the Redesign Report.

As the Group worked it was mindful of the need for the Children's Hearings System to ensure full compliance with the UN Convention on the Rights of the Child (UNCRC), which is especially important as Scotland moves towards incorporation of the Convention into Scots Law, and the European Convention on Human Rights (ECHR).

The remit of the Group, set out in the Terms of Reference,<sup>2</sup> covered the principles on which the Children's Hearings System is founded, including the ongoing relevance of the Kilbrandon report, duties regarding children's rights and general principles governing the approach of the Children's Hearings System. It included the extent, consistency, and approach of the Children's Hearing System's decision-making powers: how organisations

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<sup>1</sup> The Promise, 2020, Pg 14

<sup>2</sup> Terms of Reference can be accessed here: [www.thepromise.scot/assets/UPLOADS/DOCUMENTS/2022/01/HSWG-ToR.pdf](http://www.thepromise.scot/assets/UPLOADS/DOCUMENTS/2022/01/HSWG-ToR.pdf).

should operate within the system; what quality assurance standards should be in place; the role of Panel Members and the best decision-making model; and the way in which children and families' voices and views can be better taken into account in the redesign. It also considered governance and administrative arrangements, and the accountability and oversight mechanisms that are, or should be, in place to help uphold children's rights in line with the UNCRC.

Minutes of the meetings of the HSWG are uploaded on The Promise Scotland's website.<sup>3</sup> The Group developed a broad discussion, consideration, and engagement programme, which resulted in:

1. Production and agreement of a new and clear shared vision for the redesigned Children's Hearings System: that the system will uphold and promote children's rights, provide child and family friendly care and justice, and put participation at its heart.
2. Analysis of the practice, legislative, budgetary, and structural blocks and enablers to implementing this vision.
3. An understanding of what legislative changes are required to meet this vision and uphold the rights of children and families and production of clear, collective proposals that redesign the Children's Hearings System and define the policy and legislative changes required.
4. An understanding of what policy and practice changes are required that do not require legislative changes.

The recommendations within the report set out what a redesigned Children's Hearings System will look like, that upholds children's rights and helps Scotland to keep the promise.

### 1. Which articles of the UNCRC does this policy / measure impact on?

The main Articles that apply are:

#### Article 2

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

#### Article 3

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<sup>3</sup> [HSWG Minutes](#)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

#### Article 6

States Parties recognize that every child has the inherent right to life.

States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### Article 8

States Parties will undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.

Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

#### Article 9

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### Article 12

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### Article 16

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

The child has the right to the protection of the law against such interference or attacks.

#### Article 18

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

#### Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### Article 20

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

States Parties shall in accordance with their national laws ensure alternative care for such a child.

Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of

applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### Article 23

States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child

Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

#### Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

#### Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

#### Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

#### Article 37

States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

#### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

#### Article 40

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal



law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed; (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: (i) To be presumed innocent until proven guilty according to law; (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.

## 2. What impact will your policy/ measure have on children's rights?

In October 2016, the then First Minister, Nicola Sturgeon, made a commitment that Scotland would *"come together and love its most vulnerable children to give them the childhood they deserve."*<sup>4</sup> She announced an Independent Root and Branch Review of Care (the Independent Care Review), driven by those with experience of care. The scope of this review included the Children's Hearings System and how it operates to serve the needs of some of the most vulnerable children and families in Scotland.

The Independent Care Review heard a variety of experiences of the Children's Hearings System from children, their families, care experienced adults and those working alongside them—including Panel Members—about how the Children's Hearings System currently operates. The Children's Hearings System and Looked After Child Reviews were mentioned frequently and referenced as pivotal moments in the care journey, where children needed to be involved, listened to and able to influence what will happen in their lives.

Children and young people told the Independent Care Review that sometimes they felt in control, empowered and listened to at their Hearings and Reviews. However, the promise also highlighted a number of issues that the Independent Care Review identified, including:

- The rotation of Panel Members can result in a lack of consistency, which means children and families sometimes have to retell difficult and painful stories and often receive a different perspective from previous Hearings.
- Some families spoke about a lack of holistic understanding of families, siblings and their respective legal rights.
- Hearings struggling to manage the complexity of the families appearing before them, with Panel Members not typically reflecting the sociographic of the families and sometimes struggling to understand and empathise.
- Hearings struggling to operate in a manner that recognises the trauma of the children and families who appear before them.
- The challenge of effectively listening and engaging with the children in Hearings and decision making alongside the complexity of listening to the voices of children with additional support needs or disabilities.

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<sup>4</sup> First Minister Speech, Scottish Parliament, 5<sup>th</sup> February 2020

- Overly formal reports and language with inconsistent variation in quality of information received from social work teams and how reports are structured across the country.
- The times of the Hearings and how children are removed from school has meant they have missed lessons and felt stigmatised in comparison to other pupils.
- Panel Members not feeling listened to and their concerns and worries about the children and families who appear before them not being followed up. The rights and responsibilities of Panel Members as volunteers and their relationship with Children's Hearings Scotland (CHS) is complex and provides little structure for accountability.
- The contradiction between the main reason to excuse a child from a Hearing (young age) and the demographic of children entering care (young age).<sup>5</sup>

In order to effect change, the promise identified the following areas:

- The focus of the whole of the Children's Hearings System must be the children and families who appear before it.
- In the management of the Hearings, CHS and SCRA must protect and uphold the legal rights of children.
- There must be particular attention paid to the rights of brothers and sisters.
- New approaches should be tested relating to the underlying structures of Hearings.
- There must be a new approach to caring for children within their families with far more support than is currently available.
- Children must be listened to and meaningfully and appropriately involved in decision-making about their care, with all those involved properly listening and responding to what they want and need. There must be a compassionate and caring decision-making culture focussed on children and those they trust.

The report by the HSWG is a direct response to these conclusions. Implemented and resourced in full the recommendations will transform the current Children's Hearings System. This will herald a step change not only for the Children's Hearings System but for how organisations and agencies work alongside children and families across Scotland and ensure that they are able to know and access their rights. The transformation will be in how children and families experience the Children's Hearings System and in the way that more robust, timely and consistent decision-making and more bespoke, high- quality support will help to keep the promise and improve outcomes for children and their families.

### 3. Will there be different impacts on different groups of children and young people?

The recommendations will affect all children and families for whom compulsory measures of supervision are considered in Scotland and children on the 'edges of care'.

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<sup>5</sup> The Promise, 2020, Page 40

The Redesign Report highlights several areas where the particular unique and specific rights of different groups of children and their families must be considered as the recommendations are implemented.

In particular, these relate to the rights of children in conflict with the law and the rights of babies and infants. The recommendations are aimed to ensure decision-making is in the best interests of all children, that decisions include their voices and that processes enable and facilitate their participation.

There are also particular recommendations that encourage duty bearers to consider and uphold the rights of children with different learning abilities, children living in poverty and children for whom English is a second language.

#### 4. If a negative impact is assessed for any area of rights or any group of children and young people, can you explain why this is necessary and proportionate? What options have you considered to modify the proposal, or mitigate the impact?

One of the recommendations within the Redesign Report is to explore the potential benefits and consequences of recording Children's Hearings. The recommendation asks that this includes a full assessment of the impact this would have on the rights of children and their families.

Some of the reasons for recording Hearings might include: to ensure that there is a clear record of what happened; to allow for greater oversight, accountability, and scrutiny of decision-making processes and the behaviour of the paid workforce; to assist in training and professional development; to allow children and families to potentially reflect on the proceedings when they feel better regulated and emotionally ready to engage; to allow older children to watch what happened and how decisions were made when they were younger; to provide a clear record for an appeals process; and to allow Panel Members to remind themselves of previous proceedings or, where there is a necessary change of Chair, to help the new Chair understand what has happened previously.

When children and young people with experience of the Children's Hearings System discussed this idea with Sheriff Mackie there was a mixed reception. Some children talked about their right to privacy and had questions about how permission would be sought. They asked how the recordings would be kept safe, how long they would be kept for, who would have access to them, and whether they would be admissible in Court. There was also a strong consensus that a young person should be asked whether they want their Hearing recorded, and if they agree to have it recorded, whether they could ask for it to be deleted later. Young people also asked questions around whether they would be able to share the recording with people they trust that might not be considered a relevant person by the Hearing.

As this recommendation progresses therefore, these views must be fully taken into account and a robust assessment of how recording Hearings will impact on children's rights must be undertaken.

## 5. How will the policy/ measure give better or further effect to the implementation of the UNCRC in Scotland?

The implementation of the recommendations will transform children's experiences of the Children's Hearings System in Scotland. It will uphold children's right to have their best interests taken into account in decisions that affect them through the implementation of a new decision-making model. It will transform children's experiences of participating in the processes within the Children's Hearings System, seeking their views often and listening with the intention of hearing. A redesigned Children's Hearings System must offer significant and meaningful opportunities for children and their families to participate in the decisions about them that have historically happened around them. The recommendations will also change the way that children and families are spoken with and about and will uphold their right to help and support.

A redesigned Children's Hearings System will only engage with children and families at the right time for them. It will take into account the profound importance of consistent and loving caregivers and homes for children, given what is known and understood about the importance of strong relationships and the trauma of repeated separation and ruptured attachments. It will ensure the particular developmental needs and milestones of babies and infants are prioritised, taking into account the importance of timely decisions about long-term care in the context of the vital role of the early days, months and years for their future outcomes.

In particular, the conclusions of the promise referred to above will be addressed and children's rights will be routinely upheld and respected. The report references the following areas where children's experiences will be transformed, which will give better or further effect to the implementation of the UNCRC in Scotland:

The success of the redesign of the Children's Hearings System is dependent on the following areas (Art. 3, 18, 24, 39)

Help and support, including whole family support, mental health and other important wellbeing services, will be available for all children and families who need it, regardless of whether they are engaged with the Children's Hearings System or not. (Art.18)

Children and families will be able to access this help and support to address the challenges in their lives as early as possible, for as long as they need it, and in the way that best suits their needs. (Art.18)

The people working alongside children and families, including social workers, will be happy, healthy, skilled and supported with enough time to get to know them well.

The scaffolding around the Children's Hearings System (Art. 3, 5, 12, 18, 19)

Everyone in the system, from the Reporter to the Chair, will work closely alongside children and their families, will listen to their voices and make decisions with them instead of for them.

The whole system will understand children and their needs in the context of their entire family and the complexity of family circumstances.

The language used in Hearings will be non-judgmental. The way that people speak about children and families will feel supportive, easy to understand, and consistent across Scotland.

Everyone in the Children's Hearings System working alongside children and their families will be specially trained, will understand what children and families' rights are and how the things that have happened to them in their lives have an impact on who they are and what they do.

The pathway to the Reporter (Art. 3, 12, 18, 20)

The Children's Hearings System will be engaged in the lives of children and their families at the right time.

People referring children to the Reporter will keep in mind the importance of the developmental milestones of little children.

The Reporter and the workforce will work closely together alongside children and families and listen to their views about the help and support that would make the most difference in their lives.

The people who work alongside children and their families will work together and have a clear understanding of the referral process. The Reporter will be more involved to help with this.

The Reporter's decision (Art. 3, 9, 12, 18, 19)

The way that the Reporter works will change. Reporters will work closely with children and their families and listen to their views.

Advocacy support will be immediately offered at the point of referral to the Reporter, and may eventually be extended to the family, in addition to the child. This offer will be repeated at different stages of the process.

Children will be fully informed of their right to legal representation and will be able to access support from lawyers if they need it.

The reasons the Children's Hearings System has become involved in a child and family's life (Art. 3, 5, 9, 12, 19, 20, 34)

Children and families will understand the reasons they have been referred to the Children's Hearings System. These will be written in a rights-based way and the process will feel more supportive. The good and happy things in children and family's lives will be talked about as well as the things that are difficult.

Grounds will be agreed in a separate process before children and families attend a Hearing.

Where possible children and families will meet the same Sheriff if they are in Court and their experiences in Court will be similar to their experiences in their Hearings.

There will not be long waits while grounds are being established.

The decision-making model (Art. 3, 12)

A Children's Hearing will not feel confrontational. The main objective will be to think about what is best for the child and the way this happens will feel calm, coordinated and safe.

There will be a consistent, highly qualified Chair of the Panel and two Panel Members.

The Panel's decision will be shared in ways that children and their families can understand.

The people making decisions at a Hearing (Art. 3, 12)

All Panel Members will be able to work closely alongside children and families and they will be kind, empathetic and respectful.

The Chair will become a familiar face for the child as they follow them through their journey in the Hearings System. The Chair will know the child's background so they will not need to retell their story at every Hearing. Having a better understanding of the child's story will also support the Chair and the Panel to make the best decisions.

During a Hearing, everyone in the room will be supported to share their view and the discussion will not be overwhelmed by the strongest voice.

Children and families will feel safe, listened to and respected that and know their Hearing is being managed as the Chair will have the skills needed to 'hold the room'.

The other meetings and processes that children and families may be part of relating to their protection, care and support will feel part of the same system and children and families won't be confused about the purpose of them.

The participation and preparation before a Children's Hearing (Art. 3, 5, 9, 12)

The preparation phase before a Hearing will feel more detailed and inclusive, ensuring children and families are involved and children feel ownership over their Hearing.

Before a Hearing, children and their families will be given an opportunity to meet the Chair so they are a familiar face at the Hearing, and to learn more about the process.

The Chair will be able to make decisions about how the Hearings will look and feel without needing to get the whole Panel together.

All communication from the Children's Hearings System will be easy to understand and children and families will be supported when they receive papers about the Hearing.

When possible, Hearings will take place at a time and place which causes the least disruption in their life. Children will be able to share their preferences about this and feel the system is being flexible to meet their needs.

Children will be encouraged to come to their Hearing, but they will not have to. Very little children will not be asked to come. If children do not come to their Hearing there will be ways to include them in the processes anyway and to listen to their views, even if they are very little. They will be supported to understand what was discussed and what decisions were made.

The voices of children and their families in their Hearing (Art. 3, 12, 19, 20)

Children and families will feel empowered to be involved in their Hearings and recognised by those working alongside them, including Panel Members, as the expert of their lives and their stories.

The decision-making process will be inclusive and give children and families the feeling of working alongside the Panel to make the best decisions possible. Their rights and choices about how they want to share their views and participate will be clear.

Children and families will be actively encouraged to participate and share their views in Hearings.

Although the decisions of the Hearing will continue to be focused on the child, the Hearing will consider the importance of support for the whole family.

The people working alongside children and their families (Art. 3, 12, 20)

Everyone in the room at a Children's Hearing will have clear roles and responsibilities which will be explained to children and families. They will use clear language and will be respectful to each other.

The decisions available to the Panel and the support for children and their families (Art. 3, 9, 12, 18, 19, 20, 21, 24, 27, 39)

Children and families will receive the help and support outlined in the child's order. Orders will be specific enough to ensure safe, loving and supportive relationships are protected.

Children will not be in the Children's Hearings System for longer than needed.

Wherever possible and appropriate, a child's Chair also be the Chair for their brothers and sisters.

Children and their families will be well supported after a Hearing takes place.

The oversight, enforcement, accountability and review of a child's order (Art. 3, 5, 12, 20)

The Chair will know how to follow up on the big decisions made in a Hearing and have a responsibility to hold others accountable for actions they agreed to.

The people responsible for making sure an order is implemented will make sure children and families are receiving the support that was promised to them.

Children, families, the important people in their lives, and those working alongside them will be able to keep in touch with the Hearing about how things are going.

The accountability of the Children's Hearings System (Art. 12, 20)

Organisations working alongside children and families will keep improving and will share the right information at the right time to make sure they understand if the lives of children have improved.

If something hasn't gone well there will be one place to go to make a complaint about the Children's Hearings System.

The implementation of the recommendations (Art. 3)

Change will happen. And everyone will work together to make sure it does, alongside children, families and adults with experience of the Children's Hearing System.

## 6. How have you consulted with relevant stakeholders, including involving children and young people in the development of the policy/ measure?

The HSWG was committed to ensuring that the views and voices of children and families and care experienced adults who have experience of the Children's Hearing System were at the centre of the redesign process. These voices and views were embedded into the values and ethos of the HSWG and into the pages of this report.

The HSWG recognised that care experienced children and adults have already repeatedly shared their views about the Children's Hearings System and endeavoured to access and take that information into account rather than asking people to retell their stories once again. At its core, the HSWG based all of its work on the foundation of the Independent Care Review, which listened to over 5,500 experiences and used the Evidence Framework of the Independent Care Review as the primary research base to map across the issues identified by the promise.

In addition to this, both prior to and following the publication of the Emerging Themes Report and the drafting of recommendations, the HSWG developed engagement periods and discussion time with care experienced children and young people through organisations such as Our Hearings Our Voice, the Better Meetings group in Moray, and the Centre for Excellence for Children's Care and Protection (CELCIS)'s Voice and Inclusion



Project. The focus of this work has been for children and young people to participate in the redesign process, contribute to the development of solutions and to ask whether the proposals will address the issues and barriers that children, families, and care experienced adults identified and shared with the Independent Care Review.

To ensure the views and voice of families were central throughout the process, the HSWG also met with birth parents, adoptive parents, kinship carers, and foster carers to help inform their thinking and test and discuss emerging recommendations.

A list of engagement activity with those who shared their views, expertise and insight to inform the work of the HSWG and the final recommendations are included as an Appendix to the report.

## 7. What evidence have you used to inform your assessment?

The HSWG began by sharing data and insights to identify an Issues List, which represents the scope of the redesign process and a set of questions that is answered within the report. This was mapped against the ongoing improvement work linked to the Children's Hearings System to avoid duplication and ensure relevant outputs and learning were part of the considerations of the HSWG. Our Hearings Our Voice also mapped this against their 40 Calls to Action.

The Issues List is aligned to Plan 21-24 and Change Programme ONE of the promise and outlines the questions the Group is exploring throughout the course of its work programme. It included consideration of five broad areas of change: Scaffolding of the Hearings System; Avoiding the need for compulsory measures of supervision; Children and their Hearings (including their views and voices); Meeting the needs of Children after a Hearing takes place; and the Relationship between the Children's Hearings System and the Criminal Justice System. Questions range from the structure of the Panel and the relationship between the tribunal and the Courts to the protections around decision-making, the role of the Reporter and the ways in which Hearings can uphold families' right to support.

The HSWG's Work Programme then followed three distinct phases to address the questions set out in the Issues List: (1) Discussion and Discovery; (2) Deliberation; and (3) Design and Decision.

The Discussion and Discovery phase involved engagement and deep dive sessions with children and families and organisations working alongside children, families and care experienced adults and in providing or delivering services as part of the Children's Hearings System throughout the lifespan of the project. This engagement included discussions with the Convention of Scottish Local Authorities (COSLA), Police Scotland, Social Work Scotland, advocacy providers (including the ten advocacy providers of the Children's Hearings System), legal service providers, Safeguarders and Children 1st, which operates the national Safeguarders Panel, third sector organisations and children and families with experience of the Children's Hearings System.

Prior to the publication of the Emerging Themes Report, the Group also held an informational webinar which explored the headings of the Issues List and convened a

number of 'deep dive' informational sessions to allow the Group to consider key issues. These included the role of the Reporter; best decision-making models; the forthcoming Care and Justice Bill; the role of social work; early years, Family Group Decision Making; UNCRC, and children's rights.

The HSWG held seven sessions held with those with experience of the Children's Hearings System, including foster parents, kinship carers, birth parents, adoptive parents, advocacy providers, police and Safeguarders. The information from these sessions helped to create a map of what currently happens in the Children's Hearings System, identifying issues, themes and solutions to help inform the further work of the HSWG.

The HSWG also received a number of written submissions to inform discussions and decision-making.

The Discussion and Discovery phase also included a Collaborative Redesign Project, where three project teams were created to work intensively to create solutions on the areas identified by the Issues List, meeting fortnightly, supported by the Office of the Chief Designer and The Promise Scotland. Each project team consisted of members of the paid and unpaid workforce in and around the Children's Hearings System.

This work concluded in November 2022. It produced an expansive set of proposals, prototypes and 'bold ideas' for what the Children's Hearings System could be. This work was considered by the HSWG and used to support decision-making. Reference to the proposals can be found within this report and in the Appendices.

The HSWG also commissioned research consisting of a review of caselaw and the legislative framework specific to the Children's Hearings System; a legal opinion from senior counsel on the emerging recommendations; and asked auditors to provide an outline financial model of what the likely changes would mean, particularly for the budgetary position of CHS and SCRA.

The first phase of substantive engagement concluded at the end of 2022. In January 2023, the HSWG convened seven times as a full Group to review the output from the information and evidence sessions and the commissioned research. During these days, the proposals and prototypes of the Collaborative Redesign Project were discussed and considered with wide ranging and fruitful discussion. Following the discussions, Sheriff David Mackie and The Promise Scotland prepared a draft report for the HSWG to consider.

The HSWG ensured that recommendations produced were based on evidence and that proposed changes would have a positive impact on children and families and would be legally compliant. From February to April 2023 the project moved into a period of informal consultation and refining the developing recommendations, including with children, families, and adults with experience of the Children's Hearings System and those working alongside them.

The Chair of the HSWG and The Promise Scotland returned to the groups and organisations listed above as part of the early engagement to provide an update and to seek their views on the developing recommendations. This included children and young people and adults with experience of the Children's Hearings System, birth parents, kinship carers and foster carers. Discussions were also held with the Chief Social Work

Adviser, the Information Commissioner's Office, the Crown Office and Procurator Fiscal Service, and the Coalition of Care and Support Providers in Scotland. Sense check and discussion of the recommendations was also undertaken with organisations and individuals with experience of trauma, domestic abuse, learning disabilities, and with members of the legal profession.

The HSWG then reconvened to reflect on the feedback that Sheriff Mackie and The Promise Scotland had received and to discuss changes required to refine the draft report. The Group also discussed the legal advice that was received from senior counsel, commissioned by The Promise Scotland, to ensure a robust legal foundation for the draft recommendations.

The Group also shared a copy of the draft report with some organisations with particular expertise and understanding of the Children's Hearings System for their review. The report includes an analysis of the impact that implementing the recommendations will have on children and families' rights (what will these changes look like to children and families) which incorporate the aims agreed by the HSWG.

The development of the final draft was overseen by Sheriff Mackie and the resulting recommendations were agreed by all members of the HSWG.

## 8. How will the impact of the policy/ measure be monitored?

The expectation of the HSWG is that the redesign will be progressed at pace and will be underpinned by clear governance and accountability mechanisms. It must be crystal clear who is responsible for which action, how the recommendations will be resourced, sequenced and implemented and how they will link to—and not duplicate—other ongoing important policy areas including UNCRC incorporation and other workstreams to keep the promise.

There are three types of changes that the HSWG has identified: improvement activity, which must be coordinated, well resourced, evidenced and given strategic oversight; policy changes, where the legislative mechanisms currently exist but the practice needs to change; and legislative changes. The Promise Bill, which will be laid by the end of this Parliamentary session, has been identified by the Scottish Government as the appropriate legislative vehicle for any necessary changes to the law. The transformation sought by children and families, and by the promise will be in accepting the entirety of these recommendations and considering their impact as a whole.

The report should not just be welcomed and set aside—the vision for change must translate into reality.

To achieve this, a high-level, collaborative programme for delivery and implementation must be put in place, led by the Scottish Government under an independent Chair. This must oversee the development and execution of the national implementation of the recommendations by securing and developing:

- Strategic multi-agency and multi-organisational leadership and understanding at national and local levels;

- A coherent national delivery plan, with timescales, for staged implementation and sequencing and commencement of the recommendations;
- Significant commitment to and clarity around how the changes will be resourced; and
- A clear and comprehensive accountability framework so that duty bearers are aware of what they must do and when by and how they will be held to account for delivery.

No single agency or organisation is responsible for delivery on all aspects of the redesign. This work must take place with a clear understanding and comprehension of the need for the existing Children’s Hearings System to be constantly and consistently operational, and to uphold the rights of the children and families currently involved in the system. Public and professional confidence in the Children’s Hearings System must be maintained as these changes are considered and implemented.

There is significant potential for this process to cause increased confusion, distress and overwhelm for the workforce, and for children and families if it is not managed well. Careful, considered, and thoughtful planning is required so that the workforce feel part of the changes and supported, not burdened with another siloed approach to improvement that they do not feel fully equipped to enact.

The starting point for changes, improvement, and transformation should be the benefit to children and families and the way that their experiences will change should be kept in mind throughout.

A national delivery plan must include:

- Oversight of ongoing improvement work so that it feels less piecemeal.
- Identification of areas for legislative change.
- Identification of areas for testing and further consultation.
- Collaborative work to sequence the implementation of the recommendations so that they can be prioritised, tested, and developed in a coherent way that leads to real change.
- Detailed work to ensure the changes are fully and sustainably resourced. The recommendations cannot be implemented within the resources currently available.
- Accountability mechanisms so that it is clear how the implementation of the recommendations is going—what is working well, what needs to move forward faster and what needs to happen to overcome challenges to progress.
- A robust approach to communications to the workforce and to children, families and care experienced adults.
- The voices and experiences of children, families and adults with experience of the Children’s Hearings System.

The Scottish Government must now take this report and the financial modelling work and begin the necessary preparations to implement the recommendations as part of the Government’s broader commitment to keeping the promise by 2030.

The Appendix to the Redesign Report contains a summary of the recommendations and some indicative duty bearers as an initial starting point.