

## Stage 2 Debate: Children (Care, Care Experience and Services Planning) (Scotland) Bill – BRIEFING TWO

10 February 2026

***This is the second briefing by The Promise Scotland and the Independent Strategic Advisor written to inform the Stage 2 Debate by the Education, Children and Young People Committee. This briefing is intended for the Committee session on 11<sup>th</sup> February and builds on the [previous briefing](#) written for the Committee session on 4<sup>th</sup> February. It represents the views of both The Promise Scotland and Fiona Duncan, Independent Strategic Advisor - the promise and indicates the shared position on each of the amendments made, in the order they appear in the groupings.***

The cross-party support secured during the Independent Care Review has sustained and is essential for Scotland to keep the promise by 2030.

Members of the Scottish Parliament from across the chamber are giving due consideration to *what* needs to be included in this Bill; listening to those who will be responsible for *how* it will be delivered, and most crucially - to those *whom* this legislation is for.

This is a clear indicator of their unwavering dedication six years on from the promise being made, and their understanding that their work is not yet done.

The children, families and care experienced adults to whom the promise was made are relying on this Bill to set out rights and entitlements that, when realised, will make a meaningful difference to their lives. Those working every day to keep the promise are relying on this Bill to provide all the scaffolding they need to do this - now and in the future.

The changes proposed in this Bill are significant and many will not be straightforward to implement. For the Bill to ensure well-intentioned policy and legislation are translated into sustainable actions, it must be accompanied by coherent plans for sequenced implementation with clarity on how resourcing will be prioritised and allocated.

Only then, those to whom the promise was made will know when all aspects of it will be kept. And those charged with keeping the promise will know what is expected of them, by when and how they will deliver.

The promise must be kept by 2030, and continued responsible stewardship of this Bill through Parliament can take Scotland a step further towards that.

## the promise

In February 2020, the [Independent Care Review](#) published seven reports, including [the promise](#). Over three years, more than 5,500 people shared their experiences, including 2,000 members of the unpaid and paid workforce. Importantly, more than 3,500 children, families and care experienced adults shared their story, often about the most intimate and traumatic events of their lives. They were listened to carefully. They shared their stories in the hope that Scotland would do better, recognising that although the review could not change their lives, it could make Scotland a better place for the children, families and care- experienced adults coming behind them.

The care community led calls for a root and branch review of Scotland's care system and was at the heart of the review itself. They bravely challenged the status quo because it was not working. They crafted a promise that goes beyond systems, policies and processes and instead, focuses on love, relationships, respect and experiences.

When the review concluded, Scotland made the promise, which secured and has sustained cross- party support. Wherever it is safe to do so, children must stay with their families, and when that is not possible, they must be cared for in a loving environment, with loving relationships, so that they are able to fulfil their potential.

As the Children (Care, Care Experience and Services Planning) (Scotland) Bill has progressed we have been encouraged to see parties from across the political spectrum come together to discuss the legislative changes that must be made to keep the promise and to honour the courage and bravery of all who took part in the review and the care community to whom the promise was made.

The provisions in the Children (Care, Care Experience and Services Planning) (Scotland) Bill as laid will make a tangible difference to the lives of children, families and care experienced adults. As the Bill progresses to Stages 2 and 3, there are further opportunities to build on the cross-party support and engagement thus far, and to consider what further improvements must be made in order to embed real and lasting change to keep the promise.

This must include serious consideration of how to deliver the legislation in full and sustainably. Many of the changes introduced by the Bill will not be straightforward and must be accompanied by clear plans around about sequencing, resourcing, prioritisation and implementation. Too often, well intentioned policy and legislation is not supported by robust implementation planning and resourcing. Given the pressures already faced by those working to support children, families and care experienced adults, it is imperative that the Scottish Government and Parliament look ahead to how new rights and entitlements will be delivered.

**The courage of the children, families, care experienced adults and members of the workforce that contributed to the Independent Care Review and since 2020 must be matched by the courage of decision makers and politicians who have the power to implement the required changes.**

### **The Promise Scotland’s approach to considering amendments**

The following briefing has been provided for the Education, Children and Young People Committee’s consideration. It focuses on highlighting our support for the amendments that, in our view, will help to ensure Scotland keeps its promise.

First and foremost, our response is rooted in the voices and experiences heard by the Independent Care Review. It is guided by the strong evidence base created by the review in each of its seven published reports, and by subsequent work such as the Hearings System Working Group’s Redesign Report ‘[Hearings for Children](#)’, our [advocacy scoping paper](#) and our joint work with Staf, ‘[100 Days of Listening](#).’

All the amendments lodged are brought forward with good intentions and are designed to move forward important aspects of the promise. Even where The Promise Scotland does not support the specific amendments as laid at Stage 2, we continue to be committed to working with all parties to progress change through other means, wherever that is possible.

Where the amendments do not link directly to the conclusions of the Independent Care Review, we have not provided comment. Given the tight timescales, we have provided commentary and a perspective and have indicated where we think further information is required before we can provide a settled view. In particular, we have indicated amendments that, in our view raise important issues and require further work ahead of Stage 3: 25/ 187, 107/ 186, 116, 189, 51, 109, 200-206, 190, 77/ 113, 111/ 112, 122, and 218-220 and the amendments in the grouping relating to Family Group Decision Making.

The Promise Scotland uses the term ‘children’ to include anyone under the age of 18, including babies and infants.

Notwithstanding the need to avoid system language, for the purposes of clarity, this briefing reflects the language used in the legislation.

### **Children’s hearings: composition: Amendments 22, 23, 24, 25, 26, 27, 105, 29, 30, 31, 32, 106, 33, 107, 186, 226, 187, 227**

<b>We support</b>	<b>We do not support</b>
22, 23, 24, 26, 27, 29, 30, 31, 32	105, 106, 226, 227

We understand that **Amendments 22, 23, 24, 26, 29, 30, 31, 32 and 33** are procedural and help to clarify the provisions in the Bill and the intent as set out in the Policy Memorandum.

### **Functions of a chairing member (Amendments 25 and 187)**

The Hearings System Working Group envisaged a redesigned Children's Hearings System where the Chair is respectful and supportive and understanding of the aims, ethos and welfare-based approach that the Children's Hearings System seeks to take. '[Hearings for Children](#)' describes this in further detail on Pages 165-168, specifically setting out that the Chair must have legal competence, tribunal skills, an ability to write fully reasoned decisions and personal qualities, especially communication skills ranging from engaging with children and families and members of the workforce, including lawyers. This is particularly around conducting hearings in an inquisitorial manner; working relationally alongside children and families; upholding the rights of children and their families; presiding over a robust decision-making process; commanding the respect required for working collaboratively alongside others; and having oversight of the child's order.

Our view, as set out in our initial response to the call for views, is that this must be set out in statute in the same way that the role of the Reporter is to ensure absolute certainty about the role of the Chair, and in particular the way that they are expected to conduct Hearings in an inquisitorial manner and the oversight, enforcement, accountability and overview of a child's order (Chapter 11, '[Hearings for Children](#)'). The setting of criteria for the appointment of both Chairs and other Panel Members could be achieved through secondary legislation (regulations) reflecting and preserving the independence and discretion of the National Convener in this role. Regulations can accommodate flexibility permitting changes in practice and expectation over time as required.

Further consideration must therefore be given as to how an enabling provision could be laid at Stage 3 which would require the National Convener to set specific criteria regarding the appointment of Chairs and Panel Members in line with the conclusions of '[Hearings for Children](#)'. The most appropriate route for this could be through regulations.

### **Selection of additional members of children's hearing (Amendment 27)**

**Amendment 27** allows for flexibility so that the chairing member can decide for a Hearing to be carried out by three members.

We support **Amendment 27** (Natalie Don Innes)

### **Three panel members to consider appointing a Safeguarder (Amendment 105)**

'[Hearings for Children](#)' states that "there must be a separation between procedural decisions relating to the Hearing itself and the decisions made at a Children's Hearing." (Pg 40). It goes on to say, "the Group believes that there are a number of procedural decisions about a Hearing that can and should be made by the Chair alone without the need for a Panel to convene, in the same way that a Sheriff can decide on an Interim Compulsory Supervision Order. For example, relevant person status or **decisions about Safeguarder appointments**. This will serve to reduce the delays caused by Hearings being deferred for procedural decisions and allow for a Hearing to focus solely on the best interests of the child rather than the administrative and procedural functions that

support robust decision-making” (Pg 192). Therefore, appointment of a Safeguarder is a procedural decision that is appropriate to be taken by a highly skilled Chair.

We **do not support amendment 105** (Roz McCall).

### **Removal of subsection 13 (Amendment 106)**

This amendment seeks to remove provision in the Bill relating to Interim Compulsory Supervision Orders. The Bill as drafted reflects the position set out in '[Hearings for Children](#)' and we would be concerned if this subsection were to be removed from the Bill.

Do **not support amendment 106** (Roz McCall supported by Martin Whitfield).

### **Continuity of Children's Hearings Chair**

**Amendments 107 and 186** relate to the continuity of the Children's Hearings Chair.

The Hearings System Working Group heard one message most consistently from children, families, care experienced adults and those working alongside them: **the biggest difference to transforming the Children's Hearings System that can be made is to ensure continuity of decision makers.** Amendments in line with recommendation 6.1.3 in '[Hearings for Children](#)' would ensure as far as possible, the Chair will be the same Chair each time a child and their family attend a Hearing.

We therefore strongly support the intent of **amendments 107 and 186**, which is in line with what children, families and members of the workforce told the Hearings System Working Group.

In our view, further work could be done at Stage 3 to clarify and strengthen these amendments further and ensure that the best interests of the child are fully reflected. As currently drafted, we have a preference for amendment 186, which is stronger in its intent for continuity of the Chair. However, this would be strengthened by the addition of reference to the best interests of the child (as set out in amendment 107).

### **Remuneration of Children's Panel members (Amendments 226 and 227)**

These amendments remove the legislative change which would allow for Panel Members to receive remuneration. 'Hearings for Children' states that "a decision-making model of a redesigned Children's Hearings System must consist of a salaried, consistent and highly qualified professional Chair accompanied by two Panel Members, remunerated at a daily rate" (Pg 36).

Although the Scottish Government's intention at present is for there to be a paid Chair alongside volunteer Panel Members, the option for further remuneration must remain open in order to ensure the sustainability of the Children's Hearings System and fulfil the recommendations of the Hearings System Working Group (HSWG), who said:

*"The assessment of the HSWG is that the burden of this responsibility should not be placed on the unpaid workforce, however skilled that workforce might be. The fundamental decision-making model of the Hearing remains unaltered as it was 50 years ago. In order to take*

account of the changing nature of referrals received by the Children’s Hearings, of the conclusions reached by the Independent Care Review to address the concerns raised by children, families and care experienced adults, and of the need to secure longer-term future of the Children’s Hearings System so that it can operate effectively, the HSWG is of the view that changes must be made to the decision making model” (Pg 155).

“...Many Panel Members have caring responsibilities or employment commitments which make volunteering particularly challenging. Becoming a volunteer Panel Member represents a significant commitment and a substantial amount of time required to attend training and to prepare and attend Hearings—this is simply not possible for many people at present” Pg 51.

We **do not support** amendments 226 and 227 (Martin Whitfield).

**Children’s hearings: child’s and relevant person’s understanding and acceptance of grounds: Amendments 28, 191, 192, 60, 61, 62, 63, 64, 65, 66, 67, 68**

<b>We support</b>	<b>We do not support</b>
28, 191, 192, 60, 61, 62, 63, 64, 65, 66, 67, 68	

We support the amendments in this grouping, which we understand will help to clarify the provisions of the Bill and the policy intent. This includes **Amendment 60**, which we understand will enable the Hearing to better ensure the child understands the grounds.

**Amendments 191 and 192** provide welcome clarification that children under the age of five cannot accept grounds. There may need to be exceptions and safeguards built into this at Stage 3.

**Children’s attendance at children’s hearing: Amendments 34, 108, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 188**

<b>We support</b>	<b>We do not support</b>
34, 35-49	108, 188

We support **Amendments 34 and 35-49**, which we understand will help to clarify the provisions of the Bill and the policy intent.

**Guidance relating to the attendance of children at Hearings (Amendment 108)**

**Amendment 108** (Roz McCall) would require Scottish Ministers to publish guidance relating to the attendance of children of different ages and stages of development at Children’s Hearings. Although we understand the intent of this amendment, given the independence of Children’s Hearings this is a matter for the National Convener and the Principal Reporter rather than Scottish Ministers. We understand that SCRA and

Children’s Hearings Scotland have been leading significant improvement activity relating to children’s participation and attendance at Hearings and further work will be led by the Hearings Redesign Board. We hope that this work actively involves Sherrif David Mackie who Chaired the Hearings System Working Group and is an advisor to this Board.

**We do not support amendment 108** (Roz McCall).

**Attendance of children at Hearings (Amendment 188)**

We are concerned that **Amendment 188** removes the entirety of section 13, which was drafted to respond to the recommendations of ‘[Hearings for Children](#)’ relating to children’s attendance at Hearings. As we have stated previously, our concern is that the removal of the obligation of children’s attendance at their Hearings should be replaced by a presumption that they should attend. There must also be more detail about the ways in which children and families can participate in their Hearings—in line with the work that is being led by SCRA and the Hearings Redesign Board. This does not-require primary legislation.

The articles of the UNCRC and ECHR stated in the amendment are unnecessary given that these Conventions have already been incorporated into UK and Scots Law.

**We do not support amendment 188** (Martin Whitfield).

**Children’s hearings: general: Amendments 50, 52, 53, 54, 55, 56, 57, 58, 59, 69, 70, 71, 72, 73, 116**

<b>We support</b>	<b>We do not support</b>
52-59, 69-73	50, 53

We support **Amendments 52, 54-59 and 69-73**, which we understand will help to clarify the provisions of the Bill and the policy intent.

**Referral to children’s hearing or application to sheriff (Amendments 50/53)**

This amendment replaces reference to the Principal Reporter with Scottish Ministers (through regulations) relating to the issues to be discussed with the Principal Reporter. In our view it is not appropriate for Scottish Ministers to direct the Principal Reporter in this way.

**We do not support amendments 50/53** ([Jeremy Balfour](#)).

**Amendment 116 (Pre-conditions for removal of child)** (Sue Webber).

We recognise the intention behind this amendment to strengthen safeguards to ensure that children are only removed from their families where this is necessary and where no reasonable alternative exists.

The promise states that where children are safe and feel loved within their families, they must stay, and families must receive the support required to overcome the difficulties they face (Pg 15). This requires access to intensive, whole family support delivered over sustained periods where required. The focus must be on supporting families to stay together wherever it is safe to do so, recognising that this support may need to be flexible, relationship-based and sustained over time.

However, further work is required to ensure that any additional legislative provisions align fully with existing legislation and system reform work. There are already provisions across the Children (Scotland) Act 1995, the Children’s Hearings (Scotland) Act 2011 and Part 12 of the Children and Young People (Scotland) Act 2014 that support early help, prevention of escalation and consideration of whether removal is necessary. Consideration needs to be given to whether strengthening or consolidating existing duties would better support delivery of the promise prior to introducing further legislation.

The promise is clear that Scotland’s ‘care system’ is complex, fragmented and multi-layered and does not lend itself to simple definition or piecemeal legislative change (Pg. 112). There is a need to ensure that any additional legislative provisions do not add complexity or create parallel tests across legislation and that they align with wider work underway to review and simplify legislation relating to children and families.

The proposed requirement to consider and record alternative measures within the child’s plan reflects existing expectations within GIRFEC and child-centred planning approaches. It is important to ensure that any additional statutory requirements strengthen meaningful planning and decision making rather than creating additional recording or administrative burden. The child’s plan must remain focused on understanding children’s and families’ needs, strengths and relationships, and on identifying the support required to enable children to remain safely within their families wherever possible.

It is also essential that any strengthening of legal duties is accompanied by the availability of high quality alternative support for families in practice. Requirements to consider alternatives to removal must be matched by investment in and availability of intensive family support, whole family services and relationship-based support.

We would welcome further discussion at Stage 3 on how best to strengthen the principle that removing children should only occur where necessary, while ensuring clarity in law, consistency in practice and alignment with wider reform and legislative review work.

**Children’s hearings: advocacy: Amendments 189, 51, 109, 200, 202, 203, 204, 205, 78, 79, 80, 206**

<b>We support</b>	<b>We do not support</b>
	205, 78

**Referral to advocacy services/ opt out advocacy (Amendments 189, 51, 109, 200, 202, 203, 204, 206).**

There are a variety of amendments in this group that seek to ensure children are able to access advocacy when they need it. We support the intent of these amendments, which seeks to strengthen the existing duties in the Bill to inform children about the availability of children's advocacy services.

However, there are a number of different issues that must be considered to ensure there are no unintended consequences to passing these amendments. The Hearings System Working Group discussed this in detail, however '[Hearings for Children](#)' did not recommend that advocacy should be provided to children in the Children's Hearings System on an 'opt out' basis, allowing instead for children to be provided with full and accurate information to allow them to make an informed decision. This links also to the issues identified in the Independent Care Review relating to a sometimes overwhelming number of professionals involved in the lives of children and families with different but sometimes conflicting roles.

The promise states that independent advocacy must be available to children and families, however in our view further work must be done to consider how an 'opt out' model in the Children's Hearings System could work in practice.

**Definition of 'independent' for children's advocacy services (Amendment 205)**

As we have previously stated, we are supportive of a definition being created of the term 'independent' as it relates to advocacy services. The Independent Care Review concluded that care experienced children and adults must have the right to and access to independent advocacy, at all stages of their experience of care and beyond (Pg 115).

We note that the existing National Practice Model in the Children's Hearings System is currently working well for children and that the definition of 'independent' is still being discussed as the Bill progresses in terms of advocacy services for care experienced children and adults. We understand and support the intent of this amendment, but are concerned that there may be unintended consequences in terms of the current operation of the existing provision in the Children's Hearings System. As such, we urge caution and further consideration ahead of Stage 3 instead of passing this amendment at Stage 2.

We **do not support amendment 205** (Ross Greer, supported by Nicola Sturgeon) at this stage of the Bill process.

**Children's advocacy services: lack of age or capacity (Amendment 78)**

**Amendment 78** seeks to amend provisions of the Children's Hearings System to ensure that children are able to access children's advocacy services regardless of their age or capacity. While we support the intent of this amendment, we have some concerns about the concept of 'non- instructed advocacy' for babies and infants. We would be keen to hear more about the impact of this proposed change ahead of Stage 3.

We **do not support amendment 78** (Natalie Don-Innes)

### **Children’s advocacy services—earliest opportunity (Amendment 80)**

We agree with the principle that children must be informed of their right to advocacy at the earliest opportunity. However, given the changes included in the Bill specifically place duties on the Principal Reporter and others to inform children of their right to access advocacy we are unsure whether this is necessary.

### **Children’s hearings: timeframes: Amendment 190, 198**

<b>We support</b>	<b>We do not support</b>
	198

### **Time limit on concluding proceedings (Amendment 190)**

‘[Hearings for Children](#)’ sets out in Recommendation 5.4.1 that statutory timescales for establishing grounds should be considered to reduce drift and delay currently experienced in making decisions which impact on children and families lives significantly. The extraordinary lengths of time for children and families to be in limbo must be addressed to ensure children and families feel supported while they are waiting for their Hearing to take place and efforts must be made to address systemic delays.

We recognise that further work is required in order to ensure this amendment is implementable in practice, especially given a large number of proof proceedings currently exceed three months. In particular, there must be flexibility built into the system to allow for extensions to statutory time periods when this is in the best interests of the child and there must be a process for what happens when the three-month time period is reached.

However, ‘[Hearings for Children](#)’ was clear that these are “extraordinary lengths of time for children and families to be in limbo, waiting for significant decisions that will impact on the rest of their lives.” The Promise Scotland would therefore welcome the Scottish Government’s support for an amendment at Stage 3 that would build on **amendment 190** and seek to firmly address drift and delay in grounds being established.

### **Report on waiting times (Amendment 198)**

Amendment 198 is seeking to gather further information about drift and delay in the Children’s Hearings System, however we understand that this information is already available. There is a role for the Hearings Redesign Board in understanding what further information must be collated and shared following the passage of the Bill. Additional legislation is not required in order for further information to be shared in this way.

We **do not support amendment 198** (Roz McCall).

**Relevant persons: Amendments 74, 193, 194, 75, 76**

<b>We support</b>	<b>We do not support</b>
74, 193, 194, 75, 76	

We support **Amendments 75 and 76**, which we understand will be provided for in Court Rules instead.

**Amendment 74** seeks to introduce a requirement that requests by a relevant person for a Children’s Supervision Order (CSO) review—currently permitted every three months—are assessed to determine whether they are “frivolous or vexatious”. Where a request is deemed to meet this threshold, any subsequent requests would be treated as frivolous or vexatious unless and until that determination is revoked. As such it introduces a significant restriction on the ability to request a CSO review.

We understand that the intent of this amendment is to introduce safeguards prevent perpetrators of domestic abuse from utilising the system to continue patterns of harmful or abusive behaviour. This responds to a judgement in a Judicial Review by Lady Carmichael.

We **support amendment 74** (Natalie Don-Innes).

**Amendment 193 and 194** insert reference to Article 16 of the UNCRC. We do not see any reason why this should not be added given the existing reference to Article 8 of the ECHR.

We **support amendments 193 and 194** (Martin Whitfield).

**Children’s hearings: legal representation and legal aid: Amendments 77, 111, 112, 113, 114, 115**

<b>We support</b>	<b>We do not support</b>
115	114

**Legal aid for children referred to the Children’s Reporter on offence grounds (Amendment 77/ 113)**

The promise states that children and their families must have a right to legal advice and representation if required (Pg 116). ‘[Hearings for Children](#)’ is clear in recommendation 4.2 that children must be fully informed of their right to legal representation. There must be an exploration and understanding of how to ensure the mechanisms to access legal aid and their right to legal support are sufficient.

Children referred to the Children’s Hearing System on offence grounds must have legal representation due to the complexities of the grounds being raised and the potential long-term consequences of accepting offence grounds without full understanding of them by the child. **This amendment (113)** provides the opportunity to ensure automatic

access to solicitors within the Children’s Hearings System for a child that has been referred to the hearing for conduct or offence grounds to be realised. However, we note concerns that the way this amendment has been drafted means that the duty scheme will be engaged rather than the child’s solicitor, which is likely to raise capacity issues for the duty scheme. We also note that the [Legal Aid and Advice and Assistance \(Miscellaneous Amendment\) \(Scotland\) Regulations 2026](#), currently before Parliament, removes the ‘means and merits’ test in the Children’s Hearings System, so there is some potential duplication/ overlap.

We therefore encourage further discussion and consideration ahead of Stage 3 to ensure the intent of this amendment is realised and there are no unintended consequences.

### **Accreditation of solicitors representing children and relevant persons and rights of audience (Amendments 111 and 112).**

The promise states that everyone involved in the Children’s Hearings System, including legal representatives, must be properly trained in the impact of trauma, childhood development, neurodiversity and children’s rights (Pg 42). It also states that upholding the rights of children on the edge of and within Scotland’s system of care requires a unique skill set. Lawyers must act in a way that is accessible, understandable and not overtly adversarial.

The promise also recognises the need for Scotland to consider the creation of an accredited legal specialism to set standards for legal professionals representing children. Those standards must uphold children’s rights, understand trauma and attachment and how to operate in a setting that seeks to uphold children’s wellbeing (Pg 116). [‘Hearings for Children’](#) (recommendation 10.1) states that:

- There must be a review of the pre-existing Code of Practice that lawyers are required to adhere to and of the processes with respect to the register of solicitors eligible to provide legal assistance to children, maintained by the Scottish Legal Aid Board.
- There must be mechanisms to review practice and to ensure that lawyers are held to the standard expected of them at Children’s Hearings.
- There must be consideration of the development of ‘rights of audience’ so that lawyers should demonstrate certain skills and attributes before being able to appear on behalf of children and relevant people at a Hearing.

These amendments seek to address these recommendations. **Amendment 111** will allow for further consultation and consideration of the practical implementation of accreditation of solicitors representing children and relevant persons.

Both amendments require further consultation and discussion ahead of Stage 3 to ensure that they are implementable in practice and do not impede on the independence of the legal profession. There are significant, legitimate concerns about the availability of the workforce able to meet these duties—however we hope that a suitable amendment can be laid at Stage 3 that commits to rights of audience and solicitor accreditation in line with the conclusions of [‘Hearings for Children’](#).

### **Legal aid (Amendments 114 and 115)**

We are supportive of the intent of **amendment 114** and the expansion of children’s legal aid. Delivery of the provisions set out in **amendments 77 and 113** must ensure capacity in the system keeps pace with meeting the needs of children. Implementation of **Amendment 114** requires further exploration in subsequent promise-keeping legislation.

We **do not support amendment 114** (Jeremy Balfour).

We support **amendment 115**, which does not change legal aid entitlement but ensures that there is due regard to the availability of child-centred legal advice and representation. At Stage 3 it would be helpful to explore similar amendments where the duty applies to other people involved in referring a child to the Children’s Hearings System.

We **support amendment 115** (Jeremy Balfour).

### **Special provision for infants: Amendments 110, 195, 197, 199**

<b>We support</b>	<b>We do not support</b>
	110, 195, 197, 199

### **Children’s Hearings in relation to infants (Amendment 110) and Safe Baby Hearings (Amendment 199)**

The Independent Care Review, the Hearings System Working Group and the ‘Moving On’ Change Programme, led by STAF and The Promise Scotland heard evidence of the harm caused when children and families lack long-term plans for their future. This is detailed within the [100 Days of Listening report](#). The Independent Care Review concluded that:

- if required, safe and loving homes must be found for children as quickly as possible;
- the number of moves for children must be limited;
- where appropriate there must be robust concurrency planning;
- safe, consistent relationships must be prioritised; and
- there must be a broadened approach to understanding risk, shifting from the risk of possible harm to the risk of not having stable, long term, loving relationships.

Our position is clear: children’s futures must be secured as early as possible, in line with the robust and substantial evidence about the importance of children’s earliest years. Drift and delay must not be tolerated and there must be a laser sharp focus on addressing it.

The Hearings System Working Group listened carefully to the evidence and information provided by a wide range of organisations and stakeholders relating child development

and the importance of making decisions in line with baby and infant milestones. As a result, '[Hearings for Children](#)' states that measures must be in place to prioritise the developmental needs of infants and babies where systemic delays may impact on their ability to form lasting and consistent relationships. It made a number of recommendations to address this that are either included within this Bill, the amendments proposed at Stage 2 or being considered and progressed by the Hearings Redesign Board, SCRA and Children's Hearings Scotland.

These include (but are not limited to) recommendations around:

- Consistent decision makers (Pg 37 etc.)
- Skilled, paid Chairs with specific understanding of babies and infants milestones (Pg 259).
- Measures to eliminate drift and delay (Pg 142).
- Early and intensive help and support (Pg 73).
- Earlier referrals to the Children's Hearings System and ensuring referrers take into account babies and infants developmental milestones (Pg 34/102).
- Considering a statutory timescale for establishing grounds (Pg 143).
- Removing the obligation for attendance for babies and infants/ establishing grounds when babies and infants are involved (Pg 40/ 146).
- Ways to capture the voices and experiences of babies and infants (Pg 42/ 124/ 194/ 208).
- Consistent caregivers/ long term planning for children (Pg 235).
- The role of the Reporter before a baby is born (Pg 109)
- Interim orders in place for a length of time in the best interests of the child (Pg 145).

The implementation of these recommendations will, in our view, seek to improve the quality of decision-making for babies and infants in the Children's Hearings System. **The Hearings System Working Group did not recommend that there should be separate proceedings or processes for babies and infants.**

It did, however, make a recommendation (7.5) that there must be "a national review of multiple ongoing child protection, care and support processes and meetings, including review meetings, to identify where unnecessary duplication takes place, where drift and delay is introduced, and where information could and should be better shared collaboratively with the Panel or Reporter to better inform decision-making." This review needs to be conducted quickly and will help inform the ongoing work of the Hearings Redesign Board, which has set up a new workstream specifically looking at babies and infants.

We **do not support amendments 110** (Roz McCall) **and 199** (Martin Whitfield).

## **Infant Safeguarders (Amendment 195) and Independent representation for infants (Amendment 197)**

We understand the intent behind amendments 195 and 197 relating to an infant safeguarder/ representation role. '[Hearings for Children](#)' made a number of recommendations relating to Safeguarders, including that their appointment must be routinely considered during the process to establish grounds (recommendation 5.3) and that there should be more 'active management' of the role (recommendation 10.2). These recommendations were made with babies and infants in mind—there was clear recognition from the Hearings System Working Group about the importance of the role of Safeguarders for very young children in particular.

We are unclear from these amendments whether the suggestion is for this to be a new role or to be combined with the pre-existing role of a Safeguarder. We are also unclear what additional duties an infant Safeguarder could undertake and are mindful of the feedback from children, young people and families about the number of people in the room at a Hearing and how confusing and overwhelming this can be. Creating a new and separate role (if that is what is intended) could cause additional confusion and complexity. Instead, we think it is important that the recommendations set out in '[Hearings for Children](#)' are implemented and that further work is undertaken to ensure that members of the workforce, including Safeguarders, are trained in the impact of trauma, childhood development, neurodiversity and children's rights (recommendation 2.4/ 3.2).

We **do not support** **amendments 195** (Martin Whitfield) **and** **197** (Roz McCall).

### **Nurture and support: Amendment 117**

<b>We support</b>	<b>We do not support</b>
	117

**Amendment 117** seeks to amend The Children's Hearings (Scotland) Act 2011 to replace references to "treatment and control" with "nurture and support" in a range of provisions relating to children's hearings and compulsory supervision processes.

The promise makes clear that children must be cared for through relationships rooted in love, care, and respect, and that systems must move away from approaches that feel cold, overly professionalised or controlling. Stories and experiences shared with the Independent Care Review highlighted that many children and young people experienced their care in this way and that language mattered. Moving towards language that reflects nurture and support is consistent with the relational and trauma-informed approach set out in the promise.

'[Hearings for Children](#)' states that the existing statutory language found in s.60(2) of the Children's Hearings (Scotland) Act 2011 relating to the referral of children to the Reporter should be re-examined, in particular to understand the legal implications for removing

reference to “treatment and control” of children in favour of updating it with more modern and relevant terminology. The Hearings System Working Group was of the view that such changes will lead to greater consistency in the application of referral criteria, whilst at the same time bringing greater clarity to their rights- based foundation (Pg 105, recommendation 3.3). The Scottish Government accepted this recommendation, with conditions—referencing the ‘Language Leaders’ work and the need to seek views on potential changes.

While we understand and fully support the intent of these amendments, further work is required to understand the impact of this change and any potential unintended consequences, including the potential impact on caselaw.

We **do not support amendment 117** (Roz McCall)

**Child protection orders: evidence on oath: Amendments 119, 120**

<b>We support</b>	<b>We do not support</b>
	119, 120

**Amendments 119 and 120 seek** to ensure that any evidence presented to a sheriff in relation to the potential removal of a child is provided by an individual who is willing to swear or affirm that the evidence is true and accurate. The intention is to reduce the risk of overstated or unduly persuasive arguments being advanced in such proceedings, and to increase accountability where evidence is later found to be flawed.

However, it is unclear what form of evidence would be considered acceptable under oath. In particular, the amendment does not specify whether this would require oral evidence to be given in person, or whether a written affirmation or sworn statement would be sufficient. This lack of clarity could lead to delays in proceedings where urgent action is required to safeguard children.

We **do not support amendments 119 and 120** (Sue Webber).

**Family group decision making: Amendments 207, 208, 208A, 118, 210, 210A, 211, 212, 213, 214, 215, 125, 223**

Family Group Decision Making (FGDM) is a voluntary, strengths-based approach designed to bring together family members where there are concerns about a child or children. The promise states that “family group decision making and mediation must become a much more common part of listening and decision-making” (Pg 33). Plan 24-30 states that by 2030 Scotland needs to make sure that “decision making challenges traditional power dynamics. It is clear that FGDM must be accessible to all children and families who want it in every local area in Scotland.”

Our view is that FGDM must be consistently available for all children and families across Scotland. However, the current provision of FGDM across Scotland is inconsistent. We

support a statutory underpinning for FGDM, building on the existing provisions through Part 12 of the Children and Young People (Scotland) Act 2014 and the related Order.

'Hearings for Children' identified a number of areas upon which the redesign of the Children's Hearings System. One of these areas was ensuring consistent, high- quality provision of Family Group Decision Making and Restorative Justice services across Scotland (Pg 26). The report states "FGDM should be routinely and consistently offered to children and families... as an option to help find innovative and creative ways to solve their problems well in advance of any statutory involvement of the Children's Hearings System..." (Pg 76). The Hearings System Working Group also concluded that "if appropriate, Children's Hearings should be empowered to create space for Restorative Justice and FGDM processes to take place, by deferring Hearings for a sufficient time" (Pg 228).

We therefore welcome the intent of many amendments to the Bill which seek to address this and enshrine an approach where children and families have a right to access FGDM and local authorities have a duty to provide it which will ensure more equitable and consistent access across Scotland. We note that there is further work to do ahead of Stage 3 to consolidate the draft amendments and ensure that there is an appropriate legislative framework that will enable children and families to access Family Group Decision Making if they want to.

### Places of safety: arrest: Amendment 209

We support	We do not support
209	

The promise states that for a variety of reasons care experienced children are disproportionately criminalised and overrepresented in the youth criminal justice system (Pg 89). Scotland must do more to avoid that criminalisation and support the workforce to respond to children in a way that is relational rather than procedural and process driven (Pg 91).

Legislative change is needed to make this a reality. **Amendment 209** seeks to amend the Criminal Justice (Scotland) Act 2016 to allow for children who have been arrested to be taken to a place of safety instead of police custody unless an appropriate constable certifies that no appropriate alternative location is available. This small change to existing legislation would enable a significant change that would ensure a more rights-respecting and trauma-informed response to children in conflict with the law in line with Scotland's commitment to keep the promise.

The use of an alternative location would not be a requirement - a police station could still be used - but would enable alternatives to be considered where appropriate. This change would then enable any piloting of an alternative to police custody to be carried out, without any legislative challenge for police officers.

We understand that there are some reservations about the current drafting of this amendment, including reference to availability rather than appropriateness of alternative places. We strongly support work to strengthen this amendment at Stage 3.

We **support amendment 209** (Willie Rennie).

### **Children’s services planning: Amendments 81, 82, 121, 123**

<b>We support</b>	<b>We do not support</b>
81, 82	121, 123

We support **Amendment 81**, which will help to clarify the provisions of the Bill and the policy intent.

#### **Care service registration and children’s services planning alignment (Amendment 82)**

We are supportive of **amendment 82** which seeks to amend the Public Services Reform (Scotland) Act 2010 to strengthen alignment between care service regulation and children’s services planning frameworks. The promise states that Scotland’s ‘care system’ is currently fragmented and requires greater coherence, shared accountability and alignment across all of its services and structures to ensure it meets the needs of children and families (Pg 112). Strengthening the role of children’s services planning bodies in care service registration is consistent with this and supports a shift towards the more joined up system delivery of the promise requires.

However, legislative change alone will not deliver the required improvement to strengthen alignment between regulation and planning frameworks. The effectiveness of this provision will depend on meaningful collaboration and clarity about roles, responsibilities, and resourcing. Implementation must focus on using the provision to improve experiences and outcomes for children and families rather than stopping at the creation of additional procedural bureaucracy.

We **support amendments 81 and 82** (Natalie Don-Innes)

#### **Sunset clause and review of children’s services planning functions (amendments 121, 123)**

**Amendments 121 and 123** introduce a 5-year sunset clause and review requirement for the changes made by section 22 of the Act, which relate to children’s services planning functions for Integration Joint Boards (IJBs).

We are supportive of strengthening review and accountability mechanisms that help to increase the pace of change required for the promise to be kept by 2030. However, to be effective, these mechanisms must align with the existing monitoring and improvement activity that supports delivery and focus on strengthening implementation, rather than potentially creating instability.

Although the changes proposed by this Bill are significant, it will not be the final piece of legislation required for the promise to be kept by 2030, and implementation will not be straightforward. It will require well-resourced, sequenced implementation plans that build on the change to date and increase pace in ways that create stability for children, families and care-experienced adults. This demands sustained, long-term transformation alongside day-to-day improvements.

The introduction of sunset clauses within core children’s services structures risks undermining both the commitment to long-term, sustained improvement and the ability to realise it.

Scotland has a vision that the promise is kept by 2030 with the Review being clear that “never again must it be necessary to conduct a review on the scale” of the Independent Care Review (Pg 30).

Those systems that require to achieve sustained improvement depend on certainty and continuity; the pressure from an ever-increasing proximity of a sunset clause would risk incentivising short-term fixes over the sustained improvement required to systems and services and culture and undermine exactly what the Bill seeks to achieve.

We **do not support** amendments 121 and 123 (Roz McCall).

### **Children’s services plans and reports: Amendments 83, 84, 85, 122, 216**

<b>We support</b>	<b>We do not support</b>
83, 84, 85	216

#### **National outcomes within children’s services planning and reporting requirements (Amendments 83, 84, 85)**

**Amendments 83, 84 and 85** seek to amend the Children and Young People (Scotland) Act 2014 to strengthen how children’s services planning connects to national outcomes and priorities and update related reporting requirements; strengthen communication and accountability between Scottish Ministers (and national service providers) and local children’s services planning bodies, and clarify how children’s services plans can be revised in response; give Scottish Ministers powers to set additional national reporting requirements for children’s services plans, subject to consultation.

The promise is clear that responsibility for improving outcomes for children and families sits across national and local systems and services and all organisations with a role to play must understand and fulfil their responsibilities to children and families (Pg 112). Strengthening the link between national priorities and local children’s services planning supports a more coherent, joined up, and responsive system and creates opportunities to identify and address barriers to change which should ultimately improve the experiences of children and families. This reflects the shared responsibility outlined in the promise.

However, it is important that any additional planning, response, or reporting requirements are proportionate and aligned to existing structures and monitoring frameworks (including [Plan 24-30](#) and the [Promise Story of Progress](#)) and avoid duplication or unnecessary administrative burden. Whilst supportive of continued work to ensure national and local partners and processes work together to support delivery of the promise in practice, we also expect this to include meaningful engagement with children, families, and care experienced adults and the workforce and to be accompanied by implementation, sequencing and sustainable resourcing.

We **support amendments 83, 84, 85** (Nicola Sturgeon).

### **Prevention of family separation within children's services planning aims (amendment 122)**

**Amendment 122** seeks to amend the Children and Young People (Scotland) Act 2014 to strengthen the role of children's services planning in preventing unnecessary separation of children from their families, by focusing on availability of and access to services that support children to remain with or return to parents.

The promise is unequivocal, where children are safe and loved within their families they must stay, and families must receive the support required to overcome difficulties and stay together (Pg 15). It also makes clear that this requires access to universal and intensive whole family support, including practical, emotional, and financial support delivered over sustained periods where required (Pg 55).

Further work is required to ensure clarity about how this amendment interacts with existing statutory duties relating to early help and support for families, and to ensure alignment with wider policy and implementation. Agreements on finance and resource for delivery are particularly important to ensure this does not become another service that families in need find difficult to access and those with duties to deliver and unable to provide. We would welcome further discussion on this ahead of Stage 3.

### **Reporting on services for children with life-shortening conditions (Amendment 216)**

We understand the intent of **amendment 216** which seeks to amend the Children and Young People (Scotland) Act 2014 to require children's services planning reports to include specific information about services for children and young people with life-shortening conditions, including transition to adult services. The promise highlights the importance of consistent lifelong support and the need to avoid cliff edges as children move into adulthood.

However, without an associated care experience, children with life-shortening conditions do not fall within the scope of this Bill. Children with life-shortening conditions have specific needs and require services which do not necessarily overlap with the legal definitions identifying the care experienced population or with the statutory duties of the organisations committed to support them. The risks of conflation for children in terms of delivery of and / or reporting on services is that neither provide the cognisance required to fully meet their needs.

We **do not support amendment 216** (Miles Briggs).

### **Review of the Act: Amendments 218, 219, 220**

**Amendments 218, 219, and 220** seek to put in place measures to review the operation of the Act resulting from this Bill process, including definition of the review period and identification of reporting requirements.

We support the intention of these amendments to strengthen review, scrutiny, and accountability for delivery of the Act and progress towards keeping the promise. The promise states that Scotland must remain accountable for delivering sustained change in the lives of children, families, and care experienced adults.

Responsibility for delivering the promise sits across Scotland's institutions and systems, and they must understand what is expected of them, by when, and be resourced to effectively discharge their responsibility. Progress must be transparent, measurable, and focused on improving experiences and outcomes.

Given the complexity of delivery and accountability, strengthening mechanisms that support oversight of progress is therefore consistent with the expectation set out in the promise that all organisations with a role to play must understand and fulfil their responsibilities to care experienced people (Pg 112).

The focus on outcomes that are measurable within current data systems is particularly welcomed given the Independent Care Review heard clearly about the long-term inequalities experienced by care experienced people and the need for Scotland to better understand outcomes in order to improve supports and services, but also the data challenges of measuring these.

It is important that any review mechanisms introduced are comprehensible and coherent and align with existing work underway to monitor progress towards keeping the promise, including national planning, reporting, and improvement activity. Duplication of reporting or review requirements risks increasing bureaucracy and diverting resource from delivery of change and improving experiences for care experienced people.

We would welcome discussion ahead of Stage 3 on how the amendments as set out could be merged and aligned to best support delivery of the promise, ensuring that they strengthen implementation and learning whilst avoiding unnecessary complexity.

### **About The Promise Scotland**

[The Promise Scotland](#) was established in 2021 and exists to support Scotland as it works to keep [the promise](#) to Scotland's children, families and care experienced adults following the conclusions of the [Independent Care Review](#). Since the organisation was established, it has supported and delivered a wide range of projects and programmes, which you can read more about in our [organisational review](#) and our [strategic work programme](#).

Keeping the promise involves transforming the entirety of Scotland's 'care system', so that children, young people, families and care experienced adults are at its centre. The Promise Scotland directly supports the work of multiple organisations and agencies,

across many sectors working to make that happen by 2030 at the very latest, with a commitment to its own obsolescence by that date.

**If you want to get in touch to discuss any of the areas raised in our briefing please do not hesitate to contact our Policy Lead, Chloe Riddell on [chloe@thepromise.scot](mailto:chloe@thepromise.scot).**