

THE PROMISE SCOTLAND

Update to decluttering the Landscape work and support for the development of the Plan 24-30

Legislation Route map

The author of this report

The Promise Scotland commissioned an advocate, Melanie Barbour, to undertake the following report. The substance of this report is Melanie's view and opinion about how to 'declutter the landscape', following on from the initial report she developed in 2024.

A note on language

Children and young people told the Independent Care Review that some of the existing language, which is used about care, reinforces feelings of being different, lowers self-esteem and contributes to stigma. The Independent Care Review provided Conclusions on the issue entitled "language of care". Various organisations and public bodies have subsequently produced work with alternative language to be used. This report has attempted to use the alternative language where possible to do so. It has been, however, not always possible to do so as some existing statutory terms use the old-style language. This Report considers the legal framework, and it would not be appropriate in this Report to change existing terms as it could lead to confusion about what is set out in the Report. Where there is reference to legal matters, the existing statutory terms have therefore been used.

A note from the Independent Strategic Advisor, the promise - Fiona Duncan

This paper is part of a suite of documents that has been produced by The Promise Scotland with the intention of supporting the development of work to 'declutter' the landscape of care in line with the core conclusions of the Independent Care Review.

The proposed approach outlined in this paper is to amend and then consolidate the six core Acts relating to the 'care system' (and the new Bill). It is important to be clear that this legislation relates to the 'care journey', but does not include the plethora of other legislation that relates to children, families and care experienced adults. When the Independent Care Review was published there were 44 pieces of legislation, 19 pieces of secondary legislation and 3 international covenants straddling 6 out of 9 of the Scottish policy areas. Today, with the addition of the new Bill, there are at least 48 pieces of legislation and 24 pieces of secondary legislation. Although the suggestions made will consolidate 7 pieces of legislation, and potentially some of the related secondary legislation, there will still be 41 pieces of legislation that are connected in some way to the 'care system' and to the lives of children,

families and care experienced adults. **Decluttering the landscape in the way outlined in this paper, therefore, is a start, but is not enough on its own.** These other pieces of legislation must not be overlooked, and the work to refine and consolidate must include broader consideration of how to ensure the overall policy and legislative framework relating to children, families and care experienced adults serves them better.

It must not be assumed that there is not a need for new legislation. In this report a number of areas for consideration for further legislation have been identified. It is clear that new legislation will be needed in the next parliamentary term in the areas set out below as well as relating to secure care, profit, scrutiny and inspection, governance and a wide range of other areas.

This work presents an opportunity to introduce further new legislation that is necessary to keep the promise.

1 BACKGROUND AND CONTEXT

The Independent Care Review was a root and branch review of the whole landscape of systems and services that interact with children and families, currently referred to as the “care system”. The Review looked at its legal underpinning, its development, its context and its outcomes.

On 5 February 2020, the Independent Care Review published seven reports, having engaged over 5,500 children, families and care experienced adults with [the promise](#) report narrating a vision for Scotland, built on five foundations and [the rules](#) showing that:

“The ‘care system’ is a complex, fragmented, multi-purpose and multifaceted entity which does not lend itself to easy definition. It provides an enormously wide variety of supports and services for a diverse group of children and young adults (and their families) and involves a vast array of organisations, service providers, professionals and volunteers in its delivery. This is spread over legislation, policy and practice which is reflective of how many systems have evolved over many years. The current system is underpinned by 44 pieces of legislation, 19 pieces of secondary legislation and 3 international conventions and straddles 6 out of 9 Scottish policy areas, making cohesive operation impossible and creating disconnects into which children, young adults and their families can fall.” (The Promise, p.112)

The Promise Scotland and the Independent Strategic Advisor published Plan 24-30, Scotland’s Plan for Keeping the Promise. This report is provided to support the development of the ‘legislation’ route map set out in Plan 24-30.

As the Independent Care Review noted, there is a considerable amount of different primary and secondary legislation and policy guidance governing the rights and obligations towards children and adults, who may or will become care experienced. The promise stipulated that there must be a significant decluttering of this landscape in order to create a “*clear legislative enabling environment that supports families to stay together and protects and allows relationships to flourish.*” (*The Promise, p.112*)

In 2024, the Promise Scotland commissioned a report: ‘Current Laws Around the Care System’¹ to understand the current legal landscape, setting out the legislative framework surrounding the care system in 2024; identify what legislative changes would simplify the landscape and make it easier for children, families, care experienced adults and the workforce to understand; and inform views on when and how such legislative changes would be best achieved between now and 2030. That report looked at various legislative changes that could be made to Scottish law, policy and guidance to meet the promise’s vision of updating the legislative landscape to make it simpler to understand and more accessible to children, families and members of the workforce while at the same ensuring that robust measures are in place which ensure the safety of Scotland’s children and young people, including those who are care experienced, and to support all or those children and young persons and their families.

The report: ‘Current Laws Around the Care System’ was accompanied by a table of legislation, setting out all the areas in legislation that are connected to Scotland’s ‘care system’.² A significant amount of the legislation connected to the ‘care system’ is set out in the Children (Scotland) Act 1995 and therefore predates devolution and is outwith the scope of the United Nations Convention on the Rights of the Child (Incorporation) Scotland Act 2024. The implications for this are discussed later in this report.

There were three options for ‘decluttering the landscape’ suggested in the report: ‘Current Laws Around the Care System’:

¹ The Promise Report: [report-current-laws-around-the-care-system.pdf](#)

² The Promise Table of Legislation: [table-of-legislation.pdf](#)

Option 1 proposed a tidying up of the existing legislation and bringing in orders and guidance as necessary to support those limited changes; it would be relatively quick to enact into legislation; the disbenefits would be that there would remain a multitude of different Acts, orders and guidance, and the system would remain complicated to navigate, and some Acts would remain non-UNCRC compliant.

Option 2 was a wholesale exercise consolidating all relevant Acts; there would be one primary piece of legislation for children who are care experienced. The benefits would be: it would be up-to-date, terms could be consistent, and there would be one Act to navigate; the disbenefits would be that trying to include all relevant sections could be unwieldy, time-consuming to enact, other Acts which do not affect only care experienced children would end up being brought under this new Act and it may end up trying to do too much.

Option 3 suggested a more focused piece of legislation. It would be primarily a consolidating Act, taking six principal Acts and one Bill and consolidating them into one Act, where necessary bringing provisions up to date, tidying up language and introducing new provisions where there was a lacuna in existing legislation. The suggested Acts/ Bill are: the Social Work (Scotland) Act 1968; the Children (Scotland) Act 1995; the Adoption and Children (Scotland) Act 2007; the Children's Hearings (Scotland) Act 2011; the Children and Young People (Scotland) Act 2014; the Children (Scotland) Act 2020; and the Children (Care, Care Experience and Services Planning) (Scotland) Bill.

Benefits would include containing the majority of principal provisions relating to care experience and child welfare in one Act, making it easier for professionals and families to use. It would aim to make all relevant provisions UNCRC compliant and within the scope of the UNCRC following the incorporation of the UNCRC into Scots Law. Terms and language could be made consistent. The disbenefits would be the need for some navigating with other Acts. But this option felt like the best balance in terms of achieving the aims of the promise.

2 THE PURPOSE OF THIS REPORT: DEVELOP FURTHER "OPTION 3"

This report intends to build on the original piece of work, with a focus on Option 3. As stated above, Option 3 identified the six principal Acts relating to children in the 'care system'. This means that there are at least 41 pieces of legislation that sits alongside a consolidated Act relating to the 'care system'. Careful consideration should be given to ensuring that these are not ignored and the work to declutter

the landscape includes ways to create a clear and coherent framework that is inclusive of the broader policy and legislative context.

Option 3 suggested bringing these Acts together and consolidating them into one primary Act. Since the report: 'Current Laws Around the Care System' was published the Scottish Government has laid a further Bill, the Children (Care, Care Experience and Services Planning) (Scotland) Bill, which brings the total number to seven.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024³ will be a guiding principle for this report, with recommendations for 'decluttering the landscape of care' being inclusive of the need for any consolidated new Act to be both within scope and compliant with the UNCRC following incorporation.

It should be noted that the Children (Care, Care Experience and Services Planning) (Scotland) Bill is currently at Stage 1 in the Scottish Parliament and will be amended at Stages 2 and 3. The Bill has not yet passed, but this report has included reference to it on the basis that it contains provisions that, if passed, will impact work to 'declutter the landscape'.

The first report: 'Current Laws Around the Care System' suggested a framework. This report extrapolates the detail of that framework and issues arising from it. It considers the benefits of bringing the seven Acts/ Bill together, looks at the purpose of consolidation and codification, considers international examples, and assesses what future steps may be needed. It also considers responses from key stakeholders to the call for evidence on the Children (Care, Care Experience and Services Planning) (Scotland) Bill, which offer views about how this work might be undertaken.

This report will therefore:

1. Look at and develop further "Option 3" of the previous report: 'Current Laws Around the Care System';
2. Provide *draft headings* for an imagined Act which is Appendix 1 to this report. The draft Act is in 5 Parts.
3. Develop a route map for the 'legislation' theme of Plan 24-30, which identifies actions and milestones for Scotland to keep the promise and will be set out on the Plan 24-30 website.

³ This Act includes both private and public law aspects affecting the rights of children both care and non-experienced.

This is set out in a separate document and will be shared with officials by The Promise Scotland.

Why Option 3?

Option 3 would be beneficial in that it could become a solely Scottish Act, and one which would therefore be subject to the provisions of the United Nations Convention on the Rights of the Child (Scotland) Act 2024.

Option 3 would also allow there to be a review of language and terms used to make them consistent, where possible, throughout the Act. It would allow for modern language to be amended into the Acts and thereby pay heed to what children and young persons told the Independent Care Review about the negative impact that current language has and the need for a commonly used and understood 'language of care'.

The previous report: 'Current Laws Around the Care System' looked at two other options: a minor tidying up of current legislation, amending existing provisions to implement recommendations brought forward through the work of The Promise Scotland. Option 1 is in effect now being introduced in the Children (Care, Care Experience and Services Planning) (Scotland) Bill. While this Bill introduces important new changes to the Children (Scotland) Act 1995, Children and Young People (Scotland) Act 2014, the Public Services Reform (Scotland) Act 2010, and the Children Hearings (Scotland) Act 2011, it does not declutter the landscape but adds another tier of future legislation for children, care experienced persons, their families and professionals to navigate.

The other option, Option 2, is a wholesale review of all legislation impacting on children, care experienced persons, and their families. This option would have had much wider implications and changes on other areas of society, for example, general education. Such a review would have been time-consuming and complicated. It may also be more expansive than what is required in terms of the aims of the promise.

This report suggests that Option 3 sits somewhere between the other two options. Option 3 is not comprehensive in all aspects of a child and young person's life, and does not bring in other Acts dealing with health and education: these would remain separate. In addition, not all justice provisions have been introduced to this Act, with the justice provisions in Option 3 focusing only on the Children's Hearing System.

Option 3 seeks to declutter the landscape and make legislative provisions easier to navigate by bringing a number of Acts together into one new Act. There would also be some additional provisions which would likely be brought in as additional, primary legislation into this new Act. There would be a more comprehensive focus on the 1968, 1995 and 2014 Acts. This has been illustrated in draft headings for an imagined Act in Appendix 1.

3 CONSOLIDATION, AMENDMENT AND CODIFICATION

What is consolidation?

The Law Commission and Scottish Law Commission are creatures of statute⁴; their purpose is the reform of the law. On their website, the Scottish Law Commission's stated task is *"... to recommend reforms to improve, simplify and update the law of Scotland. Society is constantly developing, and it is important that the law keeps pace with changes in the way we live and work. Outdated or unnecessarily complex law makes for injustice and inefficiency and leads to the law being out of step with the needs of ordinary people."*⁵

The importance of consolidation of legislation is recognised at a national and governmental level, in Scotland, England and Wales. The Commission's duties include consolidation with the aim of making legislation easier to find and use. The vision of the promise mirrors these statutory aims in considering how to navigate the multitude of Acts and regulations affecting some of our most vulnerable members of society.

Consolidation, Family Law and the Scottish Law Commission

The last codification and consolidation relating to the topic of Family Law was carried out by the Scottish Law Commission in 1990. At that time, the Scottish Law Commission undertook a consolidation process, looking at three separate areas. First: Family law - which included issues regarding marriage, divorce, matrimonial homes, aliment and property. Second: Child law considering parental rights and duties, guardianship, custody and access. Third: the effects of cohabitation in private law. [Report on Family Law Report 135]⁶. That consultation culminated in the Family Law

⁴ Law Commission Act 1965; section 3 sets out the functions of the commissions.

⁵ link

⁶ Report on Family Law Report 135

Report 135, published on 6 May 1992. In their report they refer to other important developments ... taking place in relation to childcare law.⁷ At page 134 of the Report, the Commission noted at paragraph 19.2 that there are important developments currently taking place in relation to childcare law, which included a review of social welfare law affecting children, a review of the children's hearing system, and a review of adoption law being carried out in the United Kingdom.

At paragraph 19.3, they noted that there is a need for a coherent approach. They state that *"it seems clear that the public interest would be better served by a coherent rather than an incoherent approach to the Scottish reform of child and family law."* They were aware that some of the provisions in the draft bill to the report would touch on matters of childcare or adoption law. They said that there is no reason why the *various reform developments should not eventually be brought together into a coherent whole.*

The Children (Scotland) Act 1995 was enacted and brought public and private law rights for children together. It implemented parental rights and parental responsibilities; section 11 orders regulating residence, contact and specific issues for children in the private law field, and sitting alongside were public law measures dealing with public law duties to children, in terms of child care law: creating support for children and families, provision of services, parental responsibility orders (the forerunner of permanence orders) and the remodelling of the Children's Hearings System and Reporter's office. One Act was, therefore, brought in to deal with the majority of rights and duties affecting all children 30 years ago.

As noted in the previous report: 'Current Laws Around the Care System', over the years the issues covered in the 1995 Act have become fragmented, some Parts were removed from the Act and other parts have expanded. A new Children's Hearings (Scotland) Act 2011 and a new Adoption and Children (Scotland) Act 2007 came into force. There has also been the creation of a number of new pieces of legislation affecting children bringing in to force important national concepts such as wellbeing and GIRFEC, legislating for the increased understanding of the need to ensure the child's views are taken and considered, providing focus on the importance of sibling relationships in proceedings affecting children; putting in place some control over child welfare reporters and contact centres⁸; and giving

⁷ The review of childcare law in Scotland, this group reported in 1990.

⁸ Children (Scotland) Act 2020, came out of Scottish Government review of the Children (Scotland) Act 1995, <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2018/05/review-part-1-children-scotland-act-1995-creation-family-justice/documents/00535359-pdf/00535359-pdf/govscot%3Adocument/00535359.pdf>

legal force to international rights in conventions such as United National Convention on the Rights of the Child.

In addition, while increasingly recognised, there have also been important areas left more to regulations and guidance, most notably where children are leaving care and moving from being looked after to adulthood. Child protection is not a statutory concept. As noted in the earlier report: 'Current Laws Around the Care System', there is no statutory duty in any of the Scottish Acts that a local authority must investigate a child's circumstances where the child is deemed at risk of significant harm. In England, the Children Act 1989, section 47 imposes a duty on local authorities to investigate a child's circumstances where they have reasonable cause to suspect significant harm. Child protection in Scotland is regulated by national non-statutory guidance. This is notwithstanding that these procedures form an important area of practice.

All of this has led, over the years, to first, a fragmentation of the Children (Scotland) 1995 Act and the overarching rules for children that it contained, and second, an ongoing move away from the recommendations in the Family Law report 135, that *"the public interest would be better served by a coherent rather than an incoherent approach to the Scottish reform of child and family law."*

Consolidation and Codification - the Welsh Government

In 2019, the Welsh Government began a process of modernising and making accessible and bilingual body of law for Wales with the enactment of the Legislation (Wales) Act 2019. This followed work done by the Law Commission which looked at the form and accessibility of the law applicable to Wales leading to their Report and Recommendations to Parliament in 2016⁹. The Law Commission's Report considered in detail the case for consolidation and codification of law in Wales.¹⁰ The 2019 Act requires that the Government prepare a programme setting out steps it will take over a 5-year period towards the goal of making the law more accessible, through consolidating and codifying existing law.¹¹ To date, their focus has been on consolidating and codifying planning legislation. As part of this process,

⁹ https://webarchive.nationalarchives.gov.uk/ukgwa/20250109100548mp_/https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2016/10/lc366_form_accessibility_wales_English.pdf

¹⁰ https://webarchive.nationalarchives.gov.uk/ukgwa/20250109113316mp_/https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/07/cp223_for_accessibility_wales_with_cover.pdf. See chapter 3.80 and following paragraphs which consider the process of special procedures for law reform bills

¹¹ <https://lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/>; <https://law.gov.wales/legislation-wales-act-2019>; <https://www.gov.wales/consolidation-planning-law>

they carried out a consultation exercise in October 2019 ¹² entitled The Future of Welsh law: Classification, Consolidation, Codification. They say part of the purpose of their work was to put in place

“ ... A future in which all laws that fall within the legislative competence of the Senedd are in order, easy to navigate, available in up-to-date form and as understandable as the complexity of the content allows. Achieving this requires a revamp of the statute book through consolidation of existing law and, once in order, a process of codification intended to keep the law in order. It also means improving the way we publish legislation and provide explanatory material about legislation.” [page 6].

When discussing consolidating and codifying their law, the Welsh government considered that there were detrimental effects of inaccessible law. They considered that there were self-evident monetary costs associated with inaccessible law; it pushes up the costs of accessing the law by increasing the time and resources needed to research and apply the law, not only for lawyers, but also for businesses and citizens who may find it disproportionately expensive to access the law directly. Furthermore, they say that due to the time and resource constraints within which lawyers and others accessing the law must operate, inaccessible law can lead to limited or inaccurate legal analysis and advice. This can detrimentally affect the persons relying on this advice, and ultimately the court system. They conclude that improving the accessibility of the law would reduce the costs associated with these issues and benefit the people of Wales. They go on to say that more significant is the social cost of the current situation,

“14. Being able to find and understand the law with reasonable ease is essential for citizens to be able to enjoy the benefits and respect the obligations, that the law confers or imposes on them. Given that access to justice more generally, notably through state-funded legal advice, is under such threat, ensuring that people have a fighting chance of understanding the law is vital. It goes to the heart of a nation governed by the rule of law. “

The Welsh Government refer to the work they have already done to make the law more accessible. One of the examples they give is the Social Services and Well-being Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016, which contain nearly all of the law on social care in Wales. They say that *“not all of this law was reformed, but the extent of the change in the law meant that the*

¹² <https://www.gov.wales/sites/default/files/consultations/2020-01/the-future-of-welsh-law-consultation-document.pdf>

sensible approach was to restate those areas of the law that were unaffected. This had the advantage of setting out the law more clearly, bilingually, and within a coherent context.

Chapter 3 of their consultation considers what consolidation is. At paragraph 45, they state that the purpose of consolidating legislation is to improve access to the law.

“This is done both by bringing together all or most of the (generally primary) legislation on a specific subject so that it can easily be found, and by modernising the form and drafting of the law to make it easier to understand and apply. Dictionary definitions refer to consolidation as the action or process of ‘combining a number of things into a single more effective or coherent whole’ or of ‘making something stronger’. The Welsh Government’s aim is to do both”.

In developing their position on the nature and extent of consolidation, the Welsh Government had considered other examples in the UK and also other Commonwealth countries (Australia and New Zealand). They say that there are several common features of consolidation, and they consider these in their report.

Consolidation Bills can restate existing legislation with any changes of order, language or format appropriate for the purpose of improving the presentation of the law and ensuring consistency with current drafting practice:

Preparing a consolidation Bill can result in legislation which looks very different to the original text. Significant presentational changes designed to modernise the language and make its structure more accessible can be achieved without making changes to the effect of the law.

In practice this could include:

- 1. renumbering and rearranging provisions and expressing provisions in a way that reflects their actual legal effect.*
- 2. changing the language of legislation that exists only in English to facilitate the production of a coherent bilingual Bill. A consolidation exercise would also adopt gender neutral language and modernise the language in any other way (including by omitting redundant wording).*
- 3. adopting other changes of format such as labels and headings; new tables, formulae or other ways of presenting information; and including navigational aids such as overviews and signposting provisions.*
- 4. potentially setting out in full provisions of other legislation that are incorporated into the consolidated legislation.¹³*

As noted in the report by the Welsh Government, the types of matters that can be addressed in a consolidation exercise include organisation, language and format; clarifying application or effect;

¹³ The future of Welsh law: A programme for 2021 to 2026

removing or omitting provisions which are obsolete, spent or no longer of practical utility or effect; minor changes to the law for the purposes of achieving a satisfactory consolidation of existing law. This also includes ensuring any consolidation legislation is compatible with Convention rights, and transitional provisions, savings, consequential amendments and repeals.

In relation to codification. The Law Commission in their Report entitled *Form and Accessibility of the Law Applicable in Wales A Consultation Paper* wrote¹⁴ that they had recommended a new approach to law-making in Wales and ways to make the existing law applicable in Wales clearer, simpler and easier to access. They suggest that a significant area of the law in Wales should be consolidated and codified. Legislation relating to areas such as education, housing, health, and planning could be brought together into codes, creating one easily accessible piece of primary legislation to cover each subject. They go on to say that to keep codes intact, they recommend that amendments or future legislation should be made only by amending or adding to the code. They also recommend that secondary legislation should be re-enacted as amended.¹⁵

4 WHAT COULD A NEW, 'DECLUTTERED' ACT LOOK LIKE IN SCOTLAND?

As noted in the preceding section, set out in Appendix 1 is a series of headings of an imagined draft Act that would bring Option 3 to life. is set out in five Parts:

Part 1 - Parents, Children and Guardians (replicates Part 1 of the Children (Scotland) Act 1995);

Part 2 - Promotion of Children's Welfare by Local Authorities (which is an amalgamation of suggested relevant parts of the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, and the Children and Young People (Scotland) Act 2014, together with brand new provisions which The Promise Scotland considers could be necessary to meet the promise);

Part 3 – Children's Hearings (which is the whole of the existing Children's Hearings (Scotland) Act 2011 with some minor additions taken from the Children (Scotland) Act 1995 Act);

Part 4 - Adoption and Permanence Order (which is the whole of the Adoption and Children (Scotland) Act 2007 with some minor additions taken from the Children (Scotland) Act 1995; and

¹⁴ <https://lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/>;

¹⁵ For description of codifying the legislation see Law Commission report at page 142 et seq **Codifying the legislation** *The second form of common law codification involves bringing together the statutory law on a single subject into one instrument without substantially changing the boundaries between statute law and case law. Where this is done without any (or any significant) change in the substance of the law, it is mere consolidation, which we discussed in chapter 7 above. However, it is important here for two reasons. First, it is associated with substantive law reform. Secondly, it can have implications for the form of the law on a continuing basis.*

Part 5 - Miscellaneous Provisions (miscellaneous provisions from the Children (Scotland) Act 1995 and the Children (Scotland) Act 2020.

The rationale for this approach

The above sets out a framework roughly similar to the original Children (Scotland) Act 1995, with private law rights and responsibilities being set out in Part 1. Thereafter, the remaining Parts would aim to set out a clear framework which sets out child welfare and care experienced children and their families.

The implementation of the Children (Scotland) Act 1995 brought into force a fundamental piece of law, governing rights in respect of children, with private law rights sitting alongside public law rights affecting children. It was a landmark Act which was wide-ranging and comprehensive in its purpose. Bringing the proposed Acts together in the Option 3 draft Act would ensure that the majority of relevant provisions were once again contained in one Act, similar to what the 1995 Act aimed to do. By taking such an approach, **it would declutter the legislative landscape**, in line with the conclusions of the promise and as noted further in this report, going back to such a structure would provide a similar framework to other jurisdictions.

Parts 2, 3 and 4 of the Option 3 draft Act would be set out in **chronological order**, from early help and support, informal measures, through formal measures of support, permanent removal from families, and also transition to adulthood. The aim is to have in place an Act which is more structured and easier to navigate with signposting, the intention being that children, families and professionals accessing the law would access a principal Act, which contained the majority of relevant provisions and had them laid out in a format which included chronological provisions from early childhood to children moving to adulthood. The Option 3 draft Act brings back in under one Act the Children's Hearings provisions and adoption and permanence orders. It is suggested that there is logic to such a framework.

Parts 1,3, 4 and 5 do not innovate on what already works but seek to bring together the existing private law rights, the formal measures which are used to support children and families, in terms of the Children's Hearings System, and also bring under one Act the permanent removal of parental rights and responsibilities through adoption or permanence orders. It is submitted that this sits appropriately in one Act: adoption orders affect private law rights, and private law rights in terms of section 11 orders regulating parental rights and responsibilities often touch on public law decisions, for example, where kinship carers seek section 11 orders; or where parents are left with some parental rights and

responsibilities when permanence orders are sought. To leave disparate Acts makes it more difficult for users to navigate the law; it makes it more likely that they will not link the rules in one Act to the rules in another. The exercise could also ensure continued focus on the welfare principle and that the best interests of the child are overarching throughout the Act.

Part 2 also sets out what provisions “generally” can be accessed by families and children, again keeping these provisions in one Act and making it easier for people to navigate. However, in this Part additional provisions could be introduced. This would be limited to bringing the law up-to-date in relation to increasing the focus on the involvement of families, early help and support, the role of universal services, the transition to adulthood, and Child Protection: the principal aim would be to consolidate what is already there, and insert a new Part 2 (made up of parts of the 1968 Act, Part II of the 1995 Act and the 2014 Act). There would also be the opportunity to include specific sections of other Acts in the new Part 2 where they were relevant to that Part. In consolidating what is already there and bringing in a new Part 2, this will have the effect of decluttering the landscape.

Part 2 would also contain new sections putting Child Protection on a statutory footing¹⁶; introducing provisions for family group conferencing/ decision making and setting out more fully rules for *throughcare* for young people moving towards adulthood in primary legislation. The intention of Part 2 of the Option 3 draft Act would be to provide a comprehensive legal framework which includes earlier help and support for children and families, all the way through to the young person moving onto adulthood.

The concept of “corporate parenting” would sit in Part 2, to make it clear that these duties to children and their families apply to all public bodies and not just social work. There should also be some reference to the role of universal services in Part 2 to ensure that there is a clear understanding of the role of these services.

How could this be operationalised in reality?

The Option 3 imagined draft Act **would be consolidating in part and new in other parts**. It is suggested that Parts 1, 3, 4, and 5 would be consolidated provisions with little change to these provisions when they were consolidated in the Option 3 draft Act. Part 2 would take provisions from the 1968 Act, the 1995 Act and the 2014 Act and also introduce brand new provisions.

¹⁶ See discussion in the earlier Promise Report about the Child Protection currently not being statutory.

It is suggested that Part 2 would be introduced as a brand-new Act in its own right, and then once in force, be consolidated along with the other Acts (forming Parts 1,2,4, and 5) into one consolidating Act. This would follow the same process as the Scottish Law Commission suggested when they were consulting on children and family law in the early 1990s. The route map will suggest a form of sequencing whereby a new Bill would be laid and then a consolidation exercise would be undertaken thereafter.

This approach could therefore allow for new duties to be considered (see above).

The process of consolidation is set out in detail in Chapter 7 of The Law Commissions' Paper on Form and Accessibility of Law in Wales,¹⁷. For ease, a section of Chapter 7 is narrated as follows, where they explain how various Acts are consolidated into "one":

Procedures at Westminster

There is a special Parliamentary procedure designed to give certain technical Bills "a fair wind, whilst protecting the system from abuse". The essential feature of the procedure is that Bills are introduced in the House of Lords and, after a second reading, referred to the Joint Committee on Consolidation etc Bills for detailed consideration. For an ordinary Bill second reading is where the principles or policy which inform the Bill are debated, before it is sent to a public Bill committee for line by line scrutiny. If the Joint Committee is content with the Bill, the other parliamentary stages are largely formal.

The Joint Committee has jurisdiction over three main types of technical legislative reform Bill:

(1) consolidation Bills, whether public or private, which are limited to re-enacting existing law;

(2) Bills to consolidate any enactments with amendments to give effect to recommendations made by the Law Commission or the Scottish Law Commission or both of them, with any report containing such Recommendations;

(3) Bills prepared by one or both of the Law Commissions to promote the reform of statute law by the repeal, in accordance with Law Commission recommendations, of certain enactments which (except in so far as their effect is preserved) are no longer of practical utility, whether or not they make other

¹⁷ https://webarchive.nationalarchives.gov.uk/ukgwa/20250109113316mp_/https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/07/cp223_for_accessibility_wales_with_cover.pdf

provision in connection with the repeal of those enactments, together with any Law Commission report on any such Bill.

Numbers (1) and (2) above are properly understood as consolidation Bills, with (2) allowing a more flexible approach to the existing law.

A consolidation Bill will be intended to replace provisions in different Acts (and often statutory instruments) passed over a period of years. The drafter is also able to remove obsolete material, modernise language (now conventionally gender-neutral) and resolve many of the minor inconsistencies and ambiguities that creep in over the years. This enables the Bill to be scrutinised on a non-partisan basis without taking up much time on the floor of either House. This is the “straight” consolidation described in (1) above.

The special procedure cannot be used for a Bill that alters the substantive effect of the law, unless the change is recommended by one or both of the Law Commissions. A Bill containing amendments recommended by one or both of the Law Commissions falls into (2) above. The purpose of any such change must be limited to producing a satisfactory consolidated text. For example, a change might be necessary to enable the Bill to address similar points in the same language, despite variations in the original legislation. But the procedure is not designed for making changes that do not relate to issues arising from the consolidation process itself.

The Consultation Document explains the consolidation process in Westminster and also refers to the similar procedures which exist in Holyrood,

7.16 Procedures in Holyrood

Similar procedures exist in the Scottish Parliament. Once introduced there, a consolidation Bill is referred to a Consolidation Committee which is established for the purpose. The Committee’s job is first to report on whether the Bill should proceed as a Consolidation Bill. Once it has survived the Committee’s attention, a consolidation Bill again benefits from expedited procedure.

7.17 Very similar rules apply to statute law repeals Bills, statute law revision Bills, and, interestingly, codification Bills in Scotland. Codification Bills restate both statute law and common law.

In order to take forward this Option 3 draft model. It is suggested that a draft Part 2 Bill be drawn up, and it be progressed first as a separate Bill and then Act. As it progressed through Parliament, the other Acts which make up Parts 1, 3, 4 and 5, be reviewed for consistency and language. Once Part 2 has been enacted, then all the Acts which make up Parts 1 to 5 will be enacted as a consolidating Act, and it will become a Code for Child Welfare in Scotland.

In terms of existing secondary legislation and guidance, at the same time as the primary provisions were being determined, the associated secondary legislation would also need to be considered and updated as appropriate. As has already been noted, much of what is being suggested is consolidation and codification, and it is suggested that there would not need to be a rewrite of the existing secondary legislation; again, it may only require to be updated. It would also be sensible to update supporting guidance. It is noted that this was something referred to by Social Work Scotland when the 1995 Act was implemented that there was a set of guidance provided. There were four colour-coded guidance textbooks provided when the 1995 Act came into force. They were set out in a straightforward way with reference to the sections considered. Guidance similar to this approach could be considered. It would be helpful if that were drafted and consulted on at the same time as the Bill was working its way through Parliament, or before the Option 3 Act was brought into force.

Areas for consideration and discussion

The purpose of the Option 3 draft Act would be as a Code for Child Welfare. This would provide one easily accessible piece of primary legislation to cover Child Welfare law. In creating this legislation there is an opportunity to consider what else should be (or should not be) included and therefore what new legislation should accompany a consolidated Act.

To keep the Code for Child Welfare intact, amendments or future legislation should be made only by amending or adding to that Code. Secondary legislation should be re-enacted as amended.¹⁸ However, a further draft Bill could be laid in advance of the consolidated Act to allow for consideration of the following areas.

¹⁸ For description of codifying the legislation see Law Commission report at page 142 et seq **Codifying the legislation** *The second form of common law codification involves bringing together the statutory law on a single subject into one instrument without substantially changing the boundaries between statute law and case law. Where this is done without any (or any significant) change in the substance of the law, it is mere consolidation, which we discussed in chapter 7 above. However, it is important here for two reasons. First, it is associated with substantive law reform. Secondly, it can have implications for the form of the law on a continuing basis.*

Children leaving care

Amendments could be made, bringing in specific rules regarding Pathways assessment for children leaving care, to ensure that they are clear that support for them is in the main Act, and it has not been hived off into secondary regulations, suggesting that it is not a primary concern.

Child protection

Child Protection could become a statutory feature in the Act, providing clear rules about how, when and why it is to operate and the responsibility for doing so.

Gathering, sharing and analysing data

New provisions for data gathering, sharing, analysing and review could be added in order that assessment can be made about actions, discharge of duties, etc, to assess what is working, and where improvements, changes should be made. This is a recurring issue raised in every Serious Case Review where a child has been harmed and is a significant barrier for public service reform.

Additional sections

Further time should also be taken to consider whether any additional sections would be required to be added from other Acts to ensure that for main provisions dealing with matters relating to Part 2 are included in this Part, if that would assist the users.

Devolution

While there have been challenges to the Scottish Parliament's right to enact new legislation where the area is reserved to the UK Parliament, it is suggested that child law is not a matter reserved to the UK Parliament, and previous decisions of the Supreme Court would not prohibit the Scottish Parliament from making law on this area.¹⁹ Given that the devolution question exists, however, further consideration should be given to establishing if any of the UK provisions coming into the new Act were not reserved matters.

¹⁹ See Attorney Generals Reference UNCRC (Sc) Bill, Re Attorney General's Reference European Charter of Local Self-Government (Incorp.) (Sc) Bill 2022 SC (UKSC) 1; see also Article *The Power to Make Laws for Scotland: the Treaty Incorporation Bills Reference by Graeme Cowie PL 2022 Apr, 189-199 at page of this article the writer suggests that* "The Scottish Parliament's power to impose constraints on the legal meaning and effect of primary legislation will depend not just on that legislation's content, but also its "legislative wrapper". If it wants to maximise the incorporation of the two treaties in devolved Scots law, Holyrood is now incentivised to repeal and re-enact, *en masse*, UK Acts as ASPs."

Language and definitions

The proposed new provisions in Part 2 of the Option 3 draft Act could also address out-of-date language. Language could be reviewed to ensure it is up to date and consistent throughout the Act. Again, these were matters also raised by the Child and Young People’s Commissioner that should be addressed.²⁰ These are also matters which have been considered by The Promise Scotland. As noted already, children and young people told the Independent Care Review that some of the existing language, which is used about care, reinforces feelings of being different, lowers self-esteem and contributes to stigma. The Independent Care Review provided conclusions on the issue entitled “language of care”. The Promise Scotland has produced work with alternative language to be used. If the draft Act, as suggested in Option 3, were to be taken forward, then a comprehensive review of language should be undertaken to consider what terms are used, why they are used and can they be amended in line with what children and young people have asked for.

The Option 3 draft Act could also provide universal definitions, if appropriate, for example, putting in place the universal definition of “care experience” that will be developed as a result of the guidance set out in the Children (Care, Care Experience and Services Planning) (Scotland) Bill. Again, consultation on this issue would need to be undertaken.

Scope of the decluttering work

The Option 3 draft Act would form the basis of a “Code” together with secondary legislation and supplementary guidance. Such a framework would appear to be a framework that Social Work Scotland may support. It also appears that this may be something that the Law Society of Scotland would also support.

That said, Social Work Scotland at page 26 responds to the question “*What are your views on the proposed changes to Children's Services Planning set out in section 22 of the Bill*” as follows, “*Successful delivery of the Promise will require much more than children’s services can do on their own. The issues which lead to the state’s involvement in a family are now overwhelmingly to do with adults (directly or indirectly), and therefore adult services are absolutely critical to ensuring children enjoy the scaffolding of support which keeps them safe and well. Moreover, as our expectations of ‘corporate parents’*”

²⁰<https://www.cypcs.org.uk/resources/children-care-care-experience-and-services-planning-scotland-bill-stage-1-evidence/>

evolves, with commitments to support people with care experience throughout their lifetimes, this necessarily means that adults services are central.”²¹

These comments need to be considered against the Option 3 draft Act model. As currently proposed in Appendix 1, it does not have regard to the issues arising from the wider provision that Social Work Scotland refers to. It may be that the Option 3 draft Act needs to be considered alongside the Welsh model as set out in the Social Services and Well-being (Wales) Act 2014. In the years running up to 2030, time should be used to look at and consider whether such a wider piece of social care legislation needs to be brought forward as well, to provide a second, more holistic Act, which could tackle wider issues across the whole family. Such an Act could have the added benefit of benefiting children by supporting the adults who matter to those children.

Social Work Scotland also highlights the role of universal services and how those services should sit in the area of child welfare. For example, they highlight the use of universal services, adult services and children and families social work services during the young person’s transition to adulthood. It may be that further work and assessment need to be done in this area to decide where duties should lie and why, and if more should be contained in the Option 3 draft Act in Part 2, and what impact this might have on other existing legislation.

Minimum intervention

Social Work Scotland highlights the principle that involvement in the lives of children is based on the minimum intervention principle, a refocusing on whether this principle is still good today, and if it is, how it sits with increased state intervention in the lives of children and families’ needs to be considered. The minimum intervention principle runs through child welfare legislation; it is an issue that should be reconsidered, given the changing support that social work and other services offer children and their families. A consolidating Act with a new Bill enacted as the proposed Part 2 of the Option 3 draft Act would give stakeholders time to consider this question and provide responses to the Part 2 Bill on this issue.

Social Work (Scotland) Act 1968

²¹ <https://socialworkscotland.org/wp-content/uploads/2025/08/Call-for-Views-Children-Care-Care-Experience-and-Services-Planning-Scotland-Bill-FINAL-FOR-WEB-1.pdf>

It is suggested that there would need to be consideration of proposed sections from the Social Work (Scotland) Act 1968; not all should be repealed if they are introduced into the Option 3 draft Act, as some of those provisions also apply to adults and so would need to be retained in the 1968 Act.

Why should it be done in this way?

As noted, this approach would not require a complete rewrite of the existing legislation already in place. Much of it can be done by consolidation, while Part 2 would need to be updated and amended through a new Bill. Considering the Welsh consolidation and codification exercise, much of what is proposed in Part 2 of the Option 2 draft Act would be a reordering, renumbering and new heading exercise, and may not therefore be a wholesale rewrite.

The proposed framework in Part 2 is more innovative and seeks to amend the law by bringing it up to date, as set out in Part 2. In Part 2, much of it merges the public law provisions from the 1995 Act, the whole of the 2014 Act, and parts of the 1968 Act. It has re-ordered them and provided new headings under this Part.

The suggested framework in Part 2 sets out the overarching principles of welfare, well-being and the duty of local authorities to make provision for welfare. Thereafter, it aims to set out in chronological order support for children and their families, it then deals with matters such as corporate parenting, general duties and explains what support can be offered. It brings together the original working duties in the 1995 Act and sets them alongside the increased corporate duties. It also puts centre front the concept of “wellbeing”. This offers clarity in an understandable way and brings front and centre the rights and entitlements of children, families and care experienced adults. It also brings together an understanding of what the existing statutory framework is from the point of early help all the way through to the lifelong rights of care experienced adults.

Bringing together these Acts in this way would have the added benefit of ensuring that there is a review of accompanying secondary legislation, guidance and related policies to ensure that they are not contradictory and are made clearer. Although new guidance would not be required in its entirety, some areas of contradiction or non-compliance with the UNCRC could be identified, with the overall result being clearer and more coherent statutory and non statutory guidance for the workforce and clarity for children, families and care experienced adults.

Social Work Scotland refers to their concern about the continued drift away from the foundational principles of the 1995 Act and GIRFEC. They talked about *the Children (Scotland) Act 1995 being an example of how major, system-changing legislation can be successfully developed and implemented: a period of review, clear and comprehensive consideration alongside partners of changes which would improve provision, followed by a single set of legislation and guidance which was clear easy to follow, and available 12 months in advance to facilitate agencies' readiness – including funding, processes, and training.*

It is suggested that the Option 3 approach would align with what Social Work Scotland considered to be good practice, as was set out in the 1995 Act. The Option 3 draft Act would update the 1995 Act and also bring in under one Act the fundamental concepts that Social Work Scotland refers namely, GIRFEC, and it would also align the concept of *wellbeing* with the welfare provisions.

Stakeholder views & further consultation

The consultation responses to the Children (Care, Care Experience and Services Planning) (Scotland) Bill assist in focusing on areas that consultees want further consideration of (see below). These responses are useful when considering what stakeholders would consider helpful and what should be considered in the next steps. It is submitted that the Option 3 draft Act, with a proposed new Part 2, would require consultation and consideration, and some of the important issues raised in responses to the current Bill could be considered as part of that consultation.

It should be remembered that the steps identified in this paper regarding Option 3 and set out in Appendix 1 are merely a suggested approach to a legislative framework which could be used to take forward the recommendations from the Independent Care Review. There will no doubt be other options which could be used; different organisations will have their own views about what would best meet the recommendations of the Independent Care Review and keep the promise; and further consultation may lead to different legislative frameworks being designed. However, The Promise Scotland has commissioned this piece of work to put forward one possible solution which could meet the recommendations of the Independent Care Review or, at the very least, provide a starting point for wider discussion and consultation.

5. WHAT DO OTHERS THINK? KEY RESPONSES TO THE CHILDREN (CARE, CARE EXPERIENCED AND SERVICES PLANNING) (SCOTLAND) BILL

The Children (Care, Care Experienced and Services Planning) (Scotland) Bill was introduced on 17 June 2025. Responses to that Bill provide an opportunity to help inform as to what progress has been made on the implementation of the recommendations of the Independent Care Review, including decluttering the landscape.

The following responses are a small sample of views from key stakeholders who responded to call for evidence to the Children (Care, Care Experience and Services Planning) (Scotland) Bill.

The Children and Young People's Commissioner has commented on the fact that the proposed Bill does not address the issue that there will remain legislation affecting children and families which does not have to be UNCRC compliant, as the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 will not apply to those Acts that were not made by the Scottish Parliament, for example the Children (Scotland) Act 1995.

The question of inconsistent and out-of-date language was also raised by the Child and Young People's Commissioner.²²

In Social Work Scotland's response to the Children (Care, Care Experienced and Services Planning)(Scotland) Bill, they say that in relation to the case for new legislation:

*"Our members are clear that new legislation is a necessary component to delivery of the Promise. We currently operate within a framework of legislation built up incrementally over nearly sixty years. Additions have not always been constructed with an eye to overall coherence, nor has sufficient attention been given to the system's central operating principles, as set in the foundational Social Work (Scotland) Act 1968 and Children (Scotland) Act 1995."*²³

Social Work Scotland talks on page 3 about their concern about the continued drift away from the foundational principles of the 1995 Act and GIRFEC. They refer to the Bill also lacking detail around key proposals, with significant areas left to secondary legislation and guidance.

²²<https://www.cypcs.org.uk/resources/children-care-care-experience-and-services-planning-scotland-bill-stage-1-evidence/>

²³ <https://socialworkscotland.org/wp-content/uploads/2025/08/Call-for-Views-Children-Care-Care-Experience-and-Services-Planning-Scotland-Bill-FINAL-FOR-WEB-1.pdf>

“As we have noted above, the Children (Scotland) Act 1995 provides an example of how major, system-changing legislation can be successfully developed and implemented: a period of review, clear and comprehensive consideration alongside partners of changes which would improve provision, followed by a single set of legislation and guidance which was clear easy to follow, and available 12 months in advance to facilitate agencies’ readiness – including funding, processes, and training.”

Social Work Scotland at page 26 responds to the *“What are your views on the proposed changes to Children’s Services Planning set out in section 22 of the Bill”* as follows:

“Successful delivery of the Promise will require much more than children’s services can do on their own. The issues which lead to the state’s involvement in a family are now overwhelmingly to do with adults (directly or indirectly), and therefore adult services are absolutely critical to ensuring children enjoy the scaffolding of support which keeps them safe and well. Moreover, as our expectations of ‘corporate parents’ evolves, with commitments to support people with care experience throughout their lifetimes, this necessarily means that adults services are central.”²⁴

Social Work Scotland also highlights the principle that involvement in the lives of children is based on the minimum intervention principle, and there should be a refocusing on whether this principle is still good today, and if it is, how it sits with increased state intervention in the lives of children and families’ needs to be considered.

Social Work Scotland also highlights the role of universal services and how those services sit in this area of work, for example, they highlight the use of those services, adult services and children and families social work services during the young person’s transition to adulthood.

Social Work Scotland refers to the fundamental 1995 and 2014 Acts, but questions whether time should now be used to bring in new legislation that really declutters the landscape and also deals with important wider issues, such as support for adults and how that support may affect outcomes for children. Social Work Scotland wishes to consider what early help and support there should be in the lives of children, adults, the principles of minimum intervention,²⁵ the role of universal services and

²⁴ <https://socialworkscotland.org/wp-content/uploads/2025/08/Call-for-Views-Children-Care-Care-Experience-and-Services-Planning-Scotland-Bill-FINAL-FOR-WEB-1.pdf>

²⁵ The principle of minimum intervention is set out in various Acts, see : Children (Scotland) Act 1995 s 16 (3); Children’s Hearings (Scotland) Act ss. 28, and 29; and Adoption and Children (Scotland) Act 2007 s84 (3); these provisions require the court or the Children’s Hearing to make no order unless it considers that it would be better for the child that the order be made than that it should not be made. This principle also reflects

the role of the state. These are wide-ranging issues, and using the Option 3 draft Act and also considering what place an Act such as the Welsh 2014 Act may have in the future of Scotland, would provide a useful starting point to explore these overlapping wide-ranging issues.

The Law Society of Scotland's response to the bill raised a number of concerns, including that the approach to the bill is piecemeal and exacerbates existing uncertainty and complexity across the child and family law landscape. They also say that consideration ought to be given in the first instance to further consolidation and codification of child law in Scotland, see page 3.²⁶

6.THEMES ARISING FROM OTHER COUNTRIES' FRAMEWORK FOR CHILDREN

If there is a theme running through international legislation, it must be that decisions are made having regard to the best interests of children (the child's welfare), and that the child has a right to participate in decision-making. There appears to be an increasing acknowledgement of the United Nations Convention on the Rights of the Child; early help and support for children and their families' features, and also, the concept of "wellbeing" is set out in other countries' laws. New Zealand has enacted particular child protection measures. New Zealand include youth justice in their overarching 1989 Act, which has a focus which has not been noted elsewhere. Wales has been ambitious, setting out cradle-to-grave provisions in relation to social work support. The Act allows for regulations and codes to be drawn up to give detail to the Act.

Most countries have legislation that either incorporates private and public law for children together or has standalone child welfare legislation. Only Wales has gone further and included children and adults in one piece of overarching legislation.

Norway appears to have in place the Child Welfare Act, which is something similar to what is proposed as Option 3. The Child Welfare Act encapsulates voluntary and formal support and investigation, formal measures, and removal of parental rights and adoption long-term orders. It provides a straightforward framework, providing a comprehensive set of rules for children and families who are or who may become care experienced.

international jurisprudence, reflecting the principle of proportionality which is found in the United Nations Convention on the Rights of the Child, and European Convention on Human Rights; see also S v L 2012 (UKSC) 30, where Lord Reed considered that the minimum intervention principle applied in the orders for adoption, where a parents consent had to be dispended with for the welfare of the child.

²⁶ <https://www.lawscot.org.uk/media/rv0kc0k3/25-08-22-cf-child-care-care-experienced-and-services-planning-bill-2025.pdf>

The other noted theme running through some countries' Acts is legislation shown online, which appears similar to a Codification of an area of law set out in one Act; and where new provisions are being amended into the one overarching Act, see Norway²⁷ and New Zealand²⁸ as examples.

Appendix 2 shows some indicative international comparators as examples for consideration.

7. CONCLUSION

As noted already, the Option 3 draft Act would be consolidating in part and new in other part. It is suggested that Parts 1, 3, 4, and 5 would be consolidated provisions with little change to these provisions when they were consolidated in the Option 3 draft Act. Part 2 would be new. It would take provisions from the 1968 Act, the 1995 Act and the 2014 Act and also introduce brand new provisions. It is suggested that Part 2 could be introduced as a brand new Act in its own right, and then once in force, be consolidated along with the other Acts (forming Parts 1,2,4, and 5) into one consolidating Act. This would follow the same process as the Scottish Law Commission suggested when they were consulting on children and family law in the early 1990s.

Thereafter, the Option 3 Act would sit as one overarching Act, and it would be the *Code* for Child Welfare. If changes were to be made to it, they would be amended into that Act. This would be in line with what the Law Commission proposed in the new Welsh model of consolidation and codification. It also appears there are other international jurisdictions that have codified this area of the law, see Norway as an example.

The proposed Part 2 in the Option 3 draft Act would include a rewrite of the 1968 and the 1995 Acts, which would have the benefit of making the new Option 3 draft Act subject to the UNCRC Act 2024. This is a matter that the Children and Young People's Commissioner has commented on in respect of the proposed changes to the Children (Scotland) Act 1995 set out in the Children (Care, Care Experienced and Services Planning) (Scotland) Bill²⁹.

²⁷ <https://lovdata.no/dokument/NL/lov/2021-06-18-97>

²⁸

https://www.legislation.govt.nz/act/public/1989/0024/latest/whole.html?search=sw_096be8ed81f7cd3e_child+protection_25_se&p=1

²⁹ <https://www.cypcs.org.uk/resources/children-care-care-experience-and-services-planning-scotland-bill-stage-1-evidence/> We note that section 1, 2 and 10 of this Bill amend the Children (Scotland) Act 1995. This puts them outwith the scope of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. As a consequence, it will not be possible to challenge the exercise of any functions under these sections which are incompatible with the UNCRC. This UNCRC Act scope gap is not identified in the Bill's supporting

documents. It is important to raise awareness in Parliament and across Government that different drafting choices will be needed to ensure that the UNCRC Act meets its full potential.

APPENDIX 1: DRAFT HEADINGS FOR IMAGINED ACT (see separate document)

APPENDIX 2: COMPARISONS OF INTERNATIONAL MODELS ON CHILD WELFARE LAW LEGISLATION

The following countries have been highlighted to offer a comparison of different approaches that have been taken. These systems are not necessarily offering improved outcomes for children compared to Scotland, but the examples below demonstrate the different approaches.

Wales

Wales now has a dual system of legislation which applies to child social care; they have provision in the Children Act 1989 (which is shared with England) and the Social Services and Well-being (Wales) Act 2014. As highlighted earlier, the Welsh Assembly appear to have taken a bold approach in bringing forward their own laws. In doing so, they seek to consolidate and codify their laws for the benefit of the people of Wales.

The Children Act 1989 Part III no longer applies in Wales, with Wales having enacted the Social Services and Well-being (Wales) Act 2014. The 2014 Act provides for the assessment of the care and support needs of adults and children, including carers, who may require a service to achieve their wellbeing outcomes. Provisions relating to children's social care previously set out in five other Acts were replaced by the 2014 Act; these included provisions relating to carers, disabled children and persons.³⁰ The 2014 Act does a different job to the Children Act 1989, it focuses on social services and support for all persons in Wales, from early years, children, moving through to adulthood and then care of the vulnerable and elderly adults. It is a framework Act, but holistic in its purpose, applying to all persons in Wales who require social services. It sets out overarching principles and duties to assess. Part 6 deals with looked-after and accommodated children.³¹

Of note, they set out detailed provisions in the 2014 Act, in relation to the assessment and support for young people leaving social care as children and moving to adulthood. At present, the Scottish model contains very few primary provisions on this important stage in a young person's life, and the main

³⁰ <https://sites.cardiff.ac.uk/childrens-social-care-law/legislation/primary/>

³¹ <https://www.wlga.wales/social-services-and-well-being-wales-act-2014#:~:text=The%20Social%20Services%20and%20Well,as%20part%20of%20their%20community.>

The Social Services and Well-being (Wales) Act received Royal Assent on 1st May 2014 and came into force from April 2016. The Act provides the legal framework for improving the well-being of people who need care and support and carers who need support, and for transforming social services in Wales, giving effect to the policy stated in the White Paper Sustainable Social Services for Wales: A Framework for Action. The Act will transform the way social services are delivered through an approach that is focused on achieving the outcomes necessary to promote a person's well-being - as an individual, as part of a family and as part of their community.

provisions are contained in the associated regulations and guidance. There is a noted clearer focus on this area of life in Welsh primary legislation.

Australia

Private law rights for children are regulated by a federal act, the Family Law Act 1975; as far as child protection and social services provision for children in need of care and support is concerned, each territory and state has their own acts dealing with such matters. There is some Commonwealth legislation which guides child protection for the states and territories; however, states and territories have responsibility for the administration and operation of child protection services. There is federal guidance which states that across Australia, there is a key set of principles which guide all child protection legislation; these key principles are based on human rights conventions. The principles of the UNCRC underline all of Australia's child protection legislation. The 1975 Act sets out how child protection concerns raised in the family court should be managed.

The legislation found across the states and territories has similar guiding principles, which include the best interests of the child; early help and support for family, culturally appropriate care for Aboriginal and Torres Strait Islander child placement principles; and participation of the children and young people in decision-making processes.

Australia also has a National Framework for Protecting Australia's Children 2021-2031. It focuses on a national approach to early help and support, and targeted support for children and families, improving information sharing, data development and analysis, and strengthening the child and family sector and workforce capability, and addressing overrepresentation in child protection systems.³²

England

The principal Acts governing arrangements for children are set out in the Children Act 1989, Children Act 2004, Children and Families Act 2014 and Children and Social Work Act 2017. The 1989 Act is still the principal Act, governing the English position; however, like Scotland, it has also become more fragmented. What is different to the Scottish position is that the 1989 Act still contains the main provisions for private law rights and public law rights, including the care orders, and duties provided by local authorities to children and their families. There is, therefore, more cohesion in that Act than its Scottish equivalent.

³² <https://aifs.gov.au/resources/resource-sheets/australian-child-protection-legislation>

Norway

The principal acts in Norway are the Children's Act and the Child Welfare Act. The Children's Act covers legislation on parenthood, parental responsibility, attendance and maintenance obligations. The Act also contains rules on parental mediation and the handling of parenting disputes in court.

The Child Welfare Act relates to child welfare services. The Child Welfare Act sets out 18 chapters. In Chapter 1, it includes purpose, scope and basic provisions. Overarching provisions are the best interests of the child; the Child's right to participate; the Child's right to care and right to family life; and the Child's right to necessary child welfare measures. The Child's welfare services case processing, services and measures must be justifiable. Section 1-9 provides that the Child Welfare Service (CWS) must, as far as possible, cooperate with both children and parents, and must treat them with respect. 1-10 provides that the Child Welfare Service must implement measures at an early stage in order to prevent serious neglect and behavioural problems. Chapter 2 deals with reports or concerns and investigations. Chapter 3 deals with assistive measures. It includes voluntary measures, foster homes, and child welfare institutions, an assistive order. Chapter 4 deals with emergency measures. Chapter 5 deals with taking a child into care, deprivation of parental responsibility and adoption. Chapter 6 measures relating to behaviour. Chapter 7 provides for access and contact after a child has been taken into care. Chapter 8 deals with reviews of decisions for children. Chapter 9 Foster Home, 10 Child Welfare Institution, and 11 Accommodation for Refugee and asylum-seeking minors. Chapter 12 Case Processing Rules. Chapter 14: Rules for child welfare tribunals. Chapter 15 includes responsibilities and tasks of the municipality and the CWS. Chapter 16: Central Child Welfare Authorities. Chapter 17 Central Government supervision. Chapter 18 are final provisions.³³

The Norwegian Child Welfare Act appears to be a comprehensive Code of laws dealing with child welfare, all sitting inside one Act. It is chronological, and the areas it covers are similar to the areas that Parts 2 – 5 of the Option 3 draft Act would propose to cover.

New Zealand

Has four main acts governing children in need: the Oranga Tamariki Act 1989, the Care of Children Act 2004, the Children's Act 2014 and the Oversight of Oranga Tamariki System Act 2022. The 1989 Act provides for state intervention in respect of children in need of care and protection and includes provisions for children and youths who criminally offend. Sections 20 – 38 of the Oranga Tamariki Act

³³ <https://www.regjeringen.no/contentassets/221b1c050f72434b8fb56564af085ea7/ny-barnevernslov-1.-januar-2023-en.pdf>

1989 make specific provision for holding Family Group Conferences. Part 4 deals with Youth Justice. The 2004 Act defines and regulates the care and guardianship of children. The Children Act 2014 contains specific provisions in respect of Child Protection policies making these part of primary legislation.