

# The Promise Scotland briefing for the Scottish Government on key areas of consideration for the Promise Bill

December 2024

## Background

It has been clear since the promise was made that there would be a need for legislative change. [‘The Rules’](#), produced by the Independent Care Review as one of its final reports, outlines some key areas where legislative change is required:

- Ensuring the **legal rights of children are protected and upheld** in all circumstances, particularly in the Children’s Hearings System.
- Acknowledging, protecting and promoting **brother and sister relationships** in and on the edges of care, meaningful participation in decision-making and simple rights of appeal.
- Treating **unaccompanied asylum-seeking children** as ‘looked after’ children and placing them in caring, supportive settings, whilst ensuring access to legal support, advice and advocacy.
- Understanding the complex consequences for the legal identities of children and young people after **adoption breakdown**.
- Preventing **lengthy detention in hospital settings** through mental health legislation.
- Ensuring access to **legal advice for children** with additional support needs, those living in rural communities and those for whom English is a second language.
- The legislative environment that **governs data**.
- There must not be any delay between well-intentioned changes to legislation and their implementation.

The promise is also clear about the need for the policy and legislative environment that governs the ‘care system’ to change.

The Promise Scotland and the Independent Strategic Advisor have previously provided oral and written advice and information about key areas for consideration for the Promise Bill. This briefing is an update to that. It builds on the outlines set out in ‘The Rules’ and provides more specific detail as policy instructions are finalised. It is intended to support the Scottish Government, including the Bill team in its decision-making.

The **first part** of the briefing identifies the fundamentals for a Promise Bill and the process for developing it. The **second part** sets out the relevant changes required and is **organised according to a child’s journey through the ‘care system’**. **We have focused on identifying the legislative changes that are required to keep the promise and ensure**

**children, and care experienced adults know and understand their rights at each stage of their interaction with the 'system'.**

A **high-level summary** is also provided for ease of reference.

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**PART ONE: Fundamentals of the Bill and the process for developing it**

### **The Promise Bill must:**

- set out a **coherent vision**, clearly articulated so that members of the care community and the workforce understand what the intention is behind it and how the duties will be implemented.
- be fully **compliant with the UNCRC** legislation.
- **not further complicate the landscape** of care by 'layering on' or adding additional duties to an already overstretched workforce.
- **be clear about the rights and entitlements of children, families and care experienced adults at every stage of their interaction with Scotland's 'care system'**. Sometimes this will mean creating new legislation to enshrine statutory rights (for example to advocacy, Family Group Decision Making and legal representation). In other cases, it will mean drawing together existing pieces of legislation in one place so that children, families, care experienced adults and members of the unpaid and paid workforce are clearer about what the rights, entitlements and duties are at every stage of interaction with the 'care system'. This links to some of the work required to 'declutter' the landscape (see below).
- include measures to **'declutter' the landscape of care**, in line with the commitment in the Scottish Government's Keeping The Promise Implementation Plan to undertake a review of the legislative framework relating to the 'care system' in Scotland and consider the desirability and extent of a restatement of the law in this area so that it is identifiable and understandable (Pg 98). The promise is clear that the current legislative environment is too complex and cluttered and legislative change is required to simplify it and ensure that children, families and care experienced adults understand their rights and duty bearers understand their duties—and, crucially, are supported to implement them.
- address the **areas of the promise that require legislative change – including removing legislative barriers to relationship-based ways of working** – or articulate clearly other, more appropriate, legislative vehicles.
- be **properly sequenced** with full use of sequenced commencement dates to ensure that duties are enacted in ways that ensure they will be properly implemented and fully resourced.

### **The process to develop the Promise Bill should:**

- **not cut corners** in order to meet deadlines.
- only propose **legislative change in areas where it is absolutely necessary**. Not all areas of the promise require legislative change. Where the process to develop the Bill identifies areas where legislative change is not required, but policy or practice change is, these must be shared with The Promise Scotland and prioritised as the route-maps for Plan 24-30 develop.
- ensure **legislative changes are fully evidenced** and able to stand up to robust scrutiny. This includes the evidence that was heard from children, young people and care experienced adults by the Independent Care Review.

- identify where **other pieces of enabling legislation around the 'care system' have not yet been implemented and prioritise and resource their enactment.** This includes the provisions of:
  - the Children (Scotland) Act 2020;
  - the Children and Young People (Scotland) Act 2014 relating to continuing care (Part 11), aftercare (Part 10), kinship care (Part 13) and children at risk of becoming looked after (Part 12)
  - the Criminal Justice (Scotland) Act 2016 (impact assessments for children of prisoners).
- focus on **implementation**, in particular ensuring :
  - Clear communication with children, families, members of the care community and members of the unpaid and paid workforce about how the Promise Bill fits into the broader picture of transformational change, how the duties will be enacted in a thoughtful way, and how the changes link clearly to the other considerable areas of change (for example around secure care reform and implementation of the Children (Care and Justice) (Scotland) Act 2024).
  - The provisions in the Bill are fully resourced and there is a clear and accurate Financial Memorandum (and respective identified funding lines within existing budgets).
  - Sequencing and modelling work is undertaken (including an assessment of when certain duties should commence and how that aligns with other pieces of legislation).

## **PART TWO: A high-level summary of the specific areas identified by The Promise Scotland as potentially requiring legislative change, which therefore should be considered for the Promise Bill**

More detailed information on each area is outlined in the section below.

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### **Early help and support for children and families**

- Clarity over the existing statutory framework and the rights of children and families to early help and support.
- Definition of early help and support
- Duty to provide early help and support
- Meeting the needs of infants and babies
- Preventative spend milestones
- Duties around multi-disciplinary teams and team working
- Reporting and monitoring mechanisms and changes to the development of Children's Services Plans
- A statutory footing for family learning
- Access to Family Group Decision Making
- Sustainable, long-term funding and changes to existing procurement and commissioning
- Poverty

### **Intensive support for children and families**

- Statutory framework around intensive support
- Strengthening and implementing Part 12 of the Children and Young People (Scotland) Act 2014
- One family one plan
- Multi-disciplinary teams
- Duty to provide support for parents when children are removed from their care and beyond
- Support for kinship carers
- Support for foster carers
- Support for adoptive parents
- Support for children of parents who are in conflict with the law
- Domestic abuse
- Access to substance use services for parents

- Children with a disability and with additional support needs

### **Decision-making alongside children and families (including the Children's Hearings System)**

- Embedding a legal right to participation/ consultation in decision-making frameworks
- The voices of infants and babies
- A right to advocacy
- A right to legal representation and legal aid
- Changes to the Children's Hearings System (including consistency of Panel Members and no more Grounds Hearings)
- Decisions around permanence (including a statutory time limit)

### **Children and families' first engagement with the 'care system' (after a decision has been made)**

- Specific rights for children entering the 'care system'
- Overarching duty to promote the wellbeing and uphold the rights of children with experience of care in Scotland

### **The rights of children for whom Scotland has caring responsibilities**

- Removing barriers to relationships
- Reducing cross border 'placements'
- Support for kinship care and changing the age and rights around Kinship Care Orders
- National Foster Care Register
- Changes to Secure Care (remaining in Secure Care for longer, exit planning, etc.)
- Adoption
- Unaccompanied asylum seeking children
- Brothers and sisters
- Justice (including Age of Criminal Responsibility and places of safety)
- Education (including Virtual Headteacher Network)

### **Moving on from care into adulthood & lifelong rights of care experienced adults**

- Staying Put for longer (planning for this and transition planning)
- Access to financial support
- Removing regulatory barriers to children staying in foster, kinship and residential care
- Clearer definition of 'aftercare'
- Removal of eligible needs assessments
- Extension of continuing care and aftercare

- Improvements to monitoring
- A statutory right to return
- A statutory right to advocacy and legal representation
- Lifelong support

## **People**

- Support for the workforce

## **Scaffolding (creating an enabling environment for change)**

- Changes around data and information
- Governance
- Legislation (decluttering the landscape)
- Clearly setting out rights and entitlements
- Restraint
- Scrutiny and inspection
- Removing profit and targets associated with profit

## **Detail on the relevant changes required in each of the specific areas:**

### **Early help and support for children and families**

There must be absolute clarity about:

- what the rights are of children and their families in need of early help and support, and
- what the existing statutory duties are for these children and their families.

This clarity is needed so these rights and statutory duties can be upheld.

There must be a clear statutory framework for early help and support for children and families that sits alongside universal services and is universally available to all children and families that need it, in line with the promise.

This may involve bringing together pieces of existing legislation into one place for clarity (see above regarding 'decluttering' the landscape) as well as new options for both legislative and non-legislative reform in this area. The following areas must be considered for inclusion within the Promise Bill as part of the work to develop a clearer framework:

- **A clear definition of 'early help and support services'** so that there is absolute clarity (for both the 'system' and for children and families) about what children and families' rights to early help and support are and how such help and support can be accessed. This should align with existing children's services planning duties set out in Part 3 of the Children and Young People (Scotland) Act 2014 and ensuring Children's Services Plans adequately and appropriately identify what early help and support services are available in each local area.

- Consideration of a **duty to provide early help and support services** in local areas which includes emotional, practical and financial help. This could include statutory guidance for local authorities, building on the existing GIRFEC guidance and the enactment of Part 18 of the Children and Young People (Scotland) Act 2014 (definition of wellbeing).
- Scotland must support families at an earlier stage, so more babies and infants remain at home in loving, nurturing relationships. The barriers preventing this must be addressed quickly with appropriate and bespoke support. For progress to be made, family support must consistently begin pre-birth and focus on the needs of families with very young children. This must be included in any definition of 'early help and support' and there must be an expectation, in statutory guidance, that the **needs of infants and babies are met in Children's Service Plans**.
- There must be a **consideration of clear milestones to ensure the commitment to preventative spend** is met.
- The proposed changes to English legislation in relation to **multi-disciplinary teams** and additional duties to engage with members of the education workforce should be considered in a Scottish context.
- Potential changes to how **Children's Services Plans are developed** (by amending Part 3 of the Children and Young People (Scotland) Act 2014) should also be considered (in addition to what is referenced above), including around creating improved reporting mechanisms back to local communities about how decisions are made and what services are locally available. Children's Services Plans must be developed in coordination with the local community, the care community and the third sector—this must be meaningful.
- There is also a need to **review reporting mechanisms** which are currently too burdensome for local authorities. The Promise Bill provides an opportunity to review the existing reporting expectations on local authorities and to consider how this can be more meaningful while reducing bureaucracy. For example, there may be an opportunity to consider how reporting around Children's Services Plans, children's rights and corporate parenting can be better streamlined. A legislative approach will be required. The planned consultation to revise guidance around Part 3 of the Children and Young People (Scotland) Act 2014 in Spring 2025 would be an opportunity to consider this—although an alternative legislative vehicle to the Promise Bill would therefore need to be considered given the timeframe. This work must also align with ongoing consideration of how to 'declutter' the landscape (see above).
- There should be consideration of whether **Family Learning should be placed on a statutory footing**—including as part of early help and support services within local authorities.
- Family Group Decision Making (FGDM) must be consistently available for all children and families across Scotland. **The Promise Scotland favours a legislative approach where children and families have a right to access FGDM and local authorities have a duty to provide it.** Full consideration and discussion is required in terms of understanding when this should be provided to children and their families (when they want it), but The Promise Scotland's view is that no life changing decision should be made about children

and families without the offer of FGDM being made, except in exceptional circumstances. In order to realise this, alongside changes in statute there must be adequate resourcing made available so that local authorities that do not currently have an FGDM service can develop one and so that local authorities that do have one can expand it if necessary, in line with the expected level of demand from children and families. FGDM must be of high-quality and there must be an approach to developing (or further developing) consistent standards and training as in other areas, such as advocacy. The National Family Group Decision Making Steering Group is likely to have a view on whether the existing standards need to be on a statutory footing.

- There must be adequate resourcing available to provide sustainable, flexible early help and support services. **Changes to existing procurement and commissioning rules** may be required to facilitate this (for instance, the lead agency for delivery), in addition to coordination with the ongoing work identified in the Programme for Government to streamline funding streams and the investment: disinvestment work programme led by the Independent Strategic Advisor. The existing Whole Family Wellbeing Fund is a part of this (and the work being undertaken by Scotland Excel around commissioning and procurement will support this)—but there is a need to be clearer about expectations around spending and how early help and support services funded through the Whole Family Wellbeing Fund align with spending for intensive family support services (see below).

In terms of **poverty**, we are not aware of any additional legislative levers required—rather a need to focus on ensuring the statutory child poverty targets are met and particular attention to the housing crisis (including by resourcing and implementing the Housing Bill). However, the End Child Poverty Coalition and others, including Aberlour, may have specific legislative asks around issues such as family debt relief that should be considered.

**Key stakeholders:** Family support organisations (for example, Circle, Home Start, Children First, Aberlour, Barnardo's, Gingerbread, Home Start, Dad's Rock etc.), COSLA and local authorities, Social Work Scotland, Poverty Alliance, Child Poverty Action Group, JRF, End Child Poverty, etc.

**Relevant Plan 24-30 route-maps:** [Universal family support](#), [Intensive family support](#), [Poverty](#).

## **Intensive support for children and families**

There must be absolute clarity about what the rights are of children and their families in need of intensive support and what the existing statutory duties are in order to uphold them. This includes the availability of support for those families identified in the promise who may come into contact with the 'care system' more frequently (including parents using substances, parents with mental health problems, parents with learning disabilities, parents caring for a child with a disability, parents in conflict with the law and where domestic abuse is involved) if they need additional help and support and for foster, kinship and adoptive families .

There must be a clear statutory framework for intensive support for children and families that ensures intensive support is available for all children and families who need it, in line with the ten principles set out in the promise. Some legislative provision is already in place—in

particular through Part 12 (services for children at risk of becoming looked after) and Part 13 (kinship care) and the Adoption (Scotland) Act 2007. However, it is widely acknowledged that these duties are not being consistently implemented.

In addition to ensuring effective implementation of the current provision, it is likely that legislative change will be required to strengthen duties and ensure the protection of children and families' rights are enshrined in law. This may involve bringing together pieces of existing legislation into one place for clarity (see above regarding 'decluttering' the landscape) as well as new options for both legislative and non-legislative reform in this area. The following areas must be considered for inclusion within the Promise Bill as part of the work to develop a clearer framework:

- **Strengthening the existing provisions in Part 12 of the Children and Young People (Scotland) Act 2014** and updating the guidance so that rights and duties are clearer and in line with the ten principles of intensive family support set out in the promise.
- Considering how the existing provisions in Part 12 can be **implemented more effectively and what monitoring mechanisms/ reporting requirements should be in place to ensure that families' right to intensive family support is being upheld**. This must not add to the bureaucratic reporting burden that already exists (see above) but must link to existing reporting expectations, to the development of Children's Service Plans and to new and innovative ways to report to children, families, care experienced adults and communities.
- Developing an approach to meet the promise's conclusion that there is a need for families to have one plan ('**one family one plan**', Pg 52).
- The proposed changes to English legislation in relation to **multi-disciplinary teams** and additional duties to engage with members of the education workforce should be considered in a Scottish context.
- **Ensuring better support for birth families**. There is a need to ensure there is adequate and appropriate support for parents after a child is removed from their care and beyond. Many children and young adults return home when they leave care and it is important to ensure families are supported so that when they do return home they are loved and safe, in line with the conclusions of the promise.
- In terms of **support for kinship carers**, the current guidance linked to the implementation of part 13 (Part 2, para 77) states that it is recommended that annual reviews should be undertaken in relation to kinship carers' financial allowances. This could be broadened (as indeed it currently is in practice) to a 'wellbeing review'. This is likely to be a recommendation in the AFKA permanence guides (currently in draft) and is worth considering in order to ensure that the annual review expands beyond financial support. However, such a review is not enough on its own—resourcing and support services must be readily available for children living with kinship carers and for kinship carers to access.
- A review of the Adoption Support Services and Allowances (Scotland) Regulations 2009 and the provisions in the 2007 adoption legislation and the efficacy of the regulations in providing **proportionate and equitable support for adoptive families** should be considered.

- Existing provisions do not go far enough to protect the **rights of children whose parents are in conflict with the law**. Too often the impact of imprisonment (including custodial remand) on children is not considered until too late in the process. The promise is clear about the rights of pregnant mothers— there is a need to further address this. There is a need to ensure the better use of impact assessments and how more joined up planning and preparation can be undertaken so that there are no emergency circumstances where children’s rights are not upheld when parental imprisonment (including custodial remand) occurs. This could build on the existing provisions within the 2016 Criminal Justice legislation (which have not yet been enacted).
- There is a need to revisit the implementation of the **Domestic Abuse (Scotland) Act 2018** and in particular to ensure that the aggravator is being used effectively. Previous calls around an offence of domestic abuse against a child may be worth revisiting, but The Promise Scotland is of the view that the Promise Bill is not an appropriate vehicle for this.
- Depending on the progression of Douglas Ross MSP’s Members Bill on the ‘right to recovery’ there is likely to be a need to consider **the specific right to access substance use services for parents** and any additional funding required in line with existing Drugs Mission funding. Parents affected by substance use must also be able to access holistic whole family support and trauma-informed help and support, and there must be better collaboration between children’s and adult services, addiction services, housing and the justice system to ensure wrap around, intensive support is available for children and families.
- There may be particular areas for families caring for **children with a disability and children with additional support needs** that other stakeholders would wish to highlight.

There is also a need to consider the practice and resourcing required to understand how intensive support for families – including when intensive support is required prior to a baby’s birth – can be consistently available in Scotland for children and families that need it— and how existing duties can be implemented in the way envisioned by existing legislation and guidance. This must be prioritised.

**Key stakeholders:** Scottish Families Affected by Drugs, Families Outside, Phoenix Futures, COSLA and local authorities, Children in Scotland, Children First, Aberlour, Barnardo’s, Action for Children, Social Work Scotland, etc.

**Relevant Plan 24-30 route-maps:** [Intensive family support](#), [Where children live](#).

## **Decision-making alongside children and families (including the Children’s Hearings System)**

There must be absolute clarity about what the rights of children and their families are when life-changing decisions are being made and what the existing statutory duties are in order to uphold them. These rights must sit together in one place to reduce the complexity of the system and ensure that this complexity does not cause harm. This may involve bringing together pieces of existing legislation into one place for clarity (see above regarding ‘decluttering’ the landscape) as well as new options for both legislative and non-legislative

reform in this area. The following areas must be considered for inclusion within the Promise Bill as part of the work to develop a clearer understanding:

- The law must be absolutely clear that children and families' voices, including those of very young children, must be routinely heard when decisions are made, and they must be involved in how important, life-changing decisions are made. Decisions must be made alongside children and families, and there must be efforts to address the inherent power imbalance that exists when the state intervenes in family life. Changes will be made to children's engagement in the Children's Hearings System through implementing the recommendations of the Hearings System Working Group (including the way that the Reporter works and enhanced participation and engagement for children and families in decisions).
- However, **there is a need to consider where else a statutory approach can strengthen children and families' voices when decisions are made—to further embed legal rights to participation/consultation in decision-making frameworks.** The review of decision making processes that the Scottish Government has committed to (recommendation 7.7 of 'Hearings for Children') will support this work, but there must also be consideration of a statutory duty to ensuring children and families' voices are heard and their views are taken into account when decisions are being made and in the development of care plans. This is in line with both the core conclusions of the promise and the UNCRC.
- Those caring for and working alongside **infants and babies**, who know them best, must be able to share their views. There must be processes for the voices of infants and babies to be heard in creative and meaningful ways— these must be embedded into statutory decision-making processes.
- The existing provisions in the **Children (Scotland) Act 2020** relating to children's views and the Children's Hearings System must be implemented and fully resourced.
- The Independent Care Review also concluded that children, families and care experienced adults should have **access to advocacy**, if they require it. Our [advocacy scoping paper](#) recommends a statutory approach to advocacy (Pg 6: "*The Promise Scotland therefore recommends that access to independent advocacy for care experienced children, adults and families be a statutory right. The upcoming Promise Bill could be the legislative mechanism for the development of a statutory right to advocacy provision and associated redress and complaints processes.*")

The recommended expansion of the current National Practice Model to beyond the parameters of the Children's Hearings System for children and young people up to the age of 26 (Phase Two of the scoping report) will require legislation.

There is a need for consideration, too, of the creation of a national advocacy agency—but this would need to be linked to other policy areas such as the work to implement the UNCRC, the work around reforming mental health law and the potential National Care Service (see Phases Three and Four of The Promise Scotland's scoping paper).

- The Independent Care Review also concluded that children, families and care experienced adults must have **access to legal representation** and advice. As noted in our consultation response to the Scottish Government's consultation on the Redesign of the Children's Hearings System, the specific recommendations about legal

representation were not included. Consideration should be given to whether there should be changes to how children and families are informed of their right to legal representation and whether the current mechanisms for them to access legal aid and their right to legal support is sufficient (recommendation 4.2). The specific changes around the conduct of lawyers are unlikely to require legislation, but there should be consideration of the development of 'rights of audience' (recommendation 10.1.3).

In order to meet the core conclusions of the promise around legal representation, there is a need for reform to legal aid (and full resourcing in line with the recommendations from the Scottish Legal Aid Board and the Law Society of Scotland) to ensure that children, families and care experienced adults are aware of their rights to legal representation and are able to access them.

'The Rules' report is clear that particular attention should be paid to ensuring access to legal advice for children with additional support needs, those living in rural communities, those for whom English is a second language, and to unaccompanied asylum-seeking children.

Additionally, the calls from Clan Childlaw and others relating to an automatic right to legal representation for children who are referred to the Children's Hearings System on offence grounds (like the duty scheme in criminal courts) must be explored. We understand that these were previously considered as the Children (Care and Justice) Act 2024 was passing through Parliament and that Clan Childlaw has recently shared a briefing with the Minister with further details. The specific amendments detailed in this briefing are:

1. To enable automatic legal aid and access to duty scheme for children who have been referred to the Children's Hearing on offence grounds, amendments will be required to the Legal Aid (Scotland) Act 1986 s28C

Any amendment should cover the following:

S28C(1)(g) A children's hearing or pre-hearing panel is arranged following a decision by the Principal Reporter pursuant to s66(2) that a s67(j) ground applies in relation to a child and that it is necessary for a compulsory supervision order to be made in respect of the child.

S28C (2) (b) add in (g)

2. There will require to be changes made to SCRA Practice Decision 22 – Legal Aid.
3. There does not seem to be any rules that require to be added in or changed in the Children's Hearings (Scotland) Act 2011 or the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013.

Options must also be available for children to access legal redress linked to UNCRC incorporation.

In relation to decision-making and the **Children's Hearings System**, our detailed response to the Scottish Government's consultation on the Redesign of the Children's Hearings System [is available here](#). We are expecting to see a clearly articulated vision and principles around an 'inquisitorial approach' to transform the Children's Hearings System, within the following areas included within the Promise Bill. Changes must be made to:

- Develop principles to establish an 'inquisitorial approach'
- Children and families' participation and engagement in the Children's Hearings System, including ensuring they understand the decisions that affect them and that the important people in their lives are involved. This includes removing a presumption of attendance and ensuring babies and infants do not have to attend where it is not appropriate.
- Specific language used within the Children's Hearings System, in line with the core conclusions of the Independent Care Review.
- Existing referral criteria and the way that grounds are established, including ensuring that there are no more Grounds Hearings.
- Reduce/eliminate 'drift and delay' in the entire system, but in particular in the process of establishing grounds— including consideration of set time limits.
- The way decisions are made shortly after a child is born (recommendation 3.6).
- Role of the Reporter (including a potential statutory duty to ensure the Reporter captures the child and families' views.)
- Role of the Chair, including the option to meet with the Chair before a Hearing and certain procedural decisions being made by the Chair. In order to do this, non-statutory changes must be made to the recruitment of decision-makers, including values-based recruitment and ensuring that the Chair has the skills and qualities set out within 'Hearings for Children'.
- The decision-making model, including to ensure decision-makers are consistent. In order to achieve this, options for remuneration must be available.
- The way that advocacy and legal representation is offered and available (including 'right of audience'—see above).
- The way that Family Group Decision Making and Restorative Justice are accessed and available.
- Children and families' understanding of what needs to happen to 'exit' the Children's Hearings System and how they are supported.
- Hearing Rules to ensure that Children's Hearings can operate in a non-adversarial way.
- The way Review Hearings operate.
- Data collection and sharing.

Finally, there is a need to review and consider Scotland's **decision making framework around permanence**—taking into account the vast amount of expertise and evidence in this area, in particular around the crucial importance of the early years. In particular, there is a

need to consider what changes can be made to ensure timely decisions are made for children within their developmental timescales. This must include:

- Lessons for Scotland around England and Wales' approach to early permanence planning and other international approaches and whether Scotland's legislation can be further strengthened. Early permanence legislation exists in all UK nations except Scotland.
- Whether it would be appropriate for there to be a statutory time limit for decisions to be made for children, in particular for babies and infants, in keeping with the public law outline in England and Wales.
- The potential impact, and benefit, of enabling dual registration of foster carers so that, where appropriate, children can remain with foster carers permanently ('foster to adopt'). This may be an issue raised by stakeholders as they respond to the current Scottish Government consultation on the future of foster care.
- A statutory right to lifestory work (see below). In England and Wales they call this 'life journey' work and it is a statutory right.
- The recommendations from 'Hearings for Children' linked decision-making and timeframes and the links between the Children's Hearings System and other decision-making processes. Specifically, considering a statutory three month set time limit for determining grounds; introducing measures to prioritise the developmental needs of infants and babies; and understanding whether a flat rate fee structure or changes to legal aid would support the timely establishment of grounds (recommendation 5.4). The review of decision-making processes (see above) may also lead to further changes (recommendation 7.7).
- The changes to Review Hearings and processes around review.
- Recommendation 11.8, which will be explored by the Scottish Government, states that there must be closer links between local authority decision-making relating to adoption, permanence and residence orders and the legal tribunal of the children's hearing. Efforts must be made to streamline aspects of decision-making when a Permanence Order or Adoption Order has been applied for. The exploration of this recommendation should be prioritised, in line with emerging research and evidence from the BeST Study and the CELCIS research on adoption.

See below for more on stability, transitions and consistent caregivers.

**Key stakeholders:** Children's Hearings Scotland, Scottish Children's Reporter Administration, Social Work Scotland, Our Hearings Our Voice, Who Cares? Scotland and other advocacy providers, Clan Childlaw and other legal representatives, COSLA and local authorities, Scottish Legal Aid Board, Scottish Law Society, CELCIS, NSPCC Scotland, etc.

**Relevant Plan 24-30 route-maps:** [Listening, Participation and engagement](#), [Advocacy and legal advice](#), [Decision making](#)

## **Children and families' first engagement with the 'care system' (after a decision has been made)**

The Independent Care Review heard that once it has been decided that children and families require the additional support of the 'care system', it is not always clear either to children and families, or to members of the unpaid and paid workforce, what the rights and duties surrounding them are. Therefore, the Promise Bill must be clearer what support is available for children and families and what their rights are—and how they can access them. This may involve bringing together pieces of existing legislation into one place for clarity (see above regarding 'decluttering' the landscape) as well as new options for both legislative and non-legislative reform in this area.

There must be a review of what should be in statute and is not, what should not be in statute but should be included in guidance alongside statutory rights and entitlements, and what currently is in statute in disparate pieces of legislation that should be brought together in one place.

This includes **the specific right to** (not an exhaustive list):

- Legal representation and advocacy (see above)
- Mental health and trauma recovery support
- Physical health and dental assessments
- Speech and language therapy (particularly in the early years)
- Education (including Virtual Head Teachers, where appropriate—see below)
- Understanding their cultural, ethnic, and religious identity and family history, including medical and health history and lifestory support (see above and below)
- Safe and warm homes
- Being able to access personal identity documents such as passports and bank accounts (see below data and information)
- Highly skilled and consistent caregivers. See above with regard to potential changes around dual registration of foster carers ('foster to adopt') and potential statutory timeframes in order to uphold the rights and meet the needs of infants and babies
- Live with or maintain relationships with brothers and sisters and other people important to the child (including those with sibling-like relationships) (see below).

In order to achieve this, there is a need to review the Looked After Child Regulations, 2009, to ensure that each child entering the 'care system'— and their family (see above regarding intensive (and continued) support for families when a child is removed and beyond) receives ongoing and personalised care and support.

As stated above, much of this **does not require new legislation**, but rather drawing together existing pieces of legislation in order to ensure it is simplified and streamlined and the rights and entitlements are clear—in the way that the promise intends.

An **overarching duty to promote the wellbeing and uphold the rights of children with experience of care in Scotland and of care experienced adults** could also be considered—including with respect to key areas such as education, employment, housing and mental health, building on existing corporate parenting duties set out in Part 9 of the Children and Young People (Scotland) Act 2014.

**Key stakeholders:** CELCIS, NSPCC Scotland, Clan Childlaw, Barnardo's, Action for Children, Staf, Who Cares? Scotland etc.

**Relevant Plan 24-30 route-maps:** [Listening, Participation and engagement](#), [Advocacy and legal advice](#), [Decision making](#)

## **The rights of children for whom Scotland has caring responsibilities**

The Promise Bill must also be clearer what support is available for children and families once they have entered the 'care system' in Scotland—and how they can access them. As stated above, this may involve bringing together pieces of existing legislation into one place for clarity (see above regarding 'decluttering' the landscape) as well as new options for both legislative and non-legislative reform in this area.

There must be a review of what should be in statute and is not, what should not be in statute but should be included in guidance alongside statutory rights and entitlements and what currently is in statute in disparate pieces of legislation that should be brought together in one place.

The Independent Care Review highlighted the following areas in particular where children's rights must be upheld. A statutory approach to upholding or introducing rights in these areas must be considered for the Promise Bill:

- **Relationships:** The Independent Care Review was clear that rules and regulations getting in the way of relationships must be removed. Work must be undertaken to identify what these are and whether statutory or non-statutory mechanisms are needed to remove them.

There may also be a need to consider contractual arrangements around out of hours working and/ or safeguarding arrangements to better facilitate relational ways of working for members of the unpaid and paid workforce.

Lifelong Links, or similar approaches to help children and care experienced adults to know and understand their life story, maintain relationships with family members and explore their family history must be consistently available. A legislative approach, such as the one in place in England and Wales should be considered. See above regarding consistent caregivers.

- **Cross border 'placements':** There is a need to define (most likely in legislation) what exceptional circumstances would mean children should/could be placed in Scotland (e.g. where they have family connections) and potentially a best interests test. This would need to link to discussions with Westminster to ensure that it would be effective in England and Wales, not just Scotland. There is a need to understand what legislative changes may be required to support local authorities to plan for children in their local area and prevent children from being inappropriately placed across local authority borders within Scotland.

- **Kinship care:** See above regarding support for kinship carers and children living in kinship care, including through strengthening Part 13 of the Children and Young People (Scotland) Act. There is a need to change the age relating to Kinship Care Orders from 16 to 18 and ensure children who have Kinship Care Orders in place have access to 'continuing care' and 'aftercare'— this will require legislation.
- **Foster Care:** See above regarding support for foster carers and children living in foster care. A National Foster Care Register must be considered.
- **Secure care:** The Reimagining Secure Care work being led by CYCJ may lead to a requirement to consider the legal framework around secure care governance and access to support.

The Independent Care Review concluded that there must be specific settings for girls who have been sexually abused and exploited. This is likely to require a legislative approach and must be explored alongside the implementation of changes identified in the Reimagining Secure Care work. The Hearings System Working Group made specific recommendations around secure care, including a statutory 'exit plan' held by the Children's Hearings and links to the Child's Plan. There must be more scope to remain in secure care for those who have turned 18, where this is in a young person's best interests. The 'Reimagining Secure Care' work should align with this conclusion from the Independent Care Review. Any young person who is 'looked after' and is in secure care and turns 18 must retain social work support. When children and young people leave secure care, they must be able to access appropriate throughcare and 'continuing care' provision.

- **Adoption:** See above regarding support to adoptive families and regarding early permanence decision-making. "The Rules" states that there should be an understanding of the complex consequences for the legal identities of children and young people after adoption breakdown. CELCIS' recent research ([Towards modernising adoption in Scotland: A focused mapping review](#), Nov 2024) has a number of recommendations around legislative reform to the law around adoption that must be considered. The key recommendations from the report are:
  - Re-visioning the structure, organisation and delivery of adoption services
  - Developing the legal system in Scotland
  - Recruiting and preparing adoptive parents to meet the needs of children
  - The importance of investing in life journey work
  - Delivering services which are trauma-informed and 'adoption competent'
  - Improving practice around keeping in touch with birth families after adoption
  - Improving support for everyone affected by adoption
  - The importance of hearing and responding to the views of children, adults and families with lived experience of adoption.
- **Unaccompanied asylum-seeking children:** Unaccompanied asylum-seeking children must be considered as 'looked after' and must live in caring, supportive settings, in line with "The Rules." They must have access to legal support, advice and advocacy to navigate the Home Office asylum procedures. The rights of all unaccompanied asylum-seeking children must be upheld, and they must have access to all that would be

expected for any other child or young person, including access to education, health services and appropriate translation.

- **Brothers and sisters:** The Children (Scotland) Act 2020 contains provisions to promote contact, but Local Authorities report that this has been hard to implement. Approximately 25% of siblings are still not able to remain together and the 2020 Act has not yet fully commenced. The STAC reports contain a route-map: sequenced changes across short, medium and long term (in effect 23-24, 24-27 and by 2030). The Scottish Government, having taken time since summer 2023 to understand and align these, must accelerate the pace of change. The legislative actions in the STAC route map include:
  - Scottish Government to lead on identifying and supporting stakeholder(s) to scope existing materials, and assess the need for development of new training and learning materials required to implement the tiered Learning and Development Framework. Alongside this, in partnership with stakeholders, Scottish Government to lead scoping of wider strategic, cost, delivery, and any legislative implications associated with implementing the framework.
  - Through consultation with relevant stakeholders, Scottish Government to provide a clearer definition of terminology used in legislation and guidance. The varied interpretation of this can lead to children's rights being inconsistently upheld.
  - There must be a wider understanding of the impact of other legislation and policies needed for the effective delivery of the commitment to siblings. This includes, but is not limited to, the availability of resources (such as experienced practitioners to assess and support the sibling relationship); housing legislation to ensure that sibling groups can be physically accommodated; carers being properly resourced to support sibling relationships.
- **Justice:** There must be consideration of:
  - Increasing the Age of Criminal Responsibility to 14 (at a minimum). If the Promise Bill is not identified as the suitable legislative vehicle for this change, there must be clarity over an alternative option in line with the recommendations from the working group.
  - Ensuring that children's experiences of the criminal justice system is improved and their rights are upheld.
  - How to place additional protections around care experienced children so that they are not disproportionately criminalised.
  - Changing the definition of 'child' in certain pieces of criminal justice legislation from 16 to 18 in line with the UNCRC.
  - Building on the consultations that took place during the passage of the Children (Care and Justice) (Scotland) Act 2024 around places of safety to ensure that safe and appropriate places of safety are available for children when required.
- **Education:** There must be consideration of:
  - Further understanding what appropriate legislative mechanisms should be available to prevent the exclusion and seclusion of care experienced children.
  - A statutory definition of 'exclusion'.

- Placing Virtual Schools and the Virtual Headteachers Network on a statutory footing—all children who need to access the support of a Virtual School/ Headteacher must be able to access one (or similar/ alternative support). The proposals in the English legislation around extension of the role to represent children in kinship families and placing a new statutory duty on local authorities to promote the achievement of all the cohorts of children represented by the Virtual School Head should be considered in a Scottish context.

These schools must cater for the needs of children and young people at risk of exclusion (many of whom we know are care experienced or on the 'edges of care'), but also those who are non-attenders, have social, emotional and behavioural concerns, have learning gaps because of illness/hospitalisation etc. They would have state of the art technology and utilise online learning and links to live lessons, plus each child/young person could be allocated a mentor for pastoral support. Virtual Schools must have bespoke timetables and a curriculum to meet the needs of all learners.

- Similarly, the proposals in England to place a statutory duty on local authorities to promote the educational of children on child in need plans (at risk of becoming looked after in Scotland), child protection plans and in kinship arrangements should be considered in a Scottish context. There must be absolute clarity over who is accountable for ensuring the right of children with experience of care to an education is upheld.
- How to ensure and secure consistent provision and sustainable funding for speech and language therapy for care experienced children.
- Duties and/or a national funding framework to ensure health and education services better work together to deliver place-based trauma-informed mental health support for children and families.

**Key stakeholders:** Fostering Network, AFKA, Who Cares? Scotland, CELCIS, Social Work Scotland, CYCJ, Education Scotland, Kinship Care Alliance, Citizens Advice Service, Commissioner for Children and Young People, Scotland, Just Right Scotland, Clan Childlaw, Place2Be etc.

**Relevant Plan 24-30 route-maps:** [Documenting decisions](#), [Relationships](#), [Stability](#), [Where children live](#), [Health](#), [Justice](#), [Education](#).

## **Moving on from care into adulthood & lifelong rights of care experienced adults**

There must be absolute clarity about what the rights are of children and young people when they are moving on from care into adulthood, and what the existing statutory duties are in order to uphold them. There must also be clarity about what the lifelong rights of care experienced adults are.

These rights must sit together in one place to reduce the complexity of the system and ensure that this does not cause harm. This may involve bringing together pieces of existing

legislation into one place for clarity (see above regarding 'decluttering' the landscape) as well as new options for both legislative and non-legislative reform in this area.

The Promise Scotland's response to the Scottish Government consultation on moving on from care into adulthood [can be found here](#). Areas for legislative change identified within our response include:

- The Promise Bill must be used as an opportunity to **clearly determine the rights of young people moving on from care into adulthood, and the duties of duty-bearers in enabling and upholding these rights.**
- The **language** used to talk about children moving on from care into adulthood must change, including terms such as 'continuing care', 'throughcare' and 'aftercare' (see below).
- Ensuring that **transition planning starts earlier** and is appropriately planned, phased and staged, and take a needs-led approach which places less emphasis on the crescendo of a child's 16th birthday.
- Young people must be encouraged to 'stay put' and care planning must include a presumption that children and young people will remain in care for longer, in line with 'Staying Put Scotland' and 'aftercare' will be provided until the age of 26. Ensuring that this is the default position for local authorities must involve planning finances to guarantee every eligible young person's 'continuing care' and 'aftercare' entitlements. This could involve **placing the 'Staying Put' guidance on a statutory footing**— alongside the provide of appropriate resources.
- Access to financial support must be more consistent across Scotland—a **statutory approach to consistent financial support or allowances** should be considered alongside ongoing implementation of the Care Leavers Payment, work to develop a Minimum Income Guarantee for Care Leavers and the operation of the Care Experienced Children and Young People Fund.
- **Kinship Care Orders must be able to remain in place until the age of 18**, in line with the UNCRC's definition of a child, Scotland's 'Staying Put' Guidance and the conclusions of the Independent Care Review (see above).
- **Regulatory barriers to young people staying with foster carers for as long as is required must be removed.** This includes removing or making changes to registration requirements that might prevent children and young people adults from staying in some places. Similarly, residential homes and kinship carers must be supported to continue offering safe and loving homes to children and young people.
- There is a need to **better understand how 'continuing care' can be implemented for children and young people when it is not possible for care to continue in the exact same place.** For example, children in secure care or where foster or kinship carers are no longer able to care for young people. This will require additional resource and a clear plan of action for how to address the systemic issues raised.
- **Amendments to the legislation and statutory guidance to ensure there is a clearer definition of what is currently termed 'aftercare'** are required, to support consistent practice, including in terms of access to financial support and housing, so that there is

less room for inconsistency and misunderstanding about the various rights and entitlements.

- **The legislative duty for an 'eligible needs' assessment when young people reach 19 must be removed.** Young people should not require an assessment to be able to access additional help and support.
- What is currently termed '**continuing care**' and '**aftercare**' should be extended to:
  1. Children and young people on Kinship Care Orders.
  2. Young people in further and higher education, so that this matches their length of study.
- There should be **improvements to the monitoring of the statutory duties** linked to what is currently termed 'aftercare' and 'continuing care'. This includes putting safeguards and monitoring in place to ensure that financial challenges do not drive decisions about young people or restrict their entitlement to 'continuing care' or 'aftercare.'
- A **statutory right to return** must be introduced for young adults for whom Scotland has taken on parenting responsibility and access to services and supportive people to nurture them for as long as required. The provisions and resources to enable this must be put in place by 2030.
- Care experienced young people and adults must have a **statutory right to accessing independent advocacy and legal representation** at all stages of an individual's care experience and beyond (see above).
- There must be more thought into the **specific statutory support available for care experienced adults once 'continuing care' and 'aftercare' duties 'end' at 26.** All young care experienced people transitioning into adulthood from care must have access to safe, secure and suitable housing and there must be parity for all across Scotland.

There must be full and effective implementation of existing legislation and guidance relating to 'continuing care' and 'aftercare', including Parts 10, and 11 of the Children and Young People (Scotland) Act 2014 and related guidance and Staying Put Scotland, 2013.

The promise is also clear that there should be a broad **definition of 'care experience'**. We will respond to the Scottish Government's consultation on this— highlighting in particular the need for absolute clarity about the rights and entitlements of all children and families who require early help and support, are 'on the edges of care' and throughout their interaction with the 'care system' and as they move into adulthood (as set out above). These rights must not be dependent on arbitrary age limits or definitions. Support must be available for children, families and care experienced adults when they need it, including access to advocacy and legal representation.

**Key stakeholders:** Staf, Who Cares? Scotland, CELCIS, Social Work Scotland, etc.

**Relevant Plan 24-30 route-maps:** [Moving on and lifelong support](#)

## People

See above for changes to the role of the Chair and Reporter within the Children’s Hearings System.

Funding streams must reflect the need for **multi-disciplinary teams** working alongside families for as long as it takes: a well-supported, and retained workforce is crucial to sustainability and developing and maintaining relationships.

There may require to be **changes to existing statutory codes of practice and values frameworks** and a potential need for make the **code of practice for employers statutory** (see the evidence from Social Work Scotland at the Education, Children and Young People Committee on 4/12/24).

**Key stakeholders:** COSLA and local authorities, Social Work Scotland, CCPS, trade unions, etc.

**Relevant Plan 24-30 route-maps:** [Leadership](#), [Recruitment and retention](#), [Rules, processes and culture](#), [Workforce support](#).

## Scaffolding

### ***Data and information***

The Independent Care Review concluded that Scotland must take a different approach to how it collects data and information, collecting, using and analysing data that shows the whole person in context. Local data must be fit for purpose and easily accessible so practitioners and leaders are not waiting for national, annual statistics. The legislative environment governing the collection of data must support this new way of working and any barriers to this must be removed.

The Promise Scotland’s work on information sharing and the Information Commissioner’s work on the information rights of care experienced people may lead to the need for legislative changes in the future—but it is not anticipated that any changes will be ready to include in a legislative vehicle in 2025.

The work in England with respect to a Single Unique Identifier should be explored and lessons for Scotland must be considered.

The Promise Progress Framework was published in December 2024. In the future there may be a need to shift some key indicators to a statutory footing—and there may be monitoring or reporting requirements that need legislation.

Potential changes to reporting mechanisms linked to Children’s Services Plans, corporate parenting and children’s rights are also referred to above. Part of this consideration should include how to develop effective data systems and better alignment of monitoring processes, so it can be better understood how the ‘care system’ is working and how children and families are doing.

Data and information related recommendations accepted by the Scottish Government from the Hearings System Working Group may require legislative change. These include:

- Developing improved mechanisms to better capture data to understand the impact of voluntary measures and why children are re-referred to the Reporter. (Recommendation 4.4.5)
- Exploring (through the Redesign Board) ways to effectively and more consistency collect, share and learn from data across the Children’s Hearings System (Recommendation 13.3).
- Supporting local authorities to hold and provide the data to inform and support national and local understanding of the implementation, impact and outcome of decisions made by the Children’s Hearings System.

Any legislative change should give careful consideration to how to incentivise/prioritise/balance the use and collection of data that reflects children and families' experiences and what matters to them, and not add to the existing statistical data collection burden without due consideration of existing data and alignment.

### **Governance**

We have shared with the Scottish Government the findings of our work around governance. Some of the proposed changes may require legislative, policy and practice change to ensure the core conclusions of the promise are met.

It is unclear thus far as to the status of the proposed National Social Work Agency. If the evidence is clear that this would be an effective way of protecting children and families’ rights and supporting the workforce to keep the promise then the Promise Bill may be an appropriate legislative vehicle to create the structures for a National Social Work Agency. However, The Promise Scotland has not yet seen any evidence either way and encourages further investigation and evidence gathering to determine its effectiveness in relation to keeping the promise.

### **Legislation**

As stated above, the Bill must include measures to ‘declutter’ the landscape of care—or there must be an understanding of how and when this will happen.

The Promise Scotland has commissioned work to understand the options for achieving this which it will share with the Scottish Government for discussion. However, the promise is clear that the current legislative environment is too complex and cluttered and legislative change is required to simplify it and ensure that children, families and care experienced adults understand their rights and duty bearers understand their duties—and, crucially, are supported to implement them. The Promise Scotland expects that the Scottish Government will clearly set out how this can be achieved both through the Promise Bill and any future pieces of legislation before 2030. Given the upcoming Scottish Parliamentary election there will be a need for sustained cross-party engagement to take this forward.

### **Rights (including restraint and language of care)**

The Promise Bill should be clear about the rights and entitlements of children, families and care experienced adults at every stage of their interaction with Scotland’s ‘care system’. It must be fully compliant with the UNCRC and should not amend other pieces of legislation that pre-date devolution so that the duties fall within the scope of the UNCRC Act 2024.

A language of care that better reflects the views and experiences of children and care experienced adults must be developed, with the implications of changing statutory terms clearly understood.

An overarching statutory framework covering all environments in which children may be restrained (care settings, mental health, detention, education, etc.) is required. The route map for Plan 24-30 sets out a specific action plan for how this should be achieved. In particular, there must be consideration of a legal and human rights framework for the use of restraint and other restrictive practices, in residential and secure care settings. This should robustly align with possible changes to the legal framework in education settings set out in Daniel Johnson MSP's Members Bill. This includes clarity and alignment around reporting and monitoring instances of restraint to safeguard children and ensure restraint is only used in exceptional circumstances.

The Mental Health Law Review stated that SG should *"propose legislation for a national register of restraint to be set up and maintained by a central public authority which is capable of hosting the exchange of data between multiple public authorities, and which is capable of reporting publicly on trends in data from all of those authorities."*

### **Scrutiny and inspection**

"The Rules" states that there must be changes to the legislative framework around regulation, including a set of shared standards. There is a need to consider potential changes to requirements for regulatory bodies around inspection and values-based inspection.

The ongoing work relating to changes to the Public Bodies (Scotland) Act 2010 and the definitions around registering care services will help to support this and should be considered for the Bill

### **Money and commissioning**

The conclusions of the Independent Care Review around profit must be met, in particular that services within the 'care system' must not profit from care. Any presence of surplus funds generated within any part of the 'care system' must be directed to the care and support of children.

Targets associated with adopting children, including financial and profit based targets, must be removed.

Processes of regulation, scrutiny and commissioning must support the removal of profit from the care system.

Legislative changes will be required to meet these conclusions.

Changes may be required to commissioning and procurement processes to better enable longer term and more sustainable funding and to reduce funding siloes.

**Key stakeholders:** Residential care providers, foster carers, COSLA and local authorities, private sector, Care Inspectorate, SSSC, CCPS, Children and Young People's Commissioner for Scotland, etc.

**Relevant Plan 24-30 route-maps:** [Data and information](#), [Governance](#), [Legislation](#), [Money and commissioning](#), [Rights](#) (including restraint and language of care), [Scrutiny and Inspection](#).