

## The Promise Scotland's Briefing for Stage 3 debate of the Children (Care and Justice) (Scotland) Bill

Wednesday 24<sup>th</sup> April 2024

[The Promise Scotland](#) exists to support Scotland in its delivery of keeping [the promise](#) to Scotland's children, families and care experienced people following the [conclusions](#) of the Independent Care Review. Keeping the promise involves restructuring Scotland's 'care system', so that children, young people, and families are at its centre. The Promise Scotland directly supports people and organisations to help make that happen.

### Key messages

- The Promise Scotland **strongly supports** the aim and ambition of the Bill, and the changes within it which will help Scotland to keep the promise.
- In particular, the promise concluded that Young Offenders Institutions were inappropriate places for children and The Promise Scotland is keen to ensure this provision within the Bill is **commenced immediately**.
- In order to ensure effective implementation of the Bill, particular attention must be paid to:
  - **Supporting the workforce** and addressing recruitment and retention challenges so that it feels well equipped to uphold the rights and meet the needs of children and families.
  - **Adequate investment and resourcing**, in particular with respect to community support, mental health support and family support preventative services.
  - **Sequencing and prioritising** the provisions within the Bill so that they are aligned with other measures to help keep the promise and do not overwhelm the workforce.

**The Promise Scotland strongly supports the intent and ambition of the Children (Care and Justice) (Scotland) Bill**, which will ensure that some of the core conclusions of the Independent Care Review are realised. In particular:

- the provisions which seek to **end the inappropriate placement** of 16- and 17-year-olds in Young Offenders Institutions (YOIs) or prisons.

The promise was clear that children who do need to have their liberty restricted must be cared for in small, secure, safe, trauma-informed environments that uphold the totality of their rights and should only be done when other options have been fully explored (pg.91).

Provisions within this Bill respond to this conclusion of the promise by seeking to end the use of YOIs (and prisons) for all children aged under 18 and intend that any child who is to be deprived of their liberty will receive rights-based, psychological and trauma informed responses in age appropriate and therapeutic environments, which will normally be secure accommodation.

- the extension of the **provisions of the Children’s Hearings System** to further uphold the rights of older children.

The promise concluded that the principles that underpin the Children’s Hearings System – that children who engage in offending need care and protection rather than punishment – must be restated and understood across Scotland’s services to allow more children who are in conflict with the law to be engaged with the Children’s Hearings System and be supported in a way envisaged by the original Kilbrandon principles (pg.89).

The impact of early criminalisation is life long and can make it profoundly difficult for young people to access future opportunities, therefore, a preventative, inquisitive approach that seeks to understand the root causes of children’s offending behaviour, the adversities and challenges in their lives and the help and support they need is welcome and reflects what the promise concluded (pg.89).

The Bill aligns with the promise by proposing to change the age of referral to a children’s hearing from 16 years old to 18 years old and removing statutory barriers to 16- and 17-year-olds being referred to the Principal Reporter. This change will extend to all under 18s, both those on welfare and criminal grounds.

- **cross-border placements should only occur in exceptional circumstances** where the placement is in the best interests of an individual child.

The promise was clear that accommodating children from outside of Scotland in care placements is a breach of children’s fundamental human rights, denying those children access to their family support networks and services. It also skews the landscape for Scotland so that there is a lack of strategic planning for children, meaning that children can be put in inappropriate settings if demand has spiked (pg. 110).

This Bill will seek to ensure any new care service providers tailor provision to Scotland’s particular needs and will amend the powers of the Care Inspectorate to have an increased role in relation to the registration, regulation, and oversight of care settings where cross-border children are accommodated.

## Implementation of the Bill

The Promise Scotland has been consistently clear that care and attention must be paid to ensuring that the workforce is properly supported and that adequate resources are available to fully and effectively implement these important changes in practice.

The workforce must not feel overwhelmed by the significance of these changes and the rights of all children and families involved in the Children’s Hearings System—including those who have been affected or impacted by the behaviour of other children—must be

upheld. This means that there must be investment, time and space for appropriate training, the development of effective safety planning and information sharing protocols, and investment in the workforce and in community supports to support families. This will ensure that the Children's Hearings System is allowed to work in the way that the Kilbrandon Committee originally intended and that it can 'shrink and specialise' in the way the promise sets out (pg.44).

### Supporting the workforce

In evidence provided to the Education, Children and Young People Committee, it was highlighted that there are existing challenges with workforce recruitment and retention. This includes with respect to social workers, foster carers and in terms of recruiting sufficient numbers of volunteer Panel Members. This pressure makes it challenging to create space to redesign services, including secure care, which will deliver better outcomes for children and young people, and to enable the workforce to build lasting, consistent, and supportive relationships with children and families.

Transformational change will not be achieved if the workforce feels overwhelmed, confused, and disconnected from the many demands placed upon them. The success of the transformation of the 'care system' relies on a compassionate and caring workforce that feels valued, with the capacity and resources to work relationally alongside children and families in the way described in the promise.

The provisions in this Bill will require careful planning to ensure the diverse needs of those requiring this means of care are met and their rights are upheld. The workforce must be safe and protected in carrying out their work in doing this, but they must be supported to ensure that their responses to the children in their care mirror the tolerance and understanding of a good parent (pg.91). That involves workforce understanding of self, nurture, support, and leadership that models expected behaviour, and treats children in a way that is relational rather than procedural and process driven.

The ongoing work that the Scottish Government is undertaking with respect to workforce planning—in particular, regarding social work recruitment and retention—**must be prioritised and fully resourced**. Similarly, the work of the Children's Hearings Redesign Board to consider how best to ensure the recommendations of the Hearings System Working Group with respect to consistent, skilled, and competent Panel Members should be prioritised alongside the implementation of the Bill.

### Adequate investment and resourcing

As stated in our original evidence at Stage 1<sup>1</sup>, it is critical that the lens of enquiry is not simply on how the Children's Hearings System itself will accommodate these changes, but how implementing authorities, who will be responsible for facilitating the support specified in Compulsory Supervision Orders (CSOs) and a Child's Plan, will make sure 16-

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<sup>1</sup> The Promise Scotland (2023) Response to the Education, Children and Young People Committee's call for views on the Children (Care and Justice) (Scotland) Bill. <https://thepromise.scot/resources/2023/response-care-and-justice.pdf>

and 17- year-olds are able to access adequate help and support to uphold their right to care and protection.

This includes ensuring that the broader protection, care and support landscape is ready and prepared for the number of 16- and 17-year-olds that will require help and support, with cognisance of the complexity of the challenges they are likely to face.

Investment and resources must be available with respect to upholding the rights of older children engaged in the Children’s Hearings System (and those accessing support through section 25 of the Children (Scotland) Act 1995) to adequate housing, transport, healthcare, and education. There should also be access to mental health support, substance use services and consideration of the pervasive impact of poverty on many of the children who will be entering the Children’s Hearings System.

There should also be adequate provision to uphold children’s right to aftercare and continuing care support, to ensure their needs are fully reflected by corporate parents and in the work on meeting the child poverty targets and Children’s Services Plans. Some of these children may be parents themselves, and that should be considered as the Children’s Hearings System engages in their lives.

The specific needs of unaccompanied children should be considered, including resources to facilitate interpretation and translation. There should be a laser- sharp awareness and understanding of the impact of grooming, trafficking, child criminal exploitation and child sexual exploitation on children.

While there may be a need for significant investment at first, a welfare and rights-based approach to supporting children and families, which meets their needs and upholds their rights, is likely to reduce demand for the Children’s Hearings System and the secure care estate in the future. In line with the Independent Care Review’s Human and Economic Cost Modelling approach<sup>2</sup>, and the work of the Independent Strategic Advisor, Fiona Duncan, the expectation of The Promise Scotland is that the changes within this Bill are fully resourced, and the resourcing required will reduce over time as the changes become embedded into practice.

### [Sequencing and prioritisation](#)

The commencement of the duties contained within this Bill, if passed, must be sequenced and prioritised carefully with multiple upcoming legislative and policy changes.

This includes the recommendations in the [Hearings for Children Redesign Report](#) which the Scottish Government published its formal [response](#) to in December 2023—the majority of which were accepted.

It may be helpful for Members to be aware that a number of the amendments proposed for this Bill are either recommendations within the Redesign Report or align closely to the Hearings Systems Working Group’s thinking on transformational change, including numbers, **45** (commencement of the Children (Scotland) Act 2020), **47** (cases where a compulsory supervision order has not been made), **66, 67** (participation), **42** (trauma), **46**

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<sup>2</sup> Independent Care Review (2020) Follow the Money <https://www.carereview.scot/wp-content/uploads/2020/02/Follow-the-money.pdf>

(multi-agency approach), **57** (Children's Panel training), and those linked to changes to legal aid (**54- 56**).

The recommendations present long-term solutions to some of the current challenges relating to the sustainability of the current model of the Children's Hearings System, in particular relating to the recruitment and retention of Panel Members, which is crucial in delivering a Children's Hearings System which extends provisions to 16- and 17-year-olds.

The launch of Plan 24-30 due in June 2024, and led by the Independent Strategic Advisor, Fiona Duncan, will provide a route-map of what steps Scotland must take to keep the promise by 2030. Segments of the plan will be inextricably linked to the implementation of this Bill, and therefore, there is a clear need for strategic leadership to sequence the many changes and proposals properly and coherently. This is crucial for ensuring the workforce does not feel overwhelmed by the seismic changes which are being considered in parallel to one another, including, this Bill, the Hearings for Children recommendations, Plan 24-30, Reimagining Secure Care, and the Whole Family Wellbeing Fund.

There must be a clear and coherent sense of how the changes will be resourced and implemented in practice to ensure children and families can feel the benefits of the promise being kept. It is crucial these key policy milestones do not appear in conflict with each other, and rather are considered and viewed as part of Scotland's broader efforts to keep the promise.

**Please do not hesitate to get in touch with The Promise Scotland's Policy Officer, Emma Young, with any questions or comments about this briefing: [emma@thepromise.scot](mailto:emma@thepromise.scot).**